



MAR 23 2006

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Report Number: A-01-04-00012

Ms. Beth Waldman
Director of Medicaid
Office of Medicaid
Executive Office of Health and Human Services
Commonwealth of Massachusetts
One Ashburton Place, 11th Floor
Boston, Massachusetts 02108

Dear Ms. Waldman:


Enclosed are two copies of the Department of Health and Human Services, Office of Inspector General (OIG) report entitled "Review of University of Massachusetts Medical School Administrative Cost Claims For the Period From July 1, 2002 Through June 30, 2004."

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.

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To facilitate identification, please refer to report number A-01-04-00012 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:

Charlotte Yeh, M.D.
Regional Administrator
Centers for Medicare and Medicaid Services – Region I
Department of Health and Human Services
Room 2325, JFK Federal Building
Boston, Massachusetts 02203

Department of Health and Human Services

**OFFICE OF
INSPECTOR GENERAL**

**REVIEW OF
UNIVERSITY OF MASSACHUSETTS
ADMINISTRATIVE COST CLAIMS
UNDER THE MEDICAID PROGRAM
FOR THE PERIOD FROM
JULY 1, 2002 THROUGH
JUNE 30, 2004**



**Daniel R. Levinson
Inspector General**

A-01-04-00012

Office of Inspector General

<http://oig.hhs.gov>

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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 Federal grants to States for Medicaid programs that provide medical assistance to low-income individuals and persons with disabilities. The Centers for Medicare & Medicaid Services (CMS) administers the Medicaid program for the Federal Government. Each State administers its Medicaid program in accordance with its CMS-approved State plan.

In Massachusetts, the Office of Medicaid (the State agency), a subdivision of the Massachusetts Executive Office of Health and Human Services, is the single State agency responsible for administering and supervising the Medicaid program. The responsibilities of the State agency include processing claims and monitoring provider operations. On a quarterly basis, the State agency submits Form CMS-64 to summarize, by category of service, Medicaid expenditures for Federal reimbursement as well as expenditures for administrative costs.

In October 2002, the State agency entered into an administrative services contract with the University of Massachusetts Medical School (the University) under which the University agreed to provide support services to the Medicaid State agency. These services comprised rate and program management, MassHealth member services support, management support systems, and applied policy and academic research. For State fiscal years 2003 and 2004, the State agency claimed about \$133 million (\$78.6 million Federal share) for administrative costs for Medicaid-related activities involving the University. We reviewed these administrative costs at the request of CMS.

OBJECTIVE

Our objective was to determine whether the State agency's claim for selected administrative costs incurred by the University of Massachusetts met applicable Medicaid program requirements.

SUMMARY OF FINDINGS

The State agency claimed administrative costs that were unallowable because they did not adhere to Federal regulations. Specifically, the State agency claimed reimbursement for:

- unsupported contingency fee payments,
- excessive payments to a subcontractor, and
- employee salaries that had already been reimbursed through indirect cost rates.

As a result, the State agency overstated its claim by \$1,228,045 (\$614,022 Federal share) for State fiscal years 2003 and 2004 (July 1, 2002, through June 30, 2004). We attribute the

overstatement to the State agency's lack of procedures for ensuring compliance with Medicaid regulations.

In addition, the University did not prepare timesheets or obtain supervisor certifications for most employees whose salaries were claimed for Federal reimbursement. As a result, we have less than reasonable assurance that the quarterly Medicaid administrative costs that the University reported were for allowable Medicaid activities. The State agency did not provide adequate oversight to ensure that the University maintained appropriate time records for all employees whose salaries were claimed for reimbursement.

RECOMMENDATIONS

We recommend that the State agency:

- refund \$614,022 in unallowable costs to the Federal government;
- establish procedures to ensure compliance with Federal regulations regarding contingency fee payments, subcontractor costs, and salaries claimed for Medicaid reimbursement; and
- establish and enforce proper internal controls over timekeeping procedures for salaries claimed for Medicaid reimbursement.

