
Federal Findings and Questioned Costs

2016-002 The Department of Social and Health Services improperly charged \$3.6 million to multiple federal grants.

Federal Awarding Agencies: U.S. Department of Agriculture
U.S. Department of Health and Human Services

Pass-Through Entity: None

CFDA Numbers and Titles: 10.551 Supplemental Nutrition Assistance Program (SNAP)
10.561 State Administrative Matching Grants for the Supplemental Nutrition Assistance Program
93.558 Temporary Assistance for Needy Families
93.566 Refugee and Entrant Assistance – State-Administered Programs

Federal Award Numbers: 201616S806947, 201615Q750347, 201616S251947, 201616S252047, 201616S802647, 201616Q390347, 201616S251447, 201616S803647, 1601WATANF, 1601WATAN3, G-1601WARCMA, G-1601WARSOC

Applicable Compliance Component: Period of Performance

Known Questioned Cost Amount: \$3,576,497

Background

The Department of Social and Health Services administers multiple federal grant programs and spent about \$5 billion in federal grant funds during fiscal year 2016. The Department is responsible for ensuring grant money is used for costs that are allowable and related to each grant’s purpose. Each federal grant specifies a period during which program costs may be obligated. Payments for costs obligated before a grant’s beginning date are not allowed without the grantor’s prior approval.

In the fiscal year 2014 and 2015 audits, we reported findings that the Department improperly charged multiple federal grants before their effective dates. These were reported as finding numbers 2014-022 and 2015-003. In those audits, we determined the improper charges were for centralized costs that are allocated throughout the Department.

Description of Condition

Most of the Department’s federal grant awards have a fiscal year 2016 grant period that began on October 1, 2015. We found three programs obligated expenditures in September 2015, but the costs were charged to the fiscal year 2016 grants. The grant programs and amounts improperly charged were:

- Temporary Assistance for Needy Families, \$3,300,965

- Supplemental Nutrition Assistance Program Cluster, \$260,904
- Refugee and Entrant Assistance, \$14,628

The Department took steps to address our prior audit findings. Specifically, the Department identified the salary and benefit costs that were improperly charged and corrected them by charging them to the proper grant. However, the other administrative costs were not corrected during the audit period.

The Department did not have prior authorization from the grantor to charge pre-award costs to the grants.

Cause of Condition

An Accounting Administrator said the Department has not fully corrected this problem because of limitations in its automated systems. While the salary and benefit costs were identified, the other administrative costs were constantly charged by the automated system, and the Department was not able to identify which charges were allowable and which should be charged to the previous grant. The Department recently made changes to their procedures that should help correct the problem, but these changes were not in place for the period under audit.

Effect of Condition and Questioned Costs

We are questioning improperly charged expenditures of \$3,576,497 made before the start of the performance periods for the three grant programs described above.

We question costs when we find an agency has not complied with grant regulations or when it does not have adequate documentation to support its expenditures.

Recommendation

We recommend the Department only charge expenditures to federal grants if they are obligated during the period of performance. The Department should consult with the grantors to determine what, if any, of the questioned costs should be repaid.

Agency's Response

The Department partially concurs with this finding.

The Department notes that the aforementioned transactions are accruals, and contends that there will be related appropriate payments during the same or future period. The Department does not agree that accruals result in charging to federal grants. All accruals, whether manual or automatic as in the case with payroll and benefits, automatically reverse the next fiscal month. Related payments are charged to federal grants, which is the reason that the Department's Economic Services Administration, Division of Finance and Financial Recovery (DFFR) implemented processes to reverse payments from the improperly charged grant year and charge these payments to the appropriate grant year.

DSHS improperly charged amounts in salaries, benefits and other administrative costs. SAO identified the payroll cycle for the pay period ending September 30th and paid on October 10th as the only payroll cycle that charged to the wrong grant year. DFFR identified these charges, reversed them, and charged to the appropriate grant year. DFFR researched all other administrative charges (disbursements), based on processing dates, and moved those to charge against the appropriate grant year as well. DFFR completed the reversal process for the Supplemental Nutrition Assistance Program and the Refugee and Entrant Assistance grant, they did not complete reversals for the Temporary Assistance for Needy Families program due to focus on completing the TANF claim which was a higher risk.

For the Refugee and Entrant Assistance grant, DFFR reversed the accruals and the automatic reversal of the accruals. This was in addition to the reversal of the disbursements. However, another administration posted a small amount of accrual transactions the day after resulting in improper charges of \$14,628.

For the Supplemental Nutrition Assistance Program Cluster, DFFR reversed all identified disbursements consisting of payroll, benefits, and goods and services charged to the wrong grant year resulting in more than \$3 million of reversals. DFFR is confident that all the appropriate costs were identified and corrected to charge to the appropriate grant year. The Department does not agree that this program should be included in the finding as this amount is material and the reversals exceed the \$2,801,282 accrual amount originally questioned.

DFFR realizes additional procedural changes and strategies are needed to resolve future Period of Performance issues. WaTech recently added an option to add Month of Service (MOS) to transactions in the Agency Financial and Reporting System (AFRS) that will provide DFFR with an easier and more proficient process in identifying charges improperly charged to the wrong grant year. ESA Internal Control Administrator implemented a procedural change requiring accounting staff to include the MOS on all AFRS transactions. Accounting staff are required to review and research improperly charged costs monthly and make corrections as needed. DFFR will continue with the manual process via journal vouchers to move disbursements as needed. DFFR will change the process of updating the Automated Cost Allocation Plan from October to November and will update the current procedures with the preceding changes and include a checklist for use by staff responsible for the various grants in question. DFFR will apply the current and updated processes to Temporary Assistance for Needy Families, Supplemental Nutrition Assistance Program and the Refugee and Entrant Assistance grants.

Auditor's Concluding Remarks

We thank the Department for its cooperation and assistance throughout the audit. We would, however, like to address some of the concerns expressed by the Department. The Department states that the amounts reported are accruals and that these do not relate to charges to the federal grant. This issue centers on accruals incurred in September of 2015 that were accrued prior to the end of the month. These accruals are then reversed out in October and automatically charged to the new federal fiscal year grants that had just become available. Since these accruals were for activities occurring prior to the availability of the new fiscal year grants they were improper. This is an issue that our Office had extensive conversations with the Department about and received confirmation from management that

the accruals do in fact get reversed out and recharged to the new grant. When the Department states the accruals get reversed they are technically correct, but omit the fact they are immediately charged back to the grants as expenditures. If the accruals did not result in improper charges to the grants in October, the Department would have had no need to implement the manual procedures they detailed to address the problem.

It is also important to point out that the reason our audit work started with the accruals is that the Department informed us they are unable to provide us detailed documentation supporting those expenditures after they have been cost allocated. During the next audit, we will again request this information and if the Department is again unable to identify the expenditures associated with the federal funds we will attempt to use other methods, such as sampling, to determine the amount of improper charges.

The Department acknowledges they did not reverse the reported amounts for the TANF program and they acknowledge the \$14,628 reported for the Refugee program was improperly charged. These expenditures account for about 93 percent of the reported questioned costs.

We reaffirm our finding and will review the status of the Department's corrective action during our next audit.

Applicable Laws and Regulations

Title 2 U.S. Code of Federal Regulations Part 200, *Uniform Administrative Requirements, Cost Principles, and Audit Requirements for Federal Awards* (Uniform Guidance) established reporting requirements for audit findings.

Section 200.303 Internal controls.

The non-Federal entity must:

- (b) Comply with Federal statutes, regulations, and the terms and conditions of the Federal awards.

Section 200.403 Factors affecting Allowability of costs.

Except where otherwise authorized by statute, costs must meet the following general criteria in order to be allowable under Federal awards.

- (a) Be necessary and reasonable for the performance of the Federal award and be allocable thereto under these principles.
- (b) Conform to any limitations or exclusions set forth in these principles or in the Federal award as to types or amount of cost items.
- (c) Be consistent with policies and procedures that apply uniformly to both federally-financed and other activities of the non-Federal entity.
- (d) Be accorded consistent treatment. A cost may not be assigned to a Federal award as a direct cost if any other cost incurred for the same purpose in like circumstances has been allocated to the Federal award as an indirect cost.
- (e) Be determined in accordance with generally accepted accounting principles (GAAP), except, for state and local governments and Indian tribes only, as otherwise provided for in this part.

- (f) Not be included as a cost or used to meet cost sharing or matching requirements of any other federally-financed program in either the current or a prior period. See also §200.306 Cost sharing or matching paragraph (b).
- (g) Be adequately documented. See also §§200.300 Statutory and national policy requirements through 200.309 Period of performance of this part.

Section 200.516 Audit reporting, state in part:

- (a) *Audit findings reported.* The auditor must report the following as audit findings in a schedule of findings and questioned costs:
 - (3) Known questioned costs that are greater than \$25,000 for a type of compliance requirement for a major program. Known questioned costs are those specifically identified by the auditor. In evaluating the effect of questioned costs on the opinion on compliance, the auditor considers the best estimate of total costs questioned (likely questioned costs), not just the questioned costs specifically identified (known questioned costs). The auditor must also report known questioned costs when likely questioned costs are greater than \$25,000 for a type of compliance requirement for a major program. In reporting questioned costs, the auditor must include information to provide proper perspective for judging the prevalence and consequences of the questioned costs.

CFR Part 200, Appendix XI Compliance Supplement, states in part:

H. PERIOD OF AVAILABILITY OF FEDERAL FUNDS

Compliance Requirements

Federal awards may specify a time period during which the non-Federal entity may use the Federal funds. Where a funding period is specified, a non-Federal entity may charge to the award only costs resulting from obligations incurred during the funding period and any pre-award costs authorized by the Federal awarding agency. Also, if authorized by the Federal program, unobligated balances may be carried over and charged for obligations of a subsequent funding period. Obligations means the amounts of orders placed, contracts and subgrants awarded, goods and services received, and similar transactions during a given period that will require payment by the non-Federal entity during the same or a future period (A-102 Common Rule, §__.23; OMB Circular A-110 (2 CFR section 215.28)).

2 CFR section 215.28 Period of availability of funds, states:

Where a funding period is specified, a recipient may charge to the grant only allowable costs resulting from obligations incurred during the funding period and any pre-award costs authorized by the Federal awarding agency.

2016-003 The Department of Health did not have adequate internal controls over and did not comply with requirements to monitor local agency operations timely and at the minimum percentage for the WIC program.

Federal Awarding Agency: U. S. Department of Agriculture
Pass-Through Entity: None
CFDA Number and Title: 10.557 Special Supplemental Nutrition Program for Women, Infants, and Children (WIC)
Federal Award Number: 7WA700WA1, 7WA700WA7
Applicable Compliance Component: Subrecipient Monitoring
Known Questioned Cost Amount: None

Background

The Special Supplemental Nutrition Program for Women, Infants and Children (WIC) is operated by the Department of Health (Department). WIC reaches more than 289,000 women, infants, and children in over 200 clinics throughout the state and is funded exclusively with federal funds from the U.S. Department of Agriculture.

WIC serves pregnant, postpartum and breastfeeding women, and children up to 5 years old, who are at or below 185 percent of the federal poverty level. WIC provides:

- Nutrition ideas and tips on how to eat well and be more active
- Breastfeeding support, such as access to a peer counselor (varies by agency)
- Health reviews and referrals
- Monthly checks for healthy food, such as fruit, vegetables and milk

The Department passes grant funds to local health districts, non-profit organizations and tribes that administer the program and provide services. The Department spent about \$134 million in federal grant funds during fiscal year 2016. About \$38 million was passed through to local agencies for client services.

Federal regulations require the Department to monitor local agency program operations at least once every two years, including onsite reviews of at least 20 percent of the clinics in each local agency or one clinic, whichever is greater. The onsite reviews include evaluation of management, certification, nutrition education, civil rights compliance, accountability, financial management systems and food delivery systems.

Description of Condition

The Department did not have adequate internal controls to ensure onsite reviews of all local agencies were conducted.

Program Monitoring

We identified one individually significant local agency and also used a non-statistical sampling method to randomly select 12 of the 60 local agencies that received pass-through funds from the Department to examine. We found the Department did not monitor one local agency at least once every two years.

We also found the Department did not always ensure onsite reviews were performed for a minimum of 20 percent of the clinics in each local agency when an agency required more than one clinic to be monitored. Of the 61 total local agencies, four required multiple clinics to be reviewed. One required six clinics to be reviewed but only four were, and the other required three reviews but only two were performed.

Fiscal Monitoring

We analyzed the Department's monitoring list of agencies to ensure it was complete and determined one agency was missing. As a result, the agency was not monitored at least once in two years.

We also randomly selected 12 of the other 60 agencies who were required to receive a fiscal monitoring visit from the Department. We found the Department visited all 12, but one instance when the WIC program was not reviewed.

We consider these internal control deficiencies to be a material weakness.

Cause of Condition

Program Monitoring

According to the Monitoring Unit Supervisor, the Department did not devote enough resources to ensure it reviewed at least 20 percent of the clinics in each local agency.

Fiscal Monitoring

According to the Fiscal Monitoring Unit Manager, two WIC providers were inadvertently overlooked due to a reorganization of the Department's fiscal monitoring function.

Effect of Condition

When monitoring is not conducted, it increases the likelihood the Department would not detect in a timely manner when agencies and clinics are not following program rules.

Recommendation

We recommend the Department strengthen internal controls to ensure it monitors all local agency program and fiscal operations at least once every two years, including onsite reviews of at least 20 percent of the clinics in each local agency.

Agency's Response

Program Monitoring Portion:

The department concurs with audit finding that was identified by Auditor's Office around ensuring that 20 percent of all Women, Infants, and Children (WIC) clinics associated with contracted WIC agencies be included during onsite monitor engagements. Code of Federal Regulations (CFR) 246.19(b)(3) requires the department to conduct monitoring reviews of each local agency at least once every two years and that a minimum of 20 percent of the clinics in each local agency have onsite reviews. We recently received clarification from our granting agency, USDA-FNS, on how to calculate the required 20 percent of the clinics in each local agency. Based on this we will include all WIC clinics, including temporary sites, in the denominator for the 20% calculation.

The following controls are in place in response to this finding:

- *Local agency that was identified as not having been monitored in two years was monitored on February 7, 2017;*
- *Monitor plan has been developed for all local agencies for 2017 and 2018 to ensure compliance with CFR requirements; and*
- *Quarterly assessment by the supervisor will be done to ensure staff are following the plan for completing all monitors. Contingency plans will be developed for any deviations from the planned schedule.*

Fiscal Monitoring Portion:

We appreciate the opportunity to respond to the exceptions identified during the Auditor's Office testing for the Fiscal Monitoring portion of the finding. The Fiscal Monitoring Unit (FMU) was created by DOH Leadership to centralize the fiscal monitoring function at the Department which entailed moving site visits from an external contractor to an in-house function performed by Department staff. Calendar year 2016 was the first year that FMU staff took over all fiscal monitoring site visits and the scheduling function for all DOH subrecipients. In the future, during the scheduling phase, the FMU will ensure that WIC program staff has the opportunity to review the schedule and add or delete WIC subrecipients based upon that review to ensure the Department performs a fiscal monitor review at least once every two years.

Auditor's Concluding Remarks

We thank the Department for its cooperation and assistance throughout the audit. We will review the status of the Department's corrective action during our next audit.

Applicable Laws and Regulations

Title 2 U.S. Code of Federal Regulations Part 200, *Uniform Administrative Requirements, Cost Principles, and Audit Requirements for Federal Awards* (Uniform Guidance) established reporting requirements for audit findings.

Section 200.303 Internal controls.

The non-Federal entity must:

- (a) Establish and maintain effective internal control over the Federal award that provides reasonable assurance that the non-Federal entity is managing the Federal award in compliance with Federal statutes, regulations, and the terms and conditions of the Federal award. These internal controls should be in compliance with guidance in “Standards for Internal Control in the Federal Government” issued by the Comptroller General of the United States or the “Internal Control Integrated Framework”, issued by the Committee of Sponsoring Organizations of the Treadway Commission (COSO).
- (b) Comply with Federal statutes, regulations, and the terms and conditions of the Federal awards.

Section 200.516 Audit reporting, state in part:

- (b) *Audit findings reported.* The auditor must report the following as audit findings in a schedule of findings and questioned costs:
 - (1) Significant deficiencies and material weaknesses in internal control over major programs and significant instances of abuse relating to major programs. The auditor’s determination of whether a deficiency in internal control is a significant deficiency or material weakness for the purpose of reporting an audit finding is in relation to a type of compliance requirement for a major program identified in the Compliance Supplement.
 - (2) Material noncompliance with the provisions of Federal statutes, regulations, or the terms and conditions of Federal awards related to a major program. The auditor’s determination of whether a noncompliance with the provisions of Federal statutes, regulations, or the terms and conditions of Federal awards is material for the purpose of reporting an audit finding is in relation to a type of compliance requirement for a major program identified in the compliance supplement.

The American Institute of Certified Public Accountants defines significant deficiencies and material weaknesses in internal controls over compliance in its *Codification of Statements on Auditing Standards*, section 935, as follows:

.011 For purposes of adapting GAAS to a compliance audit, the following terms have the meanings attributed as follows: ...

Material weakness in internal control over compliance. A deficiency, or combination of deficiencies, in internal control over compliance, such that there is a reasonable possibility that material noncompliance with a compliance requirement will not be prevented, or detected and corrected, on a timely basis. In this section, a reasonable possibility exists when the likelihood of the event is either reasonably possible or probable as defined as follows:

Reasonably possible. The chance of the future event or events occurring is more than remote but less than likely.

Remote. The chance of the future event or events occurring is slight.

Probable. The future event or events are likely to occur.

Significant deficiency in internal control over compliance. A deficiency, or a combination of deficiencies, in internal control over compliance that is less severe than a material weakness in internal control over compliance, yet important enough to merit attention by those charged with governance.

Material noncompliance. In the absence of a definition of material noncompliance in the governmental audit requirement, a failure to follow compliance requirements or a violation of prohibitions included in the applicable compliance requirements that results in noncompliance that is quantitatively or qualitatively material, either individually or when aggregated with other noncompliance, to the affected government program.

Title 7 Code of Federal Regulations, which states in part:

§246.2 Definitions

Clinic means a facility where applicants are certified.

§246.19 Management evaluation and monitoring reviews.

- (b) *State agency responsibilities.* (1) The State agency shall establish an on-going management evaluation system which includes at least the monitoring of local agency operations, the review of local agency financial and participation reports, the development of corrective action plans to resolve Program deficiencies, the monitoring of the implementation of corrective action plans, and on-site visits. The results of such actions shall be documented.
- (2) Monitoring of local agencies must encompass evaluation of management, certification, nutrition education, breastfeeding promotion and support, participant services, civil rights compliance, accountability, financial management systems, and food delivery systems. If the State agency delegates the signing of vendor agreements, vendor training, or vendor monitoring to a local agency, it must evaluate the local agency's effectiveness in carrying out these responsibilities.
- (3) The State agency shall conduct monitoring reviews of each local agency at least once every two years. Such reviews shall include on-site reviews of a minimum of 20 percent of the clinics in each local agency or one clinic, whichever is greater. The State agency may conduct such additional on-site reviews as the State agency determines to be necessary in the interest of the efficiency and effectiveness of the program.
- (4) The State agency must promptly notify a local agency of any finding in a monitoring review that the local agency did not comply with program requirements. The State agency must require the local agency to submit a corrective action plan, including implementation timeframes, within 60 days of receipt of a State agency report of a monitoring review containing a finding of program noncompliance. The State agency must monitor local agency implementation of corrective action plans.
- (5) As part of the regular monitoring reviews, FNS may require the State agency to conduct in-depth reviews of specified areas of local agency operations, to

implement a standard form or protocol for such reviews, and to report the results to FNS. No more than two such areas will be stipulated by FNS for any fiscal year and the areas will not be added or changed more often than once every two fiscal years. These areas will be announced by FNS at least six months before the beginning of the fiscal year.

- (6) The State agency shall require local agencies to establish management evaluation systems to review their operations and those of associated clinics or contractors.

2016-004 The Department of Social and Health Services did not have adequate internal controls over and did not comply with public assistance cost allocation plan requirements.

Federal Awarding Agencies: U.S. Department of Agriculture
 U.S. Department of Housing and Urban Development
 U.S. Department of Justice
 U.S. Department of Labor
 U.S. Department of Education
 U.S. Department of Health and Human Services
 Social Security Administration

Pass-Through Entity: None

CFDA Numbers and Titles: Numerous, see list at end of finding

Federal Award Numbers: Numerous, see list at end of finding

Applicable Compliance Component: Allowable Costs/Cost Principles

Known Questioned Cost Amount: Undetermined

Background

The Department of Social and Health Services (Department) is required to submit a public assistance cost allocation plan to the U.S. Department of Health and Human Services (HHS). Public assistance cost allocation plans are used to allocate administrative costs between federal and state programs. Once the Department submits a plan, HHS reviews and approves it. If HHS does not approve a plan in a timely manner, the Department can follow the submitted plan until it is informed otherwise. The Department can update its plan throughout the year, but it must submit amendments with these changes to HHS and submit a new plan each year that there are changes.

It is common for the Department to negotiate with HHS before plans are approved. Negotiations take place in consecutive order, because changes to one plan may affect the next. HHS approved the fiscal year 2012 plan in October 2015, the 2013 plan in June 2016 and the 2014 plan in October 2016.

Description of Condition

The Department did not submit a cost allocation plan for fiscal year 2016 by the July 1, 2015, due date, as required by federal law. We followed up with the Department in December 2016 and were told it still had not submitted the 2016 plan.

We consider this control deficiency to be a material weakness.

Cause of Condition

A Department Grants Manager said that in fiscal year 2014 an HHS employee verbally requested the Department stop submitting public assistance cost allocation plans and updates until HHS approved the prior plans. We contacted HHS to attempt to verify this statement, but the staff member the

Department spoke to is no longer with the agency. The Branch Chief for HHS also told us their agency does not have the authority to grant exceptions to the regulations requiring the plans to be submitted.

Effect of Condition and Questioned Costs

Approximately \$1.1 billion in costs are distributed to federal and state programs using the public assistance cost allocation plan. We determined at least \$472 million of that amount were federal costs. HHS could disallow all of the federal costs.

We question costs when we find an agency has not complied with grant regulations or when it does not have adequate documentation to support its expenditures.

Recommendations

We recommend the Department establish internal controls to ensure the required public assistance cost allocation plans and amendments are created and submitted in a timely manner. We also recommend the Department submit all required plans and amendments before charging affected costs to a federal grant.

Agency's Response

The Department concurs with this finding.

The Centers for Medicare and Medicaid Services' (CMS), Region 10, Division of Cost Allocation (DCA) was in possession of the Department's FY12, FY13 and FY14 cost allocation plans (Plans). While DCA was in possession of those three Plans, they were working with the Department to ensure the FY12 Plan was approved. The Department was provided verbal directions from DCA's negotiator to stop submitting Plans until DCA finished approving those previous year's Plans. The Department had worked with the same negotiator for several years and constantly based our actions off of the information we received from her. Therefore, when the Department was directed to stop submitting new Plans, we stopped.

The Department had not received any notifications from any of its Federal Partners, to include Region 10 DCA management, there was an issue with FY15 and FY16 Plans not being submitted. The Federal Partners are aware of where the Department stands with its Plans as they are actively working with the Department on approvals of previously submitted Plans. The Department was never informed we were out of compliance by DCA.

The Department has since received written directions from DCA and will now ensure, prior to July 1, 2017, that all outstanding Plans, up through FY18 will be submitted to DCA.

Auditor's Concluding Remarks

We thank the Department for its cooperation and assistance throughout the audit. We will review the status of the Department's corrective action during our next audit.

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- (k) Be accorded consistent treatment. A cost may not be assigned to a Federal award as a direct cost if any other cost incurred for the same purpose in like circumstances has been allocated to the Federal award as an indirect cost.
- (l) Be determined in accordance with generally accepted accounting principles (GAAP), except, for state and local governments and Indian tribes only, as otherwise provided for in this part.
- (m) Not be included as a cost or used to meet cost sharing or matching requirements of any other federally-financed program in either the current or a prior period. See also §200.306 Cost sharing or matching paragraph (b).
- (n) Be adequately documented. See also §§200.300 Statutory and national policy requirements through 200.309 Period of performance of this part.

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relation to a type of compliance requirement for a major program identified in the Compliance Supplement.

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The American Institute of Certified Public Accountants defines significant deficiencies and material weaknesses in internal controls over compliance in its *Codification of Statements on Auditing Standards*, section 935, as follows:

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Title 45 U.S. Code of Federal Regulations Part 95, *General Administration – Grant Programs (Public Assistance, Medical Assistance and State Children’s Health Insurance Programs)* subpart E established requirements for cost allocation plans.

Section 95.501 Purpose.

This subpart establishes requirements for:

- (a) Preparation, submission, and approval of State agency cost allocation plans for public assistance programs; and
- (b) Adherence to approved cost allocation plans in computing claims for Federal financial participation.

Section 95.509 Cost allocation plan amendments and certifications.

- (a) The State shall promptly amend the cost allocation plan and submit the amended plan to the Director, DCA if any of the following events occur:
 - (1) The procedures shown in the existing cost allocation plan become outdated because of organizational changes, changes in Federal law or regulations, or significant changes in program levels, affecting the validity of the approved cost allocation procedures.
 - (2) A material defect is discovered in the cost allocation plan by the Director, DCA or the State.
 - (3) The State plan for public assistance programs is amended so as to affect the allocation of costs.
 - (4) Other changes occur which make the allocation basis or procedures in the approval cost allocation plan invalid.
- (b) If a State has not submitted a plan or plan amendment during a given State fiscal year, an annual statement shall be submitted to the Director, DCA certifying that its approved cost allocation plan is not outdated. This statement shall be submitted within 60 days after the end of that fiscal year.

Section 95.515 Effective date of a cost allocation plan amendment.

As a general rule, the effective date of a cost allocation plan amendment shall be the first day of the calendar quarter following the date of the event that required the amendment (See §95.509). However, the effective date of the amendment may be earlier or later under the following conditions:

- (a) An earlier date is needed to avoid a significant inequity to either the State or the Federal Government.
- (b) The information provided by the State which was used to approve a previous plan or plan amendment is later found to be materially incomplete or inaccurate, or the previously approved plan is later found to violate a Federal statute or regulation. In either situation, the effective date of any required modification to the plan will be the same as the effective date of the plan or plan amendment that contained the defect.
- (c) It is impractical for the State to implement the amendment on the first day of the next calendar quarter. In these instances, a later date may be established by agreement between the State and the DCA.

Section 95.517 Claims for Federal financial participation.

(a) A State must claim FFP for costs associated with a program only in accordance with its approved cost allocation plan. However, if a State has submitted a plan or plan amendment for a State agency, it may, at its option claim FFP based on the proposed plan or plan amendment, unless otherwise advised by the DCA. However, where a State has claimed costs based on a proposed plan or plan amendment the State, if necessary, shall retroactively adjust its claims in accordance with the plan or amendment as subsequently approved by the Director, DCA. The State may also continue to claim FFP under its existing approved cost allocation plan for all costs not affected by the proposed amendment.

Section 95.519 Cost disallowance.

If costs under a Public Assistance program are not claimed in accordance with the approved cost allocation plan (except as otherwise provided in §95.517), or if the State failed to submit an amended cost allocation plan as required by §95.509, the costs improperly claimed will be disallowed.

CFDA Numbers and Titles Material to program:

16.727	Enforcing Underage Drinking Laws Program
93.048	Special Programs for the Aging Title IV and Title II Discretionary Projects
93.051	Alzheimer's Disease Demonstration Grants to States
93.072	Lifespan Respite Care Program
93.517	Affordable Care Act Aging and Disability Resource Center
93.556	Promoting Safe and Stable Families
93.558	Temporary Assistance for Needy Families
93.563	Child Support Enforcement
93.566	Refugee and Entrant Assistance State Administered Programs
93.597	Grants to States for Access and Visitation Programs
93.626	Affordable Care Act State Health Insurance Assistance Program (SHIP) and Aging and Disability Resource Center (ADRC) Options Counseling for Medicare-Medicaid Individuals in States with Approved Financial Alignment Models
93.643	Children's Justice Grants to States
93.645	Stephanie Tubbs Jones Child Welfare Services Program
93.658	Foster Care Title IV-E
93.659	Adoption Assistance
93.667	Social Services Block Grant
93.669	Child Abuse and Neglect State Grants
93.791	Money Follows the Person Rebalancing Demonstration
96.001	Social Security Disability Insurance

CFDA Numbers and Titles Not material to the program:

10.561	State Administrative Matching Grants for the Supplemental Nutrition Assistance Program
10.596	Pilot Project to Reduce Dependency and Increase Work Requirements and Work Effort under SNAP
14.008	Transformation Initiative: Choice Neighborhoods Demonstration Small Research Grant Program
16.593	Residential Substance Abuse Treatment for State Prisoners
16.812	Second Chance Act Reentry Initiative
17.235	Senior Community Service Employment Program
84.126	Rehabilitation Services Vocational Rehabilitation Grants to States
93.044	Special Programs for the Aging Title III, Part B Grants for Supportive Services and Senior Centers
93.052	National Family Caregiver Support, Title III, Part E
93.09	Guardianship Assistance
93.15	Projects for Assistance In Transition From Homelessness
93.243	Substance Abuse and Mental Health Services Projects of Regional and National Significance
93.564	Child Support Enforcement Research
93.575	Child Care and Development Block Grant
93.584	Refugee and Entrant Assistance Targeted Assistance Grants
93.599	Chafee Education and Training Vouchers Program
93.609	The Affordable Care Act – Medicaid Adult Quality Grants
93.628	Affordable Care Act Implementation Support for State Demonstrations to Integrate Care for Medicare-Medicaid Enrollees
93.671	Family Violence Prevention and Services/Domestic Violence Shelter and Supportive Services
93.674	Chafee Foster Care Independence Program
93.767	Children's Health Insurance Program
93.777	State Survey and Certification of Health Care Providers and Suppliers (Title XVIII) Medicare
93.778	Medical Assistance Program
93.958	Block Grants for Community Mental Health Services
93.959	Block Grants for Prevention and Treatment of Substance Abuse

Federal Award Numbers:

2011AHFX0059, 2013CZBX0010, 2013CZBX0015, 2013RTBX0022, 2014RTBX0051, 2015IE320321, 2015IQ750347, 2015IS251447, 201616Q750347, 201616S251447, 2-15AAWAT3FC, 2-15AAWAT3SS, 2-16AAWAT3FC, 2-16AAWAT3SS, 2-90DS200801, 2-90JI001001, 2-90LI001701, 2-90LI001702, 2-90RO003004, 4-1404WADI00, 4-1504WADI00, 4-1604WADI00, 5-1505WA1081, 5-1505WA5000, 5-1505WA5001, 5-1505WA5ADM, 5-1505WA5MAP, 5-1605WA5000, 5-1605WA5001, 5-1605WA5021, 5-1605WA5ADM, 5-1605WA5MAP, 5-1I1331234A, 5-1J1331313A, 5-AMQG131118, 5-MFP300141A, 5-SHAD131131, C-10SM60196A, C-11TI23477A, C-12SM61237A, C-12TI24265A, C-13SP20155A, C-13TI25342A, C-14B1WACMHS, C-14B1WASAPT, C-14SM16048A, C-14SM61705A, C-14TI25570A, C-15B1WACMHS, C-15B1WASAPT, C-15SM16048A, C-15TI25995A, C-15TI26138A, E-H126A140071, E-H126A150071, E-H126A160071, G-1401WA1420, G-1401WACETV, G-1401WACJA1, G-1401WAFVPS, G-1401WASAVP, G-1402WATANF, G-1411WAFPCV, G-14TAWARTAG, G-1501WAADPT, G-1501WACA01, G-1501WACETV, G-1501WACILP, G-1501WACJA1, G-1501WACWSS, G-1501WAFOST, G-1501WAFPSS, G-1501WAFVPS, G-1501WAGARD, G-1501WARCMA, G-1501WARSOC, G-1501WASAVP, G-1501WASOSR, G-1502WATANF, G-1504WACSES, G-15TAWARTAG, G-1601WAADPT, G-1601WACA01, G-1601WACWSS, G-1601WAFOST, G-1601WAFPSS, G-1601WAGARD, G-1601WARCMA, G-1601WARSOC, G-1601WASOSR, G-1601WATANF, G-1604WACSES, G-90FD019401, G-90FD019402, G-90FD019801, G-90FD019802, H-21645RG, T-AD26895ZW0

2016-005 The Employment Security Department made unsupported payments to Trade Readjustment Allowance program participants under the Unemployment Insurance program.

Federal Awarding Agency: U.S. Department of Labor
Pass-Through Entity: None
CFDA Number and Title: 17.225 Unemployment Insurance
Federal Award Number: UI-26568-15-55-A-53
UI-28010-16-55-A-53
Applicable Compliance Component: Activities Allowed or Unallowed,
Allowable Costs/Cost Principles
Known Questioned Cost Amount: \$1,645
Likely Questioned Cost Amount \$1,027,796

Background

The Employment Security Department administers the Unemployment Insurance program, which provides benefits to workers during periods of involuntary unemployment. The federal government and employers in Washington primarily fund the program.

The Unemployment Insurance program may provide additional benefits under several other programs including Trade Readjustment Allowance (TRA). Trade Readjustment Allowances are income support payments to participants who have exhausted Unemployment Compensation and whose jobs were affected by foreign imports as determined by the Department of Labor.

Once determined eligible, a claimant must submit a weekly claim form to the Department to receive TRA benefit payments. Department staff will review the form to ensure that the payment is allowable.

In fiscal year 2016, Employment Security spent about \$1.1 billion in program funds, 91 percent of which was paid for benefits to workers. About \$9.2 million of these program funds were TRA program funds.

We reported a finding in the fiscal year 2015 audit for the Department not having adequate documentation to support payments, which resulted in questioned costs. This was reported as finding number 2015-008.

Description of Condition

We examined \$22,959 in payments made to 25 TRA participants who received benefit payments during fiscal year 2016. We reviewed each payment to determine if the Department received the weekly TRA benefit claim form prior to making payments.

The Department could not provide the weekly TRA benefit claim forms for three payments totaling \$1,645. Without the proper support, we could not verify whether these payments were accurate or allowable.

Cause of Condition

The Department did not have written policies and procedures in place to ensure supporting documentation was retained in accordance with state law. Additionally, management did not sufficiently monitor or review the work of Department staff to ensure the payments were accurate, allowable and adequately supported.

Effect of Condition and Questioned Costs

The Department risks making unallowable payments with federal funds when adequate support is not retained and claims are not reviewed. The Department paid \$1,645 to participants that was either unallowable or unsupported. Because a statistical sampling method was used to select the payments examined, we estimate the amount of likely questioned costs to be \$1,027,796.

We question costs when we find an agency has not complied with grant regulations and/or when it does not have adequate documentation to support its expenditures.

Recommendation

We recommend the Department establish and follow written policies and procedures, including appropriate supervisory review procedures, sufficient to ensure that payments are supported prior to issuing payment and that supporting documentation is retained in accordance with state and federal laws and regulations.

The Department should consult with the Department of Labor to determine what, if any, of the questioned costs should be repaid.

Agency's Response

The Department concurs with this finding. The Department has established processing guidelines effective to ensure benefit payments are supported prior to issuance and that supporting documentation is retained in accordance with state and federal laws and regulations. The Department has implemented appropriate supervisor review to ensure guidelines are being followed.

The Department will consult with the U.S. Department of Labor to determine what, if any, of the questioned costs should be repaid.

Auditor's Concluding Remarks

We thank the Department for its cooperation and assistance throughout the audit. We will review the status of the Department's corrective action during our next audit.

Applicable Laws and Regulations

Title 2 U.S. Code of Federal regulations Part 200, *Uniform Administrative Requirements, Cost Principles, and Audit Requirements for Federal Awards* (Uniform Guidance) established reporting requirements for audit findings.

Section 200.403 Factors affecting Allowability of costs.

Except where otherwise authorized by statute, costs must meet the following general criteria in order to be allowable under Federal awards.

- (a) Be necessary and reasonable for the performance of the Federal award and be allocable thereto under these principles.
- (b) Conform to any limitations or exclusions set forth in these principles or in the Federal award as to types or amount of cost items.
- (c) Be consistent with policies and procedures that apply uniformly to both federally-financed and other activities of the non-Federal entity.
- (d) Be accorded consistent treatment. A cost may not be assigned to a Federal award as a direct cost if any other cost incurred for the same purpose in like circumstances has been allocated to the Federal award as an indirect cost.
- (e) Be determined in accordance with generally accepted accounting principles (GAAP), except, for state and local governments and Indian tribes only, as otherwise provided for in this part.
- (f) Not be included as a cost or used to meet cost sharing or matching requirements of any other federally-financed program in either the current or a prior period. See also §200.306 Cost sharing or matching paragraph (b).
- (g) Be adequately documented. See also §§200.300 Statutory and national policy requirements through 200.309 Period of performance of this part.

Section 200.516 Audit reporting, state in part:

- (a) *Audit findings reported.* The auditor must report the following as audit findings in a schedule of findings and questioned costs:
 - (3) Known questioned costs that are greater than \$25,000 for a type of compliance requirement for a major program. Known questioned costs are those specifically identified by the auditor. In evaluating the effect of questioned costs on the opinion on compliance, the auditor considers the best estimate of total costs questioned (likely questioned costs), not just the questioned costs specifically identified (known questioned costs). The auditor must also report known questioned costs when likely questioned costs are greater than \$25,000 for a type of compliance requirement for a major program. In reporting questioned costs, the auditor must include information to provide proper perspective for judging the prevalence and consequences of the questioned costs.

OMB Circular A-87: Cost Principles for State, Local and Indian Tribal Governments (2 CFR Part 225); Appendix A – General Principles for Determining Allowable Costs; Section C – Basic Guidelines states in part:

1. Factors affecting allowability of costs. To be allowable under Federal awards, costs must meet the following general criteria:
 - j. Be adequately documented.

State Government General Records Retention Schedule (SGGRRS) Version 5.1 (August 2011)

3.4 GRANTS MANAGEMENT

The function relating to the administration of grants either issues by the state or received by state agencies. Records include grant applications, grantor and grantee correspondence and official responses, grant contacts, fiscal records, reports, administrative correspondence, grant products, and other related records.

DESCRIPTION OF RECORDS

Grants Received by State Agencies (GS 23004)

Documentation of grant projects and funds received and expended by state agencies. May include copies of Requests for Proposals (RFPs), applications, notifications of grant awards, fiscal reports and supporting documentation, reports and correspondence related to grant monitoring, audit reports, status reports, compliance reports, grants modifications requests, progress reports and final reports.

Retention and Disposition Action

Retain for 6 years after end of grant period then destroy.

Title 20, Code of Federal Regulations, states in part:

Subpart B – Trade Readjustment Allowances (TRA)

Section 617.12 – Evidence of Qualification

- (a) State agency action. When an individual applies for TRA, the State agency having jurisdiction under §617.50(a) shall obtain information necessary to establish:
 - (1) Whether the individual meets the qualifying requirements in §617.11;
 - (2) The individual's average weekly wage; and
 - (3) For an individual claiming to be partially separated, the average weekly hours and average weekly wage in adversely affected employment.
- (b) Insufficient data. If information specifically in paragraph (a) of this section is not available from State agency records or from any employer, the State agency shall require the individual to submit a signed statement setting forth such information as may be required for the State agency to make the determinations required by paragraph (a) of this section.

- (c) Verification. A statement made under paragraph (b) of this section shall be certified by the individual to be true to the best of the individual's knowledge and belief and shall be supported by evidence such as Forms W-2, paycheck stubs, union records, income tax returns, or statements of fellow workers, and shall be verified by the employer.

Section 617.19 – Requirement for participation in training, states in part:

- (a) In general-(1) Basic requirement.
 - (i) All individuals otherwise entitled to basic TRA, for each week, must either be enrolled in or participating in a training program approved under § 617.22(a), or have completed a training program approved under § 617.22(a), as provided in § 617.11(a)(2)(vii), in order to be entitled to basic TRA payments for any such week (except for continuation of payments during scheduled breaks in training of 14 days or less under the conditions stated in § 617.15(d)). The training requirement of paragraph (a)(1)(i) of this section shall be waived in writing on an individual basis, solely in regard to entitlement to basic TRA, if approval of training for the individual is not feasible or is not appropriate, as determined in accordance with paragraph (a)(2) of this section.

2016-006 The Employment Security Department did not establish adequate internal controls over its Next Generation Tax System, which led to improper computations of employer unemployment insurance tax rates.

Federal Awarding Agency: U.S. Department of Labor
Pass-Through Entity: None
CFDA Number and Title: 17.225 Unemployment Insurance
Federal Award Number: UI-28010-16-55-A-53, UI-26568-15-55-A-53, UI-25237-14-55-A-53, UI-27138-15-55-A-53, UI-27935-15-55-A-53, UI-26427-14-55-A-53
Applicable Compliance Component: Special Tests and Provisions – Employer Experience Rating
Known Questioned Cost Amount: None

Background

The Employment Security Department administers Washington’s unemployment insurance program using a federally certified experience-rated tax system. Having a federally certified system reduces Washington employer’s tax rates by up to 5.4 percent. There are two components of state unemployment taxes, the experience rate and the social-cost rate, that are added together to determine an employer’s unemployment insurance rate. Employers receive delinquent tax rates if they have not submitted all reports, taxes, interest and penalties by September 30 of the preceding year. The delinquent tax rate includes an additional percentage added to the employers’ experience rate, ranging from 0.5 percent to 2 percent.

The Department notifies employers every December of their unemployment tax rates for the following calendar year. The rates are adjusted only if errors are discovered.

The Department implemented a new computer system called Next Generation Tax System (NGTS) in March 2014 that processes employer wage reports and payments, and automatically calculates employers’ unemployment insurance tax rates. In fiscal year 2016, NGTS processed about \$1.1 billion in Unemployment Insurance premium payments.

As part of our 2015 audit of the Washington’s Comprehensive Annual Financial Report (CAFR), our Office issued a finding related to the NGTS processing of employer wage reports and payments. This finding was reported in our 2015 single audit (2015-002). The finding was re-issued as part of our 2016 (CAFR) audit.

Description of Condition

We found the Department did not establish adequate internal controls to ensure employer unemployment insurance tax rates were properly calculated. Missing tax and wage reports and payments caused some employers to be reported as delinquent when they were not. Due to the inaccurate payment, reporting and delinquency data recorded in NGTS, the system miscalculated some employers’ rates, creating a higher tax liability for those affected.

We used a statistical sampling method and randomly sampled 87 employers to determine if NGTS properly computed their unemployment insurance tax rates. We determined that NGTS incorrectly determined five (5.7 percent) of these employers' tax rates. In each case, the employers were inappropriately assigned a delinquent tax rate.

We consider these internal control deficiencies to constitute a material weakness.

Cause of Condition

The Department has not established a process to verify that files transmitted through interfaces were received and processed into NGTS accurately and completely. The Department also did not establish adequate procedures to review or spot check the data for errors.

Before the implementation of NGTS, the Department did not perform adequate testing to ensure the system accurately processed unemployment insurance tax payments, tax and wage reports, unemployment insurance rates and employer receivables. In addition, the lack of some key reconciliations increases the likelihood system errors will not be detected and corrected in a timely manner.

Effect of Condition

We determined the five employers that were assessed improper rates overpaid their unemployment insurance taxes by almost \$322,000.

If Washington's experience-rated UI tax system does not comply with state law, the U.S. Department of Labor could revoke the state's certification. If the certification is revoked, all employers could be required to pay up to an additional 5.4 percent in federal unemployment insurance tax.

Recommendations

We recommend the Department:

- Establish internal controls to ensure employer unemployment insurance tax rates are correct and to ensure the complete and accurate processing of employer payments and tax and wage reports for unemployment insurance tax payments
- Identify and correct defects within NGTS
- Perform reconciliations between systems to ensure information transmitted by interfaces is accurate and complete

Agency's Response

The Department concurs with this finding.

The ESD will continue to improve internal controls to ensure employer unemployment insurance tax rates are correct and to ensure the complete and accurate processing of employer payments and tax and wage reports for unemployment insurance tax payments.

ESD has already identified defects within NGTS and is in the process of correcting them.

ESD has developed a comprehensive strategy to address interface issues that includes strengthening controls between systems to ensure data that enters NGTS is accurate and complete.

Auditor's Concluding Remarks

We thank the Department for its cooperation and assistance throughout the audit. We will review the status of the Department's corrective action during our next audit.

Applicable Laws and Regulations

Title 2 U.S. Code of Federal Regulations Part 200, *Uniform Administrative Requirements, Cost Principles, and Audit Requirements for Federal Awards* (Uniform Guidance) established reporting requirements for audit findings.

Section 200.303 Internal controls.

The non-Federal entity must:

- (a) Establish and maintain effective internal control over the Federal award that provides reasonable assurance that the non-Federal entity is managing the Federal award in compliance with Federal statutes, regulations, and the terms and conditions of the Federal award. These internal controls should be in compliance with guidance in "Standards for Internal Control in the Federal Government" issued by the Comptroller General of the United States or the "Internal Control Integrated Framework", issued by the Committee of Sponsoring Organizations of the Treadway Commission (COSO).
- (b) Comply with Federal statutes, regulations, and the terms and conditions of the Federal awards.

Section 200.516 Audit reporting, state in part:

- (a) *Audit findings reported.* The auditor must report the following as audit findings in a schedule of findings and questioned costs:
 - (1) Significant deficiencies and material weaknesses in internal control over major programs and significant instances of abuse relating to major programs. The auditor's determination of whether a deficiency in internal control is a significant deficiency or material weakness for the purpose of reporting an audit finding is in relation to a type of compliance requirement for a major program identified in the Compliance Supplement.
 - (2) Material noncompliance with the provisions of Federal statutes, regulations, or the terms and conditions of Federal awards related to a major program. The auditor's determination of whether a noncompliance with the provisions of Federal statutes, regulations, or the terms and conditions of Federal awards is material for the purpose of reporting an audit finding is in relation to a type of compliance requirement for a major program identified in the compliance supplement.

The American Institute of Certified Public Accountants defines significant deficiencies and material weaknesses in internal controls over compliance in its *Codification of Statements on Auditing Standards*, section 935, as follows:

.011 For purposes of adapting GAAS to a compliance audit, the following terms have the meanings attributed as follows: ...

Material weakness in internal control over compliance. A deficiency, or combination of deficiencies, in internal control over compliance, such that there is a reasonable possibility that material noncompliance with a compliance requirement will not be prevented, or detected and corrected, on a timely basis. In this section, a reasonable possibility exists when the likelihood of the event is either reasonably possible or probable as defined as follows:

Reasonably possible. The chance of the future event or events occurring is more than remote but less than likely.

Remote. The chance of the future event or events occurring is slight.

Probable. The future event or events are likely to occur.

Significant deficiency in internal control over compliance. A deficiency, or a combination of deficiencies, in internal control over compliance that is less severe than a material weakness in internal control over compliance, yet important enough to merit attention by those charged with governance.

Material noncompliance. In the absence of a definition of material noncompliance in the governmental audit requirement, a failure to follow compliance requirements or a violation of prohibitions included in the applicable compliance requirements that results in noncompliance that is quantitatively or qualitatively material, either individually or when aggregated with other noncompliance, to the affected government program.

26 USC 3301 Rate of tax

There is hereby imposed on every employer (as defined in section 3306(a)) for each calendar year an excise tax, with respect to having individuals in his employ, equal to—

- (1) 6.2 percent in the case of calendar years 1988 through 2010 and the first 6 months of calendar year 2011; or
- (2) 6.0 percent in the case of the remainder of calendar year 2011 and each calendar year thereafter; of the total wages (as defined in section 3306(b)) paid by him during the calendar year (or portion of the calendar year) with respect to employment (as defined in section 3306(c)).

26 USC 3302 Credits against tax, states in part:

(b) Additional credit

In addition to the credit allowed under subsection (a), a taxpayer may credit against the tax imposed by section 3301 for any taxable year an amount, with respect to the unemployment compensation law of each State certified as provided in section 3303 for the 12-month period ending on October 31 of such year, or with respect to any provisions thereof so certified, equal to the amount, if any, by which the contributions required to be paid by him with respect to the taxable year were less than the contributions such taxpayer would have

been required to pay if throughout the taxable year he had been subject under such State law to the highest rate applied thereunder in such 12-month period to any person having individuals in his employ, or to a rate of 5.4 percent, whichever rate is lower.

26 USC 3303 Conditions of additional credit allowance, states in part:

- (b) Certification by the Secretary of Labor with respect to additional credit allowance
 - (3) The Secretary of Labor shall, within 30 days after any State law is submitted to him for such purpose, certify to the State agency his findings with respect to reduced rates of contributions to a type of fund or account, as defined in subsection (c), which are allowable under such State law only in accordance with the provisions of subsection (a). After making such findings, the Secretary of Labor shall not withhold his certification to the Secretary of the Treasury of such State law, or of the provisions thereof with respect to which such findings were made, for any 12-month period ending on October 31 pursuant to paragraph (1) or (2) unless, after reasonable notice and opportunity for hearing to the State agency, the Secretary of Labor finds the State law no longer contains the provisions specified in subsection (a) or the State has, with respect to such 12-month period, failed to comply substantially with any such provision.

Revised Code of Washington 50.29.025: Contribution rates (as amended by 2011 c 4)

Due to the length of the RCW it is not included here but can be found at <http://apps.leg.wa.gov/RCW/default.aspx?cite=50.29.025>

2016-007

The Department of Transportation did not have adequate internal controls over and did not comply with federal wage rate requirements for the High-Speed Rail Corridors program.

Federal Awarding Agency: U.S. Department of Transportation
Pass-Through Entity: None
CFDA Number and Title: 20.319 High-Speed Rail Corridors and Intercity Passenger Rail Service – Capital Assistance Grants
Federal Award Number: FR-HSR-0017-11-01-06
Applicable Compliance Component: Special Tests and Provisions – Wage Rate Requirements
Known Questioned Cost Amount: None

Background

The Department of Transportation, Rail Division, administers the High-Speed Rail Corridors and Intercity Passenger Rail Service – Capital Assistance Grants. The purpose of the program is to deliver incremental and critical rail infrastructure improvements for emerging high-speed rail service, expand travel choices and foster economic growth in Washington. The Department spent more than \$207 million in federal grant funds during fiscal year 2016.

For federally funded construction projects that exceed \$2,000, federal regulations require contractors to pay prescribed prevailing wages to laborers (Davis-Bacon Act). Contracts for these projects must contain language notifying the contractor and subcontractors they must comply with wage rate requirements in construction contracts. The Act also requires recipients of federal funds to obtain weekly-certified payroll reports and a statement of compliance from the contractor for its employees and subcontractors to ensure prevailing wages are paid.

Description of Condition

We found the Department did not have adequate internal controls to ensure compliance with wage rate requirements. The Department's process was to collect certified payrolls when contractors submitted invoices requesting payment.

- We examined six invoices and found two invoices did not contain the weekly-certified payrolls. The certified payrolls were not collected during our audit period.

We consider these internal control deficiencies to constitute a material weakness.

Cause of Condition

Rail management acknowledged that staff did not follow its invoice review process to ensure the two invoices missing certified payrolls were received before the invoice was approved and paid.

Effect of Condition

Without collecting weekly-certified payroll reports with the monthly invoices, the Department cannot ensure the contractors and subcontractors paid prevailing wages. Additionally, the Department is not compliant with federal requirements, which could lead to actions by the federal grantor. The Department could also be liable for paying additional wages if prevailing wages were not paid.

Recommendation

We recommend the Department follow internal controls to ensure all the weekly, certified payroll reports are collected and reviewed with the monthly invoices.

Agency's Response

Thank you for the opportunity to respond to the draft finding on the High-Speed Rail Corridors grant program (CFDA 20.319) for the 2016 Statewide Single Audit Report. WSDOT values an independent review of its operations including adherence to federal laws and regulations.

WSDOT's Stakeholder Agreements with Burlington Northern Santa Fe Railroad (BNSF) and Sound Transit (ST) include the requirement to comply with the Davis-Bacon Act regarding payment of prevailing wages. The Federal Rail Administration (FRA) as our grantor provided legal guidance to WSDOT stating that since the Department required BNSF and ST to comply with Davis-Bacon Act requirements, it would be BNSF and ST's responsibility to collect certified payrolls from its construction contractors on a weekly basis.

WSDOT monitors BNSF and ST to ensure that they follow Davis-Bacon Act requirements. WSDOT receives weekly certified payrolls from BNSF and ST with their monthly invoices. WSDOT's Rail, Freight and Ports Division staff review the certified payrolls to confirm that the construction contractors' employees are paid prevailing wages prior to payment to BNSF and Sound Transit.

WSDOT's Rail, Freight, and Ports Division has already addressed the oversight where two ST invoices did not contain weekly-certified payrolls from its contractors. Rail Division management identified the issue, requested and received missing certified payrolls from ST in November 2016, and have been receiving certified payrolls with each subsequent ST invoice.

We appreciate the assistance from your staff and look forward to continuing our working relationship based on a high level of professional standards.

Auditor's Concluding Remarks

We thank the Department for its cooperation and assistance throughout the audit. We will review the status of the Department's corrective action during our next audit.

Applicable Laws and Regulations

Title 2 U.S. Code of Federal Regulations Part 200, *Uniform Administrative Requirements, Cost Principles, and Audit Requirements for Federal Awards* (Uniform Guidance) established reporting requirements for audit findings.

Section 200.303 Internal controls.

The non-Federal entity must:

- (a) Establish and maintain effective internal control over the Federal award that provides reasonable assurance that the non-Federal entity is managing the Federal award in compliance with Federal statutes, regulations, and the terms and conditions of the Federal award. These internal controls should be in compliance with guidance in “Standards for Internal Control in the Federal Government” issued by the Comptroller General of the United States or the “Internal Control Integrated Framework”, issued by the Committee of Sponsoring Organizations of the Treadway Commission (COSO).
- (b) Comply with Federal statutes, regulations, and the terms and conditions of the Federal awards.

Section 200.516 Audit reporting, state in part:

- (a) *Audit findings reported.* The auditor must report the following as audit findings in a schedule of findings and questioned costs:
 - (1) Significant deficiencies and material weaknesses in internal control over major programs and significant instances of abuse relating to major programs. The auditor’s determination of whether a deficiency in internal control is a significant deficiency or material weakness for the purpose of reporting an audit finding is in relation to a type of compliance requirement for a major program identified in the Compliance Supplement.
 - (2) Material noncompliance with the provisions of Federal statutes, regulations, or the terms and conditions of Federal awards related to a major program. The auditor’s determination of whether a noncompliance with the provisions of Federal statutes, regulations, or the terms and conditions of Federal awards is material for the purpose of reporting an audit finding is in relation to a type of compliance requirement for a major program identified in the compliance supplement.

The American Institute of Certified Public Accountants defines significant deficiencies and material weaknesses in internal controls over compliance in its *Codification of Statements on Auditing Standards*, section 935, as follows:

.011 For purposes of adapting GAAS to a compliance audit, the following terms have the meanings attributed as follows: ...

Material weakness in internal control over compliance. A deficiency, or combination of deficiencies, in internal control over compliance, such that there is a reasonable possibility that material noncompliance with a compliance requirement will not be prevented, or detected and corrected, on a timely basis. In this section, a reasonable possibility exists when the likelihood of the event is either reasonably possible or probable as defined as follows:

Reasonably possible. The chance of the future event or events occurring is more than remote but less than likely.

Remote. The chance of the future event or events occurring is slight.

Probable. The future event or events are likely to occur.

Significant deficiency in internal control over compliance. A deficiency, or a combination of deficiencies, in internal control over compliance that is less severe than a material weakness in internal control over compliance, yet important enough to merit attention by those charged with governance.

Material noncompliance. In the absence of a definition of material noncompliance in the governmental audit requirement, a failure to follow compliance requirements or a violation of prohibitions included in the applicable compliance requirements that results in noncompliance that is quantitatively or qualitatively material, either individually or when aggregated with other noncompliance, to the affected government program.

Title 29, Code of Federal Regulations contains, in part:

5.5 Contract provisions and related matters.

(a) The Agency head shall cause or require the contracting officer to insert in full in any contract in excess of \$2,000 which is entered into for the actual construction, alteration and/or repair, including painting and decorating, of a public building or public work, or building or work financed in whole or in part from Federal funds or in accordance with guarantees of a Federal agency or financed from funds obtained by pledge of any contract of a Federal agency to make a loan, grant or annual contribution (except where a different meaning is expressly indicated), and which is subject to the labor standards provisions of any of the acts listed in §5.1, the following clauses (or any modifications thereof to meet the particular needs of the agency, *Provided*, That such modifications are first approved by the Department of Labor):

(1) *Minimum wages.* (i) All laborers and mechanics employed or working upon the site of the work (or under the United States Housing Act of 1937 or under the Housing Act of 1949 in the construction or development of the project), will be paid unconditionally and not less often than once a week, and without subsequent deduction or rebate on any account (except such payroll deductions as are permitted by regulations issued by the Secretary of Labor under the Copeland Act (29 CFR part 3)), the full amount of wages and bona fide fringe benefits (or cash equivalents thereof) due at time of payment computed at rates not less than those contained in the wage determination of the Secretary of Labor which is attached hereto and made a part hereof, regardless of any contractual relationship which may be alleged to exist between the contractor and such laborers and mechanics. Contributions made or costs reasonably anticipated for bona fide fringe benefits under section 1(b)(2) of the Davis-Bacon Act on behalf of laborers or mechanics are considered wages paid to such laborers or mechanics, subject to the provisions of paragraph (a)(1)(iv) of this section; also, regular contributions made or costs incurred for more than a weekly period (but not less often than quarterly) under plans, funds, or programs which cover the particular weekly period, are deemed to be constructively made or incurred during such weekly period. Such laborers and mechanics shall be paid the appropriate wage rate and fringe benefits on the wage determination for the

classification of work actually performed, without regard to skill, except as provided in §5.5(a)(4). Laborers or mechanics performing work in more than one classification may be compensated at the rate specified for each classification for the time actually worked therein: *Provided*, That the employer's payroll records accurately set forth the time spent in each classification in which work is performed. The wage determination (including any additional classification and wage rates conformed under paragraph (a)(1)(ii) of this section) and the Davis-Bacon poster (WH-1321) shall be posted at all times by the contractor and its subcontractors at the site of the work in a prominent and accessible place where it can be easily seen by the workers.

- ...
- (3) (ii) (A) The contractor shall submit weekly for each week in which any contract work is performed a copy of all payrolls to the (write in name of appropriate federal agency) if the agency is a party to the contract, but if the agency is not such a party, the contractor will submit the payrolls to the applicant, sponsor, or owner, as the case may be, for transmission to the (write in name of agency). The payrolls submitted shall set out accurately and completely all of the information required to be maintained under 29 CFR 5.5(a)(3)(i), except that full social security numbers and home addresses shall not be included on weekly transmittals. Instead the payrolls shall only need to include an individually identifying number for each employee (*e.g.*, the last four digits of the employee's social security number). The required weekly payroll information may be submitted in any form desired. Optional Form WH-347 is available for this purpose from the Wage and Hour Division Web site at <http://www.dol.gov/esa/whd/forms/wh347instr.htm> or its successor site. The prime contractor is responsible for the submission of copies of payrolls by all subcontractors. Contractors and subcontractors shall maintain the full social security number and current address of each covered worker, and shall provide them upon request to the (write in name of appropriate federal agency) if the agency is a party to the contract, but if the agency is not such a party, the contractor will submit them to the applicant, sponsor, or owner, as the case may be, for transmission to the (write in name of agency), the contractor, or the Wage and Hour Division of the Department of Labor for purposes of an investigation or audit of compliance with prevailing wage requirements. It is not a violation of this section for a prime contractor to require a subcontractor to provide addresses and social security numbers to the prime contractor for its own records, without weekly submission to the sponsoring government agency (or the applicant, sponsor, or owner).
- (B) Each payroll submitted shall be accompanied by a "Statement of Compliance," signed by the contractor or subcontractor or his or her agent who pays or supervises the payment of the persons employed under the contract and shall certify the following:
- (1) That the payroll for the payroll period contains the information required to be provided under §5.5 (a)(3)(ii) of Regulations, 29 CFR part 5, the appropriate information is being maintained under §5.5 (a)(3)(i) of

Regulations, 29 CFR part 5, and that such information is correct and complete;

(2) That each laborer or mechanic (including each helper, apprentice, and trainee) employed on the contract during the payroll period has been paid the full weekly wages earned, without rebate, either directly or indirectly, and that no deductions have been made either directly or indirectly from the full wages earned, other than permissible deductions as set forth in Regulations, 29 CFR part 3;

(3) That each laborer or mechanic has been paid not less than the applicable wage rates and fringe benefits or cash equivalents for the classification of work performed, as specified in the applicable wage determination incorporated into the contract.

(C) The weekly submission of a properly executed certification set forth on the reverse side of Optional Form WH-347 shall satisfy the requirement for submission of the "Statement of Compliance" required by paragraph (a)(3)(ii)(B) of this section.

(6) *Subcontracts.* The contractor or subcontractor shall insert in any subcontracts the clauses contained in 29 CFR 5.5(a)(1) through (10) and such other clauses as the (write in the name of the Federal agency) may by appropriate instructions require, and also a clause requiring the subcontractors to include these clauses in any lower tier subcontracts. The prime contractor shall be responsible for the compliance by any subcontractor or lower tier subcontractor with all the contract clauses in 29 CFR 5.5.

(7) *Contract termination: debarment.* A breach of the contract clauses in 29 CFR 5.5 may be grounds for termination of the contract, and for debarment as a contractor and a subcontractor as provided in 29 CFR 5.12.

(8) *Compliance with Davis-Bacon and Related Act requirements.* All rulings and interpretations of the Davis-Bacon and Related Acts contained in 29 CFR parts 1, 3, and 5 are herein incorporated by reference in this contract.

2016-008

The Department of Enterprise Services did not have adequate internal controls over and was not compliant with federal wage rate requirements for the Grants to States for Construction of State Home Facilities program.

Federal Awarding Agency: U. S. Department of Veterans Affairs
Pass-Through Entity: None
CFDA Number and Title: 64.005 Grants to State for Construction of State Home Facilities
Federal Award Number: FAI 53-034
Applicable Compliance Component: Special Tests and Provisions – Wage Rate Requirements (Davis-Bacon Act)
Known Questioned Cost Amount: None

Background

In fiscal year 2016, the Department of Veterans Affairs (DVA) spent about \$15.6 million in federal funds for construction of the Walla Walla Veterans Home, an 80-bed nursing home facility for veterans in Washington State.

For federally funded construction projects that exceed \$2,000, federal regulations require contractors to pay federally prescribed prevailing wages to laborers (Davis-Bacon Act). In addition, contracts for these projects must contain language notifying the contractor and subcontractors they must comply with wage rate requirements in construction contracts. The Act also requires recipients of federal funds to obtain weekly-certified payroll reports for all contractors and subcontractors to ensure prevailing wages are paid.

DVA contracted with the Department of Enterprise Services (DES) for project management services that included, but were not limited to, ensuring that the project, agreements and contracts comply with applicable state and federal statutes and requirements, including wage rate requirements. The contract also specified that DES would manage the construction contracts, including reviewing and approving construction invoices for final approval and payment.

Description of Condition

We found DES failed to ensure required language was included in the contract notifying contractors and subcontractors of the requirement to submit weekly-certified payroll reports. The Department also did not obtain weekly-certified payroll reports.

We consider this internal control deficiency to be a material weakness.

Cause of Condition

DES was unaware that it was required to include specific language related to wage rates in the construction contract. DES was also unaware that the wage rate documentation had to be collected and reviewed weekly to ensure compliance with wage rate requirements.

Effect of Condition

Without adequate internal controls in place to ensure that weekly-certified payroll reports are obtained, DES cannot ensure the contractors and subcontractors paid prevailing wage. The state could be liable for paying additional wages if prevailing wages were not paid.

Recommendation

We recommend DES establish and follow internal controls to ensure provisions that require the contractor and subcontractors submit weekly certified payroll reports to the recipient of federal funds are included in all construction contracts subject to the wage rate requirement. We also recommend DES establish and follow internal controls to ensure all the weekly-certified payroll reports have been collected and reviewed.

Agency's Response

The Washington State Department of Enterprise Services (Enterprise Services) would like to thank the Washington State Auditor's Office for bringing this matter to our attention. Through the Engineering & Architectural Services (E&AS) program, Enterprise Services performs a broad range of services, including project management services, for an extremely wide variety of client agencies, including:

- *34 community and technical colleges*
- *Washington State Department of Corrections*
- *Washington State Department of Social & Health Services*
- *Washington State Department of Veterans Affairs*
- *Washington State Department of Enterprise Services*
- *Washington State Patrol*
- *Washington Military Department*
- *Other Washington State boards, commissions, and agencies*

E&AS provides project management services for the Washington State Department of Veterans Affairs (DVA) and other client agencies pursuant to an Interagency Agreement (IAA). In this case, DVA, as the federal funds grantee, entered into an IAA with Enterprise Services for certain project management services pertaining to the construction of a skilled nursing facility by third party contractors - DES Agreement No. K3539. While the IAA noted the federal Davis-Bacon Act obligation (40 U.S.C. §§ 3141 et seq.), it did not specify the parties' contractual obligations regarding the Davis-Bacon Act requirements to be assumed and performed by Enterprise Services.

Upon notification by the State Auditor's Office, Enterprise Services took immediate corrective actions that included:

1. *Notification to agency program representatives and management of the status of the audit and its ramifications.*
2. *Review of all current program contracts to identify any similar requirements and potential risks.*
3. *Amendment of three contracts to clarify Davis-Bacon Act requirements regarding verification responsibility for certified payroll (e.g., certified payroll is provided weekly by the general contractor to Enterprise Services).*
4. *Initiation of a program-wide verification with each client agency to address Davis-Bacon Act compliance as a contract consideration for every project with federal funding and that, when appropriate, the parties operationalize their respective contractual commitments.*
5. *Initiated a team-wide project management services training, provided by the Attorney General's Office, regarding Davis-Bacon Act compliance requirements.*
6. *On all projects, the Contracts Specialist will verify that contractors and consultants under contract are not on the Federal Suspension and Debarment listing.*
7. *E&AS will review and edit eight (8) of our existing forms and develop procedures to ensure adherence to the requirements.*

With the above actions, we are confident that this finding is resolved.

Auditor's Concluding Remarks

We thank the Department its cooperation and assistance throughout the audit. We will review the status of the Department's corrective action during our next audit.

Applicable Laws and Regulations

Title 2 U.S. Code of Federal Regulations Part 200, *Uniform Administrative Requirements, Cost Principles, and Audit Requirements for Federal Awards* (Uniform Guidance) established reporting requirements for audit findings.

Section 200.303 Internal controls.

The non-Federal entity must:

- (a) Establish and maintain effective internal control over the Federal award that provides reasonable assurance that the non-Federal entity is managing the Federal award in compliance with Federal statutes, regulations, and the terms and conditions of the Federal award. These internal controls should be in compliance with guidance in "Standards for Internal Control in the Federal Government" issued by the Comptroller General of the United States or the "Internal Control Integrated Framework", issued by the Committee of Sponsoring Organizations of the Treadway Commission (COSO).
- (b) Comply with Federal statutes, regulations, and the terms and conditions of the Federal awards.

Section 200.516 Audit reporting, state in part:

- (a) *Audit findings reported.* The auditor must report the following as audit findings in a schedule of findings and questioned costs:
 - (1) Significant deficiencies and material weaknesses in internal control over major programs and significant instances of abuse relating to major programs. The

auditor's determination of whether a deficiency in internal control is a significant deficiency or material weakness for the purpose of reporting an audit finding is in relation to a type of compliance requirement for a major program identified in the Compliance Supplement.

- (2) Material noncompliance with the provisions of Federal statutes, regulations, or the terms and conditions of Federal awards related to a major program. The auditor's determination of whether a noncompliance with the provisions of Federal statutes, regulations, or the terms and conditions of Federal awards is material for the purpose of reporting an audit finding is in relation to a type of compliance requirement for a major program identified in the compliance supplement.

The American Institute of Certified Public Accountants defines significant deficiencies and material weaknesses in internal controls over compliance in its *Codification of Statements on Auditing Standards*, section 935, as follows:

- .011 For purposes of adapting GAAS to a compliance audit, the following terms have the meanings attributed as follows: ...

Material weakness in internal control over compliance. A deficiency, or combination of deficiencies, in internal control over compliance, such that there is a reasonable possibility that material noncompliance with a compliance requirement will not be prevented, or detected and corrected, on a timely basis. In this section, a reasonable possibility exists when the likelihood of the event is either reasonably possible or probable as defined as follows:

Reasonably possible. The chance of the future event or events occurring is more than remote but less than likely.

Remote. The chance of the future event or events occurring is slight.

Probable. The future event or events are likely to occur.

Significant deficiency in internal control over compliance. A deficiency, or a combination of deficiencies, in internal control over compliance that is less severe than a material weakness in internal control over compliance, yet important enough to merit attention by those charged with governance.

Title 29, Code of Federal Regulations contains, in part:

5.5 Contract provisions and related matters.

- (a) The Agency head shall cause or require the contracting officer to insert in full in any contract in excess of \$2,000 which is entered into for the actual construction, alteration and/or repair, including painting and decorating, of a public building or public work, or building or work financed in whole or in part from Federal funds or in accordance with guarantees of a Federal agency or financed from funds obtained by pledge of any contract of a Federal agency to make a loan, grant or annual contribution (except where a different meaning is expressly indicated), and which is subject to the labor standards provisions of any of the acts listed in §5.1, the following clauses (or any modifications thereof to meet the particular needs of the agency, *Provided*, That such modifications are first approved by the Department of Labor):

(1) *Minimum wages.* (i) All laborers and mechanics employed or working upon the site of the work (or under the United States Housing Act of 1937 or under the Housing Act of 1949 in the construction or development of the project), will be paid unconditionally and not less often than once a week, and without subsequent deduction or rebate on any account (except such payroll deductions as are permitted by regulations issued by the Secretary of Labor under the Copeland Act (29 CFR part 3)), the full amount of wages and bona fide fringe benefits (or cash equivalents thereof) due at time of payment computed at rates not less than those contained in the wage determination of the Secretary of Labor which is attached hereto and made a part hereof, regardless of any contractual relationship which may be alleged to exist between the contractor and such laborers and mechanics. Contributions made or costs reasonably anticipated for bona fide fringe benefits under section 1(b)(2) of the Davis-Bacon Act on behalf of laborers or mechanics are considered wages paid to such laborers or mechanics, subject to the provisions of paragraph (a)(1)(iv) of this section; also, regular contributions made or costs incurred for more than a weekly period (but not less often than quarterly) under plans, funds, or programs which cover the particular weekly period, are deemed to be constructively made or incurred during such weekly period. Such laborers and mechanics shall be paid the appropriate wage rate and fringe benefits on the wage determination for the classification of work actually performed, without regard to skill, except as provided in §5.5(a)(4). Laborers or mechanics performing work in more than one classification may be compensated at the rate specified for each classification for the time actually worked therein: *Provided*, That the employer's payroll records accurately set forth the time spent in each classification in which work is performed. The wage determination (including any additional classification and wage rates conformed under paragraph (a)(1)(ii) of this section) and the Davis-Bacon poster (WH-1321) shall be posted at all times by the contractor and its subcontractors at the site of the work in a prominent and accessible place where it can be easily seen by the workers.

