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JAN 15 2003

Report Number: A-01-02-00002

Mr. Nicholas Kostan
Superintendent
Lynn Public Schools
14 Central Avenue
Lynn, Massachusetts 01901

Dear Mr. Kostan:

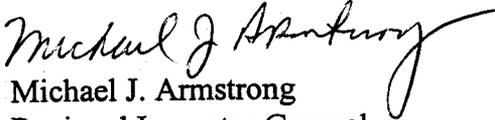
Enclosed are two copies of the U.S. Department of Health and Human Services (HHS), Office of Inspector General, Office of Audit Services' (OAS) report entitled "Medicaid Payments for School Based Health Services, Lynn, Massachusetts - July 1999 through June 2000." A copy of this report will be forwarded to the action official noted below for his/her review and any action deemed necessary.

Final determination as to actions taken on all matters reported will be made by the HHS action official named below. 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, OAS reports issued to the department's grantees and contractors are made available to members of the press and general public to the extent information contained therein is not subject to exemptions in the Act which the department chooses to exercise. (See 45 CFR Part 5.)

To facilitate identification, please refer to Report Number A-01-02-00002 in all correspondence relating to this report.

Sincerely yours,


Michael J. Armstrong
Regional Inspector General
for Audit Services

Enclosures - as stated

Direct Reply to HHS Action Official:

Ms. Lynda Silva

Acting Regional Administrator

Centers for Medicare & Medicaid Services

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cc: Frank McNamara, Director, Internal Control and Audit, Division of Medical Assistance

Executive Office of Health and Human Services, Commonwealth of Massachusetts

John Robertson, Associate Vice Chancellor, Center Director, Center for health Care

Financing University of Massachusetts

Department of Health and Human Services

**OFFICE OF
INSPECTOR GENERAL**

**MEDICAID PAYMENTS FOR
SCHOOL-BASED HEALTH SERVICES
LYNN, MASSACHUSETTS
- JULY 1999 THROUGH JUNE 2000**



JANET REHNQUIST
Inspector General

January 2003
A-01-02-00002

Office of Inspector General

<http://oig.hhs.gov>

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EXECUTIVE SUMMARY

Background

The Medicaid program was established by Title XIX of the Social Security Act and is jointly funded by the federal and state governments to provide medical assistance to pregnant women, children, and needy individuals who are aged, blind or disabled. Within broad federal guidelines, states design and administer the program under the general oversight of the Centers for Medicare and Medicaid Services (CMS). In Massachusetts, the Division of Medical Assistance (DMA) is the state agency responsible for administering the Medicaid program. The DMA contracts with the University of Massachusetts Medical School, Center for Health Care Financing, Municipal Medicaid to administer the school-based health services portion of the Medicaid program.

School-based health services reimbursable under the Medicaid program are provided by or through the Massachusetts Department of Education or a local education agency to students with special needs pursuant to an Individualized Education Plan (IEP). Services are provided in the school setting or another site in the community and include speech therapy, physical therapy, occupational therapy, audiological services, behavior management and/or counseling. Lynn Public Schools, a local education agency located in Lynn, Massachusetts, operated 30 public schools and contracted with as many as 26 private schools during our audit period. Of approximately 15,069 students that attended the Lynn Public Schools during our audit period, 1,343 students received special education services for which the school system was reimbursed \$1,094,239 (federal share) under the Commonwealth of Massachusetts' Medicaid program.

Objective

The objective of our audit was to determine whether costs claimed for school-based health services by the Lynn Public Schools through the Commonwealth of Massachusetts were reasonable, allowable and adequately supported in accordance with the terms of the state Medicaid plan and applicable federal regulations. The audit period included Medicaid payments made during the period July 1, 1999 through June 30, 2000.

Summary of Findings

In Massachusetts, claims for school-based health services are based on a daily per diem rate for the prototype (level-of-service) developed in each Medicaid eligible student's IEP. Each school district must have accurate attendance records, a valid IEP for each student, an appropriate and accurate prototype, qualified Medicaid health care providers, and evidence that any Medicaid covered service in the IEP has been delivered before the Medicaid claim is submitted for federal reimbursement.

While our review indicated that Lynn Public Schools and its billing agent had implemented many internal control procedures, we also found that further improvements can be made in internal controls.

The Lynn Public Schools need to improve their system of controls to ensure that school-based health records are assembled and maintained to support the dates and types of services provided and all providers possess the required licenses. Our review of payments contained in randomly selected months for 100 recipients showed that in 34 of the 100 sample months the Lynn Public Schools billed the Medicaid program: (1) for several students for which the school system did not locate any documentation to demonstrate that services prescribed in the IEP were delivered, (2) when personnel did not possess required qualifications, (3) for several students who were not prescribed to receive school-based health services by a current IEP, and (4) for days when the schools were closed (in-service days). Relative to our review of the randomly selected months, we estimate that the Lynn Public Schools were inappropriately overpaid at least \$250,901 (federal share).

In addition, the Lynn Public Schools billed the Medicaid program for \$8,510 (federal share) that represented the daily per diem rate for school-based health services on 10 dates when the schools were not open to students.

The Federal Family Educational Rights and Privacy Act, Individuals with Disabilities Education Act (IDEA), Chapter 766 (the Massachusetts special education law), and DMA instructions (*Operational Guide for School Districts*, revised May 1995), requires written authorization, in the appropriate language, to share educational information with the DMA. However, the Lynn Public Schools did not require an "authorization" signed by either a parent or guardian to share information with the DMA for the purpose of submitting claims for Medicaid reimbursement for school-based health services. In this regard, all 100 of the sample months tested did not have the signed authorization forms. Accordingly, we have no assurance that the parents of special education students attending the Lynn Public Schools were informed about or gave consent to sharing their child's confidential information with the state Medicaid agency. This requirement does not preclude the state agency from billing Medicaid for school-based health services.

Internal controls need to be strengthened in the Lynn Public Schools to ensure that they appropriately submit Medicaid claims for school-based health services.