STATE AGENCY'S COMMENTS

In its comments on our draft report, the State Agency agreed with our procedural recommendations and with our recommendations to refund to the Federal government unallowable costs relating to contingency fee payments (\$384,195 Federal share) and subcontractor costs (\$96,658 Federal share). The State agency disagreed with our recommendation to refund to the Federal government unallowable costs relating to salaries (\$133,169 Federal share) based on the fact that the State agency had adjusted its indirect cost rates for fiscal years 2005 and 2006. The State agency's comments are summarized in the body of our report and are included in their entirety in the appendix.

OFFICE OF INSPECTOR GENERAL'S RESPONSE

Adjusting indirect costs prospectively for fiscal years 2005 and 2006 does not change the fact that the State agency double claimed these salaries for fiscal year 2004. Thus we maintain that the State agency should return the \$133,169 to the Federal government.

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INTRODUCTION

BACKGROUND

The Medicaid Program

Title XIX of the Social Security Act authorizes Federal grants to States for Medicaid programs that provide medical assistance to low-income individuals and persons with disabilities. The Centers for Medicare & Medicaid Services (CMS) administers the Medicaid program for the Federal Government. Each State administers its Medicaid program in accordance with its CMS-approved State plan.

The Massachusetts Office of Medicaid

In Massachusetts, the Office of Medicaid (the State agency), a subdivision of the Massachusetts Executive Office of Health and Human Services, is the single State agency responsible for administering and supervising the Medicaid program. The responsibilities of the State agency include processing claims and monitoring provider operations. On a quarterly basis, the State agency submits Form CMS-64 to summarize, by category of service, Medicaid expenditures for Federal reimbursement. The Federal Government reimburses States for the administrative costs of Medicaid activities at a rate of at least 50 percent.

University Administrative Services Contract

In October 2002, the State agency entered into an administrative services contract with the University of Massachusetts Medical School (the University) under which the University agreed to provide support services to the Medicaid State agency. These services comprised rate and program management, MassHealth member services support, management support systems, and applied policy and academic research. The State agency's claims for the University's Medicaid-related administrative costs increased by 124 percent between 2002 and 2004. We performed our review at the request of CMS.

OBJECTIVE, SCOPE, AND METHODOLOGY

Objective

Our objective was to determine whether the State agency's claim for selected administrative costs incurred by the University of Massachusetts met applicable Medicaid program requirements.

Scope

The State agency claimed administrative costs totaling \$133,952,455 on behalf of the University for State fiscal years (FYs) 2003 and 2004 (July 1, 2002, through June 30, 2004). We limited our consideration of the University's internal control structure to those controls concerned with preparing and submitting Medicaid administrative cost claims because the objective of our

review did not require an understanding or assessment of the University's complete internal control structure.

We performed our fieldwork at the State agency in Boston and at the University in Worcester, MA, from November 2004 through September 2005.

Methodology

To accomplish our objective, we:

- reviewed criteria for preparing and submitting Medicaid administrative cost claims;
- reviewed the University's internal controls for claim preparation, payroll processing, timekeeper procedures, billing processes, accounts payable, personnel procedures, and expenditure reporting;
- reconciled total dollar amounts reported by the University for each of the 8 quarters of our audit period to the State agency's CMS 64 reports;
- reconciled detailed accounting records supporting salaries and contract services to the dollar amounts reported by the University for the quarter ended June 30, 2004;
- analyzed and tested documentation supporting salary and contract service expenditures from eight University departments that had the largest expenditures during the last quarter of our audit period to determine whether these expenditures were allowable for reimbursement; and
- interviewed officials from CMS, the State agency, the University, subcontractors, CPA firms representing the University and subcontractors, the National Association of Government Employees, the Massachusetts State Auditor's Office, the State Treasurer's Office, and the State Comptroller's Office to determine the policies, procedures, and controls that existed for submitting Medicaid administrative cost claims.

Our audit was conducted in accordance with generally accepted government auditing standards.

