

Department of Health and Human Services

**OFFICE OF
INSPECTOR GENERAL**

**MAINE IMPROPERLY CLAIMED
MEDICAID PAYMENTS FOR
SCHOOL-BASED HEALTH
SERVICES SUBMITTED BY
PORTLAND SCHOOL DEPARTMENT**

*Inquiries about this report may be addressed to the Office of Public Affairs at
Public.Affairs@oig.hhs.gov.*



**David Lamir
Acting Regional
Inspector General**

**April 2013
A-01-11-00011**

Office of Inspector General

<https://oig.hhs.gov>

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OFFICE OF AUDIT SERVICES FINDINGS AND OPINIONS

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

EXECUTIVE SUMMARY

BACKGROUND

Pursuant to Title XIX of the Social Security Act (the Act), the Medicaid program provides medical assistance to certain low-income individuals and individuals with disabilities. The Federal and State Governments jointly fund and administer the Medicaid program. At the Federal level, the Centers for Medicare & Medicaid Services (CMS) administers the program. Each State administers its Medicaid program in accordance with a CMS-approved State plan. Although the State has considerable flexibility in designing and operating its Medicaid program, it must comply with applicable Federal requirements. In Maine, the Department of Health and Human Services, Office of MaineCare Services (State agency) administers the Medicaid program.

Section 411(k)(13) of the Medicare Catastrophic Coverage Act of 1988 (P. L. No. 100-360) amended section 1903(c) of the Act to permit Medicaid payment for medical services provided to children under the Individuals with Disabilities Education Act through a child's individualized education plan (IEP). Pursuant to Federal and State requirements, such services require a referral or prescription from a properly credentialed physician or licensed practitioner. These services must be documented fully and provided by an individual who meets Federal qualification requirements. In addition, these services must be documented in the child's IEP.

During calendar years 2006 through 2008, the State agency claimed \$5,014,928 (\$3,213,813 Federal share) for Medicaid payments made to Portland, Maine, for school-based health services.

We reviewed a random sample of 120 student months totaling \$60,707 (\$38,937 Federal share). A student month represented all paid Medicaid school-based health services provided to an individual student for a calendar month.

OBJECTIVE

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

SUMMARY OF FINDING

The State agency did not always claim Federal Medicaid reimbursement for school-based health services submitted by the Portland School Department in accordance with Federal and State requirements. Of the 120 student months in our random sample, 56 had services, totaling \$24,793 (\$15,966 Federal share), that were not adequately supported, were provided by unqualified providers, or both. Based on our sample results, we estimated that the State agency improperly claimed \$1,039,046 (\$667,569 Federal share) for Medicaid payments made to the Portland School Department. These errors occurred because the State agency did not adequately monitor the claims for Medicaid school-based health services submitted by the Portland School Department.

RECOMMENDATIONS

We recommend that the State agency:

- refund \$667,569 to the Federal Government,
- work with CMS to review Medicaid payments made to the Portland School Department after our audit period and refund any overpayments, and
- strengthen its oversight of the Maine Medicaid school-based health services program to ensure that claims for school-based health services comply with Federal and State requirements.

PORTLAND SCHOOL DEPARTMENT COMMENTS AND OFFICE OF INSPECTOR GENERAL RESPONSE

In written comments on our draft report, the Portland School Department disagreed with our findings for 27 of the 56 student months that we identified as having one or more school-based health services that were not reimbursable. In response to the Portland School Department's comments, we modified our findings for 13 student months and adjusted our monetary recommendation accordingly. However, we maintain that the State agency did not always claim Federal reimbursement for school-based services submitted by the Portland School Department in accordance with Federal and State requirements.

STATE AGENCY COMMENTS

In written comments on our draft report, the State agency agreed with our findings.

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INTRODUCTION

BACKGROUND

Medicaid Program

Pursuant to Title XIX of the Social Security Act (the Act), the Medicaid program provides medical assistance to certain low-income individuals and individuals with disabilities. The Federal and State Governments jointly fund and administer the Medicaid program. At the Federal level, the Centers for Medicare & Medicaid Services (CMS) administers the program. Each State administers its Medicaid program in accordance with a CMS-approved State plan. Although the State has considerable flexibility in designing and operating its Medicaid program, it must comply with applicable Federal requirements.

Medicaid Coverage of School-Based Health Services

Section 411(k)(13) of the Medicare Catastrophic Coverage Act of 1988 (P.L. No. 100-360) amended section 1903(c) of the Act to permit Medicaid payment for medical services provided to children under the Individuals with Disabilities Education Act (IDEA) (originally enacted as P.L. No. 91-230 in 1970) through a child's individualized education plan (IEP).

Federal and State rules require that school-based health services be (1) referred or prescribed by a physician or another appropriate professional, (2) provided by an individual who meets Federal qualification requirements, (3) fully documented, (4) actually furnished in order to be billed, and (5) documented in the child's IEP.

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

Maine Medicaid School-Based Health Services

In Maine, the Department of Health and Human Services, Office of MaineCare (State agency) administers the Medicaid program. Maine's Medicaid school-based health services allows school administrative units (SAU)¹ to receive Federal reimbursement through the State agency for medically related services provided pursuant to a child's IEP.

¹ An SAU is a legally organized administrative body responsible for one or more school Departments.

The primary State guidance for administering and operating the school-based health program is the *MaineCare Benefits Manual* (State Manual). In order to be eligible for this program, a student must (1) have an IEP developed by the pupil evaluation team, (2) be at least 5 years of age and younger than 20 years of age, and (3) be eligible for Medicaid. Covered services under the Medicaid school-based health services program include both school-based rehabilitation services and day treatment services.

CMS approved the Maine State Plan, Attachment 4.19-B.13, which establishes the State agency's use of monthly bundled rates for school-based rehabilitation services and the use of a negotiated fee schedule for day treatment services. Accordingly, the State agency uses bundled rates to reimburse SAUs monthly for school-based rehabilitation services and daily for day treatment services. The bundled rate for monthly school-based rehabilitation ranges from \$75 to \$442 depending on the level of care; this may include speech pathology, occupational therapy, and transportation services. The bundled rate for day treatment services, which includes individual and group therapy services, is approximately \$51. Students are ineligible to participate in both programs at the same time.

The State agency reimbursed SAUs for the Federal share of Medicaid expenditures only; the SAUs were responsible for the State share.² The Federal Government pays its share, including claims for school-based health services, according to a formula established in section 1905(b) of the Act. That share is known as the Federal medical assistance percentage (FMAP). The FMAP in Maine ranged from 62.9 percent to 72.4 percent during our audit period.

Portland School Department

The Portland School Department is a public school department located in Portland, Maine. It operates 18 schools, including 11 elementary schools, 3 middle schools, 3 high schools, and a specialty school. It is the largest school system in the State, serving more than 7,000 students per school year. The Portland School Department received more than \$3.2 million in Federal Medicaid reimbursement during our audit period.

OBJECTIVE, SCOPE, AND METHODOLOGY

Objective

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

Scope

We reviewed Medicaid school-based health services that were submitted by the Portland School Department and claimed by the State agency for Federal reimbursement on Form CMS-64, Quarterly Medicaid Statement of Expenditures for the Medical Assistance Program. The State

² The State's share of the Medicaid payments consisted of certified public expenditures. These expenditures represented funds that Portland had provided for school-based services.

agency claimed \$5,014,928 (\$3,213,813 Federal share) for Medicaid payments made to the Portland School Department during calendar years 2006 through 2008.

Our objective did not require an understanding or assessment of the complete internal control structures at the State agency or the Portland School Department. Rather, we limited our review to those controls that were significant to the objective of our audit. In addition, we did not review the costs supporting the State agency's bundled rate because CMS approved of it in the State plan. We performed our fieldwork at the Portland School Department from July 2011 through August 2012.

Methodology

To accomplish our audit objective, we:

- reviewed applicable Federal laws, regulations, and guidance and the CMS-approved State plan;
- interviewed officials from CMS, the State agency, and the Portland School Department;
- obtained a computer-generated file identifying all Medicaid school-based health claims submitted by Maine with paid dates from January 1, 2006, through December 31, 2008;
- identified 16,359 student months attributed to the Portland School Department, containing services totaling \$5,014,928 (\$3,213,813 Federal share), as described in Appendix A;
- selected a stratified random sample of 120 of the 16,359 student months (Appendix A);
- reviewed medical records and other documentation in order to determine whether each of the services provided in the 120 sampled student months was allowable and accurate in accordance with Federal and State requirements; and
- estimated the overpayments and the Federal share of these overpayments based on our sample results (Appendix B).

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

FINDING AND RECOMMENDATIONS

The State agency did not always claim Federal Medicaid reimbursement for school-based health services submitted by the Portland School Department in accordance with Federal and State requirements. Of the 120 student months in our random sample, 56 had services, totaling

\$24,793 (\$15,966 Federal share), that were not adequately supported, were provided by unqualified providers, or both.

Based on our sample results, we estimated that the State agency improperly claimed \$1,039,046 (\$667,569 Federal share) for Medicaid payments made to the Portland School Department.

The deficiencies occurred because the State agency did not adequately monitor the claims for school-based health services submitted by the Portland School Department. Further, the State agency issued incorrect guidance to the SAUs on Federal requirements pertaining to provider qualifications.