...

(3) (ii) (A) The contractor shall submit weekly for each week in which any contract work is performed a copy of all payrolls to the (write in name of appropriate federal agency) if the agency is a party to the contract, but if the agency is not such a party, the contractor will submit the payrolls to the applicant, sponsor, or owner, as the case may be, for transmission to the (write in name of agency). The payrolls submitted shall set out accurately and completely all of the information required to be maintained under 29 CFR 5.5(a)(3)(i), except that full social security numbers and home addresses shall not be included on weekly transmittals. Instead the payrolls shall only need to include an individually identifying number for each employee (*e.g.*, the last four digits of the employee's social security number). The required weekly payroll information may be submitted in any form desired. Optional Form WH-347 is available for this purpose from the Wage and Hour Division Web site at <http://www.dol.gov/esa/whd/forms/wh347instr.htm> or its successor site. The prime contractor is responsible for the submission of copies of payrolls by all subcontractors. Contractors and subcontractors

shall maintain the full social security number and current address of each covered worker, and shall provide them upon request to the (write in name of appropriate federal agency) if the agency is a party to the contract, but if the agency is not such a party, the contractor will submit them to the applicant, sponsor, or owner, as the case may be, for transmission to the (write in name of agency), the contractor, or the Wage and Hour Division of the Department of Labor for purposes of an investigation or audit of compliance with prevailing wage requirements. It is not a violation of this section for a prime contractor to require a subcontractor to provide addresses and social security numbers to the prime contractor for its own records, without weekly submission to the sponsoring government agency (or the applicant, sponsor, or owner).

(B) Each payroll submitted shall be accompanied by a "Statement of Compliance," signed by the contractor or subcontractor or his or her agent who pays or supervises the payment of the persons employed under the contract and shall certify the following:

(1) That the payroll for the payroll period contains the information required to be provided under §5.5 (a)(3)(ii) of Regulations, 29 CFR part 5, the appropriate information is being maintained under §5.5 (a)(3)(i) of Regulations, 29 CFR part 5, and that such information is correct and complete;

(2) That each laborer or mechanic (including each helper, apprentice, and trainee) employed on the contract during the payroll period has been paid the full weekly wages earned, without rebate, either directly or indirectly, and that no deductions have been made either directly or indirectly from the full wages earned, other than permissible deductions as set forth in Regulations, 29 CFR part 3;

(3) That each laborer or mechanic has been paid not less than the applicable wage rates and fringe benefits or cash equivalents for the classification of work performed, as specified in the applicable wage determination incorporated into the contract.

(C) The weekly submission of a properly executed certification set forth on the reverse side of Optional Form WH-347 shall satisfy the requirement for submission of the "Statement of Compliance" required by paragraph (a)(3)(ii)(B) of this section.

(6) *Subcontracts.* The contractor or subcontractor shall insert in any subcontracts the clauses contained in 29 CFR 5.5(a)(1) through (10) and such other clauses as the (write in the name of the Federal agency) may by appropriate instructions require, and also a clause requiring the subcontractors to include these clauses in any lower tier subcontracts. The prime contractor shall be responsible for the compliance by any subcontractor or lower tier subcontractor with all the contract clauses in 29 CFR 5.5.

(7) *Contract termination: debarment.* A breach of the contract clauses in 29 CFR 5.5 may be grounds for termination of the contract, and for

debarment as a contractor and a subcontractor as provided in 29 CFR 5.12.

- (8) *Compliance with Davis-Bacon and Related Act requirements.* All rulings and interpretations of the Davis-Bacon and Related Acts contained in 29 CFR parts 1, 3, and 5 are herein incorporated by reference in this contract.

2016-009 **The Department of Services for the Blind failed to establish adequate internal controls over, and was not compliant with, federal requirements to determine client eligibility for the Vocational Rehabilitation program within a reasonable period of time.**

Federal Awarding Agency: U.S. Department of Education
Pass-Through Entity: None
CFDA Number and Title: 84.126 Rehabilitation Services - Vocational Rehabilitation Grants to States
Federal Award Number: GANH126A150072.15, GANH126A150072.16
Applicable Compliance Component: Eligibility
Known Questioned Cost Amount: None

Background

The Department of Services for the Blind’s Vocational Rehabilitation program provides services for individuals who are blind, are going blind or who have low vision so that such individuals may prepare for and engage in gainful employment. These services are primarily funded by the Vocational Rehabilitation Grant.

The Department operates and administers the program in accordance with federal laws and regulations, as well as a State Plan that is approved every fiscal year. In most cases, clients must be determined eligible within a reasonable period of time, not to exceed 60 days. There are two exceptions to the 60-day requirement:

- An exceptional or unforeseen circumstance occurred beyond the control of the Department.
- The Department is assessing the client’s ability to perform in work situations through trial work experience.

When either of these exceptions are met, Department staff must document the determination in their case management system.

To ensure eligibility decisions are made within 60 days, Department staff use monthly reports from its case management system to identify clients who are nearing or have exceeded the deadline. The reports are distributed to team leaders who resolve the issues.

Description of Condition

We found the Department did not have adequate internal controls to ensure eligibility determinations were made within 60 days as required. The Department provided us with reports from its case management system of all clients who were determined to be eligible during the audit period. The reports identified 46 determinations that took longer than the 60-day limit. We examined ten of these eligibility determinations and found in five cases the Department’s internal controls failed, resulting

in the eligibility determination exceeding the 60-day limit and the delay not being properly documented.

We also randomly selected and examined 55 of 415 client eligibility determinations made during the audit period to check for compliance with federal regulations. We found while all clients met the eligibility criteria, six instances (11 percent) when clients did not have their eligibility determination made within 60 days. There was no documentation for the six cases in the case management system describing an exception to the 60-day limit. Additionally, in two of the cases there was no documentation supporting the client agreed to a specific extension of time. In three cases, the case management system contained no documented support for the delay.

The Department provided some evidence that the client eligibility determinations on the monthly reports were investigated in the form of informal email communication. However, this communication was not consistently available and did not provide sufficient evidence a supervisor or manager monitored to ensure the reports were properly addressed.

We consider these control deficiencies to be a material weakness.

Cause of Condition

There is no formal confirmation or review process to ensure the monthly reports that identify cases coming due or overdue are addressed and adequately documented by staff. The program's procedure manual does not contain any guidance on how the review process is supposed to be performed.

Additionally, the Department's procedure manual states there must be "clear justification for the exception", while the federal requirements states exceptions must be "exceptional and unforeseen". In some cases, it appeared staff were documenting the extension using the lower standard of "clear justification for the exception" instead of the stricter federal requirements.

Effect of Condition

By not having adequate internal controls, the Department is not always making timely eligibility decisions in accordance with federal law. This could lead to eligible clients not receiving services in a timely manner and also puts the Department at risk that the federal grantor will withhold grant funds.

Recommendation

We recommend the Department:

- Improve its internal controls to ensure eligibility determinations are made timely
- Ensure any exceptional and unforeseen circumstances are properly documented
- Ensure supervisory reviews are properly documented and effective
- Update its procedures to include the federal requirements and the process for supervisory review.

Agency's Response

The agency understands the importance of not unnecessarily delaying an eligibility determination, and we make every effort to complete the determination within the 60 days allotted per federal regulation, and work to gather participant agreement for delays beyond the agency control.

The auditor did not find our internal systems for alerting counselors to those cases with eligibilities that are coming due or are overdue clearly systemized and documented so that it is clear to an outside observer that the controls are consistently performed. We will work to create more systematized processes for internal controls to make our monthly processes more evident to an outside observer. We commit to creating systems that document managers' receipt of tracking reports, and documenting the managers' verification of providing the tracking information to the counselors on a regular basis.

The auditor found a lack of required documentation for justification and participant agreement for delay of eligibility in some of the cases reviewed. Five of the ten overdue eligibilities did indeed have documentation that met agency policy, indicating participant agreement to delay and justification for the delay. Of the five other cases that were found to lack adequate documentation, it should be noted that four instances were from one to four days delayed, with the 60th day in each case falling on a weekend. While the delays were not significant, and likely the counselor in each situation considered it reasonable that a delay justification was unnecessary if eligibility was made one or two working days after the 60 day period had passed, we accept that 60 days means 60 days, and will provide coaching to counselors that they should in future include documentation if an eligibility determination is passing the 60 day mark, regardless if that 60th day is a non-work day, holiday or weekend.

The new regulations were finalized June 30, 2016, and the agency is providing coaching to counselors about the new requirement to include a specific expected day of completion for eligibility. This requirement did not exist as a rule before the regulations were finalized, and we disagree with any findings that were found solely due to lack of a specific completion date. We expect to be working towards implementing the new rule in this coming year, along with many other process changes to align to the new regulations.

Auditor's Concluding Remarks

We thank the Department for its cooperation and assistance throughout the audit.

During the audit, Department management asserted that the requirement to meet a 60-day deadline was not implemented until the end of the audit period, June 30, 2016. When conducting the single audit, we are required to follow the federal guidance from the Office of Management and Budget in the 2016 Compliance Supplement. The guidance clearly states that we are required to test for compliance with the 60-day limitation. Additionally, the guidance given in the OMB 2014 and 2015 Compliance Supplements also contained this requirement, which means the audit requirement has been in place for at least three years.

Additionally, the Department responded that some of the exceptions we cited were over a weekend period. Our sample did include internal control failures of 1-2 days. However, our sample also identified instances when determinations were overdue by 3, 15, 16, 27, 31, and 60 days.

We reaffirm our finding and will review the status of the Department’s corrective action during our next audit.

Applicable Laws and Regulations

Title 2 U.S. Code of Federal Regulations Part 200, *Uniform Administrative Requirements, Cost Principles, and Audit Requirements for Federal Awards* (Uniform Guidance) established reporting requirements for audit findings.

Section 200.303 Internal controls.

The non-Federal entity must:

- (a) Establish and maintain effective internal control over the Federal award that provides reasonable assurance that the non-Federal entity is managing the Federal award in compliance with Federal statutes, regulations, and the terms and conditions of the Federal award. These internal controls should be in compliance with guidance in “Standards for Internal Control in the Federal Government” issued by the Comptroller General of the United States or the “Internal Control Integrated Framework”, issued by the Committee of Sponsoring Organizations of the Treadway Commission (COSO).
- (b) Comply with Federal statutes, regulations, and the terms and conditions of the Federal awards.

Section 200.516 Audit reporting, state in part:

- (a) *Audit findings reported.* The auditor must report the following as audit findings in a schedule of findings and questioned costs:
 - (1) Significant deficiencies and material weaknesses in internal control over major programs and significant instances of abuse relating to major programs. The auditor’s determination of whether a deficiency in internal control is a significant deficiency or material weakness for the purpose of reporting an audit finding is in relation to a type of compliance requirement for a major program identified in the Compliance Supplement.
 - (2) Material noncompliance with the provisions of Federal statutes, regulations, or the terms and conditions of Federal awards related to a major program. The auditor’s determination of whether a noncompliance with the provisions of Federal statutes, regulations, or the terms and conditions of Federal awards is material for the purpose of reporting an audit finding is in relation to a type of compliance requirement for a major program identified in the compliance supplement.

The American Institute of Certified Public Accountants defines significant deficiencies and material weaknesses in internal controls over compliance in its *Codification of Statements on Auditing Standards*, section 935, as follows:

.011 For purposes of adapting GAAS to a compliance audit, the following terms have the meanings attributed as follows: ...

Material weakness in internal control over compliance. A deficiency, or combination of deficiencies, in internal control over compliance, such that there is a reasonable possibility that material noncompliance with a compliance requirement will not be

prevented, or detected and corrected, on a timely basis. In this section, a reasonable possibility exists when the likelihood of the event is either reasonably possible or probable as defined as follows:

Reasonably possible. The chance of the future event or events occurring is more than remote but less than likely.

Remote. The chance of the future event or events occurring is slight.

Probable. The future event or events are likely to occur.

Significant deficiency in internal control over compliance. A deficiency, or a combination of deficiencies, in internal control over compliance that is less severe than a material weakness in internal control over compliance, yet important enough to merit attention by those charged with governance.

Material noncompliance. In the absence of a definition of material noncompliance in the governmental audit requirement, a failure to follow compliance requirements or a violation of prohibitions included in the applicable compliance requirements that results in noncompliance that is quantitatively or qualitatively material, either individually or when aggregated with other noncompliance, to the affected government program.

29 USC 722(a)(6) Eligibility and individualized plan for employment – Timeframe for making an eligibility determination states in part:

The designated State unit shall determine whether an individual is eligible for vocational rehabilitation services under this subchapter within a reasonable period of time, not to exceed 60 days, after the individual has submitted an application for the services unless—

- (A) exceptional and unforeseen circumstances beyond the control of the designated State unit preclude making an eligibility determination within 60 days and the designated State unit and the individual agree to a specific extension of time; or
- (B) the designated State unit is exploring an individual's abilities, capabilities, and capacity to perform in work situations under paragraph (2)(B).

WAC 67-25-025 Eligibility for services, states:

- (1) The department shall determine whether an individual is eligible for vocational rehabilitation services within sixty days after receipt of an application for services, unless, exceptional and unforeseen circumstances beyond the control of the department preclude completion of the determination within sixty days, in which case, the department will notify the applicant.
- (2) The applicant must agree to an extension of eligibility determination or, must agree to participate in trial work experience or extended evaluation in accordance with WAC 67-25-065 and 67-25-070. If the applicant does not agree to an extension of the eligibility determination or does not agree to participate in trial work experience or extended evaluation, the applicant will be determined ineligible for vocational rehabilitation services and the case service record will be closed in accordance with WAC 67-25-055.

Washington State Department of Services for the Blind Vocational Rehabilitation Procedures states:

3. ELIGIBILITY (WAC 67-25-025)

Eligibility Timelines

The Rehabilitation Act requires that eligibility determination be made within 60 days after receiving an application. The only exception is if unforeseen circumstances beyond the control of the VR Team prevent completion of the determination within 60 days. Case note E60 “Eligibility Determination over 60 Days” is used to document this exception and must:

- Provide clear justification for the exception;
- Outline needed action to complete the determination;
- Indicate how the individual was informed of the need for an extension; and
- Indicate that the individual accepts the justification and agrees to an extension.

Case note E60 must be completed to address the above four points (ideally as bullet points) every 30 days after the initial entry until the individual is found eligible, or the case is closed

2016-010 **The Department of Services for the Blind failed to establish adequate internal controls over, and was not compliant with, federal requirements to establish timely individual plans of employment for Vocational Rehabilitation program clients.**

Federal Awarding Agency: U.S. Department of Education
Pass-Through Entity: None
CFDA Number and Title: 84.126 Rehabilitation Services - Vocational Rehabilitation Grants to States
Federal Award Number: GANH126A150072.15, GANH126A150072.16
Applicable Compliance Component: Special Tests and Provisions
Known Questioned Cost Amount: None

Background

The Department of Services for the Blind’s Vocational Rehabilitation program provides services for individuals who are blind, are going blind, or who have low vision so that such individuals may prepare for and engage in gainful employment. These services are primarily funded by the Vocational Rehabilitation Grant.

The Department operates and administers the program in accordance with federal laws and regulations, as well as a State Plan that is approved every fiscal year. It is responsible for ensuring that, once an individual is determined eligible, an Individual Plan for Employment (IPE) is created as soon as possible but no later than 90 days after the date they were determined eligible. The creation of the IPE can extend past 90 days only if the Department and the individual agree to an extension with a specific date by which it must be completed. When this happens Department staff must document the extension in their case management system.

In order to ensure IPEs are created within 90 days, the Department uses monthly reports to identify clients who are nearing or have exceeded their IPE deadline. The reports are distributed to team leaders who ensure any issues are properly resolved by completing the IPE, or documenting the agreement to the extension and the specific date of completion.

Description of Condition

We found the Department did not have adequate internal controls to ensure IPE development was completed within 90 days as required. The Department provided us reports from their case management system indicating 132 out of 338 (39 percent) applicants did not receive their IPE within 90 days. We randomly selected and examined 17 of these late determinations and found in 16 cases, the Department’s internal controls failed, resulting in the IPE development exceeding 90 days without the proper documentation.

We also examined the 17 IPE determinations for compliance with federal regulations and found 16 of the cases were missing at least one of the two elements, which allow extension of the IPE date; the client agreement and the date of completion.

We consider these control deficiencies to be a material weakness.

Cause of Condition

There is no formal confirmation or review process to ensure the cases identified in the monthly reports are addressed and adequately documented by staff. The Department provided some evidence that the IPE determinations on the monthly reports were investigated in the form of informal email communication. However, this communication was not consistently available and did not provide sufficient evidence a supervisor or manager monitored to ensure the reports were properly addressed.

Additionally, the Department's procedure manual does not contain any guidance on how this review process is supposed to be performed.

Effect of Condition

By not having adequate internal controls, the Department is not always making timely IPE determinations in accordance with federal law. This could lead to a delay in clients receiving services and also puts the Department at risk that the federal grantor will withhold grant funds.

Recommendations

We recommend the Department:

- Improve its internal controls to ensure IPEs are created timely
- Ensure extensions are agreed upon by the client and are properly documented
- Ensure supervisory reviews are properly documented and effective
- Update its procedures to include the federal requirements and the process for supervisory review

Agency's Response

The agency understands the importance of not unnecessarily delaying planned vocational rehabilitation services, and we make every effort to complete the individualized plan for employment within the required 90 days, with agreement for the associated services that will be required for the individual to successfully get, keep or advance in their career and vocational rehabilitation. When delays are beyond the control of the agency, we work to gather and document the participant agreement for delays.

The auditor did not find our internal systems for alerting counselors to those cases with plans that are coming due or are overdue clearly systemized and documented so that it is clear to an outside observer that the controls are consistently performed. We will work to create more systematized processes for internal controls to make our monthly processes more evident to an outside observer. We commit to

creating systems that document managers' receipt of tracking reports, and documenting the managers' verification of providing the tracking information to the counselors on a regular basis.

The auditor reported to find a lack of required documentation for justification and participant agreement for delay of plan in 16 of the 17 cases reviewed. The agency is in full agreement that process for getting and documenting participant agreement was not followed in six of the 16 cases. For ten of the cases, the agency disagrees with the finding as the documentation met agency policy and procedure, and the federal regulations that existed at the time the work was done. Ten of the cases have findings because the documentation lacked inclusion of a specific date for estimated completion of plan activities that is agreed to by the participant. The date for IPE completion of those ten include:

- 02/18/2016
- 01/12/2016
- 05/26/2016
- 09/11/2015
- 12/01/2015
- 06/13/2016
- 02/08/2016
- 06/12/2016
- 10/15/2015
- 09/08/2015

The agency understands that this is a new requirement, becoming rule on June 30th, 2016 in the final federal regulations, and we understand that we need to move towards compliance with this requirement in this coming year. We have begun to coach counselors of the new requirement to include a specific date in any plan delay justification. However, we strongly feel we should not be expected to comply with a process that was not a rule during the period of audit (note all completion dates for the ten cases with findings occurred before the June 30, 2016 date when regulations with the new requirement went into effect), and strongly disagree with the finding as a result.

Auditor's Concluding Remarks

We thank the Department for its cooperation and assistance throughout the audit.

During the audit, Department management asserted that the requirement to meet a 90-day deadline was not implemented until the end of the audit period, June 30th, 2016. When conducting the single audit, we are required to follow the federal guidance from the Office of Management and Budget in the 2016 Compliance Supplement. The guidance clearly states that we are required to test for compliance with the 90-day limitation. Additionally, the guidance in the OMB 2015 Compliance Supplement also contained this requirement, which means the audit requirement has been in place for at least two years. However, due to the concerns expressed by the Department, we contacted the federal agency program contact with the U.S. Department of Education to confirm the requirement. He informed us the requirement went into effect in 2014 when the enabling legislation was signed and was therefore in place before our audit period began.

Additionally, the Department responded we reported a lack of documentation for justification of delays, but this is not accurate. The requirement is only that the participant agree to delay, and to establish a date for completion, which is what we reported. We reaffirm our finding and will review the status of the Department's corrective action during our next audit.

Applicable Laws and Regulations

Title 2 U.S. Code of Federal Regulations Part 200, *Uniform Administrative Requirements, Cost Principles, and Audit Requirements for Federal Awards* (Uniform Guidance) established reporting requirements for audit findings.

Section 200.303 Internal controls.

The non-Federal entity must:

- (a) Establish and maintain effective internal control over the Federal award that provides reasonable assurance that the non-Federal entity is managing the Federal award in compliance with Federal statutes, regulations, and the terms and conditions of the Federal award. These internal controls should be in compliance with guidance in "Standards for Internal Control in the Federal Government" issued by the Comptroller General of the United States or the "Internal Control Integrated Framework", issued by the Committee of Sponsoring Organizations of the Treadway Commission (COSO).
- (b) Comply with Federal statutes, regulations, and the terms and conditions of the Federal awards.

Section 200.516 Audit reporting, state in part:

- (a) *Audit findings reported.* The auditor must report the following as audit findings in a schedule of findings and questioned costs:
 - (1) Significant deficiencies and material weaknesses in internal control over major programs and significant instances of abuse relating to major programs. The auditor's determination of whether a deficiency in internal control is a significant deficiency or material weakness for the purpose of reporting an audit finding is in relation to a type of compliance requirement for a major program identified in the Compliance Supplement.
 - (2) Material noncompliance with the provisions of Federal statutes, regulations, or the terms and conditions of Federal awards related to a major program. The auditor's determination of whether a noncompliance with the provisions of Federal statutes, regulations, or the terms and conditions of Federal awards is material for the purpose of reporting an audit finding is in relation to a type of compliance requirement for a major program identified in the compliance supplement.

The American Institute of Certified Public Accountants defines significant deficiencies and material weaknesses in internal controls over compliance in its *Codification of Statements on Auditing Standards*, section 935, as follows:

- .011 For purposes of adapting GAAS to a compliance audit, the following terms have the meanings attributed as follows:

Material weakness in internal control over compliance. A deficiency, or combination of deficiencies, in internal control over compliance, such that there is a reasonable possibility that material noncompliance with a compliance requirement will not be prevented, or detected and corrected, on a timely basis. In this section, a reasonable possibility exists when the likelihood of the event is either reasonably possible or probable as defined as follows:

Reasonably possible. The chance of the future event or events occurring is more than remote but less than likely.

Remote. The chance of the future event or events occurring is slight.

Probable. The future event or events are likely to occur.

Significant deficiency in internal control over compliance. A deficiency, or a combination of deficiencies, in internal control over compliance that is less severe than a material weakness in internal control over compliance, yet important enough to merit attention by those charged with governance.

Material noncompliance. In the absence of a definition of material noncompliance in the governmental audit requirement, a failure to follow compliance requirements or a violation of prohibitions included in the applicable compliance requirements that results in noncompliance that is quantitatively or qualitatively material, either individually or when aggregated with other noncompliance, to the affected government program.

29 USC 722 (b) Development of an individualized plan for employment, states in part:

(3) Mandatory procedures

(F) Timeframe for completing the individualized plan for employment states: The individualized plan for employment shall be developed as soon as possible, but not later than a deadline of 90 days after the date of the determination of eligibility described in paragraph (1), unless the designated State unit and the eligible individual agree to an extension of that deadline to a specific date by which the individualized plan for employment shall be completed.

The Department provided us reports from its case management system indicating 1,452 of 4,630 applicants (25 percent) did not receive their IPE within 90 days. We randomly selected and examined 88 of these late determinations — 44 of those clients were determined eligible before October 1, 2015, and 44 were determined eligible after that date.

Of the 88 late determinations we randomly selected, we found 40 cases (91 percent) determined before October 1, 2015, and 29 cases (69 percent) determined after October 1, 2015, in which either the client did not approve the extension before the 90-day deadline or the IPE was not completed and approved by the agreed upon extension date, or both of these conditions were present. We also determined that eight of the 88 IPEs examined (9 percent) lacked either the counselor's or client's signatures. Despite the lack of signatures, dates were still entered into STARS indicating that the IPEs had been properly approved.

We consider these control deficiencies to be a material weakness.

Cause of Condition

Although the Department was aware the requirement went into effect in July of 2014, the Director of the Division of Vocational Rehabilitation directed the Policy Manager to delay implementation until October 1, 2015, due to the amount of work required to implement the requirement. The Department also did not have written policies and procedures in place to ensure that clients received IPEs within 90 days or that it required clients to agree to a specific extension date if needed.

Additionally, Department staff were not following policies and procedures to ensure that both the counselor and the client were approving the IPE. Managerial oversight was not sufficient to detect or prevent these issues.

Effect of Condition

By not having adequate internal controls, the Department is not always making timely IPE determinations in accordance with federal law. This could delay services to clients and also puts the Department at risk that the federal grantor will withhold grant funds.

Recommendations

We recommend the Department:

- Improve its internal controls to ensure IPEs are created in a timely manner
- Ensure extensions are agreed upon by the client and are properly documented
- Ensure both counselors and clients are approving the completed IPEs

Agency's Response

The Department concurs with the recommendations and will implement improved internal controls to ensure their implementation.

The Department offers the following information regarding its timeframe for implementation of the requirement to develop IPEs no later than 90-days after the date a client is determined eligible:

- 1. The 90-day requirement for IPE development was signed into law and enacted on July 22, 2014 with the amendments of the Rehabilitation Act under the Workforce Innovation and Opportunity Act. At that time the Department of Education Rehabilitation Services Administration (RSA) let state VR agencies know that while all changes to the Rehabilitation Act were immediately in effect, it would be one year or longer until implementing federal regulations were drafted and adopted. RSA encouraged state VR agencies to implement as many changes as possible based on statutory language, but did not issue any formal guidance or technical assistance regarding specific changes or timelines to be implemented prior to final regulation. However, the 90-day IPE development timeframe was identified as an example of a change that RSA hoped state VR agencies would implement as quickly as possible. RSA did not publish draft regulations until April 2016 and they were not finalized until September 2016. During this period, RSA was prohibited from providing formal guidance on any facet of programmatic changes required by the amended Rehabilitation Act until the rule-making process was completed.*
- 2. The Department's implementation of the 90-day requirement for IPE development started in August 2014 and was completed in October 2015. This included the following major steps:*
 - a. August 2014 – February 2015: Identify all of the Rehabilitation Act statutory changes that could be implemented without final federal regulations or formal guidance and technical assistance from RSA, including 90-day IPE development.*
 - b. February 2015 – September 2015: Re-program the Service Tracking and Reporting System (STARS), the automated case management system, to reflect 90-day IPE development and substantially revise all of the vocational assessment screens on which an IPE is based; compose and publish a new Customer Handbook with information about new programmatic changes and tools for developing an IPE within 90-days; develop and deliver training to all staff so they learn how to implement the 90-day timeframe for IPE development and related changes in service delivery*
- 3. Effective October 1, 2015, all new clients who were determined eligible on or after that date were required to develop an IPE within 90-days or sign an extension agreement.*

Auditor's Concluding Remarks

We thank the Department for its cooperation and assistance throughout the audit. We will review the status of the Department's corrective action during our next audit.

Applicable Laws and Regulations

Title 2 U.S. Code of Federal Regulations Part 200, *Uniform Administrative Requirements, Cost Principles, and Audit Requirements for Federal Awards* (Uniform Guidance) established reporting requirements for audit findings.

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Reasonably possible. The chance of the future event or events occurring is more than remote but less than likely.

Remote. The chance of the future event or events occurring is slight.

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a material weakness in internal control over compliance, yet important enough to merit attention by those charged with governance.

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29 USC 722 (b) Development of an individualized plan for employment, states in part:

(3) Mandatory procedures

(F) Timeframe for completing the individualized plan for employment:

The individualized plan for employment shall be developed as soon as possible, but not later than a deadline of 90 days after the date of the determination of eligibility described in paragraph (1), unless the designated State unit and the eligible individual agree to an extension of that deadline to a specific date by which the individualized plan for employment shall be completed.

2016-012

The Department of Social and Health Services did not establish adequate internal controls over and was not compliant with federal requirements to determine client eligibility within a reasonable period of time for the Vocational Rehabilitation program.

Federal Awarding Agency: U.S. Department of Education
Pass-Through Entity: None
CFDA Number and Title: 84.126 Rehabilitation Services – Vocational Rehabilitation Grants to States
Federal Award Number: H126A150071-15B, H126A160071-16A
Applicable Compliance Component: Eligibility
Known Questioned Cost Amount: None

Background

At the Department of Social and Health Services, the Division of Vocational Rehabilitation provides employment services and counseling to individuals with disabilities who want to work but experience barriers to work because of physical, sensory, and/or mental disabilities. These services are primarily funded by the Vocational Rehabilitation Grant.

The Department must comply with federal regulations, as well as a state plan that is approved every fiscal year. In most cases, clients' eligibility must be determined within a reasonable period of time, not to exceed 60 days. There are two exceptions to the 60-day requirement:

- An exceptional or unforeseen circumstance occurred beyond the control of the Department, and the client agrees to the extension.
- The Department is assessing the client's ability to perform in work situations through trial work experience.

When either of these exceptions are met, Department staff must document the determination in the case management system. A customer service manual requires staff to complete an extension agreement form and have the client sign the form indicating approval of the extension. The manual does not state that there are only two exceptions to the 60-day requirement.

To ensure eligibility decisions are made accurately and in a timely manner, the case management system pulls random samples of client cases for Vocational Rehabilitation Supervisors to review. The Department's practice is for each supervisor to review two cases per month for each counselor they oversee.

Description of Condition

We found the Department did not have adequate internal controls to ensure eligibility determinations were made within 60 days as required. The Department gave us reports from its case management system of the 9,464 clients who were determined to be eligible during the audit period. The reports

identified 793 determinations that took longer than the 60-day limit. We randomly selected and examined 44 of these eligibility determinations and found 35 instances when the Department's internal controls failed, resulting in the eligibility determination exceeding the 60-day limit and the delay not being properly documented. Of these cases, 33 were not supported by documentation to show the client agreed to a specific extension date, and 29 cases lacked a reason for the extension that was an exceptional or unforeseen circumstance outside of the Department's control.

We also found internal controls were not effective to ensure management monitored eligibility determinations to ensure they were accurate and completed in a timely manner. The Department provided a list of 2,893 client cases that were randomly selected by the case management system for review by supervisors. Division management did not require supervisors to complete their review of these selected cases. Also, Information Technology staff deleted some of the randomly selected cases from the review list at the request of management.

We consider these internal control deficiencies to be a material weakness.

Cause of Condition

The Department did not establish an adequate monitoring process to ensure cases selected each month were reviewed by supervisors. According to the program's interim director, cases were not monitored because of supervisor turnover. Additionally, the Department's procedure manual did not contain guidance about how to perform the review process and management did not monitor to ensure selected reviews were performed.

Effect of Condition

By not establishing adequate internal controls, the Department is not always making timely eligibility decisions in accordance with federal law. The Department is at a higher risk of not providing services to eligible clients in a timely manner. There is also at risk that the federal grantor could withhold grant funds.

Recommendations

We recommend the Department:

- Improve its internal controls to ensure eligibility determinations are made in a timely manner
- Ensure any exceptional and unforeseen circumstances are properly documented
- Ensure supervisory reviews of all randomly selected cases are performed
- Update its procedures to include the federal requirements and the process for supervisory reviews

Agency's Response

The Department concurs with the recommendations and will implement improved internal controls to ensure their implementation. However, the Department notes that of the 9,464 clients determined eligible during the audit period, the 793 determinations that exceeded 60-days represent 8.4% of all

eligibility determinations which constitutes a relatively small number of cases that missed the required timeframe. The Department acknowledges that while the number of cases is small, increased focus is needed to assure proper documentation of eligibility determinations that require longer than 60-days.

Supervisors were required to complete their review of selected cases. However, in rare circumstances when a supervisor vacated their position, some did not complete all of their required case reviews before leaving. The Department recognized this gap in some supervisory reviews and initiated steps for Area Managers to assure that an existing supervisor completed required case reviews prior to vacating their position.

Auditor’s Concluding Remarks

We thank the Department for its cooperation and assistance throughout the audit. We will review the status of the Department’s corrective action during our next audit.

Applicable Laws and Regulations

Title 2 U.S. Code of Federal Regulations Part 200, *Uniform Administrative Requirements, Cost Principles, and Audit Requirements for Federal Awards* (Uniform Guidance) established reporting requirements for audit findings.

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The non-Federal entity must:

- (a) Establish and maintain effective internal control over the Federal award that provides reasonable assurance that the non-Federal entity is managing the Federal award in compliance with Federal statutes, regulations, and the terms and conditions of the Federal award. These internal controls should be in compliance with guidance in “Standards for Internal Control in the Federal Government” issued by the Comptroller General of the United States or the “Internal Control Integrated Framework”, issued by the Committee of Sponsoring Organizations of the Treadway Commission (COSO).
- (b) Comply with Federal statutes, regulations, and the terms and conditions of the Federal awards.

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Material noncompliance. In the absence of a definition of material noncompliance in the governmental audit requirement, a failure to follow compliance requirements or a violation of prohibitions included in the applicable compliance requirements that results in noncompliance that is quantitatively or qualitatively material, either individually or when aggregated with other noncompliance, to the affected government program.

29 USC 722(a)(6) Eligibility and individualized plan for employment, Timeframe for making an eligibility determination, states:

The designated State unit shall determine whether an individual is eligible for vocational rehabilitation services under this subchapter within a reasonable period of time, not to exceed 60 days, after the individual has submitted an application for the services unless—

(A) exceptional and unforeseen circumstances beyond the control of the designated State unit preclude making an eligibility determination within 60 days and the designated State unit and the individual agree to a specific extension of time; or

(B) the designated State unit is exploring an individual's abilities, capabilities, and capacity to perform in work situations under paragraph (2)(B).

Washington State DVR Customer Service Manual states:

Time line for Eligibility Determinations

The 60-day period within which a VR counselor must determine if an applicant is eligible begins on the date the individual signs the Application for VR Services. If it will take longer than 60 days to determine eligibility, the VR counselor and applicant discuss the reason for the delay and whether another approach is needed to get the necessary information.

If the individual agrees to extend the eligibility period, the extension documentation is completed and a copy of the signed agreement is filed in the case service record. This agreement is not valid until signed by the applicant. If the applicant does not return the signed agreement, the VR counselor must follow-up to obtain a signed agreement.

If there is a need to gather or exchange information with other parties to complete the assessment for eligibility and severity of disability, a VR Counselor must obtain signed consent and/or release forms from the applicant.

2016-013

The Department of Social and Health Services did not have adequate internal controls over and was not compliant with requirements to ensure payments paid on behalf of clients and staff time and effort for Vocational Rehabilitation were allowable.

Federal Awarding Agency:	U.S. Department of Education
Pass-Through Entity:	None
CFDA Number and Title:	84.126 Rehabilitation Services – Vocational Rehabilitation Grants to States
Federal Award Number:	H126A150072.15, H126A150072.16
Applicable Compliance Component:	Activities Allowed or Unallowed and Allowable Costs/Cost Principles
Known Questioned Cost Amount:	\$11,145,636
Likely Questioned Cost Amount:	\$13,241,044

Background

At the Department of Social and Health Services, the Division of Vocational Rehabilitation provides employment services and counseling to individuals with disabilities who want to work but experience barriers to work because of physical, sensory, and/or mental disabilities. These services are funded primarily by the Vocational Rehabilitation Grant.

The Department operates in accordance with federal regulations, as well as a state plan that is approved every year. The Department is allowed to spend federal grant dollars on administrative costs to run the program. Because staff that work on this grant bill 100 percent of their time and effort to this grant, the Department uses a semi-annual certification process to ensure billed time is accurate. The program creates reports of time charged to the grant during each six-month period and sends the appropriate list of employees to their supervisor to certify. Department policy states each supervisor is responsible for reviewing time for the staff they supervise and that they must sign the certifications by the following dates:

- Hours worked from October to March is due by May 15
- Hours worked from April to September is due by November 15

The Department can also pay for pre-employment services or employment services that are included in the individual plan for employment (IPE) that assist individuals with a disability in preparing for, securing, retaining or regaining an employment outcome. To ensure the client is informed and involved in their employment outcome, they are required to sign and date the completed IPE after reviewing it. The client's counselor is also required to sign and date the IPE. Employment services are not considered allowable unless they are in the approved IPE. Pre-employment services are not required to be in the IPE but must be for services that allow the Department to determine eligibility or ability to work.

The Department spent about \$48.3 million in federal program funds in fiscal year 2016, including about \$16.3 million for salaries and benefits and \$25.3 million for client services.

Description of Condition

We found the program did not follow Department policies and procedures to ensure employee time and effort was certified in a timely manner.

The Department confirmed that 75 certifications were required to be completed during fiscal year 2016. Using a non-statistical sampling method, we randomly sampled 13 certifications to examine. We found eight (62 percent) certifications that were due by May 15, 2016, were not completed until October 2016.

Upon further inquiry, the budget analyst who performs the function said that all certifications for October through March, which covered payroll costs totaling \$11,099,787, were not performed in a timely manner.

We also found the program did not have adequate internal controls to ensure payments for client employment services were for services recorded in an approved IPE. Using a statistical sampling method, we randomly sampled 59 out of 58,164 total payments made for client services during fiscal year 2016. We examined each payment to determine if it was for an allowable pre-employment service or a service that should have been included in the client's IPE.

We found four cases (6.8 percent) in which the employment service was not included in an approved IPE or the item was purchased before the IPE was approved. None of the exceptions identified were considered pre-employment services, so they were required to be in an approved IPE. We also examined the five largest payments, totaling \$147,158, and found one that cost \$33,622 was issued without an approved IPE.

We consider these internal control deficiencies to be a material weakness.

Cause of Condition

Vocational Rehabilitation central office staff are required to pull the certification reports, which are reviewed by supervisors, but the Department did not ensure new employees were aware of the Department's policy and timelines. The new staff member responsible for running the time and effort reports did not perform this duty until October 2016, five months after the original due date. The Department did not have a process in place to ensure the administrative policy was followed.

Additionally, Department staff were not following policies and procedures to ensure that payments made for client services were contained in the client's approved IPE and that services were not being paid for before approval. Managerial oversight was not sufficient to detect or prevent these issues.

Effect of Condition and Questioned Costs

We found \$11,099,787 in direct payroll and benefit charges to the grant that were not supported by timely certifications as required by Department policy. By not performing a timely review and certification of employee time and effort charged to the grant, the Department risks making unsupported charges for employee time and effort.

Additionally, the Department risks making unallowable payments for client services with federal funds by not ensuring that employment services were included in an approved IPE. The Department paid \$45,849 to participants who were considered unallowable or unsupported. Because a statistical sampling method was used to select the payments examined, we estimated the amount of likely questioned costs to be \$2,141,257.

We question costs when we find an agency has not complied with grant regulations and/or when it does not have adequate documentation to support its expenditures.

Recommendation

We recommend Vocational Rehabilitation staff follow Department policies to ensure payroll certifications are properly reviewed. We also recommend staff ensure payments for client employment services are made only for services that are included in an approved IPE and that these services are not paid for before approval.

The Department should consult with its grantor to determine what, if any, of the questioned costs should be repaid.

Agency's Response

The Department concurs with the finding.

Time certification for the one quarter was completed during FY17, rather than FY16. The direct payroll and benefit charges, while done outside the correct fiscal year, were appropriately charged to the grant and certified. The program will follow administrative policies to ensure payroll certifications are conducted accurately and timely going forward.

Some client employment services were paid or purchased before they were included in an approved Individual Plan for Employment (IPE). Directives to field staff will emphasize required services must be included in the IPE along with staff and client signatures, the case management system will alert staff about IPE required purchases and the program will ensure internal compliance reviews are performed regarding IPE requirements.

Auditor's Concluding Remarks

We thank the Department for its cooperation and assistance throughout the audit. We will review the status of the Department's corrective action during our next audit.

Applicable Laws and Regulations

Title 2 U.S. Code of Federal Regulations Part 200, *Uniform Administrative Requirements, Cost Principles, and Audit Requirements for Federal Awards* (Uniform Guidance) established reporting requirements for audit findings.

Section 200.303 Internal controls.

The non-Federal entity must:

- (a) Establish and maintain effective internal control over the Federal award that provides reasonable assurance that the non-Federal entity is managing the Federal award in compliance with Federal statutes, regulations, and the terms and conditions of the Federal award. These internal controls should be in compliance with guidance in “Standards for Internal Control in the Federal Government” issued by the Comptroller General of the United States or the “Internal Control Integrated Framework”, issued by the Committee of Sponsoring Organizations of the Treadway Commission (COSO).
- (b) Comply with Federal statutes, regulations, and the terms and conditions of the Federal awards.

Section 200.403 Factors affecting Allowability of costs.

Except where otherwise authorized by statute, costs must meet the following general criteria in order to be allowable under Federal awards.

- (a) Be necessary and reasonable for the performance of the Federal award and be allocable thereto under these principles.
- (b) Conform to any limitations or exclusions set forth in these principles or in the Federal award as to types or amount of cost items.
- (c) Be consistent with policies and procedures that apply uniformly to both federally-financed and other activities of the non-Federal entity.
- (d) Be accorded consistent treatment. A cost may not be assigned to a Federal award as a direct cost if any other cost incurred for the same purpose in like circumstances has been allocated to the Federal award as an indirect cost.
- (e) Be determined in accordance with generally accepted accounting principles (GAAP), except, for state and local governments and Indian tribes only, as otherwise provided for in this part.
- (f) Not be included as a cost or used to meet cost sharing or matching requirements of any other federally-financed program in either the current or a prior period. See also §200.306 Cost sharing or matching paragraph (b).
- (g) Be adequately documented. See also §§200.300 Statutory and national policy requirements through 200.309 Period of performance of this part.

Section 200.516 Audit reporting, state in part:

- (a) *Audit findings reported.* The auditor must report the following as audit findings in a schedule of findings and questioned costs:
 - (1) Significant deficiencies and material weaknesses in internal control over major programs and significant instances of abuse relating to major programs. The auditor’s determination of whether a deficiency in internal control is a significant deficiency or material weakness for the purpose of reporting an audit finding is in

relation to a type of compliance requirement for a major program identified in the Compliance Supplement.

- (2) Material noncompliance with the provisions of Federal statutes, regulations, or the terms and conditions of Federal awards related to a major program. The auditor's determination of whether a noncompliance with the provisions of Federal statutes, regulations, or the terms and conditions of Federal awards is material for the purpose of reporting an audit finding is in relation to a type of compliance requirement for a major program identified in the compliance supplement.
- (3) Known questioned costs that are greater than \$25,000 for a type of compliance requirement for a major program. Known questioned costs are those specifically identified by the auditor. In evaluating the effect of questioned costs on the opinion on compliance, the auditor considers the best estimate of total costs questioned (likely questioned costs), not just the questioned costs specifically identified (known questioned costs). The auditor must also report known questioned costs when likely questioned costs are greater than \$25,000 for a type of compliance requirement for a major program. In reporting questioned costs, the auditor must include information to provide proper perspective for judging the prevalence and consequences of the questioned costs.

The American Institute of Certified Public Accountants defines significant deficiencies and material weaknesses in internal controls over compliance in its *Codification of Statements on Auditing Standards*, section 935, as follows:

.011 For purposes of adapting GAAS to a compliance audit, the following terms have the meanings attributed as follows: ...

Material weakness in internal control over compliance. A deficiency, or combination of deficiencies, in internal control over compliance, such that there is a reasonable possibility that material noncompliance with a compliance requirement will not be prevented, or detected and corrected, on a timely basis. In this section, a reasonable possibility exists when the likelihood of the event is either reasonably possible or probable as defined as follows:

Reasonably possible. The chance of the future event or events occurring is more than remote but less than likely.

Remote. The chance of the future event or events occurring is slight.

Probable. The future event or events are likely to occur.

Significant deficiency in internal control over compliance. A deficiency, or a combination of deficiencies, in internal control over compliance that is less severe than a material weakness in internal control over compliance, yet important enough to merit attention by those charged with governance.

Material noncompliance. In the absence of a definition of material noncompliance in the governmental audit requirement, a failure to follow compliance requirements or a violation of prohibitions included in the applicable compliance requirements that results in noncompliance that is quantitatively or qualitatively material, either individually or when aggregated with other noncompliance, to the affected government program.

Title 2 U.S. Code of Federal Regulations Part 200, *Uniform Administrative Requirements, Cost Principles, and Audit Requirements for Federal Awards* (Uniform Guidance), states in part:

Section 200.430 Compensation – personal services

- (a) General. Compensation for personal services... Costs of compensation are allowable to the extent that they satisfy the specific requirements of this part, and that the total compensation for individual employees:
 - (1) Is reasonable for the services rendered and conforms to the established written policy of the non-Federal entity consistently applied for both Federal and non-Federal activities;
 - (i) Standards for Documentation of Personnel Expenses (1) Charges to Federal awards for salaries and wages must be based on records that accurately reflect the work performed. These records must:
 - (i) Be supported by a system of internal control which provides reasonable assurance that the charges are accurate, allowable, and properly allocated:

2016-014

The Department of Social and Health Services did not have adequate internal controls over and did not comply with requirements to ensure subrecipients of the Substance Abuse and Mental Health Services Projects of Regional Significance and Block Grants for Prevention and Treatment of Substance Abuse programs received required audits.

Federal Awarding Agency: U.S. Department of Health and Human Services
Pass-Through Entity: None
CFDA Number and Title: 93.243 Substance Abuse and Mental Health Services
Projects of Regional and National Significance
93.959 Block Grants for Prevention and Treatment of
Substance Abuse
Federal Award Number: 2B08TI010056-14; 2B08TI010056-15; 2B08TI010056-
16; 5U79TI023477-05; 5U79SP020155-03;
5U79TI024265-03; 1H79TI025995-01; 5H79SM061705-
02; 5H79TI025342-02; 1H79TI026138-01;
1H79TI025570-01
Applicable Compliance Component: Subrecipient Monitoring
Known Questioned Cost Amount: None

Background

The Department of Social and Health Services, Division of Behavioral Health and Recovery, administers the Block Grants for Prevention and Treatment of Substance Abuse. The Department subawards some of the funds to counties, tribes, nonprofit organizations and other state agencies to develop prevention programs and provide treatment and support services. The Department spent more than \$32.8 million in grant funds during fiscal year 2016. Of this amount, the Department passed about \$13 million to 84 subrecipients.

The Department also administers the Substance Abuse and Mental Health Services Projects of Regional Significance. This federal grant program is designed to address priority substance abuse treatment, prevention and mental health needs of regional and national significance. The Department spent more than \$10.2 million in grant funds during fiscal year 2016. Of this amount, the Department passed about \$3.6 million to 26 counties, school districts and nonprofit organizations as subrecipients.

Federal regulations require the Department to monitor the grant-funded activities of subrecipients. This includes ensuring its subrecipients that spend \$500,000 or more in federal grant money during a fiscal year receive an audit of expenditures and related internal controls, in accordance with the federal Office of Management and Budget Circular A-133, and submit its audit reports to the Federal Audit Clearinghouse within nine months of its fiscal year end. For fiscal years beginning after December 26, 2014, OMB Circular A-133 was superseded by the Uniform Administrative Requirements, Cost Principles, and Audit Requirements of Federal Awards – 2 CFR 200 in which the threshold triggering an audit was increased to \$750,000. For the period under audit, OMB Circular A-133 applied.

The Department is also required to follow up on any audit findings a subrecipient receives that may affect the federal program, and to issue a management decision within six months of the audit report's acceptance by the Federal Audit Clearinghouse. These requirements help ensure grant money is used for authorized purposes and within the provisions of contracts or grant agreements.

In prior audits, we reported the Department did not have internal controls over and did not comply with requirements to ensure subrecipients received required audits. The prior finding numbers were 2015-016 and 2014-019.

Description of Condition

The Department does not have adequate internal controls in place to verify:

- Subrecipients received required audits
- Findings are followed up on and management decisions are issued in a timely manner
- Funds received are being reported for audit purposes

During the audit period, we found no evidence that the Department monitored or verified if any subrecipients obtained required audits.

We consider these internal control weaknesses to constitute a material weakness.

Cause of Condition

The Department did not have policies or procedures in place to ensure subrecipients received required audits. The Department did not assign the responsibility to perform this function to a specific unit or individual. Additionally, management did not provide sufficient oversight to ensure the requirement was met. The Department's corrective action plan for the previous finding stated that by August 2016 the Department will establish policies and procedures to ensure all required audits occur and subrecipient audits are included in the subrecipient tracking system.

Effect of Condition

Without establishing adequate internal controls, the Department cannot be certain all subrecipients that met the threshold for an audit complied with federal grant requirements and therefore cannot ensure it has met the monitoring requirements of its federal grantor.

Recommendation

We recommend the Department improve its monitoring of subrecipients by:

- Verifying all required audits occurred
- Following up on all subrecipient audit findings related to the program and issuing a management decision in a timely manner
- Ensuring subrecipients report the federal funds they received from the Department

We also recommend the Department establish policies and procedures to help ensure monitoring of subrecipient audits occurs and is consistent.

Agency's Response

The Department concurs with the finding.

The Department agreed to formalize its subrecipient monitoring procedure in its corrective action plan for the previous finding numbers 2015-016 and 2014-019.

BHA Management Bulletin BFD 16-09-002 became effective on September 1, 2016 and ensures compliance with the Code of Federal Regulations, Title 1, Part 200, the Department's Administrative Policy 19.50.30 – Subrecipient Monitoring, and audit conditions identified in this finding.

The BHA Management Bulletin BFD 16-09-002 outlines procedures that will ensure compliance with staff risk assessment, monitoring, and audit report collection responsibilities, and collecting federal audit requirements from vendors. In addition to the Management Bulletin, two staff have been assigned the roles and responsibilities of subrecipient monitoring.

Auditor's Concluding Remarks

We thank the Department for its cooperation and assistance throughout the audit. We will review the status of the Department's corrective action during our next audit.

Applicable Laws and Regulations

Title 2 U.S. Code of Federal Regulations Part 200, *Uniform Administrative Requirements, Cost Principles, and Audit Requirements for Federal Awards* (Uniform Guidance) established reporting requirements for audit findings.

Section 200.303 Internal controls.

The non-Federal entity must:

- (a) Establish and maintain effective internal control over the Federal award that provides reasonable assurance that the non-Federal entity is managing the Federal award in compliance with Federal statutes, regulations, and the terms and conditions of the Federal award. These internal controls should be in compliance with guidance in "Standards for Internal Control in the Federal Government" issued by the Comptroller General of the United States or the "Internal Control Integrated Framework", issued by the Committee of Sponsoring Organizations of the Treadway Commission (COSO).
- (b) Comply with Federal statutes, regulations, and the terms and conditions of the Federal awards.

Section 200.516 Audit reporting, state in part:

- (a) *Audit findings reported.* The auditor must report the following as audit findings in a schedule of findings and questioned costs:

- (1) Significant deficiencies and material weaknesses in internal control over major programs and significant instances of abuse relating to major programs. The auditor's determination of whether a deficiency in internal control is a significant deficiency or material weakness for the purpose of reporting an audit finding is in relation to a type of compliance requirement for a major program identified in the Compliance Supplement.
- (2) Material noncompliance with the provisions of Federal statutes, regulations, or the terms and conditions of Federal awards related to a major program. The auditor's determination of whether a noncompliance with the provisions of Federal statutes, regulations, or the terms and conditions of Federal awards is material for the purpose of reporting an audit finding is in relation to a type of compliance requirement for a major program identified in the compliance supplement.

The American Institute of Certified Public Accountants defines significant deficiencies and material weaknesses in internal controls over compliance in its *Codification of Statements on Auditing Standards*, section 935, as follows:

.011 For purposes of adapting GAAS to a compliance audit, the following terms have the meanings attributed as follows: ...

Material weakness in internal control over compliance. A deficiency, or combination of deficiencies, in internal control over compliance, such that there is a reasonable possibility that material noncompliance with a compliance requirement will not be prevented, or detected and corrected, on a timely basis. In this section, a reasonable possibility exists when the likelihood of the event is either reasonably possible or probable as defined as follows:

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Significant deficiency in internal control over compliance. A deficiency, or a combination of deficiencies, in internal control over compliance that is less severe than a material weakness in internal control over compliance, yet important enough to merit attention by those charged with governance.

Material noncompliance. In the absence of a definition of material noncompliance in the governmental audit requirement, a failure to follow compliance requirements or a violation of prohibitions included in the applicable compliance requirements that results in noncompliance that is quantitatively or qualitatively material, either individually or when aggregated with other noncompliance, to the affected government program.

U.S. Office of Management and Budget Circular A-133, *Compliance Supplement 2015*, Part 3 – Compliance Requirements states in part:

Section M. Subrecipient Monitoring
Compliance Requirements

A pass-through entity is responsible for: ...

- *Subrecipient Audits* – (1) Ensuring that subrecipients expending \$500,000 or more in Federal awards during the subrecipient’s fiscal year for fiscal years ending after December 31, 2003 as provided in OMB Circular A-133 have met the audit requirements of OMB Circular A-133 and that the required audits are completed within 9 months of the end of the subrecipient’s audit period; (2) issuing a management decision on audit findings within 6 months after receipt of the subrecipient’s audit report; and (3) ensuring that the subrecipient takes timely and appropriate corrective action on all audit findings. In cases of continued inability or unwillingness of a subrecipient to have the required audits, the pass-through entity shall take appropriate action using sanctions.

U.S. Office of Management and Budget 2 CFR Part 200, Appendix XI, *Compliance Supplement 2016*, Part 3 – Compliance Requirements states in part:

Section M. Subrecipient Monitoring
Compliance Requirements

A pass-through entity is responsible for:

- *Subrecipient Audits* – (1) Ensuring that subrecipients expending \$750,000 or more in Federal awards during the subrecipient’s fiscal year for fiscal years beginning on or after December 26, 2014 have met the audit requirements of 2 CFR part 200, subpart F and that the required audits are completed within 9 months of the end of the subrecipient’s audit period; (2) issuing a management decision on audit findings within 6 months after receipt of the subrecipient’s audit report; and (3) ensuring that the subrecipient takes timely and appropriate corrective action on all audit findings. In cases of continued inability or unwillingness of a subrecipient to have the required audits, the pass-through entity shall take appropriate action using sanctions.

2016-015

The Department of Social and Health Services did not have adequate internal controls over and did not comply with requirements to sanction Temporary Assistance for Needy Families program participants who were not cooperative with the Department regarding child support issues.

Federal Awarding Agency: U.S. Department of Health and Human Services
Pass-Through Entity: None
CFDA Number and Title: 93.558 Temporary Assistance for Needy Families
Federal Award Number: 1601WATANF; 1601WATAN3;1502WATANF
Applicable Compliance Component: Special Tests and Provisions-Child Support Non-Cooperation
Known Questioned Cost Amount: \$3,218
Likely Questioned Cost Amount: \$91,919

Background

The Department of Social and Health Services, Community Services Division, administers the Temporary Assistance for Needy Families (TANF) grant that provides temporary cash assistance for families in need. The Department spent over \$304 million in grant funds during fiscal year 2016.

The Division of Child Support (DCS) within the Department of Social and Health Services provides child support services including paternity establishment, child support order establishment and child support collection services. TANF clients are required to cooperate with the DCS in order to help establish paternity and/or modify or enforce child support payments. The DCS is responsible for determining when a client is non-cooperative and notifying the Community Services Division where monitoring of TANF clients takes place. Federal regulations require the Department to reduce benefits if a client is non-cooperative with DCS.

In our fiscal year 2015 audit, we reported the Department did not have adequate internal controls over and did not comply with requirements to sanction TANF clients who were not cooperative with DCS child support services. The prior finding number was 2015-018.

Description of Condition

During the audit period, the Department did not have adequate internal controls in place to ensure it complied with child support noncooperation requirements. After child support noncooperation was determined, the Department did not monitor sufficiently to ensure benefits were reduced.

We used a statistical sampling method and randomly sampled 59 TANF recipients out of a total population of 4,234 recipients who should have received a noncooperation notice. For the 59 recipients selected for testing, we examined documentation to determine whether the Department complied with federal requirements and found:

- A record of noncooperation was not documented in 15 client files.
- A record of noncooperation was not documented timely in three additional client files.
- Out of these 18 clients, benefits were not properly reduced for seven who were not cooperative.

In addition, we reviewed five clients whose record of noncooperation was not documented in the prior audit period to determine if their benefits were properly reduced in the current audit period. We found that once the Department was made aware of the exceptions during the last audit they did issue the required overpayments. However, prior to becoming aware they had already issued \$1,963 in unallowable payments to these clients.

We consider these control deficiencies to be a material weakness.

Cause of Condition

The Department was unaware some non-cooperative client's benefits were not being reduced or denied. In six of the client files, a computer error occurred and the Department was unaware the error had not been corrected. Additionally, management did not adequately monitor to ensure the Department complied with federal requirements.

Effect of Condition and Questioned Costs

By not monitoring to ensure non-cooperative clients had their benefits reduced or denied, the Department issued \$3,218 in improper payments to clients. Because a statistical sampling method was used to select the payments we examined, we estimate the amount of likely questioned costs to be \$91,919.

We question costs when we find an agency has not complied with grant regulations or when it does not have adequate documentation to support payments.

Recommendation

We recommend the Department establish policies and procedures sufficient to ensure participants who are non-cooperative with DCS have their TANF benefits reduced or denied as required by federal law. We further recommend management monitor to ensure the requirements for imposing sanctions are being met.

The Department should consult with the Department of Health and Human Services to determine what, if any, of the questioned costs should be repaid.

Agency's Response

The Department concurs with the audit finding.

The Department recognizes that it did not properly apply sanctions for 18 clients who did not cooperate with child support requirements which resulted in seven of those clients receiving more benefits than they were eligible to receive. The Department will carefully review these cases and will establish overpayments as appropriate. The Department did not reduce benefits for the remaining 11 clients because their benefits were already closing for another reason or the client was receiving benefits for a child only, and therefore the benefits should not have been reduced.

The system glitch identified in the prior year's audit affected cases through September 1, 2016 of the current year's audit sample. The Division of Child Support (DCS) immediately fixed the glitch and sent all potentially affected cases to the Community Services Division (CSD) for review.

CSD took immediate action to ensure staff appropriately prioritize non-cooperation notices from DCS to ensure sanctions are applied timely and accurately. CSD will also develop an online refresher training to highlight existing policies/procedures already in place to reduce benefits for clients in non-cooperation status, and complete a monthly random review of a sample of clients to determine if additional training or guidance is needed. CSD will continue to pursue a long-term, automated solution to ensure all cases in non-cooperation status are properly sanctioned.

The Community Services Division and the Division of Child Support will continue to work together to identify and eliminate potential gaps in appropriately sanctioning a client in non-cooperation status.

Auditor's Concluding Remarks

We thank the Department for its cooperation and assistance throughout the audit. We will review the status of the Department's corrective action during our next audit.

Applicable Laws and Regulations

Title 2 U.S. Code of Federal regulations Part 200, *Uniform Administrative Requirements, Cost Principles, and Audit Requirements for Federal Awards* (Uniform Guidance) established reporting requirements for audit findings.

Section 200.303 Internal controls.

The non-Federal entity must:

- (a) Establish and maintain effective internal control over the Federal award that provides reasonable assurance that the non-Federal entity is managing the Federal award in compliance with Federal statutes, regulations, and the terms and conditions of the Federal award. These internal controls should be in compliance with guidance in "Standards for Internal Control in the Federal Government" issued by the Comptroller General of the United States or the "Internal Control Integrated Framework", issued by the Committee of Sponsoring Organizations of the Treadway Commission (COSO).

- (b) Comply with Federal statutes, regulations, and the terms and conditions of the Federal awards.

Section 200.403 Factors affecting Allowability of costs.

Except where otherwise authorized by statute, costs must meet the following general criteria in order to be allowable under Federal awards.

- (a) Be necessary and reasonable for the performance of the Federal award and be allocable thereto under these principles.
- (b) Conform to any limitations or exclusions set forth in these principles or in the Federal award as to types or amount of cost items.
- (c) Be consistent with policies and procedures that apply uniformly to both federally-financed and other activities of the non-Federal entity.
- (d) Be accorded consistent treatment. A cost may not be assigned to a Federal award as a direct cost if any other cost incurred for the same purpose in like circumstances has been allocated to the Federal award as an indirect cost.
- (e) Be determined in accordance with generally accepted accounting principles (GAAP), except, for state and local governments and Indian tribes only, as otherwise provided for in this part.
- (f) Not be included as a cost or used to meet cost sharing or matching requirements of any other federally-financed program in either the current or a prior period. See also §200.306 Cost sharing or matching paragraph (b).
- (g) Be adequately documented. See also §§200.300 Statutory and national policy requirements through 200.309 Period of performance of this part.

Section 200.516 Audit reporting, state in part:

- (a) *Audit findings reported.* The auditor must report the following as audit findings in a schedule of findings and questioned costs:
 - (1) Significant deficiencies and material weaknesses in internal control over major programs and significant instances of abuse relating to major programs. The auditor's determination of whether a deficiency in internal control is a significant deficiency or material weakness for the purpose of reporting an audit finding is in relation to a type of compliance requirement for a major program identified in the Compliance Supplement.
 - (2) Material noncompliance with the provisions of Federal statutes, regulations, or the terms and conditions of Federal awards related to a major program. The auditor's determination of whether a noncompliance with the provisions of Federal statutes, regulations, or the terms and conditions of Federal awards is material for the purpose of reporting an audit finding is in relation to a type of compliance requirement for a major program identified in the compliance supplement.
 - (3) Known questioned costs that are greater than \$25,000 for a type of compliance requirement for a major program. Known questioned costs are those specifically identified by the auditor. In evaluating the effect of questioned costs on the opinion on compliance, the auditor considers the best estimate of total costs questioned (likely questioned costs), not just the questioned costs specifically identified (known questioned costs). The auditor must also report known questioned costs when likely questioned costs are greater than \$25,000 for a type of compliance

requirement for a major program. In reporting questioned costs, the auditor must include information to provide proper perspective for judging the prevalence and consequences of the questioned costs.

The American Institute of Certified Public Accountants defines significant deficiencies and material weaknesses in internal controls over compliance in its *Codification of Statements on Auditing Standards*, section 935, as follows:

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Significant deficiency in internal control over compliance. A deficiency, or a combination of deficiencies, in internal control over compliance that is less severe than a material weakness in internal control over compliance, yet important enough to merit attention by those charged with governance.

Material noncompliance. In the absence of a definition of material noncompliance in the governmental audit requirement, a failure to follow compliance requirements or a violation of prohibitions included in the applicable compliance requirements that results in noncompliance that is quantitatively or qualitatively material, either individually or when aggregated with other noncompliance, to the affected government program.

Title 45, Code of Federal Regulations, Section 264.30 and 264.31-Other Accountability Provisions:

§264.30 What procedures exist to ensure cooperation with the child support enforcement requirements?

- (a) (1) The State agency must refer all appropriate individuals in the family of a child, for whom paternity has not been established or for whom a child support order needs to be established, modified or enforced, to the child support enforcement agency (i.e., the IV-D agency).
- (2) Referred individuals must cooperate in establishing paternity and in establishing, modifying, or enforcing a support order with respect to the child.
- (b) If the IV-D agency determines that an individual is not cooperating, and the individual does not qualify for a good cause or other exception established by the State agency responsible for making good cause determinations in accordance with section 454(29) of the Act or for a good cause domestic violence waiver granted in accordance with §260.52 of this chapter, then the IV-D agency must notify the IV-A agency promptly.
- (c) The IV-A agency must then take appropriate action by:

- (1) Deducting from the assistance that would otherwise be provided to the family of the individual an amount equal to not less than 25 percent of the amount of such assistance; or
- (2) Denying the family any assistance under the program.

§264.31 “What happens if a State does not comply with the IV-D sanction requirement?” states in part,

- (a) (1) If we find that, for a fiscal year, the State IV-A agency did not enforce the penalties against recipients required under §264.30(c), we will reduce the SFAG payable for the next fiscal year by one percent of the adjusted SFAG.

2016-016

The Department of Social and Health Services did not have adequate internal controls in place for submitting quarterly reports for the Temporary Assistance for Needy Families Grant.

Federal Awarding Agency: U.S. Department of Health and Human Services
Pass-Through Entity: None
CFDA Number and Title: 93.558 Temporary Assistance for Needy Families
Federal Award Number: 1601WATANF; 1601WATAN3;1502WATANF
Applicable Compliance Component: Reporting
Known Questioned Cost Amount: None

Background

The Department of Social and Health Services, Community Services Division, administers the Temporary Assistance for Needy Families (TANF) grant that provides temporary cash assistance for families in need. To receive TANF benefits, participants must be engaged in entering the work force through required work participation. State agencies must meet or exceed minimum annual work participation rates of 50 percent overall and 90 percent for two parents. The Department spent more than \$304 million in grant funds during fiscal year 2016.

Federal regulations require the Department to file quarterly reports that include work participation data at the summary and individual level. The Department must file separate reports for their federal TANF program and state programs. The proper reporting of work participation data is critical because it serves as the basis for the federal government to determine whether states have met the required work participation rates. A penalty may apply for failure to meet the required rates.

Description of Condition

During the audit period, the Department did not have adequate internal controls in place to ensure it complied with grant reporting requirements. Data is extracted from large databases and is transformed with customized code to produce reports. The Department performed informal, manual reviews to attempt to ensure necessary coding changes were applied properly. However, we found these reviews were not adequate to ensure all changes were properly identified and reviewed. Additionally, a program change tool was not utilized to facilitate an adequate review. Without the use of such a tool to identify what code was modified, added or deleted, there is an increased risk that changes to code could be made, both intentionally and unintentionally, and not reviewed.

In addition, we found the review and testing of coding changes was not adequately documented. Therefore, we were unable to evaluate if internal controls were in place and effective.

We consider these internal control weaknesses to constitute a significant deficiency. We were able to examine other supporting data not used by the report preparers to verify the amounts reported by the Department were materially accurate.

Cause of Condition

The Department did not have adequate written policies or procedures in place to ensure it complied with reporting requirements. Additionally, while the Department indicated it had program change control software, it was not in use during the audit period. Management did not adequately monitor to ensure the Department complied with federal requirements because it believed informal review and testing of the coding was sufficient to ensure accuracy and completeness.

Effect of Condition

By not ensuring the accuracy of the required quarterly data reports, the Department diminishes the federal government's ability to monitor grant requirements. Additionally, grant conditions allow the grantor to penalize the Department 4 percent of the grant for each quarter the state fails to submit an accurate, complete and timely report, and up to 21 percent for not meeting minimum participation rates.

Because it did not perform adequate reviews, the Department cannot be sure the data was accurate and complete. Without assurance the data is accurate, the Department could become noncompliant without being aware and could be penalized.

Recommendations

We recommend the Department:

- Establish adequate written policies and procedures for this complex reporting process
- Improve internal controls to ensure accurate and complete reporting
- Use a program change tool, along with a secondary review, to ensure all changes are appropriate, accurate and complete

Department's Response

The Department partially agrees with this audit finding.

Management considers the cost benefit of documentation requirements for the entity as well as the size, nature, and complexity of the entity and its objectives. We believe:

- *Controls for change requests, coding updates and the approval processes are adequate. The Department has extensive documentation on algorithms for deriving the items in the federal transmission, including specifications on tables and codes in the Automated Client Eligibility System and the Social Service Payment System and how Statistical Analysis System processes use these data to comply with reporting requirements. Staff also run a quality assurance process that identifies potential fatal and warning edits; these results are reviewed by the Supervisor.*
- *Manual monitoring, reviewing, and testing of coding changes were performed to ensure they were applied correctly. While no version control software was used by the Department, staff kept systematic copies of all old code versions using filename conventions, duplicating most of*

the functionality of version control software. The Department is not aware of any audit standards that require version control software to be used by entities audited under the Single Federal Audit.

- *The quarterly reports required for meeting participation rates were accurate, complete and submitted timely. While the Department may benefit from a more formal process, the review of both code and results is extensive and the process includes monthly dissemination of summary data to multiple partners for review and double checking.*

Going forward, the Research and Data Analysis division will ensure:

- *All proposed coding changes are documented, approved by supervisor, and reviewed after implementation. This process is formally documented for each major change.*
- *Version control software packages are researched to determine if they will be used. Current source code archiving processes are documented.*
- *Supervisor review of all verification and review actions are documented.*

Auditor's Concluding Remarks

We thank the Department for its cooperation and assistance throughout the audit. We will review the status of the Department's corrective action during our next audit.

Applicable Laws and Regulations

Title 2 U.S. Code of Federal Regulations Part 200, *Uniform Administrative Requirements, Cost Principles, and Audit Requirements for Federal Awards* (Uniform Guidance) established reporting requirements for audit findings.

Section 200.303 Internal controls.

The non-Federal entity must:

- (a) Establish and maintain effective internal control over the Federal award that provides reasonable assurance that the non-Federal entity is managing the Federal award in compliance with Federal statutes, regulations, and the terms and conditions of the Federal award. These internal controls should be in compliance with guidance in "Standards for Internal Control in the Federal Government" issued by the Comptroller General of the United States or the "Internal Control Integrated Framework", issued by the Committee of Sponsoring Organizations of the Treadway Commission (COSO).

Section 200.516 Audit reporting, state in part:

- (a) *Audit findings reported.* The auditor must report the following as audit findings in a schedule of findings and questioned costs:
 - (1) Significant deficiencies and material weaknesses in internal control over major programs and significant instances of abuse relating to major programs. The auditor's determination of whether a deficiency in internal control is a significant deficiency or material weakness for the purpose of reporting an audit finding is in relation to a type of compliance requirement for a major program identified in the Compliance Supplement.

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.011 For purposes of adapting GAAS to a compliance audit, the following terms have the meanings attributed as follows: ...

Material weakness in internal control over compliance. A deficiency, or combination of deficiencies, in internal control over compliance, such that there is a reasonable possibility that material noncompliance with a compliance requirement will not be prevented, or detected and corrected, on a timely basis. In this section, a reasonable possibility exists when the likelihood of the event is either reasonably possible or probable as defined as follows:

Reasonably possible. The chance of the future event or events occurring is more than remote but less than likely.

Remote. The chance of the future event or events occurring is slight.

Probable. The future event or events are likely to occur.

Significant deficiency in internal control over compliance. A deficiency, or a combination of deficiencies, in internal control over compliance that is less severe than a material weakness in internal control over compliance, yet important enough to merit attention by those charged with governance.

Material noncompliance. In the absence of a definition of material noncompliance in the governmental audit requirement, a failure to follow compliance requirements or a violation of prohibitions included in the applicable compliance requirements that results in noncompliance that is quantitatively or qualitatively material, either individually or when aggregated with other noncompliance, to the affected government program.

Title 45, Code of Federal Regulations

Section 265.3 – What reports must the State file on a quarterly basis, states in part:

(a) Quarterly reports

(1) Each State must collect on a monthly basis, and file on a quarterly basis, the data specified in the TANF Data Report and the TANF Financial Report

(2) Each State that claims MOE expenditures for a separate State program(s) must collect on a monthly basis, and file on a quarterly basis, the data specified in the SSP-MOE Data Report.

(b) *TANF Data Report.* The TANF Data Report consists of four sections. Two sections contain disaggregated data elements and two sections contain aggregated data elements.