FINDINGS AND RECOMMENDATIONS

The State agency claimed administrative costs that were unallowable because they did not adhere to Federal regulations. Specifically, the State agency claimed reimbursement for:

- unsupported contingency fee payments,
- excessive payments to a subcontractor, and
- employee salaries that had already been reimbursed through indirect cost rates.

As a result, the State agency overstated its claim by \$1,228,045 (\$614,022 Federal share).

In addition, the University did not prepare timesheets or obtain supervisor certifications for most employees whose salaries were claimed for Federal reimbursement. As a result, we have less than reasonable assurance that the quarterly Medicaid administrative costs that the University reported were for allowable Medicaid activities.

CONTINGENCY FEE PAYMENTS

Federal Requirements

Office of Management and Budget (OMB) Circular A-87, Attachment B (32), states: “Costs of professional and consultant services . . . are allowable . . . when reasonable in relation to the services rendered and when not contingent upon recovery of the costs from the Federal Government.”

In addition, the CMS “Letter to Regional Administrators: Contingency Fee Payments – Policy Revisions,” states that Federal financial participation for contingency fee payments paid as Medicaid administration is allowed if the payments meet all of the following conditions:

1. The fee must be contingent upon Medicaid cost avoidance savings or recoveries in which the Federal Government shares. The intent of the CFC [contingency fee contract] must be to produce Medicaid program savings, not additional expenditures reported for FFP [Federal financial participation]. Payments contingent upon recoveries from the Federal Government are not allowable.
2. The CFC must be awarded based upon a competitive procurement that includes issuance of a Request for Proposal or Invitation for Bid that is formally advertised and targets a wide audience. Only free and open competition can support the kind of price or cost analyses required by 45 CFR 74.45 and the OMB cost principles to demonstrate that the contract costs are reasonable in relation to the services rendered.
3. The savings upon which the contingency fee payment is based must be adequately defined and the determination of fee payments documented to CMS’s satisfaction. This condition is critical because savings other than cash collections can be difficult to quantify and may be attributable to factors not related to the contractor’s actions or to the State’s implementation of the contractor’s recommendations.

Unsupported Contingency Fee Payments

Contrary to Federal regulations and CMS guidelines, the State agency claimed reimbursement amounting to \$768,390 (\$384,195 Federal share) on behalf of the University for outside consultant services that were not based on the reasonable cost of actually providing the service.

A nonprofit entity affiliated with the University entered into an open-ended contract with a private consultant on a contingency fee basis to identify instances when pharmacies billed Medicaid for items that should have been billed to Medicare. Our analysis of the contract showed that the contingency fee was based upon the recoveries of additional funds from the Federal government. The University did not follow the competitive bidding process in awarding this contract to the nonprofit entity. Furthermore, the University never submitted the determination of fee payments to CMS for review and approval. As a result, the contingency fee of \$768,390 (\$384,195 Federal share) that the State agency claimed for reimbursement on behalf of the University was unallowable.

This situation occurred because the State agency did not provide adequate oversight to ensure that contingency fees that were claimed by the University were in compliance with Federal guidelines.

During the course of our audit, State agency officials informed us that because they did not recover any funds from Medicare, they returned the amount of the contingency fee to CMS by way of a reversal on the CMS 64 report for the quarter that ended in March 2005.

SUBCONTRACTOR COSTS

Federal Requirements

42 CFR § 413.17, subpart A, states:

Except as provided in paragraph (d) of this section, costs applicable to services, facilities, and supplies furnished to the provider by organizations related to the provider by common ownership or control are includable in the allowable cost of the provider at the cost to the related organization. However, such cost must not exceed the cost of comparable services, facilities, or supplies that could be purchased elsewhere Related to the provider means that the provider to a significant extent is associated or affiliated with or has control of or is controlled by the organization furnishing the services, facilities or supplies Control exists if an individual or an organization has the power, directly or indirectly, significantly to influence or direct the actions or policies of an organization or institution. . . . If the provider obtains items or services from an organization, even if it is a separate legal entity, and the organization is owned or controlled by the owner(s) [or controller] of the provider, in effect, the items are obtained from itself Therefore, reimbursable cost should include the costs of these items at the cost of the supplying organization. . . .