SCHOOL-BASED SERVICES NOT ADEQUATELY SUPPORTED OR PROVIDED BY QUALIFIED PROVIDERS

Pursuant to section 1902(a)(27) of the Act, States claiming Federal Medicaid funding must document services provided. This requirement is reiterated in CMS's technical guide and the State Manual; both state that school-based health providers must maintain records documenting that a related service or evaluation service was provided. Moreover, pursuant to 42 CFR § 455.1(a)(2), States are required to have a method for verifying whether services reimbursed by Medicaid were actually furnished.

Pursuant to 42 CFR § 440.110, speech, occupational, and physical therapy require a prescription from a physician or licensed practitioner of the healing arts practicing within his or her scope of practice as defined in State law. The State Manual requires that speech pathology services must be provided by either a licensed speech pathologist or a qualified speech pathology assistant under the supervision of a licensed speech pathologist. In addition, the State Manual also requires that the student be present and receive covered services in order for the provider to be reimbursed.

Pursuant to 42 CFR § 225.55, costs must be necessary and reasonable for proper and efficient performance and administration in order to be allowable under Federal awards. Furthermore, costs must be consistent with policies, regulations, and procedures that apply to Federal awards.

For 56 of the 120 student months in our sample, the State agency claimed Federal reimbursement for services provided by the Portland School Department that were not adequately supported or were provided by unqualified providers.³ Specifically:

- For 45 student months, the State agency claimed Federal reimbursement for services for which the documentation did not support that a service was provided. For example, the Portland School Department requested reimbursement from the State agency for occupational therapy services that were not documented.
- For 12 student months, the State agency claimed Federal reimbursement for speech, occupational, or physical therapy services that did not meet Federal prescription

³ The total for the specific examples exceeds 56 because 17 student months contained more than 1 type of deficiency.

requirements. For example, the Portland School Department did not provide prescriptions signed by a physician or a licensed practitioner of the healing arts for 12 student months to support the related services.

- For 11 student months, the State agency claimed Federal reimbursement for services that were provided by unqualified providers. For example, the Portland School Department received reimbursement from the State agency for speech services that were not provided by or under the supervision of a licensed speech language pathologist.
- For 7 student months, the State agency claimed Federal reimbursement for services when the students were absent from school. For example, the Portland School Department received reimbursement from the State agency for school-based rehabilitative services 3 months after a student dropped out of school.

IMPROPERLY CLAIMED FEDERAL MEDICAID REIMBURSEMENT

The State agency did not always claim Federal Medicaid reimbursement for school-based health services submitted by the Portland School Department in accordance with Federal and State requirements. Of the 120 student months in our random sample, 56 student months had 1 or more school-based health services, totaling \$24,793 (\$15,966 Federal share), that were not reimbursable. Based on our sample results, we estimated that the State agency improperly claimed \$1,039,046 (\$667,569 Federal share) for Medicaid payments made to the Portland School Department.

INADEQUATE OVERSIGHT AND INCORRECT GUIDANCE

The deficiencies occurred because the State agency did not adequately monitor the claims for school-based health services submitted by the Portland School Department. Furthermore, the State agency issued incorrect guidance to the SAUs on Federal requirements pertaining to provider qualifications.

RECOMMENDATIONS

We recommend that the State agency:

- refund \$667,569 to the Federal government,
- work with CMS to review Medicaid payments made to the Portland School Department after our audit period and refund any overpayments, and
- strengthen its oversight of the Maine Medicaid school-based health services program to ensure that claims for school-based health services comply with Federal and State requirements.

PORTLAND SCHOOL DEPARTMENT COMMENTS AND OFFICE OF INSPECTOR GENERAL RESPONSE

In written comments on our draft report, the Portland School Department disagreed with our findings for 27 of the 56 student months that we identified as having one or more school-based health services that were not reimbursable. In response to the Portland School Department's comments, we modified our findings and monetary recommendations for 13 student months. However, we maintain that the State agency did not always claim Federal reimbursement for school-based services submitted by the Portland School Department in accordance with Federal and State requirements.

The Portland School Department comments, excluding 18 attachments totaling 47 pages, are included as Appendix C. We provided the comments in their entirety to the State agency.

The following is a summary of the Portland School Department comments regarding specific findings of our report and our response to these comments.

Documentation Requirements Not Met

Portland School Department Comments

The Portland School Department stated that the reimbursement it claimed for school-based health services provided during 16 student months met Federal and State documentation requirements for the following reasons:

- For 12 student months, the Portland School Department maintained that documentation sufficiently fulfilled the State requirement for service records, even though the treatment was provided by an educational technician and documented by a licensed social worker.
- For 4 student months, the Portland School Department maintained that service records prepared by a licensed master social worker were not for counseling services and were allowable because they were for the implementation of a "life plan" to achieve specific goals relative to specific life issues. Examples of these life issues included diminished interest in activities and decreased concentration, rooted in the academic pressures of school.
- For 1 student month, the Portland School Department maintained that a service record provided for a speech service met documentation requirements.
- For 1 student month, the Portland School Department maintained that a monthly report showing progress relative to behavior goals, including progress documented on a specific day by a licensed master social worker, met documentation requirements for a description of treatment.

- For 1 student month, the Portland School Department maintained that a day treatment note that does not indicate daily progress met State documentation requirements for a description of treatment.

Office of Inspector General Response

We agree in part that reimbursement claimed for services provided during 6 months met Federal and State requirements, but we disagree that the remaining 10 student months met the requirements. Specifically:

- We disagree that services rendered by one provider but documented by a different provider met Federal documentation requirements for Medicaid reimbursement. Federal regulations specify that States must keep all necessary documentation to support claimed services. Specifically, the documentation must indicate who performed the service. The Portland School Department did not provide service records indicating that the claimed services were provided by the educational technician.
- We agree that the documentation provided by the Portland School Department supported that the licensed master social worker was implementing a life plan to achieve specific goals relative to specific life issues. We modified our report and adjusted our results to reflect this change.
- We agree that the documentation provided by the Portland School Department met Federal and State requirements for speech service documentation. We modified our report and adjusted our results to reflect this change.
- We agree that the documentation provided by the Portland School Department met Federal and State requirements for service documentation because the licensed master social worker's service record included the signature of the education technician who provided the service. We modified our report and adjusted our results to reflect this change.
- We disagree that the provider's description of the treatment met State documentation requirements. State regulations require that progress notes identify services provided and progress toward the achievement of service plan goals.

Provider Qualification Requirements Not Met

Portland School Department Comments

The Portland School Department stated that the reimbursement claimed for school-based health services provided during 13 student months met Federal and State provider qualification requirements for the following reasons:

- For 7 student months, the Portland School Department maintained that a licensed master social worker met provider qualifications for the implementation of a life plan to achieve specific goals relative to specific life issues. Examples of these life issues included social skill development in the areas of peer relationships and self esteem.
- For 6 student months, the Portland School Department maintained that reimbursement for speech services met requirements because the State agency calculated a reduced rate by excluding the cost of speech clinicians.

Office of Inspector General Response

We agree in part that reimbursements claimed for services provided during 7 months met Federal and State requirements, but we disagree that the remaining 6 student months met the requirements. Specifically:

- We agree that the licensed master social worker met provider qualifications requirements for implementation of a life plan to achieve specific goals relative to specific life issues. We modified our report and adjusted our results to reflect this change.
- We do not agree that using a reduced rate that excludes the cost of speech clinicians is in compliance with Federal regulations, as required by 2 CFR 225.55 and 42 CFR 440.110 (c)(1). Furthermore, speech services rendered by an unsupervised speech clinician were the only health service prescribed for these claims. Thus, no other documented costs were incurred by the Portland School Department on those days.

Prescription Requirements Not Met

Portland School Department Comments

The Portland School Department stated that the reimbursements claimed for school-based health services provided during 15 student months met Federal and State prescription requirements for the following reasons:

- For 5 student months, the Portland School Department maintained it met referral requirements for services provided by unsupervised speech clinicians because it billed the

services at a reduced rate calculated by the State agency to exclude the cost of speech clinicians.

- For 5 student months, the Portland School Department maintained that a pupil evaluation team referral based on an IEP met State regulations for an allowable prescription for occupational therapy services.
- For 4 student months, the Portland School Department maintained that State regulations enable a licensed occupational therapist to prescribe occupational therapy services provided by a licensed occupational therapist.
- For 3 student months, the Portland School Department maintained that a pupil evaluation team referral based on an IEP met State regulations for social work services. The Portland School Department also indicated that Federal regulations do not require a referral for social work services.
- For 2 student months, the Portland School Department maintained that State regulations enable a licensed physical therapist to prescribe physical therapy services provided by a licensed physical therapist.
- For 1 student month, the Portland School Department maintained that a pupil evaluation team referral based on an IEP met referral requirements for speech services.