(1) *Disaggregated Data on Families Receiving TANF Assistance - Section one.* Each State must file disaggregated information on families receiving TANF assistance. This section specifies identifying and demographic data such as the individual's Social Security Number and information such as the amount of assistance received, educational level, employment status, work participation activities, citizenship status, and earned and unearned income. The data must be provided for both adults and children.

- (2) *Disaggregated Data on Families No Longer Receiving TANF Assistance - Section two.* Each State must file disaggregated information on families no longer receiving TANF assistance. This section specifies the reasons for case closure and data similar to the data required in section one.
 - (3) *Aggregated Data - Section three.* Each State must file aggregated information on families receiving, applying for, and no longer receiving TANF assistance. This section of the TANF Data Report requires aggregate figures in such areas as: The number of applications received and their disposition; the number of recipient families, adult recipients, and child recipients; the number of births and out-of-wedlock births for families receiving TANF assistance; the number of noncustodial parents participating in work activities; and the number of closed cases.
 - (4) *Aggregated Caseload Data by Stratum-Section four.* Each State that opts to use a stratified sample to report the quarterly TANF disaggregated data must file the monthly caseload data by stratum for each month in the quarter.
- (d) *SSP-MOE Data Report.* The SSP-MOE Data Report consists of four sections. Two sections contain disaggregated data elements and two sections contain aggregated data elements.
- (1) *Disaggregated Data on Families Receiving SSP-MOE Assistance - Section one.* Each State that claims MOE expenditures for a separate State program(s) must file disaggregated information on families receiving SSP-MOE assistance. This section specifies identifying and demographic data such as the individual's Social Security Number, the amount of assistance received, educational level, employment status, work participation activities, citizenship status, and earned and unearned income. The data must be provided for both adults and children.
 - (2) *Disaggregated Data on Families No Longer Receiving SSP-MOE Assistance - Section two.* Each State that claims MOE expenditures for a separate State program(s) must file disaggregated information on families no longer receiving SSP-MOE assistance. This section specifies the reasons for case closure and data similar to the data required in section one.
 - (3) *Aggregated Data - Section three.* Each State that claims MOE expenditures for a separate State program(s) must file aggregated information on families receiving and no longer receiving SSP-MOE assistance. This section of the SSP-MOE Data Report requires aggregate figures in such areas as: The number of recipient families, adult recipients, and child recipients; the total amount of assistance for families receiving SSP-MOE assistance; the number of non-custodial parents participating in work activities; and the number of closed cases.
 - (4) *Aggregated Caseload Data by Stratum - Section four.* Each State that claims MOE expenditures for a separate State program(s) and that opts to use a stratified sample to report the SSP-MOE quarterly disaggregated data must file the monthly caseload by stratum for each month in the quarter.
- (e) *Optional data elements.* A State has the option not to report on some data elements for some individuals in the TANF Data Report and the SSP-MOE Data Report, as specified in the instructions to these reports.
- (f) *Non-custodial parents.* A State must report information on a non-custodial parent (as defined in § 260.30 of this chapter) if the non-custodial parent:
- (1) Is receiving assistance as defined in § 260.31 of this chapter;

- (2) Is participating in work activities as defined in section 407(d) of the Act; or
- (3) Has been designated by the State as a member of a family receiving assistance.

Title 45, Code of Federal Regulations

Section 262.1 What penalties apply to States [states in part]?

- (a) We will assess fiscal penalties against States under circumstances defined in parts 261 through 265 of this chapter. The penalties are:
 - (1) A penalty of the amount by which a State misused its TANF funds;
 - (2) An additional penalty of five percent of the adjusted SFAG if such misuse was intentional;
 - (3) A penalty of four percent of the adjusted SFAG for each quarter a State fails to submit an accurate, complete and timely required report;
 - (4) A penalty of up to 21 percent of the adjusted SFAG for failure to satisfy the minimum participation rates;

2016-017 **The Department of Social and Health Services did not have adequate internal controls in place to ensure compliance with the maintenance of effort requirements for the Temporary Assistance for Needy Families grant program.**

Federal Awarding Agency: U.S. Department of Health and Human Services
Pass-Through Entity: None
CFDA Number and Title: 93.558 Temporary Assistance for Needy Families
Federal Award Number: 1601WATANF; 1601WATAN3;1502WATANF
Applicable Compliance Component: Level of Effort
Known Questioned Cost Amount: None

Background

The Department of Social and Health Services (Department), Community Services Division, administers the Temporary Assistance for Needy Families (TANF) grant that provides temporary cash assistance for families in need. The Department spent more than \$304 million in grant funds during fiscal year 2016.

Federal regulations require the Department to maintain state spending at certain levels to meet federal grant requirements. Referred to as maintenance of effort (MOE), these requirements include that the state must:

- Maintain qualified state expenditures for eligible families at a level that is at least 80 percent of historic state expenditures. Qualified expenditures with respect to eligible families may come from all programs, such as the state’s TANF program as well as programs separate from the state’s TANF program.
- Maintain qualified state expenditures at a level that is more than 100 percent of its historic state expenditures for fiscal year 1994 to keep any of the federal contingency funding it received
- Show all the costs are verifiable.

Although the Department administers the grant, it can count certain expenditures made by other state agencies toward its MOE requirements. To do so, the Department must ensure the expenditures of the other state agencies were on TANF-eligible clients.

During fiscal year 2016, the Department claimed about \$186 million of its own spending within seven programs. In addition, the Department claimed about \$420 million in MOE expenditures from 15 programs, including seven other state agencies and two non-profit organizations. These expenditures were not part of the state’s TANF program.

In our fiscal year 2015 audit, we reported the Department did not have adequate internal controls to ensure MOE requirements were met. This was reported as finding number 2015-020.

Description of Condition

During the audit period, the Department did not have adequate internal controls in place to ensure it complied with the MOE requirements.

Data is extracted from large databases and is transformed with customized code to produce the list of eligible clients used to match other agency data. The Department performed reviews to attempt to ensure necessary coding changes were applied properly. However, we found a program change tool was not used to facilitate an adequate review. Without the use of such a tool to identify what code was modified, added or deleted, there is an increased risk that changes to code could be made, either intentionally or unintentionally, and not reviewed. In addition, we found the review and testing of coding changes was not adequately documented to evaluate if internal controls were in place and effective.

We also found the Department failed to:

- Adequately monitor expenditures throughout the year to ensure it would meet the MOE requirements
- Review final expenditure data from outside agencies to determine whether the expenditures are allowable, supported and correct

We consider these internal control weaknesses to constitute a significant deficiency. We were able to examine other supporting data not used by the report preparers to verify the amounts reported by the Department were materially accurate.

Cause of Condition

The Department did not have adequate written policies or procedures in place to ensure it complied with MOE requirements. Additionally, while the Department indicated it had program change control software, the software was not in use during the audit period. Management did not adequately monitor to ensure the Department complied with federal requirements because it believed informal review and testing of the coding was sufficient to ensure accuracy and completeness.

The Department did not have ongoing fiscal monitoring to ensure the MOE requirements would be met. The Department also believed it could rely on the other agencies' processes to ensure expenditures are allowable, supported and correct.

Effect of Condition

By not performing adequate reviews of coding and expenditure data, the Department cannot be sure the MOE data was accurate and complete.

The Department did not know if it would be compliant until after the year had ended due to lack of ongoing monitoring. In addition, the Department did not review adequate supporting documentation before reporting the MOE amount to the grantor, therefore the report preparer and approver did not know whether the amounts reported were allowable.

We determined the Department met the MOE requirements for fiscal year 2016. However, during our testing, we found the following MOE expenditures from several agencies that were not allowable:

- The Department included federal funds that resulted in a MOE amount over-reported by \$3,746,257.
- The Department included unallowable amounts totaling \$6,064. This testing was done using a statistically valid sampling method, and we therefore project the likely error is \$2,840,489.
- The Department included MOE amounts that were outside the current federal fiscal year.

Without assurance the data is allowable and accurate, the Department could unknowingly become noncompliant, and the grantor could reduce future grant funds in the amount of the shortage.

Recommendations

We recommend the Department:

- Establish adequate written policies and procedures for this complex process to ensure it collects and reviews adequate documentation to support all MOE expenditures
- Use a program change tool, along with a secondary review, to ensure all coding changes are appropriate, accurate and complete
- Monitor throughout the year to ensure the federal requirements are met

Department's Response

The Department partially agrees with the overall findings of the State Auditor's Office.

The Department agrees that its written policies and procedures to ensure it collects and reviews adequate documentation to support MOE sources, as well as its monitoring protocol, were not adequately organized or structured. The Department also agrees internal controls need to be improved and documented, such that management may review to ensure accurate and timely reporting.

The Department agrees it should implement a protocol to review final expenditure data from outside agencies to ensure expenditures were allowable, supported, and correct. The Department disagrees on the mechanism to be used for such a review, particularly concerning other state agency MOE sources. The Department believes the use of attestations between the Department and other state agencies satisfies 45 CFR section 263.2(e) (1): "The expenditure is verifiable and meets all applicable requirements in 45 CFR 92.3 and 92.24." The Department feels its current use of attestations to satisfy this requirement is in congruence with both Federal/State Regulations and other states' generally accepted practices.

In response to finding number 2015-020 from the 2015 audit, the Economic Services Administration (ESA), Division of Finance and Financial Recovery (DFFR), Community Services Division (CSD), and Research and Data Analysis (RDA) created a collaborative and joint work group to develop written policies and procedures, and strengthen internal controls specific to reporting and MOE requirements. The finalized procedures identify the steps and processes for staff to ensure the MOE is

accurate and allowable, and include additional controls to ensure quarterly and annual reporting requirements are met.

The written policies and procedures will be used to implement a number of changes, including, but not limited to:

- *Improved procedures regarding its control environment:*
 - *Utilization of CSD “Core Values,” and DSHS RESPECT “Values and Key Principles” to define the control environment.*
- *Development of new and a strengthening of current:*
 - *Risk assessment methods:*
 - *Weekly assessment of potential program exploitation, reporting procedural risks, data and expenditure validity concerns, program eligibility risks, and potential risks due to legislative or programmatic changes.*
 - *Establishment of site-visits to MOE source programs.*
 - *Control activities, including, but not limited to:*
 - *Quarterly review including frequency analysis, trend analyses and triangulation among DFFR, RDA, and CSD, to verify its reported expenditures.*
 - *Information and communication methods:*
 - *Creation of a TANF/MOE Microsoft SharePoint site accessible by all TANF/MOE DSHS groups/leaders, where documents, discussions, calendars, program instructions, processes, and procedures are stored and shared between WA agencies and departments. The TANF/MOE SharePoint site is updated weekly.*
 - *Monitoring practices:*
 - *Site visits, agenda-led open-discussion meetings with TANF MOE participating programs*
 - *Weekly meetings among DFFR, RDA, and CSD TANF MOE administrators*
 - *Creation of “exception protocol” and adoption of WA government “whistle blower” protocol.*

The Department implemented these procedures after the audit period and understands these improvements do not impact this audit period.

Representatives from the Department’s Community Services Division, Division of Finance and Financial Recovery, and Research and Data Analysis Division will continue to meet weekly for ongoing review and updating of internal controls, and policies and procedures related to MOE expenditures. In addition, the representatives will also meet quarterly to sample and check the report for accuracy and review the data for MOE expenditure projection.

The recommendation to utilize a change tool and secondary review to ensure all coding changes are appropriate, accurate and complete is addressed by the Department’s Research and Data Analysis Division (RDA) for SAO 2016-023 TANF Reporting 199-209 finding.

Auditor’s Concluding Remarks

We thank the Department for its cooperation and assistance throughout the audit. We will review the status of the Department’s corrective action during our next audit.

Applicable Laws and Regulations

Title 2 U.S. Code of Federal regulations Part 200, *Uniform Administrative Requirements, Cost Principles, and Audit Requirements for Federal Awards* (Uniform Guidance) established reporting requirements for audit findings.

Section 200.303 Internal controls.

The non-Federal entity must:

- (a) Establish and maintain effective internal control over the Federal award that provides reasonable assurance that the non-Federal entity is managing the Federal award in compliance with Federal statutes, regulations, and the terms and conditions of the Federal award. These internal controls should be in compliance with guidance in “Standards for Internal Control in the Federal Government” issued by the Comptroller General of the United States or the “Internal Control Integrated Framework”, issued by the Committee of Sponsoring Organizations of the Treadway Commission (COSO).

Section 200.516 Audit reporting, state in part:

- (a) *Audit findings reported.* The auditor must report the following as audit findings in a schedule of findings and questioned costs:
 - (1) Significant deficiencies and material weaknesses in internal control over major programs and significant instances of abuse relating to major programs. The auditor’s determination of whether a deficiency in internal control is a significant deficiency or material weakness for the purpose of reporting an audit finding is in relation to a type of compliance requirement for a major program identified in the Compliance Supplement.

The American Institute of Certified Public Accountants defines significant deficiencies and material weaknesses in internal controls over compliance in its *Codification of Statements on Auditing Standards*, section 935, as follows:

.011 For purposes of adapting GAAS to a compliance audit, the following terms have the meanings attributed as follows: ...

Material weakness in internal control over compliance. A deficiency, or combination of deficiencies, in internal control over compliance, such that there is a reasonable possibility that material noncompliance with a compliance requirement will not be prevented, or detected and corrected, on a timely basis. In this section, a reasonable possibility exists when the likelihood of the event is either reasonably possible or probable as defined as follows:

Reasonably possible. The chance of the future event or events occurring is more than remote but less than likely.

Remote. The chance of the future event or events occurring is slight.

Probable. The future event or events are likely to occur.

Significant deficiency in internal control over compliance. A deficiency, or a combination of deficiencies, in internal control over compliance that is less severe than a material weakness in internal control over compliance, yet important enough to merit attention by those charged with governance.

45 CFR section 263 Expenditures of State and Federal TANF Funds, states in part

Section 263.1 – How much State money must a State expend annually to meet the basic MOE requirement, states in part:

- (a) (1) The minimum basic MOE for a fiscal year is 80 percent of a State’s historic State expenditures.

Section 263.2 – What kinds of State expenditures count toward meeting a State’s basic MOE expenditure requirement, states in part:

- (e) Expenditures for benefits or services listed under paragraph (a) of this section may include allowable costs borne by others in the State (e.g., local government), including cash donations from non-Federal third parties (e.g., a non-profit organization) and the value of third party in-kind contributions if:
 - (1) The expenditure is verifiable and meets all applicable requirements in 45 CFR 92.3 and 92.24;
 - (2) There is an agreement between the State and the other party allowing the State to count the expenditure toward its MOE requirement; and,
 - (3) The State counts a cash donation only when it is actually spent.

Section 263.8 - What happens if a State fails to meet the basic MOE requirement?

- (a) If any State fails to meet its basic MOE requirement for any fiscal year, then we will reduce dollar-for-dollar the amount of the SFAG payable to the State for the following fiscal year.
- (b) If a State fails to meet its basic MOE requirement for any fiscal year, and the State received a WtW formula grant under section 403(a)(5)(A) of the Act for the same fiscal year, we will also reduce the amount of the SFAG payable to the State for the following fiscal year by the amount of the WtW formula grant paid to the State.

Section 263.9 May a State avoid a penalty for failing to meet the basic MOE requirement through reasonable cause or corrective compliance?

No. The reasonable cause and corrective compliance provisions at §§ 262.4, 262.5, and 262.6 of this chapter do not apply to the penalties in § 263.8.

Section 264.72 What requirements are imposed on a State if it receives contingency funds, states in part:

- (a) (1) A State must meet a Contingency Fund MOE level of 100 percent of historic State expenditures for FY 1994.
- (2) A State must exceed the Contingency Fund MOE level to keep any of the contingency funds that it received. It may be able to retain a portion of the amount of contingency funds that match countable State expenditures, as defined in § 264.0,

that are in excess of the State's Contingency Fund MOE level, after the overall adjustment required by section 403(b)(6)(C) of the Act.

2016-018 **The Department of Social and Health Services did not have adequate internal controls in place and was not compliant with requirements for submitting quarterly and annual reports for the Temporary Assistance for Needy Families grant.**

Federal Awarding Agency: U.S. Department of Health and Human Services
Pass-Through Entity: None
CFDA Number and Title: 93.558 Temporary Assistance for Needy Families
Federal Award Number: 1601WATANF; 1601WATAN3;1502WATANF
Applicable Compliance Component: Reporting
Known Questioned Cost Amount: None

Background

The Department of Social and Health Services, Community Services Division, administers the Temporary Assistance for Needy Families (TANF) grant that provides temporary cash assistance for families in need. To receive TANF benefits, participants must be engaged in entering the work force through the Work First program, with limited exceptions.

The Department spent about \$305 million in grant funds during state fiscal year 2016.

Quarterly financial reports

Federal regulations require the Department to file quarterly financial reports that include spending data on the use of federal TANF funds, as well as state TANF funds. The Department must collect on a monthly basis, and file on a quarterly basis, the data specified in the TANF Financial Report. A quarterly report must be filed for each federal grant that is open. The state must maintain TANF spending at a specific level to meet federal maintenance of effort (MOE) requirements.

Annual report

The Department also must file an annual report containing detailed information on the state's MOE spending for that year. The total MOE expenditures reported on the federal fiscal year end quarterly financial report must match the expenditures reported on the annual report. The Department must maintain records that show all costs are allowable and verifiable.

We reported a finding in our 2015 audit that the Department lacked adequate internal controls over submitting quarterly and annual reports for the TANF program. This was reported in finding number 2015-21.

Description of Condition

The Department did not have adequate internal controls in place to ensure it complied with grant reporting requirements for quarterly financial reports or its annual report.

Quarterly financial reports

The Department reported \$606,337,064 in state spending for federal fiscal year 2015, but did not maintain all the documentation needed to support the expenditures. We examined four of the seven submitted quarterly reports. For one of the four quarterly reports we examined, the Department reported expenditures through April instead of March in error. This resulted in a misstatement of \$36,569,124. In addition, the final report for federal fiscal year 2015 included nearly \$420,000,000 in spending by other state agencies and two nonprofit organizations. Each of these entities told the Department how much they spent, but the staff who submitted the reports did not verify the amounts were accurate and adequately supported before reporting them to the federal government.

Annual report

The annual report was filed before confirming the MOE totals matched the federal fiscal year end quarterly financial report, resulting in a misstatement of \$35,201,987. In addition, we identified errors in the underlying data from other agencies that totaled about \$3.8 million. This error was partially identified through statistically valid sampling methods, and we therefore project another \$2.8 million is likely in error as well.

We consider these internal control weaknesses to constitute a material weakness for the quarterly financial reports and the annual report.

Cause of Condition

The Department did not have written policies or procedures in place to ensure it complied with reporting requirements. The staff who prepared the reports relied on emails received from other state agencies and two nonprofit organizations for support and believed this was sufficient.

Additionally, management did not adequately monitor to ensure the Department complied with the federal requirements.

Effect of Condition

By not ensuring the accuracy of the required quarterly and annual reports, the federal government's ability to monitor grant funds is diminished. Additionally, grant terms allow the grantor to penalize the Department for noncompliance, including suspending or terminating the award.

We were able to examine other supporting data not used by the report preparers and determined one quarterly report and the annual report had material errors.

Recommendations

We recommend the Department:

- Establish written policies and procedures for preparing the reports
- Improve internal controls sufficiently to ensure reporting requirements are met
- Verify expenditures reported as state maintenance of effort to ensure they are allowable and adequately supported
- Maintain adequate documentation to support reports filed with its federal grantor

Department's Response

The Department partially concurs with the State Auditor's Office that the Department's internal controls that were in place to ensure compliance with federal reporting requirements were not adequate and that there were errors in the Department's quarterly and annual reports.

The Department does not agree with the conclusion of the State Auditor's Office that "the Department did not have written policies or procedures in place." The Department acknowledges that its procedures for preparing the financial reports were not adequately documented or well-organized.

In response to finding number 2015-021 from the 2015 audit by the State Auditor's Office, the Department created a work group comprised of staff from the Division of Finance and Financial Recovery (DFFR), Community Services Division (CSD), and Research & Data Analysis (RDA). The work group developed additional written procedures and adopted those procedures to strengthen internal controls for ensuring that federal reporting requirements were met. The Department has been continuously improving the internal controls since the ending of the last audit period. The Department realizes that some of the internal controls were not in place or finalized during this audit period and understands that the SAO could not consider these improvements.

The Department does not agree with the SAO that "the staff who prepared the reports relied on emails received from other state agencies and two nonprofit organizations for support and believed this was sufficient." The Department ensured that the state agencies' expenditures were verifiable and allowable by reviewing the agencies' reporting methodologies and records maintenance protocols, and analyzing the agencies' expenditure data to the extent allowable under state regulations and policies protecting confidentiality.

The Department asserts that the State Auditor's Office erred in applying federal regulations when it concluded that the Department's staff who submitted the reports "must verify" the amounts of spending by the other non-State government agencies before counting those expenditures toward the State's basic Maintenance of Effort (MOE) requirement, rather than merely ensuring that the amounts could be verified. Section 263.2(e) of Title 45 of the Code of Federal Regulations establishes requirements for the kinds of expenditures that may be counted toward meeting its maintenance of effort requirement. An expenditure may be counted and reported if it "is verifiable and meets all applicable requirements in 45 CFR 92.3 and 92.24" and if there is "an agreement between the State and the other party allowing the State to count the expenditure toward its MOE requirement." [45 CFR § 263.2(e)(1) and (2)] The Department believes obtaining attestations from the other agencies is

in accordance with the federal requirement that expenditures are verifiable and that the State has an agreement with the other party allowing the State to count the expenditure toward its MOE requirements. The Department feels its current use of attestations to satisfy this requirement is in congruence with both Federal/State Regulations and other states' generally accepted practices."

In addition to an ongoing review of policies and procedures for continuous discussion on process improvements and internal controls, the Department will:

- *Convene and lead a quarterly TANF MOE meeting consisting of representatives from CSD, DFFR, and RDA to review the MOE projection data.*
- *Develop a quarterly report review checklist and update the written policies and procedures to include this new process.*
- *Initiate a meeting with the SAO to review and provide feedback on the newly developed written policies and procedures.*

Auditor's Concluding Remarks

We thank the Department for its cooperation and assistance throughout the audit.

We requested copies of all policies and procedures in place during the audit period relating to the preparation of these reports. The Department provided no policies, stating that a policy was being worked on, but was still in draft form and had not been implemented. The Department did provide two documents related to small pieces of the report preparation, but they did not cover enough of the process to ensure the reports were accurate and complete. We reaffirm the Department did not have written policies and procedures in place that would ensure compliance with federal requirement.

The Department also states *"The Department ensured that the state agencies' expenditures were verifiable and allowable by reviewing the agencies' reporting methodologies and records maintenance protocols, and analyzing the agencies' expenditure data to the extent allowable under state regulations and policies protecting confidentiality."* During the audit we had numerous meetings with staff and at no point was evidence provided that showed the Department reviewed the methodologies and records maintenance protocols of the other state agencies. We followed up with the Department to determine if other reviews we were not aware of were being performed. The Department referred us to multiple processes we were already aware of such as:

- Performing trend and frequency analyses
- Comparing the population of TANF eligible clients from the expenditures reported by the other agencies to ensure they were TANF eligible
- Meeting internally to discuss the amounts reported by the partner agencies to determine if they appear reasonable. This includes comparing to prior reporting periods
- Asking the partner agencies to confirm and accept the calculated expenditure amounts

These processes identified by the Department are useful analytical tools, but are not sufficient to ensure reported expenditures are accurate. Therefore, the Department cannot be sure they are reporting the proper amounts. This is evidenced by the fact the Department was unaware there were errors in the amounts reported by their three largest partner agencies until we informed them.

The Department also asserts “*the State Auditor’s Office erred in applying federal regulations when it concluded that the Department’s staff who submitted the reports “must verify” the amounts of spending by the other non-State government agencies before counting those expenditures toward the State’s basic Maintenance of Effort (MOE) requirement, rather than merely ensuring that the amounts could be verified.*” 45 CFR § 263.2(e)(1) and (2) cited by the Department only applies to non-State entities, which only made up four percent of the \$420 million non-DSHS expenditures reported. The Department further states it feels this standard is the same for other state agencies and that an attestation is sufficient to rely on other agencies expenditures. This is not accurate because the state is responsible for the accuracy of its own information. If the Department were to have agreements with other agencies, that specify they are responsible for maintaining sufficient internal controls to ensure the accuracy of the data provided, the Department may be able to rely on those controls. In the absence of such agreements, the responsibility to ensure only allowable and accurate amounts are reported is the Department’s. The effect of this lack of monitoring was apparent when we discovered expenditures were improperly claimed at each of the other three agencies we examined.

We will review the status of the Department’s corrective action during our next audit.

Applicable Laws and Regulations

Title 2 U.S. Code of Federal regulations Part 200, *Uniform Administrative Requirements, Cost Principles, and Audit Requirements for Federal Awards* (Uniform Guidance) established reporting requirements for audit findings.

Section 200.303 Internal controls.

The non-Federal entity must:

- (a) Establish and maintain effective internal control over the Federal award that provides reasonable assurance that the non-Federal entity is managing the Federal award in compliance with Federal statutes, regulations, and the terms and conditions of the Federal award. These internal controls should be in compliance with guidance in “Standards for Internal Control in the Federal Government” issued by the Comptroller General of the United States or the “Internal Control Integrated Framework”, issued by the Committee of Sponsoring Organizations of the Treadway Commission (COSO).
- (b) Comply with Federal statutes, regulations, and the terms and conditions of the Federal awards.

Section 200.516 Audit reporting, state in part:

- (a) *Audit findings reported.* The auditor must report the following as audit findings in a schedule of findings and questioned costs:
 - (1) Significant deficiencies and material weaknesses in internal control over major programs and significant instances of abuse relating to major programs. The auditor’s determination of whether a deficiency in internal control is a significant deficiency or material weakness for the purpose of reporting an audit finding is in relation to a type of compliance requirement for a major program identified in the Compliance Supplement.
 - (2) Material noncompliance with the provisions of Federal statutes, regulations, or the terms and conditions of Federal awards related to a major program. The auditor’s

determination of whether a noncompliance with the provisions of Federal statutes, regulations, or the terms and conditions of Federal awards is material for the purpose of reporting an audit finding is in relation to a type of compliance requirement for a major program identified in the compliance supplement.

The American Institute of Certified Public Accountants defines significant deficiencies and material weaknesses in internal controls over compliance in its *Codification of Statements on Auditing Standards*, section 935, as follows:

.011 For purposes of adapting GAAS to a compliance audit, the following terms have the meanings attributed as follows: ...

Material weakness in internal control over compliance. A deficiency, or combination of deficiencies, in internal control over compliance, such that there is a reasonable possibility that material noncompliance with a compliance requirement will not be prevented, or detected and corrected, on a timely basis. In this section, a reasonable possibility exists when the likelihood of the event is either reasonably possible or probable as defined as follows:

Reasonably possible. The chance of the future event or events occurring is more than remote but less than likely.

Remote. The chance of the future event or events occurring is slight.

Probable. The future event or events are likely to occur.

Significant deficiency in internal control over compliance. A deficiency, or a combination of deficiencies, in internal control over compliance that is less severe than a material weakness in internal control over compliance, yet important enough to merit attention by those charged with governance.

Material noncompliance. In the absence of a definition of material noncompliance in the governmental audit requirement, a failure to follow compliance requirements or a violation of prohibitions included in the applicable compliance requirements that results in noncompliance that is quantitatively or qualitatively material, either individually or when aggregated with other noncompliance, to the affected government program.

Title 45, Code of Federal Regulations

Section 265.3 – What reports must the State file on a quarterly basis, states in part:

(a) Quarterly reports

(1) Each State must collect on a monthly basis, and file on a quarterly basis, the data specified in the TANF Data Report and the TANF Financial Report

Section 263.2 – What kinds of State expenditures count toward meeting a State’s basic MOE expenditure requirement, states in part:

(e) Expenditures for benefits or services listed under paragraph (a) of this section may include allowable costs borne by others in the State (e.g., local government), including cash donations from non-Federal third parties (e.g., a non-profit organization) and the value of third party in-kind contributions if:

(1) The expenditure is verifiable and meets all applicable requirements in 45 CFR 75.2 and 75.306;

- (2) There is an agreement between the State and the other party allowing the State to count the expenditure toward its MOE requirement; and,
- (3) The State counts a cash donation only when it is actually spent.

Section 265.9 What information must the State file annually, states in part:

- (a) Each State must file an annual report containing information on the TANF program and the State's MOE program(s) for that year. The report may be filed as:
 - (1) An addendum to the fourth quarter TANF Data Report; or
 - (2) A separate annual report.
- (c) Each State must provide the following information on the State's program(s) for which the State claims MOE expenditures:
 - (1) The name of each program and a description of the major activities provided to eligible families under each such program;
 - (2) Each program's statement of purpose;
 - (3) If applicable, a description of the work activities in each separate State MOE program in which eligible families are participating;
 - (4) For each program, both the total annual State expenditures and the total annual State expenditures claimed as MOE;
 - (5) For each program, the average monthly total number or the total number of eligible families served for which the State claims MOE expenditures as of the end of the fiscal year;
 - (6) The eligibility criteria for the families served under each program/activity;
 - (7) A statement whether the program/activity had been previously authorized and allowable as of August 21, 1996, under section 403 of prior law;
 - (8) The FY 1995 State expenditures for each program/activity not authorized and allowable as of August 21, 1996, under section 403 of prior law (see § 263.5(b) of this chapter); and
 - (9) A certification that those families for which the State is claiming MOE expenditures met the State's criteria for "eligible families."
- (d) If the State has submitted the information required in paragraphs (b) and (c) of this section in the State Plan, it may meet the annual reporting requirements by reference in lieu of re-submission. If the information in the annual report has not changed since the previous annual report, the State may reference this information in lieu of re-submission.

Section 265.10 When is the annual report due?

The annual report required by § 265.9 is due at the same time as the fourth quarter TANF Data Report.

Section 265.4 When are quarterly reports due?

- (a) Each State must file the TANF Data Report and the TANF Financial Report (or, as applicable, the Territorial Financial Report) within 45 days following the end of the quarter or be subject to a penalty.

- (b) Each State that claims MOE expenditures for a separate State program(s) must file the SSP-MOE Data Report within 45 days following the end of the quarter or be subject to a penalty.
- (c) A State that fails to submit the reports within 45 days will be subject to a penalty unless the State files complete and accurate reports before the end of the fiscal quarter that immediately succeeds the quarter for which the reports were required to be submitted.

2016-019

The Department of Social and Health Services did not have adequate internal controls over and did not comply with requirements to ensure payments to child care providers for the Temporary Assistance for Needy Families program were allowable.

Federal Awarding Agency:	U.S. Department of Health and Human Services
Pass-Through Entity:	None
CFDA Number and Title:	93.558 Temporary Assistance for Needy Families
Federal Award Number:	1502WATANF, 1601WATANF, 1601WATAN3
Applicable Compliance Component:	Activities Allowed or Unallowed and Allowable Costs/Cost Principles
Known Questioned Cost Amount:	\$ 5,176
Likely Questioned Cost Amount:	\$24,831,172

Background

The Department of Social and Health Services (DSHS) administers the Temporary Assistance for Needy Families (TANF) grant that provides temporary cash assistance for families in need. To receive TANF benefits, participants must be engaged in activities listed in the Individual Responsibility Plan (IRP) through the WorkFirst program, unless the TANF benefits are received on behalf of a child only. TANF funds may be used to pay for participants' child care costs to meet one of the program's primary purposes of helping clients obtain employment. If a client obtains employment and is no longer eligible for TANF, TANF funds may still be used to pay for child care costs to assist the client in maintaining employment.

Working Connections Child Care Program

Washington has established the Working Connections Child Care (WCCC) program that helps eligible working families in paying for child care. Both the Department of Early Learning (DEL) and DSHS administer the program. DEL is responsible for establishing policies and procedures for the program and for licensing child care providers. DSHS determines client eligibility and pays child care providers under an agreement with DEL.

Federal grant funding

Payments are made to WCCC providers for child care from both the Child Care and Development Fund (CCDF) grant and the TANF grant. While the two federal programs are separate, the requirements and policies in Washington for child care payments are consolidated under the WCCC program.

In fiscal year 2016, DSHS made an estimated 638,072 monthly child care subsidy payments to all providers funded by the CCDF and TANF grants. In total DSHS paid over \$271 million in federal grant funds to providers - about \$32 million coming from the TANF grant.

Child care providers

There are three provider types in the WCCC program:

- Licensed centers
- Licensed in-home providers
- Friends, family or neighbors (FFNs)

State rules require child care providers to maintain attendance records to support their requests for payment. At a minimum, the records must include the child's name, date(s) child care was provided and authorized signature, typically of a parent or guardian, documenting the times the child arrived and left care.

Prior audit results

Since fiscal year 2005, we have reported DEL and DSHS have not established adequate internal controls to prevent unallowable payments to child care providers. In 2015, we issued a finding to DEL reporting questioned costs of \$64,802 and likely questioned costs of \$85,239,118 for CCDF funds only.

The most recent audit finding numbers were 2015-023, 2014-023, 2013-016, 12-28, 11-23, 10-31, 9-12, and 8-13. The findings for fiscal years 2008 through 2011 were issued to both DSHS and DEL while 2012 through 2015 were issued to DEL only.

In the past four audits, we also reported that DSHS did not have adequate internal controls over the eligibility process for CCDF child care subsidy recipients. The eligibility process is closely related to the allowable activities payments for providers. These were reported as finding numbers 2015-026, 2014-026, 2013-017 and 12-30. During the 2015 state fiscal year, we questioned \$12,967 in known questioned costs and \$22,680,872 in likely questioned costs due to incorrect eligibility determinations.

Description of Condition

We found the internal control deficiencies identified during our audit of the CCDF program directly affect DSHS' use of TANF funds, because the federal grants are commingled when paying WCCC providers.

We found DSHS does not have adequate internal controls to ensure payments to child care providers were allowable. Although each agency performs some oversight activities, they were not sufficient to ensure payments were allowable.

Because CCDF and TANF funds are commingled for the WCCC program, child care payments were tested as one population for both funding sources. We randomly selected and examined 133 WCCC payments for child care totaling \$57,813 in federal funds, to determine if they were allowable. Of this amount, 23 payments included a total of \$12,957 in TANF federal funding. With assistance from DEL, we requested attendance records from providers that supported the payments. We also compared the

providers' records to the case files to determine if the payments were allowed by federal and state regulations as well as DEL policies.

We found 14 of the 23 (61 percent) payments with TANF funding were partially or completely unallowable. Of these payments, 13 were fully TANF funded and one was partially TANF funded. The total questioned costs for these payments was \$5,176.

We consider these internal control weaknesses to constitute a material weakness.

Cause of Condition

DSHS did not have sufficient preventive internal controls to ensure payments were allowable. While DSHS authorizes a maximum for what providers may bill without further approval, this does not prevent providers from billing for unallowable days or hours, or services. Childcare providers are not required to submit any supporting documentation before payments are made. The authorization maximums also do not prevent clients from using child care when they are not meeting the activities required in the IRP.

While DSHS reviewed some payments through its internal auditing activities, it did not consider certain components required by state regulations. This includes comparing attendance records and employer verified working schedules for the parent(s) to the payment and supporting documentation. Therefore, while the DSHS auditors' reconciliations identified overpayments during their reviews, we determined they are ineffective because we found errors with 61 percent of the payments we tested.

The primary reasons we determined the payments to be unallowable were:

- DSHS did not verify employment or school schedule as required when determining initial or ongoing eligibility
- Providers overbilled for services not performed or supported by required documentation
- Attendance records were not provided upon request or were inadequate to support payments

Effect of Condition and Questioned Costs

Not having adequate internal controls in place puts DSHS at a higher risk of making improper payments for child care services. Additionally, by not considering all the criteria state regulations require, DSHS auditors might not detect all improper payments when performing reconciliations.

We used a statistical sampling method to randomly select the payments examined in the audit. We found \$5,176 in known questioned costs and estimate the total amount of likely questioned costs to be \$24,831,172.

We question costs when we find an agency has not complied with grant regulations or when it does not have adequate documentation to support payments.

Many of the improper payments were partially funded by state money. Specifically, we found 81 improper payments were partially funded with a total of \$206 of state money, which projects to a

likely improper payment amount of \$986,249. This amount is not included in the federal questioned costs.

Recommendations

We recommend DSHS implement preventive internal controls over payments to providers to reduce the rate of unallowable payments. We also recommend DSHS develop internal controls to help detect unallowable provider billings based on the expected consumer child care needs as documented by the parent's verified working schedule.

Further, we recommend DSHS continue to improve its reconciliation process, including testing to all federal and state regulations when reviewing provider payments.

Finally, we recommend DSHS consult the grantor to discuss the repayment of questioned costs, including interest.

Agency's Response

The Department of Social and Health Services appreciates, acknowledges and supports the State Auditor's Office's (SAO) mission, which is to hold state and local governments accountable for the use of public resources.

The Department partially concurs with the overall findings of the State Auditor's Office. To that end, the Department will enact major changes to improve our internal controls. To appropriately and effectively initiate and implement these substantial changes, while minimizing impact to our clients, the Department will seek 25 additional full-time employees and necessary resources to staff the business-process redesign and support the information technology initiatives necessary to improve our internal controls.

The Department also notes that even if we immediately implement changes that fully resolve the audit findings, given that we are currently about three quarters of the way through the SFY17 audit period (which spans July 1, 2016 – June 30, 2017), we won't see the full benefit of our corrective actions until the State Fiscal Year 2018 audit (which will span the period of July 1, 2017 – June 30, 2018). It is likely that we will see similar findings in the SFY17 audit.

SAO Description of Weakness: *DSHS did not verify employment or school schedule as required when determining initial or ongoing eligibility.*

Program policy and guidance, as maintained by the Department of Early Learning (DEL), does not require staff to verify employment or school schedule as a condition of eligibility. The Individual Responsibility Plan (IRP) outlines the approved activity for Temporary Assistance for Needy Families (TANF) clients participating in the WorkFirst program. The IRP also lists the number of hours the client is required to participate, which determines the client's authorization for full-time or part-time child care. WorkFirst staff and contractors maintain the client's schedule, and regularly track and report actual hours of participation. For contractors, DSHS assumes the client is participating and remains eligible for child care unless the client is referred back for non-participation.

DEL clarified policy around verification to address SAO findings from SWSA 2015. On April 15, 2016, DEL revised WAC 170-290-0012 removing section (d) which referenced obtaining “work, school, or training schedule.” To further support these changes, DEL created WAC 170-290-0014 to outline information that must be verified before making a payment to a provider. The rule specifically allows for self-attestation of work schedule. DHS approved the plan on June 27, 2016, but made it effective as of March 1, 2016. Federal approval of the CCDF state plan ratified DELs policy changes.

SAO Description of Weakness: *Providers overbilled for services not performed or supported by required documentation. While DSHS authorizes a maximum for what providers may bill without further approval, this does not prevent providers from billing for unallowable days or hours, or services. Childcare providers are not required to submit any supporting documentation before payments are made. The authorization maximums also do not prevent clients from using child care when they are not working. Attendance records were not provided upon request or were inadequate to support payments.*

DSHS acknowledges that adequate attendance records are necessary in the reconciliation process to determine allowable payments. DELs policy requires providers receiving subsidy payments to maintain attendance records and provide them upon request. However, because attendance records are paper-based, it is not feasible for staff to request, review and reconcile all records before subsidy payments are made. As referenced in the agency response for the 2016-021 Activities Allowed finding:

“DEL continues to request funding for an electronic time and attendance billing system whereby attendance data for all providers is available for Quality Assurance review and as a condition of receiving subsidy payments. With an electronic time and attendance system, DEL can effectively audit 100% of all payments, and will use data analysis (algorithms) to dramatically increase overpayment detection. The electronic attendance system will reduce provider errors and will alter provider behavior, especially for those who now typically bill for their full authorization but are unable to produce records to support the billing.”

DSHS will continue to conduct post-payment reviews where it appears likely that an improper payment may have occurred. Factors suggesting improper payment include, for example, providers that bill the maximum authorization each month. Staff will continue to review the case specifics and verification by requesting attendance records to determine whether an overpayment occurred, whether it was a provider or a client that was overpaid, and the amount of the improper payment and establish an overpayment if appropriate.

Auditor’s Concluding Remarks

We thank the Department for its cooperation and assistance throughout the audit. The Department stated program staff are not required to verify employment or school schedules as a condition of eligibility. WCCC program requirements, including the approved state plan, specify that clients must be participating in verified and confirmed allowable activities. During the audit period, the WCCC program did not allow clients to self-attest either their actual approved activities or expected working schedule. While some changes were made to the new state plan it did not go into effect on March 1, 2016, as the Department states, but instead on June 1, 2016. None of the payments we tested were for

services rendered under the new rules. Additionally, only three of the 14 exceptions were solely for the Department not validating the client's approved activity. The rest were for reasons such as:

- Providers billed for working days beyond available days within the month, and/or days unsupported by billing records
- A provider billed for a child who did not attend the entire month
- Providers did not provide billing records

We reaffirm our finding and will review the status of the Department's corrective action during our next audit.

Applicable Laws and Regulations

Title 2 U.S. Code of Federal Regulations Part 200, *Uniform Administrative Requirements, Cost Principles, and Audit Requirements for Federal Awards* (Uniform Guidance) established reporting requirements for audit findings.

Section 200.303 Internal controls.

The non-Federal entity must:

- (a) Establish and maintain effective internal control over the Federal award that provides reasonable assurance that the non-Federal entity is managing the Federal award in compliance with Federal statutes, regulations, and the terms and conditions of the Federal award. These internal controls should be in compliance with guidance in "Standards for Internal Control in the Federal Government" issued by the Comptroller General of the United States or the "Internal Control Integrated Framework", issued by the Committee of Sponsoring Organizations of the Treadway Commission (COSO).
- (b) Comply with Federal statutes, regulations, and the terms and conditions of the Federal awards.
- (d) Take prompt action when instances of noncompliance are identified including noncompliance identified in audit findings.

Section 200.403 Factors affecting Allowability of costs.

Except where otherwise authorized by statute, costs must meet the following general criteria in order to be allowable under Federal awards.

- (a) Be necessary and reasonable for the performance of the Federal award and be allocable thereto under these principles.
- (b) Conform to any limitations or exclusions set forth in these principles or in the Federal award as to types or amount of cost items.
- (c) Be consistent with policies and procedures that apply uniformly to both federally-financed and other activities of the non-Federal entity.
- (d) Be accorded consistent treatment. A cost may not be assigned to a Federal award as a direct cost if any other cost incurred for the same purpose in like circumstances has been allocated to the Federal award as an indirect cost.
- (e) Be determined in accordance with generally accepted accounting principles (GAAP), except, for state and local governments and Indian tribes only, as otherwise provided for in this part.

- (f) Not be included as a cost or used to meet cost sharing or matching requirements of any other federally-financed program in either the current or a prior period. See also §200.306 Cost sharing or matching paragraph (b).
- (g) Be adequately documented. See also §§200.300 Statutory and national policy requirements through 200.309 Period of performance of this part.

Section 200.516 Audit reporting, state in part:

- (a) *Audit findings reported.* The auditor must report the following as audit findings in a schedule of findings and questioned costs:
 - (b) Significant deficiencies and material weaknesses in internal control over major programs and significant instances of abuse relating to major programs. The auditor's determination of whether a deficiency in internal control is a significant deficiency or material weakness for the purpose of reporting an audit finding is in relation to a type of compliance requirement for a major program identified in the Compliance Supplement.
 - (c) Material noncompliance with the provisions of Federal statutes, regulations, or the terms and conditions of Federal awards related to a major program. The auditor's determination of whether a noncompliance with the provisions of Federal statutes, regulations, or the terms and conditions of Federal awards is material for the purpose of reporting an audit finding is in relation to a type of compliance requirement for a major program identified in the compliance supplement.
 - (d) Known questioned costs that are greater than \$25,000 for a type of compliance requirement for a major program. Known questioned costs are those specifically identified by the auditor. In evaluating the effect of questioned costs on the opinion on compliance, the auditor considers the best estimate of total costs questioned (likely questioned costs), not just the questioned costs specifically identified (known questioned costs). The auditor must also report known questioned costs when likely questioned costs are greater than \$25,000 for a type of compliance requirement for a major program. In reporting questioned costs, the auditor must include information to provide proper perspective for judging the prevalence and consequences of the questioned costs.

The American Institute of Certified Public Accountants defines significant deficiencies and material weaknesses in internal controls over compliance in its *Codification of Statements on Auditing Standards*, section 935, as follows:

.011 For purposes of adapting GAAS to a compliance audit, the following terms have the meanings attributed as follows: ...

Material weakness in internal control over compliance. A deficiency, or combination of deficiencies, in internal control over compliance, such that there is a reasonable possibility that material noncompliance with a compliance requirement will not be prevented, or detected and corrected, on a timely basis. In this section, a reasonable possibility exists when the likelihood of the event is either reasonably possible or probable as defined as follows:

Reasonably possible. The chance of the future event or events occurring is more than remote but less than likely.

Remote. The chance of the future event or events occurring is slight.

Probable. The future event or events are likely to occur.

Significant deficiency in internal control over compliance. A deficiency, or a combination of deficiencies, in internal control over compliance that is less severe than a material weakness in internal control over compliance, yet important enough to merit attention by those charged with governance.

Material noncompliance. In the absence of a definition of material noncompliance in the governmental audit requirement, a failure to follow compliance requirements or a violation of prohibitions included in the applicable compliance requirements that results in noncompliance that is quantitatively or qualitatively material, either individually or when aggregated with other noncompliance, to the affected government program.

45 CFR Subpart A, 260.20, What is the purpose of the TANF program? States:

The TANF program has the following four purposes:

- (a) Provide assistance to needy families so that children may be cared for in their own homes or in the homes of relatives;
- (b) End the dependence of needy parents on government benefits by promoting job preparation, work, and marriage;
- (c) Prevent and reduce the incidence of out-of-wedlock pregnancies and establish annual numerical goals for preventing and reducing the incidence of these pregnancies; and
- (d) Encourage the formation and maintenance of two-parent families.

WAC 170-290-0002 Scope of agency responsibilities. [Effective until 5/15/2016]

- (1) The responsibilities of the department of early learning (DEL) include, but are not limited to:
 - (a) Determining child care subsidy policy for the WCCC and SCC programs, including determining thresholds for eligibility and copayment amounts and establishing rights and responsibilities. DEL is also designated as the lead agency for child care and development funds (CCDF) and oversees expenditure of CCDF funds; and
 - (b) Serving as the designated representative for the state to implement the collective bargaining agreement under RCW 41.56.028 for in-home/relative providers as defined in WAC 170-290-0003(7), and for all licensed family child care providers.
- (2) The responsibilities of the department of social and health services (DSHS) include, but are not limited to, service delivery for the WCCC and SCC programs, including determining who is eligible for WCCC and SCC benefits, authorizing payments for these programs, and managing payments made to providers that receive WCCC and SCC subsidies.
- (3) This allocation between DEL and DSHS is pursuant to section 501(2), chapter 265, Laws of 2006 (2SHB 2964), in which the legislature transferred all of the powers, duties, and functions relating to the WCCC program from DSHS to DEL, except for eligibility staffing and eligibility payment functions, which remain in DSHS.

WAC 170-290-0002 Scope of agency responsibilities, states: [Effective 5/16/2016]

DEL is designated as the lead agency for child care and development funds (CCDF) and oversees expenditure of CCDF funds.

- (1) The responsibilities of the department of early learning (DEL) include, but are not limited to:
 - (a) Determining child care subsidy policy for the WCCC and SCC programs;
 - (b) Determining thresholds for eligibility and copayment amounts and establishing rights and responsibilities; and
 - (c) Serving as the designated representative for the state to implement the collective bargaining agreement under RCW 41.56.028 for in-home/relative providers as defined in WAC 170-290-0003(13), and for all licensed family homes.
- (2) The responsibilities of the department of social and health services (DSHS) include, but are not limited to:
 - (a) Service delivery for the WCCC and SCC programs, including determining who is eligible for WCCC and SCC benefits; and
 - (b) Authorizing payments for these programs, and managing payments made to providers that receive WCCC and SCC subsidies.
- (3) This allocation between DEL and DSHS is pursuant to section 501(2), chapter 265, Laws of 2006 (2SHB 2964), in which the legislature transferred all of the powers, duties, and functions relating to the WCCC program from DSHS to DEL, except for eligibility staffing and eligibility payment functions, which remain in DSHS.

WAC 170-290-0005 Eligibility, states:

- (1) Parents. To be eligible for WCCC, the person applying for benefits must:
 - (a) Have parental control of one or more eligible children;
 - (b) Live in the state of Washington;
 - (c) Be the child's:
 - (i) Parent, either biological or adopted;
 - (ii) Stepparent;
 - (iii) Legal guardian verified by a legal or court document;
 - (iv) Adult sibling or step-sibling;
 - (v) Nephew or niece;
 - (vi) Aunt;
 - (vii) Uncle;
 - (viii) Grandparent;
 - (ix) Any of the relatives in (c)(vi), (vii), or (viii) of this subsection with the prefix "great," such as great-aunt; or
 - (x) An approved in loco parentis custodian responsible for exercising day-to-day care and control of the child and who is not related to the child as described above;
 - (d) Participate in an approved activity under WAC 170-290-0040, 170-290-0045, 170-290-0050, or have been approved per WAC 170-290-0055;
 - (e) Comply with any special circumstances that might affect WCCC eligibility under WAC 170-290-0020;

- (f) Have countable income at or below two hundred percent of the federal poverty guidelines (FPG). The consumer's eligibility shall end if the consumer's countable income is greater than two hundred percent of the FPG;
- (g) Not have a monthly copayment that is higher than the state will pay for all eligible children in care;
- (h) Complete the WCCC application and DSHS verification process regardless of other program benefits or services received; and
 - (i) Meet eligibility requirements for WCCC described in Part II of this chapter.
- (2) Children. To be eligible for WCCC, the child must:
 - (a) Belong to one of the following groups as defined in WAC 388-424-0001:
 - (i) A U.S. citizen;
 - (ii) A U.S. national;
 - (iii) A qualified alien; or
 - (iv) A nonqualified alien who meets the Washington state residency requirements as listed in WAC 388-468-0005;
 - (b) Live in Washington state, and be:
 - (i) Less than age thirteen; or
 - (ii) Less than age nineteen, and:
 - (A) Have a verified special need, according WAC 170-290-0220; or
 - (B) Be under court supervision.

WAC 170-290-0012 Verifying consumers' information, states:

- (1) A consumer must complete the DSHS application for WCCC benefits and provide all required information to DSHS to determine eligibility when:
 - (a) The consumer initially applies for benefits; or
 - (b) The consumer reapplies for benefits.
- (2) A consumer must provide verification to DSHS to determine if he or she continues to qualify for benefits during his or her eligibility period when there is a change of circumstances under WAC 170-290-0031.
- (3) All verification that is provided to DSHS must:
 - (a) Clearly relate to the information DSHS is requesting;
 - (b) Be from a reliable source; and
 - (c) Be accurate, complete, and consistent.
- (4) If DSHS has reasonable cause to believe that the information is inconsistent, conflicting or outdated, DSHS may:
 - (a) Ask the consumer to provide DSHS with more verification or provide a collateral contact (a "collateral contact" is a statement from someone outside of the consumer's residence that knows the consumer's situation); or
 - (b) Send an investigator from the DSHS office of fraud and accountability (OFA) to make an unannounced visit to the consumer's home to verify the consumer's circumstances. See WAC 170-290-0025(9).
- (5) The verification that the consumer gives to DSHS includes, but is not limited to, the following:
 - (a) A current WorkFirst IRP for consumers receiving TANF;
 - (b) Employer name, address, and phone number;

- (c) State business registration and license, if self-employed;
- (d) Work, school, or training schedule (when requesting child care for non-TANF activities);
- (e) Hourly wage or salary;
- (f) Either the:
 - (i) Gross income for the last three months;
 - (ii) Federal income tax return for the preceding calendar year; or
 - (iii) DSHS employment verification form;
- (g) Monthly unearned income the consumer receives, such as child support or supplemental security income (SSI) benefits;
- (h) If the other parent is in the household, the same information for them;
 - (i) Proof that the child belongs to one of the following groups as defined in WAC 388-424-0001:
 - (i) A U.S. citizen;
 - (ii) A U.S. national;
 - (iii) A qualified alien; or
 - (iv) A nonqualified alien who meets the Washington state residency requirements as listed in WAC 388-468-0005;
 - (j) Name and phone number of the licensed child care provider; and
- (k) For the in-home/relative child care provider, a:
 - (i) Completed and signed criminal background check form;
 - (ii) Legible copy of the proposed provider's photo identification, such as a driver's license, Washington state identification, or passport;
 - (iii) Legible copy of the proposed providers' valid Social Security card; and
 - (iv) All other information required by WAC 170-290-0135.
- (6) If DSHS requires verification from a consumer that costs money, DSHS must pay for the consumer's reasonable costs.
- (7) DSHS does not pay for a self-employed consumer's state business registration or license, which is a cost of doing business.
- (8) If a consumer does not provide all of the verification requested, DSHS will determine if a consumer is eligible based information already available to DSHS.

WAC 170-290-0020 Eligibility—Special circumstances, states:

- (1) Child care provided at the consumer's place of work. A consumer is not eligible for WCCC benefits for his or her children when child care is provided at the same location where the consumer works.
- (2) Consumer's child care employment.
 - (a) A consumer may be eligible for WCCC benefits during the time she or he works in a child care center but does not provide direct care in the same classroom to his or her children during work hours.
 - (b) A consumer is not eligible for WCCC benefits during the time she or he works in a family home child care where his or her children are also receiving subsidized child care.

- (c) In-home/relative providers who are paid child care subsidies to care for children receiving WCCC benefits may not receive those benefits for their own children during the hours in which they provide subsidized child care.
 - (d) A child care provider who receives TANF benefits on behalf of a dependent child may not bill the state for subsidized child care for that same child.
- (3) Two-parent family.
- (a) A consumer may be eligible for WCCC if he or she is a parent in a two-parent family and one parent is not able or available as defined in WAC 170-290-0003 to provide care for the children while the other parent is working or participating in approved activities.
 - (b) If a consumer claims one parent is not able to care for the children the consumer must provide written documentation from a licensed professional (see WAC 388-448-0020) that states the:
 - (i) Reason the parent is not able to care for the children;
 - (ii) Expected duration and severity of the condition that keeps the parent from caring for the children; and
 - (iii) Treatment plan if the parent is expected to improve enough to be able to care for the children. The parent must provide evidence from a medical professional showing he or she is cooperating with treatment and is still not able to care for the children.
- (4) Single-parent family. A consumer is not eligible for WCCC benefits when he or she is the only parent in the family and will be away from the home for more than thirty days in a row.
- (5) Legal guardians.
- (a) A legal guardian under WAC 170-290-0005 may receive WCCC benefits for his or her work or approved activities without his or her spouse or live-in partner's availability to provide care being considered unless his or her spouse or live-in partner is also named on the permanent custody order.
 - (b) Eligibility for WCCC benefits is based on the consumer's work or approved activities schedule, the child's need for care, and the child's income eligibility and family size of one.
 - (c) The consumer's spouse or live-in partner is not eligible to receive subsidized child care payments as a child care provider for the child.
- (6) In loco parentis custodians.
- (a) An in loco parentis custodian may be eligible for WCCC benefits when he or she cares for an eligible child in the absence of the child's legal guardian or biological, adoptive or step-parents.
 - (b) An in loco parentis custodian who is not related to the child as described in WAC 170-290-0005(1) may be eligible for WCCC benefits if he or she has:
 - (i) A written, signed agreement between the parent and the caregiver assuming custodial responsibility; or
 - (ii) Receives a TANF grant on behalf of the eligible child.
 - (c) Eligibility for WCCC benefits is based on his or her work schedule, the child's need for care, and the child's income eligibility and family size of one.
 - (d) The consumer's spouse or live-in partner is not eligible to receive subsidized child care payments as a child care provider for the child.

- (7) WorkFirst sanction.
 - (a) A consumer may be eligible for WCCC if he or she is a sanctioned WorkFirst participant and participating in an activity needed to remove a sanction penalty or to reopen his or her WorkFirst case.
 - (b) A WorkFirst participant who loses his or her TANF grant due to exceeding the federal time limit for receiving TANF may still be eligible for WCCC benefits under WAC 170-290-0055.

WAC 170-290-0031 Notification of changes, states:

When a consumer applies for or receives WCCC benefits, he or she must:

- (1) Notify DSHS, within five days, of any change in providers;
- (2) Notify the consumer's provider within ten days when DSHS changes his or her child care authorization;
- (3) Notify DSHS within ten days of any significant change related to the consumer's copayment or eligibility, including:
 - (a) The number of child care hours the consumer needs (more or less hours);
 - (b) The consumer's countable income, including any TANF grant or child support increases or decreases, only if the change would cause the consumer's countable income to exceed the maximum eligibility limit as provided in WAC 170-290-0005. A consumer may notify DSHS at any time of a decrease in the consumer's household income, which may lower the consumer's copayment under WAC 170-290-0085;
 - (c) The consumer's household size such as any family member moving in or out of his or her home;
 - (d) Employment, school or approved TANF activity (starting, stopping or changing);
 - (e) The address and telephone number of the consumer's in-home/relative provider;
 - (f) The consumer's home address and telephone number; and
 - (g) The consumer's legal obligation to pay child support;
- (4) Report to DSHS, within twenty-four hours, any pending charges or conviction information the consumer learns about his or her in-home/relative provider; and
- (5) Report to DSHS, within twenty-four hours, any pending charges or conviction information the consumer learns about anyone sixteen years of age and older who lives with the provider when care occurs outside of the child's home.

WAC 170-290-0040 Approved activities for consumers participating in WorkFirst. [Effective until 5/15/2016]

Applicants and consumers who participate in WorkFirst activities may be eligible for WCCC benefits for the following approved activities in their individual responsibility plans (IRPs), for up to a maximum of sixteen hours per day, including:

- (1) An approved WorkFirst activity under WAC 388-310-0200, with the following exception: In-home/relative providers who are paid child care subsidies to care for children receiving WCCC benefits may not receive those benefits for their own children during the hours in which they provide subsidized child care. These consumers may be eligible for other approved activities in their IRPs;
- (2) Employment as defined in WAC 170-290-0003;

- (3) Self-employment as defined in WAC 170-290-0003 and as described in the consumer's current WorkFirst IRP;
- (4) Transportation time between the location of child care and the consumer's place of employment or approved activity;
- (5) Up to ten hours per week of study time for approved classes; and
- (6) Up to eight hours of sleep time before or after a night shift.

WAC 170-290-0040 Approved activities for applicants and consumers participating in WorkFirst, states: [Effective 5/16/2016]

Applicants and consumers who participate in WorkFirst activities may be eligible for WCCC benefits for the following approved activities in their individual responsibility plans (IRPs), for up to a maximum of sixteen hours per day, including:

- (1) An approved WorkFirst activity under WAC 388-310-0200, with the following exception: In-home/relative providers who are paid child care subsidies to care for children receiving WCCC benefits may not receive those benefits for their own children during the hours in which they provide subsidized child care. These consumers may be eligible for other approved activities in their IRPs;
- (2) Employment as defined in WAC 170-290-0003;
- (3) Self-employment as defined in WAC 170-290-0003 and as described in the consumer's current WorkFirst IRP;
- (4) Transportation time between the location of child care and the consumer's place of employment or approved activity;
- (5) Up to ten hours per week of study time for approved classes; and
- (6) Up to eight hours of sleep time before or after a night shift.

WAC 170-290-0095, When WCCC benefits start, states:

- (1) WCCC benefits for an eligible consumer may begin when the following conditions are met:
 - (a) The consumer has completed the required WCCC application and verification process as described under WAC 170-290-0012 within thirty days of the date DSHS received the consumer's application or reapplication for WCCC benefits;
 - (b) The consumer is working or participating in an approved activity under WAC 170-290-0040, 170-290-0045, 170-290-0050 or 170-290-0055;
 - (c) The consumer needs child care for work or approved activities within at least thirty days of the date of application for WCCC benefits; and
 - (d) The consumer's eligible provider (under WAC 170-290-0125) is caring for his or her children.
- (2) If a consumer fails to turn in all information within thirty days from his or her application date, the consumer must restart the application process.
- (3) The consumer's application date is whichever is earlier:
 - (a) The date the consumer's application is entered into DSHS's automated system; or
 - (b) The date the consumer's application is date stamped as received.

WAC 170-290-0268, Payment discrepancies—Provider overpayments, states:

- (1) An overpayment occurs when a provider receives payment that is more than the provider is eligible to receive. Provider overpayments are established when that provider:
 - (a) Bills and receives payment for services not provided;
 - (b) Bills without attendance records that support their billing;
 - (c) Bills and receives payment for more than they are eligible to bill;
 - (d) With respect to license-exempt providers, bills the state for more than six children at one time during the same hours of care; or
 - (e) With respect to licensed or certified providers:
 - (i) Bills the state for more than the number of children they have in their licensed capacity; or
 - (ii) Is caring for a WCCC child outside their licensed allowable age range without a DEL-approved exception; or
 - (f) With respect to certified providers caring for children in a state bordering Washington:
 - (i) Is determined not to be in compliance with their state's licensing regulations; or
 - (ii) Fails to notify DSHS within ten days of any suspension, revocation, or change to their license.
- (2) DEL or DSHS may request documentation from a provider when preparing to establish an overpayment. The provider has fourteen consecutive calendar days to supply any requested documentation.
- (3) Providers are required to repay any payments that they were not eligible to receive.
- (4) If an overpayment was made through departmental error, the provider is still required to repay that amount.

WAC 170-290-0271, Payment discrepancies—Consumer overpayments, states:

- (1) DSHS establishes overpayments for past or current consumers when the consumer:
 - (a) Received benefits when he or she was not eligible;
 - (b) Used care for an unapproved activity or for children not in his or her WCCC household;
 - (c) Failed to report information to DSHS resulting in an error in determining eligibility, amount of care authorized, or copayment;
 - (d) Used a provider that was not eligible per WAC 170-290-0125; or
 - (e) Received benefits for a child who was not eligible per WAC 170-290-0015 or 170-290-0020.
- (2) DEL or DSHS may request documentation from a consumer when preparing to establish an overpayment. The consumer has fourteen consecutive calendar days to supply any requested documentation.
- (3) Consumers are required to repay any benefits paid by DSHS that they were not eligible to receive.
- (4) If an overpayment was made through departmental error, the consumer is still required to repay that amount.
- (5) If a consumer is not eligible under WAC 170-290-0032 and the provider has billed correctly, the consumer is responsible for the entire overpayment, including any absent days.

WAC 170-290-0275, Payment discrepancies—Providers covered under collective bargaining, states:

- (1) This section applies to any provider covered under the collective bargaining agreement.
- (2) For in-home/relative and licensed family home child care providers, disputes regarding underpayments shall be grievable.
- (3) Beginning July 1, 2007, there are different time frames for how far back a payment discrepancy may be corrected. The time frames, as provided in this subsection are based on:
 - (a) When services were provided;
 - (b) When the request for the underpayment was made; and
 - (c) The type of provider: Family home or in-home/relative provider.
- (4) Family home and in-home/relative providers must submit a claim for payment no later than twelve months after the date of service. "Submitting a claim for payment" means turning the original invoice in to DSHS for services no later than twelve months after the date of service. If the claim for payment is made within the twelve-month period, the time limits for correcting payment errors are:
 - (a) Two years back if the error is on rates paid by age and/or region, unless discovered by a federal audit. This means the provider has up to two years after the date of service to ask for a corrected payment; or
 - (b) Three years back if the error was for any other reason, including those discovered by a federal audit. This means the provider has up to three years after the date of service to ask for a corrected payment.

WAC 388-410-0001, What is a cash assistance overpayment?, states:

- (1) An overpayment is any cash assistance paid that is more than the assistance unit was eligible to receive.
- (2) There are two types of cash overpayments:
 - (a) Intentional overpayments, presumed to exist if you willfully or knowingly:
 - (i) Fail to report a change you must tell us about under WAC 388-418-0005 within the time frames under WAC 388-418-0007; or
 - (ii) Misstate or fail to reveal a fact affecting eligibility as specified in WAC 388-446-0001.
 - (b) Unintentional overpayments, which includes all other client-caused and all department-caused overpayments.
- (3) If you request a fair hearing and the fair hearing decision is in favor of the department, then:
 - (a) Some or all of the continued assistance you get before the fair hearing decision must be paid back to the department (see WAC 388-418-0020); and
 - (b) The amount of assistance you must pay back will be limited to sixty days of assistance, starting with the day after the department receives your hearing request.
- (4) If you receive child support payments directly from the noncustodial parent, you must turn these payments over to the division of child support (DCS). These payments are not cash assistance overpayments.

2016-020

The Department of Early Learning and the Department of Social and Health Services did not have adequate internal controls over and did not comply with requirements to identify and detect fraud in the Child Care and Development Fund program.

Federal Awarding Agency: U.S. Department of Health and Human Services
Pass-Through Entity: None
CFDA Number and Title: 93.575 Child Care and Development Block Grant
93.596 Child Care Mandatory and Matching Funds of the Child Care and Development Fund
Federal Award Number: G1601WACCDF, G1501WACCDF G1401WACCDF
Applicable Compliance Component: Special Tests and Provisions – Fraud Detection and Repayment
Known Questioned Cost Amount: None

Background

The Department of Early Learning (DEL) administers the federal Child Care and Development Fund (CCDF) grant to help eligible working families pay for child care. In fiscal year 2016, child care providers were paid about \$218 million in federal grant funds. DEL is the lead agency for the CCDF program and is responsible for recovering child care payments resulting from fraud. However, the Department of Social and Health Services’ (DSHS) Office of Fraud and Accountability (OFA) has the statutory authority to conduct investigations related to allegations of fraud in the CCDF program. Both DEL and DSHS offer reporting of suspected fraud for citizens online, by mail, by phone, or by fax. All staff who work at either agency can report suspected fraud through internal systems or to a hotline.

State law requires DEL and DSHS staff to report all suspected incidents of child care subsidy fraud to OFA for appropriate investigation and action and to recover child care payments. Once a report is made, it is received by OFA, which then may assign it to an investigator for review. DSHS explained some reports are not assigned to investigators because of workload capacity. If the report is assigned for investigation within the first 90 days from the date of the initial report, an investigator investigates the allegations. If the fraud report is not assigned within the first 90 days of the initial report, it is then “aged out” and sent back to DSHS child care staff. Child care staff then review the original reported information and decide to either send the case back to OFA investigators, or dismiss the fraud report. There are some referrals, approximately 12 percent, that go through a different process and do not “age out”. In fiscal year, 2016 DSHS collected \$383,341 on 26 child care fraud cases.

DEL staff perform case reviews to identify provider payment errors. DEL randomly selects provider payments to review based on a given month of service. When a provider is selected for review, child care subsidy auditors request attendance records for all payments to that provider for the month and compare the records to paid invoices. If an error is found, the subsidy auditor establishes an amount of overpayment and submits it to the Subsidy Audit Supervisor for secondary review to discuss suspected fraud. The Subsidy Audit Supervisor determines whether to forward the case to the Subsidy

Policy Supervisor for a final fraud referral determination. If fraud is suspected, the case is referred to OFA for fraud investigation.

In fiscal year 2016, DEL made 569,633 monthly child care subsidy payments to providers for individual clients. DEL reviewed records for 2,408 provider-billing months, which totaled about \$5.6 million in payments. The reviews identified overpayments in 1,433 (60 percent) of those months, totaling \$975,553.

During the prior year audit, we reported that DEL lacked adequate internal controls over child care fraud and repayments. The prior finding number was 2015-025.

Description of Condition

DEL

DEL lacked adequate internal controls to ensure it referred all suspected client or provider child care fraud to OFA for examination and determination. Despite identifying potential overpayments in 60 percent of the payment records examined during the year, DEL referred only four cases to OFA for investigation of suspected fraud. DEL did not expand its review for any of the cases that resulted in significant overpayments, which could have led to support for a fraud investigation.

DSHS

The OFA did not review all fraud referrals it received. In state fiscal year 2016, there were 2,330 aged-out fraud referral cases that OFA staff did not review. Of those, DSHS asserted 165 were related to suspected child care fraud. During our review, however, we determined that the system DSHS used was not able to accurately identify all cases that were potentially related to child care because it is dependent on how the fraud referral is documented. For example, we looked at two “aged out” cases the Department did not count as child care related and were able to determine they should have been.

DEL and DSHS

We consider these internal control weaknesses to constitute a material weakness. We consider both Departments non-compliant with federal requirements to correctly identify and report fraud.

Cause of Condition

DEL

DEL lacked written policies and procedures related to the identification of suspected fraud for use by staff performing and supervising the payment review process for most of state fiscal year 2016. In April 2016, DEL began implementing a series of trainings on fraud-related detection for its subsidy review staff and provider licensors that work in the field directly with providers throughout Washington. DEL also began drafting fraud referral policies and protocols at the end of state fiscal year 2016.

The determination of whether a case is referred to OFA as suspected fraud is based on staff judgment. Managers said that staff did not, for the majority of the year, receive training to identify suspected fraud. Managers also said that DEL staff were directed to refer anything that appears to represent fraudulent activities to supervisors to review during the entire state fiscal year 2016.

DSHS

According to the OFA's Senior Director, the 2,330 fraud referrals were not reviewed due to insufficient staffing. We could not verify how many of the 2,330 fraud referrals related to the CCDF program because DSHS did not track the referrals by program source during the year. During the audit, the Department discovered a system error that affected 1,588 cases. The error caused the referral to not be sent back to child care staff for further review after it had aged out.

Effect of Condition

DEL

DEL is at higher risk of not detecting fraudulent billing activities by not expanding its examination of records when significant overpayments are detected.

Further, as a result of DEL's lack of established guidance and training for identifying suspected fraud, staff may not have been properly referring cases to OFA for the entire state fiscal year.

DSHS

By not reviewing all fraud referrals made related to the CCDF program, DSHS is at risk of not detecting fraudulent billing activities and not meeting the grant requirement to correctly identify and report fraud.

DEL and DSHS

By not complying with grant requirements, the state is at risk of having federal funds withheld and of potentially being disqualified from receiving future federal funding.

Recommendations

We recommend DEL:

- Establish written policies and procedures for staff to follow when potential fraud is suspected
- Provide training to staff responsible for reviewing provider records and who make decisions about whether to refer cases of suspected fraud to OFA
- Ensure all suspected incidents of child care subsidy fraud are referred to OFA, as required
- Consider expanding its review of provider records when significant overpayments are discovered during payment reviews

We recommend DSHS:

- Review all suspected referrals of child care fraud and ensure fraudulent payments are recovered from the responsible party
- Track fraud referrals, and subsequent collection, by program type

Agencies' Responses

DEL and DSHS concur with this finding and recommendations and will prioritize addressing fraud and other overpayment issues. DEL will recruit for a position tasked solely with addressing fraud and this finding, including developing an agency wide fraud detection and referral system, risk based fraud detection methods, and case development, referral, and tracking systems. This position will utilize existing tools and DEL's electronic Attendance System, currently in procurement and described below, to develop algorithmic and data driven fraud detection.