Recommendations

We recommend that the Lynn Public Schools:

- Develop written policies and procedures requiring service providers to document all health services delivered to Medicaid recipients which details client specific information regarding all specific services actually provided for each individual recipient of services and retain those records for review,
- Develop written policies or procedures requiring that all service providers for which Lynn Public Schools intended to bill Medicaid have the required licenses,
- Strengthen procedures to ensure that Medicaid billings are based on accurate attendance records that support the students' presence to receive services, days for which the school was open, and students which have a current IEP that prescribes direct services,

- Strengthen controls to ensure the correct prototype is used when preparing claims for federal reimbursement, and
- Refund through the DMA, the \$259,411 (federal share) that was inappropriately paid by the Medicaid program to the Lynn Public Schools.

Auditee Response

While Lynn Public Schools agreed with the findings concerning the need for attendance and prototype records, they strongly disagree with the findings related to service documentation, provider qualifications, and IEPs. Further, Lynn Public Schools rejects the Office of Inspector General's (OIG) assertion concerning internal control weaknesses. In this regard, Lynn Public Schools believes that they have extensive internal controls in place to ensure service delivery and to submit valid claims.

We have made changes, where appropriate, to our final report to address Lynn Public Schools concerns. Lynn Public Schools' response to our draft report is summarized in the body of our report and attached in APPENDIX C.

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INTRODUCTION

Background

The Medicaid program was established by Title XIX of the Social Security Act and is jointly funded by the federal and state governments to provide medical assistance to pregnant women, children, and needy individuals who are aged, blind or disabled. Within broad federal guidelines, states design and administer the program under the general oversight of the Centers for Medicare and Medicaid Services (CMS). In Massachusetts, the Division of Medical Assistance (DMA) is the state agency responsible for administering the Medicaid program. The DMA contracts with the University of Massachusetts Medical School, Center for Health Care Financing, Municipal Medicaid to administer the school-based health services portion of the Medicaid program.

School-based health services reimbursable under the Medicaid program are provided by or through the Massachusetts Department of Education or a local education agency to students with special needs pursuant to an Individualized Education Plan (IEP). Services are provided in the school setting or another site in the community and include speech therapy, physical therapy, occupational therapy, audiological services, behavior management and/or counseling. The IEP describes the special education and related services, including school-based health services, which the student requires. An IEP must be in compliance with the Individuals with Disabilities Education Act, P.L. 94-142, as amended, and in compliance with requirements of regulations implementing Chapter 766 of the Acts of 1972, M.G.L., Chapter 71B, as amended.

To seek Medicaid reimbursement of school-based health services, school districts must:

- Have a Provider Agreement with the DMA;
- Determine whether the student is enrolled in the Medicaid program;
- Provide services pursuant to a valid IEP that are in compliance with all Chapter 766 requirements (the Massachusetts special education law;)
- Assemble and complete documentation that the Medicaid covered service in the IEP has been delivered by a qualified provider before the Medicaid claim is submitted to UNISYS (the DMA Medicaid claims agent) for federal reimbursement;
- Comply with the Massachusetts Department of Education and DMA requirements concerning the authorization to share information with the DMA; and
- Submit a claim for reimbursement that details the student, dates of attendance, CMS procedure codes (level-of-service) and rates. (School districts submit claiming documents to UNISYS in order to obtain federal reimbursement.)

Massachusetts reimburses school districts for school-based health services based on the number of days in attendance times a statewide per diem rate for the Program Prototype per the student's IEP. According to the Massachusetts state Medicaid plan, the per diem rate is based on the Medicaid fee-for-service rate for each service and a statistically representative utilization rate for those services.

The Lynn Public Schools, a local education agency located in Lynn, Massachusetts, operated 30 public schools and contracted with as many as 26 private schools during our audit period. Of approximately 15,069 students who attended the Lynn Public Schools during our audit period, 1,343 students received special education services for which the school system submitted reimbursement claims to the Commonwealth of Massachusetts' Medicaid program. The Lynn Public Schools contracted with Public Consulting Group, Inc. (PCG) to prepare and submit its Medicaid claims for school-based health services.

Objective, Scope and Methodology

The objective of our audit was to determine whether costs claimed for school-based health services by the Lynn Public Schools through the Commonwealth of Massachusetts were reasonable, allowable and adequately supported in accordance with the terms of the state Medicaid plan and applicable federal regulations. Specifically, our audit included, but was not limited to, recipient and provider eligibility, payment rates and billing processes. The audit period included Medicaid payments made during the period July 1, 1999 through June 30, 2000.

To accomplish our audit objective, we:

- Reviewed federal and state laws, regulations and guidelines pertaining to the Medicaid program and special education related to school-based health services. We also reviewed the Commonwealth of Massachusetts State Plan Amendment 92-14 that describes the Department of Public Welfare's procedure for reimbursing school-based special needs services.
- Obtained an understanding of Lynn Public Schools' internal controls relative to recipient eligibility, provider qualifications, payment rates and billing processes.
- Identified all individual claims made for days when the Lynn Public Schools were not in session, including holidays (e.g., Thanksgiving, Christmas and Memorial Day), winter and spring vacations, and snow and emergency days. We did not review claims for residential placement or preschool placement.
- Selected from a population of 9,387 recipient/months (federal share totaling \$1,094,239), a simple random sample of 100 recipient/months representing claims totaling a federal share of \$11,566 in Medicaid claims paid during the period July 1, 1999 through June 30, 2000 for school-based health services in the Lynn Public Schools.
- Obtained and analyzed information from Lynn Public Schools' and out-of-district schools' records which supported Lynn Public Schools' claim for Medicaid reimbursement, including student eligibility for Medicaid, parental consent to bill Medicaid, student IEPs, student attendance and provider qualifications.
- Held discussions with officials from the Lynn Public Schools and out-of-district schools.

Our audit was conducted in accordance with generally accepted government auditing standards. We performed our fieldwork at the Lynn Public Schools in Lynn, Massachusetts and other contracted out-of-district schools in Massachusetts during the period December 2001 through October 2002.

FINDINGS AND RECOMMENDATIONS

In Massachusetts, claims for school-based health services are based on a daily per diem rate for the prototype (level-of-service) developed in each Medicaid eligible student's IEP. While our review indicated that Lynn Public Schools and its billing agent had implemented many internal control procedures, we also found that further improvements can be made in internal controls. In this regard, the Lynn Public Schools did not design a system of controls to ensure that all providers possess the required licenses and school-based health records were assembled and maintained to support the dates and type of medical services provided. In this regard, each school district must have accurate attendance records, a valid IEP for each student, an appropriate and accurate prototype, qualified Medicaid health care providers, and evidence that any Medicaid covered service in the IEP has been delivered before the Medicaid claim is submitted for federal reimbursement.