Office of Inspector General Response

We agree in part that reimbursement claimed for services provided during 3 student months met Federal and State requirements, but we disagree that the remaining 12 student months met the requirements. Specifically

- We do not agree that using a reduced rate that excludes the cost of speech clinicians is in compliance with Federal regulations, as required by 42 CFR 440.110 (c)(1).
- We do not agree that an occupational therapy referral made by a unqualified pupil evaluation team member met the Federal requirement for a prescription by a physician or licensed practitioner of the healing arts within the scope of his/her practice under Maine State Law. Specifically, the Portland School Department did not provide evidence that a physician or licensed practitioner of the healing arts was a member of the pupil evaluation team.
- We do not agree that Maine State regulations provide licensed occupational therapists specific authority to prescribe occupational therapy services by an occupational therapist.

Specifically, Maine State statute does not authorize occupational therapists to prescribe occupational therapy services.

- We agree that a pupil evaluation team referral meets prescription requirements for social work and that Federal regulations do not require a prescription for social work services. We modified our report and adjusted our results to reflect this change.
- We do not agree that Maine State regulations provide licensed physical therapists specific authority to prescribe physical therapy services by a physical therapist. Specifically, Maine State statute does not authorize physical therapists to prescribe physical therapy services.
- We do not agree that a speech referral made by an unqualified pupil evaluation team member met the Federal requirement for a speech referral by a physician or speech language pathologist or audiologist. Specifically, Portland School Department did not provide evidence that a physician, speech pathologist, or audiologist was member of the pupil evaluation team.

Attendance Requirements Not Met

Portland School Department Comments

The Portland School Department stated that the reimbursement claimed for school-based health services provided during 1 student month met Federal and State attendance requirements. Specifically, it stated that the documentation provided demonstrated the student was not absent on 2 dates of service.

Office of Inspector General Response

We disagree that reimbursements claimed for services provided during 1 student month met Federal and State requirements. The support documentation provided by the Portland School Department indicated affirmatively that the student was absent, and no percentage progress was indicated on the note for days questioned.

STATE AGENCY COMMENTS

In written comments on our draft report, the State agency agreed with our findings. The State agency's comments are included in their entirety as Appendix D.

APPENDIXES

APPENDIX A: SAMPLE DESIGN AND METHODOLOGY

POPULATION

The population consisted of Medicaid paid claims for school-based rehabilitation and day treatment services that the Maine Department of Health and Human Services, Office of MaineCare Services (State agency) reimbursed Portland Public Schools during calendar years (CY) 2006 through 2008. The State agency requested Federal reimbursement for these claims and recorded them in its Medicaid Management Information System (MMIS).

SAMPLING FRAME

The sampling frame was two Access database tables with a total of 16,359 student month records. A student month consists of all Medicaid school-based services rendered in a month to a student. There was one Access table for the rehabilitation services and another table for the day treatment services. The 16,359 student months contained a total of 52,875 services for which the State agency was paid a total Federal share of \$3,213,813.26.

SAMPLE UNIT

The sample unit was a student month.

SAMPLE DESIGN

Our sample design consisted of a stratified random sample.

Stratum	Description	Number of Student Months	Federal Share Dollar Value of Student Months
1	Rehabilitation Services	13,789	\$1,942,325.55
2	Day Treatment Services	2,570	\$1,271,487.71
Total		16,359	\$3,213,813.26

SAMPLE SIZE

The sample consisted of 120 beneficiary months with 60 beneficiary months in each stratum.

SOURCE OF THE RANDOM NUMBERS

We generated the random numbers using the Office of Inspector General, Office of Audit Services (OAS) statistical software.

METHOD OF SELECTING SAMPLE ITEMS

We consecutively numbered the sample units in each stratum. After generating 60 random numbers for each stratum, we selected the corresponding frame items.

ESTIMATION METHODOLOGY

We used OAS statistical software to estimate the total amount and Federal share of the overpayments.

APPENDIX B: SAMPLE RESULTS AND ESTIMATES

Sample Results: Total Amounts

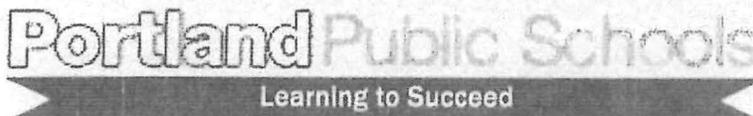
Stratum	Frame Size	Value of Frame	Sample Size	Value of Sample	No. of Student Months With Unallowable Services	Value of Unallowable Services in Sample
1	13,789	\$3,021,542	60	\$13,226	7	\$ 1,078
2	2,570	1,993,386	60	47,481	49	23,715
Total	16,359	\$5,014,928	120	\$60,707	56	\$24,793

Sample Results: Federal Share Amounts

Stratum	Frame Size	Value of Frame (Federal Share)	Sample Size	Value of Sample (Federal Share)	No. of Student Months With Unallowable Services	Value of Unallowable Services in Sample (Federal Share)
1	13,789	\$1,942,325	60	\$ 8,392	7	\$ 684
2	2,570	1,271,488	60	30,545	49	15,282
Total	16,359	\$3,213,813	120	\$38,937	56	\$15,966

Estimated Value of Improperly Claimed Federal Medicaid Reimbursement
(Limits Calculated for a 90-Percent Confidence Interval)

	<u>Total Amounts</u>	<u>Federal Share</u>
Point Estimate	\$1,263,544	\$ 811,820
Lower Limit	1,039,046	667,569
Upper Limit	1,488,042	956,071

**Administration**

Emmanuel Caulk, Superintendent
David Galin, Chief Academic Officer
Michael Wilson, Chief Financial Officer
Peter Eglinton, Chief Operations Officer

196 Allen Avenue, Portland, Maine 04103
(207) 874-8100

December 19, 2012

Michael Armstrong
Regional Inspector General for Audit Services
Department of Health and Human Services
Office of Inspector General, Office of Audit Services
John F. Kennedy Federal Building, Room 2425
Boston, MA 02203

Re: A-01-11-00011

Dear Mr. Armstrong:

The U.S. Department of Health and Human Services, Office of Inspector General (OIG), issued to the Portland School Department a draft report entitled *Maine Improperly Claimed Medicaid Payments of School-Based Health Services Submitted by Portland School Department* by letter dated November 5, 2012. With the consent of OIG, the deadline to respond to the draft report was extended until December 21, 2012.

The enclosed submissions represent the Portland School Department's response to the draft report based on all information currently available. Attachment A, compiled by the Portland School Department, responds to factual issues relating to individual students and student IEPs. Attachment B, drafted by legal counsel at [REDACTED] in Portland, Maine, addresses provider qualifications and the scope of provider authority under Maine law. In the interest of efficiency, the factual submission cross-references the legal submission where appropriate, thereby providing both a legal and factual basis for contesting disallowance of particular claims.

We appreciate the opportunity to respond to OIG's preliminary findings. Please do not hesitate to contact me or our counsel at [REDACTED] with additional questions.

Sincerely,

A handwritten signature in dark ink, appearing to read "Emmanuel Caulk", is written over a horizontal line.

Emmanuel Caulk
Superintendent of Schools
Portland School Department

Enclosures



ATTACHMENT A

December 21, 2012

Michael Armstrong
Regional Inspector General for Audit Services
Department of Health and Human Services
Office of Inspector General, Office of Audit Services
John F. Kennedy Federal Building, Room 2425
Boston, MA 02203

Re: A-01-11-00011

Dear Mr. Armstrong,

Thank you for your preliminary audit findings reviewed at a meeting at the offices of the Portland School District on September 12, 2012. We appreciate the opportunity to respond to these preliminary findings.

School Based Rehabilitative Services

Students' Background, SB Samples 29, 23, 36, 31, 2, 25:

██████████ November 2007, SB Sample #29

Pursuant to ██████████ IEP, ██████████ required Speech and Language Services as defined by Section 104.04.C of the MaineCare Benefits Manual. Since the speech language pathologist did not meet the credentialing requirements of Section 104.07-2.G, a "reduced rate" claim was submitted as allowed pursuant to Section 104.08.

██████████ October 2007, SB Sample #23

Pursuant to ████████ IEP, ██████ required Speech and Language Services as defined by Section 104.04.C of the MaineCare Benefits Manual. Since the speech language pathologist did not meet the credentialing requirements of Section 104.07-2.G, a "reduced rate" claim was submitted as allowed pursuant to Section 104.08.

██████████ October 2008, SB Sample # 36

Pursuant to ████████ IEP, ██████ required Speech and Language Services as defined by Section 104.04.C, Occupational Therapy Services as defined by Section 104.04.G and Physical Therapy Services as defined by Section 104.04.H of the MaineCare Benefits Manual. Since the speech language pathologist did not meet the credentialing requirements of Section 104.07-2.G, a "reduced rate" claim was submitted as allowed pursuant to Section 104.08.

██████████ May 2007, SB Sample #31

Pursuant to ████████ IEP, ██████ required Speech and Language Services as defined by Section 104.04.C of the MaineCare Benefits Manual. Since the speech language pathologist did not meet the credentialing

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requirements of Section 104.07-2.G, a "reduced rate" claim was submitted as allowed pursuant to Section 104.08.

██████████ April 2008, SB Sample #2

Pursuant to ██████████ IEP, ██████████ required Speech and Language Services as defined by Section 104.04.C of the MaineCare Benefits Manual. Since the speech language pathologist did not meet the credentialing requirements of Section 104.07-2.G, a "reduced rate" claim was submitted as allowed pursuant to Section 104.08.