As to the Auditor's specific recommendations, DEL concurs and offers the following detail:

- ***Establish written policies and procedures for staff to follow when potential fraud is suspected.***

On January 11, 2016, DEL finalized a formal Procedure for staff to follow when potential fraud is suspected. It requires DEL staff who suspect fraud to report it, providing supporting documentation, to the Subsidy Policy Supervisor via a specified form for referral to the Office of Fraud and Accountability (OFA) at the Department of Social and Health Services (DSHS), or anonymously online. DEL will finalize a formal Policy on April 7, 2017, defining fraud as "an intentional deception or misrepresentation made by a person with the knowledge that the deception could result in some unauthorized benefit" as provided in RCW 74.04.004. The Policy will set a "reasonable suspicion" threshold for staff to decide whether a scenario meets the definition, and instruct them to err on the side of reporting when uncertain. DEL will require all staff, as a condition of employment, to review the Policy and Procedure.

- ***Provide training to staff responsible for reviewing provider records and who make decisions about whether to refer cases of suspected fraud to OFA.***

In 2016, DEL developed and provided training for Licensing staff who in the course of their work may eye witness evidence of fraud. Trainings occurred on April 14 and 19, and June 2 and 29, 2016.

By May 7, 2017, DEL will expand on this training and develop similar training for Subsidy Quality Assurance staff. Both trainings will define fraud in layman's terms so staff can distinguish it from error, identify fraud scenarios staff are likely to encounter, explain the reasonable suspicion threshold for reporting, instruct staff on key facts to document for referral, instruct staff on how to fill out the fraud referral form or make an anonymous referral, and inform staff of the process for receiving status updates on their referrals. The training will also coach licensing staff to ensure that when they observe suspicious activity in the field (such as a provider being closed on one or more days when others are typically open), this information is relayed back to the Subsidy Quality Assurance program, so that billing records can be researched and investigated.

Quality Assurance staff training will further instruct these staff to expand review of provider records when they discover significant overpayments and when expanded review will support a fraud referral from Licensing staff.

DEL will regularly provide training on these expanded practices to licensors in each of our four licensing regions and to subsidy policy and audit staff in our Olympia office.

- ***Ensure all suspected incidents of child care subsidy fraud are referred to OFA, as required.***

In the past DEL has consulted with OFA to receive guidance on fraud referrals that are most likely to result in successful prosecution. This may have unintentionally suppressed referral by focusing on the high standard of proof (especially as to provider intent) in successful criminal fraud cases instead of agency staff's duty to report potential fraud.

While continuing to consult with OFA, DEL will ensure that all suspected incidents of fraud are reported by adopting Policy and Procedure and providing training that supports a reasonable suspicion threshold for staff to report potential fraud, and instructs them to err on the side of reporting when in doubt. The Subsidy Policy Supervisor will apply the same standards in determining whether to finally refer to OFA.

Assuming that DEL Quality Assurance staff review 200 providers per month with a 60% payment error rate, and that 15% of errors raise a "reasonable suspicion" of fraud, DEL would expect 18 provider fraud referrals per month. Another 2 referrals each month could be expected from Licensing staff. By broadening the scope of scenarios DEL would refer as described above, DEL would expect to increase fraud referral to OFA to this level by October 2017.

DEL's current efforts to reduce overpayments and identify and refer fraud are undertaken in the context of a manual, paper-based attendance and billing system not conducive to accurate billing or fraud detection. DEL has and will continue to request funding for an electronic time and attendance billing system whereby attendance data for all providers is available for Quality Assurance review and fraud detection. With an electronic time and attendance system, DEL can effectively audit 100% of all payments, and will use data analysis (algorithms) to dramatically increase fraud detection and referral. The electronic attendance system will reduce provider errors and will alter provider behavior, especially for those who now typically bill for their full authorization but are unable to produce records to support the billing. Ultimately, DEL hopes to have an integrated system (eligibility/authorization, attendance and other data needed to correctly compute an invoice) and the ability to reconcile information before making payments. DEL is finalizing a Request for Proposals to procure the attendance piece of this system as a standalone first phase to address this finding and is planning a later phase to link the attendance data received with the subsidy payment system for reconciliation prior to payment.

- ***Consider expanding its review of provider records when significant overpayments are discovered during payment reviews.***

As described above, Quality Assurance staff training will include a component on expanding review of provider records when significant overpayments are discovered. Training will set thresholds by provider type (to be determined) for what constitutes a significant overpayment requiring expanded review. These staff will also expand review as necessary and beneficial to develop fraud referrals from Licensing staff.

DEL will continue efforts to reduce overpayments, including:

- 1. Making changes to program rules such as reducing authorizations to Family, Friends and Neighbor (FFN) providers under the 110 hour rule, and specifying consequences for attendance record deficiencies*
 - 2. Improving communication between DEL and DSHS to ensure accurate eligibility determination and authorization (which contribute to reduced fraud)*
 - 3. Assigning audit caseloads so that auditors focus regionally and develop relationships with providers that promote accuracy and fidelity in billing and attendance records*
 - 4. Employing risk-based auditing techniques such as focus audits on providers billing for twice as many subsidy children as their licensed capacity, or on providers who bill the limit of their authorization.*
- **Review all suspected referrals of child care fraud and ensure fraudulent payments are recovered from the responsible party.***
 - **Track fraud referrals, and subsequent collection, by program type.***

The Department's Office of Financial Recovery (OFR) is implementing a new case management system. OFR's system improvements will improve how overpayment collections are tracked. The Office of Fraud and Accountability (OFA) has improved the functionality of the fraud case management and cleaned up the data contained in the system over the last year. Referrals are assigned priority based upon an algorithm for fraud that has been approved by an outside auditing agency. OFA can adjust the algorithm and intends to work with the Economic Service Administration (ESA) to review the current algorithm logic and discuss and implement appropriate adjustments.

OFA works two types of fraud referrals: eligibility issues and vendor fraud. In regards to eligibility issues, during fiscal year 2016, OFA received over 13,000 referrals for fraud investigations. Of the 13,000 referrals, 2,330 aged out. All of the referrals that aged out were requests for current eligibility issues known as Fraud Early Detection (FRED) referrals. These current eligibility issues are time sensitive and if the work is not completed within a short period, the issue becomes out-of-date. The cases that were not worked, because of time constraints, were sent back to Financial Services Specialist (FSS) workers.

The FSS worker can re-FRED the aged out referral or if the potential fraud issue is ongoing at the next eligibility review, the FSS worker can request again and many are completed on the second request. In fact, several hundred of the FRED referrals that aged out during the audit period were completed on the second referral and occurred after the audit period. As indicated above, OFA will work with ESA to review the current algorithm for how referrals are prioritized.

In addition, OFA also conducts criminal fraud investigations, also known as Intentional Overpayment Investigations, of childcare benefit fraud and child care vendor fraud. All of these cases are

investigated and none age out like the eligibility cases. In regards to the 18-20 anticipated DEL provider fraud referrals per month described in DEL's response, OFA will investigate all of these referrals and they will not age out. OFA continues to review their referral process to see if it can be more efficient.

In addition to the 26 cases for prosecution involving \$383,341, OFA criminal fraud investigations resulted in \$187,951 in identified overpayments during the audit period that were not referred for prosecution. The total amount of overpayments identified in the audit period from OFA childcare investigations was \$571,292.

Auditor's Concluding Remarks

We thank the Departments for their cooperation and assistance throughout the audit. We will review the status of the Departments' corrective actions during our next audit.

Applicable Laws and Regulations

Title 2 U.S. Code of Federal Regulations Part 200, *Uniform Administrative Requirements, Cost Principles, and Audit Requirements for Federal Awards* (Uniform Guidance) established reporting requirements for audit findings.

Section 200.303 Internal controls.

The non-Federal entity must:

- (a) Establish and maintain effective internal control over the Federal award that provides reasonable assurance that the non-Federal entity is managing the Federal award in compliance with Federal statutes, regulations, and the terms and conditions of the Federal award. These internal controls should be in compliance with guidance in "Standards for Internal Control in the Federal Government" issued by the Comptroller General of the United States or the "Internal Control Integrated Framework", issued by the Committee of Sponsoring Organizations of the Treadway Commission (COSO).
- (b) Comply with Federal statutes, regulations, and the terms and conditions of the Federal awards.

Section 200.516 Audit reporting, state in part:

- (a) *Audit findings reported.* The auditor must report the following as audit findings in a schedule of findings and questioned costs:
 - (1) Significant deficiencies and material weaknesses in internal control over major programs and significant instances of abuse relating to major programs. The auditor's determination of whether a deficiency in internal control is a significant deficiency or material weakness for the purpose of reporting an audit finding is in relation to a type of compliance requirement for a major program identified in the Compliance Supplement.
 - (2) Material noncompliance with the provisions of Federal statutes, regulations, or the terms and conditions of Federal awards related to a major program. The auditor's determination of whether a noncompliance with the provisions of Federal statutes, regulations, or the terms and conditions of Federal awards is material for the

purpose of reporting an audit finding is in relation to a type of compliance requirement for a major program identified in the compliance supplement.

The American Institute of Certified Public Accountants defines significant deficiencies and material weaknesses in its Codification of Statements on Auditing Standards, section 935, as follows:

.011 For purposes of adapting GAAS to a compliance audit, the following terms have the meanings attributed as follows:

Material weakness in internal control over compliance. A deficiency, or combination of deficiencies, in internal control over compliance, such that there is a reasonable possibility that material noncompliance with a compliance requirement will not be prevented, or detected and corrected, on a timely basis. In this section, a reasonable possibility exists when the likelihood of the event is either reasonably possible or probable as defined as follows:

Reasonably possible. The chance of the future event or events occurring is more than remote but less than likely.

Remote. The chance of the future event or events occurring is slight.

Probable. The future event or events are likely to occur.

Significant deficiency in internal control over compliance. A deficiency, or a combination of deficiencies, in internal control over compliance that is less severe than a material weakness in internal control over compliance, yet important enough to merit attention by those charged with governance.

Material noncompliance. In the absence of a definition of material noncompliance in the governmental audit requirement, a failure to follow compliance requirements or a violation of prohibitions included in the applicable compliance requirements that results in noncompliance that is quantitatively or qualitatively material, either individually or when aggregated with other noncompliance, to the affected government program.

45 CFR, section 98.60 Availability of funds, states in part:

(i) Lead Agencies shall recover child care payments that are the result of fraud. These payments shall be recovered from the party responsible for committing the fraud.

RCW 43.215.562

Child care subsidy fraud - Referral - Collection of overpayments.

- (1) The department must refer all suspected incidents of child care subsidy fraud to the department of social and health services office of fraud and accountability for appropriate investigation and action.
- (2) For the purposes of this section, "fraud" has the definition in RCW 74.04.004.
- (3) This section does not limit or preclude the department or the department of social and health services from establishing and collecting overpayments consistent with federal regulation or seek other remedies that may be legally available, including but not limited to criminal investigation or prosecution.

2016-021 **The Department of Early Learning did not have adequate internal controls over and was not compliant with requirements to ensure payments to child care providers for the Child Care and Development Fund program were allowable.**

Federal Awarding Agency:	U.S. Department of Health and Human Services
Pass-Through Entity:	None
CFDA Number and Title:	93.575 Child Care and Development Block Grant 93.596 Child Care Mandatory and Matching Funds of the Child Care and Development Fund
Federal Award Number:	G1401WACCDF; G1501WACCDF; G1601WACCDF
Applicable Compliance Component:	Activities Allowed or Unallowed and Allowable Costs/Cost Principles
Known Questioned Cost Amount:	\$ 22,463
Likely Questioned Cost Amount:	\$107,768,876

Background

The Department of Early Learning (DEL) administers the federal Child Care and Development grant to assist eligible working families in paying for child care. The Department of Social and Health Services (DSHS) determines client eligibility and pays child care providers under an agreement with DEL. Child care providers consist of licensed centers, licensed family home providers and friends, family and neighbors (FFNs). Payments are made to providers for child care from both the Child Care and Development grant fund, and the Temporary Assistance for Needy Families grant and a payment can include funding from both programs.

DEL is responsible for establishing adequate policies and procedures to ensure payments are allowable. In fiscal year 2016, DEL made an estimated 638,072 monthly child care subsidy payments to child care providers from both the Child Care and Development Fund and the Temporary Assistance for Needy Families grant as well as state funding. These payments totaled over \$271 million in federal and state funds.

There are three child care provider types: licensed centers, licensed family homes and family, friends and neighbor providers. Licensed centers typically operate as larger-scale facilities, whereas licensed family homes are limited to no more than 12 children at a given-time. Both centers and homes must adhere to strict licensing requirements established by DEL and are subject to routine inspections. FFN providers are exempt from many of the licensing requirements and are not subject to routine on-site monitoring visits.

Authorizations for child care

To be authorized for child care services, parents must be determined eligible based on their income, residency, and demonstrated need based on their work schedules. Once parents are determined eligible, DSHS authorizes one of two service levels. For licensed providers, the service levels are

generally either 23 full-day units (up to 10 hours a day) or 30 half-day units (up to five hours a day). FFN providers are paid by the hour and authorizations are made for either part-time care (up to 110 hours) or full-time care (up to 230).

The authorized service level is based on the parent's work schedule, which is also required to be documented, verified with the employer, and updated with DSHS when it changes significantly. Payments for child care are only allowable if they are properly approved, adequately documented and for actual worked hours.

Attendance records

According to state rules, child care providers must maintain attendance records to support their requests for payment. At a minimum, the records must include the children's names, date(s) child care was provided and authorized signatures, typically of a parent or guardian, documenting the times the child arrived and left care.

DEL subsidy auditor reconciliations

Providers are not required to submit attendance records with their monthly requests for payment. DEL has established a subsidy audit unit that randomly selects prior payments for review. To determine if payments were allowable and properly supported, providers are requested to submit attendance records and other supporting documentation, which are reconciled to paid invoices.

DEL subsidy auditors completed 2,408 reconciliations during the audit period and identified 1,433 instances (60 percent) of provider overpayments during their reconciliations and assessed overpayments that totaled \$975,553. The identified overpayments represented 17 percent of the total amount of payments reviewed.

The most common reasons DEL's reconciliations determined overpayments occurred were:

- Providers overbilled because child care was not provided
- Providers did not submit required attendance records
- Providers billed and were paid for the maximum amount of authorized childcare, regardless if services aligned with the family's established work schedule
- Providers billed for absent days that were not supported

Prior audit results

Since fiscal year 2005, we have reported DEL and DSHS have not established adequate internal controls to prevent unallowable payments. During fiscal years 2010 and 2011, we found DSHS did not adequately reconcile attendance records with child care payments. In fiscal year 2012, DEL assumed this process, but only reconciled one month of child care payments to attendance records. In fiscal year 2013, we found no reconciliations of fiscal year 2013 months of service were performed as all reconciliations were for prior fiscal years. In 2014, reconciliations were initiated for three months of the fiscal year and the rest of the reconciliations were for services months in prior fiscal years.

In 2015, we reported questioned costs of \$64,802 and likely questioned costs of \$85,239,118. The most recent audit finding numbers were 2015-023, 2014-023, 2013-016, 12-28, 11-23, 10-31, 9-12, and 8-13.

In October 2012, our Office issued an accountability audit report titled, “Audit of State Payments to Child Care Providers,” covering the period from July 1, 2010 to June 30, 2011. Using a statistical sample of 153 providers, the audit identified actual overpayments of \$1.6 million and total estimated overpayments of \$73.9 million. The audit also identified \$2.9 million in payments supported by questionable documentation, with estimated questionable payments that totaled of \$34.9 million. The payments examined in the audit were funded by both state and federal grants.

Description of Condition

We found DEL took steps to address the previous findings, but continues to lack adequate internal controls to prevent and detect significant unallowable payments to child care providers. In response to the most recent audit finding, DEL said it would work to address the internal control weaknesses by having dedicated staff perform payment reconciliations. DEL also said it would seek timely reimbursements from providers for overpayments.

DEL has a desk manual and set audit electronic workbooks that contain steps for subsidy auditors to follow when performing reconciliations. For the audit period, DEL’s reconciliation steps were:

- Determine if submitted provider attendance records are complete and contact the provider if records are incomplete
- Examine attendance records for reasonableness and allow for partial parental/guardian signatures and/or names of children without signatures
- Examine and compare attendance records to parent(s)’ working schedules
- Determine allowable region rates for the provider by region and child’s age, and compare this to the billed invoice
- Allow unlimited absence days per month as long as the child attended for one day of the month
- Determine allowable holiday(s) providers were allowed to bill

At the beginning of the audit period, the Department was not reconciling all required client information, but improved its process about halfway through the audit period and began testing provider records to more client specific information.

We randomly selected and examined 133 payments for child care totaling \$57,813 in federal funds to determine if they were allowable. Of the 133, we randomly selected and stratified these payments by totals from each of three provider types: licensed centers, licensed family providers and FFNs. With assistance from DEL, we requested attendance records from providers that supported the payments. We also compared the providers’ records to the case files to determine if the payments were allowed by federal and state regulations, as well as DEL’s internal policies.

We found 85 payments were partially or fully unallowable. In total, we questioned \$22,463 paid by federal funds.

The reasons we found overpayments occurred were:

- Attendance records were not submitted by providers or were inadequate to support payments
- In some cases providers informed us they did not maintain the required records
- Providers overbilled for services not performed or supported by attendance records
- Some providers billed the maximum childcare authorized regardless of the amount of actual services performed, or required by the parent's work schedules

We consider these internal control weaknesses to constitute a material weakness.

Cause of Condition

Sufficient preventative internal controls did not exist to ensure payments were allowable. While the authorizations establish a maximum for what providers may bill without further approval, it does not prevent providers from billing for unallowable days or hours, or services. Childcare providers are not required to submit any supporting documentation before payments are made. The authorization maximums also do not prevent clients from using child care when they are not in an approved activity.

When DEL subsidy auditors reviewed payments, they were not always able to compare attendance records to a documented, employer verified working schedule for the parents. This is because DSHS staff, when determining a client's eligibility, did not always require a verified schedule. Therefore, while the DEL auditors identified overpayments 60 percent of the time, they likely did not detect all overpayments during their reviews. Audits for providers with overpayments did not consistently receive expanded reviews to determine if the issues were systemic. However, DEL management did put increased emphasis on expanding reviews toward the end of the audit period.

Although DEL writes the guidelines for the CCDF program and implements policy, many key functions, including determining eligibility and issuing payments, are performed by DSHS. As a separate Department, DSHS makes management decisions without input from DEL. While DEL and DSHS do work together, some of the improper payments identified in this finding could have been prevented had DSHS collected all required documentation and properly determined eligibility. As long as DSHS continues to have significant weaknesses in the eligibility determination process, it will be difficult for DEL to stop the types of improper payments reported in this finding.

The Chief Financial Officer of DEL said it is unlikely they can resolve the material weakness and material non-compliance reported in the finding using the current hard-copy attendance record system. He said an electronic system is necessary to perform more thorough fiscal monitoring.

Effect of Condition and Questioned Costs

By not having adequate internal controls in place, the state is at a higher risk of making improper payments for child care services. Additionally, by not considering all criteria required by state regulations, DEL auditors may not detect all improper payments when performing reconciliations. By not expanding its audits when overpayments are found, DEL may not be identifying providers with systemic billing issues.

A statistical sampling method was used to randomly select the payments examined in the audit. Based on the results of our testing, we estimate the total amount of likely questioned costs to be \$107,768,876. We also performed testing of client eligibility using a separate population but reported likely questioned costs of \$102,972,489 in audit finding 2016-023. Because likely questioned costs are determined by projecting known questioned costs to the entire population of payments there is significant overlap of the likely questioned costs between these two findings.

We question costs when we find an agency has not complied with grant regulations or when it does not have adequate documentation to support payments.

Many of the improper payments were partially funded by state dollars. Specifically, we found \$6,980 of improper state payments, which projects to a likely improper payment amount of \$33,485,484. This amount is not included in the federal questioned costs.

Actions Taken by the Department

The Department took the following steps to address the previous findings:

- Began policy revisions to address previously reported weaknesses
- Began offering additional provider training
- Increased communication with DSHS CCDF program staff
- Provided training that is more complete for subsidy auditors performing provider payment review
- Moved to auditing provider payments based on month of payment instead of month of service to improve audit review timeliness
- Requested funding for an electronic time and attendance billing system

Recommendations

We recommend DEL:

- Implement preventative internal controls over payments to providers to reduce the rate of unallowable payments
- Develop internal controls that will assist in the detection of unallowable provider billings based on the expected consumer child care needs constrained by the parent's verified working schedule needs
- As the administrator of the grant, work with DSHS to ensure they are addressing known problems with the initial eligibility process for the CCDF program
- Continue to pursue electronic systems to more efficiently prevent and detect improper payments
- Continue to improve its reconciliation process by following Departmental policies, testing to all federal and state regulations when reviewing provider payments
- Expand auditor examinations when significant provider overpayments are found to determine if the issue is isolated or systemic

Agency's Response

DEL concurs with this finding and recommendations, with concerns outlined below. DEL will prioritize addressing provider overpayment issues and is recruiting for a position tasked with monitoring program compliance with federal law, rules, and guidance governing CCDF, and executing action plans to address this and other findings.

DEL has concerns regarding the SAO's sampling methodology and the associated extrapolation of questioned costs. The SAO elected to employ a non-statistical sampling methodology to estimate noncompliance and total questionable costs sampling only 133 payments from the universe of 638,072 payment records. DEL's initial calculations indicate the need for a sample size of between 600 and 1,038 records for a statistically valid sample for the extrapolation with 95% and 99% confidence level respectively. The method of sample size estimation selected would be appropriate for audit purposes of identifying at least one instance of questionable costs in a target population, but the method is inadequate to support extrapolation of questionable costs. The inappropriately small sample size does not provide precise estimates of the actual amount of questionable costs in the larger population DEL requests, for future large-scale projections, that the SAO utilize a larger, statistically valid sample size, therefore lending better credibility to the associated results. Although SAO clearly stratified the sample population, it is unclear whether extrapolation was performed in a stratified manner. In the future, it would be helpful to know whether the extrapolation was performed in a stratified manner. DEL would like to work with SAO during the spring of 2017, to better understand their sampling and extrapolation methodologies, and address our concerns.

In the cause of condition section, SAO states that DEL auditors identified overpayments 60 percent of the time and that they likely did not detect all overpayments during their reviews. As part of their audit process, DEL audit staff draw random samples from among Centers, Family Homes, and Family Friend and Neighbor (FFN) providers who submit invoices each month. By design DEL oversamples FFN providers, where higher rates of improper payments are traditionally detected. So for example, in FY2016 FFN providers represented 56.7% of the provider month records available for sampling, but 75.1% of the records sampled were FFN providers. We believe this intentional over-representation of FFN providers among records reviewed increases the likelihood of detecting overpayments.

As to the Auditor's specific recommendations, DEL concurs and offers the following additional details:

- ***Continue to pursue electronic systems to more efficiently prevent and detect improper payments.***
- ***Implement preventative internal controls over payments to providers to reduce the rate of unallowable payments.***

DEL's current efforts to reduce provider overpayments are undertaken in the context of a manual, paper-based attendance and billing system not conducive to accurate billing. DEL has and will continue to request funding for an electronic time and attendance billing system whereby attendance data for all providers is available for Quality Assurance review and as a condition of receiving subsidy payments. With an electronic time and attendance system, DEL can effectively audit 100% of all payments, and will use data analysis (algorithms) to dramatically increase overpayment detection.

The electronic attendance system will reduce provider errors and will alter provider behavior, especially for those who now typically bill for their full authorization but are unable to produce records to support the billing. Ultimately, DEL hopes to have an integrated system (eligibility/authorization, attendance and other data needed to correctly compute an invoice) and the ability to reconcile information before making payments. DEL is finalizing a Request for Proposals to procure the attendance piece of this system as a standalone first phase to address this finding and is planning a later phase to link the attendance data received with the subsidy payment system for reconciliation prior to payment.

Further, by October 1, 2017, DEL will adopt rules and policy describing consequences for client and provider intentional program violations, including potential ineligibility for client benefits and provider payment to prevent repeat violations that cause unallowable payments. Intentional program violations in this context will be defined in rule and will likely include intentional acts that knowingly result in an unallowable payment but that do not involve misrepresentation.

- ***As the administrator of the grant, work with DSHS to ensure they are addressing known problems with the initial eligibility process for the CCDF program.***

The Department collaborates closely with DSHS - including review of draft staff training, desk aids, communications, and procedures and provision of policy guidance – to ensure DSHS field staff understand and correctly interpret policy regarding eligibility. We will continue this coordination.

In addition, the position described above that DEL is recruiting will coordinate with DSHS on response to this and other audit findings to ensure successful implementation of DSHS and DEL corrective action plans. Specifically, this position will be DEL's lead on system implementation and training to new rules, policies, and guidance adopted to address the Eligibility finding. It will also review findings of the DSHS Division of Program Integrity and provide input on risk-based categories of pre-authorization review. The position will further work with DSHS to ensure implementation of separation of duties so that the same worker cannot make an eligibility determination and authorize provider payment on the same case, and system changes to actively alert a worker when the household composition in WCAP is different from the household composition for other DSHS-administered programs.

DEL and DSHS will continue meeting quarterly and will ensure that problems with the initial eligibility process are a top priority. Also, starting April 2017, DEL and DSHS will reinstitute a quarterly meeting of DSHS and DEL Quality Assurance staff where issues with initial eligibility discovered in QA can be discussed and solutions presented.

- ***Develop internal controls that will assist in the detection of unallowable provider billings based on the expected consumer child care needs constrained by the parent's verified working schedule needs.***

DEL will employ risk-based auditing to identify more provider payment errors, including, but not limited to, focus audits on providers billing for twice as many subsidy children as their licensed capacity, or on providers who bill the limit of their authorization. And starting within three months of implementing of the Electronic Attendance System being procured, DEL will run algorithms against

all provider payments, attendance data, and the eligibility system, to identify payment errors and potential fraud. Further, DEL Subsidy Quality Assurance staff will continue auditing provider payments and, within three months of implementing of the Electronic Attendance System, increase from 200 to 400 the number of monthly audits performed.

Regarding parent working schedules, effective July 1, 2016, DEL amended Chapter 170-290 WAC to comply with Reauthorization of the federal Child Care Development Block Grant Act and the Early Start Act enacted by the State Legislature. Taken together, these Acts prohibited termination of consumer eligibility prior to the end of their 12 month eligibility period for changes in circumstances as to a parent's engagement in approved activities, and eliminated the requirement to report these changes. The WAC amendments eliminated language constraining provider billing to the parent's working schedule so long as billing does not exceed the total authorization. This was necessary because consumers are allowed, as of July 1, 2016, to use child care benefits even after termination of employment and are not required to report changes in work schedule during the eligibility period. This means that the work schedule obtained at the "snapshot" eligibility determination is not controlling as to the hours of day or days of the week a provider can bill, but simply establishes the upper limit of payment authorized. As a result of these rule amendments, DEL assumes that provider billing that is correct in all other respects and based on supported eligibility determination and authorization will not be unallowable for falling outside the hours and days described in the working schedule. This will reduce overpayments substantially.

DEL is currently in the process of finalizing changes to all program guidance and documentation, including the CCDF Plan, to support the above WAC amendments consistently. DEL expects to complete these changes by April 2017.

- ***Continue to improve its reconciliation process by following Departmental policies, testing to all federal and state regulations when reviewing provider payments.***

DEL will ensure its reconciliation process aligns with its policies and all federal and state regulations. The new position described above will review the current process and recommend necessary WAC, guidance, documentation, and reconciliation process changes, consistent with federal rules, for the unit's implementation. Specifically, DEL will examine the current rules as to household composition, consumer income, consumer activity schedules, provider authorizations, and provider attendance record requirements. DEL will clarify WAC language specifying circumstances under which a provider is liable for an overpayment. DEL will complete this work by October 2017. Also by October 2017, DEL will train its Subsidy Quality Assurance staff to any changes in the reconciliation process brought about by process review and WAC changes.

- ***Expand auditor examinations when significant provider overpayments are found to determine if the issue is isolated or systemic.***

By May 7, 2017, DEL will develop Subsidy Quality Assurance staff training including a component on expanding review of provider records when significant overpayments are discovered. Training will set thresholds by provider type (to be determined) for what constitutes a significant overpayment requiring expanded review, and will cover example scenarios where expanded review is necessary

and beneficial to identify systemic issues or possible fraud. Examples may include, but would not be limited to the following:

- 1. A Family, Friends and Neighbors provider billing on authorizations to care for multiple children in their separately located homes during similar hours – expand review to determine if provider routinely bills for care at two different locations at the same time.*
- 2. A provider who has lost attendance records to support billing – expand review to determine if provider routinely cannot produce records.*
- 3. Provider submits attendance records supporting billing well above the amount actually billed – expand review to determine if provider is maintaining records in real time or is creating them upon audit request.*

Auditor’s Concluding Remarks

We thank the Department for its cooperation and assistance throughout the audit. We are pleased that the Department concurred with the finding but would like to address the Department’s concerns about our sampling methodology and extrapolation of costs. The Department states we chose to employ a non-statistical sampling method. This is not correct. A statistical sample for audit purposes is defined by AU-C 530.05 as “An approach to sampling that has the following characteristics: (a) random selection of the sample items; (b) the use of an appropriate statistical technique to evaluate sample results, including measurement of sampling risk.” Our sampling methodology meets these criteria.

It is important to note that the sampling technique we used is intended to match our audit opinion by determining whether or not expenditures were in compliance with program requirements in all material respects. Accordingly, we used an acceptance sampling formula designed to provide 99% confidence of whether exceptions were above our materiality threshold. This conclusion is reflected in our audit report and finding. However, the likely questioned costs projections are a point estimate and only represent our “best estimate of total questioned costs” as required by 2 CFR 200.516(3).

To ensure a representative sample, we stratified the population by both provider type and dollar amount. Once we completed testing, we evaluated our results compared to other audit evidence and found it to be consistent. For example, we compared our results to the results of the audit last year and found them consistent. We also compared results to the Department’s own internal testing results and found them consistent. As the Department pointed out, they oversample their higher risk populations and thus expect a higher exception rate than the expected actual rate in the population. Since we also determined they do not test to all of the required criteria that we do, our results of a 64 percent exception rate with additional criteria are consistent with their 60 percent rate that focuses on higher risk payments but does not use all criteria.

Upon receiving the Department’s audit finding response we requested any evidence the Department had that our estimate of likely questioned costs was incorrect but were not provided anything other than what is in the response. The Department has not disputed the nature of the identified exceptions or the audit work itself but only the reliability of the projected likely questioned costs. While our sample was appropriately representative and provided statistically valid evidence at 99% confidence of our conclusion regarding material noncompliance, we can agree with the Department that the sample was only designed to determine that likely questioned costs were material to the program. A

much larger sample size would be needed to achieve a similar confidence level about the precise amount of likely questioned costs. For this reason, it may not be sufficient to conclude on the precise amount of questioned costs for purposes of determining a repayment amount to the grantor. We encourage the Department to work with the granting agency to address their concerns in this regard.

We will review the status of the Department's corrective action during our next audit.

Applicable Laws and Regulations

Title 2 U.S. Code of Federal Regulations Part 200, *Uniform Administrative Requirements, Cost Principles, and Audit Requirements for Federal Awards* (Uniform Guidance) established reporting requirements for audit findings.

Section 200.303 Internal controls.

The non-Federal entity must:

- (a) Establish and maintain effective internal control over the Federal award that provides reasonable assurance that the non-Federal entity is managing the Federal award in compliance with Federal statutes, regulations, and the terms and conditions of the Federal award. These internal controls should be in compliance with guidance in "Standards for Internal Control in the Federal Government" issued by the Comptroller General of the United States or the "Internal Control Integrated Framework", issued by the Committee of Sponsoring Organizations of the Treadway Commission (COSO).
- (b) Comply with Federal statutes, regulations, and the terms and conditions of the Federal awards.

Section 200.403 Factors affecting Allowability of costs.

Except where otherwise authorized by statute, costs must meet the following general criteria in order to be allowable under Federal awards.

- (a) Be necessary and reasonable for the performance of the Federal award and be allocable thereto under these principles.
- (b) Conform to any limitations or exclusions set forth in these principles or in the Federal award as to types or amount of cost items.
- (c) Be consistent with policies and procedures that apply uniformly to both federally-financed and other activities of the non-Federal entity.
- (d) Be accorded consistent treatment. A cost may not be assigned to a Federal award as a direct cost if any other cost incurred for the same purpose in like circumstances has been allocated to the Federal award as an indirect cost.
- (e) Be determined in accordance with generally accepted accounting principles (GAAP), except, for state and local governments and Indian tribes only, as otherwise provided for in this part.
- (f) Not be included as a cost or used to meet cost sharing or matching requirements of any other federally-financed program in either the current or a prior period. See also §200.306 Cost sharing or matching paragraph (b).
- (g) Be adequately documented. See also §§200.300 Statutory and national policy requirements through 200.309 Period of performance of this part.

Section 200.516 Audit reporting, state in part:

- (a) *Audit findings reported.* The auditor must report the following as audit findings in a schedule of findings and questioned costs:
- (1) Significant deficiencies and material weaknesses in internal control over major programs and significant instances of abuse relating to major programs. The auditor's determination of whether a deficiency in internal control is a significant deficiency or material weakness for the purpose of reporting an audit finding is in relation to a type of compliance requirement for a major program identified in the Compliance Supplement.
 - (2) Material noncompliance with the provisions of Federal statutes, regulations, or the terms and conditions of Federal awards related to a major program. The auditor's determination of whether a noncompliance with the provisions of Federal statutes, regulations, or the terms and conditions of Federal awards is material for the purpose of reporting an audit finding is in relation to a type of compliance requirement for a major program identified in the compliance supplement.
 - (3) Known questioned costs that are greater than \$25,000 for a type of compliance requirement for a major program. Known questioned costs are those specifically identified by the auditor. In evaluating the effect of questioned costs on the opinion on compliance, the auditor considers the best estimate of total costs questioned (likely questioned costs), not just the questioned costs specifically identified (known questioned costs). The auditor must also report known questioned costs when likely questioned costs are greater than \$25,000 for a type of compliance requirement for a major program. In reporting questioned costs, the auditor must include information to provide proper perspective for judging the prevalence and consequences of the questioned costs.

The American Institute of Certified Public Accountants defines significant deficiencies and material weaknesses in internal controls over compliance in its *Codification of Statements on Auditing Standards*, section 935, as follows:

.011 For purposes of adapting GAAS to a compliance audit, the following terms have the meanings attributed as follows: ...

Material weakness in internal control over compliance. A deficiency, or combination of deficiencies, in internal control over compliance, such that there is a reasonable possibility that material noncompliance with a compliance requirement will not be prevented, or detected and corrected, on a timely basis. In this section, a reasonable possibility exists when the likelihood of the event is either reasonably possible or probable as defined as follows:

Reasonably possible. The chance of the future event or events occurring is more than remote but less than likely.

Remote. The chance of the future event or events occurring is slight.

Probable. The future event or events are likely to occur.

Significant deficiency in internal control over compliance. A deficiency, or a combination of deficiencies, in internal control over compliance that is less severe than a material weakness in internal control over compliance, yet important enough to merit attention by those charged with governance.

Material noncompliance. In the absence of a definition of material noncompliance in the governmental audit requirement, a failure to follow compliance requirements or a violation of prohibitions included in the applicable compliance requirements that results in noncompliance that is quantitatively or qualitatively material, either individually or when aggregated with other noncompliance, to the affected government program.

Title 45 Code of Federal Regulations, Section 98.20 - A child's eligibility for child care services, states in part:

- (a) In order to be eligible for services under § 98.50, a child shall:
 - (1) (i) Be under 13 years of age; or,
 - (ii) At the option of the Lead Agency, be under age 19 and physically or mentally incapable of caring for himself or herself, or under court supervision;
 - (2) Reside with a family whose income does not exceed 85 percent of the State's median income for a family of the same size; and
 - (3) (i) Reside with a parent or parents (as defined in § 98.2) who are working or attending a job training or educational program; or
 - (ii) Receive, or need to receive, protective services and reside with a parent or parents (as defined in § 98.2) other than the parent(s) described in paragraph (a)(3)(i) of this section.
 - (A) At grantee option, the requirements in paragraph (a)(2) of this section and in § 98.42 may be waived for families eligible for child care pursuant to this paragraph, if determined to be necessary on a case-by-case basis by, or in consultation with, an appropriate protective services worker.
 - (B) At grantee option, the provisions in (A) apply to children in foster care when defined in the Plan, pursuant to § 98.16(f)(7).
- (b) A grantee or other administering agency may establish eligibility conditions or priority rules in addition to those specified in this section and §98.46, which shall be described in the Plan pursuant to §98.16(i)(5), so long as they do not:
 - (1) Discriminate against children on the basis of race, national origin, ethnic background, sex, religious affiliation, or disability;
 - (2) Limit parental rights provided under Subpart D; or
 - (3) Violate the provisions of this section, § 98.44, or the Plan. In particular, such conditions or priority rules may not be based on a parent's preference for a category of care or type of provider. In addition, such additional conditions or rules may not be based on a parent's choice of a child care certificate.

Title 45 Code of Federal Regulations, section 98.50 - Child care services, states in part:

- (a) Of the funds remaining after applying the provisions of paragraphs (c), (d) and (e) of this section the Lead Agency shall spend a substantial portion to provide child care services to low-income working families.
- (b) Child care services shall be provided:
 - (1) To eligible children, as described in § 98.20;
 - (2) Using a sliding fee scale, as described in § 98.42;
 - (3) Using funding methods provided for in § 98.30; and

(4) Based on the priorities in § 98.44.

Title 45 Code of Federal Regulation, Section 98.54 - Restrictions on the use of funds, states in part:

(a) General.

- (1) Funds authorized under section 418 of the Social Security Act and section 658B of the Child Care and Development Block Grant Act, and all funds transferred to the Lead Agency pursuant to section 404(d) of the Social Security Act, shall be expended consistent with these regulations. Funds transferred pursuant to section 404(d) of the Social Security Act shall be treated as Discretionary Funds;
- (2) Funds shall be expended in accordance with applicable State and local laws, except as superseded by § 98.3.

Title 45 Code of Federal Regulations, Section 98.67 - Fiscal requirements, states:

- (a) Lead Agencies shall expend and account for CCDF funds in accordance with their own laws and procedures for expending and accounting for their own funds.
- (b) Unless otherwise specified in this part, contracts that entail the expenditure of CCDF funds shall comply with the laws and procedures generally applicable to expenditures by the contracting agency of its own funds.
- (c) Fiscal control and accounting procedures shall be sufficient to permit:
 - (1) Preparation of reports required by the Secretary under this subpart and under subpart H; and
 - (2) The tracing of funds to a level of expenditure adequate to establish that such funds have not been used in violation of the provisions of this part.

WAC 170-290-0005 Eligibility, states:

- (1) Parents. To be eligible for WCCC, the person applying for benefits must:
 - (a) Have parental control of one or more eligible children;
 - (b) Live in the state of Washington;
 - (c) Be the child's:
 - (i) Parent, either biological or adopted;
 - (ii) Stepparent;
 - (iii) Legal guardian verified by a legal or court document;
 - (iv) Adult sibling or step-sibling;
 - (v) Nephew or niece;
 - (vi) Aunt;
 - (vii) Uncle;
 - (viii) Grandparent;
 - (ix) Any of the relatives in (c)(vi), (vii), or (viii) of this subsection with the prefix "great," such as great-aunt; or
 - (x) An approved in loco parentis custodian responsible for exercising day-to-day care and control of the child and who is not related to the child as described above;
 - (d) Participate in an approved activity under WAC 170-290-0040, 170-290-0045, 170-290-0050, or have been approved per WAC 170-290-0055;

- (e) Comply with any special circumstances that might affect WCCC eligibility under WAC 170-290-0020;
 - (f) Have countable income at or below two hundred percent of the federal poverty guidelines (FPG). The consumer's eligibility shall end if the consumer's countable income is greater than two hundred percent of the FPG;
 - (g) Not have a monthly copayment that is higher than the state will pay for all eligible children in care;
 - (h) Complete the WCCC application and DSHS verification process regardless of other program benefits or services received; and
 - (i) Meet eligibility requirements for WCCC described in Part II of this chapter.
- (2) Children. To be eligible for WCCC, the child must:
- (a) Belong to one of the following groups as defined in WAC 388-424-0001:
 - (i) A U.S. citizen;
 - (ii) A U.S. national;
 - (iii) A qualified alien; or
 - (iv) A nonqualified alien who meets the Washington state residency requirements as listed in WAC 388-468-0005;
 - (b) Live in Washington state, and be:
 - (i) Less than age thirteen; or
 - (ii) Less than age nineteen, and:
 - (A) Have a verified special need, according WAC 170-290-0220; or
 - (B) Be under court supervision.

WAC 170-290-0012 Verifying consumers' information, states:

- (1) A consumer must complete the DSHS application for WCCC benefits and provide all required information to DSHS to determine eligibility when:
 - (a) The consumer initially applies for benefits; or
 - (b) The consumer reapplies for benefits.
- (2) A consumer must provide verification to DSHS to determine if he or she continues to qualify for benefits during his or her eligibility period when there is a change of circumstances under WAC 170-290-0031.
- (3) All verification that is provided to DSHS must:
 - (a) Clearly relate to the information DSHS is requesting;
 - (b) Be from a reliable source; and
 - (c) Be accurate, complete, and consistent.
- (4) If DSHS has reasonable cause to believe that the information is inconsistent, conflicting or outdated, DSHS may:
 - (a) Ask the consumer to provide DSHS with more verification or provide a collateral contact (a "collateral contact" is a statement from someone outside of the consumer's residence that knows the consumer's situation); or
 - (b) Send an investigator from the DSHS office of fraud and accountability (OFA) to make an unannounced visit to the consumer's home to verify the consumer's circumstances. See WAC 170-290-0025(9).
- (5) The verification that the consumer gives to DSHS includes, but is not limited to, the following:

- (a) A current WorkFirst IRP for consumers receiving TANF;
 - (b) Employer name, address, and phone number;
 - (c) State business registration and license, if self-employed;
 - (d) Work, school, or training schedule (when requesting child care for non-TANF activities);
 - (e) Hourly wage or salary;
 - (f) Either the:
 - (i) Gross income for the last three months;
 - (ii) Federal income tax return for the preceding calendar year; or
 - (iii) DSHS employment verification form;
 - (g) Monthly unearned income the consumer receives, such as child support or supplemental security income (SSI) benefits;
 - (h) If the other parent is in the household, the same information for them;
 - (i) Proof that the child belongs to one of the following groups as defined in WAC 388-424-0001:
 - (i) A U.S. citizen;
 - (ii) A U.S. national;
 - (iii) A qualified alien; or
 - (iv) A nonqualified alien who meets the Washington state residency requirements as listed in WAC 388-468-0005;
 - (j) Name and phone number of the licensed child care provider; and
 - (k) For the in-home/relative child care provider, a:
 - (i) Completed and signed criminal background check form;
 - (ii) Legible copy of the proposed provider's photo identification, such as a driver's license, Washington state identification, or passport;
 - (iii) Legible copy of the proposed providers' valid Social Security card; and
 - (iv) All other information required by WAC 170-290-0135.
- (6) If DSHS requires verification from a consumer that costs money, DSHS must pay for the consumer's reasonable costs.
- (7) DSHS does not pay for a self-employed consumer's state business registration or license, which is a cost of doing business.
- (8) If a consumer does not provide all of the verification requested, DSHS will determine if a consumer is eligible based information already available to DSHS.

WAC 170-290-0020 Eligibility—Special circumstances, states:

- (1) Child care provided at the consumer's place of work. A consumer is not eligible for WCCC benefits for his or her children when child care is provided at the same location where the consumer works.
- (2) Consumer's child care employment.
 - (a) A consumer may be eligible for WCCC benefits during the time she or he works in a child care center but does not provide direct care in the same classroom to his or her children during work hours.
 - (b) A consumer is not eligible for WCCC benefits during the time she or he works in a family home child care where his or her children are also receiving subsidized child care.

- (c) In-home/relative providers who are paid child care subsidies to care for children receiving WCCC benefits may not receive those benefits for their own children during the hours in which they provide subsidized child care.
 - (d) A child care provider who receives TANF benefits on behalf of a dependent child may not bill the state for subsidized child care for that same child.
- (3) Two-parent family.
- (a) A consumer may be eligible for WCCC if he or she is a parent in a two-parent family and one parent is not able or available as defined in WAC 170-290-0003 to provide care for the children while the other parent is working or participating in approved activities.
 - (b) If a consumer claims one parent is not able to care for the children the consumer must provide written documentation from a licensed professional (see WAC 388-448-0020) that states the:
 - (i) Reason the parent is not able to care for the children;
 - (ii) Expected duration and severity of the condition that keeps the parent from caring for the children; and
 - (iii) Treatment plan if the parent is expected to improve enough to be able to care for the children. The parent must provide evidence from a medical professional showing he or she is cooperating with treatment and is still not able to care for the children.
- (4) Single-parent family. A consumer is not eligible for WCCC benefits when he or she is the only parent in the family and will be away from the home for more than thirty days in a row.
- (5) Legal guardians.
- (a) A legal guardian under WAC 170-290-0005 may receive WCCC benefits for his or her work or approved activities without his or her spouse or live-in partner's availability to provide care being considered unless his or her spouse or live-in partner is also named on the permanent custody order.
 - (b) Eligibility for WCCC benefits is based on the consumer's work or approved activities schedule, the child's need for care, and the child's income eligibility and family size of one.
 - (c) The consumer's spouse or live-in partner is not eligible to receive subsidized child care payments as a child care provider for the child.
- (6) In loco parentis custodians.
- (a) An in loco parentis custodian may be eligible for WCCC benefits when he or she cares for an eligible child in the absence of the child's legal guardian or biological, adoptive or step-parents.
 - (b) An in loco parentis custodian who is not related to the child as described in WAC 170-290-0005(1) may be eligible for WCCC benefits if he or she has:
 - (i) A written, signed agreement between the parent and the caregiver assuming custodial responsibility; or
 - (ii) Receives a TANF grant on behalf of the eligible child.
 - (c) Eligibility for WCCC benefits is based on his or her work schedule, the child's need for care, and the child's income eligibility and family size of one.
 - (d) The consumer's spouse or live-in partner is not eligible to receive subsidized child care payments as a child care provider for the child.

- (7) WorkFirst sanction.
 - (a) A consumer may be eligible for WCCC if he or she is a sanctioned WorkFirst participant and participating in an activity needed to remove a sanction penalty or to reopen his or her WorkFirst case.
 - (b) A WorkFirst participant who loses his or her TANF grant due to exceeding the federal time limit for receiving TANF may still be eligible for WCCC benefits under WAC 170-290-0055.

WAC 170-290-0031 Notification of changes, states:

When a consumer applies for or receives WCCC benefits, he or she must:

- (1) Notify DSHS, within five days, of any change in providers;
- (2) Notify the consumer's provider within ten days when DSHS changes his or her child care authorization;
- (3) Notify DSHS within ten days of any significant change related to the consumer's copayment or eligibility, including:
 - (a) The number of child care hours the consumer needs (more or less hours);
 - (b) The consumer's countable income, including any TANF grant or child support increases or decreases, only if the change would cause the consumer's countable income to exceed the maximum eligibility limit as provided in WAC 170-290-0005. A consumer may notify DSHS at any time of a decrease in the consumer's household income, which may lower the consumer's copayment under WAC 170-290-0085;
 - (c) The consumer's household size such as any family member moving in or out of his or her home;
 - (d) Employment, school or approved TANF activity (starting, stopping or changing);
 - (e) The address and telephone number of the consumer's in-home/relative provider;
 - (f) The consumer's home address and telephone number; and
 - (g) The consumer's legal obligation to pay child support;
- (4) Report to DSHS, within twenty-four hours, any pending charges or conviction information the consumer learns about his or her in-home/relative provider; and
- (5) Report to DSHS, within twenty-four hours, any pending charges or conviction information the consumer learns about anyone sixteen years of age and older who lives with the provider when care occurs outside of the child's home.

WAC 170-290-0095, When WCCC benefits start, states:

- (1) WCCC benefits for an eligible consumer may begin when the following conditions are met:
 - (a) The consumer has completed the required WCCC application and verification process as described under WAC 170-290-0012 within thirty days of the date DSHS received the consumer's application or reapplication for WCCC benefits;
 - (b) The consumer is working or participating in an approved activity under WAC 170-290-0040, 170-290-0045, 170-290-0050 or 170-290-0055;
 - (c) The consumer needs child care for work or approved activities within at least thirty days of the date of application for WCCC benefits; and
 - (d) The consumer's eligible provider (under WAC 170-290-0125) is caring for his or her children.

- (2) If a consumer fails to turn in all information within thirty days from his or her application date, the consumer must restart the application process.
- (3) The consumer's application date is whichever is earlier:
 - (a) The date the consumer's application is entered into DSHS's automated system; or
 - (b) The date the consumer's application is date stamped as received.

WAC 170-290-0268, Payment discrepancies—Provider overpayments, states:

- (1) An overpayment occurs when a provider receives payment that is more than the provider is eligible to receive. Provider overpayments are established when that provider:
 - (a) Bills and receives payment for services not provided;
 - (b) Bills without attendance records that support their billing;
 - (c) Bills and receives payment for more than they are eligible to bill;
 - (d) With respect to license-exempt providers, bills the state for more than six children at one time during the same hours of care; or
 - (e) With respect to licensed or certified providers:
 - (i) Bills the state for more than the number of children they have in their licensed capacity; or
 - (ii) Is caring for a WCCC child outside their licensed allowable age range without a DEL-approved exception; or
 - (f) With respect to certified providers caring for children in a state bordering Washington:
 - (i) Is determined not to be in compliance with their state's licensing regulations; or
 - (ii) Fails to notify DSHS within ten days of any suspension, revocation, or change to their license.
- (2) DEL or DSHS may request documentation from a provider when preparing to establish an overpayment. The provider has fourteen consecutive calendar days to supply any requested documentation.
- (3) Providers are required to repay any payments that they were not eligible to receive.
- (4) If an overpayment was made through departmental error, the provider is still required to repay that amount.

WAC 170-290-0271, Payment discrepancies—Consumer overpayments, states:

- (1) DSHS establishes overpayments for past or current consumers when the consumer:
 - (a) Received benefits when he or she was not eligible;
 - (b) Used care for an unapproved activity or for children not in his or her WCCC household;
 - (c) Failed to report information to DSHS resulting in an error in determining eligibility, amount of care authorized, or copayment;
 - (d) Used a provider that was not eligible per WAC 170-290-0125; or
 - (e) Received benefits for a child who was not eligible per WAC 170-290-0015 or 170-290-0020.
- (2) DEL or DSHS may request documentation from a consumer when preparing to establish an overpayment. The consumer has fourteen consecutive calendar days to supply any requested documentation.
- (3) Consumers are required to repay any benefits paid by DSHS that they were not eligible to receive.

- (4) If an overpayment was made through departmental error, the consumer is still required to repay that amount.
- (5) If a consumer is not eligible under WAC 170-290-0032 and the provider has billed correctly, the consumer is responsible for the entire overpayment, including any absent days.

WAC 170-290-0275, Payment discrepancies—Providers covered under collective bargaining, states:

- (1) This section applies to any provider covered under the collective bargaining agreement.
- (2) For in-home/relative and licensed family home child care providers, disputes regarding underpayments shall be grievable.
- (3) Beginning July 1, 2007, there are different time frames for how far back a payment discrepancy may be corrected. The time frames, as provided in this subsection are based on:
 - (a) When services were provided;
 - (b) When the request for the underpayment was made; and
 - (c) The type of provider: Family home or in-home/relative provider.
- (4) Family home and in-home/relative providers must submit a claim for payment no later than twelve months after the date of service. "Submitting a claim for payment" means turning the original invoice in to DSHS for services no later than twelve months after the date of service. If the claim for payment is made within the twelve-month period, the time limits for correcting payment errors are:
 - (a) Two years back if the error is on rates paid by age and/or region, unless discovered by a federal audit. This means the provider has up to two years after the date of service to ask for a corrected payment; or
 - (b) Three years back if the error was for any other reason, including those discovered by a federal audit. This means the provider has up to three years after the date of service to ask for a corrected payment.

WAC 388-410-0001, What is a cash assistance overpayment?, states:

- (1) An overpayment is any cash assistance paid that is more than the assistance unit was eligible to receive.
- (2) There are two types of cash overpayments:
 - (a) Intentional overpayments, presumed to exist if you willfully or knowingly:
 - (i) Fail to report a change you must tell us about under WAC 388-418-0005 within the time frames under WAC 388-418-0007; or
 - (ii) Misstate or fail to reveal a fact affecting eligibility as specified in WAC 388-446-0001.
 - (b) Unintentional overpayments, which includes all other client-caused and all department-caused overpayments.
- (3) If you request a fair hearing and the fair hearing decision is in favor of the department, then:
 - (a) Some or all of the continued assistance you get before the fair hearing decision must be paid back to the department (see WAC 388-418-0020); and

- (b) The amount of assistance you must pay back will be limited to sixty days of assistance, starting with the day after the department receives your hearing request.
- (4) If you receive child support payments directly from the noncustodial parent, you must turn these payments over to the division of child support (DCS). These payments are not cash assistance overpayments.

2016-022

The Department of Early Learning did not have adequate internal controls over and did not comply with health and safety requirements for the Child Care and Development Fund program.

Federal Awarding Agency: U.S. Department of Health and Human Services
Pass-Through Entity: None
CFDA Number and Title: 93.575 Child Care and Development Block Grant
93.596 Child Care Mandatory and Matching Funds of the Child Care and Development Fund
Federal Award Number: G1601WACCDF; G1501WACCDF; G1401WACCDF
Applicable Compliance Component: Special Tests and Provisions – Health and Safety Requirements
Known Questioned Cost Amount: \$1,882
Likely Questioned Costs Amount \$278,164

Background

The Department of Early Learning (DEL) administers the federal Child Care and Development grant to assist eligible working families in paying for child care. In fiscal year 2016, the Department paid about \$184 million in federal funding to child care providers. Department is the lead agency responsible for ensuring providers meet licensing standards, which includes ensuring background checks are performed for all staff with direct access to children.

The Department conducts unannounced, annual onsite inspections of licensed providers to verify if required safety and health standards are being met and require providers to address any identified issues. Department licensors document inspections using a checklist. If a provider has no recent complaints or identified noncompliance, and has received a full checklist review in the past three years, an abbreviated checklist may be used. Otherwise, the licensor must use a full review checklist. When safety and health infractions are identified, licensors document them on a Facility Licensing Compliance Agreement (FLCA). The FLCA identifies the areas of provider non-compliance and establishes deadlines for correcting them. Providers must submit to their licensor a corrective action plan or resolution activity to the Department.

If an inspection was attempted but the provider was not present, the licensor must follow up and conduct the inspection within 30 days of the due date. If a follow-up inspection cannot be conducted, the licensor consults with their supervisor for a decision on conducting any further inspection attempts.

Common examples of noncompliance identified by licensors are:

- Providers that exceed the required staff-to-child ratios
- Providers that did not maintain accurate or complete attendance logs
- Provider supervision was not sufficient to ensure children’s safety
- Health and safety hazards

When serious safety and health violations are identified, licensors must conduct an unannounced re-check of the facility within 10 business days. Less serious non-compliance issues must be addressed within 30 days. If the provider does not resolve a noncompliance issue, the Department may impose sanctions, issue fines, or suspend or revoke the provider's license.

The Department conducts additional unannounced inspections for other reasons, including but not limited to:

- Complaints regarding health or safety
- Complaints of verbal, physical or sexual abuse (the Department refers these cases to DSHS Children's Administration)
- Complaints regarding non-reporting of accidents resulting in physical harm to a child
- Complaints regarding improper documentation of child care records

The Department is also required to ensure that license exempt childcare providers pass background checks upon becoming a provider, and at least every two years or when there is a 60-day gap in providing care.

Child care providers are required to self-report to the Department within 24 hours if they are convicted of a disqualifying crime.

In our fiscal year 2015 audit, we reported the Department did not have adequate internal controls over and did not comply with health and safety requirements. This was reported as finding number 2015-024.

Description of Condition

In state fiscal year 2016, the Department regulated 4,850 licensed providers. Department staff informed us that 842 (18 percent) of all licensed providers were overdue on their yearly inspections (licensors had attempted visits on 151 of those providers).

We used a statistical sampling method and randomly selected and reviewed records for 90 licensed providers to determine if monitoring inspections were conducted as required. We found:

- Twelve (13 percent) monitoring inspections were performed late by up to 22 months
- Six (7 percent) monitoring inspections were overdue and not conducted by June 30, 2016

We reviewed the provider's prior visit history to determine if the licensor used the appropriate monitoring checklist. We found 21 instances (23 percent) when licensors did not use the full inspection checklist as required. We also found that 10 providers did not have complete background check documentation for one or more staff members.

We examined the Department's response to serious violations documented during inspections and found 35 (39 percent) instances when violations of health, safety, and well-being of children were not followed up on within 10 days as required. Some examples of these serious violations were:

- Lack of background check documentation
- Inadequate supervision of children
- Use of inappropriate disciplinary methods
- Exceeding the maximum licensed capacity
- Exceeding the staff-to-child ratio
- General health and safety hazards to the children

We used a statistical sampling method and randomly selected 59 license-exempt providers and examined if background checks were performed as required. We found all background checks were performed properly. However, we identified one Friend, Family and Neighbor, a non-licensed provider, who committed a disqualifying crime and did not self-report. The Department detected this during a renewal background check, which was six months after the conviction occurred, and the individual was promptly disqualified.

We consider these internal control deficiencies to be a material weakness.

Cause of Condition

The Statewide Licensing Administrator said the Department was unable to complete all licensing visits timely for the following reasons:

- Turnover of licensing staff
- Inconsistent application and enforcement of policies
- Some providers were inactive and not watching children at the time of the monitoring visit so no inspection could be done
- Some providers refused the licensor access

He also said the Department's statutes were not in alignment with active and inactive licensing status that would ensure licensors were able to conduct their inspections. Specifically, when a provider was repeatedly not available, was inactive or refused access to the licensor, the allowable sanctions were not sufficient to ensure timely compliance.

Management did not actively monitor to ensure licensors completed required monitoring and follow-up visits in a timely manner. Additionally, we found there were circumstances that required a follow-up visit; however, licensors accepted and relied on provider attestations in place of the onsite inspections to resolve issues.

After receiving the fiscal year 2015 finding, Department managers began to provide increased training for licensing supervisors to consistently apply and enforce internal policies. The Department has also begun to pursue additional methods to compel providers to allow licensors timely access.

Effect of Condition and Questioned Costs

The Department's activities resulted in inconsistent monitoring and enforcement actions for providers. When inspections are not conducted, or are conducted late, it increases the likelihood that the Department would not detect health and safety violations in a timely manner.

Further, we found that 15 inspection records (17 percent) we reviewed identified noncompliance with a health or safety issue that had also been identified as noncompliant in the prior inspection. By not following up on violations in a timely manner, the Department cannot be sure these issues have been corrected. Health and safety, supervision, background check, discipline, and over-capacity/over-ratio violations may put children in jeopardy for harm, neglect, and unhealthy emotional and cognitive development environments.

The provider who was not eligible to receive payment because of a disqualifying crime continued to receive payments because they did not self-report their own conviction. The provider received \$1,882 in improper payments with federal funds. Because a statistical sampling method was used to select the providers examined, we estimate the amount of likely questioned costs to be \$278,164.

Recommendations

We recommend the Department ensure staff follow policies related to health and safety requirements. This includes ensuring management oversight is sufficient to ensure compliance with state rules and policies and procedures and that childcare providers are meeting all applicable health and safety requirements.

We also recommend the Department attempt to recover the improper payments issued to the disqualified provider and to consult its grantor to determine which costs, if any, need to be repaid.

Agency's Response

The Department of Early Learning (DEL) concurs with this finding, and is strongly committed to ensuring the health, safety and well-being of all children in licensed care.

As to the Auditor's specific recommendations, DEL concurs and offers the following detail:

- *In response to last years audit, and effective June 2016, DEL has implemented new monitoring and compliance agreement policies and procedures to clarify language for the use of a full checklist every three years and to clarify when a site visit is needed and what methods of compliance can be used. The Department will continue to train Licensing staff on these new policies and procedures. In addition, DEL is working to rewrite all licensing policies and procedures to ensure that they align with current state and federal rules and regulations.*
- *In January 2017, DEL revised the boundaries of our four state licensing regions to be more efficient and effective at managing licensing staff requirements/workload.*
- *In April 2017, DEL will replace the current paper driven monitoring system with a new electronic system (WA COMPASS, built on the Salesforce platform) that will allow Licensing staff to make timely updates, improve data integrity, streamline staff work processes, and*

provide electronic reminders to licensing staff and supervisors. The new system will result in time savings we will reinvest in the higher caseload and additional state and federal licensing requirements.

- *WA COMPASS will provide electronic tools for tracking the 10 day health and safety rechecks currently required by policy and for automatically converting from an abbreviated checklist to a full checklist when criteria is met.*
- *Currently DEL is aligning Family Home and Child Care Center licensing rules in Washington Administrative Code (WAC). This alignment process is in response to the demands of the legislature and to the needs of the provider community.*
- *DEL will also be weighting all licensing standards. This will create an objective enforcement system that connects licensing infractions with the level of risk to children. DEL will ensure that enforcement of these rules is both timely and consistent. DEL will also provide more information and clarity about the risk level of each standard and the consequences for violations. This process is currently taking place and should be completed by end of March 2017.*
- *DEL will provide training to staff on both the new IT system and new weighted rules. Additionally, DEL will work to create a continuous training plan for licensing staff.*
- *DEL has created 5 new positions to address the new federal regulations requiring the Department to monitor non-relative family, friend and neighbor caregivers (FFN). DEL will meet these new requirements by the effective date of October 1, 2017.*
- *DEL's portable background unit will start processing FFN portable background checks effective July 1, 2017, pending approval from the FBI. We are in the process of transferring this responsibility from the Department of Social and Health Services.*
- *DEL will work with DSHS to process and collect the overpayment identified above.*

Auditor's Concluding Remarks

We thank the Department for its cooperation and assistance throughout the audit. We will review the status of the Department's corrective action during our next audit.

Applicable Laws and Regulations

Title 2 U.S. Code of Federal Regulations Part 200, *Uniform Administrative Requirements, Cost Principles, and Audit Requirements for Federal Awards* (Uniform Guidance) established reporting requirements for audit findings.

Section 200.303 Internal controls.

The non-Federal entity must:

- (a) Establish and maintain effective internal control over the Federal award that provides reasonable assurance that the non-Federal entity is managing the Federal award in compliance with Federal statutes, regulations, and the terms and conditions of the Federal award. These internal controls should be in compliance with guidance in "Standards for Internal Control in the Federal Government" issued by the Comptroller General of the United States or the "Internal Control Integrated Framework", issued by the Committee of Sponsoring Organizations of the Treadway Commission (COSO).

- (b) Comply with Federal statutes, regulations, and the terms and conditions of the Federal awards.

Section 200.403 Factors affecting Allowability of costs.

Except where otherwise authorized by statute, costs must meet the following general criteria in order to be allowable under Federal awards.

- (a) Be necessary and reasonable for the performance of the Federal award and be allocable thereto under these principles.
- (b) Conform to any limitations or exclusions set forth in these principles or in the Federal award as to types or amount of cost items.
- (c) Be consistent with policies and procedures that apply uniformly to both federally-financed and other activities of the non-Federal entity.
- (d) Be accorded consistent treatment. A cost may not be assigned to a Federal award as a direct cost if any other cost incurred for the same purpose in like circumstances has been allocated to the Federal award as an indirect cost.
- (e) Be determined in accordance with generally accepted accounting principles (GAAP), except, for state and local governments and Indian tribes only, as otherwise provided for in this part.
- (f) Not be included as a cost or used to meet cost sharing or matching requirements of any other federally-financed program in either the current or a prior period. See also §200.306 Cost sharing or matching paragraph (b).
- (g) Be adequately documented. See also §§200.300 Statutory and national policy requirements through 200.309 Period of performance of this part.

Section 200.516 Audit reporting, state in part:

- (a) *Audit findings reported.* The auditor must report the following as audit findings in a schedule of findings and questioned costs:
 - (1) Significant deficiencies and material weaknesses in internal control over major programs and significant instances of abuse relating to major programs. The auditor's determination of whether a deficiency in internal control is a significant deficiency or material weakness for the purpose of reporting an audit finding is in relation to a type of compliance requirement for a major program identified in the Compliance Supplement.
 - (2) Material noncompliance with the provisions of Federal statutes, regulations, or the terms and conditions of Federal awards related to a major program. The auditor's determination of whether a noncompliance with the provisions of Federal statutes, regulations, or the terms and conditions of Federal awards is material for the purpose of reporting an audit finding is in relation to a type of compliance requirement for a major program identified in the compliance supplement.
 - (3) Known questioned costs that are greater than \$25,000 for a type of compliance requirement for a major program. Known questioned costs are those specifically identified by the auditor. In evaluating the effect of questioned costs on the opinion on compliance, the auditor considers the best estimate of total costs questioned (likely questioned costs), not just the questioned costs specifically identified (known questioned costs). The auditor must also report known questioned costs when likely questioned costs are greater than \$25,000 for a type of compliance

requirement for a major program. In reporting questioned costs, the auditor must include information to provide proper perspective for judging the prevalence and consequences of the questioned costs.

The American Institute of Certified Public Accountants defines significant deficiencies and material weaknesses in internal controls over compliance in its *Codification of Statements on Auditing Standards*, section 935, as follows:

.011 For purposes of adapting GAAS to a compliance audit, the following terms have the meanings attributed as follows: ...

Material weakness in internal control over compliance. A deficiency, or combination of deficiencies, in internal control over compliance, such that there is a reasonable possibility that material noncompliance with a compliance requirement will not be prevented, or detected and corrected, on a timely basis. In this section, a reasonable possibility exists when the likelihood of the event is either reasonably possible or probable as defined as follows:

Reasonably possible. The chance of the future event or events occurring is more than remote but less than likely.

Remote. The chance of the future event or events occurring is slight.

Probable. The future event or events are likely to occur.

Significant deficiency in internal control over compliance. A deficiency, or a combination of deficiencies, in internal control over compliance that is less severe than a material weakness in internal control over compliance, yet important enough to merit attention by those charged with governance.

Material noncompliance. In the absence of a definition of material noncompliance in the governmental audit requirement, a failure to follow compliance requirements or a violation of prohibitions included in the applicable compliance requirements that results in noncompliance that is quantitatively or qualitatively material, either individually or when aggregated with other noncompliance, to the affected government program.

45 CFR section 98.40 Compliance with applicable State and local regulatory requirements, states:

(a) Lead Agencies shall:

- (1) Certify that they have in effect licensing requirements applicable to child care services provided within the area served by the Lead Agency;
- (2) Provide a detailed description of the requirements under paragraph (a)(1) of this section and of how they are effectively enforced.

(b) (1) This section does not prohibit a Lead Agency from imposing more stringent standards and licensing or regulatory requirements on child care providers of services for which assistance is provided under the CCDF than the standards or requirements imposed on other child care providers.

- (2) Any such additional requirements shall be consistent with the safeguards for parental choice in § 98.30(f).

45 CFR section 98.41 Health and safety requirements, states:

- (a) Although the Act specifically states it does not require the establishment of any new or additional requirements if existing requirements comply with the requirements of the statute, each Lead Agency shall certify that there are in effect, within the State (or other area served by the Lead Agency), under State, local or tribal law, requirements designed to protect the health and safety of children that are applicable to child care providers of services for which assistance is provided under this part. Such requirements shall include:
 - (1) The prevention and control of infectious diseases (including immunizations). With respect to immunizations, the following provisions apply:
 - (i) As part of their health and safety provisions in this area, States and Territories shall assure that children receiving services under the CCDF are age-appropriately immunized. Those health and safety provisions shall incorporate (by reference or otherwise) the latest recommendation for childhood immunizations of the respective State or territorial public health agency.
 - (ii) Notwithstanding paragraph (a)(1)(i) of this section, Lead Agencies may exempt:
 - (A) Children who are cared for by relatives (defined as grandparents, great grandparents, siblings (if living in a separate residence), aunts, and uncles);
 - (B) Children who receive care in their own homes;
 - (C) Children whose parents object to immunization on religious grounds; and
 - (D) Children whose medical condition contraindicates immunization;
 - (iii) Lead Agencies shall establish a grace period in which children can receive services while families are taking the necessary actions to comply with the immunization requirements;
 - (2) Building and physical premises safety; and
 - (3) Minimum health and safety training appropriate to the provider setting.
- (b) Lead Agencies may not set health and safety standards and requirements under paragraph (a) of this section that are inconsistent with the parental choice safeguards in § 98.30(f).
- (c) The requirements in paragraph (a) of this section shall apply to all providers of child care services for which assistance is provided under this part, within the area served by the Lead Agency, except the relatives specified in paragraph (e) of this section.
- (d) Each Lead Agency shall certify that procedures are in effect to ensure that child care providers of services for which assistance is provided under this part, within the area served by the Lead Agency, comply with all applicable State, local, or tribal health and safety requirements described in paragraph (a) of this section.
- (e) For the purposes of this section, the term “child care providers” does not include grandparents, great grandparents, siblings (if such providers live in a separate residence), aunts, or uncles, pursuant to § 98.2.

WAC 170-296A-0001, Authority, states:

The department of early learning was established under chapter 265, Laws of 2006. Chapter 43.215 RCW establishes the department's responsibility and authority to set and enforce licensing requirements and standards for licensed child care agencies in Washington state, including the authority to adopt rules to implement chapter 43.215 RCW.

WAC 170-296A-1410, Department inspection, states:

- (1) Prior to the department issuing a license, a department licensor must inspect the proposed indoor and outdoor spaces to be used for child care to verify compliance with the requirements of this chapter.
- (2) The licensee must grant reasonable access to the department licensor during the licensee's hours of operation for the purpose of announced or unannounced monitoring visits to inspect the indoor or outdoor licensed space to verify compliance with the requirements of this chapter.

WAC 170-296A-8000, Facility licensing compliance agreements, states:

At the department's discretion, when a licensee is in violation of this chapter or chapter 43.215 RCW, a facility licensing compliance agreement may be issued in lieu of the department taking enforcement action.

- (1) The facility licensing compliance agreement contains:
 - (a) A description of the violation and the rule or law that was violated;
 - (b) A statement from the licensee regarding the proposed plan to comply with the rule or law;
 - (c) The date the violation must be corrected;
 - (d) Information regarding other licensing action that may be imposed if compliance does not occur by the required date; and
 - (e) Signature of the licensor and licensee.
- (2) The licensee must return a copy of the completed facility license compliance agreement to the department by the date indicated when corrective action has been completed.
- (3) The licensee may request a supervisory review regarding the violation of rules or laws identified on the facility license compliance agreement.
- (4) A facility license compliance agreement is not subject to appeal under chapter 170-03 WAC.

WAC 170-296A-8025, Time period for correcting a violation, states:

The length of time the licensee has to make the corrections depends on:

- (1) The seriousness of the violation;
- (2) The potential threat to the health, safety and well-being of the children in care; and
- (3) The number of times the licensee has violated rules in this chapter or requirements under chapter 43.215 RCW.