Relative to our review of Medicaid claims in randomly selected months, we estimate that the Lynn Public Schools were inappropriately overpaid at least \$250,901 (federal share). In addition, the Lynn Public Schools billed the Medicaid program for \$8,510 (federal share), which represented the daily per diem rate for school-based health services on 10 dates when the schools were not open to students.

Furthermore, the Lynn Public Schools did not require an "authorization" signed by either a parent or guardian to share information with the DMA for the purpose of submitting claims for Medicaid reimbursement for school-based health services. Accordingly, we have no assurance that the parents of special education students attending the Lynn Public Schools were informed about or gave consent to sharing their child's confidential information with the state Medicaid agency. This requirement does not preclude the state agency from billing Medicaid for school-based health services.

REVIEW OF MEDICAID CLAIMS

Review of Sample Claims

As part of our review of the appropriateness of payments to the Lynn Public Schools under the Medicaid program for school-based health care services, we reviewed payments totaling \$11,566 (federal share) for a random sample of months for 100 recipients paid during the period July 1, 1999 through June 30, 2000. We excluded payments for days when the Lynn Public Schools were not in session as this is addressed in the section below.

We found that for payments contained in 34 of the 100 months reviewed, the Lynn Public Schools claimed \$4,082 for school-based health services when: (1) the Lynn Public Schools did not maintain sufficient documentation that services prescribed in the IEP were delivered (22 sample months), (2) school-based health services were rendered by providers that did not have

the qualifications required by DMA Medicaid regulations (8 sample months), (3) the student did not have a current IEP (3 sample months), (4) they billed the wrong prototype (7 sample months), and (5) the schools were closed for in-service days (4 sample months). The individual sample units total more than 34 because some sample units had more than one condition. While some sample units had more than one condition, we did not question more than 100 percent of the claim. (See APPENDIX A.) As a result, we estimate that the Lynn Public Schools were overpaid at least \$250,901 (federal share). (See APPENDIX B.)

Documentation of Services Delivered

For 22 of the 100 sample months reviewed, the Lynn Public Schools claimed the daily per diem rate for school-based health services amounting to \$3,558 for which the school system did not maintain any documentation that services prescribed in the IEP were delivered. Specifically, the school system could not locate case/encounter notes for dates of service or progress notes spanning the sample month.

The CMS's *Medicaid and School Health: A Technical Assistance Guide*, dated August, 1997, page 40, states:

...A school, as a provider, must keep organized and confidential records that details client specific information regarding all specific services provided for each individual recipient of services and retain those records for review ... Relevant documentation includes the dates of service....

In addition, the Commonwealth of Massachusetts' *Operational Guide for School Districts*, revised May 1995, requires that in addition to attendance records, schools assemble and complete documentation that any Medicaid covered service in the IEP has been delivered before the Medicaid claim is submitted to UNISYS for federal reimbursement.

Further, in the provider agreement the Lynn Public Schools entered into with the DMA, the Lynn Public Schools agreed to "... keep such records as are necessary to disclose fully the extent of the services to recipients and to preserve these records for a minimum period of six years...."

Accordingly, for the students included in the 22 months reviewed, for which the Lynn Public Schools could neither locate case/encounter notes for dates of service nor progress notes spanning the sample month, the Lynn Public Schools could not provide the required documented assurance that services prescribed in the IEP were delivered.

Lynn Public Schools did not have written policies or procedures in place requiring service providers to document services delivered to Medicaid recipients.

Medicaid Provider Qualifications

For 8 of the 100 sample months reviewed the Lynn Public Schools claimed \$1,149 in daily per diem rates for school-based health services rendered by providers that did not have the qualifications required by DMA Medicaid regulations. We reviewed the qualifications for 34

providers that were employed by Lynn Public Schools and out of district schools to provide health services to special education students during our audit period. We found that 9 of the 34 providers (26 percent) did not have the qualifications (licenses) required by Massachusetts Medicaid regulations.

The CMS's *Medicaid and School Health: A Technical Assistance Guide*, dated August, 1997, pages 15 and 16, 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. It is not sufficient for a state to use Department of Education provider qualifications for reimbursement of Medicaid-covered school health services....Some Medicaid provider qualifications are dictated by the Federal Medicaid program by regulation, while other provider qualifications are established by the state....Where a school or school district provides a variety of Medicaid covered services, the school must meet all Federal and state provider qualifications associated with each service it provides....

Further, state Medicaid plan, Supplement 2 to Attachment 4.19-B (dated June 20, 1992), states that direct care providers employed or contracted by the school districts must comply with all qualifications for that provider type, including any state licensure and certification requirements. This is consistent with the agreement between DMA and the Lynn Public Schools which states that direct care providers employed or contracted by the Provider must comply with the qualifications for that provider type established under the applicable DMA regulations.

Medicaid payment for speech therapy, occupational therapy and counseling will be made for services that meet the applicable requirements as set forth in the Commonwealth of Massachusetts, Division of Medical Assistance *Therapist Manual, Psychologist Manual and All Providers Manual*. Specifically, the *All Providers Manual*, section 450.212 (A) (4) states: "To be eligible to participate in MassHealth as any provider type, a provider must: be fully licensed, certified, or registered by the agency or board overseeing the specific provider type...."

Lynn Public Schools did not have written policies or procedures in place requiring that all service providers for which Lynn Public Schools intended to bill Medicaid had the required licenses. School officials advised us that they believed if the person providing the therapy or counseling was certified by the Department of Education, then Lynn Public Schools could bill Medicaid for the service.

Individualized Education Plan

For 3 of the 100 sample months reviewed, the Lynn Public Schools claimed the daily per diem rate for school-based health services amounting to \$206 based on an IEP, which did not prescribe direct services. Using the bundled rate developed for direct services, the Lynn Public Schools submitted claims for consultation services in February 1999 and March 2000 for three students, for which the IEPs did not prescribe any direct special education services in or out of the regular education classroom. The IEPs did prescribe "Indirect Services to School Personnel and

Parents.” The special education teachers were to confer with the regular education teachers. One of the IEPs listed the time as 20 minutes monthly and another listed the time as 5 minutes weekly. The DMA has not approved a reimbursement rate for consultation for indirect services and it is inappropriate to use a bundled rate developed for direct services to seek reimbursement for indirect services.