██████████ December 2007, SB Sample #25

Pursuant to ██████████ IEP, ██████████ required Speech and Language Services as defined by Section 104.04.C of the MaineCare Benefits Manual. Since the speech language pathologist did not meet the credentialing requirements of Section 104.07-2.G, a "reduced rate" claim was submitted as allowed pursuant to Section 104.08.

Discussion, SB Samples 29, 23, 36, 31, 2, 25:

Under the bundled rate methodology, when speech was ordered in a child's IEP and delivered by an unqualified speech practitioner, a separate rate structure was developed that essentially "deducted" the costs associated with the delivery of speech services. As a result, the monthly bundled rate utilized in the SB samples did not include cost reimbursement for the speech services, therefore not requiring a school district to document or produce the qualifying credentials for a speech pathologist or a speech referral. This "reduced rate" claim for the monthly bundled rate is described in Section 104.08 of MaineCare Benefits Manual Chapter II as in effect during the period of the audit: "...A separate rate has been calculated to allow for reimbursement excluding speech-language pathology services when those services are provided by an individual not listed in 104.07-2...." 10-144-101 ME. CODE R. § 104.08 (2006). The "reduced rate" component was introduced in a memorandum issued by the Maine Department of Health and Human Services on September 16, 1998. We have attached a copy of the memo for your reference at Appendix A.

In a follow-up memo issued by the Department of Health and Human Services dated December 5, 1998, school districts were provided notice that the bundled rate would be reformed to account for situations where school districts continued to utilize speech clinicians (not qualified under the Medicaid regulations) to deliver speech services as ordered in a child's IEP: "Therefore, the Department of Human Services will be promulgating amendments to the Medicaid policy for School Based Rehabilitation Services to exclude speech clinicians from the list of allowed service providers to be billed under this policy. In addition, this rule will include a new set of codes which pay a reduced rate due to excluding reimbursement for speech-language services. This will allow schools which choose to continue utilizing speech clinicians to continue billing under the School Based Rehab Services policy, while excluding the costs associated with those practitioners." We have attached a copy of the memo for your reference at Appendix B.

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As such, we do not believe that these samples should fall into the category of a disallowance recommendation, but rather into the category of a "no opinion" because the service was provided and billed within the boundaries of the bundled rate methodology permitted in Maine.

In addition, in regards to SB Sample # 36, we do not agree that OT and PT were not properly ordered by a licensed practitioner of the healing arts within the scope of practice of Maine law. In regards to Physical Therapy, "[t]he practice of physical therapy includes the evaluation, treatment and instruction of human beings to detect, assess, prevent, correct alleviate and limit physical disability, bodily malfunction and pain from injury, disease and other bodily condition; the administration, interpretation and evaluation of tests and measurements of bodily functions and structures for the purpose of treatment planning; the planning, administration, evaluation and modification of treatment and instruction; and the use of physical agents and procedures, activities and devices for preventative and therapeutic purposes; and the provision of consultative, educational and other advisory services for the purpose of reducing the incidence and severity of physical disability, bodily malfunction and pain." 32 M.R.S. §3111-A. We submit that the scope of practice, particularly with the utilization of words like "...the planning, administration, evaluation and modification of treatment..." provides a licensed Physical Therapist with the statutory authority to prescribe physical therapy as a licensed practitioner of the healing arts, pursuant to Section 104.04.H. In addition, the Physical Therapy Practice Act also states by implication that a Physical Therapist has the authority to provide Physical Therapy services "...without referral from a doctor..." subject to certain limitations. 32 M.R.S. §3113-A.

We therefore do not agree that a disallowance is required because a prescription was provided by a Physical Therapist.

In regards to Occupational Therapy, "'Occupational Therapy' means the assessment, planning and implementation of a program of purposeful activities to develop or maintain adaptive skills necessary to achieve the maximal physical and mental functioning of the individual in the individual's daily pursuits. The practice of 'occupational therapy' includes, but is not limited to, assessment and treatment of individuals whose abilities to cope with the tasks of living are threatened or impaired by developmental deficits, the aging process, learning disabilities, poverty and cultural differences, physical injury or disease, psychological and social disabilities or anticipated dysfunction...." 32 M.R.S. §2272.12. We submit that the scope of practice, particularly with the utilization of words like "...assessment, planning and implementation of a program ..." provides a licensed Occupational Therapist with the statutory authority to prescribe Occupational Therapy services pursuant to Section 104.04.G. We therefore do not agree that a disallowance is required.

June 2007, SB Sample #14

We agree that since this child did not have an IEP in effect for the month of June, a monthly claim should not have been submitted.

Day Treatment

June 2006, DT #1

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In regards to the disallowance recommendations for 6/6 and 6/8, we disagree that no documentation provided demonstrated receipt of services on those days. We provided treatment notes that documented treatment on 6/6 and 6/8 relative to specific Day Treatment Goals. We submit that this documentation fulfills the requirement of Section 41.07-4.G and K whereby a description of treatment, counseling or follow-up care was provided because it describes treatment related outcomes, even if the treatment was provided by an Educational Technician and documented by a Licensed Clinical Social Worker. Attached please find that documentation at Appendix C.

December 2006, DT #2

In regards to the disallowance recommendations for all dates in December except for 12/ 5, 12/19 and 12/22, we agree that no documentation provided demonstrated receipt of services on those days. Should we uncover additional documentation in this regard, it will be provided.

December 2006, DT #3

We disagree that on the dates that the Licensed Master Social Worker provided counseling services, the Licensed Master Social Worker provided services outside of the scope of the Maine Practice Act. The Maine Unified Special Education Regulations define counseling as "...services provided by qualified social workers, psychologists, or other qualified personnel." 05-071-101 Me. Code R. § XI (2008). As defined in the Social Workers Practice Act, "'Social work' means engaging in psychosocial evaluation and intervention . . . to effect a change in the feelings, attitudes and behavior of a client, whether an individual, group or community. 'Social work' also means engaging in community organization, social planning, administration and research." 32 M.R.S. §7001-A (11). Within the allowed functions of a Licensed Master Social Worker, the Social Worker Practice Act makes it clear that "...[a]ny licensed master social worker may...[p]erform all of the functions of a licensed social worker..."(32 M.R.S. §7053-A(1)(B)) "... A licensed social worker may...conduct basic data gathering of records and specific life issues of individuals, groups and families, assess this data and formulate and implement a plan to achieve specific goals relative to specific life issues." 32 M.R.S. §7053-A(4)(A). In the case of this student, the services provided were within the boundaries of the scope of practice of this Licensed Master Social Worker because the services were meant to implement a plan to achieve specific goals relative to specific life issues. Specifically, this child's IEP indicated that he needed the support of Day Treatment Services relative to social skill development in the areas of peer relationships and self esteem, as well as interventions that allowed him to manage frustration and sustain focus and attention.

The Licensed Master Social Worker provided services with the scope authorized by the Social Worker Practice Act. We therefore do not agree that a disallowance is required.

We agree that [REDACTED] was not a qualified speech provider, and did not provide services under the direction of a properly qualified speech provider on 12/4, 12/5, 12/7, 12/11, 12/12, 12/14, 12/18, 12/19 and 12/21. We therefore agree that a disallowance is required on these dates.

October, 2007, DT #4

In regards to the disallowance recommendations for 10/11, 10/16, 10/18, 10/24 and 10/30, we disagree that no documentation provided demonstrated receipt of services on those days. We provided

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treatment notes that documented treatment on 10/11, 10/16, 10/18, 10/24 and 10/30 relative to specific Day Treatment Goals. We submit that this documentation fulfills the requirement of Section 41.07-4.G and K whereby a description of treatment, counseling or follow-up care was provided because it describes treatment related outcomes, even if the treatment was provided by an Educational Technician and documented by a Licensed Clinical Social Worker. Attached please find that documentation at Appendix D. In regards to the disallowance recommendation for 10/25, we agree that no documentation provided demonstrated receipt of service on that day. Should we uncover additional documentation in this regard, it will be provided.

[REDACTED], October 2007, DT #5

In regards to the disallowance recommendations for 10/2, 10/5, 10/9, 10/16, 10/23, 10/26 and 10/30 relative to the Licensed Master Social Worker providing counseling services, we disagree that the counseling services were provided outside of the scope of the Maine Practice Act. The Maine Unified Special Education Regulations define counseling as "...services provided by qualified social workers, psychologists, or other qualified personnel." 05-071-101 Me. Code R. § XI (2008). As defined in the Social Workers Practice Act, "'Social work' means engaging in psychosocial evaluation and intervention . . . to effect a change in the feelings, attitudes and behavior of a client, whether an individual, group or community. 'Social work' also means engaging in community organization, social planning, administration and research." 32 M.R.S. §7001-A (11). Within the allowed functions of a Licensed Master Social Worker, the Social Worker Practice Act makes it clear that "...[a]ny licensed master social worker may...[p]erform all of the functions of a licensed social worker..."(32 M.R.S. §7053-A(1)(B)) "... A licensed social worker may...conduct basic data gathering of records and specific life issues of individuals, groups and families, assess this data and formulate and implement a plan to achieve specific goals relative to specific life issues." 32 M.R.S. §7053-A(4)(A). In the case of this student, the services provided were within the boundaries of the scope of practice of this Licensed Master Social Worker because the services were meant to implement a plan to achieve specific goals relative to specific life issues. Specifically, this child's IEP indicated that he needed the support of Day Treatment Services relative to struggles with depressed mood, diminished interest in activities, decreased concentration, suicidal ideation and hopelessness, which were apparently rooted in the academic pressures of school

The Licensed Master Social Worker provided services within the scope of the Maine Practice Act, and we therefore disagree that a disallowance is required.