WAC 170-296A-8175, Violations—Enforcement action, states:

The department may deny, suspend, revoke, or not continue a license when:

- (1) The licensee is unable to provide the required care for the children in a way that promotes their health, safety and well-being;
- (2) The licensee is disqualified under chapter 170-06 WAC (DEL background check rules);
- (3) The licensee or household member has been found to have committed child abuse or child neglect;

- (4) The licensee has been found to allow staff or household members to commit child abuse or child neglect;
- (5) The licensee has a current charge or conviction for a disqualifying crime under WAC 170-06-0120;
- (6) There is an allegation of child abuse or neglect against the licensee, staff, or household member;
- (7) The licensee fails to report to DSHS children's administration intake or law enforcement any instances of alleged child abuse or child neglect;
- (8) The licensee tries to obtain or keep a license by deceitful means, such as making false statements or leaving out important information on the application;
- (9) The licensee commits, permits or assists in an illegal act at the child care premises;
- (10) The licensee uses illegal drugs or alcohol in excess, or abuses prescription drugs;
- (11) The licensee knowingly allowed a staff or household member to make false statements on employment or background check application related to their suitability or competence to provide care;
- (12) The licensee fails to provide the required level of supervision for the children in care;
- (13) The licensee cares for more children than the maximum number stated on the license;
- (14) The licensee refuses to allow department authorized staff access during child care operating hours to:
 - (a) Requested information;
 - (b) The licensed space;
 - (c) Child, staff, or program files; or
 - (d) Staff or children in care.
- (15) The licensee is unable to manage the property, fiscal responsibilities or staff in the facility;
- (16) The licensee cares for children outside the ages stated on the license;
- (17) A staff person or a household member residing in the licensed home is disqualified under chapter 170-06 WAC (DEL background check rules);
- (18) The licensee, staff person, or household member residing in the licensed home has a current charge or conviction for a crime described in WAC 170-06-0120;
- (19) A household member residing in the licensed home had a license to care for children or vulnerable adults denied or revoked;
- (20) The licensee does not provide the required number of qualified staff to care for the children in attendance; or
- (21) The department is in receipt of information that the licensee has failed to comply with any requirement described in WAC 170-296A-1420.

WAC 170-297-1410, Department inspection, states:

- (1) Prior to the department issuing a license, a department licensor must inspect the proposed indoor and outdoor spaces to be used for child care to verify compliance with the requirements of this chapter.
- (2) Access must be granted to the department licensor during the child care hours of operation for the purpose of announced or unannounced monitoring visits to inspect the indoor or outdoor licensed space to verify compliance with the requirements of this chapter.

WAC 170-297-8000, Facility licensing compliance agreements, states:

At the department's discretion, when a licensee is in violation of this chapter or chapter 43.215 RCW, a facility licensing compliance agreement may be issued in lieu of the department taking enforcement action.

- (1) The facility licensing compliance agreement contains:
 - (a) A description of the violation and the rule or law that was violated;
 - (b) A statement from the licensee regarding the proposed plan to comply with the rule or law;
 - (c) The date the violation must be corrected;
 - (d) Information regarding other licensing action that may be imposed if compliance does not occur by the required date; and
 - (e) Signature of the licensor and licensee.
- (2) The licensee must return a copy of the completed facility license compliance agreement to the department by the date indicated when corrective action has been completed.
- (3) The licensee may request a supervisory review regarding the violation of rules or laws identified on the facility license compliance agreement.
- (4) A facility license compliance agreement is not subject to appeal under chapter 170-03 WAC.

WAC 170-297-8025, Time period for correcting a violation, states:

The length of time the program has to make the corrections depends on:

- (1) The seriousness of the violation;
- (2) The potential threat to the health, safety and well-being of the children in care; and
- (3) The number of times the program has violated rules in this chapter or requirements under chapter 43.215 RCW.

WAC 170-297-8175, Violations—Enforcement action, states:

The department may deny, suspend, revoke, or not continue a license when:

- (1) The licensee or program staff are unable to provide the required care for the children in a way that promotes their health, safety and well-being;
- (2) The licensee or program staff person is disqualified under chapter 170-06 WAC (DEL background check rules);
- (3) The licensee or program staff person has been found to have committed child abuse or child neglect;
- (4) The licensee has been found to allow program staff or volunteers to commit child abuse or child neglect;
- (5) The licensee or program staff person has a current charge or conviction for a disqualifying crime under WAC 170-06-0120;
- (6) There is an allegation of child abuse or neglect against the licensee, staff, or volunteer;
- (7) The licensee or program staff person fails to report to DSHS children's administration intake or law enforcement any instances of alleged child abuse or child neglect;
- (8) The licensee tries to obtain or keep a license by deceitful means, such as making false statements or leaving out important information on the application;

- (9) The licensee or a program staff person commits, permits or assists in an illegal act at the child care premises;
- (10) The licensee or a program staff person uses illegal drugs or alcohol in excess, or abuses prescription drugs;
- (11) The licensee knowingly allowed a program staff person or volunteer to make false statements on employment or background check application related to their suitability or competence to provide care;
- (12) The licensee does not provide the required number of qualified program staff to care for the children in attendance;
- (13) The licensee or program staff fails to provide the required level of supervision for the children in care;
- (14) When there are more children than the maximum number stated on the license at any one time;
- (15) The licensee or program staff refuses to allow department authorized staff access during child care operating hours to:
 - (a) Requested information;
 - (b) The licensed space;
 - (c) Child, staff, or program files; or
 - (d) Staff or children in care;
- (16) The licensee is unable to manage the property, fiscal responsibilities or staff in the facility; or
- (17) The licensee or program staff cares for children outside the ages stated on the license.

The Department of Early Learning Child Care Licensing Policies and Procedures, 10.1.3 Compliance Agreement Procedure state in part:

Completing the Compliance Agreement

1. The licensor must use 10.9.1.1 Compliance Agreement in ELF to record noncompliance issues. If the technology equipment is not working, then the licensor will use the hardcopy 10.9.1.1 Compliance Agreement form.
7. If there is an immediate health and safety issue, the issue will be corrected immediately or as soon as possible to ensure child safety but no later than 10 business days to ensure child health and safety.

Monitoring the Compliance Agreement

10. The licensor must monitor the compliance agreement based on the nature and severity of WAC violations.
11. The licensor must make a site visit within 10 business days to verify correction of licensing non-compliance that could immediately impact the health, safety and well-being of children in care. The site visit must be documented in FamLink using the health and safety re-check code. The licensor must request supervisor approval if unable to meet this time frame and this must be documented in FamLink provider notes. Examples may include but are not limited to:
 - a. Health and safety hazards
 - b. Behavior management
 - c. Supervision

- d. Staff/child interaction
 - e. Group size/capacity
 - f. Medication management
 - g. Nap and sleep equipment to include SIDS prevention
 - h. Window blind cords that form a loop
12. If the noncompliance issues do not immediately impact the health, safety and well-being of children in care, written verification in lieu of a site visit may be used to verify compliance. Examples may include but are not limited to:
- a. Menu posting
 - b. Documentation of activity program
 - c. Supplies verified with receipt
 - d. Changes to parent communication
 - e. Staff development and training records
 - f. Health Care Plan
 - g. Fire Drill record

2016-023

The Department of Social and Health Services did not have adequate internal controls over and did not comply with client eligibility requirements for the Child Care Development Fund.

Federal Awarding Agency: U.S. Department of Health and Human Services
Pass-Through Entity: None
CFDA Number and Title: 93.575 Child Care and Development Block Grant
93.596 Child Care Mandatory and Matching Funds of the Child Care and Development Fund
Federal Award Number: G1601WACCDF, G1501WACCDF, G1401WACCDF
Applicable Compliance Component: Eligibility
Known Questioned Cost Amount: \$18,882
Likely Questioned Cost Amount: \$102,972,489

Background

The Department of Early Learning (DEL) administers the federal Child Care and Development grant (CCDF) to assist eligible working families in paying for child care. The Department of Social and Health Services (DSHS) determines client eligibility and pays child care providers under an agreement with DEL. In fiscal year 2016, the Departments paid child-care providers about \$184 million in federal grant funds.

For a family to be eligible for child care assistance, state and federal rules require that children:

- Be under age 13 (with some exceptions)
- Reside with a family whose income does not exceed 85 percent of state, territorial or tribal median income for a family of the same size; and
- Reside with a parent, or parents, who work or attend a job-training or education program; or are in need of, or are receiving, protective services.

State rules also describe the information that clients (consumers) must provide to DSHS to verify their eligibility. Within 30 days, DSHS must complete the eligibility determinations, or the application process must be restarted. The information must be from a reliable source, accurate, complete and consistent. This includes, but is not limited to, employer and hourly wage information, family household size and composition, and the parents' work schedules. DSHS also has direct access to systems that contain wage and household benefit and composition data for some, but not all child care recipients.

If an ineligible client receives assistance, the payment made to the child-care provider is not allowable by federal regulations.

In the past four annual statewide single audits for Washington, we reported in findings that DSHS did not have adequate internal controls over the eligibility process for child care subsidy recipients. These were reported as finding numbers 2015-026, 2014-026, 2013-017 and 12-30. The federal grantor had agreed with our 2012, 2013 and 2014 findings. The grantor has not issued its decision on the 2015

finding. In the 2015 state fiscal year audit, we identified \$12,967 in known questioned costs and \$22,680,872 in likely questioned costs related to eligibility determinations — DSHS responded that it does not agree with the identified conditions.

Description of Condition

DSHS has not established adequate internal controls to ensure it correctly determines and documents client eligibility before payments are made to child-care providers.

We found:

- In most cases, a DSHS caseworker processes client eligibility information and authorizes services without a secondary review or approval.
- Caseworkers can authorize services in DSHS’s eligibility system without verifying client household income or employment activity.
- Caseworkers who establish authorizations for child care can also make changes to increase these authorizations to exceed full-time care without supervisory review.

DSHS reviewed about 4 percent of open authorizations for child care eligibility determinations. It also performed a post payment review of about 2.5 percent of payments. These reviews did not provide adequate coverage to compensate for the internal control weaknesses and prevent improper payments. As part of these reviews, DSHS identified incorrect eligibility determinations regarding parent income, authorizations, co-payments, and missing or incomplete documentation.

For authorizations requiring more than standard full-time care, DSHS policy requires staff to use a special authorization code. The code does not become active until a supervisor has reviewed and approved the request. The system, however, allows a worker to authorize additional care without using the special code, thereby avoiding supervisory approval.

We randomly selected and examined the eligibility determinations of 86 clients, for whom 86 payments totaling \$33,712 in CCDF federal funds were made to child care providers. In 50 instances (58 percent), we found eligibility determinations were made improperly, required documentation was not obtained or information was not verified by DSHS before services were authorized.

Specifically, we found:

- 11 clients were determined eligible, but either did not participate in an approved activity or DSHS did not verify their participation
- 33 clients were determined eligible when work schedules were not verified, or when schedules were accepted but not supported by adequate information
- 14 clients were determined eligible when employment information was not verified, or information was accepted but not supported by adequate documentation
- 19 clients were determined eligible when wage information was not verified, or information was accepted but not supported by adequate information. Seven of these clients exceeded the maximum income limit
- 3 self-employed clients’ cases received improper self-employment eligibility determinations

- 12 instances when DSHS did not establish the client’s complete household composition. Eight of these cases resulted in improper head of household eligibility determinations and client ineligibility.

For some clients, more than one issue occurred, which is why the total numbers described in the bullets do not reconcile to 50 client files we determined to have exceptions.

During our examination of client case files, we also found:

- An incorrect calculation of monthly client co-pay, resulting in an overpayment
- Eligibility staff did not always review three months of gross income when determining or re-determining continued eligibility on cases with existing employment
- Instances when staff noted they compared wage earnings to other systems, but when we independently reviewed the earnings, we found the client was ineligible

For state fiscal years 2015 and 2016, DSHS reported to DEL the common errors identified during DSHS audits and reviews of client cases. The common errors related to eligibility were incorrect income budgeting, incorrect authorizations for clients, improper co-payment calculation, and missing or incomplete documentation — many of the same issues identified in our audit. Reports for both years identified significant overpayments and high error rates.

To address the trends, DSHS identified changes it was making to help improve accuracy in the future. The 2016 summary identified the same four error trends and proposed the same changes as the 2015 report.

We consider these internal control weaknesses to constitute a material weakness.

Cause of Condition

DSHS staff made eligibility determinations that conflicted with state regulations and the federally approved state plan for the program. When we discussed staff not fully verifying eligibility within the 30-day limit, DSHS referenced DEL’s policy manual stating that income verification could be performed after the 30-day period. State regulations and the approved state plan require these verifications to be performed within 30 days, and state regulations require the client to reapply for the program if eligibility verification is not complete after 30 days.

Other incorrect eligibility determinations resulted from required documents, such as three months of wage information or work schedule, not being collected before approving and authorizing child care. In some instances, documents were never collected. In many instances, DSHS accepted client self-attestations of critical information, such as working schedules and actual earnings, instead of collecting and verifying required documentation.

DSHS’s eligibility system is designed with an alert function that reminds staff when an issue is outstanding and needs to be addressed. The alerts can be dismissed without confirming outstanding issues were addressed. Alerts in the eligibility system were dismissed and confirmed as completed by staff when our testing found that required documents were not documented in the client’s case file.

Effect of Condition and Questioned Costs

By not having adequate internal controls in place, DSHS is at a higher risk of paying providers for child-care services when clients are ineligible.

For the 50 client eligibility determinations with errors, we found improper client eligibility determinations resulted in \$18,882 of federal overpayments to providers. Of this amount, \$10,248 was paid to clients we determined were ineligible while the remaining \$8,634 was paid to clients that DSHS did not collect the required documentation to determine whether they were eligible or not. We used a statistical sampling method to randomly select the payments examined in the audit. We estimate the amount of likely federal questioned costs to be \$102,972,489.

Further, many of the improper payments were partially funded by state dollars. Specifically, we found \$6,643 of improper state payments, which projects to a likely improper payment amount of \$35,833,962. This amount is not included in the federal questioned costs.

We question costs when we find an agency has not complied with grant regulations or when it does not have adequate documentation to support expenditures.

Recommendations

We recommend DSHS improve its internal controls over determining eligibility to ensure:

- Authorizations for child care are adequately supported with verified documentation
- Eligibility determinations are reviewed sufficiently to detect improper eligibility determinations
- Segregation of duties between staff that determine eligibility and authorize payments
- Employees review client eligibility documents and compare those documents with source data available to DSHS staff

We also recommend that DSHS and DEL improve the current review process to cover a larger population of authorized payments to ensure eligibility is properly determined before making payments.

Agency's Response

Both DSHS and DEL have provided responses to this finding.

DSHS Response

The Department of Social and Health Services appreciates, acknowledges and supports the State Auditor's Office's (SAO) mission, which is to hold state and local governments accountable for the use of public resources.

The Department partially concurs with the overall findings of the State Auditor's Office. To that end, the Department will enact major changes to improve our internal controls over determining eligibility. To appropriately and effectively initiate and implement these substantial changes, while minimizing

impact to our clients, the Department will seek 25 additional full-time employees and necessary resources to staff the business-process redesign and support the information technology initiatives necessary to improve our internal controls.

The Department also notes that even if we immediately implement changes that fully resolve the audit findings, given that we are currently about three quarters of the way through the SFY17 audit period (which spans July 1, 2016 – June 30, 2017), we won't see the full benefit of our corrective actions until the State Fiscal Year 2018 audit (which will span the period of July 1, 2017 – June 30, 2018). It is likely that we will see similar findings in the SFY17 audit.

The Department would also like to share our concerns regarding the SAO's sampling methodology and the associated extrapolation of questioned costs. The SAO elected to employ a non-statistical sampling methodology to estimate noncompliance and total questionable costs sampling only 86 payments from the universe of 569,633 payment records. The method of sample size estimation selected would be appropriate for audit purposes of identifying at least one instance of questionable costs in a target population, but the method is inadequate to support extrapolation of questionable costs. The inappropriately small sample size does not provide precise estimates of the actual amount of questionable costs in the larger population. The Department requests, for future large-scale projections, that the SAO utilize a larger, statistically valid sample size, therefore lending better credibility to the associated results.

Exception Reviews

*Of the 50 exceptions cited, the Department **concur**s that we did not comply with eligibility requirements for 26 exceptions. Within these 26 exceptions, however, our further review indicates that minor procedural errors had no effect on seven of these exceptions - we accurately determined eligibility resulting in no overpayments for the clients. The Department **does not** concur that we did not comply with eligibility requirements for 24 exceptions. The Department of Early Learning (DEL) supports DSHS in this assertion. Of the 24 exceptions for which DSHS does not concur, the disagreement centers on two primary policy interpretations:*

- (1) **Accepting client's self-attestation of work schedule.** The SAO states that an employer must always verify work schedules, but state rule (WAC 170-290-0012) requires third-party schedule verification only if questionable. Furthermore, SAO states client self-attestation is always questionable, while DEL policy and DSHS procedures assert that client attestation is questionable only when wage, employment or other available information contradicts it under WAC 170-290-0012.*
- (2) **Allowing a client 60 days to verify wages on new/changed employment.** The SAO states this verification must be done within the first 30 days of application, and before payment is authorized to providers. However, DEL rules support the 60-day verification practice, and WAC 170-290-0095 was recently updated to specifically provide clients with new or changed employment a 60-day window to supply employment verification.*

The U.S. Department of Health and Human Services, Administration for Children and Families (HHS/ACF) encourages states to adopt family-friendly policies (see 45 CFR Part 98) in determining

child care subsidy eligibility. DEL has embraced this philosophy and highlighted two examples in the FY2016-18 CCDF Washington State Plan to illustrate how they are meeting the federal requirements:

- (1) Allowing self-attestation of work schedules (pg. 89); and*
- (2) Allowing 60 days for verification of new employment (pg. 73).*

The federal government approved this plan. HHS/ACF, DSHS, and DEL are moving forward with these family-friendly policies. The SAO indicated verbally during a meeting that this shift in philosophy, policy, and procedure is not in accord with federal regulations regarding allowable costs.

For the 26 exceptions for which we agree with, we are thoroughly reviewing the cases to determine if an overpayment is appropriate. As of February 28, 2017, the Department's review of the exceptions indicate one situation of likely fraud (client's failure to accurately report household composition), 18 cases where an overpayment occurred and seven where it did not (we agree we were not in compliance due to minor procedural errors, however, we correctly determined eligibility and the client did not incur an overpayment). The Department referred the fraud case for prosecution and the overpayment to the Office of Financial Recovery for collection.

SAO Description of Weakness – *In most cases, a DSHS caseworker processes client eligibility information and authorizes services without a secondary review or approval.*

Child care program policy, as established and maintained by DEL, does not require secondary review or approval when determining eligibility and authorizing benefits and payment. However, DSHS continues to employ the following controls to ensure child care subsidy payment authorizations are made correctly:

- A supervisory review is required for payment requests that exceed certain parameters. The supervisor reviews the need for the additional payment and either approves the payment by submitting the authorization to SSPS or denies the payment if the consumer is not eligible. All special authorizations require supervisor review for approval.*
- New employees have 100 percent of their work audited by lead workers until they achieve proficiency; these reviews may be conducted either pre or post-authorization.*

The Department agrees that a procedural separation of duties between eligibility determination and authorization could increase the integrity of the program. To that end, the Department is initiating the IT requirements gathering process to support changes that will separate eligibility determination from the authorization process. This will require changes to procedures, staffing levels, staff training, and IT systems that will require some time to implement.

The Department's IT systems span multiple agencies, and system changes, even critical ones, must be reviewed, approved, and scheduled in a manner that minimizes delays and disruption to other previously scheduled, mission-critical changes.

SAO Description of Weakness: *DSHS reviews about four percent of open authorizations for child care eligibility determinations, which does not provide adequate coverage to compensate for the internal control weaknesses to prevent improper payments.*

Following last year's audit recommendation, the Department increased the percentage reviewed of open authorizations that were prior to payment from one to four percent. In addition, the Department reviewed 5.4 percent of open authorizations that were post-payment, and CSD Supervisors reviewed 0.9 percent of all open child care cases in SFY16.

SAO Description of Weakness – *Caseworkers can authorize services in the Department's eligibility system without verifying client household income or employment activity.*

Washington Administrative Code, established and maintained by DEL, requires workers to request verification if not provided by the consumer. Eligibility workers must verify a consumer's activity and income prior to making eligibility determinations. Staff training curricula reinforce these requirements. DEL WAC 170-290-0012 requires a consumer to provide verification of employment or employment activity including income, hours of work and work schedule to receive childcare subsidy payments, however, if a consumer does not provide all of the verification requested, DEL WAC (WAC 170-290-0012(7)) directs DSHS to determine eligibility based on the information provided to DSHS.

SAO Description of Weakness – *Caseworkers who establish authorizations for child care can also make changes to increase these authorizations to exceed full time care without supervisory review.*

It is true that caseworkers have access to create authorizations, including those that exceed full time care, without supervisory review. This is consistent with child care program policy, established and maintained by DEL, which allows staff to approve benefits, authorize payment and make changes to authorizations without supervisory approval. The Department has consistent monitoring protocols to maintain payment integrity including:

- A separation of duties protocol that does not allow a staff member who activates a license-exempt provider to make any authorizations for that provider.*
- Staff activating or reactivating a provider's SSPS number are electronically linked to that provider number and are not able to create or alter authorizations on behalf of that provider number. The activation of a license-exempt provider's file occurs when the provider's SSPS number is created, and reactivation occurs when the provider has had no payment authorizations for the previous 90 days. Staff must manually activate, or reactivate, a license-exempt provider's SSPS number prior to authorizations/payments being submitted through SSPS.*

SAO Cause of Weakness – *DSHS staff made eligibility determinations that conflicted with state regulations and the federally approved state plan for the program. When we discussed staff not fully verifying eligibility within the 30-day limit, the Department asserted that income verification could be performed after the 30-day period. State regulations and the approved state plan require these verifications to be performed within 30 days and state regulations require the client to reapply for the program if eligibility verification is not complete after 30 days.*

Other incorrect eligibility determinations were a result of required documents, such as current wage stubs or work schedule, not being collected before approving and authorizing child care. In some instances, documents were never collected. In many instances, the Department accepted client self-attestations of critical information, such as working schedules and actual earnings, instead of collecting and verifying required documentation.

The SAO notes that the SFY 2014-2015 Washington State CCDF Plan did not specifically authorize self-attestation and 60-day verification. However, because the federal funder specifically provides flexibility for States to make changes to their state plans (as described below), DSHS and DEL disagree with the SAO position that the lack of specific mention of these policies is evidence of federal disapproval. DEL made policy changes within their authority during the period, and the subsequent state plan documented them.

The approved Washington State CCDF Plan states that child care “eligibility rules and policies are set by the State”. Both DEL and DSHS interpret this to mean that DEL has the authority to set the rules and policies for child care subsidy programs. This interpretation is supported by Public Law 113-186 (19 Nov 2014), the reauthorization of the Child Care and Development Block Grant, which states as its purpose: “To allow each state maximum flexibility in developing child care programs and policies that best suit the needs of children and parents within that state.”

The Code of Federal Regulations, 45 CFR 98.18 (b) advises that states may make changes to their state plans during the period they are in effect and that an amendment to an approved state plan needs federal review and approval only if it is a “substantial change.” This flexibility is reiterated in a June 27, 2016 letter from Rachel Schumacher, Director, Office of Child Care, to Ross Hunter, Director DEL approving the FY 2016-2018 Washington State Plan.

To address SAO findings from SWSA 2015, DEL clarified policy around verification. These policies were ratified by federal approval of the CCDF state plan. The Federal Office of Child Care approved the plan on June 27, 2016, but made it effective as of March 1, 2016. The revised state plan addresses schedules and new employment as follows:

- *Schedules*
On April 15, 2016, DEL revised WAC 170-290-0012 removing section (d) which referenced obtaining “work, school, or training schedule.” To further support these changes, DEL created WAC 170-290-0014 to outline information that must be verified before making a payment to a provider. The rule specifically allows for self-attestation of work schedule.
- *New Employment*
On July 1, 2016, DEL revised WAC 170-290-0095 and included language in section (a) to allow 60 days for verification of new employment. DEL made this revision specifically to address SWSA15/CCDF finding. Prior to that time, the WAC was silent on this issue.

SAO Cause of Weakness – *The Department’s eligibility system is designed with an alert function that reminds staff when an issue is outstanding and needs to be addressed. The alerts can be dismissed without confirming outstanding issues were addressed. Alerts in the Department’s eligibility system were dismissed and confirmed as completed by staff when our testing found that required documents were not documented in the client’s case file.*

DSHS concurs that alerts can be dismissed without confirming outstanding issues have been addressed. All financial service specialist staff, whether they work in child care or for the other CSD programs, are trained to process electronic alerts and to take appropriate action to address the outstanding issues. The system is programmed to show the date/time alerts are completed and by whom. CSD identifies and reviews error trends and addresses these through system changes or

additional staff training. The Department acknowledges this weakness and will evaluate and implement appropriate, effective ways to mitigate the weakness.

DSHS Initiatives in Response to Finding

DSHS acknowledges there is a potential for fraud when eligibility determination and payment authorization are both completed by the same worker, due to a lack of checks and balances. DSHS will move forward with IT and staffing changes needed for complete segregation of duties between eligibility determinations and authorization of payments. In addition, beginning October 1, 2017 DEL staff will approve and maintain Family Friends or Neighbor (FFN) provider information, segregating a part of the approval process for these licensed-exempt providers where the potential of fraud and errors has historically been above average.

The Department will increase internal controls and implement pre-authorization reviews and a secondary review process by:

- Pursuing changes in child care subsidy procedures that would require pre-authorization review of high cost and high-risk cases. Doing this will require changes to procedures, staffing levels, staff training, and IT systems that may require some time to implement.*
- Implementing a secondary review by the DSHS/ESA Division of Program Integrity (DPI). DPI will model this review process after the process used for SNAP, in which we have an exceptionally high accuracy rate.*
- Taking the findings from these and other child care reviews, and identify and recommend new areas for improvement.*

The Department will also pursue system enhancements to the Working Connections Automated Program (WCAP) that will actively alert a worker when the household composition in WCAP is different from the household composition for other DSHS-administered programs. This will ensure workers are reviewing and assessing all available information prior to making an eligibility determination.

DEL Response

DEL concurs with this finding and recommendations, with significant concerns outlined below, and in collaboration with DSHS, will prioritize improving internal controls on eligibility determinations. DEL will adopt rules and policy changes simplifying and clarifying eligibility determination and authorization to prevent error. DEL supports the commitment by DSHS to increase the frequency of eligibility determination management reviews, segregate eligibility determination and payment authorization duties, implement pre-authorization reviews and a secondary review process, and implement system enhancements to automatically alert workers when source data available to staff contradicts client attested household composition information.

While concurring with the finding and recommendations, DEL has significant concerns with the sample the Auditor used, the extrapolation of exceptions found in the sample to the larger population served by the program, and the Auditor's application of relevant legal authority regarding client self-attestation to determine exceptions in specific cases.

DEL acknowledges there is a potential for fraud when eligibility determination and payment authorization are both completed by the same worker. DEL supports the commitment by DSHS to move forward with IT and staffing changes needed for complete segregation of duties between eligibility determinations and authorization of payments. Finally, DEL supports DSHS' commitment to continue existing monitoring protocols to maintain payment integrity.

By October 1, 2017, DEL will amend sections of Chapter 170-290 WAC and align supporting guidance and documentation to simplify and clarify eligibility determination and payment authorization within the bounds of federal and state law and regulations. DSHS will implement these changes to ensure eligibility determinations and authorizations are adequately supported.

Specific rules and policy changes will include the following:

- 1. Model household composition determination requirements after those for the Supplemental Nutrition Assistance Program (SNAP). Specify that questionable client statements of household composition must be supported with additional third party verification, and specify acceptable forms of documentation and timelines for receipt.*
- 2. Clearly define "new employment" so that client attestation of income for the first 60 days of new employment is unambiguous.*
- 3. Eliminate the requirement to use three months of wages for income determination. Provide flexibility in income counting rules and income verification requirements to allow use of income documentation that most accurately reflects the consumer's economic situation and allows income eligibility determination to be completed.*
- 4. Standardize authorization amounts for all families, including those with parents participating in approved activities full time (110 or more hours per month) and part time (less than 110 hours per month), for traditional, non-traditional, and variable working schedules, and for school-age and non-school-age children, across all provider types. Clarify and simplify rules and policy as to how parent and child schedules may impact the authorization.*
- 5. Clarify rules and policy regarding working schedules to specify circumstances where schedule information and third party verification as to specific days and hours worked may be required. Specify acceptable forms of documentation and timelines for receipt.*
- 6. Create rules and policy describing consequences for client and provider intentional program violations, including potential ineligibility for client benefits and provider payment. Intentional program violations in this context will be defined in rule and will likely include intentional acts that knowingly result in an unallowable payment but that do not involve misrepresentation (fraud).*

Auditor's Concluding Remarks

We thank the Department for its cooperation and assistance throughout the audit. We are pleased that DEL, the administrator of the grant, concurred with this finding and that DSHS committed to enacting major changes over internal controls.

We would, however, like to address some of the Departments' concerns, starting with our sampling methodology and extrapolation of costs. DSHS states we chose to employ a non-statistical sampling method. This is not correct. A statistical sample for audit purposes is defined by AU-C 530.05 as "An

approach to sampling that has the following characteristics: (a) random selection of the sample items; (b) the use of an appropriate statistical technique to evaluate sample results, including measurement of sampling risk.” Our sampling methodology meets these criteria.

It is important to note that the sampling technique we used is intended to match our audit opinion by determining whether or not expenditures were in compliance with program requirements in all material respects. Accordingly, we used an acceptance sampling formula designed to provide 99% confidence of whether exceptions were above our materiality threshold. This conclusion is reflected in our audit report and finding. However, the likely questioned costs projections are a point estimate and only represent our “best estimate of total questioned costs” as required by 2 CFR 200.516(3).

To ensure a representative sample, we stratified the population by dollar amount and extrapolated the results by strata. Once we completed testing, we evaluated our results compared to other audit evidence and found it to be consistent. For example, we compared our results to the results of the audit last year and also to other work performed on this program this year and found them to be consistent. We also compared results to DSHS’s own internal audit results and found them to be consistent and that many of the recurring errors they identified internally were the same as our audit identified.

Upon receiving the Departments’ audit finding responses we requested any evidence DSHS had that our estimate of likely questioned costs was incorrect. DSHS provided documentation showing their research and rationale supporting an alternate type of statistical sampling, but did not provide any evidence that our projections were inaccurate. It has not disputed the nature of the identified exceptions or the audit work itself but only the reliability of the projected likely questioned costs. While our sample was appropriately representative and provided statistically valid evidence at 99 percent confidence of our conclusion regarding material noncompliance, we can agree with DSHS that the sample was only designed to determine that likely questioned costs were material to the program. A much larger sample size would be needed to achieve a similar confidence level about the precise amount of likely questioned costs. For this reason, it may not be sufficient to conclude on the precise amount of questioned costs for purposes of determining a repayment amount to the grantor. We encourage DSHS to work with the granting agency to address their concerns in this regard.

DSHS states it disagrees with 24 of the 50 exceptions cited due to two primary policy interpretations, accepting client’s self-attestation of work schedule and allowing a client 60 days to verify wages on new/changed employment. It is important to note that all payments tested for the audit period were issued no later than June 2016, and were for services rendered in May 2016 or earlier. This is important because DEL requested an extension to operate under the 2013-2015 approved state plan until May of 2016. The 2016 state plan was approved by the Health and Human Services Administration for Children and Families to be in effect as of June 1, 2016, not March 1, 2016 as DSHS has asserted. None of the eligibility determinations we tested were made after the new state plan was in effect. Additionally, the new approved state plan still does not allow for 60 day verification of new employment (page 74 of the new plan). We did confirm the language allowing self-attestation of work schedules but since the new state plan was not in effect when any of the tested claimants were determined to be eligible for the program, it was not relevant to this audit, but will be considered next year.

It is also important to note that of the 24 exceptions DSHS does not concur about, only eight were exceptions solely because of a lack of work schedule being confirmed and DSHS concurred with two of those during the audit. Additionally, there were no questioned costs identified solely for exceeding the 30 day requirement in this finding.

DSHS also asserts that DEL is allowed to make changes to the plan without approval, unless they are substantial changes. We believe that the decision to go from requiring documentation supporting a client's work schedule to a system of self-attestation is a substantial change. Not collecting documentation to support a client's eligibility is not in line with standard federal expectations for establishing eligibility and we therefore believe the federal grantor would have to specifically approve such a policy.

We will review the status of the Department's corrective action during our next audit.

Applicable Laws and Regulations

Title 2 U.S. Code of Federal regulations Part 200, *Uniform Administrative Requirements, Cost Principles, and Audit Requirements for Federal Awards* (Uniform Guidance) established reporting requirements for audit findings.

Section 200.303 Internal controls.

The non-Federal entity must:

- (a) Establish and maintain effective internal control over the Federal award that provides reasonable assurance that the non-Federal entity is managing the Federal award in compliance with Federal statutes, regulations, and the terms and conditions of the Federal award. These internal controls should be in compliance with guidance in "Standards for Internal Control in the Federal Government" issued by the Comptroller General of the United States or the "Internal Control Integrated Framework", issued by the Committee of Sponsoring Organizations of the Treadway Commission (COSO).
- (b) Comply with Federal statutes, regulations, and the terms and conditions of the Federal awards.

Section 200.403 Factors affecting Allowability of costs.

Except where otherwise authorized by statute, costs must meet the following general criteria in order to be allowable under Federal awards.

- (a) Be necessary and reasonable for the performance of the Federal award and be allocable thereto under these principles.
- (b) Conform to any limitations or exclusions set forth in these principles or in the Federal award as to types or amount of cost items.
- (c) Be consistent with policies and procedures that apply uniformly to both federally-financed and other activities of the non-Federal entity.
- (d) Be accorded consistent treatment. A cost may not be assigned to a Federal award as a direct cost if any other cost incurred for the same purpose in like circumstances has been allocated to the Federal award as an indirect cost.

- (e) Be determined in accordance with generally accepted accounting principles (GAAP), except, for state and local governments and Indian tribes only, as otherwise provided for in this part.
- (f) Not be included as a cost or used to meet cost sharing or matching requirements of any other federally-financed program in either the current or a prior period. See also §200.306 Cost sharing or matching paragraph (b).
- (g) Be adequately documented. See also §§200.300 Statutory and national policy requirements through 200.309 Period of performance of this part.

Section 200.516 Audit reporting, state in part:

- (a) *Audit findings reported.* The auditor must report the following as audit findings in a schedule of findings and questioned costs:
 - (1) Significant deficiencies and material weaknesses in internal control over major programs and significant instances of abuse relating to major programs. The auditor's determination of whether a deficiency in internal control is a significant deficiency or material weakness for the purpose of reporting an audit finding is in relation to a type of compliance requirement for a major program identified in the Compliance Supplement.
 - (2) Material noncompliance with the provisions of Federal statutes, regulations, or the terms and conditions of Federal awards related to a major program. The auditor's determination of whether a noncompliance with the provisions of Federal statutes, regulations, or the terms and conditions of Federal awards is material for the purpose of reporting an audit finding is in relation to a type of compliance requirement for a major program identified in the compliance supplement.
 - (3) Known questioned costs that are greater than \$25,000 for a type of compliance requirement for a major program. Known questioned costs are those specifically identified by the auditor. In evaluating the effect of questioned costs on the opinion on compliance, the auditor considers the best estimate of total costs questioned (likely questioned costs), not just the questioned costs specifically identified (known questioned costs). The auditor must also report known questioned costs when likely questioned costs are greater than \$25,000 for a type of compliance requirement for a major program. In reporting questioned costs, the auditor must include information to provide proper perspective for judging the prevalence and consequences of the questioned costs.

The American Institute of Certified Public Accountants defines significant deficiencies and material weaknesses in internal controls over compliance in its *Codification of Statements on Auditing Standards*, section 935, as follows:

- .011 For purposes of adapting GAAS to a compliance audit, the following terms have the meanings attributed as follows: ...

Material weakness in internal control over compliance. A deficiency, or combination of deficiencies, in internal control over compliance, such that there is a reasonable possibility that material noncompliance with a compliance requirement will not be prevented, or detected and corrected, on a timely basis. In this section, a reasonable

possibility exists when the likelihood of the event is either reasonably possible or probable as defined as follows:

Reasonably possible. The chance of the future event or events occurring is more than remote but less than likely.

Remote. The chance of the future event or events occurring is slight.

Probable. The future event or events are likely to occur.

Significant deficiency in internal control over compliance. A deficiency, or a combination of deficiencies, in internal control over compliance that is less severe than a material weakness in internal control over compliance, yet important enough to merit attention by those charged with governance.

Material noncompliance. In the absence of a definition of material noncompliance in the governmental audit requirement, a failure to follow compliance requirements or a violation of prohibitions included in the applicable compliance requirements that results in noncompliance that is quantitatively or qualitatively material, either individually or when aggregated with other noncompliance, to the affected government program.

45 CFR 98.20 A child's eligibility for child care services, states:

- (a) In order to be eligible for services under § 98.50, a child shall:
 - (1) (i) Be under 13 years of age; or,
 - (ii) At the option of the Lead Agency, be under age 19 and physically or mentally incapable of caring for himself or herself, or under court supervision;
 - (2) Reside with a family whose income does not exceed 85 percent of the State's median income for a family of the same size; and
 - (3) (i) Reside with a parent or parents (as defined in § 98.2) who are working or attending a job training or educational program; or
 - (ii) Receive, or need to receive, protective services and reside with a parent or parents (as defined in § 98.2) other than the parent(s) described in paragraph (a)(3)(i) of this section.
 - (A) At grantee option, the requirements in paragraph (a)(2) of this section and in § 98.42 may be waived for families eligible for child care pursuant to this paragraph, if determined to be necessary on a case-by-case basis by, or in consultation with, an appropriate protective services worker.
 - (B) At grantee option, the provisions in (A) apply to children in foster care when defined in the Plan, pursuant to § 98.16(f)(7).
- (b) Pursuant to § 98.16(g)(5), a grantee or other administering agency may establish eligibility conditions or priority rules in addition to those specified in this section and §98.44 so long as they do not:
 - (1) Discriminate against children on the basis of race, national origin, ethnic background, sex, religious affiliation, or disability;
 - (2) Limit parental rights provided under Subpart D; or
 - (3) Violate the provisions of this section, § 98.44, or the Plan. In particular, such conditions or priority rules may not be based on a parent's preference for a category of care or type of provider. In addition, such additional conditions or rules may not be based on a parent's choice of a child care certificate.

WAC 170-290-0005 Eligibility, states:

- (1) Parents. To be eligible for WCCC, the person applying for benefits must:
 - (a) Have parental control of one or more eligible children;
 - (b) Live in the state of Washington;
 - (c) Be the child's:
 - (i) Parent, either biological or adopted;
 - (ii) Stepparent;
 - (iii) Legal guardian verified by a legal or court document;
 - (iv) Adult sibling or step-sibling;
 - (v) Nephew or niece;
 - (vi) Aunt;
 - (vii) Uncle;
 - (viii) Grandparent;
 - (ix) Any of the relatives in (c)(vi), (vii), or (viii) of this subsection with the prefix "great," such as great-aunt; or
 - (x) An approved in loco parentis custodian responsible for exercising day-to-day care and control of the child and who is not related to the child as described above;
 - (d) Participate in an approved activity under WAC 170-290-0040, 170-290-0045, 170-290-0050, or have been approved per WAC 170-290-0055;
 - (e) Comply with any special circumstances that might affect WCCC eligibility under WAC 170-290-0020;
 - (f) Have countable income at or below two hundred percent of the federal poverty guidelines (FPG). The consumer's eligibility shall end if the consumer's countable income is greater than two hundred percent of the FPG;
 - (g) Not have a monthly copayment that is higher than the state will pay for all eligible children in care;
 - (h) Complete the WCCC application and DSHS verification process regardless of other program benefits or services received; and
 - (i) Meet eligibility requirements for WCCC described in Part II of this chapter.
- (2) Children. To be eligible for WCCC, the child must:
 - (a) Belong to one of the following groups as defined in WAC 388-424-0001:
 - (i) A U.S. citizen;
 - (ii) A U.S. national;
 - (iii) A qualified alien; or
 - (iv) A nonqualified alien who meets the Washington state residency requirements as listed in WAC 388-468-0005;
 - (b) Live in Washington state, and be:
 - (i) Less than age thirteen; or
 - (ii) Less than age nineteen, and:
 - (A) Have a verified special need, according WAC 170-290-0220; or
 - (B) Be under court supervision.

WAC 170-290-0012 Verifying consumers' information, states:

- (1) A consumer must complete the DSHS application for WCCC benefits and provide all required information to DSHS to determine eligibility when:
 - (a) The consumer initially applies for benefits; or
 - (b) The consumer reapplies for benefits.
- (2) A consumer must provide verification to DSHS to determine if he or she continues to qualify for benefits during his or her eligibility period when there is a change of circumstances under WAC 170-290-0031.
- (3) All verification that is provided to DSHS must:
 - (a) Clearly relate to the information DSHS is requesting;
 - (b) Be from a reliable source; and
 - (c) Be accurate, complete, and consistent.
- (4) If DSHS has reasonable cause to believe that the information is inconsistent, conflicting or outdated, DSHS may:
 - (a) Ask the consumer to provide DSHS with more verification or provide a collateral contact (a "collateral contact" is a statement from someone outside of the consumer's residence that knows the consumer's situation); or
 - (b) Send an investigator from the DSHS office of fraud and accountability (OFA) to make an unannounced visit to the consumer's home to verify the consumer's circumstances. See WAC 170-290-0025(9).
- (5) The verification that the consumer gives to DSHS includes, but is not limited to, the following:
 - (a) A current WorkFirst IRP for consumers receiving TANF;
 - (b) Employer name, address, and phone number;
 - (c) State business registration and license, if self-employed;
 - (d) Work, school, or training schedule (when requesting child care for non-TANF activities);
 - (e) Hourly wage or salary;
 - (f) Either the:
 - (i) Gross income for the last three months;
 - (ii) Federal income tax return for the preceding calendar year; or
 - (iii) DSHS employment verification form;
 - (g) Monthly unearned income the consumer receives, such as child support or supplemental security income (SSI) benefits;
 - (h) If the other parent is in the household, the same information for them;
 - (i) Proof that the child belongs to one of the following groups as defined in WAC 388-424-0001:
 - (i) A U.S. citizen;
 - (ii) A U.S. national;
 - (iii) A qualified alien; or
 - (iv) A nonqualified alien who meets the Washington state residency requirements as listed in WAC 388-468-0005;
 - (j) Name and phone number of the licensed child care provider; and
 - (k) For the in-home/relative child care provider, a:
 - (i) Completed and signed criminal background check form;

- (ii) Legible copy of the proposed provider's photo identification, such as a driver's license, Washington state identification, or passport;
 - (iii) Legible copy of the proposed providers' valid Social Security card; and
 - (iv) All other information required by WAC 170-290-0135.
- (6) If DSHS requires verification from a consumer that costs money, DSHS must pay for the consumer's reasonable costs.
 - (7) DSHS does not pay for a self-employed consumer's state business registration or license, which is a cost of doing business.
 - (8) If a consumer does not provide all of the verification requested, DSHS will determine if a consumer is eligible based information already available to DSHS.

WAC 170-290-0020 Eligibility—Special circumstances, states:

- (1) Child care provided at the consumer's place of work. A consumer is not eligible for WCCC benefits for his or her children when child care is provided at the same location where the consumer works.
- (2) Consumer's child care employment.
 - (a) A consumer may be eligible for WCCC benefits during the time she or he works in a child care center but does not provide direct care in the same classroom to his or her children during work hours.
 - (b) A consumer is not eligible for WCCC benefits during the time she or he works in a family home child care where his or her children are also receiving subsidized child care.
 - (c) In-home/relative providers who are paid child care subsidies to care for children receiving WCCC benefits may not receive those benefits for their own children during the hours in which they provide subsidized child care.
 - (d) A child care provider who receives TANF benefits on behalf of a dependent child may not bill the state for subsidized child care for that same child.
- (3) Two-parent family.
 - (a) A consumer may be eligible for WCCC if he or she is a parent in a two-parent family and one parent is not able or available as defined in WAC 170-290-0003 to provide care for the children while the other parent is working or participating in approved activities.
 - (b) If a consumer claims one parent is not able to care for the children the consumer must provide written documentation from a licensed professional (see WAC 388-448-0020) that states the:
 - (i) Reason the parent is not able to care for the children;
 - (ii) Expected duration and severity of the condition that keeps the parent from caring for the children; and
 - (iii) Treatment plan if the parent is expected to improve enough to be able to care for the children. The parent must provide evidence from a medical professional showing he or she is cooperating with treatment and is still not able to care for the children.
- (4) Single-parent family. A consumer is not eligible for WCCC benefits when he or she is the only parent in the family and will be away from the home for more than thirty days in a row.

- (5) Legal guardians.
 - (a) A legal guardian under WAC 170-290-0005 may receive WCCC benefits for his or her work or approved activities without his or her spouse or live-in partner's availability to provide care being considered unless his or her spouse or live-in partner is also named on the permanent custody order.
 - (b) Eligibility for WCCC benefits is based on the consumer's work or approved activities schedule, the child's need for care, and the child's income eligibility and family size of one.
 - (c) The consumer's spouse or live-in partner is not eligible to receive subsidized child care payments as a child care provider for the child.
- (6) In loco parentis custodians.
 - (a) An in loco parentis custodian may be eligible for WCCC benefits when he or she cares for an eligible child in the absence of the child's legal guardian or biological, adoptive or step-parents.
 - (b) An in loco parentis custodian who is not related to the child as described in WAC 170-290-0005(1) may be eligible for WCCC benefits if he or she has:
 - (i) A written, signed agreement between the parent and the caregiver assuming custodial responsibility; or
 - (ii) Receives a TANF grant on behalf of the eligible child.
 - (c) Eligibility for WCCC benefits is based on his or her work schedule, the child's need for care, and the child's income eligibility and family size of one.
 - (d) The consumer's spouse or live-in partner is not eligible to receive subsidized child care payments as a child care provider for the child.
- (7) WorkFirst sanction.
 - (a) A consumer may be eligible for WCCC if he or she is a sanctioned WorkFirst participant and participating in an activity needed to remove a sanction penalty or to reopen his or her WorkFirst case.
 - (b) A WorkFirst participant who loses his or her TANF grant due to exceeding the federal time limit for receiving TANF may still be eligible for WCCC benefits under WAC 170-290-0055.

WAC 170-290-0031 Notification of changes, states:

When a consumer applies for or receives WCCC benefits, he or she must:

- (1) Notify DSHS, within five days, of any change in providers;
- (2) Notify the consumer's provider within ten days when DSHS changes his or her child care authorization;
- (3) Notify DSHS within ten days of any significant change related to the consumer's copayment or eligibility, including:
 - (a) The number of child care hours the consumer needs (more or less hours);
 - (b) The consumer's countable income, including any TANF grant or child support increases or decreases, only if the change would cause the consumer's countable income to exceed the maximum eligibility limit as provided in WAC 170-290-0005. A consumer may notify DSHS at any time of a decrease in the consumer's household income, which may lower the consumer's copayment under WAC 170-290-0085;

- (c) The consumer's household size such as any family member moving in or out of his or her home;
 - (d) Employment, school or approved TANF activity (starting, stopping or changing);
 - (e) The address and telephone number of the consumer's in-home/relative provider;
 - (f) The consumer's home address and telephone number; and
 - (g) The consumer's legal obligation to pay child support;
- (4) Report to DSHS, within twenty-four hours, any pending charges or conviction information the consumer learns about his or her in-home/relative provider; and
 - (5) Report to DSHS, within twenty-four hours, any pending charges or conviction information the consumer learns about anyone sixteen years of age and older who lives with the provider when care occurs outside of the child's home.

WAC 170-290-0082, Eligibility period, states:

- (1) A consumer who meets all of the requirements of part II of this chapter is eligible to receive WCCC subsidies for twelve months before having to redetermine his or her income eligibility. The twelve-month eligibility period in this subsection applies only if enrollments in the WCCC program are capped as provided in WAC 170-290-0001(1). Regardless of the length of eligibility, consumers are still required to report changes of circumstances to DSHS as provided in WAC 170-290-0031.
- (2) A consumer's eligibility may be for less than twelve months if:
 - (a) Requested by the consumer; or
 - (b) A TANF consumer's individual responsibility plan indicates child care is needed for less than twelve months.
- (3) A consumer's eligibility may end sooner than twelve months if:
 - (a) The consumer no longer wishes to participate in WCCC; or
 - (b) DSHS terminates the consumer's eligibility as stated in WAC 170-290-0110.
- (4) All children in the consumer's household under WAC 170-290-0015 are eligible for the twelve-month eligibility period.
- (5) The twelve-month eligibility period begins:
 - (a) When benefits begin under WAC 170-290-0095; or
 - (b) Upon reapplication under WAC 170-290-0109(4).

WAC 170-290-0095, When WCCC benefits start, states:

- (1) WCCC benefits for an eligible consumer may begin when the following conditions are met:
 - (a) The consumer has completed the required WCCC application and verification process as described under WAC 170-290-0012 within thirty days of the date DSHS received the consumer's application or reapplication for WCCC benefits;
 - (b) The consumer is working or participating in an approved activity under WAC 170-290-0040, 170-290-0045, 170-290-0050 or 170-290-0055;
 - (c) The consumer needs child care for work or approved activities within at least thirty days of the date of application for WCCC benefits; and
 - (d) The consumer's eligible provider (under WAC 170-290-0125) is caring for his or her children.

- (2) If a consumer fails to turn in all information within thirty days from his or her application date, the consumer must restart the application process.
- (3) The consumer's application date is whichever is earlier:
 - (a) The date the consumer's application is entered into DSHS's automated system; or
 - (b) The date the consumer's application is date stamped as received.

WAC 170-290-0109, New eligibility period, states:

- (1) If a consumer wants to receive child care benefits for another eligibility period, he or she must reapply for WCCC benefits before the end of the current eligibility period. To determine if a consumer is eligible, DSHS:
 - (a) Requests reapplication information before the end date of the consumer's current WCCC eligibility period; and
 - (b) Verifies the requested information for completeness and accuracy.
- (2) A consumer may be eligible for WCCC benefits for a new eligibility period if:
 - (a) DSHS receives the consumer's reapplication information no later than the last day of the current eligibility period;
 - (b) The consumer's provider is eligible for payment under WAC 170-290-0125; and
 - (c) The consumer meets all WCCC eligibility requirements.
- (3) If DSHS determines that a consumer is eligible for WCCC benefits based on his or her reapplication information, DSHS notifies the consumer of the new eligibility period and copayment.
- (4) When a consumer submits a reapplication after the last day of his or her current eligibility period, the consumer's benefits begin:
 - (a) On the date that the consumer's reapplication is date-stamped as received in DSHS's community service office or entered into the DSHS automated system, whichever date is earlier;
 - (b) When the consumer is working or participating in an approved WorkFirst activity; and
 - (c) The consumer's child is being cared for by his or her eligible WCCC provider.

2016-024

The Department of Social and Health Services did not have adequate internal controls over and did not comply with foster care payment rate setting and application requirements for the Foster Care program.

Federal Awarding Agency: U.S. Department of Health and Human Services
Pass-Through Entity: None
CFDA Number and Title: 93.658 Foster Care – Title IV-E
Federal Award Number: 1501WAFOST; 1601WAFOST
Applicable Compliance Component: Special Tests and Provisions – Payment Rate Setting and Application
Known Questioned Cost Amount: None

Background

The Title IV-E Foster Care program helps states provide safe and stable out-of-home care for children under the jurisdiction of the state child welfare agency until the children are returned home safely, placed with adoptive families or placed in other planned arrangements for permanency. The program provides funds to states to assist with the costs of foster care maintenance for eligible children, administrative costs to manage the program and training for state agency staff, foster parents and certain private agency staff. Funds may not be used for costs of social services, such as those that provide counseling or treatment to improve or remedy personal problems, behaviors or home conditions for a child, the child's family, or the child's foster family.

In Washington, the Department of Social and Health Services Children's Administration is responsible for the oversight and administration of the Foster Care program. State Foster Care agencies establish basic payment rates for maintenance payments to foster parents or child care institutions, or directly to children. As a result, the Department must submit a Title IV-E plan to the grantor that must include a periodic review of the payment rates at reasonable, specific and time-limited periods. The Department is also responsible for reviewing Foster Care basic maintenance payment rates for continued appropriateness in accordance with its submitted plan and must establish payment rates that provide only for costs necessary for the proper and efficient administration of the Foster Care program.

During fiscal year 2016, the Department spent about \$98 million in federal grant funds, with more than \$29 million paid to eligible foster care recipients and their guardians.

For the previous two audits, we reported the Department lacked adequate controls to ensure it reviewed basic maintenance payment rates for their continued appropriateness in reasonable, specific, time-limited periods, as required by federal regulations. The Department did not comply with foster care payment rate setting and application requirements for the Foster Care program. The prior finding numbers were 2015-028 and 2014-027.

Description of Condition

During our audit, we tested to determine if basic maintenance rates established by the Department were reviewed for their continued appropriateness and if the review was conducted in accordance with the Department's Title IV-E approved state plan.

We found the Department's Title IV-E plan did not specifically address the methodology and frequency with which the Department will conduct its periodic reviews of payment rates.

However, we determined the Department conducted its most recent rate assessment in 2016, and increased the basic maintenance rates paid to foster care recipients effective July 1, 2015. We determined the Department adequately and accurately determined the payment rates currently in effect. The Department has agreed to conduct an economic analysis of current foster care rates every four years, as a result of a recent court settlement with the Foster Parents' Association of Washington State (FPAWS).

The Department was not able to provide any policies or procedures specifying the methodology and frequency for conducting its periodic review of payment rates. There are no provisions under Department rule or state law that clarify how or when the review(s) must be performed, and the Department did not include any such provisions in its current Title IV-E state plan.

We consider these internal control weaknesses to be a material weakness.

Cause of Condition

The Department's most recent IV-E state plan was approved by the grantor in January 2015. As such, the Department believed the plan was sufficient to ensure it met federal program requirements. However, this plan did not provide for periodic review of payment rates at reasonable, specific time-limited periods as required.

Additionally, the Department did not update its policies and procedures in fiscal year 2016 because it anticipated additional guidance from Children's Bureau, which would further define the term "periodic." The Department believed that the creation of the Cures Act would establish specific criteria states must comply with in developing and reviewing basic maintenance payment rates.

The Department does not want to publish its own policy before the Act's implementation, because it is possible such policy would conflict with new federal requirements or guidance from Children's Bureau.

Effect of Condition

By not specifying, in the Title IV-E plan, the methodology and frequency with which the Department will conduct future reviews of foster care basic maintenance payment rates, the Department is not in compliance with the federal grant requirements. Additionally, the grant terms and conditions state failure to comply may result in the loss of federal funds and may be considered grounds for suspension or termination of the grant.

Recommendation

We recommend the Department specify the methodology and periodicity of when it will review basic maintenance payment rates for their continued appropriateness. We further recommend the Department include this process in its Title IV-E plan.

Department's Response

The Department partially concurs with the finding. In 2016 the Children's Administration (CA) did not have a policy that defined periodic to any specifically defined time period as the federal regulation states periodic and reasonable without outlining a specific time table in which to be in compliance. During SFY15 'The Family First Act' was introduced to Congress but failed to pass. 'The Family First Act' included set time parameters for a rate review to be done every three years. In SFY16 'The Family First Act' was incorporated into the 'CURES Act' and reintroduced to Congress. CA did not want to create policy that would potentially be in conflict with the new federal regulation, had it passed, and opted to wait for the final bill to be signed by the President to better understand what would need to be included in any newly written CA policy. While the 'CURES Act' did pass, 'The Family First Act' was subsequently dropped and with it, the three year rate review requirement.

The Department will review the maintenance payment rate again in 2019, based upon an economic analysis, to determine if the rate needs to be adjusted. If an increase is needed, the Department will submit a decision package for additional funding. Reviews after 2019 will occur every four years. CA will write a policy which identifies the economic analysis be completed every four years after 2019.

Auditor's Concluding Remarks

We thank the Department for its cooperation and assistance throughout the audit. We will review the status of the Department's corrective action during our next audit.

Applicable Laws and Regulations

Title 2 U.S. Code of Federal Regulations Part 200, *Uniform Administrative Requirements, Cost Principles, and Audit Requirements for Federal Awards* (Uniform Guidance) established reporting requirements for audit findings.

Section 200.303 Internal controls.

The non-Federal entity must:

- (a) Establish and maintain effective internal control over the Federal award that provides reasonable assurance that the non-Federal entity is managing the Federal award in compliance with Federal statutes, regulations, and the terms and conditions of the Federal award. These internal controls should be in compliance with guidance in "Standards for Internal Control in the Federal Government" issued by the Comptroller General of the United States or the "Internal Control Integrated Framework", issued by the Committee of Sponsoring Organizations of the Treadway Commission (COSO).
- (b) Comply with Federal statutes, regulations, and the terms and conditions of the Federal awards.

Section 200.516 Audit reporting, state in part:

- (a) *Audit findings reported.* The auditor must report the following as audit findings in a schedule of findings and questioned costs:
- (1) Significant deficiencies and material weaknesses in internal control over major programs and significant instances of abuse relating to major programs. The auditor's determination of whether a deficiency in internal control is a significant deficiency or material weakness for the purpose of reporting an audit finding is in relation to a type of compliance requirement for a major program identified in the Compliance Supplement.
 - (2) Material noncompliance with the provisions of Federal statutes, regulations, or the terms and conditions of Federal awards related to a major program. The auditor's determination of whether a noncompliance with the provisions of Federal statutes, regulations, or the terms and conditions of Federal awards is material for the purpose of reporting an audit finding is in relation to a type of compliance requirement for a major program identified in the compliance supplement.

The American Institute of Certified Public Accountants defines significant deficiencies and material weaknesses in internal controls over compliance in its *Codification of Statements on Auditing Standards*, section 935, as follows:

.011 For purposes of adapting GAAS to a compliance audit, the following terms have the meanings attributed as follows: ...

Material weakness in internal control over compliance. A deficiency, or combination of deficiencies, in internal control over compliance, such that there is a reasonable possibility that material noncompliance with a compliance requirement will not be prevented, or detected and corrected, on a timely basis. In this section, a reasonable possibility exists when the likelihood of the event is either reasonably possible or probable as defined as follows:

Reasonably possible. The chance of the future event or events occurring is more than remote but less than likely.

Remote. The chance of the future event or events occurring is slight.

Probable. The future event or events are likely to occur.

Significant deficiency in internal control over compliance. A deficiency, or a combination of deficiencies, in internal control over compliance that is less severe than a material weakness in internal control over compliance, yet important enough to merit attention by those charged with governance.

Material noncompliance. In the absence of a definition of material noncompliance in the governmental audit requirement, a failure to follow compliance requirements or a violation of prohibitions included in the applicable compliance requirements that results in noncompliance that is quantitatively or qualitatively material, either individually or when aggregated with other noncompliance, to the affected government program.

Grant Award; GENERAL TERMS AND CONDITIONS; MANDATORY FORMULA, BLOCK and ENTITLEMENT GRANT PROGRAMS

Except as noted otherwise, these Terms and Conditions apply to all mandatory grant programs administered by the Administration for Children and Families (see Appendix A).

Please also review the separate program-specific Addendum to these Terms and Conditions applicable to each program.

By acceptance of the individual awards, each grantee agrees to comply with these requirements. Failure to comply may result in the loss of Federal funds and may be considered grounds for the suspension or termination of the grant.

45 CFR section 1356.21 (m) – Requirements Applicable to Title IV-E, states in part:

Review of payments and licensing standards. - In meeting the requirements of section 471(a)(11) of the Act, the title IV-E agency must review at reasonable, specific, time-limited periods to be established by the agency:

- (1) The amount of the payments made for foster care maintenance and adoption assistance to assure their continued appropriateness.

42 USC 671(a)(11) - State Plan for foster care and adoption assistance – Requisite features of State Plan states, in part:

In order for a State to be eligible for payments under this part, it shall have a plan approved by the Secretary which –

- (11) Provides for periodic review of the standards referred to in the preceding paragraph and amounts paid as foster care maintenance payments and adoption assistance to assure their continuing appropriateness;

2016-025

The Department of Social and Health Services did not have adequate internal controls over federal eligibility requirements for the Foster Care program.

Federal Awarding Agency: U.S. Department of Health and Human Services
Pass-Through Entity: None
CFDA Number and Title: 93.658 Foster Care – Title IV-E
Federal Award Number: 1501WAFOST; 1601WAFOST
Applicable Compliance Component: Eligibility
Known Questioned Cost Amount: None

Background

The Title IV-E Foster Care program helps states provide safe and stable out-of-home care for children under the jurisdiction of the state child welfare agency until the children are returned home safely, placed with adoptive families or placed in other planned arrangements for permanency. The program provides funds to states to assist with the costs of foster care maintenance for eligible children, administrative costs to manage the program and training for state agency staff, foster parents and certain private agency staff. Funds may not be used for costs of social services, such as those that provide counseling or treatment to improve or remedy personal problems, behaviors, or home conditions for a child, the child's family, or the child's foster family.

In Washington, the Department of Social and Health Services Children's Administration is responsible for the oversight and administration of the Foster Care program. The Department establishes basic rates for maintenance payments to foster parents, child care institutions or directly to children. The purpose of the program is to assist the states with funding to offset the cost of providing stable out-of-home care for foster children, some of whom are categorized as having special needs. During fiscal year 2016, the Department paid approximately \$31 million for the support of over 5,600 children.

To qualify for federal funding under the Title IV-E Foster Care program, a child must first be determined eligible by the Department to receive IV-E federal assistance. The Department must document that the child is financially needy and deprived of parental support or care.

Foster care providers are also subject to eligibility requirements that are verified by the Department. Two of these requirements are that providers must pass a Washington State name and date of birth background check, as well as a FBI fingerprint background check.

Description of Condition

The Department did not have adequate internal controls in place to ensure that foster care recipients were eligible to receive federal assistance and providers were eligible to provide services.

We used a statistical sampling method and randomly selected 45 out of 5,631 children who received IV-E foster care services in fiscal year 2016. In eight cases, the Department either did not obtain or maintain documentation to support the children were financially needy.

We also found the Department's internal controls were not sufficient to ensure the required background checks are performed prior to authorizing a provider to care for a foster child.

We consider these internal control deficiencies to be a material weakness.

Cause of Condition

As part of its IV-E eligibility determination process, Foster Care program staff relied on the Department's Division of Licensed Resources and Background Check Central Unit to perform background checks of current and prospective providers to ensure the providers were eligible to provide care for foster children. Program management did not sufficiently monitor, or perform its own review, to ensure the required background checks were performed before providing care to children.

Additionally, the Department did not believe that retaining primary source documents to show evidence of income verification was necessary to support its IV-E eligibility determinations for children entering foster care.

Effect of Condition and Questioned Costs

By not ensuring background checks are performed prior to determining providers eligible, the Department is at risk of approving ineligible individuals to provide care. Additionally, by not ensuring all documentation necessary to support a decision of eligibility was reviewed, the Department cannot be sure the client was eligible.

Recommendations

We recommend the Department:

- Strengthen internal controls to ensure background checks for providers are performed in accordance with federal requirements
- Strengthen internal controls to ensure that foster care income eligibility determinations are performed in accordance with federal requirements, and that the sources of information used to make such determinations are fully documented and adequately supported

Agency's Response

The Department does not concur with the finding.

All providers in the sample had background checks completed prior to payment for the period under review.

With regard to documentation for income eligibility; the Title IV-E Foster Care Eligibility Review Guide states,

“Unless otherwise specified, the method for substantiating financial need and deprivation is derived from the title IV-E agency’s policy and procedures.”

It is not a federal rule or requirement that documentation be printed and placed into a physical file.

The Department prints income source documentation when the information contains amounts over zero dollars and places the information in the title IV-E eligibility file. The Department makes note of the zero dollar resource information in FamLink which is the official case management system and source for title IV-E income verification information.

The printing of a piece of paper showing no information is counter to the RCW requirement for paper reduction. Per RCW 70.95.725, which was enacted as a result of Executive Order 02-03 signed by Governor Gary Locke on September 18, 2002, “...Each state agency shall endeavor to conserve paper by at least 30% of their current paper use.”

Auditor’s Concluding Remarks

We thank the Department for its cooperation and assistance throughout the audit. The Department did not concur with the finding, stating all background checks were performed and there is no federal rule requiring documentation to be retained to support income eligibility determinations. We concur that all background checks were performed and did not report any identified exceptions. What we are reporting is that the internal controls in place are not sufficient to ensure all background checks are performed. It is the responsibility of the Children’s Administration to ensure background checks are performed before any payments are made. The Administration relies on another division to perform the checks and does not verify they were performed before authorizing payments. It is our opinion that there is reasonable possibility that this weakness in internal controls could lead to noncompliance in the future.

While the Department is correct that the methods of substantiating eligibility are to be derived from the agency’s policies and procedures, the Department must maintain evidence showing a client was truly eligible. If the Department chooses not to print and retain the documentation in order to conserve paper, it still must document that the required checks were performed. The Department states it makes note of the zero dollar resource information in FamLink and when we could substantiate this we did not identify an exception. For the eight cases referenced, we examined the Department provided case notes and notes in FamLink. While we did identify some notes stating the client was financially eligible, none of the notes documented what sources of income were checked and what the results were. Without this information, neither the Department or our Office had assurance the required income sources were checked prior to determining eligibility.

We reaffirm our finding and will follow-up with the Department during our next audit.

Applicable Laws and Regulations

Title 2 U.S. Code of Federal Regulations Part 200, *Uniform Administrative Requirements, Cost Principles, and Audit Requirements for Federal Awards* (Uniform Guidance) established reporting requirements for audit findings.

Section 200.303 Internal controls.

The non-Federal entity must:

- (a) Establish and maintain effective internal control over the Federal award that provides reasonable assurance that the non-Federal entity is managing the Federal award in compliance with Federal statutes, regulations, and the terms and conditions of the Federal award. These internal controls should be in compliance with guidance in “Standards for Internal Control in the Federal Government” issued by the Comptroller General of the United States or the “Internal Control Integrated Framework”, issued by the Committee of Sponsoring Organizations of the Treadway Commission (COSO).
- (b) Comply with Federal statutes, regulations, and the terms and conditions of the Federal awards.

Section 200.403 Factors affecting Allowability of costs.

Except where otherwise authorized by statute, costs must meet the following general criteria in order to be allowable under Federal awards.

- (a) Be necessary and reasonable for the performance of the Federal award and be allocable thereto under these principles.
- (b) Conform to any limitations or exclusions set forth in these principles or in the Federal award as to types or amount of cost items.
- (c) Be consistent with policies and procedures that apply uniformly to both federally-financed and other activities of the non-Federal entity.
- (d) Be accorded consistent treatment. A cost may not be assigned to a Federal award as a direct cost if any other cost incurred for the same purpose in like circumstances has been allocated to the Federal award as an indirect cost.
- (e) Be determined in accordance with generally accepted accounting principles (GAAP), except, for state and local governments and Indian tribes only, as otherwise provided for in this part.
- (f) Not be included as a cost or used to meet cost sharing or matching requirements of any other federally-financed program in either the current or a prior period. See also §200.306 Cost sharing or matching paragraph (b).
- (g) Be adequately documented. See also §§200.300 Statutory and national policy requirements through 200.309 Period of performance of this part.

Section 200.516 Audit reporting, state in part:

- (a) *Audit findings reported.* The auditor must report the following as audit findings in a schedule of findings and questioned costs:
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deficiency or material weakness for the purpose of reporting an audit finding is in relation to a type of compliance requirement for a major program identified in the Compliance Supplement.

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- (3) Known questioned costs that are greater than \$25,000 for a type of compliance requirement for a major program. Known questioned costs are those specifically identified by the auditor. In evaluating the effect of questioned costs on the opinion on compliance, the auditor considers the best estimate of total costs questioned (likely questioned costs), not just the questioned costs specifically identified (known questioned costs). The auditor must also report known questioned costs when likely questioned costs are greater than \$25,000 for a type of compliance requirement for a major program. In reporting questioned costs, the auditor must include information to provide proper perspective for judging the prevalence and consequences of the questioned costs.

The American Institute of Certified Public Accountants defines significant deficiencies and material weaknesses in internal controls over compliance in its *Codification of Statements on Auditing Standards*, section 935, as follows:

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42 U.S. Code § 671– State Plan for foster care and adoption assistance, (a) Requisite Features of State Plan states in part:

In order for a State to be eligible for payments under this part, it shall have a plan approved by the Secretary which –

- (20) (A) provides procedures for criminal records checks, including fingerprint-based checks of national crime information databases (as defined in section 534(e)(3)(A) of title 28), for any prospective foster or adoptive parent before the foster or adoptive parent may be finally approved for placement of a child regardless of whether foster care maintenance payments or adoption assistance payments are to be made on behalf of the child under the State plan under this part, Including procedures requiring that-
 - (i) in any case involving a child on whose behalf such payments are to be so made in which a record check reveals a felony conviction for child abuse or neglect, for spousal abuse, for a crime against children (including child pornography), or for a crime involving violence, including rape, sexual assault, or homicide, but not including other physical assault or battery, if a State finds that a court of competent jurisdiction has determined that the felony was committed at any time, such final approval shall not be granted; and
 - (ii) in any case involving a child on whose behalf such payments are to be so made in which a record check reveals a felony conviction for physical assault, battery, or a drug-related offense, if a State finds that a court of competent jurisdiction has determined that the felony was committed within the past 5 years, such final approval shall not be granted; and [3]
- (C) provides procedures for criminal records checks, including fingerprint-based checks of national crime information databases (as defined in section 534(e)(3)(A) of title 28), on any relative guardian, and for checks described in subparagraph (B) of this paragraph on any relative guardian and any other adult living in the home of any relative guardian, before the relative guardian may receive kinship guardianship assistance payments on behalf of the child under the State plan under this part;

42 U.S. Code 672 – Foster Care maintenance payments program, states in part:

(a) (3) AFDC eligibility requirement

(A) In general

A child in the home referred to in paragraph (1) would have met the AFDC eligibility requirement of this paragraph if the child—

- (i) would have received aid under the State plan approved under section 602 of this title (as in effect on July 16, 1996) in the home, in or for the month in which the agreement was entered into or court proceedings leading to the determination referred to in paragraph (2)(A)(ii) of this subsection were initiated; or
- (ii) (I) would have received the aid in the home, in or for the month referred to in clause (i), if application had been made therefor; or
- (II) had been living in the home within 6 months before the month in which the agreement was entered into or the proceedings were initiated, and would

have received the aid in or for such month, if, in such month, the child had been living in the home with the relative referred to in paragraph (1) and application for the aid had been made.

Revised Code of Washington RCW 74.15.030 Power and Duties of Secretary, states in part:

The secretary shall have the power and it shall be the secretary's duty:

- (2) In consultation with the children's services advisory committee, and with the advice and assistance of persons representative of the various type agencies to be licensed, to adopt and publish minimum requirements for licensing applicable to each of the various categories to be licensed.

The minimum requirements shall be limited to:

(C) Conducting background checks for those who will or may have unsupervised access to children, expectant mothers, or individuals with a developmental disability; however a background check is not required if a caregiver approves an activity pursuant to the prudent parent standard contained in RCW 74.13.710.