Prototype

For 7 of the 100 sample months, Lynn Public Schools claimed reimbursement for 93 days using the incorrect prototype. The Lynn Public Schools both over-billed (3 sample months) and under-billed (4 sample months), resulting in a net over-payment of \$51. Two of the over-payments were the result of the Lynn Public Schools continuing to bill the weekly preschool prototype for 2 students who were in kindergarten and should have been billed at a daily per diem rate. The preschool rate is billed weekly and the full amount is billed and paid as long as the student is in attendance at least one day during the week. Contrary to this, the daily per diem rates are only billed and paid for days when the student is present in school. The school system claimed an incorrect per diem rate based on the level of service provided to the students. The Lynn Public Schools did not have controls in place to ensure the correct prototype was used when preparing claims for federal reimbursement. In this respect, Massachusetts reimbursed schools districts for school-based health services based on the number of days in attendance times a statewide per diem rate for the Program Prototype (level of service) per the student’s IEP. Entering the wrong prototype into the Medicaid billing system will result in incorrect billing.

In-Service Days

For 4 of the 100 sample months reviewed, the Lynn Public Schools claimed the daily per diem rate for school-based health services amounting to \$29 when the schools were closed and the students did not receive services for at least one day. Specifically, the Lynn Public Schools billed for in-service days when the schools were closed and students did not receive services. The PCG inadvertently billed for these days.

Days Schools Were Not Open to Students

The local education agency is entitled to bill Medicaid the per diem rate for each day the student attended school.



We reviewed 100 percent of claims for days when the Lynn Public Schools were not in session, including holidays (e.g., Thanksgiving, Christmas and Memorial Day), winter and spring vacations, and snow and emergency days. From the universe of 37,265 individual claims submitted by the Lynn Public Schools during our audit period, we found 970 claims that included at least one day when school was not in session. As a result, we found that \$8,510

(federal share) was paid to Lynn Public Schools in error for these days when the student was not in school. The PCG indicated that the Lynn Public Schools initially indicated that one of the days was a school day; however, they were later informed, after billing, that school was cancelled on that day. They also indicated that some of the errors were the result of data entry errors.

Recommendations

We recommend that the Lynn Public Schools:

- Develop written policies and procedures requiring service providers to document all health services delivered to Medicaid recipients which details client specific information regarding all specific services actually provided for each individual recipient of services and retain those records for review,
- Develop written policies or procedures requiring that all service providers for which Lynn Public Schools intended to bill Medicaid have the required licenses,
- Establish procedures to ensure that Medicaid billings are based on accurate attendance records that support the students' presence to receive services, days for which the school was open, and students which have a current IEP that prescribes direct services,
- Establish controls to ensure the correct prototype is used when preparing claims for federal reimbursement, and
- Refund through the DMA, the \$259,411 (federal share) that was inappropriately paid by the Medicaid program to the Lynn Public Schools.

AUDITEE RESPONSE AND ADDITIONAL OIG COMMENTS

Lynn Public Schools' response to our draft report is attached in APPENDIX C. While Lynn Public Schools agreed with the findings concerning the need for attendance and prototype records, they strongly disagreed with the findings related to service documentation, provider qualifications, and IEPs. Further, Lynn Public Schools rejected the Office of Inspector General's assertion concerning internal control weaknesses. In this regard, Lynn Public Schools believes that they have extensive internal controls in place to ensure service delivery and to submit valid claims. We have summarized the Lynn Public Schools comments by topic below.

Documentation of Services Delivered

Auditee Response The Lynn Public Schools states that claims for Medicaid-eligible students are based on attendance and a valid IEP and not specific services provided on specific dates. The Commonwealth of Massachusetts' *Operational Guide for School Districts*, revised May 1995 sets forth what records a school district must submit and maintain to support a claim for Medicaid reimbursement. Lynn has satisfied these requirements, and OIG must resolve its differences with other oversight agencies in this area, rather than penalize the Lynn Public

Schools. The Lynn Public Schools goes on to state that they have been following all guidance provided to it from state and federal oversight agencies, including their Provider Agreement with DMA and the 1997 CMS Technical Assistance Guide.

Additional OIG Comments Based on the current Massachusetts claiming methodology, we agree that claims are based on attendance rather than specific dates of service. However, for IEPs that contained a health related service there should be documentation of the health related services provided. Specifically, the Provider Agreement between DMA and Lynn Public Schools required the provider to keep such records as necessary to disclose fully the extent of the services to recipients and to preserve these records for a minimum period of six years. Furthermore, the provider agreed to furnish federal and state officials with such information, including copies of medical records, regarding any services for which payment was claimed.

For the IEPs that prescribe one or more health related service(s), we found the claim to be appropriate if at least one of the health related services was supported by service documentation. We accepted any documentation that indicated that services were delivered to recipients during our sample month including quarterly progress reports that covered our sample month. However, we did not accept documentation dated prior to our sample month since there was no assurance that services continued into the sample month. Furthermore, we did not accept IEPs, assessments or evaluations as documentation that services were provided since they identify only those services that a child should receive and not the services that the child actually received.

Medicaid Provider Qualifications

Auditee Response Lynn Public Schools does not concur with our finding related to provider qualifications. Lynn Public Schools states that the Commonwealth has not issued any specific guidelines for school-based providers. Furthermore, Lynn Public Schools did not agree with OIG disallowing certain types of providers for counseling services.

Additional OIG Comments According to CMS's *Medicaid and School Health: A Technical Assistance Guide*, dated August 1997, Medicaid regulations require that provider qualifications be uniform and standard. This means that states cannot have one set of provider qualifications for school providers and another set of provider qualifications for all other providers. The guide states that schools should check with the state Medicaid agency to determine specific state requirements regarding provider qualification for participation in the Medicaid program. We followed this process to identify the provider qualifications discussed in this area.