In regards to the disallowance recommendations for 10/3, 10/17, 10/24 and 10/31, we disagree that no documentation provided demonstrated receipt of services on those days. We provided treatment notes that documented treatment on 10/3, 10/17, 10/24 and 10/31 relative to specific Day Treatment Goals. We submit that this documentation fulfills the requirement of Section 41.07-4.G and K whereby a description of treatment, counseling or follow-up care was provided because it describes treatment related outcomes, even if the treatment was provided by an Educational Technician and documented by a Licensed Master Social Worker. Attached please find that documentation at Appendix E.

[REDACTED], September 2008, DT #8

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We agree that this child was marked absent on the Day Treatment Service delivery log on 9/11 and therefore agree with the disallowance recommendation.

██████████ May 2006, DT #9

We agree that even though Occupational Therapy was documented as delivered on 5/19, OT was not ordered in the child's IEP, and therefore a disallowance recommendation on that date is appropriate. As to the balance of the disallowance recommendations for all of the other days of the month, we agree that no documentation provided demonstrated receipt of services on those days. Should we uncover additional documentation in this regard, it will be provided.

██████████ June 2007, DT #10

In regards to the disallowance recommendations for 6/1, 6/6, 6/7, 6/8, 6/12, 6/13 and 6/14, we agree that no documentation provided demonstrated receipt of services on those days. Should we uncover additional documentation in this regard, it will be provided.

██████████ December 2007, DT #11

In regards to the disallowance recommendations for 12/19 and 12/21, we agree that the service delivery log is a more accurate reflection of attendance and the disallowance recommendation on these two days is appropriate.

██████████ June 2006, DT # 13

We disagree with the disallowance recommendations for 6/2 and 6/5 because of the finding that a properly licensed Occupational Therapist does not have the authority to recommend OT services. "Occupational Therapy" means the assessment, planning and implementation of a program of purposeful activities to develop or maintain adaptive skills necessary to achieve the maximal physical and mental functioning of the individual in the individual's daily pursuits. The practice of "occupational therapy" includes, but is not limited to, assessment and treatment of individuals whose abilities to cope with the tasks of living are threatened or impaired by developmental deficits, the aging process, learning disabilities, poverty and cultural differences, physical injury or disease, psychological and social disabilities or anticipated dysfunction...." 32 M.R.S. §2272.12. We submit that the scope of practice, particularly with the utilization of words like "...assessment, planning and implementation of a program ..." provides a licensed Occupational Therapist with the statutory authority to prescribe Occupational Therapy services. We therefore do not agree that a disallowance is required.

In addition, for Day Treatment Services, of which OT is included as a reimbursable service, the regulations only required a referral by the Pupil Evaluation Team (now known as the Individualized Education Program Team) based on the development of an Individual Education Plan. 10-144-101 Me. CODE R: §41.02.B.2 (2006). In this case, we provided access to the child's IEP during the audit which formed the basis of the referral from the team for Day Treatment Services.

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In regards to the disallowance recommendations for 6/1, 6/7, 6/8, 6/9 and 6/12, we agree that no documentation provided demonstrated receipt of services on those days. Should we uncover additional documentation in this regard, it will be provided.

October 2007, DT # 14

In regards to the disallowance recommendations for 10/3, 10/5, 10/10, 10/12, 10/16, 10/18, 10/19, 10/23, 10/26 and 10/30 we agree that no documentation provided demonstrated receipt of services on those days. Should we uncover additional documentation in this regard, it will be provided.

In regards to the disallowance recommendations for 10/3, 10/10, 10/16 and 10/30, because the psychologist did not sign the documentation, we agree that the disallowance is appropriate.

January 2008, DT # 15

We do not agree that this child was marked absent on 1/4 and 1/24. Attached please find his attendance report at Appendix F.

In regards to the disallowance recommendations for 1/3, 1/8, 1/10, 1/15, 1/17, 1/22 and 1/29 relative to the Licensed Master Social Worker providing counseling services, we disagree that counseling services were provided outside of the Scope of the Maine Practice Act. The Maine Unified Special Education Regulations define counseling as "...services provided by qualified social workers, psychologists, or other qualified personnel." 05-071-101 Me. Code R. § XI (2008). As defined in the Social Workers Practice Act, "'Social work' means engaging in psychosocial evaluation and intervention, including therapy, to the extent permitted by the licensure provisions of this chapter, to effect a change in the feelings, attitudes and behavior of a client, whether an individual, group or community. 'Social work' also means engaging in community organization, social planning, administration and research." 32 M.R.S. §7001-A (11). Within the allowed functions of a Licensed Master Social Worker, the Social Worker Practice Act makes it clear that "...[a]ny licensed master social worker may...[p]erform all of the functions of a licensed social worker..." 32 M.R.S. §7053-A(1)(B). "... A licensed social worker may...conduct basic data gathering of records and specific life issues of individuals, groups and families, assess this data and formulate and implement a plan to achieve specific goals relative to specific life issues." 32 M.R.S. §7053-A(4)(A). In the case of this student, the services provided were within the boundaries of the scope of practice of this Licensed Master Social Worker because the services were meant to implement a plan to achieve specific goals relative to specific life issues. Specifically, this child's IEP indicated that he needed the support of Day Treatment Services relative to difficulty with elements of depression, chronic anger, violent behavior and oppositional behavior. The Licensed Master Social Worker provided services within the scope of the Maine Practice Act, and we therefore do not agree that a disallowance is required.

In regards to the disallowance recommendations for 1/9, 1/11, 1/16, 1/18, 1/23 and 1/30 we disagree that no documentation provided demonstrated receipt of services on those days. We provided treatment notes that documented treatment on 1/9, 1/11, 1/16, 1/18, 1/23 and 1/30 relative to specific Day Treatment Goals. We submit that this documentation fulfills the requirement of Section 41.07-4.G and K whereby a description of treatment, counseling or follow-up care was provided because it

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describes treatment related outcomes, even if the treatment was provided by an Educational Technician and documented by a Licensed Master Social Worker. Attached please find that documentation at Appendix F.

October 2008, DT #16

In regards to the disallowance recommendations for 10/1, 10/6, 10/8, 10/15, 10/20, 10/22, 10/27 and 10/29, we disagree that no documentation provided demonstrated receipt of services on those days. We provided treatment notes that documented treatment on 10/1, 10/6, 10/8, 10/15, 10/20, 10/22, 10/27 and 10/29 relative to specific Day Treatment Goals. We submit that this documentation fulfills the requirement of Section 41.07-4.G and K whereby a description of treatment, counseling or follow-up care was provided because it describes treatment related outcomes, even if the treatment was provided by an Educational Technician and documented by a Licensed Clinical Social Worker. Attached please find that documentation at Appendix G.

December 2007, DT # 17

We agree that this child was marked absent on the service delivery log on 12/7 and therefore a disallowance is appropriate.

February 2006, DT #18

In regards to the disallowance recommendations for 2/2, 2/3, 2/7, 2/9, 2/10, 2/14, 2/16, 2/17 and 2/28, we agree that no documentation provided demonstrated receipt of services on those days. Should we uncover additional documentation in this regard, it will be provided.

September 2007, DT #19

We do not agree that OT and PT were not properly ordered by a licensed practitioner of the healing arts within the scope of practice of Maine law for OT and PT services on 9/17, 9/21, 9/25 and 9/28. In regards to Physical Therapy, "[t]he practice of physical therapy includes the evaluation, treatment and instruction of human beings to detect, assess, prevent, correct alleviate and limit physical disability, bodily malfunction and pain from injury, disease and other bodily condition; the administration, interpretation and evaluation of tests and measurements of bodily functions and structures for the purpose of treatment planning; the planning, administration, evaluation and modification of treatment and instruction; and the use of physical agents and procedures, activities and devices for preventative and therapeutic purposes; and the provision of consultative, educational and other advisory services for the purpose of reducing the incidence and severity of physical disability, bodily malfunction and pain." 32 M.R.S. §3111-A. We submit that the scope of practice, particularly with the utilization of words like "...the planning, administration, evaluation and modification of treatment..." provides a licensed Physical Therapist with the statutory authority to prescribe physical therapy as a licensed practitioner of the healing arts, pursuant to Section 104.04.H. In addition, the Physical Therapy Practice Act also states by implication that a Physical Therapist has the authority to provide Physical Therapy services "...without referral from a doctor..." subject to certain limitations. 32 M.R.S. §3113-A.

We therefore do not agree that a disallowance is required.