(E) Submitting a fingerprint-based background check through the Washington State Patrol under chapter 10.97 RCW and through the federal bureau of investigation for:

- (i) Agencies and their staff, volunteers, students, and interns when the agency is seeking license or relicense;
- (ii) Foster care and adoption placements; and
- (iii) Any adult living in a home where a child may be placed;

Washington Administrative Code Chapter 388-06A-0110 Who must have background checks?, states in part:

- (1) Per RCW 74.15.030, the department requires background checks on all providers who may have unsupervised access to children. This includes licensed, certified or contracted providers, their current or prospective employees and prospective adoptive parents as defined in RCW 26.33.020.

WAC 388-06A-0130 "Does the background check process apply to new and renewal licenses, certification, contracts and authorizations to have unsupervised access to children?" states:

For children's administration, these regulations apply to all applications for new and renewal licenses, contracts, certifications, and authorizations to have unsupervised access to children that are processed by the children's administration.

The Children's Administration Practices and Procedures Guide Section 5511: *Definition of Required Criminal History and Child Abuse/Neglect Checks*, states in part:

- 3. For all adults living in the home, age 18 and above, criminal history and CA/N history must include the following:
 - a. A FamLink records check,
 - b. A background check conducted by BCCU,

- c. An FBI/WSP fingerprint based criminal history check processed by BCCU; unless the check is for renewal of a foster home license, and
- d. For persons who have lived outside of Washington State in the preceding 5 years, an out of state child abuse and neglect history check from all other states where the individual has lived during that time.

The Children's Administration Practices and Procedures Guide Section 5512: *Persons Subject to Criminal History and Child Abuse/Neglect History Check Requirements*, states in part:

1. Children's Administration staff must complete the required background check, as defined in this section, of out-of-home caregivers and other adults who will have unsupervised access to a child in their home, including:
 - a. Relative caregivers as defined in RCW 74.15
 - b. Other suitable persons as defined in RCW 13.34.130
 - c. Foster parents
 - d. Adoptive parents approved by Children's Administration
 - e. All adults living in the home, age 18 and above
 - f. All adults who move into the out of home placement after the child is placed or license approved
 - g. All youth living in the home, ages 16 and 17 (excluding youth in foster care)
 - h. Former foster youth who return to live with a caregiver upon exiting care
 - i. Caregivers licensed by Washington State on behalf of child placing agencies and Tribes
 - j. Caregivers who reapply for a license after their license has lapsed
 - k. Licensed respite providers
 - l. Unlicensed relative respite providers
 - m. Individuals providing in-home child care for children being served by Children's Administration.
2. Children's Administration is responsible for conducting the background check for children under the custody of another state who are placed with a foster or unlicensed relative caregiver in Washington State through the Interstate Compact on the Placement of Children (ICPC).
3. Caregivers of children under the custody of Washington State who are placed in another state through ICPC will have their background check completed by the receiving state according to the receiving state's policy.
4. Prior to a dependent child being returned to their parent's home, the social worker must conduct a criminal background check on all adults residing in the home.

The Children's Administration Practices and Procedures Guide Section 5514: *FBI Fingerprint Based Check*, states in part:

1. An FBI fingerprint based criminal history check is required for all adults, age 18 and above.

The Administration for Children and Families, Children's Bureau, *Title IV-E Foster Care Eligibility Review Guide* states in part:

“Documenting AFDC Eligibility.

During the IV-E review, the Title IV-E agency must document for the most recent foster care episode that the child is financially needy and deprived of parental support or care during the month of the child's removal from home in accordance with a judicial order or voluntary placement agreement. For the determination of the child's financial need and deprivation, the documentation must verify that financial need is evaluated and specify the reason that the child is deprived of parental support or care.

Unless otherwise specified, the method for substantiating financial need and deprivation is derived from the title IV-E agency's policy and procedures. The documentation should include enough information so that the reviewer can be assured that the title IV-E agency correctly followed its process in making the eligibility determination. There should be a specification of how the child is determined to be in need and deprived of parental support or care. The eligibility determination should provide a clear, evidence-based path to the eligibility decision.”

2016-026

The Department of Social and Health Services did not have adequate internal controls over and did not comply with federal level of effort requirements for the Adoption Assistance program.

Federal Awarding Agency: U.S. Department of Health and Human Services
Pass-Through Entity: None
CFDA Number and Title: 93.659 Adoption Assistance – Title IV-E
Federal Award Number: 1501WAADPT; 1601WAADPT
Applicable Compliance Component: Level of Effort
Known Questioned Cost Amount: None

Background

The Department of Social and Health Services' Children's Administration administers the Adoption Assistance program to provide funding for parents who adopt eligible children with special needs. The program provides financial and medical benefits to qualified children. Adoptive parents can receive a monthly assistance payment from the Department to care for their adopted children, in addition to expenses related to the initial placement of the child in the home such as court fees, payments for medical visits and transportation costs.

The Department spent more than \$48 million in Adoption Assistance in fiscal year 2016, with more than \$40 million paid to the adoptive parents of eligible children for adoption services.

Federal regulations require the Department to maintain state spending at certain levels to meet federal grant requirements. This is referred to as maintenance of effort (MOE).

The Department must spend an amount equal to any savings in State expenditures as a result of implementing the "applicable child" provision in determining Adoption Assistance eligibility of recipients. The Department is also required to spend no less than 30 percent of any such savings on post-adoption services, post-guardianship services, and services to support and sustain positive permanent outcomes for children who might otherwise enter into the state foster care program. At least two-thirds of that amount must be spent on post-adoption and post-guardianship services. The Department must accurately report these amounts to the federal grantor.

The recipient of the grant funds acknowledges acceptance of the award terms and conditions when it draws funds through the grant payment system. If the recipient does not agree with the terms of the award, it must notify the Grants Management Officer.

Description of Condition

The Department did not have adequate internal controls in place to ensure it complied with the maintenance of effort requirements. The Department did not have a policy or procedure to establish a method for identifying the eligible expenditures to be reported. The calculated MOE was \$699,388 during the audit period and the Department reported spending \$601,301. Of this amount, \$420,910

was not supported at all and \$180,391 was not supported by sufficient documentation to determine if it was accurately calculated and was for allowable purposes.

We consider these internal control weaknesses to constitute a material weakness.

Cause of Condition

The maintenance of effort requirements were implemented for this program in September 2014. However, the Chief of the administration's Finance Division said he did not have the details of the implementation of the requirement until May 2015. He also stated in order to track these expenditures accurately and completely they needed to make changes to how they are entered into their electronic systems. Because they did not have details of the requirement until the reporting period was almost over, they were unable to do so for our audit period.

Additionally, program staff misunderstood the overall requirement, believing it was to spend 25 percent of the savings, not 100 percent.

Effect of Condition

Because the Department could not provide adequate support for the \$180,391, we were unable to determine whether the amounts the Department reported were incorrect by \$518,997 or the entire \$699,388.

The grant agreement allows the grantor to take action for noncompliance that can include temporarily withholding funds, wholly or partly suspending or terminating the award, and withholding further awards from the program.

Recommendations

We recommend the Department:

- Establish internal controls to track state-funded spending
- Establish written policies and procedures specifying how the Department will determine the amount of adoption assistance savings and subsequent expenditures of those savings to be reported to the grantor
- Review maintenance of effort reports to ensure the amount of expenditures reported to the grantor has been accurately determined and is adequately supported

Agency's Response

The Department partially concurs with the finding.

Given this is a new program requirement along with the delay in federal guidance, the program was at a disadvantage in setting up the structure to track expenditures within this audit period. While the Department could account for and identify the savings expenditures, the Department will develop a structure which will accurately track and report expenditures specifically related to Adoption Savings.

Additionally, the Department will establish written procedures as to how the Adoption Savings expenditures are to be reported.

Auditor's Concluding Remarks

We thank the Department for its cooperation and assistance throughout the audit. We will review the status of the Department's corrective action during our next audit.

Applicable Laws and Regulations

Title 2 U.S. Code of Federal Regulations Part 200, *Uniform Administrative Requirements, Cost Principles, and Audit Requirements for Federal Awards* (Uniform Guidance) established reporting requirements for audit findings.

Section 200.303 Internal controls.

The non-Federal entity must:

- (a) Establish and maintain effective internal control over the Federal award that provides reasonable assurance that the non-Federal entity is managing the Federal award in compliance with Federal statutes, regulations, and the terms and conditions of the Federal award. These internal controls should be in compliance with guidance in "Standards for Internal Control in the Federal Government" issued by the Comptroller General of the United States or the "Internal Control Integrated Framework", issued by the Committee of Sponsoring Organizations of the Treadway Commission (COSO).
- (b) Comply with Federal statutes, regulations, and the terms and conditions of the Federal awards.

Section 200.516 Audit reporting, state in part:

- (a) *Audit findings reported.* The auditor must report the following as audit findings in a schedule of findings and questioned costs:
 - (1) Significant deficiencies and material weaknesses in internal control over major programs and significant instances of abuse relating to major programs. The auditor's determination of whether a deficiency in internal control is a significant deficiency or material weakness for the purpose of reporting an audit finding is in relation to a type of compliance requirement for a major program identified in the Compliance Supplement.
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Material weakness in internal control over compliance. A deficiency, or combination of deficiencies, in internal control over compliance, such that there is a reasonable possibility that material noncompliance with a compliance requirement will not be prevented, or detected and corrected, on a timely basis. In this section, a reasonable possibility exists when the likelihood of the event is either reasonably possible or probable as defined as follows:

Reasonably possible. The chance of the future event or events occurring is more than remote but less than likely.

Remote. The chance of the future event or events occurring is slight.

Probable. The future event or events are likely to occur.

Significant deficiency in internal control over compliance. A deficiency, or a combination of deficiencies, in internal control over compliance that is less severe than a material weakness in internal control over compliance, yet important enough to merit attention by those charged with governance.

Material noncompliance. In the absence of a definition of material noncompliance in the governmental audit requirement, a failure to follow compliance requirements or a violation of prohibitions included in the applicable compliance requirements that results in noncompliance that is quantitatively or qualitatively material, either individually or when aggregated with other noncompliance, to the affected government program.

Grant Award; General Terms and Conditions; Mandatory Formula, Block and Entitlement Grant Programs:

Except as noted otherwise, these Terms and Conditions apply to all mandatory grant programs administered by the Administration for Children and Families (see Appendix A). Please also review the separate program-specific Addendum to these Terms and Conditions applicable to each program.

By acceptance of the individual awards, each grantee agrees to comply with these requirements. Failure to comply may result in the loss of Federal funds and may be considered grounds for the suspension or termination of the grant.

42 U.S. Code § 673 – Adoption and guardianship assistance program states, in part:

(a) Agreements with Adoptive Parents of Children with Special Needs; State Payments; Qualifying Children; Mount of Payments; Changes in Circumstances; Placement Period Prior to Adoption; Nonrecurring Adoption Expenses

(8)

(A) A State shall calculate the savings (if any) resulting from the application of paragraph (2)(A)(ii) to all applicable children for a fiscal year, using a methodology

specified by the Secretary or an alternate methodology proposed by the State and approved by the Secretary.

- (B) A State shall annually report to the Secretary—
 - (i) the methodology used to make the calculation described in subparagraph (A), without regard to whether any savings are found;
 - (ii) the amount of any savings referred to in subparagraph (A); and
 - (iii) how any such savings are spent, accounting for and reporting the spending separately from any other spending reported to the Secretary under part B or this part.
- (C) The Secretary shall make all information reported pursuant to subparagraph (B) available on the website of the Department of Health and Human Services in a location easily accessible to the public.
- (D)
 - (i) A State shall spend an amount equal to the amount of the savings (if any) in State expenditures under this part resulting from the application of paragraph (2)(A)(ii) to all applicable children for a fiscal year, to provide to children of families any service that may be provided under part B or this part. A State shall spend not less than 30 percent of any such savings on post-adoption services, post-guardianship services, and services to support and sustain positive permanent outcomes for children who otherwise might enter into foster care under the responsibility of the State, with at least $\frac{2}{3}$ of the spending by the State to comply with such 30 percent requirement being spent on post-adoption and post-guardianship services.
 - (ii) Any State spending required under clause (i) shall be used to supplement, and not supplant, any Federal or non-Federal funds used to provide any service under part B or this part.

2016-027

The Department of Social and Health Services did not have adequate internal controls over federal eligibility requirements for the Adoption Assistance program.

Federal Awarding Agency:	U.S. Department of Health and Human Services
Pass-Through Entity:	None
CFDA Number and Title:	93.659 Adoption Assistance – Title IV-E
Federal Award Number:	1501WAADPT; 1601WAADPT
Applicable Compliance Component:	Eligibility
Known Questioned Cost Amount:	\$ 3,069
Likely Questioned Cost Amount:	\$997,425

Background

The Department of Social and Health Services administers the Adoption Assistance program to provide funding for parents who adopt eligible children with special needs. The program provides financial and medical benefits to qualified children. Adoptive parents can receive a monthly assistance payment from the Department to care for their adopted children, in addition to other expenses related to the initial placement of the child in the home such as court fees, payments for medical visits and transportation costs.

The Department spent about \$48 million in Adoption Assistance in fiscal year 2016, with about \$40 million paid to the adoptive parents of eligible children for adoption services.

Adoptive parents are also subject to eligibility requirements that the Department verifies. Two of these requirements are that providers must pass a Washington name and date of birth background check, as well as an FBI fingerprint background check when required.

Description of Condition

The Department did not have adequate internal controls in place to ensure adoption assistance recipients were eligible to receive federal assistance under the program.

We used a statistical sampling method and randomly sampled 45 out of 14,625 children receiving IV-E Adoption Assistance services. We found the Department did not ensure background checks were completed for the providers of one (2 percent) child as state law and Department rule require. In this case, no Washington name and date of birth background check result was documented for one of the adoptive parents.

We consider these control deficiencies to be a material weakness.

Cause of Condition

As part of the IV-E eligibility determination process, Adoption Support program staff at Children's Administration relied on the Division of Licensed Resources as well as the Background Check Central Unit to perform background checks of current and prospective providers to ensure the providers were eligible to provide care for adopted children. Program management did not sufficiently monitor or perform its own review to ensure the required background checks were performed before placing the child for adoption.

Effect of Condition and Questioned Costs

We identified \$6,138 in known questioned costs associated with the cases described above. We are questioning \$3,069, which is the federal share of the unallowable payments. When we project the results to the entire population of adoption assistance recipients, we estimate the Department made \$1,994,850 in unallowable payments for adoption services. The federal portion of the estimated unallowable payments is \$997,425.

We question costs when we find an agency has not complied with grant regulations or when it does not have adequate documentation to support its expenditures.

Recommendations

We recommend the Department:

- Strengthen internal controls to ensure background checks of providers and prospective providers are performed in accordance with state regulations and program rule
- Follow up on adoptive parents with no background check result to ensure that ineligible providers do not have unsupervised access to children
- Consult with the U.S. Department of Health and Human Services to discuss repaying the questioned costs, including interest

Agency's Response

The Department partially concurs with the finding.

While we cannot produce the physical document showing a cleared background check from 22 years ago, there is notation by the worker in the case management system that a background check did occur in 1995 which was prior to the adoption that then occurred in early 1997.

With regard to the second recommendation to follow up with adoptive parents with no background check. The Department had necessary documentation for the adoption support cases in the sample as evidenced by the finding for only one case that is over 20 years old. However, in the event a background check was not conducted prior to adoption, the Department has no legal authority to run a background check on the adoptive parent after the fact.

CA will consult with the U.S. Department of Health and Human Services to discuss any necessary repayment of the questioned costs.

Auditor’s Concluding Remarks

We thank the Department for its cooperation and assistance throughout the audit. The Department states there were notations by the worker in the case management system that the background check was performed. Our auditors requested and reviewed all notes provided by the Department from the case management system and no such notation was present. After initial review our auditors communicated exceptions to the Department and received additional documentation and the referenced notations were not provided at that time either. The primary purpose of this finding, however, is reporting the lack of internal controls over background checks, not the single identified missing background check.

We reaffirm our finding and will review the status of the Department’s corrective action during our next audit.

Applicable Laws and Regulations

Title 2 U.S. Code of Federal Regulations Part 200, *Uniform Administrative Requirements, Cost Principles, and Audit Requirements for Federal Awards* (Uniform Guidance) established reporting requirements for audit findings.

Section 200.303 Internal controls.

The non-Federal entity must:

- (a) Establish and maintain effective internal control over the Federal award that provides reasonable assurance that the non-Federal entity is managing the Federal award in compliance with Federal statutes, regulations, and the terms and conditions of the Federal award. These internal controls should be in compliance with guidance in “Standards for Internal Control in the Federal Government” issued by the Comptroller General of the United States or the “Internal Control Integrated Framework”, issued by the Committee of Sponsoring Organizations of the Treadway Commission (COSO).

Section 200.403 Factors affecting Allowability of costs.

Except where otherwise authorized by statute, costs must meet the following general criteria in order to be allowable under Federal awards.

- (a) Be necessary and reasonable for the performance of the Federal award and be allocable thereto under these principles.
- (b) Conform to any limitations or exclusions set forth in these principles or in the Federal award as to types or amount of cost items.
- (c) Be consistent with policies and procedures that apply uniformly to both federally-financed and other activities of the non-Federal entity.
- (d) Be accorded consistent treatment. A cost may not be assigned to a Federal award as a direct cost if any other cost incurred for the same purpose in like circumstances has been allocated to the Federal award as an indirect cost.
- (e) Be determined in accordance with generally accepted accounting principles (GAAP), except, for state and local governments and Indian tribes only, as otherwise provided for in this part.

- (f) Not be included as a cost or used to meet cost sharing or matching requirements of any other federally-financed program in either the current or a prior period. See also §200.306 Cost sharing or matching paragraph (b).
- (g) Be adequately documented. See also §§200.300 Statutory and national policy requirements through 200.309 Period of performance of this part.

Section 200.516 Audit reporting, state in part:

- (a) *Audit findings reported.* The auditor must report the following as audit findings in a schedule of findings and questioned costs:
 - (1) Significant deficiencies and material weaknesses in internal control over major programs and significant instances of abuse relating to major programs. The auditor's determination of whether a deficiency in internal control is a significant deficiency or material weakness for the purpose of reporting an audit finding is in relation to a type of compliance requirement for a major program identified in the Compliance Supplement.
 - (3) Known questioned costs that are greater than \$25,000 for a type of compliance requirement for a major program. Known questioned costs are those specifically identified by the auditor. In evaluating the effect of questioned costs on the opinion on compliance, the auditor considers the best estimate of total costs questioned (likely questioned costs), not just the questioned costs specifically identified (known questioned costs). The auditor must also report known questioned costs when likely questioned costs are greater than \$25,000 for a type of compliance requirement for a major program. In reporting questioned costs, the auditor must include information to provide proper perspective for judging the prevalence and consequences of the questioned costs.

The American Institute of Certified Public Accountants defines significant deficiencies and material weaknesses in internal controls over compliance in its *Codification of Statements on Auditing Standards*, section 935, as follows:

.011 For purposes of adapting GAAS to a compliance audit, the following terms have the meanings attributed as follows: ...

Material weakness in internal control over compliance. A deficiency, or combination of deficiencies, in internal control over compliance, such that there is a reasonable possibility that material noncompliance with a compliance requirement will not be prevented, or detected and corrected, on a timely basis. In this section, a reasonable possibility exists when the likelihood of the event is either reasonably possible or probable as defined as follows:

Reasonably possible. The chance of the future event or events occurring is more than remote but less than likely.

Remote. The chance of the future event or events occurring is slight.

Probable. The future event or events are likely to occur.

Significant deficiency in internal control over compliance. A deficiency, or a combination of deficiencies, in internal control over compliance that is less severe than a material weakness in internal control over compliance, yet important enough to merit attention by those charged with governance.

42 U.S Code § 671– State Plan for foster care and adoption assistance, states in part:

(a) Requisite Features of State Plan states in part:

In order for a State to be eligible for payments under this part, it shall have a plan approved by the Secretary which –

(20) (A) provides procedures for criminal records checks, including fingerprint-based checks of national crime information databases (as defined in section 534(e)(3)(A) of title 28), for any prospective foster or adoptive parent before the foster or adoptive parent may be finally approved for placement of a child regardless of whether foster care maintenance payments or adoption assistance payments are to be made on behalf of the child under the State plan under this part, Including procedures requiring that-

(i) in any case involving a child on whose behalf such payments are to be so made in which a record check reveals a felony conviction for child abuse or neglect, for spousal abuse, for a crime against children (including child pornography), or for a crime involving violence, including rape, sexual assault, or homicide, but not including other physical assault or battery, if a State finds that a court of competent jurisdiction has determined that the felony was committed at any time, such final approval shall not be granted; and

(ii) in any case involving a child on whose behalf such payments are to be so made in which a record check reveals a felony conviction for physical assault, battery, or a drug-related offense, if a State finds that a court of competent jurisdiction has determined that the felony was committed within the past 5 years, such final approval shall not be granted; and [3]

(C) provides procedures for criminal records checks, including fingerprint-based checks of national crime information databases (as defined in section 534(e)(3)(A) of title 28), on any relative guardian, and for checks described in subparagraph (B) of this paragraph on any relative guardian and any other adult living in the home of any relative guardian, before the relative guardian may receive kinship guardianship assistance payments on behalf of the child under the State plan under this part;

Revised Code of Washington RCW 74.15.030 “Power and Duties of Secretary,” states in part:

The secretary shall have the power and it shall be the secretary’s duty:

(2) In consultation with the children’s services advisory committee, and with the advice and assistance of persons representative of the various type agencies to be licensed, to adopt and publish minimum requirements for licensing applicable to each of the various categories to be licensed.

The minimum requirements shall be limited to:

(c) Conducting background checks for those who will or may have unsupervised access to children, expectant mothers, or individuals with a developmental disability; however a background check is not required if a caregiver approves an activity pursuant to the prudent parent standard contained in RCW 74.13.710.

- (e) Submitting a fingerprint-based background check through the Washington State Patrol under chapter 10.97 RCW and through the federal bureau of investigation for:
 - (i) Agencies and their staff, volunteers, students, and interns when the agency is seeking license or relicense;
 - (ii) Foster care and adoption placements; and
 - (iii) Any adult living in a home where a child may be placed;

Washington Administrative Code Chapter 388-06A-0110 “Who must have background checks?” states in part:

- (2) Per RCW 74.15.030, the department requires background checks on all providers who may have unsupervised access to children. This includes licensed, certified or contracted providers, their current or prospective employees and prospective adoptive parents as defined in RCW 26.33.020.

WAC 388-06A-0130 “Does the background check process apply to new and renewal licenses, certification, contracts and authorizations to have unsupervised access to children?” states:

For children’s administration, these regulations apply to all applications for new and renewal licenses, contracts, certifications, and authorizations to have unsupervised access to children that are processed by the children’s administration.

The Children’s Administration Practices and Procedures Guide Section 5511: *Definition of Required Criminal History and Child Abuse/Neglect Checks*, states in part:

- 3. For all adults living in the home, age 18 and above, criminal history and CA/N history must include the following:
 - a. A FamLink records check,
 - b. A background check conducted by CCU,
 - c. An FBI/WSP fingerprint based criminal history check processed by BCCU; unless the check is for renewal of a foster home license, and
 - d. For persons who have lived outside of Washington State in the preceding 5 years, an out of state child abuse and neglect history check from all other states where the individual has lived during that time.

The Children’s Administration Practices and Procedures Guide Section 5512: *Persons Subject to Criminal History and Child Abuse/Neglect History Check Requirements*, states in part:

- 5. Children’s Administration staff must complete the required background check, as defined in this section, of out-of-home caregivers and other adults who will have unsupervised access to a child in their home, including:
 - a. Relative caregivers as defined in RCW 74.15
 - b. Other suitable persons as defined in RCW 13.34.130
 - c. Foster parents
 - d. Adoptive parents approved by Children’s Administration

- e. All adults living in the home, age 18 and above
 - f. All adults who move into the out of home placement after the child is placed or license approved
 - g. All youth living in the home, ages 16 and 17 (excluding youth in foster care)
 - h. Former foster youth who return to live with a caregiver upon exiting care
 - i. Caregivers licensed by Washington State on behalf of child placing agencies and Tribes
 - j. Caregivers who reapply for a license after their license has lapsed
 - k. Licensed respite providers
 - l. Unlicensed relative respite providers
 - m. Individuals providing in-home child care for children being served by Children's Administration.
6. Children's Administration is responsible for conducting the background check for children under the custody of another state who are placed with a foster or unlicensed relative caregiver in Washington State through the Interstate Compact on the Placement of Children (ICPC).
 7. Caregivers of children under the custody of Washington State who are placed in another state through ICPC will have their background check completed by the receiving state according to the receiving state's policy.
 8. Prior to a dependent child being returned to their parent's home, the social worker must conduct a criminal background check on all adults residing in the home.

The Children's Administration Operations Manual Section 5514: *FBI Fingerprint Based Check*, states in part:

2. An FBI fingerprint based criminal history check is required for all adults, age 18 and above.

2016-028

The Health Care Authority did not perform semi-annual data sharing with health insurers as required by state law.

Federal Awarding Agency: U.S. Department of Health and Human Services
Pass-Through Entity: None
CFDA Number and Title: 93.775 State Medicaid Fraud Control Units
93.777 State Survey and Certification of Health Care Providers and Suppliers (Title XVIII) Medicare
93.778 Medical Assistance Program (Medicaid; Title XIX)
Federal Award Number: 5-1605WA5MAP; 5-1605WA5ADM; 5-1605WAIMPL; 5-1605WAINCT
Applicable Compliance Component: Activities Allowed/Unallowed Allowable Costs/Cost Principles
Known Questioned Cost Amount: None

Background

Medicaid is a jointly funded state and federal partnership providing coverage for about 1.9 million eligible low-income individuals who otherwise might go without medical care. Medicaid is Washington's largest public assistance program and accounts for about one third of the state's federal expenditures. The program spent about \$11.6 billion in federal and state funds during fiscal year 2016.

It is common for Medicaid beneficiaries to have one or more additional sources of coverage for health care services. Third party liability refers to the legal obligation of third parties, such as insurance companies, to pay part or all of the expenditures for medical assistance furnished under a Medicaid state plan. By law, Medicaid is the "payor of last resort", meaning all other available third party resources must meet their legal obligation to pay claims before the Medicaid program pays for the care of an individual eligible for Medicaid.

The federal Deficit Reduction Act of 2005 requires health insurers to provide states with eligibility and coverage information that will enable Medicaid agencies to determine whether clients have third-party coverage. As a condition of receiving federal Medicaid funding, the Act directed states to enact laws requiring health insurers doing business in their state to provide the eligibility and coverage information necessary to determine whether Medicaid clients have third party coverage.

To comply with this requirement, the Legislature passed RCW 74.09A in 2007 that requires the Health Care Authority to provide Medicaid client eligibility and coverage information to health insurers. As a condition of doing business with the state, the insurers are required to use that information to identify Medicaid clients with third-party coverage and provide those results to the Authority. The law requires the exchange of data to occur not less than twice per year. The Authority was required to focus its implementation of the law on those health insurers with the highest probability of joint beneficiaries.

Since 2008, we have reported findings regarding lack of internal controls over and noncompliance with the federal Deficit Reduction Act of 2005 and the state law. Prior audit finding numbers were 2015-030, 2014-034, 2013-020, 12-49, 11-38, 10-40, 09-19, and 08-25.

Description of Condition

The Authority did not perform semi-annual data sharing with health insurers as required by state law.

The Centers for Medicare and Medicaid Services developed the Payer Initiated Eligibility/Benefits (PIE) Transaction, the national standard format for data sharing prescribed by the federal government. The Authority implemented this transaction format in July 2013. In October 2013, the Authority sent letters to ten major insurance carriers with the most Medicaid clients, inviting them to begin data sharing.

During fiscal year 2015, the Authority received 24 client data files from private health insurers and attempted to upload three that contained over 10,000 client policy records into its Medicaid Management Information System, ProviderOne. The Authority was forced to stop because the system was unable to manage the large influx of data and all future data exchanges with health insurers were ceased. The Authority resolved this capacity issue in October 2015. In the current audit period, client files were received from private insurers, but the Authority did not upload them to identify liable third parties because of system uploading issues.

RCW 74.09A.020 states that the Authority is to provide client data to health insurers and the insurers are to identify joint beneficiaries and transmit the information to the Authority. The law and the Authority's current practice do not align. In practice, the data exchange is initiated by the Authority, and the Authority has attempted to identify joint beneficiaries.

The U.S. Government Accountability Office (GAO) published an audit report in January 2015 that stated additional federal action is needed to improve third-party liability efforts for the Medicaid program. The GAO also found states commonly face challenges with their third-party liability efforts, such as health insurers refusing the provider coverage information or denying liability for procedural reasons.

We consider the condition described above to be material noncompliance with federal grant requirements and a material weakness in internal controls.

Cause of Condition

In response to prior year findings, the Authority met with the Office of the Insurance Commissioner and the Office of Financial Management to enhance direct insurer participation. The Authority asserts the Offices concluded the Authority has no legal influence to enforce or compel private insurance carriers to participate in the data exchange requirement.

The Authority was unable to upload client files due to system upload issues.

Effect of Condition

Without performing the data exchange and cross-matching insurance claims, the Authority is not able to timely identify Medicaid clients that have third party coverage. This puts the Authority at a higher risk of paying claims that are not allowable. Additionally, the Authority is not in compliance with the federal Deficit Reduction Act of 2005 and state law (RCW 74.09A.020).

Recommendations

We recommend the Authority:

- Work with the Legislature to bring Washington into compliance with state law
- Continue efforts to perform data-matches with private insurers

Authority's Response

RCW 74.09A.020 requires Health Care Authority (HCA) to provide routine and periodic computerized information to health insurers regarding client eligibility and coverage information, and requires health insurers to use this information to identify joint beneficiaries. The Authority meets the intent of the law by performing data matching with insurance carriers in the State of Washington on a regular basis. Data exchanges occur in real time using information and electronic data available to the State Medicaid program.

In addition, HCA implemented the national Payor Initiated Eligibility/Benefit (PIE) transaction standard in July 2013, which meets the intent of RCW 74.09A.005 by instituting "a transfer of information between the authority and health insurers."

HCA is continuing to refine the logic for loading PIE data from insurance carriers into the MMIS. Some changes were made to the transaction logic in August 2016 and HCA is continuing to work through the logic to ensure accurate automated loading of the files to the MMIS. The Authority will complete those refinements and will continue to work with carriers currently engaged in PIE transaction submissions. The Authority will continue to encourage health insurers to develop systems capable of participating in the PIE data exchange.

While the Authority does not have legal authority to compel insurers to comply with this law, we will consider options for working with the Legislature to align state law with current practice.

Auditor's Concluding Remarks

We thank the Authority for its cooperation and assistance throughout the audit. We will review the status of the Authority's corrective action during our next audit.

Applicable Laws and Regulations

Title 2 *U.S. Code of Federal Regulations* (CFR) Part 200 Section 200.303 Internal controls.

The non-Federal entity must:

- (a) Establish and maintain effective internal control over the Federal award that provides reasonable assurance that the non-Federal entity is managing the Federal award in

compliance with Federal statutes, regulations, and the terms and conditions of the Federal award. These internal controls should be in compliance with guidance in “Standards for Internal Control in the Federal Government” issued by the Comptroller General of the United States or the “Internal Control Integrated Framework”, issued by the Committee of Sponsoring Organizations of the Treadway Commission (COSO).

- (b) Comply with Federal statutes, regulations, and the terms and conditions of the Federal awards.
- (c) Evaluate and monitor the non-Federal entity's compliance with statutes, regulations and the terms and conditions of Federal awards.
- (d) Take prompt action when instances of noncompliance are identified including noncompliance identified in audit findings.

Title 2 U.S. Code of Federal Regulations Part 200, *Uniform Administrative Requirements, Cost Principles, and Audit Requirements for Federal Awards* (Uniform Guidance) established reporting requirements for audit findings.

2 Code of Federal Regulations 200.516 Audit Reporting, states in part:

- (a) *Audit findings reported.* The auditor must report the following as audit findings in a schedule of findings and questioned costs.
 - (1) Significant deficiencies and material weaknesses in internal control over major programs and significant instances of abuse relating to major programs. The auditor’s determination of whether a deficiency in internal control is a significant deficiency or material weakness for the purpose of reporting an audit finding is in relation to a type of compliance requirement for a major program identified in the Compliance Supplement.
 - (2) Material noncompliance with the provisions of Federal statutes, regulations, or the terms and conditions of Federal awards related to a major program. The auditor’s determination of whether a noncompliance with the provisions of Federal statutes, regulations, or the terms and conditions of Federal awards is material for the purpose of reporting an audit finding is in relation to a type of compliance requirement for a major program identified in the compliance supplement.

The American Institute of Certified Public Accountants defines significant deficiencies and material weaknesses in its *Codification of Statements on Auditing Standards*, section 935, as follows:

.011 For purposes of adapting GAAS to a compliance audit, the following terms have the meanings attributed as follows:

Material weakness in internal control over compliance. A deficiency, or combination of deficiencies, in internal control over compliance, such that there is a reasonable possibility that material noncompliance with a compliance requirement will not be prevented, or detected and corrected, on a timely basis. In this section, a reasonable possibility exists when the likelihood of the event is either reasonably possible or probably as defined as follows:

Reasonably possible. The chance of the future event or events occurring is more than remote but less than likely.

Remote. The chance of the future event or events occurring is slight.

Probable. The future event or events are likely to occur.

Significant deficiency. A deficiency, or a combination of deficiencies, in internal control that is less severe than a material weakness yet important enough to merit attention by those charged with governance.

Material noncompliance. In the absence of a definition of material noncompliance in the governmental audit requirement, a failure to follow compliance requirements or a violation of prohibitions included in the applicable compliance requirements that results in noncompliance that is quantitatively or qualitatively material, either individually or when aggregated with other noncompliance, to the affected government program.

Title 42, United States Code, Part 1396a(a)(25) State plan for medical assistance, states in part:

- (A) that the State or local agency administering such plan will take all reasonable measures to ascertain the legal liability of third parties (including health insurers, self-insured plans, group health plans (as defined in section 1167(1) of U.S.C. Title 29), service benefit plans, managed care organizations, pharmacy benefit managers, or other parties that are, by statute, contract, or agreement, legally responsible for payment of a claim for a health care item or service) to pay for care and services available under the plan, including--
 - (i) the collection of sufficient information (as specified by the Secretary in regulations) to enable the State to pursue claims against such third parties, with such information being collected at the time of any determination or redetermination of eligibility for medical assistance, and
 - (ii) the submission to the Secretary of a plan (subject to approval by the Secretary) for pursuing claims against such third parties, which plan shall be integrated with, and be monitored as a part of the Secretary's review of, the State's mechanized claims processing and information retrieval systems required under section 1396b(r) of this title;
- (H) that to the extent that payment has been made under the State plan for medical assistance in any case where a third party has a legal liability to make payment for such assistance, the State has in effect laws under which, to the extent that payment has been made under the State plan for medical assistance for health care items or services furnished to an individual, the State is considered to have acquired the rights of such individual to payment by any other party for such health care items or services; and

Revised Code of Washington 74.09A.005 states:

The legislature finds that:

- (1) Simplification in the administration of payment of health benefits is important for the state, providers, and health insurers;
- (2) The state, providers, and health insurers should take advantage of all opportunities to streamline operations through automation and the use of common computer standards;
- (3) It is in the best interests of the state, providers, and health insurers to identify all third parties that are obligated to cover the cost of health care coverage of joint beneficiaries; and

- (4) Health insurers, as a condition of doing business in Washington, must increase their effort to share information with the authority and accept the authority's timely claims consistent with 42 U.S.C. 1396a (a)(25).

Therefore, the legislature declares that to improve the coordination of benefits between the health care authority and health insurers to ensure that medical insurance benefits are properly utilized, a transfer of information between the authority and health insurers should be instituted, and the process for submitting requests for information and claims should be simplified.

Revised Code of Washington 74.09A.020 Computerized information — Provision to health insurers.

1. The authority shall provide routine and periodic computerized information to health insurers regarding client eligibility and coverage information. Health insurers shall use this information to identify joint beneficiaries. Identification of joint beneficiaries shall be transmitted to the authority. The authority shall use this information to improve accuracy and currency of health insurance coverage and promote improved coordination of benefits.
2. To the maximum extent possible, necessary data elements and a compatible database shall be developed by affected health insurers and the authority. The authority shall establish a representative group of health insurers and state agency representatives to develop necessary technical and file specifications to promote a standardized database. The database shall include elements essential to the authority and its population's health insurance coverage information.
3. If the state and health insurers enter into other agreements regarding the use of common computer standards, the database identified in this section shall be replaced by the new common computer standards.
4. The information provided will be of sufficient detail to promote reliable and accurate benefit coordination and identification of individuals who are also eligible for authority programs.
5. The frequency of updates will be mutually agreed to by each health insurer and the authority based on frequency of change and operational limitations. In no event shall the computerized data be provided less than semiannually.
6. The health insurers and the authority shall safeguard and properly use the information to protect records as provided by law, including but not limited to chapters 42.48, 74.09, 74.04, 70.02, and 42.56 RCW, and 42 U.S.C. Sec. 1396a and 42 C.F.R. Sec. 43 et seq. The purpose of this exchange of information is to improve coordination and administration of benefits and ensure that medical insurance benefits are properly utilized.
7. The authority shall target implementation of this section to those health insurers with the highest probability of joint beneficiaries.

2016-029

The Health Care Authority and the Department of Social and Health Services did not have adequate internal controls and did not comply with requirements to ensure Medicaid service verifications were performed for all eligible claims.

Federal Awarding Agency: U.S. Department of Health and Human Services
Pass-Through Entity: None
CFDA Number and Title: 93.775 State Medicaid Fraud Control Units
93.777 State Survey and Certification of Health Care Providers and Suppliers (Title XVIII) Medicare
93.778 Medical Assistance Program (Medicaid; Title XIX)
Federal Award Number: 5-1605WA5MAP; 5-1605WA5ADM; 5-1605WAIMPL; 5-1605WAINCT
Applicable Compliance Component: Special Test and Provisions – Utilization Control and Program Integrity
Known Questioned Cost Amount: None

Background

Medicaid is a jointly funded state and federal partnership providing health coverage for about 1.9 million eligible low-income Washington residents who otherwise might go without medical care. Medicaid is Washington's largest public assistance program and accounts for about one-third of the state's federal expenditures. The program is administered by the Health Care Authority (Authority), the state's Medicaid agency, and the Department of Social and Health Services (Department). The program spent about \$11.6 billion in federal and state funds during fiscal year 2016.

For states such as Washington that use a mechanized claims processing system (ProviderOne), federal regulations require a specific method be in place to verify with Medicaid clients if they received services billed by providers. The intent is to improve program integrity and identify potential fraud and abuse in the Medicaid program.

The specific verification method involves sending individual written notices, within 45 days of the payment, to all or a sample group of Medicaid clients whose claims were processed through ProviderOne. Both medical and social services claims are subject to the Medicaid service verification survey process.

If credible suspicions of fraud or abuse are identified, agencies must forward the information to the Attorney General's Office, Medicaid Fraud Control Unit for investigation.

Health Care Authority

The Authority mails Medicaid medical service verification surveys monthly to a randomly selected number of clients. The random selections are made based on payments out of ProviderOne. Authority

policy requires staff to review returned surveys and follow up if questions about the legitimacy of payments exist. If the Authority identifies a credible suspicion of fraud or abuse, it refers the case to the Medicaid Fraud Control Unit for investigation.

As the Medicaid State Agency, the Authority is responsible for monitoring and ensuring all eligible claims are included in the Medicaid service verification survey process.

Department of Social and Health Services

The Department also pays providers who serve Medicaid clients. All Medicaid claims, except self-employed individual provider claims, were processed through ProviderOne until March 1, 2016. As of March 1, 2016, self-employed individual provider claims were processed through a new sub system of ProviderOne, Individual ProviderOne.

Prior audits

In prior audits, we reported findings regarding the Authority ensuring all eligible claims were included in the Medicaid service verification survey process. The prior finding numbers were 2015-032, 2014-039, and 13-031. We reviewed the Authority's corrective action plan to determine the status of the prior findings. The corrective action was listed as completed in February 2016.

Description of Condition

Health Care Authority

The Authority has established a process in which medical claims processed through ProviderOne are included in the random, monthly service verification survey process; however, social service claims were not included in the monthly random sample. The Authority is responsible for having a monitoring process in place to ensure that social service claims are included in the service verification survey process.

The Authority did not begin to send out service verification surveys to clients whose language was other than English until January 2016.

Department of Social and Health Services

Social service claims processed through the Department's former Social Service Payment System were moved to Individual ProviderOne. Once Individual ProviderOne began processing the social service claims, they became subject to the requirement to be included in the monthly Medicaid service verification survey process. The Department did not ensure these claims were included in the random sample.

We consider these control deficiencies to be a material weakness.

Cause of Condition

A written agreement between the Authority and the Department was not established that described the responsibilities of each agency to ensure the state complied with federal regulations.

Health Care Authority

The Authority excluded social service claims from its monthly random sample survey process with the understanding that the Department would include the claims in its own survey process.

The Authority submitted a change request to its ProviderOne vendor to have the non-English speaking client population included in the sample. The system change was not in place until January 2016.

Department of Social and Health Services

Department staff were not aware the regulation requires an automated sample selection process through ProviderOne and had the understanding a manual process would be sufficient in the interim.

Effect of Condition

Not monitoring to ensure all eligible claims are included in the Medicaid service verification survey process increases the risk that Medicaid fraud may go undetected and cause the Authority to be out of compliance with federal requirements.

Recommendations

We recommend the Authority and the Department establish adequate internal controls to ensure all eligible claims are included in the universe from which samples are selected in the Medicaid service verification survey process. We also recommend the agencies establish a written agreement detailing each of their roles and responsibilities regarding the Medicaid service verification survey process.

Agencies' Response

The Authority agrees that verifying that beneficiaries received the services billed by providers is beneficial. The Department completes an annual Client Service Verification survey that includes a statistically significant sample of clients. Because this method satisfies the verification requirement in 42 CFR 455.20, "The agency must have a method for verifying with beneficiaries whether services billed by providers were received," the Authority questions the auditor's interpretation that federal regulations require additional verifications be done through ProviderOne. Nonetheless, the Authority will expand the ProviderOne verification process to include social service payments.

Effective January 2018, an automated verification process through ProviderOne will be implemented. This will include establishing a written agreement between the Authority and the Department detailing each of their roles and responsibilities regarding the Medicaid service verification survey process. Until this written agreement is created, the Department's manual survey process will continue.

Auditor’s Concluding Remarks

We thank the Authority and Department for its cooperation and assistance throughout the audit. We will review the status of the Authority and Department’s corrective action during the next audit.

Applicable Laws and Regulations

Title 2 U.S. Code of Federal regulations Part 200, *Uniform Administrative Requirements, Cost Principles, and Audit Requirements for Federal Awards* (Uniform Guidance) established reporting requirements for audit findings.

Section 200.303 Internal controls.

The non-Federal entity must:

- (a) Establish and maintain effective internal control over the Federal award that provides reasonable assurance that the non-Federal entity is managing the Federal award in compliance with Federal statutes, regulations, and the terms and conditions of the Federal award. These internal controls should be in compliance with guidance in “Standards for Internal Control in the Federal Government” issued by the Comptroller General of the United States or the “Internal Control Integrated Framework”, issued by the Committee of Sponsoring Organizations of the Treadway Commission (COSO).
- (b) Comply with Federal statutes, regulations, and the terms and conditions of the Federal awards.

Section 200.516 Audit reporting, state in part:

- (a) *Audit findings reported.* The auditor must report the following as audit findings in a schedule of findings and questioned costs:
 - (1) Material noncompliance with the provisions of Federal statutes, regulations, or the terms and conditions of Federal awards related to a major program. The auditor’s determination of whether a noncompliance with the provisions of Federal statutes, regulations, or the terms and conditions of Federal awards is material for the purpose of reporting an audit finding is in relation to a type of compliance requirement for a major program identified in the compliance supplement.

The American Institute of Certified Public Accountants defines significant deficiencies and material weaknesses in internal controls over compliance in its *Codification of Statements on Auditing Standards*, section 935, as follows:

.011 For purposes of adapting GAAS to a compliance audit, the following terms have the meanings attributed as follows: ...

Material weakness in internal control over compliance. A deficiency, or combination of deficiencies, in internal control over compliance, such that there is a reasonable possibility that material noncompliance with a compliance requirement will not be prevented, or detected and corrected, on a timely basis. In this section, a reasonable possibility exists when the likelihood of the event is either reasonably possible or probable as defined as follows:

Reasonably possible. The chance of the future event or events occurring is more than remote but less than likely.

Remote. The chance of the future event or events occurring is slight.

Probable. The future event or events are likely to occur.

Significant deficiency in internal control over compliance. A deficiency, or a combination of deficiencies, in internal control over compliance that is less severe than a material weakness in internal control over compliance, yet important enough to merit attention by those charged with governance.

Material noncompliance. In the absence of a definition of material noncompliance in the governmental audit requirement, a failure to follow compliance requirements or a violation of prohibitions included in the applicable compliance requirements that results in noncompliance that is quantitatively or qualitatively material, either individually or when aggregated with other noncompliance, to the affected government program.

Title 42, Code of Federal Regulations, Section 455.1 Basis and scope, states in part:

This part sets forth requirements for a State fraud detection and investigation program, and for disclosure of information on ownership and control.

- (a) Under the authority of sections 1902(a)(4), 1903(i)(2), and 1909 of the Social Security Act, Subpart A provides State plan requirements for the identification, investigation, and referral of suspected fraud and abuse cases. In addition, the subpart requires that the State—
 - (1) Report fraud and abuse information to the Department; and
 - (2) Have a method to verify whether services reimbursed by Medicaid were actually furnished to beneficiaries.

Title 42, Code of Federal Regulations, Section 455.14 Preliminary investigation states:

If the agency receives a complaint of Medicaid fraud or abuse from any source or identifies any questionable practices, it must conduct a preliminary investigation to determine whether there is sufficient basis to warrant a full investigation.

Title 42, Code of Federal Regulations, Section 455.20, Beneficiary verification procedure, states:

- (a) The agency must have a method for verifying with beneficiaries whether services billed by providers were received.
- (b) In States receiving Federal matching funds for a mechanized claims processing and information retrieval system under part 433, subpart C, of this subchapter, the agency must provide prompt written notice as required by §433.116 (e) and (f).

Title 42 Code of Federal Regulations, Section 433.116, FFP for operation of mechanized claims processing and information retrieval systems, states in part:

- (e) The system must provide individual notices, within 45 days of the payment of claims, to all or a sample group of the persons who received services under the plan.
- (f) The notice required by paragraph (e) of this section—

- (1) Must specify—
 - (i) The service furnished;
 - (ii) The name of the provider furnishing the service;
 - (iii) The date on which the service was furnished; and
 - (iv) The amount of the payment made under the plan for the service; and
- (2) Must not specify confidential services (as defined by the State) and must not be sent if the only service furnished was confidential.
- (g) The system must provide both patient and provider profiles for program management and utilization review purposes.
- (h) If the State has a Medicaid fraud control unit certified under section 1903(q) of the Act and §455.300 of this chapter, the Medicaid agency must have procedures to assure that information on probable fraud or abuse that is obtained from, or developed by, the system is made available to that unit. (See §455.21 of this chapter for State plan requirements.)

2016-030 The Health Care Authority made improper Medicaid payments to Federally Qualified Health Centers and Rural Health Clinics.

Federal Awarding Agency: U.S. Department of Health and Human Services
Pass-Through Entity: None
CFDA Number and Title: 93.775 State Medicaid Fraud Control Units
93.777 State Survey and Certification of Health Care Providers and Suppliers (Title XVIII) Medicare
93.778 Medical Assistance Program (Medicaid; Title XIX)
Federal Award Number: 5-1605WA5MAP; 5-1605WA5ADM; 5-1605WAIMPL; 5-1605WAINCT
Applicable Compliance Component: Activities Allowed/Unallowed
Allowable Costs/Cost Principles
Known Questioned Cost Amount: \$122,539

Background

Medicaid is a jointly funded state and federal partnership providing coverage for about 1.9 million eligible low-income individuals in Washington who otherwise might go without medical care. Medicaid is Washington’s largest public assistance program and accounts for about one-third of the state’s federal expenditures. The program spent about \$11.6 billion in federal and state funds during fiscal year 2016.

The Health Care Authority paid nearly \$7.4 billion in Medicaid funds in fiscal year 2016. The Authority paid more than \$254 million to Federally Qualified Health Centers and \$9.8 million to Rural Health Clinics.

Federally Qualified Health Centers (FQHC) and Rural Health Clinics (RHC) are “safety net” providers that serve a range of populations, including the uninsured, publicly insured and underinsured low-income populations, as well as special populations such as migrant seasonal farm workers and homeless people. Both FQHCs and RHCs are certified by Centers for Medicare and Medicaid Services and designed to provide medical help for people in medically challenged areas.

RHCs are considered the essential source of outpatient care, emergency care and basic lab services in many rural areas. RHCs provide care in rural areas and places that are categorized as Health Professional Shortage Areas or Medically Underserved Areas.

FQHCs provide care for people in rural and urban areas that are classified as Medically Underserved Areas or Medically Underserved Populations. FQHCs offer similar services as RHCs in addition to more comprehensive services that must be accessed through formal arrangements. Services include diagnostic and lab, pharmaceutical, behavioral and oral, hospital and specialty, after-hours care, case management, transportation and interpretative services.

With few exceptions, FQHCs and RHCs are paid based on client encounters. An encounter is defined as a face-to-face visit between a client and a qualified FQHC/RHC that exercises independent judgment when providing services that qualify for an encounter rate. The Authority pays a fixed rate regardless of the number or type of procedures provided during the encounter.

Incidental services are factored into the encounter rate established for each FQHC/RHC. Those services must not be billed separately as a fee for service. Services not factored into the encounter rate are paid at the appropriate fee schedule amount as a fee for service.

Encounters are limited to one per client, per day except in the following circumstances:

- The client needs to be seen on the same day by different practitioners with different specialties; or
- The client needs to be seen multiple times on the same day due to unrelated diagnoses.

In prior audits, we found that the Authority made improper payments to FQHCs and RHCs due to lack of sufficient system edits within its ProviderOne system. The prior finding number for FQHCs and RHCs together is 2015-033, and the prior finding numbers for FQHCs alone are 2014-036 and 2013-026.

Description of Condition

We found the Authority had adequate internal controls to materially ensure FQHC and RHC providers are correctly billed for services provided.

Using computer assisted auditing techniques, we examined all \$263.8 million in payments made to FQHCs and RHCs and found the Authority made improper payments to FQHC and RHC providers totaling \$182,504.

The following tables summarize the specific results by provider type:

FQHCs

Description	Total unallowable payments
Fee-for-service claims were paid in addition to encounter payments.	\$114,939
Encounter payments were made when services did not qualify as an encounter.	\$ 43,386
More than one encounter payment was made for the same client.	\$ 9,077
Total	\$167,402

RHCs

Description	Total unallowable payments
Fee-for-service claims were paid in addition to encounter payments.	\$10,878
Encounter payments were made when services did not qualify as an encounter.	\$ 4,099
More than one encounter payment was made for the same client.	\$ 125
Total	\$15,102

Cause of Condition

The Medicaid claim adjudication and payment process is highly automated. The Authority relies mostly on the internal controls of its ProviderOne system, Washington's Medicaid Management Information System, to identify and deny charges that are unallowable or billed improperly.

In response to our prior findings, the FQHC Program Manager said the new system edits were implemented in October 2015, which would better prevent overpayments and improper billings by providers. However, the new system edits did not prevent all improper payments.

Effect of Condition and Questioned Costs

The Authority improperly claimed reimbursement for unallowable payments of \$182,504. We are questioning \$122,539, which is the federal portion of the unallowable costs. The federal share is calculated using the state's 2016 Federal Medical Assistance Percentages (FMAP) rate assigned per expenditure type. We question costs when we find an agency has not complied with grant regulations or when it does not have adequate documentation to support its expenditures.

Recommendations

We recommend the Authority:

- Recoup the overpayments made to FQHCs and RHCs
- Consult with the U.S. Department of Health and Human Services to discuss repayment of the questioned costs

Agency's Response

The Authority will recoup the duplicate payments, with an estimated completion date of December 31, 2017.

The Authority will consult with the U.S. Department of Health and Human Services regarding resolution of questioned costs.

Auditor's Concluding Remarks

We thank the Authority for its cooperation and assistance throughout the audit. We will review the status of the Authority's corrective action during our next audit.

Applicable Laws and Regulations

Title 2 U.S. Code of Federal regulations Part 200, *Uniform Administrative Requirements, Cost Principles, and Audit Requirements for Federal Awards* (Uniform Guidance) established reporting requirements for audit findings.

Section 200.403 Factors affecting Allowability of costs.

Except where otherwise authorized by statute, costs must meet the following general criteria in order to be allowable under Federal awards.

- (a) Be necessary and reasonable for the performance of the Federal award and be allocable thereto under these principles.
- (b) Conform to any limitations or exclusions set forth in these principles or in the Federal award as to types or amount of cost items.
- (c) Be consistent with policies and procedures that apply uniformly to both federally-financed and other activities of the non-Federal entity.
- (d) Be accorded consistent treatment. A cost may not be assigned to a Federal award as a direct cost if any other cost incurred for the same purpose in like circumstances has been allocated to the Federal award as an indirect cost.
- (e) Be determined in accordance with generally accepted accounting principles (GAAP), except, for state and local governments and Indian tribes only, as otherwise provided for in this part.
- (f) Not be included as a cost or used to meet cost sharing or matching requirements of any other federally-financed program in either the current or a prior period. See also §200.306 Cost sharing or matching paragraph (b).
- (g) Be adequately documented. See also §§200.300 Statutory and national policy requirements through 200.309 Period of performance of this part.

Section 200.516 Audit reporting, state in part:

- (a) *Audit findings reported.* The auditor must report the following as audit findings in a schedule of findings and questioned costs:
 - (3) Known questioned costs that are greater than \$25,000 for a type of compliance requirement for a major program. Known questioned costs are those specifically identified by the auditor. In evaluating the effect of questioned costs on the opinion on compliance, the auditor considers the best estimate of total costs questioned (likely questioned costs), not just the questioned costs specifically identified (known questioned costs). The auditor must also report known questioned costs when likely questioned costs are greater than \$25,000 for a type of compliance requirement for a major program. In reporting questioned costs, the auditor must include information to provide proper perspective for judging the prevalence and consequences of the questioned costs.

Washington Administrative Code 182-548-1400, Federally qualified health centers – Reimbursement and limitations, states in part:

- (8) The agency limits encounters to one per client, per day except in the following circumstances:
 - (a) The visits occur with different health care professionals with different specialties; or
 - (b) There are separate visits with unrelated diagnoses.
- (9) FQHC services and supplies incidental to the provider's services are included in the encounter rate payment.

Washington Administrative Code 182-549-1400, Rural health clinics—Reimbursement and limitations, states in part:

- (8) The agency pays for one encounter, per client, per day except in the following circumstances:
 - (a) The visits occur with different health care professionals with different specialties; or
 - (b) There are separate visits with unrelated diagnoses.
- (9) RHC services and supplies incidental to the provider's services are included in the encounter rate payment.

2016-031 The Health Care Authority did not repay the federal government for improper payments made to Medicaid Managed Care Organizations.

Federal Awarding Agency: U.S. Department of Health and Human Services
Pass-Through Entity: None
CFDA Number and Title: 93.775 State Medicaid Fraud Control Units
93.777 State Survey and Certification of Health Care Providers and Suppliers (Title XVIII) Medicare
93.778 Medical Assistance Program (Medicaid; Title XIX)
Federal Award Number: 5-1605WA5MAP; 5-1605WA5ADM; 5-1605WAIMPL; 5-1605WAINCT
Applicable Compliance Component: Activities Allowed or Unallowed
Allowable Costs/Cost Principles
Known Questioned Cost Amount: \$130,598

Background

Medicaid is a jointly funded state and federal partnership providing coverage for about 1.9 million eligible low-income Washington residents who otherwise might go without medical care. Medicaid is Washington's largest public assistance program and accounts for about one-third of the state's federal expenditures. The program spent about \$11.6 billion in federal and state funds during fiscal year 2016, almost \$7.4 billion of which was spent by the Health Care Authority (Authority).

The Authority administers the Managed Care program for Washington. Managed Care is a prepaid, comprehensive system of medical and health care delivery, including preventive, primary, specialty and ancillary health care services. The program is designed to reduce the cost of providing health benefits, improve the quality of care and deliver health care to clients. The state contracts with health insurance plans, known as Managed Care Organizations (MCO), to cover the costs of Medicaid client claims.

The Authority pays MCOs a uniform, pre-determined per-enrollee monthly premium to cover the cost of medical care for the client the selected month. Clients may choose an MCO based on availability of coverage in their location, and can be enrolled in only one managed care program at a time. Therefore, the Authority may not pay more than one monthly premium for each client.

During fiscal year 2016, the Authority paid more than \$4.7 billion in managed care premiums on behalf of more than 1.5 million Medicaid clients.

Description of Condition

We performed tests to determine if the Department had adequate internal controls to prevent duplicate payments from being made to MCOs.

We found the Authority had adequate internal controls to materially prevent duplicate premium payments from being made for managed care clients. The Authority identified improper premium payments, totaling \$209,553, paid during 2016 to MCOs that had already received a premium payment from the Authority for the same month. We found an additional \$13,027 in duplicate payments during our examination that occurred during the audit period.

Federal regulations require unallowable payments to be refunded to the federal government. Regulations further require agencies to take prompt action when instances of noncompliance are identified. We are reporting this as a finding because, as of June 30, 2016, the Authority had not repaid the grantor for unallowable costs it had identified that were charged to the Medicaid grant.

Cause of Condition

The Authority had system edits in place in its ProviderOne system designed to materially detect and prevent duplicate premium payments for the same recipient, for the same month. However, the system edits were not effective to prevent or detect all unallowable duplicate payments.

The Authority employee who identified the duplicate payments was promoted to a different position before he was able to initiate the recoupment process. The subsequent delay in filling the vacancy caused an additional delay in collecting the unallowable costs.

Effect of Condition and Questioned Costs

Payments that are duplicative in nature, or made to an ineligible recipient, are unallowable and cannot be claimed for federal reimbursement. The federal share of the unallowable duplicate payments identified by the Authority for fiscal year 2016 totaled \$123,210. The federal share of the additional duplicate payments identified by the audit totaled \$7,387.

We question costs when we find an agency has not complied with grant regulations or when it does not have adequate documentation to support its expenditures.

During the audit, we also became aware that the Department identified an additional \$130,261 in federal funds paid in fiscal years 2014 and 2015 that had not been repaid to the federal government. We are not questioning these costs because they occurred outside the audit period. However, the information is being included in the finding to provide proper perspective for judging the prevalence and consequences of the questioned costs.

The Authority stated it is in the process of recovering the improper payments.

Recommendations

We recommend the Authority:

- Recover the unallowable payments for duplicate managed care premiums
- Consult with the U.S. Department of Health and Human Services about repayment of the questioned costs, including interest

Agency's Response

As noted by the State Auditor's Office, the Authority identified the duplicate premium payments reported in this finding. The Authority is currently recouping the duplicate payments, with an estimated completion date of June 30, 2017.

The Authority will consult with the U.S. Department of Health and Human Services regarding resolution of questioned costs.

Auditor's Concluding Remarks

We thank the Authority for its cooperation and assistance throughout the audit. We will review the status of the Authority's corrective action during our next audit.

Applicable Laws and Regulations

Title 2 U.S. Code of Federal Regulations Part 200, *Uniform Administrative Requirements, Cost Principles, and Audit Requirements for Federal Awards* (Uniform Guidance) established reporting requirements for audit findings.

Section 200.403 Factors affecting Allowability of costs.

Except where otherwise authorized by statute, costs must meet the following general criteria in order to be allowable under Federal awards.

- (a) Be necessary and reasonable for the performance of the Federal award and be allocable thereto under these principles.
- (b) Conform to any limitations or exclusions set forth in these principles or in the Federal award as to types or amount of cost items.
- (c) Be consistent with policies and procedures that apply uniformly to both federally-financed and other activities of the non-Federal entity.
- (d) Be accorded consistent treatment. A cost may not be assigned to a Federal award as a direct cost if any other cost incurred for the same purpose in like circumstances has been allocated to the Federal award as an indirect cost.
- (e) Be determined in accordance with generally accepted accounting principles (GAAP), except, for state and local governments and Indian tribes only, as otherwise provided for in this part.
- (f) Not be included as a cost or used to meet cost sharing or matching requirements of any other federally-financed program in either the current or a prior period. See also §200.306 Cost sharing or matching paragraph (b).
- (g) Be adequately documented. See also §§200.300 Statutory and national policy requirements through 200.309 Period of performance of this part.

Section 200.410 Collection of unallowable costs.

Payments made for costs determined to be unallowable by either the Federal awarding agency, cognizant agency for indirect costs, or pass-through entity, either as direct or indirect costs, must be refunded (including interest) to the Federal Government in accordance with instructions from the Federal agency that determined the costs are

unallowable unless Federal statute or regulation directs otherwise. See also Subpart D—Post Federal Award Requirements of this part, §§200.300 Statutory and national policy requirements through 200.309 Period of performance.

Section 200.516 Audit reporting, states in part:

(a) *Audit findings reported.* The auditor must report the following as audit findings in a schedule of findings and questioned costs:

(3) Known questioned costs that are greater than \$25,000 for a type of compliance requirement for a major program. Known questioned costs are those specifically identified by the auditor. In evaluating the effect of questioned costs on the opinion on compliance, the auditor considers the best estimate of total costs questioned (likely questioned costs), not just the questioned costs specifically identified (known questioned costs). The auditor must also report known questioned costs when likely questioned costs are greater than \$25,000 for a type of compliance requirement for a major program. In reporting questioned costs, the auditor must include information to provide proper perspective for judging the prevalence and consequences of the questioned costs.

Office of Management and Budget OMB Uniform Guidance, Compliance Supplement for 2016, *Part 3 – Compliance Requirements*, states in part:

Improper Payments

Under OMB guidance, Public Law (Pub. L.) No. 107-300, the Improper Payments Information Act of 2002, as amended by Pub. L. No. 111-204, the Improper Payments Elimination and Recovery Act, Executive Order 13520 on reducing improper payments, and the June 18, 2010 Presidential memorandum to enhance payment accuracy, Federal agencies are required to take actions to prevent improper payments, review Federal awards for such payments, and, as applicable, reclaim improper payments. Improper payments include the following:

- 1 Any payment that should not have been made or that was made in an incorrect amount under statutory, contractual, administrative, or other legally applicable requirements, such as overpayments or underpayments made to eligible recipients resulting from inappropriate denials of payment or service, any payment that does not account for credit for applicable discounts, payments that are for the incorrect amount, and duplicate payments.
2. Any payment that was made to an ineligible recipient or for an ineligible good or service, or payments for goods or services not received (except for such payments where authorized by statute).
3. Any payment that an agency's review is unable to discern whether a payment was proper as a result of insufficient or lack of documentation.

2 Code of Federal Regulations CFR 200.53 *Improper Payment* states:

(a) *Improper payment* means any payment that should not have been made or that was made in an incorrect amount (including overpayments and underpayments) under statutory, contractual, administrative, or other legally applicable requirements; and

(b) *Improper payment* includes any payment to an ineligible party, any payment for an ineligible good or service, any duplicate payment, any payment for a good or service not received (except for such payments where authorized by law), any payment that does not account for credit for applicable discounts, and any payment where insufficient or lack of documentation prevents a reviewer from discerning whether a payment was proper.

The Apple Health Managed Care Contract, Section 5.6 – “Recoupments” states in part:

5.6.1 Unless mutually agreed by the parties in writing, HCA shall only recoup premium payments and retroactively terminate enrollment for an individual enrollee:

5.6.1.1 With duplicate coverage.

2016-032

The Health Care Authority did not establish adequate internal controls and did not comply with requirements to ensure it sought reimbursement for all eligible Medicaid outpatient prescription drug rebate claims.

Federal Awarding Agency: U.S. Department of Health and Human Services
Pass-Through Entity: None
CFDA Number and Title: 93.775 State Medicaid Fraud Control Units
93.777 State Survey and Certification of Health Care Providers and Suppliers (Title XVIII) Medicare
93.778 Medical Assistance Program (Medicaid; Title XIX)
Federal Award Number: 5-1605WA5MAP; 5-1605WA5ADM; 5-1605WAIMPL; 5-1605WAINCT
Applicable Compliance Component: Activities Allowed/Unallowed Allowable Costs/Cost Principles
Known Questioned Cost Amount: \$ 273,598
Likely Questioned Cost Amount: \$11,564,057

Background

Medicaid is a jointly funded state and federal partnership providing coverage for about 1.9 million eligible low-income Washington residents who otherwise might go without medical care. Medicaid is Washington's largest public assistance program and accounts for about one-third of the state's federal expenditures. The program spent about \$11.6 billion in federal and state funds during fiscal year 2016.

The Medicaid drug program, which began in 1991, is set forth in Title 42 United States Code Section § 1396r-8. For federal payments to be available for covered outpatient prescription drugs provided under Medicaid, drug manufacturers are required to enter into a rebate agreement with the Secretary of the U.S. Health and Human Services and pay quarterly rebates to states. Under these rebate agreements, manufacturers must give the average manufacturer price by national drug code for each of their covered drugs to the Centers for Medicare and Medicaid Services. The average manufacturer price and best price data are used to calculate the unit rebate amount for each national drug code included in the Medicaid drug rebate program, and this price and rebate information is transmitted to the states so that drug rebate amounts can be accurately calculated.

States calculate the total quarterly rebates that participating manufacturers owe by multiplying the unit rebate amount for a specific drug by the number of units of that drug for which the state reimbursed providers in that quarter. Within 60 days of the quarter's end, states must invoice the manufacturers for the reimbursed units and indicate the total rebate due for each national drug code.

The manufacturers process the invoices and pay the rebates to states within 30 days. Invoices must reflect only those drugs reimbursed in the reporting period (quarter) and must not include national drug codes paid under:

- Public Health Service drug pricing agreements
- State-funded-only general assistance programs or other state-funded-only programs; or
- Other federal non-Medicaid funded drug programs

In fiscal year 2016, the Authority invoiced drug manufacturers for drug rebates totaling more than \$527 million, of which \$410 million was for managed care claims and \$117 million was for fee-for-service claims.

In previous audits, we reported the Authority did not have adequate internal controls to ensure it sought reimbursement for all eligible fee-for-service Medicaid drug rebate claims. The prior finding numbers were 2015-034 and 2014-031.

Description of Condition

Although the Authority corrected its deficiencies in internal controls over fee-for-service claims identified in the previous audit, we found the Authority's internal controls were not adequate to ensure it sought reimbursement for managed care Medicaid outpatient prescription drug rebate claims.

The Authority's drug rebate invoicing system was not adequately configured to identify all rebate eligible prescription drugs for the managed care program. The Authority's drug rebate invoicing system automatically identifies rebate eligible prescription drug claims based on its system configuration. However, new managed care plan codes and eligibility groups are added to the system periodically. Some functions of these processes are manual, which allowed for errors in necessary system updates. As a result, the drug rebate system did not systematically identify all prescription drug claims eligible for the rebates.

The Authority also did not process rebates for some outpatient drugs because it was not able to obtain correct number of units which was needed for rebate calculation.

We consider this control deficiency to be a significant deficiency.

Cause of Condition

The Authority's Drug Rebate Program manager said a Medicaid eligibility code and two managed care plan codes were not properly updated in the drug rebate system because errors were made in the manual portions of the configuration processes.

The Authority identified and corrected the Medicaid eligibility code issue in September 2016 and the managed care plan code issue in February 2017 and is in the process of retroactively invoicing the transactions.

The Authority failed to identify correct number of units due to complexity of drug unit conversions for rebate. The rebate system automatically converts outpatient drug unit for rebate. However, there were some conversions that were complex enough that the system could not accurately calculate the units for rebate.

Effect of Condition and Questioned Costs

By not assigning the proper Medicaid eligibility codes and managed care plan codes in its drug rebate system configuration and not identifying correct number of units, the Authority is at a higher risk of not collecting all valid rebates.

Using a statistical sampling method, we randomly selected 45 fee-for-service drug rebate invoices from a population of 1,635 fee-for-service drug rebate invoices and a sample of 45 managed care drug rebate invoices from a population of 1,902 managed care drug rebate invoices, which were processed in fiscal year 2016, to determine if they were accurately prepared. The total rebate amount for the selected invoices was nearly \$1.8 million for fee-for-service and \$8.8 million for managed care drug rebates.

We did not find any issues for fee-for-service drug rebates.

For managed care drug rebates, we identified 18,189 claims, totaling \$781,862, that were eligible for a drug rebate but not included in the 45 managed care rebate invoices.

The following table summarizes the results of our review:

Drug rebate exception type	Number of claims	Paid amount	Rebate amount
Managed care plan code error	4,947	\$170,380	\$73,152
Medicaid eligibility code error	12,137	\$507,915	\$294,945
Not identifying correct number of units	1,105	\$103,567	*Not Applicable
Total	18,189	\$781,862	\$368,097

** We were not able to calculate rebate amounts for the 1,105 claims because the Authority did not have information of correct number of units which was needed for rebate calculation.*

As a result, the Authority failed to claim \$368,097 in owed rebates. We are questioning the federal share of \$273,598, which is calculated using the state’s Federal Medical Assistance Percentage. When we project the results to the entire population of managed care invoices, we estimate the Authority failed to collect \$15,558,218 in managed care drug rebates. The federal share of the estimated unclaimed rebates, or likely questioned costs, is \$11,564,057.

We question costs when we find an agency has not complied with grant regulations or when it does not have adequate documentation to support its expenditures.

Recommendations

We recommend the Authority:

- Strengthen its review process to ensure all eligible drug rebate claims are included in the invoicing process
- Correct its drug rebate system configuration errors to ensure it seeks reimbursement for all eligible outpatient prescription drug rebate claims
- Ensure it obtains correct number of units which is needed for rebate calculation
- Review managed care drug claims to determine the amount of drug rebates that should be requested from manufacturers
- Consult with the U.S. Department of Health and Human Services about repaying the questioned costs, including interest

Agency's Response

The Authority corrected the system issue concerning the managed care plan coding errors in February 2017. The \$73,152 in unclaimed rebates will be invoiced by August 2017.

The Authority identified and corrected the system issue concerning the Medicaid eligibility code in September, 2016, prior to the State Auditor's Office beginning their work. The Authority disclosed the issue to the State Auditor's Office, and will invoice the unclaimed rebates by August 2017.

The Authority will consult with the U.S. Department of Health and Human Services regarding resolution of questioned costs.

Auditor's Concluding Remarks

The Medicaid eligibility code issue was disclosed to SAO during the exception review process by the Authority. Since the issue was identified and corrected outside the audit period, we reaffirm our finding.

We thank the Authority for its cooperation and assistance throughout the audit. We will review the status of the Authority's corrective action during our next audit.

Applicable Laws and Regulations

Title 2 U.S. Code of Federal Regulations Part 200, *Uniform Administrative Requirements, Cost Principles, and Audit Requirements for Federal Awards* (Uniform Guidance) established reporting requirements for audit findings.