Based on our further review of Massachusetts regulations we found that Licensed Independent Clinical Social Workers and Licensed Certified Social Workers are eligible to participate in Medicaid. We have changed our report to consider these payments as appropriate.

Individualized Education Plans

Auditee Response The Lynn Public Schools disagrees with our findings related to all alleged instances where the OIG states an IEP does not support the claim. The Lynn Public Schools believe that all instances are directly related to the OIG's disagreement with other oversight

agencies. They state that, the assertion that the claims are “inappropriate” appears to derive from OIG’s misinterpretation of the Massachusetts methodology and disagreement with other oversight agencies.

Additional OIG Comments Since the DMA has not approved a reimbursement rate for consultation for indirect services, it is inappropriate to use a bundled rate developed for direct services to seek reimbursement for indirect services.

Student Absences and Prototype

Auditee Response The Lynn Public Schools had no disagreement with our findings concerning the need for attendance and prototype records. However, it was their position that the OIG draft findings regarding documentation, provider qualifications, and IEPs were erroneous and should not have been the basis for penalizing Lynn monetarily. They further believed that when these items were subtracted from the “finding”, the statistical validity of the OIG calculation was questionable.

Additional OIG Comments For reasons stated above, we do not agree that Appendix A to our report should exclude findings related to documentation, provider qualifications, and IEPs. Further, disagreement on these issues merely results in different costs questioned. It does not invalidate the statistical results reported by the OIG because the sample selection was random and the calculated costs questioned were based on standard statistical methodology.

Days Schools Were Not Open to Students

Auditee Response Lynn Public Schools agreed with OIG’s finding for days when schools were not open to students. In addition they point out that the OIG found that 99.99% of the revenue that the Lynn Public Schools received during the year was supported by the calendar and attendance information reviewed.

Internal Controls

Auditee Response Lynn Public Schools asserts that it already has extensive internal controls in place to ensure service delivery and to submit valid claims. Further, Lynn Public Schools takes issue with and vigorously rejects the OIG’s assertion that Lynn Public Schools has internal control “weaknesses” around its preparation and submission of Medicaid claims for school-based health services. Lynn Public Schools states that they have extensive policies and procedures in place and maintains a comprehensive monitoring system for compliance and Quality Assurance in connection with its special education program.

Additional OIG Comments We acknowledge that Lynn Public School has made a good faith effort to institute comprehensive internal controls. However, we found that improvements are still needed to ensure that Medicaid claims are billed in accordance with program requirements. We reported what we found to aid Lynn Public Schools in making further improvements to its internal controls.

General Comments

Auditee Response The Lynn Public Schools state that the OIG's audit appears to have been conducted without careful regard to existing guidelines that school districts must follow under the Massachusetts Municipal Medicaid Program. They go on to state that the OIG has interpreted the guidelines in one manner, and other oversight agencies which promulgate the rules they must follow, have interpreted the guidelines in another manner. Finally, the Lynn Public schools state that this systemic disagreement is not Lynn's issue, since they have been following guidance for the program that has been provided to them. Therefore, they do not believe that they should be financially penalized beyond the minor findings they acknowledge to be true.

Furthermore, in 1995 CMS audited several Massachusetts LEAs. The CMS did not make any changes to the claiming methodology or require or recommend that schools maintain any specific additional documentation beyond what is required in the Massachusetts Operational Guide. Lynn Public Schools feel that this underscores the fact that OIG is asking them to produce retrospective service documentation in a manner never intended by the program creators or previous auditors.

Additional OIG Comments CMS agrees with the service documentation requirements identified by the OIG and that the requirements were applicable for our audit period. Further, CMS's audit in 1995 did not include service documentation or provider qualifications in the scope of the audit. Rather, the CMS audit included attendance, prototype, and Medicaid eligibility. Therefore, Lynn Public Schools should not have assumed that the program creators or previous auditors never intended service documentation of the type being sought by the OIG.

OTHER MATTERS

We found that for all 100 sample months that we reviewed, the Lynn Public Schools did not obtain an "authorization" signed by either a parent or guardian to share information with the DMA for the purpose of submitting claims for Medicaid reimbursement for school-based health services. Not obtaining written authorization to share educational information with the DMA is contrary to the Federal Family Educational Rights and Privacy Act, IDEA, Chapter 766 (the Massachusetts special education law), and DMA instructions, (*Operational Guide for School Districts*, revised May 1995).

On behalf of the Lynn Public Schools, PCG mails parental consent forms to the Lynn Public School students, however, the policy followed by the PCG is to have the parents/guardians sign and return the consent forms only if they do not want Medicaid billed for school-based health services provided to their child. Furthermore, the PCG sends out the consent forms in English and Spanish only. Based on this "passive consent" methodology, PCG assumes that the parents/guardians approve of the use of the student's Medicaid number if it has not received a notice to the contrary.

We have concerns about PCG assuming that the parents/guardians have authorized the use of students' Medicaid numbers, because PCG did not receive a notice to the contrary. In this

regard, PCG's passive consent method appears to overlook situations where PCG does not have a written consent document because the parents/guardians did not: (1) receive the consent document from the school department, (2) understand the consent document, or (3) appropriately adhere to the instructions in the consent document. We believe that PCG should discontinue using passive consent to verify that the parents/guardians approve of PCG transferring student information to the DMA.

Without such a change, there is no assurance the parents of special education students attending the Lynn Public Schools were informed about or gave consent to sharing their child's confidential information with the state Medicaid agency. This requirement does not preclude the state agency from billing Medicaid for school-based health services. In response to our draft report, Lynn Public Schools states that their procedures to inform parents are extensive, including mailing letters to the child's home address via certified mail and operating a toll free line specifically for the parent or guardian to call if they have any questions or concerns regarding the notice. Lynn Public Schools also states that it is important to note the information being shared is not health data. Rather, it is "directory information" and includes items such as name, address, telephone number, and date of birth. The students' medical conditions are not disclosed by the transmission notice because of the use of non-revealing codes. The decision the parent makes regarding consent has no bearing whatsoever on the services delivered to the students. Lynn Public Schools respect the privacy rights of its students, and believes that the policy fully complies with Federal Family Educational Rights and Privacy Act.