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In regards to Occupational Therapy, "Occupational Therapy" means the assessment, planning and implementation of a program of purposeful activities to develop or maintain adaptive skills necessary to achieve the maximal physical and mental functioning of the individual in the individual's daily pursuits. The practice of 'occupational therapy' includes, but is not limited to, assessment and treatment of individuals whose abilities to cope with the tasks of living are threatened or impaired by developmental deficits, the aging process, learning disabilities, poverty and cultural differences, physical injury or disease, psychological and social disabilities or anticipated dysfunction...." 32 M.R.S. §2272.12. We submit that the scope of practice, particularly with the utilization of words like "...assessment, planning and implementation of a program ..." provides a licensed Occupational Therapist with the statutory authority to prescribe Occupational Therapy services pursuant to Section 104.04.G.

We therefore do not agree that a disallowance is required.

Further, Day Treatment Services, of which OT is a covered service, were recommended by a licensed psychologist. Please see attached documentation of that referral and appropriate licensure at Appendix P. Additionally, for Day Treatment Services, the regulations only required a referral by the Pupil Evaluation Team (now known as the Individualized Education Program Team) based on the development of an Individual Education Plan. 10-144-101 ME. CODE R. §41.02.B.2 (2006). In this case, we provided access to the child's IEP during the audit which formed the basis of the referral from the team for Day Treatment Services.

In regards to the disallowance recommendations for 9/6, 9/7, 9/10, 9/11, 9/12, 9/13, 9/14, 9/18, 9/19, 9/24, 9/26 and 9/27, we agree that no documentation provided demonstrated receipt of services on those days. Should we uncover additional documentation in this regard, it will be provided.

April 2007, DT #20

In regards to the disallowance recommendations for 4/2 through 4/30, we agree that no documentation provided demonstrated receipt of services on those days. Should we uncover additional documentation in this regard, it will be provided.

November 2006, DT #21

We disagree that there was no referral by a qualifying provider for social work services. The regulations only required a referral by the Pupil Evaluation Team (now known as the Individualized Education Program Team) based on the development of an Individual Education Plan. 10-144-101 ME. CODE R. §41.02.B.2 (2006). In this case, we provided access to the child's IEP during the audit which formed the basis of the referral from the team for Day Treatment Services. In addition, the federal regulations do not require a referral for social work services.

June 2007, DT # 22

We disagree with the disallowance recommendations for 6/5 because of the finding that a properly licensed Occupational Therapist does not have the authority to recommend OT services.

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In regards to Occupational Therapy, "Occupational Therapy' means the assessment, planning and implementation of a program of purposeful activities to develop or maintain adaptive skills necessary to achieve the maximal physical and mental functioning of the individual in the individual's daily pursuits. The practice of 'occupational therapy' includes, but is not limited to, assessment and treatment of individuals whose abilities to cope with the tasks of living are threatened or impaired by developmental deficits, the aging process, learning disabilities, poverty and cultural differences, physical injury or disease, psychological and social disabilities or anticipated dysfunction...." 32 M.R.S. §2272.12. We submit that the scope of practice, particularly with the utilization of words like "...assessment, planning and implementation of a program ..." provides a licensed Occupational Therapist with the statutory authority to prescribe Occupational Therapy services pursuant to Section 104.04.G. We therefore do not agree that a disallowance is required.

Additionally, the regulations only required a referral by the Pupil Evaluation Team (now known as the Individualized Education Program Team) based on the development of an Individual Education Plan. 10-144-101 ME. CODE R. §41.02.B.2 (2006). In this case, we provided access to the child's IEP during the audit which formed the basis of the referral from the team for Day Treatment Services.

In regards to the disallowance recommendations for 6/1, 6/4, 6/7, 6/8, 6/11, 6/12, 6/13 and 6/14, we agree that no documentation provided demonstrated receipt of services on those days. Should we uncover additional documentation in this regard, it will be provided.

September 2006, DT #23

In regards to the disallowance recommendations for 9/7, 9/8, 9/11, 9/12, 9/13, 9/14, 9/15, 9/19, 9/22, 9/26 and 9/29, we agree that no documentation provided demonstrated receipt of services on those days. Should we uncover additional documentation in this regard, it will be provided.

March 2007, DT #24

We agree that this child was marked absent on the service delivery logs on 3/23 and 3/26, and therefore a disallowance is appropriate.

March 2007, DT # 25

In regards to the disallowance recommendations for all of the claimed days in March 2007, we agree that no documentation provided demonstrated receipt of services on those days. Should we uncover additional documentation in this regard, it will be provided.

December 2006, DT # 26

In regards to the disallowance recommendations for 12/4, 12/6, 12/8, 12/11, 12/14, 12/15, 12/18, 12/19 and 12/22, we agree that no documentation provided demonstrated receipt of services on those days. Should we uncover additional documentation in this regard, it will be provided.

October 2006, DT #27

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We disagree that there was no appropriate referral for speech services on 10/5, 10/12 and 10/19. The regulations only required a referral by the Pupil Evaluation Team (now known as the Individualized Education Program Team) based on the development of an Individual Education Plan. 10-144-101 ME. CODE R. §41.02.B.2 (2006). In this case, we provided access to the child's IEP during the audit which formed the basis of the referral from the team for Day Treatment Services. We agree that speech was provided by an unqualified, unsupervised provider on 10/5, 10/12 and 10/19. In regards to the disallowance recommendations for 10/2, 10/3, 10/4, 10/6, 10/10, 10/11, 10/13, 10/16, 10/17, 10/18, 10/20, 10/23, 10/24, 10/25, 10/26, 10/27, 10/30 and 10/31, we agree that no documentation provided demonstrated receipt of services on those days. Should we uncover additional documentation in this regard, it will be provided.

November 2006, DT # 28

In regards to the disallowance recommendations for all of the claimed days in November 2006, we agree that no documentation provided demonstrated receipt of services on those days. Should we uncover additional documentation in this regard, it will be provided.

April 2008, DT #30

In regards to the disallowance recommendations for 4/1, 4/2, 4/3, 4/4, 4/7, 4/9, 4/10, 4/11, 4/16, 4/17, 4/18 and 4/30, we agree that no documentation provided demonstrated receipt of services on those days. Should we uncover additional documentation in this regard, it will be provided.

September 2007, DT #31

We disagree that there was no referral by a qualifying provider for social work services. The regulations only required a referral by the Pupil Evaluation Team (now known as the Individualized Education Program Team) based on the development of an Individual Education Plan. 10-144-101 ME. CODE R. §41.02.B.2 (2006). In this case, we provided access to the child's IEP during the audit which formed the basis of the referral from the team for Day Treatment Services. In addition, the federal regulations do not require a referral for social work services.

In regards to the disallowance recommendations for all of the claimed days in September 2007, we disagree that no documentation provided demonstrated receipt of services on some of the claimed days. We provided treatment notes that documented treatment on 9/10, 9/11, 9/12, 9/13, 9/14, 9/17, 9/18, 9/19, 9/20, 9/21, 9/24, 9/25, 9/26, 9/27 and 9/28 relative to specific Day Treatment Goals. We submit that this documentation fulfills the requirement of Section 41.07-4.G and K whereby a description of treatment, counseling or follow-up care was provided because it describes treatment related outcomes, even if the treatment was provided by an Educational Technician and documented by a Licensed Master Social Worker. Attached please find that documentation at Appendix H.

December 2007, DT # 32

We disagree that there was no referral by a qualifying provider for social work services on 12/4, 12/7, 12/11, 12/14, 12/18 and 12/21. The regulations only required a referral by the Pupil Evaluation Team (now known as the Individualized Education Program Team) based on the development of an Individual

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Education Plan. 10-144-101 ME. CODE R. §41.02.B.2 (2006). In this case, we provided access to the child's IEP during the audit which formed the basis of the referral from the team for Day Treatment Services. In addition, the federal regulations do not require a referral for social work services.

In regards to the disallowance recommendations for 12/5, 12/12 and 12/19, we disagree that no documentation provided demonstrated receipt of services on those days. We provided treatment notes that documented treatment on 12/5, 12/12 and 12/19 relative to specific Day Treatment Goals. We submit that this documentation fulfills the requirement of Section 41.07-4.G and K whereby a description of treatment, counseling or follow-up care was provided because it describes treatment related outcomes, even if the treatment was provided by an Educational Technician and documented by a Licensed Master Social Worker. Attached please find that documentation at Appendix I.

May 2007, DT # 33

In regards to the disallowance recommendations for 5/22, 5/23, 5/29 and 5/30, we agree that no documentation provided demonstrated receipt of services on those days. Should we uncover additional documentation in this regard, it will be provided. We disagree that documentation provided did not demonstrate the receipt of a service on 5/31. Attached is that documentation at Appendix J

February 2007, DT # 35

In regards to the disallowance recommendations for 2/1, 2/2, 2/6, 2/7, 2/8, 2/9, 2/13, 2/15, 2/16, 2/26, 2/27 and 2/28, we agree that no documentation provided demonstrated receipt of services on those days. Should we uncover additional documentation in this regard, it will be provided.