OMB Circular A-87, part C, section 3, states: “A cost is allocable to a particular cost objective if the goods or services involved are chargeable or assignable to such cost objective in accordance with relative benefits received.”

OMB Circular A-87, Cost Principles for State, Local, and Indian Tribal Governments, part C (2), states: “. . . In determining reasonableness of a given cost, consideration shall be given to . . . the restraints or requirements imposed by such factors as . . . arm’s-length bargaining”

OMB Circular A-21, Cost Principles for Educational Institutions, part C (3), states: “. . . Major considerations involved in the determination of the reasonableness of a cost are: . . . (b) the restraints or requirements imposed by such factors as arm’s-length bargaining”

Excessive Reimbursement for Subcontractor Costs

Contrary to Federal requirements, the State agency claimed reimbursement on behalf of the University for the full amount of invoices paid to Public Sector Partners, Inc. (PSP), a nonprofit organization that is affiliated with the University. PSP invoices that the State agency claimed for reimbursement on behalf of the University do not represent arm’s-length transactions because the University exercises significant control over PSP. Specifically:

- University executives serving on the PSP Board of Directors also serve as PSP officers: the University executive responsible for contract supervision serves as PSP Treasurer, and the University executive who serves as President of PSP approved the contract for PSP services;
- the University is PSP’s primary source of revenue; and
- the University is exempted from bid process requirements for contracts awarded to PSP.

The amount of the claim that the State agency submitted was not limited to the costs that PSP actually incurred in providing services to the University. Much of the work performed by PSP during our audit period involved employment services and project management services provided to the University in support of contracts with other components of the State agency. In reviewing the PSP invoices for FYs 2003 and 2004, we noted that:

- PSP invoices billed to the University included a management fee of \$157,352 (\$78,676 Federal share), which PSP officials informed us represents a profit margin, and
- PSP charged the University for \$5,842 of services rendered to Vermont and \$634 for services rendered to Maine, a total of \$6,476 (\$3,238 Federal share) that the University subsequently claimed for Federal reimbursement.

Moreover, the University added an indirect cost rate of 18 percent, amounting to \$29,489 (\$14,744 Federal share), to these unallowable PSP invoices.

As a result, the Federal government was overcharged a total of \$193,317 (\$96,658 Federal share) for services that the University obtained through PSP during our audit period. This situation occurred because the State agency did not exercise sufficient oversight to ensure that all items included on the University’s claim were allowable.

SALARIES

Federal Requirements

OMB Circular A-87, part C, section 3, states: “A cost is allocable to a particular cost objective if the goods or services involved are chargeable or assignable to such cost objective in accordance with relative benefits received.”

Salaries Reimbursed Through Indirect Cost Rates

Contrary to Federal requirements, the State agency claimed \$266,338 (\$133,169 Federal share) in salaries on behalf of the University for 39 indirect administrative employees from other State agencies whose salaries were already included in State agency’s indirect cost rates. The University reported that these employees had been transferred from the Department of Mental Health and the Department of Mental Retardation to the University. However, when these employees were reassigned to the University, their salaries were still accounted for and reimbursed to the State agency through the State agency’s approved indirect cost rates. Since these rates were not adjusted to reflect the employees’ reassignment, the State agency claimed reimbursement for their salaries twice, once through its claim on the University’s behalf and a second time through its own indirect cost rates. As a result, the State agency overstated its claim by \$266,338 (\$133,169 Federal share).

This situation occurred because the State agency did not exercise sufficient oversight to ensure that the administrative costs claimed by the University were in compliance with applicable Federal requirements.

State agency officials informed us that the typical lag between changes in indirect costs and the adjustment of indirect cost rates to reflect those changes can be at least a year. Accordingly, the State agency may continue to be inappropriately reimbursed for transfers of Medicaid functions or resources to other agencies long after the transfers actually occur.