APPENDICES

SCHEDULE OF SAMPLE ITEMS

Rpt. No: A-01-02-00002

APPENDIX A

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Sample Number	Documentation		Provider Qualifications		IEP		Prototype		In-Service Days			Totals*	
	Error	Dollars	Error	Dollars	Error	Dollars	Error	Dollars	Error	Days	Dollars	Error	Dollars
68													
69													
70	yes	\$111.40										1	\$111.40
71													
72													
73													
74					yes	\$55.70						1	\$55.70
75													
76													
77													
78			yes	\$122.54								1	\$122.54
79													
80													
81									yes	1	\$12.19	1	\$12.19
82													
83	yes	\$265.15										1	\$265.15
84													
85													
86													
87													
88													
89							yes	-\$105.92				1	-\$105.92
90													
91			yes	\$243.80								1	\$243.80
92	yes	\$105.83	yes	\$105.83								1	\$105.83
93													
94													
95													
96	yes	\$33.42										1	\$33.42
97					yes	\$77.98			yes	1	\$5.57	1	\$77.98
98													
99													
100							yes	-\$33.10	yes	1	\$5.57	1	-\$27.53
Totals	22	\$3,558.38	8	\$1,149.45	3	\$206.09	7	\$50.80	4	4	\$28.90	34	\$4,081.94

*While some sample units had more than one condition, we did not question more than 100 percent of the claim.



RESULTS OF STATISTICAL SAMPLE

Sample Size	100
Value of Sample	\$11,566
Number of Errors	34
Value of Errors	\$4,082
Population Size	9,387
Value of Population	\$1,094,239

Point Estimate	\$ 383,172
Confidence Level	@ 90 %
Lower Confidence Limit	\$ 250,901
Upper Confidence Limit	\$515,442
Sample Precision	+/-34.52

Based on our statistical sample, we are 95 percent confident that the amount overpaid was at least \$250,901 (federal share).

LYNN PUBLIC SCHOOLS

Rpt. No: A-01-02-00002

APPENDIX C

Page 1 of 8

Administration Building - 14 Central Avenue, Lynn, MA 01901 (781) 593-1680

Fax: (781) 477-7487



Office of the School Business Administrator
Stephen C. Upton

November 18, 2002

Mr. Michael Armstrong
Department of Health and Human Services
Office of Inspector General, Office of Audit Services
JFK Federal Building, Room 2425
Boston, MA 02203

Dear Mr. Armstrong:

Enclosed are Lynn Public Schools' comments regarding the recent audit conducted by your office. We appreciate the time and effort that has been put into this audit, and as always, we strive for full compliance.

We disagree with much of your report, particularly its negative tone and sweeping condemnations. We believe that most of the issues cited stem from your office's disagreement with the Massachusetts Municipal Medicaid Program methodology, which we have been following under the direction of other oversight agencies. Nevertheless, we stress that should additional, reasonable mandates be placed upon us in the future, we will comply. Indeed, we are willing to help draft new guidelines, if appropriate.

Please feel free to call me if you have any questions regarding the enclosed document.

Sincerely,

A handwritten signature in cursive script that reads "Stephen C. Upton".

STEPHEN C. UPTON
School Business Administrator

LYNN PUBLIC SCHOOLS

Administration Building - 14 Central Avenue, Lynn, MA 01901 (781) 593-1680

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Lynn Public Schools
Response to Office of Inspector General Audit:
"Medicaid Payments for School-Based Health Services"
November 2002

INTRODUCTION

Lynn Public Schools (LPS) has been participating in the Massachusetts Municipal Medicaid Program since its inception in the early 1990's. This program provides partial reimbursement to the City for the costly health-related services that LPS must provide to meet the needs of its population of students with disabilities. LPS has made diligent efforts to comply with all Federal and State guidelines, including but not limited to:

- Procedures to ensure accurate attendance data
- Thorough Special Education policies to ensure valid Individual Education Plans (IEPs) and accurate prototypes
- Processes to ensure students receive appropriate services from qualified personnel
- Internal controls to ensure only valid claims are submitted

The OIG audit was conducted in two parts. The first part of the audit reviewed attendance and school calendar information for the complete set of claims paid during fiscal year 2000. Findings are as follows:

- For the period in question, Lynn was paid \$1,094,239 in Federal Medicaid revenue
- OIG found that 99.99% of this revenue was supported by the calendar and attendance information reviewed

Because of these results, as well as the steps we have taken over the years to ensure compliance, we were surprised by the negative tone of the OIG report. We believe that OIG's "findings" are based primarily on the second part of their review, and stem from the fact that the OIG appears to have a difference of opinion with other oversight agencies. This second portion of the audit reviewed claims for 100 randomly sampled students. OIG reviewed the following areas:

- Student Attendance
- Prototype (placement)

- Individual Education Plan (IEP)
- Service Documentation
- Provider Qualifications

This second part of OIG's audit appears to have been conducted without careful regard to existing guidelines that school districts must follow under the Massachusetts Municipal Medicaid Program. We respect OIG's right to hold Local Education Authorities to high audit standards. However, OIG has interpreted the guidelines in one manner, and *other oversight agencies which promulgate the rules we must follow*, have interpreted the guidelines in another manner. This systemic disagreement is not Lynn's issue, since we have been following guidance for the program that has been provided to us. Therefore, Lynn should not be financially penalized beyond the minor findings we acknowledge to be true later in this document.

We request that several steps be taken to revise the current OIG report:

- Acknowledge Lynn's strong compliance in the areas we have been held responsible
- Distinguish Lynn's nearly 100% compliance in these areas versus disagreements OIG may have with other oversight agencies over how their regulations should be interpreted

Through our meetings with OIG, review of public reports which OIG has released for other Massachusetts Local Education Authorities (LEA's), and discussion with other districts which are also being audited, it has become clear that OIG takes exception to some aspects of the Massachusetts claiming methodology. Virtually without exception, OIG has identified the same "issues" in all of the school districts being audited across the Commonwealth. OIG is interpreting this to mean that all the LEA's are out of compliance, particularly in the areas of service documentation and provider qualifications. This conclusion is faulty. The commonality of the findings across the state, as well as the acknowledged, clear difference of opinion OIG has with other oversight agencies should underscore this fact to any reasonable evaluator.