May 2007, DT #36

In regards to the disallowance recommendations for 5/4, 5/11, 5/18, 5/25 and 5/31 relative to the Licensed Master Social Worker providing counseling services, we disagree that counseling services were provided outside of the Scope of the Maine Practice Act. The Maine Unified Special Education Regulations define counseling as "...services provided by qualified social workers, psychologists, or other qualified personnel." 05-071-101 Me. Code R. § XI (2008). As defined in the Social Workers Practice Act, "'Social work' means engaging in psychosocial evaluation and intervention . . . to effect a change in the feelings, attitudes and behavior of a client, whether an individual, group or community. 'Social work' also means engaging in community organization, social planning, administration and research." 32 M.R.S. §7001-A (11). Within the allowed functions of a Licensed Master Social Worker, the Social Worker Practice Act makes it clear that "...[a]ny licensed master social worker may...[p]erform all of the functions of a licensed social worker..."(32 M.R.S. §7053-A(1)(B)) "... A licensed social worker may...conduct basic data gathering of records and specific life issues of individuals, groups and families, assess this data and formulate and implement a plan to achieve specific goals relative to specific life issues." 32 M.R.S. §7053-A(4)(A). In the case of this student, the services provided were within the boundaries of the scope of practice of this Licensed Master Social Worker because the services were meant to implement a plan to achieve specific goals relative to specific life issues. Specifically, this child's IEP indicated that he needed the support of Day Treatment Services relative to difficulty with

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anxiety and disruptions in the school setting due to oppositional behavior. The IEP also indicated a need for routines and rules in regards to daily living and community integration.

The Licensed Master Social Worker provided services within the scope of the Maine Practice Act, and we therefore disagree that a disallowance is required.

In regards to the disallowance recommendations for 5/1, 5/2, 5/7, 5/8, 5/9, 5/14, 5/15, 5/16, 5/21, 5/22, 5/23, 5/29 and 5/30, we disagree that no documentation provided demonstrated receipt of services on those days. We provided treatment notes that documented treatment on 5/1, 5/2, 5/7, 5/8, 5/9, 5/14, 5/15, 5/16, 5/21, 5/22, 5/23, 5/29 and 5/30 relative to specific Day Treatment Goals. We submit that this documentation fulfills the requirement of Section 41.07-4.G and K whereby a description of treatment, counseling or follow-up care was provided because it describes treatment related outcomes, even if the treatment was provided by an Educational Technician and documented by a Licensed Master Social Worker. Attached please find that documentation at Appendix K.

██████████ March 2007, DT # 37

In regards to the disallowance recommendations for 3/1, 3/7, 3/8, 3/9, 3/14, 3/15, 3/16, 3/21, 3/22, 3/23, 3/28, 3/29 and 3/30, we agree that no documentation provided demonstrated receipt of services on those days. Should we uncover additional documentation in this regard, it will be provided.

██████████ March 2006, DT #38

In regards to the disallowance recommendations for 3/1, 3/3, 3/6, 3/7, 3/9, 3/10, 3/13, 3/14, 3/15, 3/16, 3/17, 3/20, 3/21, 3/23, 3/24, 3/27, 3/28, 3/29 and 3/31, we agree that no documentation provided demonstrated receipt of services on those days. Should we uncover additional documentation in this regard, it will be provided.

██████████ October 2006, DT #40

In regards to the disallowance recommendation for 10/2, we disagree that no documentation provided demonstrated receipt of services on this day. We have provided a monthly report of progress for October 2006 that shows that this child was making progress relative to behavior goals, including progress documented on October 2 by a Licensed Master Social Worker. We have provided this documentation at Appendix Q.

██████████ October 2008, DT #41

We agree that a speech clinician must be supervised by a properly qualified speech pathologist. ██████████ was not properly supervised and therefore we agree with the disallowance recommendations of 10/20 and 10/22.

In regards to the disallowance recommendations for 10/1, 10/3, 10/7, 10/8, 10/10, 10/15, 10/17, 10/20, 10/21, 10/22, 10/24, 10/28, 10/29 and 10/31, we disagree that no documentation provided demonstrated receipt of services on those days. We provided treatment notes that documented treatment on 10/1, 10/3, 10/7, 10/8, 10/10, 10/15, 10/17, 10/20, 10/21, 10/22, 10/24, 10/28, 10/29 and 10/31 relative to specific Day Treatment Goals. We submit that this documentation fulfills the

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requirement of Section 41.07-4.G and K whereby a description of treatment, counseling or follow-up care was provided because it describes treatment related outcomes, even if the treatment was provided by an Educational Technician and documented by a Licensed Clinical Social Worker. Attached please find that documentation at Appendix L.

June 2006, DT # 42

In regards to the disallowance recommendations for all of the claimed days in June 2006, we agree that no documentation provided demonstrated receipt of services on those days. Should we uncover additional documentation in this regard, it will be provided.

October 2007, DT # 43

We agree that a speech clinician must be supervised by a properly qualified speech pathologist. [REDACTED] was not properly supervised and therefore we agree with the disallowance recommendations of 10/1, 10/2, 10/3, 10/9, 10/10, 10/18, 10/22, 10/23 and 10/24.

In regards to the disallowance recommendation for 10/16, we agree that no documentation provided demonstrated receipt of services on this day. Should we uncover additional documentation in this regard, it will be provided.

June 2006, DT #44

In regards to the disallowance recommendations for 6/1, 6/2, 6/7, 6/8 and 6/9, we disagree that no documentation provided demonstrated receipt of services on those days. We provided treatment notes that documented treatment on 6/1, 6/2, 6/7, 6/8 and 6/9 relative to specific Day Treatment Goals. We submit that this documentation fulfills the requirement of Section 41.07-4.G and K whereby a description of treatment, counseling or follow-up care was provided because it describes treatment related outcomes, even if the treatment was provided by an Educational Technician and documented by a Licensed Clinical Social Worker. Attached please find that documentation at Appendix M.

January 2008, DT #45

In regards to the disallowance recommendations for 1/8, 1/15 and 1/22 relative to the Licensed Master Social Worker providing counseling services, we disagree that counseling services were provided outside of the Scope of the Maine Practice Act. The Maine Unified Special Education Regulations define counseling as "...services provided by qualified social workers, psychologists, or other qualified personnel." 05-071-101 Me. Code R. § XI (2008). As defined in the Social Workers Practice Act, "'Social work' means engaging in psychosocial evaluation and intervention . . . to effect a change in the feelings, attitudes and behavior of a client, whether an individual, group or community. 'Social work' also means engaging in community organization, social planning, administration and research." 32 M.R.S. §7001-A (11). Within the allowed functions of a Licensed Master Social Worker, the Social Worker Practice Act makes it clear that "...[a]ny licensed master social worker may...[p]erform all of the functions of a licensed social worker..."(32 M.R.S. §7053-A(1)(B)) "... A licensed social worker may...conduct basic data gathering of records and specific life issues of individuals, groups and families, assess this data and formulate and implement a plan to achieve specific goals relative to specific life issues." 32 M.R.S.

ATTACHMENT A

§7053-A(4)(A). In the case of this student, the services provided were within the boundaries of the scope of practice of this Licensed Master Social Worker because the services were meant to implement a plan to achieve specific goals relative to specific life issues. Specifically, this child's IEP indicated that he needed the support of Day Treatment Services relative to struggles with depressed mood, diminished interest in activities, decreased concentration, suicidal ideation and hopelessness, which were apparently rooted in the academic pressures of school.

The Licensed Master Social Worker provided services within the scope of the Maine Practice Act, and we therefore disagree that a disallowance is required.

We disagree that the social worker notes for 1/29 and 1/31 do not indicate the type of Day Treatment Services provided. The notes for 1/29 and 1/31 indicate that services provided and monitored from a progress perspective included helping the child follow teacher direction, use respectful, kind and polite words, keep hands and feet to himself, and take appropriate breaks at time of anger or frustration. All of these Day Treatment Services were geared towards helping this child improve his functioning in daily living and community living pursuant to Section 41.04. Please find this documentation at Appendix N.

In regards to the disallowance recommendations for 1/4, 1/9, 1/11, 1/16, 1/18, 1/23, 1/25, 1/28 and 1/30, we disagree that no documentation provided demonstrated receipt of services on those days. We provided treatment notes that documented treatment on 1/4, 1/9, 1/11, 1/16, 1/18, 1/23, 1/25, 1/28 and 1/30 relative to specific Day Treatment Goals. We submit that this documentation fulfills the requirement of Section 41.07-4.G and K whereby a description of treatment, counseling or follow-up care was provided because it describes treatment related outcomes, even if the treatment was provided by an Educational Technician and documented by a Licensed Master Social Worker. Attached please find that documentation at Appendix N.

November 2006, DT # 46

In regards to the disallowance recommendations for 11/1, 11/3, 11/7, 11/14, 11/20, 11/21, 11/29 and 11/30, we agree that no documentation provided demonstrated receipt of services on those days. Should we uncover additional documentation in this regard, it will be provided.

June 2007, DT #48

In regards to the disallowance recommendations for June 2007, we agree that no documentation provided demonstrated receipt of services on those days. Should we uncover additional documentation in this regard, it will be provided.

February 2007, DT #49

We disagree that there was no referral by a qualifying provider for social work services in February 2007. The regulations only required a referral by the Pupil Evaluation Team (now known as the Individualized Education Program Team) based on the development of an Individual Education Plan. 10-144-101 ME. CODE R. §41.02.B.2 (2006).