TIMEKEEPING CONTROLS

Federal and State Requirements

42 CFR § 433.32, subpart A, states that a State plan must provide that the Medicaid agency and, where applicable, local agencies administering the plan will:

- (a) maintain an accounting system and supporting fiscal records to assure that claims for Federal funds are in accord with applicable Federal requirements, and
- (b) retain records for 3 years from date of submission of a final expenditure report.

OMB Circular A-87, Attachment B, 11, h, (3), states:

Where employees are expected to work solely on a single Federal award or cost objective, charges for their salaries and wages will be supported by periodic certifications that the employees worked solely on that program for the period covered by the certification. These certifications will be prepared at least semi-annually and will be signed by the employee or supervisory official having firsthand knowledge of the work performed by the employee.

The Massachusetts State Medicaid Plan, Section 6.1, states: “The Medicaid agency and, where applicable, local agencies administering the plan maintains an accounting system and supporting fiscal records adequate to assure that claims for Federal funds are in accord with applicable Federal requirements. The requirements of 42 CFR § 433.32 are met.”

Inadequate Timekeeping Controls

Contrary to Federal regulations and the State plan, the State agency did not ensure that the University prepared timesheets or obtained supervisor certifications for all employees whose salaries were claimed for Federal reimbursement. The University prepared timesheets for only 31 of the 492 employees whose salaries were claimed for Federal reimbursement during our audit period. Furthermore, we found no supervisor certifications confirming that work performed by employees during that period was related to Medicaid. As a result, we have less than adequate assurance that the quarterly Medicaid administrative costs that the University reported were for allowable Medicaid activities.

The 124 percent increase in administrative costs claimed by the State agency on behalf of the University during our audit period heightens our concern because a large portion of this increase was related to salaries. The University added 201 new employees to its payroll over the 2-year period, increasing the University’s Medicaid administrative staff by almost 69 percent and its corresponding payroll by 63 percent. The State agency did not provide sufficient oversight to ensure that the University had adequate timekeeping controls.

RECOMMENDATIONS

We recommend that the State agency:

- refund \$614,022 in unallowable costs to the Federal government;
- establish procedures to ensure compliance with Federal regulations regarding contingency fee payments, subcontractor costs, and salaries claimed for Medicaid reimbursement; and
- establish and enforce proper internal controls over timekeeping procedures for salaries claimed for Medicaid reimbursement.

STATE AGENCY'S COMMENTS AND OFFICE OF INSPECTOR GENERAL'S RESPONSE

In its comments on our draft report, the State agency agreed with our procedural recommendations and agreed to refund unallowable costs of \$480,853 (Federal share) related to contingency fee payments and subcontractor costs. The State agency disagreed with our recommendation to refund \$133,169 (Federal share) related to salaries. The complete text of the State agency's comments is included in the appendix. A summary follows, along with our response.

Recommendation 1: Refund \$614,022 in Unallowable Costs to the Federal Government

State Agency's Comments

The State agency agreed with this recommendation with one exception: it disagreed with our recommendation to refund \$133,169 for salaries of indirect employees transferred from the State agency. The State agency admitted that the salaries of these employees were claimed twice during our audit period. However, it also asserted that by adjusting its program rates for FYs 2005 and 2006, it has already dealt with the double claim and would be refunding the \$133,169 twice if it followed our recommendation. It stated that it had used a CMS-approved methodology that does not "contemplate immediate adjustments to program rates for changes in direct or indirect costs throughout the course of a given year" and that our report had failed to account for "disparate approaches" to claiming Federal reimbursement.

The State agency agreed to refund \$384,195 in contingency fees to the Federal government. However, it requested that this financial finding should not appear in our final report because the State agency returned these contingency fee payments to the Federal government in March 2005, as we noted in our draft report. The State agency also disputed the underlying analysis of facts in our report regarding the contingency fee payments. In particular, the State agency disagreed with our contention that FFP is not available for contingency fee payments for third-party liability services where the third party is the Medicare program.