It is our understanding that when creating the Massachusetts Municipal Medicaid Program, the Federal government and the Massachusetts Division of Medical Assistance carefully evaluated the requirements of Federal Medicaid law and regulations in designing the State plan amendment and the guidelines that apply to operations of LPS. We have been abiding by this approved program since inception. We are willing to comply with changes that are articulated to us in the future, but we disagree with OIG that certain requirements have been in place. We understand that other oversight agencies support this position.

PROGRAM BACKGROUND

Lynn Public Schools has been participating in the Massachusetts Municipal Medicaid Program since the early 1990's, when the program was first developed and approved by the State and Federal governments. This program allows Lynn to receive Federal Medicaid reimbursement for some of the health-related services it provides to its

students with disabilities. Examples of reimbursable services include physical, occupational, and speech therapy, as well as nursing and counseling. Massachusetts school districts may submit claims for Medicaid-eligible students based on the student's attendance and their level of need, which is determined by the prototype in each student's IEP. Under a rate-setting formula developed by the state and approved by the Federal government, the amount of the claim is based on this prototype. The funding Lynn receives is a small percentage of its overall school budget, but nevertheless provides an additional source of revenue to assist in providing services to its Special Education population.

RESPONSE TO AUDIT FINDINGS

In the following sections, we describe the requirements around and our disagreement with certain OIG findings related to:

- Service Documentation
- Provider Qualifications
- Individual Education Plan (IEP)
- Internal Controls
- Parental Consent

Service Documentation

Massachusetts schools submit claims for Medicaid-eligible students based on attendance and a valid IEP. It is important to note that under the Massachusetts methodology, claims are not based on specific services provided on specific dates. According to the Operational Guide for School Districts, published by the Commonwealth, the Massachusetts Municipal Medicaid Reimbursement System was developed to "minimize local administrative effort." (Operational Guide, p. 3). Consistent with this goal, "specifically developed composite rates were formulated based upon an analysis of the average hours of health-related services delivered to a 'typical student.' These 'composite rates' were developed using a stratified sample, and represent the statewide average of health-related services delivered within each prototype multiplied by the Massachusetts Medicaid established rate for each individual health-related system." (Id.) Accordingly, under this composite rate system, payments are not based on any particular service being provided to any particular student on any particular day. In this context, then, the concept of service documentation is different from that which may be appropriate for other systems of reimbursement. The Operational Guide sets forth what records a school district must submit and maintain to support a claim for Medicaid reimbursement under this system. *Lynn has satisfied these requirements, and OIG must resolve its differences with other oversight agencies in this area, rather than penalize LPS.*

Indeed, Lynn has been following all guidance provided to it from state and federal oversight agencies, including our Provider Agreement with DMA and the 1997 CMS Technical Assistance Guide. We have listened to OIG's interpretation of this 1997 CMS guide, and we respect their opinion that service documentation is required. However, we would ask that they respect our obligation to follow our state oversight agency's

requirements (described above). We would also like to stress that CMS itself states of their 1997 guide:

“Because Medicaid policy often changes and evolves, this guide should not be considered an authoritative source in itself. The guide is intended to be a general reference . . . in order to determine specific state requirements, schools should contact their state Medicaid agency.” (CMS website, May 2002).

Finally, we wish to point out that in 1995, CMS audited several Massachusetts school providers. In connection with that audit, CMS made no changes to the Massachusetts claiming methodology, nor did it require -- or even recommend -- that schools maintain any specific additional documentation regarding the provision of services beyond that required in the Massachusetts Operational Guide. In fact, throughout the course of the audit, CMS did not even request service documentation information of the nature now being requested. We believe that this further underscores the fact that OIG is asking Lynn to produce retrospective service documentation in a manner never intended by the program creators or previous auditors.

Further, we take issue with and vigorously reject the OIG’s assertion that LPS has internal control “weaknesses” around its preparation and submission of Medicaid claims for school-based health services. LPS is committed to compliance in all of the work it conducts. Lynn has extensive policies and procedures in place and maintains a comprehensive monitoring system for compliance and Quality Assurance in connection with its special education program. In fact, the last published audit from the Massachusetts Department of Education (DOE) in 1997 showed no negative findings, an accomplishment for which we were commended by the Commonwealth. We also wish to share draft comments from the most recent review conducted by DOE in 2002:

“The Lynn Public Schools Special Education Department provides very comprehensive, professional assessments of students to determine eligibility and the needs of eligible students. All evaluators - psychologists, special education teachers, and speech, occupational and physical therapists - work well together to provide a comprehensive assessment and to discuss possible disabilities, needs and services for each student . . . The district has developed a comprehensive, broad range of services for students with disabilities.”

In light of the very nature of the composite rate reimbursement system, the instructions contained in the Operational Guide, and the fact that CMS both approved that guide and in the course of an audit never suggested that any other documentation was necessary to be maintained, it would be highly inappropriate for Lynn to be criticized, let alone financially penalized after the fact, for not maintaining unspecified additional service documentation. It must also be noted that from the start of the audit in 2001 to present, OIG itself has provided inconsistent guidance as to what service documentation information would in its view be acceptable. In fact, OIG has rejected written information provided to them which supports service delivery. We believe their inconsistent guidance, as well as the rejection of certain information, underscores the fact that service documentation requirements have been, and still are, undefined.

Of course, if other oversight agencies were to deem it appropriate to alter the composite rate methodology, or to specifically impose additional documentation requirements, we would fully comply with any such requirements. However, for claiming that has already occurred, we have provided OIG with all of the documentation which Lynn was required to maintain, consistent with the current Massachusetts Division of Medical Assistance instructions. Although not required to be prepared, maintained, and retained with regard to Medicaid reimbursement, and despite the fact that the period covered by the OIG audit goes back some two to four years, LPS has in fact provided such related records that we have been able to locate (e.g. service logs, progress reports, etc.)