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In this case, we provided a copy of the child's IEP during the audit which formed the basis of the referral from the team for Day Treatment Services. In addition, the federal regulations do not require a referral for social work services.

In regards to the disallowance recommendations for February 2007, we agree that no documentation provided demonstrated receipt of services on those days. Should we uncover additional documentation in this regard, it will be provided.

February 2008, DT #50

We agree that this child was marked absent on the service delivery log on 2/12, and therefore a disallowance is appropriate.

October 2007, DT #51

In regards to the disallowance recommendations for October 2007, we agree that no documentation provided demonstrated receipt of services on those days. Should we uncover additional documentation in this regard, it will be provided.

January 2007, DT #52

In regards to the disallowance recommendations for 1/4, 1/5, 1/8, 1/11, 1/12, 1/19, 1/25 and 1/26, we agree that no documentation provided demonstrated receipt of services on those days. Should we uncover additional documentation in this regard, it will be provided.

January 2006, DT # 53

In regards to the disallowance recommendations for 1/4, 1/6, 1/9, 1/11, 1/13, 1/18, 1/20, 1/23, 1/25, 1/27 and 1/30, we agree that no documentation provided demonstrated receipt of services on those days. Should we uncover additional documentation in this regard, it will be provided.

November 2007, DT # 54

In regards to the disallowance recommendations for 11/2, 11/6, 11/13, 11/14, 11/16, 11/26, 11/27, 11/28 and 11/30, we agree that no documentation provided demonstrated receipt of services on those days. Should we uncover additional documentation in this regard, it will be provided.

February 2008, DT # 55

In regards to the disallowance recommendations for 2/5, 2/11, 2/12, 2/15, 2/26, 2/28 and 2/29 relative to the Licensed Master Social Worker providing counseling services, we disagree that counseling services were provided outside of the Scope of the Maine Practice Act. The Maine Unified Special Education Regulations define counseling as "...services provided by qualified social workers, psychologists, or other qualified personnel." 05-071-101 Me. Code R. § XI (2008). As defined in the Social Workers Practice Act, "Social work" means engaging in psychosocial evaluation and intervention . . . to effect a change in the feelings, attitudes and behavior of a client, whether an individual, group or community. "Social work" also means engaging in community organization, social planning,

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administration and research." 32 M.R.S. §7001-A (11). Within the allowed functions of a Licensed Master Social Worker, the Social Worker Practice Act makes it clear that "...[a]ny licensed master social worker may...[p]erform all of the functions of a licensed social worker...."(32 M.R.S. §7053-A(1)(B)) "... A licensed social worker may...conduct basic data gathering of records and specific life issues of individuals, groups and families, assess this data and formulate and implement a plan to achieve specific goals relative to specific life issues." 32 M.R.S. §7053-A(4)(A). In the case of this student, the services provided were within the boundaries of the scope of practice of this Licensed Master Social Worker because the services were meant to implement a plan to achieve specific goals relative to specific life issues. Specifically, this child's IEP indicated that he needed the support of Day Treatment Services relative to difficulty with anxiety and disruptions in the school setting due to oppositional behavior. The IEP also indicated a need for routines and rules in regards to daily living and community integration.

The Licensed Master Social Worker provided services within the scope of the Maine Practice Act, and we therefore disagree that a disallowance is required.

In regards to the disallowance recommendation for 2/4, we agree that no documentation provided demonstrated receipt of services on that day. Should we uncover additional documentation in this regard, it will be provided.

In regards to the disallowance recommendations for 2/1, 2/6, 2/8, 2/25 and 2/27, we disagree that no documentation provided demonstrated receipt of services on those days. We provided treatment notes that documented treatment on 2/1, 2/6, 2/8, 2/25 and 2/27 relative to specific Day Treatment Goals. We submit that this documentation fulfills the requirement of Section 41.07-4.G and K whereby a description of treatment, counseling or follow-up care was provided because it describes treatment related outcomes, even if the treatment was provided by an Educational Technician and documented by a Licensed Master Social Worker. Attached please find that documentation at Appendix O.

██████████ June 2008, DT # 58

We disagree that there was no referral for OT services on 6/3 and 6/10. The regulations only required a referral by the Pupil Evaluation Team (now known as the Individualized Education Program Team) based on the development of an Individual Education Plan. 10-144-101 ME. CODE R. §41.02.B.2 (2006). In this case, we provided access to the child's IEP during the audit which formed the basis of the referral from the team for Day Treatment Services.

In regards to the disallowance recommendations for 6/2, 6/4, 6/6, 6/9, 6/11, 6/12, 6/13, 6/16, 6/17 and 6/18, we agree that no documentation provided demonstrated receipt of services on those days. Should we uncover additional documentation in this regard, it will be provided.

██████████ June 2008, DT # 59

In regards to the disallowance recommendations for June 2008, we agree that no documentation provided demonstrated receipt of services on those days. Should we uncover additional documentation in this regard, it will be provided.

██████████ March 2008, DT #60

ATTACHMENT A

We disagree that there was no referral for OT services on 3/11, 3/14 and 3/18. The regulations only required a referral by the Pupil Evaluation Team (now known as the Individualized Education Program Team) based on the development of an Individual Education Plan. 10-144-101 M.E. CODE R. §41.02.B.2 (2006).

In this case, we provided access to the child's IEP during the audit which formed the basis of the referral from the team for Day Treatment Services.

We agree that speech was provided by an unsupervised speech clinician.

We disagree that because the service note does not indicate any assessment of progress on a daily basis, a disallowance is appropriate. Pursuant to Section 41.07-4.G, all that is required of a daily note is a "...description of treatment..." The daily notes in this case did provide a description of the daily interventions and thus were in compliance with the regulation.

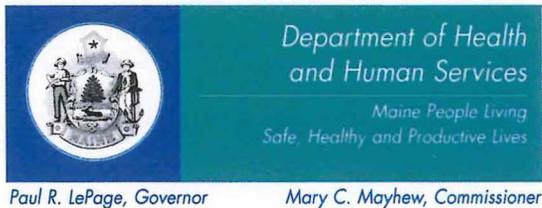
We appreciate the opportunity to respond to the initial findings.

Sincerely,



Director of Student Support Services

Portland School District



Department of Health and Human Services
Commissioner's Office
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11 State House Station
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April 12, 2013

Michael J. Armstrong, Regional Inspector General for Audit Services
Office of Audit Services, Region I
John F. Kennedy Federal Building, Room 2425
Boston, MA 02203

**Re: *Maine Improperly Claimed Medicaid Payments for School-Based Health Services
Submitted by Portland School Department - Report Number A-01-11-00011.***

Dear Mr. Armstrong:

The Department of Health and Human Services (DHHS) appreciates the opportunity to respond to the above mentioned draft audit report. We offer the following comments in relation to the recommendations on Page 5 of this report.

For your convenience, below we include the summary finding and list each recommendation followed by our response. Each response includes the State's proposed corrective action plan which we believe will bring the State into compliance with Federal requirements.

Finding:

The State agency did not always claim Federal Medicaid reimbursement for school-based health services submitted by the Portland School Department in accordance with Federal and State requirements. Of the 120 student months in our random sample, 56 had services, totaling \$24,793 (\$15,966 Federal share), that were not adequately supported, were provided by unqualified providers, or both. Based on our sample results, we estimated that the State agency improperly claimed \$1,039,046 (\$667,569 Federal share) for Medicaid payments made to the Portland School Department. These errors occurred because the State agency did not adequately monitor the claims for school-based health services submitted by the Portland School Department.

Recommendation:

Refund \$667,569 to the Federal Government.

Response:

The Department agrees that the Portland School Department received an overpayment due to billing for services for which there was not adequate documentation to support the billing. The Department will refund the Federal Government after receipt of the final report.

Michael J. Armstrong, Regional Inspector General for Audit Services
April 12, 2013
Page Two

Recommendation:

Work with CMS to review Medicaid payments made to the Portland School Department after our audit period and refund any overpayments.

Response:

The Department will review the Portland School Department for services provided from January 1, 2009 and through August 31, 2010, at which time Section 104, School Based Rehabilitation Services was repealed.

Recommendation:

Strengthen its oversight of the Maine Medicaid school-based health services program to ensure that claims for school-based health services comply with Federal and State requirements.

Response:

Maine has addressed this issue by repealing Section 104, School Based Rehabilitation Services of the MaineCare Benefits Manual. Schools must now enroll and bill for specific State Plan services provided. The Department is currently reviewing claims and supporting documentation for behavioral and rehabilitation services for regulatory compliance. School providers are included in these service reviews.

We appreciate the time spent in Maine by OIG's staff reviewing Maine's claimed Medicaid payments for school-based health services submitted by the Portland School Department. We believe this effort will enable us to perform this function more accurately in the future.

Sincerely,



Mary C. Mayhew
Commissioner

MCM/klv

cc: William Boeschstein, COO, Maine DHHS
Stefanie Nadeau, Director, Office of MaineCare Services, DHHS
Herb Downs, Director, Division of Audit, DHHS
Timothy Lawrence, Division of Audit, DHHS
Beth Ketch, Division Director, Office of MaineCare Services, DHHS
Sarah Gove, Senior Managing Accountant, Maine DHHS
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