Section 200.303 Internal controls.

The non-Federal entity must:

- (a) Establish and maintain effective internal control over the Federal award that provides reasonable assurance that the non-Federal entity is managing the Federal award in compliance with Federal statutes, regulations, and the terms and conditions of the Federal award. These internal controls should be in compliance with guidance in

“Standards for Internal Control in the Federal Government” issued by the Comptroller General of the United States or the “Internal Control Integrated Framework”, issued by the Committee of Sponsoring Organizations of the Treadway Commission (COSO).

- (b) Comply with Federal statutes, regulations, and the terms and conditions of the Federal awards.
- (d) Take prompt action when instances of noncompliance are identified including noncompliance identified in audit findings.

Section 200.403 Factors affecting Allowability of costs.

Except where otherwise authorized by statute, costs must meet the following general criteria in order to be allowable under Federal awards.

- (a) Be necessary and reasonable for the performance of the Federal award and be allocable thereto under these principles.
- (b) Conform to any limitations or exclusions set forth in these principles or in the Federal award as to types or amount of cost items.
- (c) Be consistent with policies and procedures that apply uniformly to both federally-financed and other activities of the non-Federal entity.
- (d) Be accorded consistent treatment. A cost may not be assigned to a Federal award as a direct cost if any other cost incurred for the same purpose in like circumstances has been allocated to the Federal award as an indirect cost.
- (e) Be determined in accordance with generally accepted accounting principles (GAAP), except, for state and local governments and Indian tribes only, as otherwise provided for in this part.
- (f) Not be included as a cost or used to meet cost sharing or matching requirements of any other federally-financed program in either the current or a prior period. See also §200.306 Cost sharing or matching paragraph (b).
- (g) Be adequately documented. See also §§200.300 Statutory and national policy requirements through 200.309 Period of performance of this part.

Section 200.410 Collection of unallowable costs.

Payments made for costs determined to be unallowable by either the Federal awarding agency, cognizant agency for indirect costs, or pass-through entity, either as direct or indirect costs, must be refunded (including interest) to the Federal Government in accordance with instructions from the Federal agency that determined the costs are unallowable unless Federal statute or regulation directs otherwise. See also Subpart D—Post Federal Award Requirements of this part, §§200.300 Statutory and national policy requirements through 200.309 Period of performance.

Section 200.516 Audit reporting, state in part:

- (c) *Audit findings reported.* The auditor must report the following as audit findings in a schedule of findings and questioned costs:
 - (3) Known questioned costs that are greater than \$25,000 for a type of compliance requirement for a major program. Known questioned costs are those specifically identified by the auditor. In evaluating the effect of questioned costs on the opinion on compliance, the auditor considers the best estimate of total costs questioned (likely questioned costs), not just the questioned costs specifically identified (known questioned costs). The auditor must also report known questioned costs

when likely questioned costs are greater than \$25,000 for a type of compliance requirement for a major program. In reporting questioned costs, the auditor must include information to provide proper perspective for judging the prevalence and consequences of the questioned costs.

42 U.S. Code 1396r–8. Payment for covered outpatient drugs, states in part:

(b) Terms of rebate agreement

(1) Periodic rebates

(A) In general: A rebate agreement under this subsection shall require the manufacturer to provide, to each State plan approved under this subchapter, a rebate for a rebate period in an amount specified in subsection (c) of this section for covered outpatient drugs of the manufacturer dispensed after December 31, 1990, for which payment was made under the State plan for such period, including such drugs dispensed to individuals enrolled with a medicaid managed care organization if the organization is responsible for coverage of such drugs. Such rebate shall be paid by the manufacturer not later than 30 days after the date of receipt of the information described in paragraph (2) for the period involved.

(B) Offset against medical assistance: Amounts received by a State under this section (or under an agreement authorized by the Secretary under subsection (a)(1) of this section or an agreement described in subsection (a)(4) of this section) in any quarter shall be considered to be a reduction in the amount expended under the State plan in the quarter for medical assistance for purposes of section 1396b(a)(1) of this title.

Health Care Authority Medicaid Drug Rebate Policy

C. PREPARING MEDICAID DRUG REBATE INVOICES

1. No later than 60 days after the end of the calendar quarter, HCA will prepare and transmit an invoice using the CMS-R-144 State Invoice format to each labeler participating in the drug rebate program. HCA will also transmit a copy of form CMS-R-144 to CMS and to the Office of Financial Recovery (OFR).
3. Invoices must reflect only those drugs reimbursed in the reporting period (quarter). Invoices must not include any NDCs paid for under:
 - Public Health Service drug pricing agreements;
 - State-funded only General Assistance programs; Other state-funded only programs; or
 - Other federal non-Medicaid funded drug programs.

2016-033

The Health Care Authority did not have adequate internal controls over its Medicaid inpatient hospital rate setting process and made overpayments to inpatient hospitals.

Federal Awarding Agency: U.S. Department of Health and Human Services
Pass-Through Entity: None
CFDA Number and Title: 93.775 State Medicaid Fraud Control Units
93.777 State Survey and Certification of Health Care Providers and Suppliers (Title XVIII) Medicare
93.778 Medical Assistance Program (Medicaid; Title XIX)
Federal Award Number: 5-1605WA5MAP; 5-1605WA5ADM; 5-1605WAIMPL; 5-1605WAINCT
Applicable Compliance Component: Activities Allowed/Unallowed
Allowable Costs/Cost Principles
Known Questioned Cost Amount: \$358,754

Background

Medicaid is a jointly funded state and federal partnership providing coverage for about 1.9 million eligible low-income Washington residents who otherwise might go without medical care. Medicaid is Washington's largest public assistance program and accounts for approximately one-third of the state's federal expenditures. The program, administered by the Health Care Authority (Authority), spent about \$11.6 billion in federal and state funds during fiscal year 2016.

Inpatient services are health care services provided during hospitalization to a client whose condition warrants formal admission and treatment in a hospital. The Authority primarily pays for inpatient hospital services using a Diagnosis Related Group (DRG) payment methodology. The DRG methodology simplifies the payment process, encourages administrative efficiency and bases payments on a patient's disease and hospital resources rather than length of stay. DRG-exempt inpatient services are paid through methods other than DRG, such as per diem rate, single case rate, ratio of costs-to-charges (RCC) and weighted cost to charge.

The Authority's Hospital Finance Unit establishes and adjusts the inpatient rate factors used to determine each hospital's payments in accordance with Washington's State Plan and state rules. The DRG Conversion Factor and Per Diem rates for hospitals are rebased every five to seven years.

State law requires the Authority to adjust the applied DRG Conversion Factor, per diem, and RCC rates at least annually. Several factors determine the final annual rates for each hospital, and the Authority is required by federal and state law to notify each provider of these rate changes before the rate is applied. According to the Medicaid State Plan, RCC rates are calculated annually using the most recently filed Medicare Cost Report data provided by the hospital. DRG Conversion Factor and Per Diem rates are adjusted utilizing various reports supplied by a third-party business management consultant.

In fiscal year 2016, the Authority spent \$392 million for inpatient hospital services. The Authority spent \$331 million for DRG payments and Certified Public Expenditure RCC payments for inpatient hospital services.

Description of Condition

The Authority did not have adequate controls to ensure rates were properly determined and communicated to providers in a timely manner. Hospital Finance did not follow internal procedures and state guidance regarding the inpatient hospital rate setting process. We identified three issues:

1. For rates that became effective in February 2016, the unit did not notify 23 hospitals of their updated rate changes. Hospital Finance did not have a formal process in place to review annual rate updates. In May 2016, the Authority notified the 23 hospitals that the correctly adjusted rates would be applied starting in June 2016. The Authority honored any hospitals' rates that were higher in the previous year, for the period from February through May 2016, because of its interpretation that federal and state code prohibited retroactive rate adjustments after submitting them to providers.
2. RCC rates were inaccurately calculated by using incorrect costs and charges from a non-Medicare Cost Report source. The Authority determined RCC rates using costs and charges listed on a hospital-provided RCC worksheet, because the current cost report was unavailable.
3. WAC 182-550-3830 specifies that the following adjustments are applied to the DRG Conversion Factor calculation on an annual basis at minimum: Direct Graduate Medical Expenditures, Indirect Medical Expenditures and the Wage Index Adjustment. The Authority last applied the rate factors in July 2014 for rebasing; however, has not since performed annual adjustments after rebasing, as required by WAC 182-550-3830.

We consider these control deficiencies to be a material weakness.

Cause of Condition

During the audit period, the rate-setting unit did not have adequate staffing to accommodate the unit's workload. In April 2016, it hired a new staff member to assist with inpatient hospital rate setting duties and to implement a review process.

The Hospital Finance Unit used RCC worksheets instead of Medicare cost reports to determine hospitals' RCCs, because they believed that the RCC workbook was an allowable alternate source document based on WAC 182-550-4500. However, the state rule does not align with the State Plan requiring the use of the most recently filed Medicare Cost Report. As of October, 2016, the Authority modified their processes to only consider Medicare cost reports in their hospital rate determinations.

There are two state rules that guide the application of the Direct Graduate Medical Expenditures, Indirect Medical Expenditures and the Wage Index adjustments. WAC 182-550-3800 requires adjustments to be performed during rebase. WAC 182-550-3830 requires the adjustments to be performed annually, between rebasing periods. The Unit believes that the adjustments should only be

made during rebase, rather than annually, because they feel the state rules conflict with each other and believe the rebase rule takes a higher priority.

Effect of Condition and Questioned Costs

We found 23 hospitals' RCC rates that became effective in February 2016 were not communicated to the hospitals in a timely manner. The Authority began applying the correct RCC rates to payments in June 2016, after proper notification was sent to the providers. By not communicating the rate adjustments to hospitals in a timely manner, the Authority made Medicaid overpayments to those 23 hospitals totaling \$333,045.

We found four cases where the Authority calculated rates using the RCC worksheet. For these, the amounts listed in the Medicare cost report did not agree to the worksheet and RCC rates were inaccurately calculated. The Authority's alternative method using the hospital-provided RCC worksheet rather than the Medicare cost report was not effective to ensure only allowable costs were reimbursed because the Authority was at risk of determining RCC rates incorrectly. We found an incorrect RCC rate was applied to one provider for 11 months, resulting in overpayments totaling \$47,203

We found the Authority made overpayments totaling \$380,248 to inpatient hospitals during fiscal year 2016. We are questioning \$358,754, which is the federal portion of the unallowable costs. The federal share is calculated using the state's 2016 Federal Medical Assistance Percentages rate assigned per expenditure type.

We question costs when we find an agency has not complied with grant regulations or when it does not have adequate documentation to support its expenditures.

Recommendations

We recommend the Authority:

- Follow the Medicaid State Plan and state regulation over the inpatient hospital rate setting process
- Establish adequate internal controls to ensure inpatient hospital rates are accurately determined and providers are notified in a timely manner
- Ensure that current Washington Administrative Codes and Inpatient Rate Setting practices are in alignment
- Consult with the U.S. Department of Health and Human Services about repaying the questioned costs, including interest

Agency's Response

The Authority agrees that existing internal controls did not prevent an error from occurring in the annual rate setting process. Because of other controls in place at the time, staff did detect the calculation error and corrected the rates in June 2016, before the end of the fiscal year. Since this occurrence, staff have established additional controls in the rate setting process and the review

process and the review process to ensure hospital rates are accurately determined and providers are notified in a timely manner. The Authority considers this corrective action to be complete.

The Auditor's Office identified two WACs that give conflicting requirements about the rate setting process, and cite the Authority for not complying with both WACs. The Authority agrees that the two WACs conflict with each other, but respectfully disagrees with the Auditor's Office that this is a federal compliance issue. The Authority believes the Medicaid State Plan and federal regulations have priority over state regulations and that, in a situation where there appears to be a conflict, federal regulations should be followed. The Authority will amend the WAC to agree with federal regulations.

The Authority will consult with the U.S. Department of Health and Human Services about repaying the questioned costs.

Auditor's Concluding Remarks

We thank the Authority for its cooperation and assistance throughout the audit.

The federal regulations and Medicaid State Plan do not specify the detailed rate adjustment procedures including timeframe, but state regulations do. If the Authority does not follow the procedures specified in the state regulations, it is not in compliance with the federal regulations. We reaffirm our finding.

We will review the status of the Authority's corrective action during our next audit.

Applicable Laws and Regulations

Title 2 U.S. Code of Federal regulations Part 200, *Uniform Administrative Requirements, Cost Principles, and Audit Requirements for Federal Awards* (Uniform Guidance) established reporting requirements for audit findings.

Section 200.303 Internal controls.

The non-Federal entity must:

- (a) Establish and maintain effective internal control over the Federal award that provides reasonable assurance that the non-Federal entity is managing the Federal award in compliance with Federal statutes, regulations, and the terms and conditions of the Federal award. These internal controls should be in compliance with guidance in "Standards for Internal Control in the Federal Government" issued by the Comptroller General of the United States or the "Internal Control Integrated Framework", issued by the Committee of Sponsoring Organizations of the Treadway Commission (COSO).

Section 200.403 Factors affecting Allowability of costs.

Except where otherwise authorized by statute, costs must meet the following general criteria in order to be allowable under Federal awards.

- (a) Be necessary and reasonable for the performance of the Federal award and be allocable thereto under these principles.
- (b) Conform to any limitations or exclusions set forth in these principles or in the Federal award as to types or amount of cost items.

- (c) Be consistent with policies and procedures that apply uniformly to both federally-financed and other activities of the non-Federal entity.
- (d) Be accorded consistent treatment. A cost may not be assigned to a Federal award as a direct cost if any other cost incurred for the same purpose in like circumstances has been allocated to the Federal award as an indirect cost.
- (e) Be determined in accordance with generally accepted accounting principles (GAAP), except, for state and local governments and Indian tribes only, as otherwise provided for in this part.
- (f) Not be included as a cost or used to meet cost sharing or matching requirements of any other federally-financed program in either the current or a prior period. See also §200.306 Cost sharing or matching paragraph (b).
- (g) Be adequately documented. See also §§200.300 Statutory and national policy requirements through 200.309 Period of performance of this part.

Section 200.516 Audit reporting, state in part:

- (b) *Audit findings reported.* The auditor must report the following as audit findings in a schedule of findings and questioned costs:
 - (4) Significant deficiencies and material weaknesses in internal control over major programs and significant instances of abuse relating to major programs. The auditor's determination of whether a deficiency in internal control is a significant deficiency or material weakness for the purpose of reporting an audit finding is in relation to a type of compliance requirement for a major program identified in the Compliance Supplement.
 - (5) Material noncompliance with the provisions of Federal statutes, regulations, or the terms and conditions of Federal awards related to a major program. The auditor's determination of whether a noncompliance with the provisions of Federal statutes, regulations, or the terms and conditions of Federal awards is material for the purpose of reporting an audit finding is in relation to a type of compliance requirement for a major program identified in the compliance supplement.
 - (6) Known questioned costs that are greater than \$25,000 for a type of compliance requirement for a major program. Known questioned costs are those specifically identified by the auditor. In evaluating the effect of questioned costs on the opinion on compliance, the auditor considers the best estimate of total costs questioned (likely questioned costs), not just the questioned costs specifically identified (known questioned costs). The auditor must also report known questioned costs when likely questioned costs are greater than \$25,000 for a type of compliance requirement for a major program. In reporting questioned costs, the auditor must include information to provide proper perspective for judging the prevalence and consequences of the questioned costs.

The American Institute of Certified Public Accountants defines significant deficiencies and material weaknesses in internal controls over compliance in its *Codification of Statements on Auditing Standards*, section 935, as follows:

- .011 For purposes of adapting GAAS to a compliance audit, the following terms have the meanings attributed as follows: ...

Material weakness in internal control over compliance. A deficiency, or combination of deficiencies, in internal control over compliance, such that there is a reasonable possibility that material noncompliance with a compliance requirement will not be prevented, or detected and corrected, on a timely basis. In this section, a reasonable possibility exists when the likelihood of the event is either reasonably possible or probable as defined as follows:

Reasonably possible. The chance of the future event or events occurring is more than remote but less than likely.

Remote. The chance of the future event or events occurring is slight.

Probable. The future event or events are likely to occur.

Significant deficiency in internal control over compliance. A deficiency, or a combination of deficiencies, in internal control over compliance that is less severe than a material weakness in internal control over compliance, yet important enough to merit attention by those charged with governance.

Material noncompliance. In the absence of a definition of material noncompliance in the governmental audit requirement, a failure to follow compliance requirements or a violation of prohibitions included in the applicable compliance requirements that results in noncompliance that is quantitatively or qualitatively material, either individually or when aggregated with other noncompliance, to the affected government program.

Washington Administrative Code 182-550-4500, Services—Exempt from DRG payment, states in part:

- (5) This section explains how the agency calculates each in-state and critical border hospital's RCC. For noncritical border city hospitals, see WAC 182-550-3900. The agency:
 - (a) Divides adjusted costs by adjusted patient charges. The agency determines the allowable costs and associated charges.
 - (b) Excludes agency nonallowed costs and nonallowed charges, such as costs and charges attributable to a change in ownership.
 - (c) Bases the RCC calculation on data from the hospital's annual medicare cost report (Form 2552) and applicable patient revenue reconciliation data provided by the hospital. The medicare cost report must cover a period of twelve consecutive months in its medicare cost report year.
 - (d) Updates a hospital's inpatient RCC annually after the hospital sends its hospital fiscal year medicare cost report to the centers for medicare and medicaid services (CMS) and the agency. If medicare grants a delay in submission of the CMS medicare cost report to the medicare fiscal intermediary, the agency may determine an alternate method to adjust the RCC.
 - (e) Limits a noncritical access hospital's RCC to one point zero (1.0).

Washington Administrative Code 182-550-5550, Public notice for changes in medicaid payments rates for hospital services, states in part:

- (3) The agency will notify stakeholders of proposed and final changes in individual medicaid hospital rates for hospital services, as follows:

- (a) Publish the proposed medicaid hospital rates, the methodologies underlying the establishment of the rates, and justifications for the rates;
 - (b) Give stakeholders a reasonable opportunity to review and provide written comments on the proposed medicaid hospital rates, the methodologies underlying the establishment of the rates, and justifications for the rates; and
 - (c) Publish the final medicaid hospital rates, the methodologies underlying the establishment of such rates, and justifications for such rates.
- (4) (a) Except as otherwise provided in this section, the agency will determine the manner of publication of proposed or final medicaid hospital rates.
- (b) Publication of proposed medicaid hospital rates will occur as follows:
 - (i) The agency will mail each provider's proposed rate to the affected provider via first-class mail at least fifteen calendar days before the proposed date for implementing the rates; and
 - (ii) For other stakeholders, the agency will post proposed rates on the agency's web site.
 - (c) Publication of final medicaid hospital rates will occur as follows:
 - (i) The agency will mail each provider's final rate to the affected provider via first-class mail at least one calendar day before implementing the rate; and
 - (ii) For other stakeholders, the agency will post final rates on the agency's web site.
 - (d) The publications required by subsections (4)(b) and (c) of this section will refer to the appropriate sections of chapter 182-550 WAC for information on the methodologies underlying the proposed and final rates.

Washington Administrative Code 182-550-3830, Adjustments to inpatient rates, states:

- (1) The medicaid agency updates all the following components of a hospital's specific diagnosis-related group (DRG) factor and per diem rates between rebasing periods:
 - (a) Effective July 1st of each year, the agency updates all of the following:
 - (i) Wage index adjustment;
 - (ii) Direct graduate medical education (DGME); and
 - (iii) Indirect medical education (IME).
 - (b) Effective January 1, 2015, the agency updates the sole community hospital adjustment.
- (2) The agency does not update the statewide average DRG factor between rebasing periods, except:
 - (a) To satisfy the budget neutrality conditions in WAC 182-550-3850; and
 - (b) When directed by the legislature.
- (3) The agency updates the wage index to reflect current labor costs in the core-based statistical area (CBSA) where a hospital is located. The agency:
 - (a) Determines the labor portion by multiplying the base factor or rate by the labor factor established by medicare; then
 - (b) Multiplies the amount in (a) of this subsection by the most recent wage index information published by the Centers for Medicare and Medicaid Services (CMS) when the rates are set; then
 - (c) Adds the nonlabor portion of the base rate to the amount in (b) of this subsection to produce a hospital-specific wage adjusted factor.

- (4) DGME. The agency obtains DGME information from the hospital's most recently filed medicare cost report that is available in the CMS health care cost report information system (HCRIS) dataset.
 - (a) The hospital's medicare cost report must cover a period of twelve consecutive months in its medicare cost report year.
 - (b) If a hospital's medicare cost report is not available on HCRIS, the agency may use the CMS Form 2552-10 to calculate DGME.
 - (c) If a hospital has not submitted a CMS medicare cost report in more than eighteen months from the end of the hospital's cost reporting period, the agency considers the current DGME costs to be zero.
 - (d) The agency calculates the hospital-specific DGME by dividing the DGME cost reported on worksheet B, part 1 of the CMS cost report by the adjusted total costs from the CMS cost report.
- (5) IME. The agency sets the IME adjustment equal to the "IME adjustment factor for Operating PPS" available in the most recent CMS final rule impact file on CMS's website as of May 1st of the rate-setting year.
- (6) (a) Effective January 1, 2015, the agency multiplies the hospital's specific conversion factor and per diem rates by 1.25 if the hospital meets the criteria in this subsection.
 - (b) The agency considers an in-state hospital to qualify for the rate enhancement if all of the following conditions apply. The hospital must:
 - (i) Be certified by CMS as a sole community hospital as of January 1, 2013;
 - (ii) Have a level III adult trauma service designation from the department of health as of January 1, 2014;
 - (iii) Have less than one hundred fifty acute care licensed beds in fiscal year 2011; and
 - (iv) Be owned and operated by the state or a political subdivision.
 - (v) Not participate in the certified public expenditures (CPE) payment program defined in WAC 182-550-4650.

Washington Administrative Code 182-550-3800, Rebasing, states in part:

The agency redesigns (rebases) the medicaid inpatient payment system as needed. The base inpatient conversion factor and per diem rates are only updated during a detailed rebasing process, or as directed by the state legislature. Inpatient payment system factors such as the ratio of costs-to-charges (RCC), weighted costs-to-charges (WCC), and administrative day rate are rebased on an annual basis...

- (5) Determines global adjustments.
 - (a) Claims paid under the DRG, rehab per diem, and detox per diem payment methods were reduced to support an estimated three million five hundred thousand dollar increase in psychiatric payments to acute hospitals.
 - (b) Claims for acute hospitals paid under the psychiatric per diem method were increased by a factor to inflate estimated system payments by three million five hundred thousand dollars.
- (6) Determines provider specific adjustments. The following adjustments are applied to the base factor or rate established in subsection (4) of this section:
 - (a) Wage index adjustments reflect labor costs in the cost-based statistical area (CBSA) where a hospital is located.

- (i) The agency determines the labor portion by multiplying the base factor or rate by the labor factor established by medicare; then
- (ii) The amount in (a)(i) of this subsection is multiplied by the most recent wage index information published by CMS at the time the rates are set; then
- (iii) The agency adds the nonlabor portion of the base rate to the amount in (a)(ii) of this subsection to produce a hospital-specific wage adjusted factor.
- (b) Indirect medical education factors are applied to the hospital-specific base factor or rate. The agency uses the indirect medical education factor established by medicare on the most currently available medicare cost report that exists at the time the rates are set; and
- (c) Direct medical education amounts are applied to the hospital-specific base factor or rate. The agency determines a percentage of direct medical education costs to overall costs using the most currently available medicare cost report that exists at the time the rates are set.

42 CFR Part 447, Subpart C, 253 - Payment for Inpatient Hospital and Long-Term Care Facility Services - Other requirements, states in part:

- (f) Uniform cost reporting. The Medicaid agency must provide for the filing of uniform cost reports by each participating provider.
- (g) Audit requirements. The Medicaid agency must provide for periodic audits of the financial and statistical records of participating providers.
- (h) Public notice. The Medicaid agency must provide that it has complied with the public notice requirements in § 447.205 of this part when it is proposing significant changes to its methods or standards for setting payment rates for inpatient hospital or LTC facility services.
- (i) Rates paid. The Medicaid agency must pay for inpatient hospital and long term care services using rates determined in accordance with methods and standards specified in an approved State plan.

42 U.S. Code § 1396a – State plans for medical assistance, states in part:

- (13) provide—
 - (A) for a public process for determination of rates of payment under the plan for hospital services, nursing facility services, and services of intermediate care facilities for the mentally retarded under which—
 - (i) proposed rates, the methodologies underlying the establishment of such rates, and justifications for the proposed rates are published,
 - (ii) providers, beneficiaries and their representatives, and other concerned State residents are given a reasonable opportunity for review and comment on the proposed rates, methodologies, and justifications,
 - (iii) final rates, the methodologies underlying the establishment of such rates, and justifications for such final rates are published, and
 - (iv) in the case of hospitals, such rates take into account (in a manner consistent with section 1396r–4 of this title) the situation of hospitals which serve a disproportionate number of low-income patients with special needs;

Washington State Plan, attachment 4 - Payment for Services, 4.19-A Part I: Methods and Standards for Establishing Payment Rates for Inpatient Hospital Services, states in part:

B. Definitions

RCC

RCC means a hospital ratio of costs-to-charges (RCC) calculated annually using the most recently filed CMS 2552 Medicare Cost Report data provided by the hospital. The RCC is calculated by dividing adjusted operating expense by adjusted patient charges. If a hospital's costs exceed charges, a hospital's RCC is limited to 100 percent.

D. DRG Cost-based Rate Method

b. Hospital-specific DRG conversion factors or DRG rate calculation:

The hospital-specific DRG conversion factors were based on the statewide-standardized average operating and capital costs per discharge amounts. Operating costs were adjusted for differences in wage index and indirect medical education costs. Capital costs were adjusted for differences in indirect medical education costs.

Effective for dates of admission on or after July 1, 2014, the Agency changed the inpatient prospective payment system from AP-DRG to APR-DRG. The base conversion factor for APR-DRG payments was calculated so that aggregate inpatient payments would remain constant between AP-DRG and APR-DRG payment methods. This calculation included a shift of \$3,500,000 from DRG to specialty psychiatric services.

Effective for dates of admission on or after July 1, 2014, the statewide-standardized average cost was recalculated using the same methods as described above, based on cost information for hospital fiscal years ending in 2013. The Agency applied a budget adjuster so that aggregate inpatient payments would remain constant after the rebased costs were determined.

2016-034 **The Health Care Authority did not have adequate internal controls over and did not comply with requirements to ensure Children’s Health Insurance Program funds were claimed for eligible Medicaid expenditures.**

Federal Awarding Agency: U.S. Department of Health and Human Services
Pass-Through Entity: None
CFDA Number and Title: 93.775 State Medicaid Fraud Control Units
93.777 State Survey and Certification of Health Care Providers and Suppliers (Title XVIII) Medicare
93.778 Medical Assistance Program (Medicaid; Title XIX)
Federal Award Number: 5-1605WA5MAP; 5-1605WA5ADM; 5-1605WAIMPL; 5-1605WAINCT
Applicable Compliance Component: Activities Allowed/Unallowed Allowable Costs/Cost Principles
Known Questioned Cost Amount: \$130
Likely Questioned Cost Amount: \$4,184,455

Background

Medicaid is a jointly funded state and federal partnership providing coverage for about 1.9 million eligible low-income Washington residents who otherwise might go without medical care. Medicaid is Washington’s largest public assistance program and accounts for about one-third of the state’s federal expenditures. The program spent about \$11.6 billion in federal and state funds during fiscal year 2016.

In Washington, Medicaid and the Children’s Health Insurance Program (CHIP) provide medical assistance for children up to 19 years old who reside in low-income households. Both the Medicaid and CHIP programs are jointly funded by the state and federal funds. Federal funds reimburse the state for about 88 percent of CHIP expenditures and 50 percent of Medicaid expenditures.

Medicaid expenditures for children whose family income equals or exceeds 133 percent of the federal poverty level, but does not exceed the Medicaid applicable income level, are eligible for additional CHIP funding. If the Medicaid costs have already been claimed and reimbursed, the state submits a claim for the difference between the CHIP and Medicaid rates.

The Health Care Authority (Authority) identifies the Medicaid expenditures eligible for additional CHIP funding, using the Recipient Aid Category (RAC) code. The Authority’s Medicaid Management Information System, ProviderOne, automatically assigns a RAC code to the children who are eligible for additional CHIP funds based on income information in the Automated Client Eligibility System, Washington’s social service program client eligibility system. Medicaid eligibility is determined in the eligibility system based on income information submitted to the Health Plan Finder, the online application system.

In state fiscal year 2016, the Authority claimed more than \$68.7 million in additional CHIP federal funds based on the eligibility of children in the Medicaid program. In prior audits, we reported the Authority did not have adequate internal controls to ensure additional CHIP funds were properly claimed as eligible Medicaid expenditures. The prior finding numbers were 2015-039 and 2014-037.

Description of Condition

We found the Authority did not have adequate internal controls to ensure and monitor that additional CHIP federal funds were claimed only for eligible Medicaid expenditures.

The Authority performs a post-eligibility review to ensure Medicaid eligibility is adequately determined. The review, however, is generated only when household income obtained by the Authority is above the Medicaid applicable income level. The applicable income level for Medicaid children is 210 percent of the federal poverty level. Additional CHIP funds are allowable only for Medicaid children whose household income equals or exceeds 133 percent of the level, but does not exceed 210 percent. If the verified income is below 133 percent, a post-eligibility review is not generated. Due to this reason, the Authority did not identify errors made in the eligibility determination that resulted in it incorrectly claiming additional CHIP funds.

We consider this internal control deficiency to be a material weakness.

Cause of Condition

The Authority uses specific client eligibility criteria to determine which claims are eligible for claiming additional CHIP federal funding. Clients self-attest to household income at the time of application. The eligibility system determines client eligibility based on the first self-attested income that is entered, which is then coded to identify whether the claim is eligible for additional CHIP federal funds. However, the system does not systematically re-determine eligibility if changes to the household income are subsequently entered.

The CHIP/Foster Care Program Manager at the Authority's Office of Medicaid Eligibility Policy said the eligibility system is configured to accept changes to household income self-attested in Health Plan Finder during the certification period, but is not updated to adequately determine eligibility for additional CHIP federal funds.

The post-eligibility review is not designed to capture updates to household income when it falls below 133 percent, making them ineligible for additional CHIP funds.

Effect of Condition and Question Costs

Fee-for-Service Claims

Using a statistical sampling method, we randomly sampled 65 fee-for-service claims out of 964,572 fee-for-service claims that were submitted during fiscal year 2016 to determine if the Authority properly coded the clients as eligible for additional CHIP federal funds. We found three transactions,

with known questioned costs totaling \$26, when clients were not eligible for additional CHIP federal funds. When we project the results to the entire population of fee-for-service claims, we estimate the likely questioned costs to be \$391,005.

Managed Care Claims

Using a statistical sampling method, we randomly sampled 65 managed care premium payments out of 2,377,981 managed care premium payments that were made during fiscal year 2016 to determine if the Authority properly coded the clients as eligible for additional CHIP federal funds. We found two transactions, with known questioned costs totaling \$104, in which clients were not eligible for additional CHIP federal funds. When we project the results to the entire population of managed care premium payments, we estimate the likely questioned costs to be \$3,793,450.

We question costs when we find an agency has not complied with grant regulations or when it does not have adequate documentation to support its expenditures.

Recommendations

We recommend the Authority:

- Implement an adequate monitoring procedure to ensure additional CHIP funds are only claimed for eligible expenditures.
- Consult with the U.S. Department of Health and Human Services about repaying the questioned costs, including interest.

Agency's Response

The Authority has expressed concern to the Auditor's Office about the nature and extent of the testing performed to validate compliance with Children's Health Insurance Program regulations, and about the conclusions reached based on the testing performed.

The Authority has also expressed concern that the Auditor's estimate of likely questioned costs does not provide proper perspective for judging the prevalence of questioned costs. Unallowable costs were 2.1% of the costs tested in the managed care sample, and 3.4% of the costs tested in the fee-for-service sample. SAO estimates likely questioned costs to be 6% of the total.

By September 2017 the Authority will update eligibility during the post eligibility review process to reflect the most appropriate eligibility category when it is determined self-attestation has placed the household in the incorrect eligibility category.

The Authority will consult with the U.S. Department of Health and Human Services regarding resolution of questioned costs.

Auditor's Concluding Remarks

We thank the Authority for its cooperation and assistance throughout the audit.

The Authority states the auditor’s estimate of likely questioned costs does not provide proper perspective for judging the prevalence of questioned costs. We used a statistically valid sample for our audit. A statistically valid sample for audit purposes is defined by AU-C 530.05 as “An approach to sampling that has the following characteristics: (a) random selection of the sample items; (b) the use of an appropriate statistical technique to evaluate sample results, including measurement of sampling risk.” Our sampling methodology meets these criteria.

It is important to note that the sampling technique we used is intended to match our audit opinion by determining whether or not expenditures were in compliance with program requirements in all material respects. Accordingly, we used an acceptance sampling formula designed to provide 95 percent confidence of whether exceptions were above our materiality threshold. This conclusion is reflected in our audit report and finding. However, the likely questioned costs projections are a point estimate and only represent our “best estimate of total questioned costs” as required by 2 CFR 200.516(3). To ensure a representative sample, we stratified the population by dollar amount.

We reaffirm our finding and will review the status of the Authority’s corrective action during our next audit.

Applicable Laws and Regulations

Title 2 U.S. Code of Federal Regulations Part 200, *Uniform Administrative Requirements, Cost Principles, and Audit Requirements for Federal Awards* (Uniform Guidance) established reporting requirements for audit findings.

Section 200.303 Internal controls.

The non-Federal entity must:

- (a) Establish and maintain effective internal control over the Federal award that provides reasonable assurance that the non-Federal entity is managing the Federal award in compliance with Federal statutes, regulations, and the terms and conditions of the Federal award. These internal controls should be in compliance with guidance in “Standards for Internal Control in the Federal Government” issued by the Comptroller General of the United States or the “Internal Control Integrated Framework”, issued by the Committee of Sponsoring Organizations of the Treadway Commission (COSO).
- (b) Comply with Federal statutes, regulations, and the terms and conditions of the Federal awards.
- (d) Take prompt action when instances of noncompliance are identified including noncompliance identified in audit findings.

Section 200.403 Factors affecting Allowability of costs.

Except where otherwise authorized by statute, costs must meet the following general criteria in order to be allowable under Federal awards.

- (a) Be necessary and reasonable for the performance of the Federal award and be allocable thereto under these principles.
- (b) Conform to any limitations or exclusions set forth in these principles or in the Federal award as to types or amount of cost items.

- (c) Be consistent with policies and procedures that apply uniformly to both federally-financed and other activities of the non-Federal entity.
- (d) Be accorded consistent treatment. A cost may not be assigned to a Federal award as a direct cost if any other cost incurred for the same purpose in like circumstances has been allocated to the Federal award as an indirect cost.
- (e) Be determined in accordance with generally accepted accounting principles (GAAP), except, for state and local governments and Indian tribes only, as otherwise provided for in this part.
- (f) Not be included as a cost or used to meet cost sharing or matching requirements of any other federally-financed program in either the current or a prior period. See also §200.306 Cost sharing or matching paragraph (b).
- (g) Be adequately documented. See also §§200.300 Statutory and national policy requirements through 200.309 Period of performance of this part.

Section 200.410 Collection of unallowable costs.

Payments made for costs determined to be unallowable by either the Federal awarding agency, cognizant agency for indirect costs, or pass-through entity, either as direct or indirect costs, must be refunded (including interest) to the Federal Government in accordance with instructions from the Federal agency that determined the costs are unallowable unless Federal statute or regulation directs otherwise. See also Subpart D—Post Federal Award Requirements of this part, §§200.300 Statutory and national policy requirements through 200.309 Period of performance.

Section 200.516 Audit reporting, state in part:

- (a) *Audit findings reported.* The auditor must report the following as audit findings in a schedule of findings and questioned costs:
 - (1) Significant deficiencies and material weaknesses in internal control over major programs and significant instances of abuse relating to major programs. The auditor's determination of whether a deficiency in internal control is a significant deficiency or material weakness for the purpose of reporting an audit finding is in relation to a type of compliance requirement for a major program identified in the Compliance Supplement.
 - (2) Material noncompliance with the provisions of Federal statutes, regulations, or the terms and conditions of Federal awards related to a major program. The auditor's determination of whether a noncompliance with the provisions of Federal statutes, regulations, or the terms and conditions of Federal awards is material for the purpose of reporting an audit finding is in relation to a type of compliance requirement for a major program identified in the compliance supplement.
 - (3) Known questioned costs that are greater than \$25,000 for a type of compliance requirement for a major program. Known questioned costs are those specifically identified by the auditor. In evaluating the effect of questioned costs on the opinion on compliance, the auditor considers the best estimate of total costs questioned (likely questioned costs), not just the questioned costs specifically identified (known questioned costs). The auditor must also report known questioned costs when likely questioned costs are greater than \$25,000 for a type of compliance requirement for a major program. In reporting questioned costs, the auditor must

include information to provide proper perspective for judging the prevalence and consequences of the questioned costs.

The American Institute of Certified Public Accountants defines significant deficiencies and material weaknesses in internal controls over compliance in its *Codification of Statements on Auditing Standards*, section 935, as follows:

.011 For purposes of adapting GAAS to a compliance audit, the following terms have the meanings attributed as follows:

Material weakness in internal control over compliance. A deficiency, or combination of deficiencies, in internal control over compliance, such that there is a reasonable possibility that material noncompliance with a compliance requirement will not be prevented, or detected and corrected, on a timely basis. In this section, a reasonable possibility exists when the likelihood of the event is either reasonably possible or probable as defined as follows:

Reasonably possible. The chance of the future event or events occurring is more than remote but less than likely.

Remote. The chance of the future event or events occurring is slight.

Probable. The future event or events are likely to occur.

Significant deficiency in internal control over compliance. A deficiency, or a combination of deficiencies, in internal control over compliance that is less severe than a material weakness in internal control over compliance, yet important enough to merit attention by those charged with governance.

Material noncompliance. In the absence of a definition of material noncompliance in the governmental audit requirement, a failure to follow compliance requirements or a violation of prohibitions included in the applicable compliance requirements that results in noncompliance that is quantitatively or qualitatively material, either individually or when aggregated with other noncompliance, to the affected government program.

42 U.S. Code §1397ee. Payments to States, states in part:

(g) Authority for qualifying states to use certain funds for Medicaid expenditures. -

(1) State option.—

(A) In general.—Notwithstanding any other provision of law subject to paragraph (4), a qualifying State (as defined in paragraph (2)) may elect to use not more than 20 percent of any allotment under section 1397dd of this title for fiscal year 1998, 1999, 2000, 2001, 2004, 2005, 2006, 2007, or 2008 (insofar as it is available under subsections (e) and (g) of such section) for payments under subchapter XIX of this chapter in accordance with subparagraph (B), instead of for expenditures under this subchapter .

(B) Payments to states.—

(i) In In general.—In the case of a qualifying State that has elected the option described in subparagraph (A), subject to the availability of funds under such subparagraph with respect to the State, the Secretary shall pay the State an amount each quarter equal to the additional amount that would have been paid to the State under subchapter XIX of this chapter with respect to expenditures

described in clause (ii) if the enhanced FMAP (as determined under subsection (b) of this section) had been substituted for the Federal medical assistance percentage (as defined in section 1396d(b) of this title).

- (ii) Expenditures described.—For purposes of this subparagraph, the expenditures described in this clause are expenditures, made after August 15, 2003, and during the period in which funds are available to the qualifying State for use under subparagraph (A), for medical assistance under subchapter XIX of this chapter to individuals who have not attained age 19 and whose family income exceeds 150 percent of the poverty line.
 - (iii) No impact on determination of budget neutrality for waivers.—In the case of a qualifying State that uses amounts paid under this subsection for expenditures described in clause (ii) that are incurred under a waiver approved for the State, any budget neutrality determinations with respect to such waiver shall be determined without regard to such amounts paid.
- (2) Qualifying state.—In this subsection, the term “qualifying State” means a State that, on and after April 15, 1997, has an income eligibility standard that is at least 184 percent of the poverty line with respect to any 1 or more categories of children (other than infants) who are eligible for medical assistance under section 1396a(a)(10)(A) of this title or, in the case of a State that has a statewide waiver in effect under section 1315 of this title with respect to subchapter XIX of this chapter that was first implemented on August 1, 1994, or July 1, 1995, has an income eligibility standard under such waiver for children that is at least 185 percent of the poverty line, or, in the case of a State that has a statewide waiver in effect under section 1315 of this title with respect to subchapter XIX of this chapter that was first implemented on January 1, 1994, has an income eligibility standard under such waiver for children who lack health insurance that is at least 185 percent of the poverty line, or, in the case of a State that had a statewide waiver in effect under section 1315 of this title with respect to subchapter XIX of this chapter that was first implemented on October 1, 1993, had an income eligibility standard under such waiver for children that was at least 185 percent of the poverty line and on and after July 1, 1998, has an income eligibility standard for children under section 1396a(a)(10)(A) of this title or a statewide waiver in effect under section 1315 of this title with respect to subchapter XIX of this chapter that is at least 185 percent of the poverty line.
- (3) Construction.—Nothing in paragraphs (1) and (2) shall be construed as modifying the requirements applicable to States implementing State child health plans under this subchapter.
- (4) Option for allotments for fiscal years 2009 through 2015.—
- (A) Payment of enhanced portion of matching rate for certain expenditures.—In the case of expenditures described in subparagraph (B), a qualifying State (as defined in paragraph (2)) may elect to be paid from the State’s allotment made under section 1397dd of this title for any of fiscal years 2009 through 2015 (insofar as the allotment is available to the State under subsections (e) and (m) of such section) an amount each quarter equal to the additional amount that would have been paid to the State under subchapter XIX with respect to such expenditures if the enhanced FMAP (as determined under subsection (b)) had been substituted for the Federal medical assistance percentage (as defined in section 1396d(b) of this title).

(B) Expenditures described.—For purposes graph (A), the expenditures described in this subparagraph are expenditures made after February 4, 2009, and during the period in which funds are available to the qualifying State for use under subparagraph (A), for the provision of medical assistance to individuals residing in the State who are eligible for medical assistance under the State plan under subchapter XIX or under a waiver of such plan and who have not attained age 19 (or, if a State has so elected under the State plan under subchapter XIX, age 20 or 21), and whose family income equals or exceeds 133 percent of the poverty line but does not exceed the Medicaid applicable income level.

2016-035 **The Health Care Authority did not notify Medicaid providers of revalidation requirements as required by the Center for Medicare and Medicaid Services.**

Federal Awarding Agency: U.S. Department of Health and Human Services
Pass-Through Entity: None
CFDA Number and Title: 93.775 State Medicaid Fraud Control Units
93.777 State Survey and Certification of Health Care Providers and Suppliers (Title XVIII) Medicare
93.778 Medical Assistance Program (Medicaid; Title XIX)
Federal Award Number: 5-1605WA5MAP; 5-1605WA5ADM; 5-1605WAIMPL; 5-1605WAINCT
Applicable Compliance Component: Special Tests and Provisions – Provider Eligibility - Provider Revalidation
Known Questioned Cost Amount: None

Background

Medicaid is a jointly funded state and federal partnership providing coverage for about 1.9 million eligible low-income Washington residents who otherwise might go without medical care. Medicaid is Washington’s largest public assistance program and accounts for about one-third of the state’s federal expenditures. The program spent about \$11.6 billion in federal and state funds during fiscal year 2016.

In March 2011, a federal regulation became effective that required state Medicaid agencies to revalidate the enrollment of all Medicaid providers at least every five years. The Center for Medicare and Medicaid Services (CMS) notified states through an informational bulletin that the revalidation of all providers must be completed by March 24, 2016.

In January 2016, CMS issued updated guidance to states that extended the deadline for provider validation to September 25, 2016. As part of this updated guidance, CMS required states to notify all affected providers of the revalidation requirement by the original March 24, 2016, deadline.

Over 88,000 Medicaid providers were enrolled and active in Washington during fiscal year 2016.

Description of Condition

The Authority did not notify all affected providers of the revalidation requirement by the March 24, 2016 deadline set by CMS.

Cause of Condition

The Manager of the Authority’s Provider Enrollment group said providers were not notified by the March 24, 2016, deadline because of limited staff resources.

Effect of Condition

By not complying with federal requirements, the Authority is at risk of losing federal funding.

Recommendation

We recommend the Authority ensure it complies with future directives from CMS.

Agency's Response

The Health Care Authority will notify providers of the revalidation requirement and, by December 2017, will complete revalidations of all providers who enrolled with Medicaid prior to December 2012. The Authority will continue to revalidate providers every five years from their date of enrollment or last verification. These actions will bring the Authority into compliance with the federal regulations and guidance regarding provider revalidations.

Auditor's Concluding Remarks

We thank the Authority for its cooperation and assistance throughout the audit. We will review the status of the Authority's corrective action during our next audit.

Applicable Laws and Regulations

Title 2 U.S. Code of Federal Regulations Part 200, *Uniform Administrative Requirements, Cost Principles, and Audit Requirements for Federal Awards* (Uniform Guidance) established reporting requirements for audit findings.

Section 200.303 Internal controls, states in part:

The non-Federal entity must:

- (b) Comply with Federal statutes, regulations, and the terms and conditions of the Federal awards.

Section 200.516 Audit reporting, states in part:

- (a) *Audit findings reported.* The auditor must report the following as audit findings in a schedule of findings and questioned costs:
 - (2) Material noncompliance with the provisions of Federal statutes, regulations, or the terms and conditions of Federal awards related to a major program. The auditor's determination of whether a noncompliance with the provisions of Federal statutes, regulations, or the terms and conditions of Federal awards is material for the purpose of reporting an audit finding is in relation to a type of compliance requirement for a major program identified in the compliance supplement.

The American Institute of Certified Public Accountants defines significant deficiencies and material weaknesses in internal controls over compliance in its *Codification of Statements on Auditing Standards*, section 935, as follows:

.011 For purposes of adapting GAAS to a compliance audit, the following terms have the meanings attributed as follows: ...

Material noncompliance. In the absence of a definition of material noncompliance in the governmental audit requirement, a failure to follow compliance requirements or a violation of prohibitions included in the applicable compliance requirements that results in noncompliance that is quantitatively or qualitatively material, either individually or when aggregated with other noncompliance, to the affected government program.

42 CFR § 455.414 Revalidation of enrollment

The State Medicaid agency must revalidate the enrollment of all providers regardless of provider type at least every 5 years.

Centers for Medicare and Medicaid Services, Center for Medicaid and CHIP Services, CMCS Informational Bulletin, dated December 21, 2011, states in part:

The Federal regulation at 42 CFR 455.414 requires States, beginning March 25, 2011, to complete revalidation of enrollment for all providers, regardless of provider type, at least every five years. Based upon this requirement, States must complete the revalidation process of all provider types by March 24, 2016.

Center for Medicare and Medicaid Services (CMS) Sub Regulatory Guidance for State Medicaid Agencies (SMA): Revalidation (2016-001) states in part:

The federal regulation at 42 CFR 455.414 requires that state Medicaid agencies revalidate the enrollment of all providers, regardless of provider types, at least every 5 years. The regulation was effective March 25, 2011. Based on this requirement, in a December 23, 2011 CMCS Informational Bulletin, we directed states to complete the revalidation process of all provider types by March 24, 2016.

The purpose of this guidance is to revise previous guidance in order to align Medicare and Medicaid revalidation activities to the greatest extent possible. We are revising that previous guidance to now require a two-step deadline under which states must notify all affected providers of the revalidation requirement by the original March 24, 2016 deadline, and must have completed the revalidation process by a new deadline of September 25, 2016.

1. Deadline for SMA to revalidate providers enrolled on or before September 25, 2011. The Federal regulation at 42 CFR § 455.414 requires states, beginning March 25, 2011, to revalidate the enrollment of all Medicaid providers, regardless of provider type, at least every five years. Based upon this requirement, by March 24, 2016, states must notify providers that were enrolled on or before March 25, 2011 that they must revalidate their enrollment. On March 25, 2016, states that have notified all providers subject to the revalidation requirement will be considered compliant with the revalidation activities required as of that date.

2016-036

The Department of Social and Health Services, Aging and Long-Term Support Administration, did not have adequate internal controls over requirements to ensure surveys for Medicaid nursing home facilities were completed in a timely manner.

Federal Awarding Agency: U.S. Department of Health and Human Services
Pass-Through Entity: None
CFDA Number and Title: 93.775 State Medicaid Fraud Control Units
93.777 State Survey and Certification of Health Care Providers and Suppliers (Title XVIII) Medicare
93.778 Medical Assistance Program (Medicaid; Title XIX)
Federal Award Number: 5-1605WA5MAP; 5-1605WA5ADM; 5-1605WAIMPL; 5-1605WAINCT
Applicable Compliance Component: Special Tests and Provisions – Provider Health and Safety Standards
Known Questioned Cost Amount: None

Background

Medicaid is a jointly funded state and federal partnership providing coverage for about 1.9 million eligible low-income individuals who otherwise might go without medical care. Medicaid is Washington's largest public assistance program and accounts for about one third of the state's federal expenditures. The program spent about \$11.6 billion in federal and state funds during fiscal year 2016.

In fiscal year 2016, the state Medicaid program spent about \$14.9 million for the survey and certification of health care providers. The Department of Social and Health Services spent about \$5.9 million during fiscal year 2016.

Residential Care Services, under the Department of Social and Health Services, Aging and Long-Term Support Administration, is the state nursing home survey agency for Washington.

In fiscal year 2016, the state had 222 nursing homes that were Medicare and/or Medicaid certified. The survey for certification of a nursing home is a resident-centered inspection that gathers information about the quality of service furnished in a facility to determine compliance with the requirements of participation. The survey focuses on the nursing home's administration and patient services. The survey also assesses compliance with federal health, safety and quality standards designed to ensure patients receive safe and quality care services.

States are required to complete a standard survey within 15.9 months following the previous survey and the state-wide average must not exceed 12.9 months for nursing homes as stated in the Mission and Priority Statement issued by Centers for Medicare and Medicaid Services (CMS). If deficiencies are found in the facility the Department is responsible for mailing a statement of deficiency to the facility within 10 working days of the survey date. The facility is then required to submit an acceptable

plan of correction to the Department within 10 calendar days of receipt. The Centers for Medicare and Medicaid Services measures state agencies using the federal fiscal year and our audit period looked at surveys during the state fiscal year.

In prior audits, we reported the Department did not have adequate internal controls to ensure surveys were conducted timely and that follow up on deficiencies were conducted in a timely manner. The prior finding numbers were 2015-044, and 2014-046.

Description of Condition

The Department did meet federal regulations, which requires them to survey nursing homes every 15.9 months and meeting a statewide average of 12.9 months. However, the Department did not comply with federal regulations by sending out Statement of Deficiencies timely or ensuring timely receipt of acceptable corrective action plans.

We used a statistical sampling method and randomly sampled 50 out of 181 total nursing home surveys completed during the audit period. We examined the 50 nursing home surveys to determine if the Department mailed Statements of Deficiencies within 10 working days as required. We found ten (20 percent) exceeded the required timeframe

We also examined the same nursing homes to determine if an acceptable Plan of Correction was received within 10 calendar days and found that 12 (24 percent) were submitted late.

We consider this control deficiency to be a material weakness.

Cause of Condition

The Department has procedures in place to ensure that standard surveys are completed timely, statement of deficiencies are mailed and plans of corrections are received according to federal standards in the State Operations Manual. It is up to regional field survey and investigative staff to ensure a provider has achieved compliance through follow-up reviews, phone calls and/or visits. The Department asserts the cause of delays for mailing of Statement of Deficiencies was due to regional administrative review of deficiencies to assure technical accuracy in the documents, achieving compliance with principles of documentation and allowing adequate time for comprehensive enforcement review and action and their interpretation of what is deemed an acceptable plan of correction.

Effect of Condition

When the Department does not mail Statements of Deficiencies according to the CMS State Operations Manual, the provider and/or facility is not able to begin the development and submission of an acceptable plan of correction preventing the Department from following up on deficiencies.

When the Department does not follow up on deficiencies timely, the state is paying the facilities for services provided to Medicaid clients without assurance they are in compliance with federal and state health standards and regulations.

Recommendation

We recommend the Department strengthen policies and procedures to ensure Statements of Deficiencies and acceptable Plans of Correction are submitted timely.

Agency's Response

The Department partially agrees with this finding.

The Department does not agree with the SAO findings that it does not follow up on deficiencies timely. The Department follows the Centers of Medicare and Medicaid (CMS) State Operational Manual (SOM) guidelines for following up on deficiencies timely through unannounced follow-up visits. The follow up of deficiencies was not tested in this SAO audit.

The Department recognizes the receipt of Plans of Correction (POCs) within 10 calendar days were not met per SAO's testing methodology, however the Department follows the State Operations Manual (SOM) guidelines for receiving POCs. The CMS SOM guidelines require the Department to receive the POCs within 10 calendar days of provider receipt of the SOD report.

The Department uses the POC receipt date returned to the department office as its metric whereas the SAO testing used the date POC found acceptable. During this SAO audit the department requested and received correspondence via email on 12/01/16 from Lisa Tripp, CMS Technical Director for Enforcement and Certification for the Division of Nursing Homes, supporting the departments interpretation of the CMS SOM. "The practice of the Washington Department of Social and Health Services described in this sentence: "WA State LTC has allowed a facility 10 days to return the POC per our interpretation of the SOM, and if we find any deficiencies or missing elements to the POC we do not accept the POC. Sometimes that may require more than 10 days to achieve an acceptable POC" is consistent with the correct interpretation of CMS policy and is consistent with how all states deal with situations where POCs are not acceptable"(Lisa Tripp CMS).

The Department agrees with the Statement of Deficiency (SOD) findings based on the SAO testing methodology. While the CMS SOM does not require formal tracking of the SOD/POCs, the Department did implement a statewide formal tracking system in January 2016. In March 2017, RCS will be working with Management Services Division to finalize a tracking website for SODs requiring enforcement review and action. This website allows for daily tracking of SOD processing between field managers and headquarters enforcement staff to ensure electronic SOD delivery within 10 working days of survey exit date.

In April 2017, the Department will continue to enhance its ability to distribute SODs in 10 working days and receive POCs in 10 calendar days by implementing an electronic distribution and receipt system called Aspen Electronic Plan of Correction (ePOC), per use of CMS' automated survey and processing environment. The ePOC system time stamps distribution of SODs and submission of POCs, provides notifications to the state agency when SODs and POCs are not mailed or submitted timely, and includes report functions.

Auditor’s Concluding Remarks

We thank the Department for its cooperation and assistance throughout the audit.

We came to our conclusion because the State Operations Manual 7304.4 states in part ... “an Acceptable Plan of Correction must be submitted within 10 calendar days from the date the facility receives its Form CMS-2567.”

We also contacted the CMS Division of Nursing Home’s Technical Director for Enforcement and Certification to seek clarification about the requirement. The Director said that although the Department may have interpreted the regulation to mean that a Plan of Correction (acceptable or not) must be submitted within 10 calendar days, she does not have authority to provide official guidance on the matter.

We reaffirm our finding and will review the status of the Department’s corrective action during our next audit. We will continue to seek clarification from CMS regarding the 10-day requirement in the State Operations Manual.

Applicable Laws and Regulations

Title 2 U.S. Code of Federal Regulations Part 200, *Uniform Administrative Requirements, Cost Principles, and Audit Requirements for Federal Awards* (Uniform Guidance) established reporting requirements for audit findings.

Section 200.303 Internal controls.

The non-Federal entity must:

- (a) Establish and maintain effective internal control over the Federal award that provides reasonable assurance that the non-Federal entity is managing the Federal award in compliance with Federal statutes, regulations, and the terms and conditions of the Federal award. These internal controls should be in compliance with guidance in “Standards for Internal Control in the Federal Government” issued by the Comptroller General of the United States or the “Internal Control Integrated Framework”, issued by the Committee of Sponsoring Organizations of the Treadway Commission (COSO).

Section 200.516 Audit reporting, state in part:

- (a) *Audit findings reported.* The auditor must report the following as audit findings in a schedule of findings and questioned costs:
 - (1) Significant deficiencies and material weaknesses in internal control over major programs and significant instances of abuse relating to major programs. The auditor’s determination of whether a deficiency in internal control is a significant deficiency or material weakness for the purpose of reporting an audit finding is in relation to a type of compliance requirement for a major program identified in the Compliance Supplement.

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Reasonably possible. The chance of the future event or events occurring is more than remote but less than likely.

Remote. The chance of the future event or events occurring is slight.

Probable. The future event or events are likely to occur.

Significant deficiency in internal control over compliance. A deficiency, or a combination of deficiencies, in internal control over compliance that is less severe than a material weakness in internal control over compliance, yet important enough to merit attention by those charged with governance.

Center for Medicare and Medicaid Services, State Operations Manual, Chapter 2 - The Certification Process, states in part:

2138G - Schedule for Recertification

(Rev. 91, Issued: 09-27-13, Effective: 09-27-13, Implementation: 09-27-13)

The SA completes a recertification survey an average of every 12 months and at least once every 15 months (see §2141).

2141 - Recertification - ICFs/IID

(Rev. 91, Issued: 09-27-13, Effective: 09-27-13, Implementation: 09-27-13)

- The regulation at §442.15 provides that provider agreements for ICF/IID's would remain in effect as long as the facility remains in compliance with the Conditions of Participation (COP's). Regulations at §442.109 through §442.111.
- Beginning on May 16, 2012, ICF/IID's are no longer subject to time-limited agreements. However, they are to be surveyed for re-certification an average of every 12 months and at least once every 15 months.
- If during a survey the survey agency finds a facility does not meet the standards for participation the facility may remain certified if the survey agency makes two determinations – The facility may maintain its certification if the survey agency finds Immediate Jeopardy doesn't exist, and if the facility provides an acceptable plan of correction.

Centers for Medicare and Medicaid Services, State Operations Manual, Chapter 7 – Survey and Enforcement Process for Skilled Nursing Facilities and Nursing Facilities, states in part:

7205 – Survey Frequency: 15-Month Survey Interval and 12-Month State-wide Average

7205.2 – Scheduling and Conducting Surveys (Rev. 63, Issued: 09-10-10, Effective: 09-10-10, Implementation: 09-10-10)

The State must complete a standard survey of each skilled nursing facility and nursing facility not later than 15 months after the previous standard survey.

Facilities with excellent histories of compliance may be surveyed less frequently to determine compliance, but no less frequently than every 15 months and the State-wide standard survey average must not exceed 12 months.

7304.4 - Acceptable Plan of Correction - states in part:

Except in cases of past noncompliance, facilities having deficiencies (other than those at scope and severity level A) must submit an acceptable plan of correction. The requirement for a plan of correction is in 42 CFR 488.402(d), and §7400.2 and §7400.5.3. An acceptable plan of correction must:

...

The plan of correction serves as the facility's allegation of compliance and, without it, CMS and/or the State have no basis on which to verify compliance. A plan of correction must be submitted within 10 calendar days from the date the facility receives its Form CMS-2567. If an acceptable plan of correction is not received within this timeframe, the State notifies the facility that it is recommending to the RO and/or the State Medicaid Agency that remedies be imposed effective when notice requirements are met. The requirement for a plan of correction is in 42 CFR 488.402(d). Further, 42 CFR 488.456(b)(ii) requires CMS or the State to terminate the provider agreement of a facility that does not submit an acceptable plan of correction.

In most cases of immediate jeopardy, the facility submits an allegation of removal of the immediate jeopardy and defers submission of a plan of correction until the immediate jeopardy has been removed. The allegation of removal of the immediate jeopardy must include the date the immediate jeopardy was removed, and sufficient detail demonstrating that the immediate jeopardy has been addressed. Once the removal of the immediate jeopardy is verified, the surveying entity will provide a Form CMS-2567 to the facility, including the noncompliance which constituted immediate jeopardy, and request that a plan of correction be submitted within 10 calendar days.

A facility is not required to provide a plan of correction for a deficiency cited as past noncompliance because that deficiency is corrected at the time it is cited; however, the survey team must document the facility's corrective actions on Form CMS-2567.

7305.1.1 – When No Immediate Jeopardy Exists and an Opportunity to Correct Will be Provided Before Remedies Are Imposed – states in part:

- (f) Provides that an acceptable plan of correction is required in response to deficiencies listed on the Form CMS-2567 and must be received within 10 calendar days of the facility's receipt of the CMS-2567. The plan of correction will serve as the facility's allegation of compliance;
- (g) Informs the facility of the opportunity for informal dispute resolution;
- (h) Specifies that if an acceptable plan of correction is not received within 10 calendar days of the facility's receipt of the CMS-2567, the State will notify the facility that it is recommending to the regional office and/or the State Medicaid Agency that remedies other than category 1, and/or denial of payment for new admissions, be imposed effective as soon as notice requirements are met. As authorized by CMS and/or the State Medicaid Agency, formal notice of imposition of category 1 remedies may be officially provided in this initial notice, and notice of imposition of denial of payment for new admissions may be officially provided in this notice or in the first revisit letter;

7319.1 - Non-State Operated Skilled Nursing Facilities and Nursing Facilities or Dually Participating Facilities (Rev. 63, Issued: 09-10-10, Effective: 09-10-10, Implementation: 09-10-10) states in part:

1. The State conducts the survey and certifies compliance.
2. The State sends the facility Form CMS-2567 and if applicable, the “Notice of Isolated Deficiencies Which Cause No Actual Harm with the Potential for Minimal Harm” (Form A), within 10 working days of the last day of survey.
3. If the facility is in substantial compliance, but deficiencies constitute a pattern or widespread findings causing no actual harm and potential for only minimal harm, the State instructs the facility to submit a plan of correction to the State's office. (This must be submitted within 10 calendar days after the facility has received its Statement of Deficiencies.) There is no requirement for the State to conduct a revisit to verify correction, but the facility is expected to comply with its plan of correction.

Centers for Medicare and Medicaid Services, Quality Assurance for the Medicare and Medicaid Programs, FY2016 Mission and Priority Document (MPD), states in part:

15.9 Month Max Interval: No more than 15.9 months elapses between completed surveys for any particular nursing home.

12.9 Month Average: All nursing homes in the State are surveyed, on average, once per year. The Statewide average interval between consecutive standard surveys must be 12.9 months or less.

Title 42, Code of Federal Regulations, Section 488.402 General provisions. States in part:

- (d) Plan of correction requirement.
 - (1) Except as specified in paragraph (d)(2) of this section, regardless of which remedy is applied, each facility that has deficiencies with respect to program requirements must submit a plan of correction for approval by CMS or the survey agency.

- (2) Isolated deficiencies. A facility is not required to submit a plan of correction when it has deficiencies that are isolated and have a potential for minimal harm, but no actual harm has occurred.

2016-037 **The Department of Social and Health Services, Aging and Long-Term Support Administration, did not have adequate internal controls over and did not comply with requirements to ensure surveys for Medicaid intermediate care facilities were completed in a timely manner.**

Federal Awarding Agency: U.S. Department of Health and Human Services
Pass-Through Entity: None
CFDA Number and Title: 93.775 State Medicaid Fraud Control Units
93.777 State Survey and Certification of Health Care Providers and Suppliers (Title XVIII) Medicare
93.778 Medical Assistance Program (Medicaid; Title XIX)
Federal Award Number: 5-1605WA5MAP; 5-1605WA5ADM; 5-1605WAIMPL; 5-1605WAINCT
Applicable Compliance Component: Special Test and Provisions – Provider Health and Safety Standards
Known Questioned Cost Amount: None

Background

Medicaid is a jointly funded state and federal partnership providing coverage for about 1.9 million eligible low-income individuals who otherwise might go without medical care. Medicaid is Washington’s largest public assistance program and accounts for about one third of the state’s federal expenditures. The program spent about \$11.6 billion in federal and state funds during fiscal year 2016.

In fiscal year 2016, the state Medicaid program spent about \$14.9 million for the survey and certification of health care providers. The Department of Social and Health Services spent approximately \$604,000 of that amount for surveys to Intermediate Care Facilities for Individuals with Intellectual Disabilities (ICF/IID).

The Residential Care Services, under the Department of Social and Health Services, Aging and Long-Term Support Administration, is the state Intermediate Care Facilities for Individuals with Intellectual Disabilities survey agency for Washington.

The state has 13 ICF/IID facilities. An ICF/IID is an institution whose primary purpose is for the provision of health or rehabilitation services to individuals with intellectual disabilities or related conditions that receive care and services under the Medicaid program.

The Department is required to perform an annual certification survey of each ICF/IID. The primary focus of the annual certification survey is on the “outcome” of the facility’s implementation of ICF/IID active treatment services.

In addition, states are required to complete a standard survey within 15.9 months following the previous survey and the statewide average must not exceed 12.9 months. If deficiencies are found in

a facility, the Department must mail a Statement of Deficiency to the facility within 10 working days of the survey date. The facility is then required to submit an acceptable plan of correction to the Department within 10 calendar days of receipt. The Centers for Medicare and Medicaid Services measures state agencies using the federal fiscal year and our audit period looked at surveys during the state fiscal year.

In prior audits, we reported the Department did not have adequate internal controls and was not in compliance with regulations to ensure surveys were conducted in a timely manner. The prior finding numbers were 2015-045 and 2014-046.

Description of Condition

The Department did not have adequate internal controls to ensure Statement of Deficiencies were sent out and acceptable Plans of Corrections were received within the required deadlines. Eleven of the 13 ICF/IID facilities had surveys completed during the audit period. In our examination of the 11 ICF/IID facilities, we found:

- One instance (9 percent) when the Department failed to mail the Statement of Deficiency within 10 working days of the survey date. The number of actual days was 11 days
- Four facilities (36 percent) submitted their acceptable Plan of Correction after 10 calendar days, ranging from 19 to 28 days

We examined all 13 ICF/IID facilities for the purpose of the statewide average and found the Department did not ensure surveys were performed in accordance with the frequency required by the state and federal laws. The statewide average of 14.2 months exceeds the 12.9-month requirement.

We consider these control deficiencies to be a material weakness.

Cause of Condition

The Department noted staffing challenges as the cause to ensuring the Statement of Deficiencies and Plan of Corrections were not done in a timely manner.

Effect of Condition

When the Department does not mail Statements of Deficiencies according to the CMS State Operations Manual, the provider and/or facility is not able to begin the development and submission of an acceptable plan of correction preventing the Department from following up on deficiencies.

When surveys are not conducted and follow up on deficiencies is not performed in a timely manner, the state is paying the facilities for services provided to Medicaid clients without assurance they are in compliance with federal and state health standards and regulations.

Recommendation

We recommend the Department establish internal controls to ensure Statement of Deficiencies and Plan of Corrections are completed in a timely manner. We also recommend the Department conduct ICF/IID surveys in accordance with the frequency required by federal and state laws.

Agency's Response

The Department partially agrees with these findings.

The Department does not agree with the SAO finding that it does not have internal controls to ensure Statement of Deficiencies (SODs) and Plans of Corrections (POCs) are completed timely. The Department has established internal controls to ensure SODs are mailed out to providers within 10 working days, to remind providers to submit POCs within 10 calendar days, and ensure that POCs are received within 10 calendar days.

The Department recognizes the receipt of POCs within 10 calendar days were not met per SAO's testing methodology, however the Department follows the Center of Medicare and Medicaid (CMS) State Operations Manual (SOM) guidelines for receiving POCs. The CMS SOM guidelines require the Department to receive the POCs within 10 calendar days from the date provider received the SOD report.

The Department does not agree with the SAO finding that 4 facilities submitted their acceptable POCs after 10 calendar days. The department received their POCs from the providers within 10 calendar days, however those POCs were deemed not acceptable by the department. The SAO tracked dates of receipt of the final acceptable POCs, which resulted in SAO findings.

During this SAO audit period the Department requested and received correspondence via email from CMS Technical Director for Enforcement and Certification for the Division of Nursing Homes, supporting the Department's interpretation of the CMS SOM. "The practice of the Washington Department of Social and Health Services described in this sentence: "WA State LTC has allowed a facility 10 days to return the POC per our interpretation of the SOM, and if we find any deficiencies or missing elements to the POC we do not accept the POC. Sometimes that may require more than 10 days to achieve and acceptable "POC" is consistent with the correct interpretation of CMS policy and is consistent with how all states deal with situations where POCs are not acceptable" (Lisa Tripp CMS)

The Department agrees with the Statement of Deficiency (SOD) findings using the SAO testing methodology. Procedures will be updated to direct staff to fax SODs to the provider and save the transmittal sheet in the working file if the SOD cannot be postmarked by USPS by the 10th working day.

The Department agrees the statewide average of 14.2 months exceeded the 12.9 requirement. A contributing factor to the statewide average was staffing shortages during the audit period. Effective July 2016, the ICF/IID Unit is fully staffed which should improve the department's ability to be in compliance with survey timeframes.

The Department recognizes the statewide average may not improve because subsequent surveys conducted in the last fiscal year resulted in findings of providers' non-compliance with the federal Conditions of Participation (CoPs). When providers/facilities are found non-compliant with any CoP, the department cannot conduct annual surveys unless the Department conducts credible allegation surveys to verify the facilities have met the CoPs. The credible surveys cause delay in conducting the annual recertification surveys. To support facilities' compliance with CoPs, the Department conducted informal presentations to the facilities to provide proper interpretation of the regulations and initiated amendments to the state plan to add alternative sanctions such as directed plan of correction, directed in-service training and state monitoring.

Auditor's Concluding Remarks

We thank the Department for its cooperation and assistance throughout the audit.

We came to our conclusion because the State Operations Manual 7304.4 states in part, "an Acceptable Plan of Correction must be submitted within 10 calendar days from the date the facility receives its Form CMS-2567."

We also contacted the CMS Division of Nursing Home's Technical Director for Enforcement and Certification to seek clarification about the requirement. The Director said that although the Department may have interpreted the regulation to mean that a Plan of Correction (acceptable or not) must be submitted within 10 calendar days, she does not have authority to provide official guidance on the matter.

We reaffirm our finding and will review the status of the Department's corrective action during our next audit. We will continue to seek clarification from CMS regarding the 10-day requirement in the State Operations Manual.

Applicable Laws and Regulations

Title 2 U.S. Code of Federal Regulations Part 200, *Uniform Administrative Requirements, Cost Principles, and Audit Requirements for Federal Awards* (Uniform Guidance) established reporting requirements for audit findings.

Section 200.303 Internal controls.

The non-Federal entity must:

- (a) Establish and maintain effective internal control over the Federal award that provides reasonable assurance that the non-Federal entity is managing the Federal award in compliance with Federal statutes, regulations, and the terms and conditions of the Federal award. These internal controls should be in compliance with guidance in "Standards for Internal Control in the Federal Government" issued by the Comptroller General of the United States or the "Internal Control Integrated Framework", issued by the Committee of Sponsoring Organizations of the Treadway Commission (COSO).
- (b) Comply with Federal statutes, regulations, and the terms and conditions of the Federal awards.