The State agency included an attachment to its response to further explain the relationship between the University and PSP. The State agency disagreed with our statement that University executives serving on the PSP Board of Directors also serve as PSP executives. The State agency asserted that University officials who serve on PSP's Board of Directors hold the Board titles of President, Treasurer, and Clerk. It further stated that no University employees hold any functional position in the operations of PSP or have received any financial benefit from PSP. In addition, the State agency pointed out that under State law, the University is exempted from following competitive bidding processes when awarding a contract to a corporation like PSP.

The State agency agreed with our recommendation to refund to the Federal government \$96,658 in excessive reimbursement for contractor services. It indicated that it will refund the money in the next quarterly CMS 64 report.

Office of Inspector General's Response

The \$133,169 represents salaries for transferred indirect employees claimed by the University during FYs 2003 and 2004, not FYs 2005 and 2006. If the State agency did not adjust its program rates to reflect the removal of these employees from the State agency payroll until FYs 2005 and 2006, then the University should not have claimed reimbursement for these employees' salaries until FYs 2005 and 2006 at the earliest. Furthermore, we disagree with the State agency's assertion that we did not account for "disparate approaches" to claiming Federal reimbursement. On the contrary, we maintain that the State agency's inconsistent application of these "disparate approaches" contributed significantly to indirect employees' salaries being claimed twice during our audit period.

With regard to the \$384,195 in contingency fee payments, the "underlying analysis of facts contained in our report" with which the State agency disagreed is merely a paraphrasing of CMS policy. The CMS "Letter to Regional Administrators: Contingency Fee Payments – Policy Revisions," which we refer to on page 3 of our report, lists the three conditions that must be met for a contingency fee payment to be eligible for Federal reimbursement. If the State agency disagrees with our conclusion that the contingency fee payments did not meet any of CMS's conditions, it has not explained why it considers that conclusion to be incorrect. If the State agency disagrees with the CMS policy itself, it needs to discuss this matter with CMS. In addition, because the State agency did not refund the \$384,195 in contingency fee payments to the Federal government until the quarter that ended in March 2005, which was after the end of our audit period, this financial finding remains in our final report.

Regarding the State agency's comments concerning corporate titles, we have reflected the appropriate titles in the body of our report. Nevertheless, the State agency does not dispute that the University and PSP are related parties. The legislation that the State agency cites as exempting the University from following competitive bidding processes when awarding a contract to a corporation like PSP is a 1997 State law that does not take precedence over CMS requirements for Federal matching of Medicaid reimbursement.

Recommendation 2: Establish Procedures to Ensure Compliance With Federal Regulations Regarding Contingency Fee Payments, Subcontractor Costs, and Salaries Claimed for Medicaid Reimbursement

The State agency agreed with our recommendation.

Recommendation 3: Establish and Enforce Proper Internal Controls Over Timekeeping Procedures for Salaries Claimed for Medicaid Reimbursement

The State agency agreed with our recommendation and indicated that in July 2004 the University had begun using time and labor reports to improve internal controls over timekeeping procedures.

APPENDIX



The Commonwealth of Massachusetts
Executive Office of Health and Human Services
Office of Medicaid
One Ashburton Place
Boston, MA 02108



MITT ROMNEY
Governor

KERRY HEALEY
Lieutenant Governor

TIMOTHY MURPHY
Secretary

BETH WALDMAN
Medicaid Director

February 27, 2006

Michael Armstrong
Regional Inspector General
US Department of Health and Human Services
Office of Audit Services
Region I
John F. Kennedy Building
Boston, MA 02203

Re: Draft Report Number: A-01-04-00012

Dear Mr. Armstrong:

Thank you for the opportunity to respond to your draft report, Review of University of Massachusetts Medical School Administrative Cost Claims for the period from July 1, 2002 through June 30, 2004. Please consider this our formal response to the recommendations in the draft report concerning the Massachusetts Executive Office of Health and Human Services' (the State agency) claims for federal reimbursement for the University of Massachusetts Medical School's Medicaid related administrative costs. This response will address the recommendations, reproduced in italics below, in the order in which they appear in the draft report.