Provider Qualifications

LPS takes similar exception to those instances where OIG is alleging that services were not provided by a qualified provider. LPS has followed all hiring practices required by DOE and our staff are eminently qualified. There have been no specific guidelines issued by the Commonwealth for school-based providers, nor was any issue ever raised regarding this point during the 1995 CMS audit of certain Massachusetts school districts. Accordingly, OIG cannot properly claim that LPS was "out of compliance" in this area. Additionally, in regards to counselors in particular, the proposed findings do not make good fiscal sense and are inconsistent with Medicaid policy around the country. For instance, the report proposes to disallow claims for students who had services provided by a Licensed Independent Clinical Social Worker (LICSW). The report asserts that such services should have been provided by a Psychologist. However, in virtually all other clinical settings, both in Massachusetts and around the nation, Medicaid and other health insurance companies reimburse for such services when provided by a LICSW, because of the quality of the service delivered as well as their reduced cost. We are not aware of any clinical expertise by OIG qualifying it to judge whether services should be delivered by a licensed social worker or a psychologist. On a cost basis, a matter which clearly is within OIG's expertise, the provision of services by an LICSW is plainly beneficial to Medicaid, and therefore one which we understand OIG would wish to encourage.

Individual Education Plan (IEP)

We respectfully disagree with OIG findings related to all 6 alleged instances where OIG states an IEP does not support claims. Three of the six instances are directly related to OIG's disagreement with other oversight agencies. LPS claimed in these three instances under a valid IEP according to the existing regulations in the Massachusetts Municipal Medicaid Program. The assertion that such claims are "inappropriate" appear to derive from OIG's misinterpretation of the Massachusetts methodology and disagreement with other oversight agencies.

The other three instances are outlined below: *(Office of Audit Services Note - See Bottom of page 7)*

1. LPS submitted claims for one student for whom the IEP was developed by another school system. Lynn, as required by law, honored this IEP and delivered services accordingly. We provided OIG with the relevant legal language

supporting our actions. We are puzzled as to why OIG fails to recognize our obligation to deliver services in this instance and our subsequent right to submit a claim for these services.

2. For the second student, LPS provided OIG with a signed IEP. The "audit month" for this student was May 1999. The valid IEP which was provided spanned January 1997 through January 1998. While we recognize a 16 month gap period between the official end of the written IEP, we apprised OIG that we delivered services under the Massachusetts "stay-put" provision and that therefore the IEP provided supports the claim we submitted. There is no subsequent IEP because the student graduated in June 1999.
3. For the third student's IEP which OIG is questioning, we believe OIG are simply misreading the signature page. We do not agree with OIG that the parent rejected the IEP, and we believe the signature page of the IEP supports this. We discussed the content of the page with them and even provided them with a written explanation, however they persist in their misinterpretation. In any event, we assert that LPS is in a more qualified position to interpret its IEPs than OIG.

Internal Controls

We believe that data supports the fact that LPS already has extensive internal controls in place to ensure service delivery and to submit valid claims. We shared multiple items with OIG in an attempt to convey this point:

- Procedure Manual detailing claiming policies, including steps taken by our vendor to ensure claims are based on valid attendance, IEP, and prototype data (approximately 200 pages)
- Internal procedures for accurate attendance
- Hiring practices to ensure services are performed by qualified staff

We also wish to emphasize that our last published review by the Massachusetts DOE, where our controls were thoroughly analyzed, resulted in no negative findings.

In addition, our vendor shared its automated claiming program with OIG, which includes multiple safeties for ensuring compliance. No LEA is perfect, and we acknowledge in our "Conclusion" section of this document, the inadvertent erroneous claims we submitted. We believe that to make the assertion, based on a very small error rate, that Lynn lacks internal controls, is simply untrue.

Parental Consent

Finally, we wish to address the draft OIG recommendation regarding LPS policy in obtaining parental consent. This policy is a Federal Department of Education requirement under the Federal Education Rights and Privacy Act (FERPA). LPS procedures to inform parents are extensive. We mail letters to the child's home address via certified mail and we operate a toll free line specifically for the parent or guardian to

Office of Audit Services Note - These paragraphs are not applicable because the finding (issue) referred to by the auditee is not included in this report. 6

call if they have any questions or concerns regarding the notice. If a parent or guardian calls to state they do not wish to have such information shared, then LPS does not submit a claim. Additionally, if we receive notice from the Post Office that the letter was not delivered, we do not submit a claim. It is important to note that the information being shared is not health data. Rather, it is "directory information" and includes items such as name, address, telephone number, and date of birth. The requirements for disclosing such information under FERPA are met by the methodology employed by LPS. The students' medical conditions are not disclosed by the transmission notice because of the use of non-revealing codes. It is also important to note that the decision the parent makes regarding consent has no bearing whatsoever on services delivered to the student. Lynn respects the privacy rights of its students, and believes that its policy fully complies with FERPA regulations. Indeed, we provided OIG with a 22 page packet of legal analysis and supporting documentation. In the absence of case law or other precedent to the contrary, LPS believes we are in full compliance with FERPA.

CONCLUSION

With regard to the OIG's proposed findings concerning the need for attendance and prototype records, LPS believes OIG legitimately identified \$8,584.13 in claims for which Lynn should not have been reimbursed. We regret this mistake but wish to stress that this is a less than .5% error rate.

As discussed above, it is our position that the OIG's draft findings regarding service documentation, provider qualifications, and IEPs, are erroneous. *We therefore believe that it is inappropriate to penalize Lynn monetarily in these areas.* When these items are subtracted from the "findings," we question the statistical validity of the OIG calculation. The Lower Confidence Level, (Appendix A of the OIG report), which OIG is using to calculate the majority of their findings, actually re-computes to a negative number (-\$32,695). We believe that the re-calculated formula reflects that OIG must reconsider whether it has the statistically valid data it needs to extrapolate appropriate findings from the 100 student sample.

We appreciate OIG's time and effort in conducting this audit, and support its goal of full compliance. We acknowledge our inadvertent errors in claims that amount to \$8,584.13. We are fully prepared to comply with any and all guidelines made known to us, or even to assist in formulating such guidelines if appropriate. However, we wish to reiterate that many of the issues raised by OIG are disagreements with other oversight agencies and not areas that Lynn has control over. Should new guidelines be published, we will fully comply. Such guidelines cannot be applied retroactively, however, and we respectfully urge that OIG revise its report to reflect that the majority of its findings stem from systemic disagreements and are not areas where Lynn should be financially penalized.

ACKNOWLEDGMENTS

This report was prepared under the direction of Michael J. Armstrong, Regional Inspector General for Audit Services, Region I. Other principal Office of Audit Services staff who contributed include:

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