Background

The Executive Office of Health and Human Services is the single State agency responsible for administering and supervising the Medicaid program. The State agency has entered into an administrative services contract with the University of Massachusetts Medical School (the University) under which the University agreed to provide support services to the Medicaid State agency. During the audit period, the State agency claimed administrative costs totaling approximately \$133,952,455 on behalf of the University.

Audit Recommendations

Recommendation 1

We recommend that the State agency refund \$614,022 in unallowable costs to the Federal government.

Response

We do not oppose this recommendation, with one exception. We disagree with the draft report's recommendation that the State agency should return \$133,169 in salaries on behalf of the University for indirect administrative employees from other State agencies. It is true that during the period of the OIG review these amounts were claimed through indirect costs in program rates paid to other State agencies and as direct administrative costs of the University. However, the change in circumstances of the employees has already been appropriately reflected in program rates paid to the other State agencies for State fiscal years 2005 and 2006. If the State agency also returned \$133,169 now, the State agency effectively would be accounting for that change twice.

It is important to note that in preparing the claims for program rates paid to other State agencies, and in waiting until the next fiscal year to account for the change, the State agency adhered to its CMS-approved methodology. As with most rate methodologies, those rate methodologies do not contemplate immediate adjustments to program rates for changes in direct or indirect costs throughout the course of a given year. On the other hand, claiming Medicaid administrative costs, as the University did for the transferred employees, results in immediate recognition of Medicaid claimable expenditures. The draft report fails to take account of disparate approaches to claiming Medicaid program and administrative costs, and therefore disapproves of what is in fact an appropriately delayed recognition of indirect costs commonly associated with program rates.

We agree with the recommendation to refund \$480,853, i.e., \$614,022 minus \$133,169. As the draft report notes, EOHHS has already refunded \$384,195 via an adjustment to the CMS 64 in March 2005, for reasons other than those cited in your draft report but in the normal course of business. We therefore request that the related financial finding not appear in the final report. EOHHS will refund the remaining \$96,658 in the next quarterly report.

We refund this money without agreeing with the underlying analysis or facts contained in your draft report. In particular, we do not agree that FFP is not available for contingency fee payments for third-party liability services where the third party is the Medicare program. In addition, we consider it important to clarify certain facts or legal conclusions contained in the report, which are discussed in more detail in Attachment A.

Recommendation 2

We recommend that the State agency establish procedures to ensure compliance with Federal regulations regarding contingency fee payments, subcontractor costs, and salaries claimed for Medicaid reimbursement.

Response

We agree that the State agency, as the Single State Agency, has the obligation to establish procedures to ensure compliance with Federal regulations regarding contingency fee payments, subcontractor costs, and salaries claimed for Medicaid reimbursement. We will review procedures used by the University of Massachusetts to assist in the preparation of claims for such costs and procedures used by the State agency to monitor activity and ensure compliance with all applicable requirements.

Recommendation 3

We recommend that the State agency establish and enforce proper internal controls over timekeeping procedures for salaries claimed for Medicaid reimbursement.

Response

We agree that the State agency, as the Single State Agency, has the obligation to establish and enforce proper internal controls over timekeeping procedures for salaries claimed for Medicaid reimbursement. In an effort to strengthen internal controls, in July 2004, the University began preparing a Time & Labor report for each pay period for all employees whose salaries are claimed for Federal reimbursement. The report reflects how much of the employee's time was spent on Medicaid-related work for the State agency. The report is signed by the employee as well as a supervisor who certifies and confirms the hours worked by the employee. We will continue to review procedures used by the University to ensure compliance with proper internal controls over timekeeping for salaries claimed for Medicaid reimbursement.

While we can always improve, the State agency and the University have established a strong contractual relationship which is governed by a detailed Interagency Service Agreement (ISA). The ISA is closely monitored through contract management, budgeting, management reporting, performance review, and claims processing review procedures to ensure that costs claimed are authorized, reasonable and documented prior to federal claiming.

Again, thank you for the opportunity to comment on the recommendations in your draft report. If you have any questions concerning this letter, please contact Frank McNamara

at 1-617-210-5170.

Sincerely,

A handwritten signature in black ink, appearing to read "Beth Waldman", with a long horizontal flourish extending to the right.

Beth Waldman
Medicaid Director

cc: Frank McNamara
Denise Patton
Tricia Spellman
John Robertson

Attachment A

The report (see Draft Report, page 5) asserts that “University executives serving on the PSP [Public Sector Partners, Inc.] Board of Directors also serve as PSP executives...”

PSP is a Massachusetts not-for-profit corporation organized to provide administrative support to agencies of the state and local governments that provide healthcare and health related services to recipients under the auspices of government sponsored and funded health care programs and initiatives. PSP is governed by a board of trustees that are comprised of representatives from the University of Massachusetts Medical School, University of Massachusetts Memorial Health Care and the Worcester County community.

The statement that University executives serving on the PSP Board of Directors also serve as PSP executives is not factually correct. The University employees who serve on PSP’s Board of Directors hold the Board titles of President, Treasurer and Clerk. None of these employees of University of Massachusetts Medical School are executives or employees of or hold any functional position in the operations of PSP or have received any financial benefit from PSP.

The report (see Draft Report, page 4) implies that the University inappropriately “did not follow the competitive bidding process in awarding [a] contract to [PSP].”

The University of Massachusetts Medical School is exempted from following competitive bidding processes when awarding a contract to a corporation like Public Sector Partners. Therefore, competitive bidding processes do not apply to this contract. The OIG’s statement implies that competitive bid processes were required and that the absence of them constitutes a valid basis for an audit finding. This finding is not supported as a matter of fact and law as explained below.

Pursuant to St. 1997, Chapter 163, “An Act Authorizing the Establishment in Central Massachusetts of a Health Care System Affiliated with the University of Massachusetts Medical School,” the Massachusetts Legislature authorized the restructuring of the former state-owned and operated University of Massachusetts Medical Center at Worcester, which was comprised of graduate medical education and research activities as well as a teaching hospital and a variety of other health care services and clinical activities. Under this reorganization and merger legislation, the former clinical system was separated from the University Worcester campus and transferred to a not-for-profit corporation (or corporations) provided that such corporation or corporations operate subject to many statutorily-mandated continuing conditions and obligations to the University medical school.

The purposes of this enabling act included the goal of establishing a not-for-profit corporate health care system affiliated with the medical school while retaining, to the greatest degree possible, a continuing structure of mutual services and revenue sharing between the two newly former entities such as existed prior to the implementation of the enabling act. To accomplish this goal, the Legislature provided that the newly formed health system corporations be obligated to provide services to, and to purchase services from, the medical school. Since such an obligation is statutorily established, it would be nonsensical to require the health system corporations to competitively bid to provide such services. Therefore, the same enabling legislation provides, at section 6 of Chapter 163, an exemption from competitive bid requirements was created:

Section 6. (a) The trustees may establish policies governing contract for goods and services between the university and the *corporations* and such contracts shall be exempt from all state and local laws, rules, regulations, ordinances or bylaws requiring competitive bidding, including sections 29A to 29D, inclusive, of chapter 29 of the General Laws.” (emphasis added)

In Section 3, the term “corporations” was defined as:

Any one or more corporations established under chapter 180 of the General Laws, of which the parent corporation shall initially be known as UMass Memorial Health Care, Inc... to which the trustees transfer or otherwise make available for use the operations, and certain assets, liabilities, and obligations of the clinical division, and any subsidiaries or affiliates of said corporations...”

Public Sector Partners, Inc, is one of the corporations established pursuant to Chapter 163 and in conformity with Chapter 180 of the General Laws, and has as its parent corporation UMass Memorial Health Care, Inc. Therefore, the University may contract with this corporation without engaging in competitive bidding. Notwithstanding the University’s lawful exercise of this option, it is still obligated to make prudent and reasonable purchases, ensuring that compensation provided to any of the “corporations” covered by this enabling act and the competitive bid exemption is less than or comparable to a price that would be paid in a competitive market.