Section 200.516 Audit reporting, state in part:

- (a) *Audit findings reported.* The auditor must report the following as audit findings in a schedule of findings and questioned costs:
- (1) Significant deficiencies and material weaknesses in internal control over major programs and significant instances of abuse relating to major programs. The auditor's determination of whether a deficiency in internal control is a significant deficiency or material weakness for the purpose of reporting an audit finding is in relation to a type of compliance requirement for a major program identified in the Compliance Supplement.
 - (2) Material noncompliance with the provisions of Federal statutes, regulations, or the terms and conditions of Federal awards related to a major program. The auditor's determination of whether a noncompliance with the provisions of Federal statutes, regulations, or the terms and conditions of Federal awards is material for the purpose of reporting an audit finding is in relation to a type of compliance requirement for a major program identified in the compliance supplement.

The American Institute of Certified Public Accountants defines significant deficiencies and material weaknesses in internal controls over compliance in its *Codification of Statements on Auditing Standards*, section 935, as follows:

.011 For purposes of adapting GAAS to a compliance audit, the following terms have the meanings attributed as follows: ...

Material weakness in internal control over compliance. A deficiency, or combination of deficiencies, in internal control over compliance, such that there is a reasonable possibility that material noncompliance with a compliance requirement will not be prevented, or detected and corrected, on a timely basis. In this section, a reasonable possibility exists when the likelihood of the event is either reasonably possible or probable as defined as follows:

Reasonably possible. The chance of the future event or events occurring is more than remote but less than likely.

Remote. The chance of the future event or events occurring is slight.

Probable. The future event or events are likely to occur.

Significant deficiency in internal control over compliance. A deficiency, or a combination of deficiencies, in internal control over compliance that is less severe than a material weakness in internal control over compliance, yet important enough to merit attention by those charged with governance.

Material noncompliance. In the absence of a definition of material noncompliance in the governmental audit requirement, a failure to follow compliance requirements or a violation of prohibitions included in the applicable compliance requirements that results in noncompliance that is quantitatively or qualitatively material, either individually or when aggregated with other noncompliance, to the affected government program.

Center for Medicare and Medicaid Services, State Operations Manual, Chapter 2- The Certification Process, states in part:

2138G - Schedule for Recertification

(Rev. 91, Issued: 09-27-13, Effective: 09-27-13, Implementation: 09-27-13)

The SA completes a recertification survey an average of every 12 months and at least once every 15 months (see §2141).

2141 - Recertification - ICFs/IID

(Rev. 91, Issued: 09-27-13, Effective: 09-27-13, Implementation: 09-27-13)

- The regulation at §442.15 provides that provider agreements for ICF/IID's would remain in effect as long as the facility remains in compliance with the Conditions Of Participation (COP's). Regulations at §442.109 through §442.111.
- Beginning on May 16, 2012, ICF/IID's are no longer subject to time-limited agreements. However, they are to be surveyed for re-certification an average of every 12 months and at least once every 15 months.
- If during a survey the survey agency finds a facility does not meet the standards for participation the facility may remain certified if the survey agency makes two determinations – The facility may maintain its certification if the survey agency finds Immediate Jeopardy doesn't exist, and if the facility provides an acceptable plan of correction.

Centers for Medicare and Medicaid Services, State Operations Manual, Chapter 7 – Survey and Enforcement Process for Skilled Nursing Facilities and Nursing Facilities, states in part:

7205 – Survey Frequency: 15-Month Survey Interval and 12-Month State-wide Average

7205.2 – Scheduling and Conducting Surveys (Rev. 63, Issued: 09-10-10, Effective: 09-10-10, Implementation: 09-10-10)

The State must complete a standard survey of each skilled nursing facility and nursing facility not later than 15 months after the previous standard survey.

Facilities with excellent histories of compliance may be surveyed less frequently to determine compliance, but no less frequently than every 15 months and the State-wide standard survey average must not exceed 12 months.

7304.4 - Acceptable Plan of Correction - states in part:

Except in cases of past noncompliance, facilities having deficiencies (other than those at scope and severity level A) must submit an acceptable plan of correction. The requirement for a plan of correction is in 42 CFR 488.402(d), and §7400.2 and §7400.5.3. An acceptable plan of correction must:

...

The plan of correction serves as the facility's allegation of compliance and, without it, CMS and/or the State have no basis on which to verify compliance. A plan of correction must be

submitted within 10 calendar days from the date the facility receives its Form CMS-2567. If an acceptable plan of correction is not received within this timeframe, the State notifies the facility that it is recommending to the RO and/or the State Medicaid Agency that remedies be imposed effective when notice requirements are met. The requirement for a plan of correction is in 42 CFR 488.402(d). Further, 42 CFR 488.456(b)(ii) requires CMS or the State to terminate the provider agreement of a facility that does not submit an acceptable plan of correction.

In most cases of immediate jeopardy, the facility submits an allegation of removal of the immediate jeopardy and defers submission of a plan of correction until the immediate jeopardy has been removed. The allegation of removal of the immediate jeopardy must include the date the immediate jeopardy was removed, and sufficient detail demonstrating that the immediate jeopardy has been addressed. Once the removal of the immediate jeopardy is verified, the surveying entity will provide a Form CMS-2567 to the facility, including the noncompliance which constituted immediate jeopardy, and request that a plan of correction be submitted within 10 calendar days.

A facility is not required to provide a plan of correction for a deficiency cited as past noncompliance because that deficiency is corrected at the time it is cited; however, the survey team must document the facility's corrective actions on Form CMS-2567.

7305.1.1 – When No Immediate Jeopardy Exists and an Opportunity to Correct Will be Provided Before Remedies Are Imposed – states in part:

- (f) Provides that an acceptable plan of correction is required in response to deficiencies listed on the Form CMS-2567 and must be received within 10 calendar days of the facilities receipt of the CMS-2567. The plan of correction will serve as the facility's allegation of compliance;
- (g) Informs the facility of the opportunity for informal dispute resolution;
- (h) Specifies that if an acceptable plan of correction is not received within 10 calendar days of the facility's receipt of the CMS-2567, the State will notify the facility that it is recommending to the regional office and/or the State Medicaid Agency that remedies other than category 1, and/or denial of payment for new admissions, be imposed effective as soon as notice requirements are met. As authorized by CMS and/or the State Medicaid Agency, formal notice of imposition of category 1 remedies may be officially provided in this initial notice, and notice of imposition of denial of payment for new admissions may be officially provided in this notice or in the first revisit letter;

7319.1 - Non-State Operated Skilled Nursing Facilities and Nursing Facilities or Dually Participating Facilities (Rev. 63, Issued: 09-10-10, Effective: 09-10-10, Implementation: 09-10-10) states in part:

1. The State conducts the survey and certifies compliance.
2. The State sends the facility Form CMS-2567 and if applicable, the “Notice of Isolated Deficiencies Which Cause No Actual Harm With the Potential for Minimal Harm” (Form A), within 10 working days of the last day of survey.
3. If the facility is in substantial compliance, but deficiencies constitute a pattern or widespread findings causing no actual harm and potential for only minimal harm, the

State instructs the facility to submit a plan of correction to the State's office. (This must be submitted within 10 calendar days after the facility has received its Statement of Deficiencies.) There is no requirement for the State to conduct a revisit to verify correction, but the facility is expected to comply with its plan of correction.

Centers for Medicare and Medicaid Services, Quality Assurance for the Medicare and Medicaid Programs, FY2016 Mission and Priority Document (MPD), states in part:

15.9 Month Max Interval: No more than 15.9 months elapses between completed surveys for any particular nursing home.

12.9 Month Average: All nursing homes in the State are surveyed, on average, once per year. The Statewide average interval between consecutive standard surveys must be 12.9 months or less.

Title 42, Code of Federal Regulations, Section 488.402 General provisions. States in part:

(d) Plan of correction requirement.

- (1) Except as specified in paragraph (d)(2) of this section, regardless of which remedy is applied, each facility that has deficiencies with respect to program requirements must submit a plan of correction for approval by CMS or the survey agency.
- (2) Isolated deficiencies. A facility is not required to submit a plan of correction when it has deficiencies that are isolated and have a potential for minimal harm, but no actual harm has occurred.

2016-038 **The Department of Social and Health Services did not have adequate internal controls over its examinations of Medicaid nursing home cost reports.**

Federal Awarding Agency: U.S. Department of Health and Human Services
Pass-Through Entity: None
CFDA Number and Title: 93.775 State Medicaid Fraud Control Units
93.777 State Survey and Certification of Health Care Providers and Suppliers (Title XVIII) Medicare
93.778 Medical Assistance Program (Medicaid; Title XIX)
Federal Award Number: 5-1605WA5MAP; 5-1605WA5ADM; 5-1605WAIMPL; 5-1605WAINCT
Applicable Compliance Component: Special Tests and Provisions – Inpatient Hospital and Long-Term Care Facility Audits
Known Questioned Cost Amount: None

Background

Medicaid is a jointly funded state and federal partnership providing coverage for about 1.9 million eligible low-income individuals who otherwise might go without medical care. Medicaid is Washington’s largest public assistance program and accounts for about one-third of the state’s federal expenditures. The program spent about \$11.6 billion in federal and state funds during fiscal year 2016.

In fiscal year 2016, the state Medicaid program paid about \$599 million to licensed nursing homes.

State rules require licensed nursing homes to submit annual cost reports that are needed to establish payment rates. Prior to rate setting, state rules require the Department of Social and Health Services to audit, or examine, the cost reports to ensure they are accurate. The Department’s Nursing Home Rate Section, which is responsible for examining cost reports, has established a manual and guidelines that section analysts must use when performing their examinations. The manual outlines 15 reason codes that section analysts must use to evaluate if cost reports were accurate and did not include unallowable costs. Cost report examinations begin April 1 of each year. The Department has three months to complete the examinations in order to establish the new payment rates by July 1.

Description of Condition

The Department did not have adequate internal controls over its examinations of nursing home cost reports.

We used a non-statistical sampling method and randomly sampled 23 of 238 total cost reports the Department examined during state fiscal year 2016.

We reviewed the cost report examination work papers to determine if analysts completed their review of all required 15 reason codes. According to the Department's guidelines, analysts should initial and date each reason code work paper once that examination is completed. We found three of the 23 cost report examinations (13 percent) lacked analyst initials for at least one reason code.

We further tested whether analysts performed adequate examinations of the following four reason codes:

- Allowable Therapy Expenses
- Census Reconciliation
- Unallowable Costs
- Account Code Reclassification

There was no supporting documentation that showed analysts evaluated the Unallowable Costs and Account Code Reclassification reason codes. We also found that management did not review any nursing home cost report examinations to ensure proper reviews were performed and that adequate documentation was retained.

We consider this control deficiency to be a material weakness.

Cause of Condition

The Department switched from reviewing paper copies of the cost reports to reviewing electronic copies. Previously, each examiner made notes on the paper copies and documented issues when they were found. Documentation was not required when reviewers found no issues. The Department did not officially establish a process for capturing examiner notes on electronic copies and did not have a policy in place that required staff to document the examination process used for the reason code reviews concerning unallowable costs and account codes.

The Department's Nursing Home Rate Section did not have a policy requiring a secondary review of the examination of nursing home cost reports.

Effect of Condition

By not requiring cost report examinations to be adequately documented and supervisory reviews to be performed, the Department has less assurance that only allowable costs are used to establish nursing home payment rates.

Recommendation

We recommend the Department establish clear criteria within their policies and procedures that define the necessary documentation of how the cost report examinations are performed. We also recommend a process and policy concerning properly performed secondary reviews of examinations is established.

Agency's Response

The Department partially concurs with the SAO Findings.

The Department partially agrees with the assertion there was no supporting documentation that showed analysts evaluated the Unallowable Costs (Reason Code 12) and Account Code Reclassification (Reason Code 99) reason codes. For the evaluation of reason codes 12 and 99, the Department feels there was adequate documentation when reviewers determined an adjustment was needed. However, the Department does agree that it did not have a process for examiners to document their reviews when no issues were found for Reason Code 12 and 99. By March 30th, 2017 we will add definition and clarity to the description of the minimum review of Unallowable Costs and Account Code Reclassifications within the exam guide and how to document when no adjustments are necessary.

The Department agrees with the assertion that three of the 23 cost report examinations (13 percent) lacked analyst initials for at least one of the fifteen various reason codes. By March 30th, 2017 we will establish training and communications for all analysts to ensure there are initials for all reason codes as a mechanism for documenting an exam.

The Department agrees with the assertion a secondary review was not conducted over nursing home cost report examinations, which has never been an official policy. By March 30th, 2017 a policy will be put in place to ensure a secondary review is done on each cost report going forward.

Auditor's Concluding Remarks

We thank the Department for its cooperation and assistance throughout the audit. We will review the status of the Department's corrective action during our next audit.

Applicable Laws and Regulations

Title 2 U.S. Code of Federal Regulations (CFR) Part 200, *Uniform Administrative Requirements, Cost Principles, and Audit Requirements for Federal Awards* (Uniform Guidance) established reporting requirements for audit findings.

Section 200.303 Internal controls.

The non-Federal entity must:

- (a) Establish and maintain effective internal control over the Federal award that provides reasonable assurance that the non-Federal entity is managing the Federal award in compliance with Federal statutes, regulations, and the terms and conditions of the Federal award. These internal controls should be in compliance with guidance in "Standards for Internal Control in the Federal Government" issued by the Comptroller General of the United States or the "Internal Control Integrated Framework", issued by the Committee of Sponsoring Organizations of the Treadway Commission (COSO).

Section 200.516 Audit reporting, state in part:

- (a) *Audit findings reported.* The auditor must report the following as audit findings in a schedule of findings and questioned costs:
 - (1) Significant deficiencies and material weaknesses in internal control over major programs and significant instances of abuse relating to major programs. The auditor's determination of whether a deficiency in internal control is a significant

deficiency or material weakness for the purpose of reporting an audit finding is in relation to a type of compliance requirement for a major program identified in the Compliance Supplement.

The American Institute of Certified Public Accountants defines significant deficiencies and material weaknesses in internal controls over compliance in its *Codification of Statements on Auditing Standards*, section 935, as follows:

.011 For purposes of adapting GAAS to a compliance audit, the following terms have the meanings attributed as follows: ...

Material weakness in internal control over compliance. A deficiency, or combination of deficiencies, in internal control over compliance, such that there is a reasonable possibility that material noncompliance with a compliance requirement will not be prevented, or detected and corrected, on a timely basis. In this section, a reasonable possibility exists when the likelihood of the event is either reasonably possible or probable as defined as follows:

Reasonably possible. The chance of the future event or events occurring is more than remote but less than likely.

Remote. The chance of the future event or events occurring is slight.

Probable. The future event or events are likely to occur.

Significant deficiency in internal control over compliance. A deficiency, or a combination of deficiencies, in internal control over compliance that is less severe than a material weakness in internal control over compliance, yet important enough to merit attention by those charged with governance.

42 CFR 447.253 - Other requirements, states in part:

- (b) (1) (iii) With respect to nursing facility services –
 - (A) Except for preadmission screening for individuals with mental illness and Intellectual Disability under § 483.20(f) of this Chapter, the methods and standards used to determine payment rates take into account the costs of complying with the requirements of part 483 subpart B of this chapter;
 - (B) The methods and standards used to determine payment rates provide for an appropriate reduction to take into account the lower costs (if any) of the facility for nursing care under a waiver of the requirement in § 483.35(e) of this Chapter to provide licensed nurses on a 24-hour basis;
 - (C) The State establishes procedures under which the data and methodology used in establishing payment rates are made available to the public.
- (f) Uniform cost reporting. The Medicaid agency must provide for the filing of uniform cost reports by each participating provider.
- (g) Audit requirements. The Medicaid agency must provide for periodic audits of the financial and statistical records of participating providers.

Revised Code of Washington RCW 74.46.022 Nursing facility medicaid payment system—Establishing procedures, principles, and conditions, states in part:

- (1) The department must receive complete, annual reporting of all costs and the financial condition of each contractor, prepared and presented in a standardized manner. The department shall establish, by rule, due dates, requirements for cost report completion, actions required for improperly completed or late cost reports, fines for any statutory or regulatory noncompliance, retention requirements, and public disclosure requirements.
- (2) The department shall examine all cost reports to determine whether the information is correct, complete, and reported in compliance with this chapter, department rules and instructions, and generally accepted accounting principles.

Washington Administrative Code WAC 388-96-205 Purposes of department audits—Examination—Incomplete or incorrect reports—Contractor's duties—Access to facility—Fines—Adverse rate actions, states in part:

- (1) The purposes of department audits and examinations under this chapter and chapter 74.46 RCW are to ascertain that:
 - (a) Allowable costs for each year for each medicaid nursing facility are accurately reported;
 - (b) Cost reports accurately reflect the true financial condition, revenues, expenditures, equity, beneficial ownership, related party status, and records of the contractor;
 - (c) The contractor's revenues, expenditures, and costs of the building, land, land improvements, building improvements, and movable and fixed equipment are recorded in compliance with department requirements, instructions, and generally accepted accounting principles;
 - (d) The responsibility of the contractor has been met in the maintenance and disbursement of patient trust funds; and
 - (e) The contractor has reported and maintained accounts receivable in compliance with this chapter and chapter 74.46 RCW.
- (2) The department shall examine the submitted cost report, or a portion thereof, of each contractor for each nursing facility for each report period to determine whether the information is correct, complete, reported in conformance with department instructions and generally accepted accounting principles, the requirements of this chapter, and chapter 74.46 RCW. The department shall determine the scope of the examination.
- (3) When the department finds that the cost report is incorrect or incomplete, the department may make adjustments to the reported information for purposes of establishing component rate allocations or in determining amounts to be recovered in direct care, therapy care, and support services under WAC 388-96-211 (3) and (4) or in any component rate resulting from undocumented or misreported costs. A schedule of the adjustments shall be provided to the contractor, including dollar amount and explanations for the adjustments. Adjustments shall be subject to review under WAC 388-96-901 and 388-96-904.

2016-039

The Department of Social and Health Services, Aging and Long-Term Support Administration, did not have adequate internal controls over and did not comply with requirements to ensure complaints of abuse and neglect of clients at Medicaid residential facilities were responded to properly.

Federal Awarding Agency: U.S. Department of Health and Human Services
Pass-Through Entity: None
CFDA Number and Title: 93.775 State Medicaid Fraud Control Units
93.777 State Survey and Certification of Health Care Providers and Suppliers (Title XVIII) Medicare
93.778 Medical Assistance Program (Medicaid; Title XIX)
Federal Award Number: 5-1605WA5MAP; 5-1605WA5ADM; 5-1605WAIMPL; 5-1605WAINCT
Applicable Compliance Component: Special Test and Provisions – Provider Health and Safety Standards
Known Questioned Cost Amount: None

Background

Medicaid is a jointly funded state and federal partnership providing coverage for about 1.9 million eligible low-income individuals in Washington who otherwise might go without medical care. Medicaid is Washington’s largest public assistance program and accounts for about one-third of the state’s federal expenditures. The program spent about \$11.6 billion in federal and state funds during fiscal year 2016.

The Centers for Medicare and Medicaid Services (CMS), which administers the program at the federal level, allows states to provide long-term care services to Medicaid clients that require daily nursing services. Medicaid coverage for nursing homes and intermediate care facilities for intellectually disabled clients is only authorized when services are provided in a residential facility licensed and certified by the state survey agency. The state survey agency is also responsible for investigating complaints and allegations of abuse, neglect or misappropriation.

Residential Care Services, under the Department of Social and Health Services’ Aging and Long-Term Support Administration, is the Medicaid Long-Term Care facilities survey agency for Washington. Residential Care Services manages the Complaint Resolution Unit, which is the front-line response system for providing the intake and assignment functions for complaints from staff, residents, family members and the public.

The Complaint Resolution Unit receives two types of complaints, which are also known as reports, 1) complaints from the public or law enforcement and 2) reports from facilities per regulatory guidelines.

Complaints can be submitted to the Complaint Resolution Unit by mail, email, fax, online and by telephone. Live calls are taken during business hours, and voicemail messages can be left on the Unit’s hotline 24 hours a day, seven days a week. Messages received after hours, on holidays and on weekends are responded to the next business day. The Unit uses the Tracking Incidents of Vulnerable Adults (TIVA) case management system to input, prioritize and track complaints.

Review of all report types regardless of delivery method is conducted before being entered into the TIVA case management system. Initial review of a report is performed by a program specialist. Clinical triage nurses determine the final priority assignment of all nursing home and intermediate care facility reports.

The following table lists the five different priority levels for new complaints and the respective required response times.

Priority levels	Required response
Immediate Jeopardy	Initiate investigation within 2 working days of receipt
Non Immediate Jeopardy-High	Initiate investigation within 10 working days of prioritization
Non Immediate Jeopardy-Medium	Initiate investigation within 20 working days of prioritization
Non Immediate Jeopardy-Low	Initiate investigation within 45 working days of prioritization
Quality Review	Field Manager Review

Complaints may be prioritized as a quality review for two reasons. First, the matter has already been, or is in the process of being investigated. Second, the initial intake assessment indicates there is no threat to the resident, or appropriate steps have already been taken to safeguard the resident. Classifying complaints as a quality review allows field staff to assess the information, but an on-site investigation may not be required.

Complaints are prioritized to ensure the level of response corresponds to the severity of the allegation. All complaints are prioritized and assigned to the Department’s field unit offices within two working days of knowledge of the complaint.

The CMS State Operations Manual requires an assessment of each nursing home complaint to be made by an individual who is professionally qualified to evaluate the nature of the problem based on his or her knowledge and experience of current clinical standards of practice and federal requirements. The complaints are then assigned to the field staff.

The Complaint Resolution Unit intake staff review and research the complaints and a decision is made if the complaint or report will be assigned to field staff for investigation. In fiscal year 2016, the Department created 28,071 complaints. Of these, 18,886 were screened in as a valid complaint, were assigned a priority and sent to the Residential Care Services field units to be investigated. The other 9,185 were complaints and were prioritized as quality reviews.

The following table shows the number of complaints created for each provider type served by the Complaint Resolution Unit:

Provider type	Number of complaints created
Adult family home	3,792
Assisted living facility	6,705
DEL licensed	1
Intermediate care facility/ID	1,305
Nursing home	10,220
RCS intake only	334
Supported living	5,714
Total complaints	28,071

Of the 28,071 complaints created during fiscal year 2016, 13,333 required an initiation of a response within 24 hours of receipt as required by state law. The following table shows the number of complaints created for each allegation category that must meet this requirement:

Allegation Code	Number of Complaints Created
01 - Resident/Patient/Client Abuse	8,027
02 - Resident/Patient/Client Neglect	3,332
03 - Misappropriation of property	1,868
05 - Restraints/Seclusion - Death	2
06 - Restraints/Seclusion - General	104
Total	13,333

Field staff investigate the complaint and perform follow-up within the assigned priority time frame determined by the severity of the issues noted in the above table.

In prior audits, we reported the Department did not respond timely to complaints of abuse or neglect. The prior finding numbers were 2015-047, 2014-045 and 13-033. Our Office also published a performance audit in 2015 that reported a backlog in complaints that had not been processed timely; however, the Department's decision to hire transcriptionists helped reduce that backlog significantly. The performance audit's report number was 1015480.

Description of Condition

We found the Department did not have adequate internal controls to ensure complaints were responded to timely.

Timeliness of responses to complaints

We used a non-statistical sampling method and randomly sampled 24 working days out of 252 working days in fiscal year 2016 to determine if the Department tracks complaints received. We found that 22 (92 percent) of the 24 days we examined either were not available for review, could not determine if the required timelines were met or intakes did not meet the required timeline.

Assessment of nursing home complaints by qualified individuals

We used a statistical sampling method and randomly selected 59 of the 10,220 total nursing home complaints created and found seven (12 percent) complaints for nursing homes were not reviewed by a clinical triage nurse.

We used a statistical sampling method and randomly selected 58 of the 1,305 total intermediate care facilities complaints created and found four (7 percent) complaints for intermediate care facilities were not reviewed by a clinical triage nurse.

We consider this control deficiency to be a material weakness.

Cause of Condition

Although the Department has significantly reduced the number of complaints in which it initiates its response later than the required 24 hours after receipt, staffing changes within the Unit prevented the Department from ensuring that complaints were responded to timely. It also prevented the Department from ensuring all nursing home and intermediate care facility complaints were reviewed by a nurse and assigned timely.

Effect of Condition

We found 1,260 (9 percent) of all 13,333 complaints created in fiscal year 2016 that the Department determined required response within 24 hours because of immediate jeopardy allegations of abuse/neglect/exploitation, were not entered into the Department's TIVA system timely. The following table shows the number of complaints that were not assessed within the 24 hours as required by state law and the range of time before response.

Working days to initiate a response	Number of complaints
2 - 5 days	1,246
6 – 20 days	3
21 - 44 days	8
Over 45 days	3
Total responses initiated after 24 hours	1,260

Additionally, investigations into the following non-immediate jeopardy complaints did not begin timely:

- 1,354 out of 7,065 (19 percent) for nursing homes
- 274 out of 753 (36 percent) for intermediate care facilities

When complaints are not created, prioritized and investigated timely, vulnerable residents are at a higher risk of abuse, neglect and financial exploitation.

Recommendation

We recommend the Department continue to strengthen its internal controls to ensure complaints are responded to as required by federal regulations and state law.

Agency's Response

The Department partially concurs with these findings.

The Department disagrees with the non-statistical sampling methodology the SAO auditor used when reviewing the "CRU daily extract reports" which are not an indicator of timeliness of review and response. It may have appeared that the Department was not tracking complaints received in 22 out of 24 days examined because the AM/PM extracts were not considered a valid tracking tool. At the time of the audit, the department was using the Tracking Incidents of Vulnerable Adults (TIVA) 2106 report to determine timeliness of response and initiation of intakes. SAO auditors were informed of the change in the tracking tool and were provided access to the TIVA database.

The Department disagrees with the statements in the Cause of Condition that a staffing change prevented the Department from ensuring that complaints were responded to timely and prevented the Department from ensuring all nursing home and intermediate care facility complaints were reviewed by a nurse and assigned timely. There is no data or factual information that RCS can find that supports this conclusion. The April 2016 staffing changes, adding transcriptionists and a lead PS4 position, actually started to help with processing reports and intakes timely.

July 1, 2016, CRU implemented a weekly monitoring of the 24 hour and 2 Working days (WD) timelines using the 2106 report generated in TIVA. Supervisor/Manager review any intakes over the 24 hour/2WD requirement to correct errors or discuss timeliness with the CRU staff. These weekly stats are also sent to staff each Tuesday to keep staff informed of where CRU is in reaching the required benchmarks.

In August 2016, the CRU implemented the online reporting system for the public. The public online reporting tool is a shared system with APS. The hotline script was updated September 2016 informing callers that an online option was available for providers and the public. The online reports are imported into TIVA and take less time to process than a live call.

In April 2017, planned enhancements to the TIVA database will be implemented. CRU staff will no longer be able to link a nursing home or ICF/IID intake to the field without prior review by a clinical

triage nurse. Additionally, a pop-up box will appear if the intake “created” time is over 24 hours from the “knowledge” time. This enhancement will eliminate input errors.

By July 2017, CRU will develop an additional Standard Operating Procedure (SOP) to define extenuating circumstances as noted in Chapter 5, section 5070, of the SOM for non-immediate jeopardy intakes. A TIVA update has been requested to include a dropdown box that would be for Supervisors only, in the case that an intake is linked after 2WD and falls into one of the approved extenuating circumstances explanations. An additional TIVA enhancement request will not allow any intake to be linked over 2 WD without Supervisor override.

The Department has been authorizing overtime to ensure that complaints/reports are responded to within 24 hours of “knowledge.” However, overtime has proven to be a burden for staff and for the RCS budget and is not a viable long term solution. RCS is designing continued TIVA and processing enhancements to mitigate the need for overtime and to meet timeliness requirements.

The Department continues to work on filling vacancies and will ensure new hires complete the federally required basic surveyor training. In May 2016, the on-call staffing program was implemented to enhance our work force to help improve the timeliness of investigations. Ongoing monitoring of timeliness of initiation of complaint investigations is done monthly. This monitoring provides the department with information where to leverage resources to get complaints initiated within required timeframe. These interventions during the last twelve months, has assisted the Department to address the timeliness and backlog of complaint investigations. The backlog of complaints has been reduced resulting in an improvement in the timeliness of complaint investigations.

The Department will continue to implement plans to strengthen internal controls and ensure complaints/reports are responded to and investigated, as required by federal regulation and state law.

Auditor’s Concluding Remarks

We thank the Department for its cooperation and assistance throughout the audit.

During fieldwork, staff told us that the TIVA 2106 report was being used to monitor the timeliness of complaint responses on a monthly basis, while the Unit’s daily extract reports were being reviewed by staff daily. A monthly review is not an effective control activity to ensure the Department is in material compliance with required response times.

During fieldwork, we were told by the Unit manager that the primary cause of the untimely complaint responses was due to staffing changes.

We appreciate the Department’s commitment to resolving these matters. We reaffirm our finding and will review the status of the Department’s corrective action during our next audit.

Applicable Laws and Regulations

Title 2 U.S. Code of Federal Regulations Part 200, *Uniform Administrative Requirements, Cost Principles, and Audit Requirements for Federal Awards* (Uniform Guidance) established reporting requirements for audit findings.

Section 200.303 Internal controls.

The non-Federal entity must:

- (a) Establish and maintain effective internal control over the Federal award that provides reasonable assurance that the non-Federal entity is managing the Federal award in compliance with Federal statutes, regulations, and the terms and conditions of the Federal award. These internal controls should be in compliance with guidance in “Standards for Internal Control in the Federal Government” issued by the Comptroller General of the United States or the “Internal Control Integrated Framework”, issued by the Committee of Sponsoring Organizations of the Treadway Commission (COSO).
- (b) Comply with Federal statutes, regulations, and the terms and conditions of the Federal awards.

Section 200.516 Audit reporting, state in part:

- (a) *Audit findings reported.* The auditor must report the following as audit findings in a schedule of findings and questioned costs:
 - (1) Significant deficiencies and material weaknesses in internal control over major programs and significant instances of abuse relating to major programs. The auditor’s determination of whether a deficiency in internal control is a significant deficiency or material weakness for the purpose of reporting an audit finding is in relation to a type of compliance requirement for a major program identified in the Compliance Supplement.
 - (2) Material noncompliance with the provisions of Federal statutes, regulations, or the terms and conditions of Federal awards related to a major program. The auditor’s determination of whether a noncompliance with the provisions of Federal statutes, regulations, or the terms and conditions of Federal awards is material for the purpose of reporting an audit finding is in relation to a type of compliance requirement for a major program identified in the compliance supplement.

The American Institute of Certified Public Accountants defines significant deficiencies and material weaknesses in internal controls over compliance in its *Codification of Statements on Auditing Standards*, section 935, as follows:

- .011 For purposes of adapting GAAS to a compliance audit, the following terms have the meanings attributed as follows: ...

Material weakness in internal control over compliance. A deficiency, or combination of deficiencies, in internal control over compliance, such that there is a reasonable possibility that material noncompliance with a compliance requirement will not be prevented, or detected and corrected, on a timely basis. In this section, a reasonable possibility exists when the likelihood of the event is either reasonably possible or probable as defined as follows:

Reasonably possible. The chance of the future event or events occurring is more than remote but less than likely.

Remote. The chance of the future event or events occurring is slight.

Probable. The future event or events are likely to occur.

Significant deficiency in internal control over compliance. A deficiency, or a combination of deficiencies, in internal control over compliance that is less severe than a material weakness in internal control over compliance, yet important enough to merit attention by those charged with governance.

Material noncompliance. In the absence of a definition of material noncompliance in the governmental audit requirement, a failure to follow compliance requirements or a violation of prohibitions included in the applicable compliance requirements that results in noncompliance that is quantitatively or qualitatively material, either individually or when aggregated with other noncompliance, to the affected government program.

42 U.S. Code § 1396r Requirement for nursing facilities, states in part:

(g) Survey and Certification Process

(4) Investigation of complaints and monitoring nursing facility compliance --

Each state shall maintain procedures and adequate staff to-

(A) Investigate complaints of violations of requirements by nursing facilities, and

(B) Monitor, on site, on a regular, as needed basis, a nursing facility's compliance with the requirements of subsections (b), (c), and (d) of this section, if -

- (i) the facility has been found not to be in compliance with such requirements and is in the process of correcting deficiencies to achieve such compliance;
- (ii) the facility was previously found not to be in compliance with such requirements, has corrected deficiencies to achieve such compliance, and verification of continued compliance is indicated; or
- (iii) the State has reason to question the compliance of the facility with such requirements.

A State may maintain and utilize a specialized team (including an attorney, an auditor, and appropriate health care professionals) for the purpose of identifying, surveying, gathering, and preserving evidence, and carrying out appropriate enforcement actions against substandard nursing facilities.

Center for Medicare and Medicaid Services, State Operations Manual, Chapter 5-Complaint Procedures, 5070 - Priority Assignment for Nursing Homes, Deemed and Non-Deemed Providers/Suppliers, and EMTALA states in part:

An assessment of each intake must be made by an individual who is professionally qualified to evaluate the nature of the problem based upon his/her knowledge and/or experience of current clinical standards of practice and Federal requirements. In situations where a determination is made that immediate jeopardy may be present and ongoing, the SA is required to investigate within two working days of receipt of the information. For all non-immediate jeopardy situations, the complaint/incident is prioritized within two working days of its receipt, unless there are extenuating circumstances that impede the collection of relevant information.

Title 42, Code of Federal Regulations, Section 488.335 Action on complaints of resident neglect and abuse, and misappropriation of resident property, states in part:

(a) Investigation.

- (1) The State must review all allegations of resident neglect and abuse, and misappropriation of resident property and follow procedures specified in §488.332.
- (2) If there is reason to believe, either through oral or written evidence that an individual used by a facility to provide services to residents could have abused or neglected a resident or misappropriated a resident's property, the State must investigate the allegation.
- (3) The State must have written procedures for the timely review and investigation of allegations of resident abuse and neglect, and misappropriation of resident property.

Revised Code of Washington RCW 74.34.063 Response to reports – Timing – Reports to law enforcement agencies -- Notification to licensing authority, states in part:

1. The department shall initiate a response to a report, no later than twenty-four hours after knowledge of the report, of suspected abandonment, abuse, financial exploitation, neglect, or self-neglect of a vulnerable adult.

Residential Care Services Operational Principles and Procedures Complaint Resolution Unit Section 24 Prioritizing Intakes – Operational Procedures September 2015 states in part:

1. CRU staff will prioritize complaint intakes using the following guidelines:
 - a. 2 working days (Immediate Jeopardy) - A situation in which the provider's noncompliance with one or more requirements of participation has caused, or is likely to cause, serious injury, harm, impairment, or death to a resident. Immediate corrective action is necessary.
 - b. 10 working days (Non Immediate Jeopardy-High) - Complaint and incident investigations shall be initiated within 10 working days of linking the intake to the RCS Field Unit.
 - c. 20 working days (Non Immediate Jeopardy-Medium) - Complaint and incident investigations shall be initiated within 20 working days of linking the intake to the RCS Field Unit.
 - d. 45 working days (Non Immediate Jeopardy-Low) - Investigations shall be initiated within 45 working days of linking the intake to the RCS Field Unit.
 - e. 90 working days - Complaint investigation may be delayed if the allegation is general in nature, anonymous, and a survey is scheduled within 90 working days. In general, this is a priority assignment made by the field manager, not the CRU.

2016-040 The Department of Social and Health Services, Aging and Long-Term Support Administration, did not have adequate internal controls to ensure Medicaid Community Options Program Entry System and Community First Choice in-home care providers had proper background checks.

Federal Awarding Agency: U.S. Department of Health and Human Services
Pass-Through Entity: None
CFDA Number and Title: 93.775 State Medicaid Fraud Control Units
93.777 State Survey and Certification of Health Care Providers and Suppliers (Title XVIII) Medicare
93.778 Medical Assistance Program (Medicaid; Title XIX)
Federal Award Number: 5-1605WA5MAP; 5-1605WA5ADM; 5-1605WAIMPL; 5-1605WAINCT
Applicable Compliance Component: Activities Allowed/Unallowed, Allowable Costs/Cost Principles, Special Tests and Provisions – Provider Eligibility
Known Questioned Cost Amount: \$ 58,973
Likely Questioned Cost Amount: \$3,905,529

Background

Medicaid is a jointly funded state and federal partnership providing coverage for about 1.9 million eligible low-income individuals who otherwise might go without medical care. Medicaid is Washington’s largest public assistance program and accounts for about one-third of the state’s federal expenditures. The program spent about \$11.6 billion in federal and state funds during fiscal year 2016. The Department spent \$632 million for in-home services provided to Medicaid clients.

The Community Options Program Entry System (COPES) program, administered by the Department’s Aging and Long-Term Support Administration (AL TSA), delivers in-home care services to eligible clients. Effective July 1, 2015, the COPES program was replaced by the Community First Choice (CFC) option in the State’s amended Title XIX plan for the fiscal year 2016. Under this new option, eligible Medicaid clients may continue to receive in-home services provided by individuals contracted with the Department.

The Department has agreements with local Area Agencies on Aging offices throughout the state to manage Medicaid clients and to ensure providers are eligible to provide in-home care under state law and Department rules. The Department performs an annual quality assurance review of offices to ensure providers of in-home care have met the minimum requirements for contracting with the Department.

Medicaid is the primary funding source for long-term care providers. The Medicaid Home and Community Based Services program permits states to furnish long-term care services to Medicaid clients in home and community settings. These services are provided in the client’s home by

individuals or agencies chosen by the Medicaid client or the client's legal representative. Payments to individual providers contracted with the Aging and Long-Term Support Administration accounted for more than 53 percent of all Medicaid payments made by the Department in fiscal year 2016.

All individual providers must meet basic qualifications to provide services to Medicaid clients. They must be at least 18 years old, authorized to work in the United States and meet the Department's minimum training requirements. In addition, individual providers must successfully undergo a state background check every two years and, effective January 8, 2012, all new contracted providers or applicants who have not lived in Washington for three consecutive years must complete a national fingerprint background check.

The Department has established a rule that requires long-term care providers to renew their background checks at least every two years to remain eligible to continue to provide in-home care to Medicaid recipients.

The Department identifies crimes that automatically disqualify individuals from serving vulnerable clients, outlined in WAC 388-113-0020, which applies to all programs administered by Aging and Long-Term Support Administration. Individuals who have committed crimes on this list are automatically prohibited from "having unsupervised access to children, vulnerable adults, or to individuals with a developmental disability." If an individual is found to have committed a crime that is not automatically disqualifying, the Department must perform a character, competence and suitability review to assess and determine if the provider may have unsupervised access to clients.

In prior audits, we reported the Department did not ensure COPES providers completed background checks before providing services to Medicaid clients. The prior finding numbers were 2015-040, 2014-049, 2013-40, 12-41 and 11-34.

Description of Condition

We found the Department did not have adequate internal controls to ensure providers receive background checks, as required by state law. The Department did not perform its annual quality review of provider compliance with background check requirements for fiscal year 2016.

We consider this control deficiency to be a material weakness.

Cause of Condition

The Department chose not to perform its annual review of in-home care providers during fiscal year 2016 because of a lawsuit filed by the Washington Service Employees International Union (SEIU) Training Partnership. As a result, the Department was not able to access provider documents held by the Partnership needed to complete its quality assurance review. These circumstances caused the Department to postpone its quality assurance review into fiscal year 2017.

Effect of Condition and Questioned Costs

Providers who do not meet background check requirements are not eligible to provide services to Medicaid clients. Payments made by the Department to an ineligible provider are unallowable.

We used a statistical sampling method and randomly selected 100 out of 13,388 COPES Individual providers, and another 100 out of 29,550 Community First Choice individual providers who provided in-home care services during fiscal year 2016 to ensure that:

- The provider completed a background check within the past two years
- Providers who have committed crimes that are not automatically disqualifying passed a character, competence and suitability review permitting them to work unsupervised with vulnerable adults
- No individuals with disqualifying crimes listed on the Secretary’s List were employed at the time of the audit, or continued to work unsupervised with Medicaid clients
- A Washington State background check covered the entire audit period in which the provider had access to Medicaid clients
- All individual providers required to complete a fingerprint check had done so before working unsupervised with vulnerable adults

We found one provider worked unsupervised with a Medicaid client without completing a fingerprint background check. The Department is currently performing a fingerprint check for this provider.

We identified 40 providers who had criminal records, whose crimes were not disqualifying. The Department performed the required review for 38 of those providers. However, we found the Department did not ensure a character, competence and suitability review was completed and documented for two of the 40 providers.

We also identified one provider who did not have their background check renewed within the two-year limit.

The following table summarizes the questioned costs:

Condition	Number of Providers	Total Unallowable Payments	Likely Unallowable Payments
Providers working with an expired background check	1	\$ 4,910	\$ 20,484
Providers working without a fingerprint background check	1	\$21,559	\$3,356,758
Providers with criminal records who worked without documented evidence of a character, competence, and suitability review	2	\$63,105	\$3,623,377
TOTAL	4	\$89,574	\$7,000,620

We are questioning \$58,973, which is the federal share of the unallowable payments. When we project the results of the sample to the entire population of Community First Choice individual providers, we estimate the Department made \$7,000,620 in unallowable payments to providers. The federal portion of the estimated total questioned costs is \$3,905,529. The federal share is calculated using the applicable Federal Funding Percentage (FFP) rate, which can range from 50 percent to 100 percent for this program.

We question costs when we find an agency has not complied with state or federal regulations, or when it does not have adequate documentation to support expenditures.

Recommendations

We recommend the Department:

- Strengthen its monitoring of contracted providers to ensure background checks are completed as required by state law and Department rule
- Follow up on background check results and ensure ineligible providers do not have access to vulnerable Medicaid clients
- Consult with the U.S. Department of Health and Human Services to discuss repaying the questioned costs, including interest

Agency's Response

The Department does not concur with the finding.

The Department disagrees with the statement that there were not adequate internal controls to ensure in-home care providers (IPs) had proper background checks. Because of the Department's strong internal controls, 100% of the providers audited in the SAO sample received an initial background check and no providers had a disqualifying crime. Of the 200 IPs sampled by SAO, there were errors with background checks for only 4 IPs. These errors ranged from a data entry mistake to a missing fingerprint check. Each of these 4 IPs had initial background checks and none had disqualifying crimes at the initial check or during the time period in question. This 98% proficiency rate is indicative of the strong internal controls utilized by the Department to ensure that IPs had proper background checks.

The Department does not agree with the SAO's determination that providers for whom a background check or a character, competence, or suitability (CC&S) was not renewed every two years are unqualified. WAC 388-71-0510 states that the provider must complete a background check to become an individual provider, but does not state that the IP will become unqualified if another background check is not completed within two years. WAC 388-71-0513 states an IP must not have a disqualifying crime or be determined unqualified based on a CC&S. There are no state or federal regulations requiring that a background check or CC&S be repeated every two years. It is for these reasons that the Department does not agree that the findings should be tied to questioned costs.

As noted by the SAO, due to the SEIU lawsuit, the Department was not able to access provider documents held by the Partnership. This prevented the Department from completing its quality assurance review in June of 2016. QA monitoring of IP files was delayed until August when a work

around was in place to access this data. The Department disagrees with the SAO's determination that the Department lacks internal controls because a Departmental Quality Assurance (QA) IP file review was not completed during fiscal year 2016. The Department completed a QA IP file review during calendar year 2016. There is no requirement or guidance from CMS stipulating that file reviews must be completed by fiscal year rather than calendar year.

Auditor's Concluding Remarks

We thank the Department for its cooperation and assistance throughout the audit.

We agree with the Department that the requirements for background check renewals for individual providers every two-years and documented redeterminations of an individual's character, competence and suitability are not outlined in state law. However, these requirements are communicated in the Administration's policies, which are cited under the Applicable Laws and Regulations below.

Regardless of the reason, we concluded the Department did not have internal controls during the audit period because its quality reviews of provider compliance were not performed.

We agree the Department is in material compliance with background check requirements for the Community First Choice program. Despite the 98 percent compliance rate for the audit sample, without conducting sufficient internal control activities, we believe it is reasonably possible that the Department would not prevent or detect material noncompliance.

We reaffirm our finding and will review the status of the Department's corrective action during our next audit.

Applicable Laws and Regulations

Title 2 U.S. Code of Federal Regulations Part 200, *Uniform Administrative Requirements, Cost Principles, and Audit Requirements for Federal Awards* (Uniform Guidance) established reporting requirements for audit findings.

Section 200.303 Internal controls.

The non-Federal entity must:

- (a) Establish and maintain effective internal control over the Federal award that provides reasonable assurance that the non-Federal entity is managing the Federal award in compliance with Federal statutes, regulations, and the terms and conditions of the Federal award. These internal controls should be in compliance with guidance in "Standards for Internal Control in the Federal Government" issued by the Comptroller General of the United States or the "Internal Control Integrated Framework", issued by the Committee of Sponsoring Organizations of the Treadway Commission (COSO).

Section 200.403 Factors affecting Allowability of costs.

Except where otherwise authorized by statute, costs must meet the following general criteria in order to be allowable under Federal awards.

- (a) Be necessary and reasonable for the performance of the Federal award and be allocable thereto under these principles.
- (b) Conform to any limitations or exclusions set forth in these principles or in the Federal award as to types or amount of cost items.
- (c) Be consistent with policies and procedures that apply uniformly to both federally financed and other activities of the non-Federal entity.
- (d) Be accorded consistent treatment. A cost may not be assigned to a Federal award as a direct cost if any other cost incurred for the same purpose in like circumstances has been allocated to the Federal award as an indirect cost.
- (e) Be determined in accordance with generally accepted accounting principles (GAAP), except, for state and local governments and Indian tribes only, as otherwise provided for in this part.
- (f) Not be included as a cost or used to meet cost sharing or matching requirements of any other federally financed program in either the current or a prior period. See also §200.306 Cost sharing or matching paragraph (b).
- (g) Be adequately documented. See also §§200.300 Statutory and national policy requirements through 200.309 Period of performance of this part.

Section 200.516 Audit reporting, state in part:

- (a) *Audit findings reported.* The auditor must report the following as audit findings in a schedule of findings and questioned costs:
 - (1) Significant deficiencies and material weaknesses in internal control over major programs and significant instances of abuse relating to major programs. The auditor's determination of whether a deficiency in internal control is a significant deficiency or material weakness for the purpose of reporting an audit finding is in relation to a type of compliance requirement for a major program identified in the Compliance Supplement.
 - (3) Known questioned costs that are greater than \$25,000 for a type of compliance requirement for a major program. Known questioned costs are those specifically identified by the auditor. In evaluating the effect of questioned costs on the opinion on compliance, the auditor considers the best estimate of total costs questioned (likely questioned costs), not just the questioned costs specifically identified (known questioned costs). The auditor must also report known questioned costs when likely questioned costs are greater than \$25,000 for a type of compliance requirement for a major program. In reporting questioned costs, the auditor must include information to provide proper perspective for judging the prevalence and consequences of the questioned costs.

The American Institute of Certified Public Accountants defines significant deficiencies and material weaknesses in internal controls over compliance in its *Codification of Statements on Auditing Standards*, section 935, as follows:

- .011 For purposes of adapting GAAS to a compliance audit, the following terms have the meanings attributed as follows: ...

Material weakness in internal control over compliance. A deficiency, or combination of deficiencies, in internal control over compliance, such that there is a reasonable possibility that material noncompliance with a compliance requirement will not be prevented, or detected and corrected, on a timely basis. In this section, a reasonable possibility exists when the likelihood of the event is either reasonably possible or probable as defined as follows:

Reasonably possible. The chance of the future event or events occurring is more than remote but less than likely.

Remote. The chance of the future event or events occurring is slight.

Probable. The future event or events are likely to occur.

Significant deficiency in internal control over compliance. A deficiency, or a combination of deficiencies, in internal control over compliance that is less severe than a material weakness in internal control over compliance, yet important enough to merit attention by those charged with governance.

Revised Code of Washington RCW 74.39A.056, Criminal history checks on long-term care workers, states:

- (1) (a) All long-term care workers shall be screened through state and federal background checks in a uniform and timely manner to verify that they do not have a criminal history that would disqualify them from working with vulnerable persons. The department must perform criminal background checks for individual providers and prospective individual providers and make the information available as provided by law.
 - (b) (i) Except as provided in (b)(ii) of this subsection, for long-term care workers hired after January 7, 2012, the background checks required under this section shall include checking against the federal bureau of investigation fingerprint identification records system and against the national sex offenders registry or their successor programs. The department shall require these long-term care workers to submit fingerprints for the purpose of investigating conviction records through both the Washington state patrol and the federal bureau of investigation. The department shall not pass on the cost of these criminal background checks to the workers or their employers.
 - (ii) This subsection does not apply to long-term care workers employed by community residential service businesses until January 1, 2016.
 - (c) The department shall share state and federal background check results with the department of health in accordance with RCW 18.88B.080.
- (2) No provider, or its staff, or long-term care worker, or prospective provider or long-term care worker, with a stipulated finding of fact, conclusion of law, an agreed order, or finding of fact, conclusion of law, or final order issued by a disciplining authority or a court of law or entered into a state registry with a final substantiated finding of abuse, neglect, exploitation, or abandonment of a minor or a vulnerable adult as defined in chapter 74.34 RCW shall be employed in the care of and have unsupervised access to vulnerable adults.
 - (3) The department shall establish, by rule, a state registry which contains identifying information about long-term care workers identified under this chapter who have final substantiated findings of abuse, neglect, financial exploitation, or abandonment of a vulnerable adult as defined in RCW 74.34.020. The rule must include disclosure,

disposition of findings, notification, findings of fact, appeal rights, and fair hearing requirements. The department shall disclose, upon request, final substantiated findings of abuse, neglect, financial exploitation, or abandonment to any person so requesting this information. This information must also be shared with the department of health to advance the purposes of chapter 18.88B RCW.

- (4) The department shall adopt rules to implement this section.

Washington Administrative Code WAC 388-71-0510, "How does a person become an individual provider?" states:

In order to become an individual provider, a person must:

- (1) Be eighteen years of age or older;
- (2) Provide the social worker/case manager/designee with:
 - (a) A valid Washington state driver's license or other valid picture identification; and either
 - (b) A Social Security card; or
 - (c) Proof of authorization to work in the United States.
- (3) Complete the required DSHS form authorizing a background check;
- (4) Disclose any criminal convictions and pending charges, and also disclose civil adjudication proceedings and negative actions as those terms are defined in WAC 388-71-0512;
- (5) Effective January 8, 2012, be screened through Washington state's name and date of birth background check. Preliminary results may require a thumb print for identification purposes.
- (6) Effective January 8, 2012, be screened through the Washington state and national fingerprint-based background check, as required by RCW 74.39A.056.
- (7) Results of background checks are provided to the department and the employer or potential employer unless otherwise prohibited by law or regulation for the purpose of determining whether the person:
 - (a) Is disqualified based on a disqualifying criminal conviction or a pending charge for a disqualifying crime as listed in WAC 388-113-0020, civil adjudication proceeding, or negative action as defined in WAC 388-71-0512 and 388-71-0540; or
 - (b) Should or should not be employed as an individual provider based on his or her character, competence, and/or suitability.
- (8) For those providers listed in RCW 43.43.837 (1), a second Washington state and national fingerprint-based background check is required if they have lived out of the state of Washington since the first national fingerprint-based background check was completed.
- (9) The department may require an individual provider to have a Washington state name and date of birth background check or a Washington state and national fingerprint-based background check, or both, at any time.
- (10) Sign a home and community-based service provider contract/agreement to provide personal care services to a person under a medicaid state plan or federal waiver such as COPES or other waiver programs.

WAC 388-71-0513 Is a background check required of a long-term care worker employed by a home care agency licensed by the department of health?

In order to be a long-term care worker employed by a home care agency, a person must:

- (1) Complete the required DSHS form authorizing a background check.
- (2) Disclose any disqualifying criminal convictions and pending charges as listed in WAC 388-113-0020, and also disclose civil adjudication proceedings and negative actions as those terms are defined in WAC 388-71-0512.
- (3) Effective January 8, 2012, be screened through Washington state's name and date of birth background check. Preliminary results may require a thumb print for identification purposes.
- (4) Effective January 8, 2012, be screened through the Washington state and national fingerprint-based background check, as required by RCW 74.39A.056.
- (5) Results of background checks are provided to the department and the employer or potential employer for the purpose of determining whether the person:
 - (a) Is disqualified based on a disqualifying criminal conviction or a pending charge for a disqualifying crime listed in WAC 388-113-0020, civil adjudication proceeding, or negative action as defined in WAC 388-71-0512; or listed in WAC 388-71-0540; or
 - (b) Should or should not be employed based on his or her character, competence, and/or suitability.
- (6) For those providers listed in RCW 43.43.837(1), a second national fingerprint-based background check is required if they have lived out of the state of Washington since the first national fingerprint-based background check was completed.
- (7) The department may require a long-term care worker to have a Washington state name and date of birth background check or a Washington state and national fingerprint-based background check, or both, at any time.

The Department's Aging and Long-Term Support Administration – Home and Community Services Division - Long-Term Care Manual, Chapter 11: In-Home Providers, states in part:

How often does a background check need to be completed on a provider?

Every two years, unless you have reasonable cause to believe that the provider has been arrested or convicted of a disqualifying crime. In this circumstance, you need to re-run another background check.

The Department's Aging and Long-Term Support Administration – Home and Community Services Division - Long-Term Care Manual, Chapter 7(a): In-Home Provider Requirements, states in part:

You will receive a RECORD letter from BCCU when there is a pending charge for a disqualifying crime. However, pending crimes are always disqualifying based on character, competence, and suitability, unless there is an outcome in court. The character, competence, and suitability determination must be documented on the Assessment Documentation Form or other document that is maintained in the provider's file. Complete a character, competence, and suitability determination in writing if the IP has a conviction for a non-disqualifying crime or the person is not found guilty.

...If you have previously completed a character, competence, and suitability determination, you do not have to complete a new one on the same provider of the same client if there are no new convictions or negative actions, and the provider meets all other provider qualifications in meeting the client's needs. (If the provider is going to work for another client, you need to complete another determination in relation to the new client.) If you find that you do not need a new determination, you still need to document that you have:

- Reviewed the current background check;
- Found that there is no new information;
- Referred to the previous character, competence, and suitability determination made, with the date; and
- Stated your decision.

2016-041 The Department of Social and Health Services, Developmental Disabilities Administration, did not have adequate internal controls over and did not comply with requirements for cost of care adjustments paid to Medicaid supported living providers.

Federal Awarding Agency:	U.S. Department of Health and Human Services
Pass-Through Entity:	None
CFDA Number and Title:	93.775 State Medicaid Fraud Control Units 93.777 State Survey and Certification of Health Care Providers and Suppliers (Title XVIII) Medicare 93.778 Medical Assistance Program (Medicaid; Title XIX)
Federal Award Number:	5-1605WA5MAP; 5-1605WA5ADM; 5-1605WAIMPL; 5-1605WAINCT
Applicable Compliance Component:	Activities Allowed/Unallowed Allowable Costs/Cost Principles
Known Questioned Cost Amount:	\$ 34,366
Likely Questioned Cost:	\$187,604

Background

Medicaid is a jointly funded state and federal partnership providing coverage for about 1.9 million eligible low-income individuals in Washington who otherwise might go without medical care. Medicaid is Washington's largest public assistance program and accounts for about one-third of the state's federal expenditures. The program spent about \$11.6 billion in federal and state funds during fiscal year 2016.

The Department's Developmental Disabilities Administration administers the Home and Community Based Services program for people with developmental disabilities. Supported living is a core service of this program, delivered by staff of contracted supported living providers. Contractor employees assist clients in daily living activities and with the social and adaptive skills necessary to live in the community.

The Department uses an assessment to evaluate a client's support needs. The Department uses the assessment results to calculate the number of support hours a client needs to live in the community. The assessment predicts a level of care and assigns support hours as if the client lives alone; however most live with other clients. The Department reviews the household as a whole and identifies opportunities where shared economies can be applied. When a client is temporarily out of the home, the shared needs of the remaining clients must be addressed.

When a client is temporarily out of the home, a provider can request a cost of care adjustment to cover the administrative and staff support costs necessary to maintain the residence and the client's affairs. If a client permanently leaves the household, providers can request a cost of care adjustment to

maintain the household's shared hours until a new housemate can be found. In fiscal year 2016, the Department paid about \$1.2 million to supported living providers for cost of care adjustments.

Department policy 6.02 III requires providers to complete a cost of care adjustment request form (DSHS 06-124). Depending on the type of rate claimed, providers submit varying levels of justification to document and support the need for additional funds. For shared hours and total rate requests, the policy states, "Agencies must include a clear and detailed justification highlighting client need." The policy also states that the Department will not approve shared or individual hours for a client residing in a single-person household.

The Department has published instructions providers are expected to follow regarding the adjustment request form. Section D of the instructions states in part:

"Explain how the hours requested will be utilized for the remaining clients in the home. It is necessary to include clear and detailed justification highlighting the need for any hours being requested (shared and individual hours). Specifically indicate the utilization of those hours. Wording must pertain to the client needs in the household and not related to the need to maintain current staffing patterns."

Providers submit their request forms to a Department resource manager, who reviews the forms for accuracy and completeness and forwards the form to a supervisor for final approval and payment authorization.

In prior audits, we reported the Department did not have adequate internal controls to ensure cost of care adjustments were allowable. The prior finding numbers were 2015-052, 2014-041 and 2013-038.

Description of Condition

The Department did not have adequate internal controls over cost of care adjustments to ensure the requests were allowable. We randomly selected and examined 63 cost of care adjustment payments from the total population of 806.

For thirty-two payments, totaling \$68,724, the Department approved payments when providers did not document a clear and detailed justification highlighting client need. In these instances, the providers said the additional hours were needed to ensure adequate staffing of the remaining clients in the home, but did not specifically describe why those hours were needed for the remaining clients and how they would be utilized.

Within the thirty-two requests, we also found:

- Two payments, totaling \$2,601, were made for supported living clients in a medical facility when Medicaid funds were used to pay for their hospital stays. One of those payments also included a request for shared hours for a single-person household, which is prohibited by Department policy.
- One payment was inaccurately calculated, which led to an overpayment of \$2,218.

We consider the condition described above to be a material weakness in internal controls.

Cause of Condition

According to Department staff, the justification submitted by providers on cost of care adjustment forms is not the only information used to decide whether to approve requests. For example, resource managers have knowledge about the program and client's specific needs. Information from the Department's online CARE system and provider contracts may also be relied upon. Staff communicate with providers to better understand the circumstances surrounding a request to be paid for additional hours.

When examining the forms without adequate justification, we did not observe instances when the additional information was documented. Therefore, the additional information could not be considered by supervisors who make the final decision about authorizing and approving requests.

Effect of Condition and Questioned Costs

We used a statistically valid sampling approach to select the 63 cost of care adjustment payments we examined. Of the \$68,724 in payments that were not adequately supported, we are questioning \$34,366, which is the federal portion of the unallowable payments.

When we project the results to the entire population of cost of care adjustment payments, we estimate the Department paid \$375,201 in unallowable payments to providers. The federal portion of the estimated total questioned cost is \$187,604.

We question costs when we find an agency has not complied with federal grant regulations or when it does not have adequate documentation to support its expenditures.

Recommendations

We recommend the Department:

- Improve its monitoring of provider cost of care adjustment requests to ensure they include clear and detailed justifications
- Ensure staff present supervisors with additional information in writing before requesting their review and approval of payment requests
- Consult with the U.S. Department of Health and Human Services to discuss repaying the questioned costs, including interest

Agency's Response

The department partially concurs with the audit finding.

The Department agrees that two payments were made to providers when clients were in a hospital and that one payment was inaccurately calculated. The Department will continue to monitor for accuracy and compliance with the payment requirements.

The Department does not agree justification forms were inadequate:

- *The Department believes that SAO's exceptions are based upon SAO's subjective analysis of the justification information contained in the COCA request. SAO did not give consideration of the knowledge or expertise of the program that Resource Managers possess, nor did they consider the review of other related documents Resource Managers assess while processing the COCA request.*
- *SAO's cause of condition statement "without adequate justification" is ambiguous and subjective in nature. Justification relies on the professional review and expertise of the Resource Manager.*
- *The Department also believes that a portion of the exceptions are with group homes. These group homes are facility based services where "maintaining current staffing patterns" is acceptable to justify approval of the COCA request. We do not believe SAO gave consideration between the settings, group homes versus client homes, when determining exceptions.*
- *The Department believes the current justification instructions are concise and clear and provide adequate information and guidance to complete the COCA request.*

Auditor's Concluding Remarks

We thank the Department for their assistance throughout the audit.

The Department's policy clearly states that providers are to include a clear and detailed justification highlighting client need. For the identified exceptions, we found providers did not include a justification indicating how the hours would be utilized for the remaining clients in the home.

Three of the exceptions were related to cost of care adjustments paid to group home providers. During the audit, the Department did not provide us with information or a policy that indicated "maintaining adequate staffing patterns" was adequate justification for payments to group home providers.

Since fiscal year 2013, we have issued a finding regarding these payments. We are committed to working through the disagreement with Department management. However, we reaffirm our finding and will follow up in our next audit.

Applicable Laws and Regulations

Title 2 U.S. Code of Federal Regulations Part 200, *Uniform Administrative Requirements, Cost Principles, and Audit Requirements for Federal Awards* (Uniform Guidance) established reporting requirements for audit findings.

Section 200.303 Internal controls.

The non-Federal entity must:

- (a) Establish and maintain effective internal control over the Federal award that provides reasonable assurance that the non-Federal entity is managing the Federal award in compliance with Federal statutes, regulations, and the terms and conditions of the Federal award. These internal controls should be in compliance with guidance in "Standards for Internal Control in the Federal Government" issued by the Comptroller

General of the United States or the “Internal Control Integrated Framework”, issued by the Committee of Sponsoring Organizations of the Treadway Commission (COSO).

- (b) Comply with Federal statutes, regulations, and the terms and conditions of the Federal awards.

Section 200.516 Audit reporting, state in part:

- (a) *Audit findings reported.* The auditor must report the following as audit findings in a schedule of findings and questioned costs:
 - (1) Significant deficiencies and material weaknesses in internal control over major programs and significant instances of abuse relating to major programs. The auditor’s determination of whether a deficiency in internal control is a significant deficiency or material weakness for the purpose of reporting an audit finding is in relation to a type of compliance requirement for a major program identified in the Compliance Supplement.
 - (2) Material noncompliance with the provisions of Federal statutes, regulations, or the terms and conditions of Federal awards related to a major program. The auditor’s determination of whether a noncompliance with the provisions of Federal statutes, regulations, or the terms and conditions of Federal awards is material for the purpose of reporting an audit finding is in relation to a type of compliance requirement for a major program identified in the compliance supplement.
 - (3) Known questioned costs that are greater than \$25,000 for a type of compliance requirement for a major program. Known questioned costs are those specifically identified by the auditor. In evaluating the effect of questioned costs on the opinion on compliance, the auditor considers the best estimate of total costs questioned (likely questioned costs), not just the questioned costs specifically identified (known questioned costs). The auditor must also report known questioned costs when likely questioned costs are greater than \$25,000 for a type of compliance requirement for a major program. In reporting questioned costs, the auditor must include information to provide proper perspective for judging the prevalence and consequences of the questioned costs.
 - (4) Known questioned costs that are greater than \$25,000 for a Federal program which is not audited as a major program. Except for audit follow-up, the auditor is not required under this part to perform audit procedures for such a Federal program; therefor, the auditor will normally not find questioned costs for a program that is not audited as a major program. However, if the auditor does become aware of questioned costs for a Federal program that is not audited as a major program (e.g., as part of audit follow-up or other audit procedures) and the known questioned costs are greater than \$25,000, then the auditor must report this as an audit finding.

The American Institute of Certified Public Accountants defines significant deficiencies and material weaknesses in internal controls over compliance in its *Codification of Statements on Auditing Standards*, section 935, as follows:

- .011 For purposes of adapting GAAS to a compliance audit, the following terms have the meanings attributed as follows: ...

Material weakness in internal control over compliance. A deficiency, or combination of deficiencies, in internal control over compliance, such that there is a reasonable possibility that material noncompliance with a compliance requirement will not be prevented, or detected and corrected, on a timely basis. In this section, a reasonable possibility exists when the likelihood of the event is either reasonably possible or probable as defined as follows:

Reasonably possible. The chance of the future event or events occurring is more than remote but less than likely.

Remote. The chance of the future event or events occurring is slight.

Probable. The future event or events are likely to occur.

Significant deficiency in internal control over compliance. A deficiency, or a combination of deficiencies, in internal control over compliance that is less severe than a material weakness in internal control over compliance, yet important enough to merit attention by those charged with governance.

Material noncompliance. In the absence of a definition of material noncompliance in the governmental audit requirement, a failure to follow compliance requirements or a violation of prohibitions included in the applicable compliance requirements that results in noncompliance that is quantitatively or qualitatively material, either individually or when aggregated with other noncompliance, to the affected government program.

Revised Code of Washington (RCW) 71A.12.060, Payment authorized for residents in community residential programs states:

The secretary is authorized to pay for all or a portion of the costs of care, support and training of residents of a residential habilitation center who are placed in community residential programs under this section and RCW 71A.12.070 and 71A.12.080.

Developmental Disabilities Administration Policy 6.02, states in part:

Cost of Care Adjustments (COCA)

Cost of Care Adjustments (COCA) are intended to cover the necessary costs of ISS staff support and/or administrative costs to continue uninterrupted services to clients when there is a temporary absence of a household member. Examples of a temporary absence include, hospital or nursing home stay, RHC short-term stay, incarceration, or a client who shared hours moving out, either temporarily or permanently. Only administrative costs can be requested for a single person household. ISS hours will not be approved for persons residing in a single person household. Agencies requesting a COCA must include a clear and detailed justification highlighting client need.

- A. Providers will complete DSHS 06-124, *Cost of Care Adjustment Request* form within thirty (30) days of a client being away from services. The service provider will identify the household members impacted by the absence of the house mate and their corresponding shared and individual hours. The service provider will include detailed justification for the requested hours and indicate the duration of the anticipated COCA.
- B. A request for COCA can include both ISS hours and administrative dollars.

- C. A COCA that only includes a request for the shared ISS hours identified in the rate assessment can be authorized for up to ninety (90) days.
- D. Requests that include individual hours of the absent client to support remaining client(s) in the household will be considered when the client is away from service for up to thirty (30) calendar days based on client need. For any individual hours requested, the service provider must justify the need. When individual hours of the absent client are needed to maintain the household beyond the first fifteen (15) days, the staff add-on portion of the COCA form will be completed by the RMA. The first fifteen (15) days requested may be approved regionally by the RM. Days sixteen (16) through thirty (30) may be approved regionally by the RMA or designee.
- E. DDA will review each COCA and send a signed copy of the COCA request to the service provider and the rate analyst. Copies will be maintained by DDA in the contract file and the service provider records for seven (7) years.
- F. If a COCA is expected to go beyond ninety (90) days, the residential service provider may request a new rate assessment.
- G. The Resource Manager will authorize payment for an approved COCA.

Developmental Disabilities Administration, DSHS 06-124 Instructions for Cost of Care Adjustment Request form, states in part:

Section D. Justification

Explain how the hours requested will be utilized for the remaining clients in the home. It is necessary to include clear and detailed justification highlighting the need for any hours being requested (shared and individual hours). Specifically indicate the utilization of those hours. Wording must pertain to the client needs in the household and not be related to the need to maintain current staffing patterns. If the person is receiving Community Protection supports, explain the supervision needs required of the individual...

2016-042 The Department of Social and Health Services, Developmental Disabilities Administration did not ensure two Medicaid Community First Choice in-home care providers had proper background checks.

Federal Awarding Agency: U.S. Department of Health and Human Services
Pass-Through Entity: None
CFDA Number and Title: 93.775 State Medicaid Fraud Control Units
93.777 State Survey and Certification of Health Care Providers and Suppliers (Title XVIII) Medicare
93.778 Medical Assistance Program (Medicaid; Title XIX)
Federal Award Number: 5-1605WA5MAP; 5-1605WA5ADM; 5-1605WAIMPL; 5-1605WAINCT
Applicable Compliance Component: Activities Allowed/Unallowed
Allowable Costs/Cost Principles
Special Tests and Provisions – Provider Eligibility
Known Questioned Cost Amount: \$ 16,124
Likely Questioned Cost Amount: \$1,368,621

Background

Medicaid is a jointly funded state and federal partnership providing coverage for about 1.9 million eligible low-income Washington residents who otherwise might go without medical care. Medicaid is Washington’s largest public assistance program and accounts for about one-third of the state’s federal expenditures. The program spent about \$11.6 billion in federal and state funds during fiscal year 2016. The Department spent more than \$192 million for in-home services provided to Developmental Disabilities Administration Medicaid clients.

The Community First Choice program, administered by the Department’s Developmental Disabilities Administration, delivers in-home care services to eligible clients. The Department has various offices throughout the state to manage Medicaid services and to ensure providers are eligible to provide in-home care under state law and Department rules.

Medicaid is the primary funding source for long-term care providers. The Medicaid Home and Community Based Services program permits states to furnish long-term care services to Medicaid clients in home and community settings. These services are provided in the client’s home by individuals or agencies chosen by the Medicaid client or the client’s legal representative. Payments to individual providers contracted with the Developmental Disabilities Administration accounted for more than 4 percent of all Medicaid payments made by the Department in fiscal year 2016.

All individual providers must meet basic qualifications to provide services to Medicaid clients. They must be at least 18 years old, authorized to work in the United States and meet the Department’s minimum training requirements. In addition, individual providers must successfully undergo a state background check every three years and, effective January 8, 2012, all new contracted providers or

applicants who have not lived in Washington for three consecutive years must complete a national fingerprint-based background check. Some clients may wish to receive care from their parent or legal guardian. Unless the parent applicant first contracted with the Department after January 7, 2012, a background check is not required under state law.

The Department has established a rule that requires long-term care providers to renew their background checks at least every three years to remain eligible to continue to provide in-home care to Medicaid recipients.

The Department identifies crimes that automatically disqualify individuals from having unsupervised access to vulnerable clients outlined in WAC 388-113-0020, which applies to all programs administered by the Developmental Disabilities Administration. Individuals who have committed crimes on this list are automatically prohibited from “licensing, contracting, certification or from having unsupervised access to children, vulnerable adults, or to individuals with a developmental disability.” If an individual is found to have committed a crime not listed in the WAC, they are not automatically disqualified. Instead, the Department must perform a character, competence and suitability review to assess and determine if the provider may have unsupervised access to clients.

Description of Condition

We found the Department had adequate internal controls to materially ensure individual providers meet background check requirements. However, we found two instances when the Department did not confirm that a provider’s background check was completed as state rules require.

We used a statistical sampling method and randomly selected 100 of 12,278 Community First Choice individual providers who provided in-home care services to developmentally disabled clients during fiscal year 2016 to ensure that:

- The provider completed a background check in the past three years
- Providers who have committed non-disqualifying crimes passed a character, competence and suitability review permitting them to work unsupervised with vulnerable adults
- No individuals who committed disqualifying crimes listed in WAC 388-113-0020 were employed at the time of the audit, or continued to work unsupervised with Medicaid clients.
- A Washington background check covered the entire audit period in which the provider had access to Medicaid clients
- All individual providers required to complete a fingerprint-based background check had done so before working unsupervised with vulnerable adults

We found one provider worked with Medicaid clients for 12 months without a background check. The provider also did not complete a fingerprint check as state law requires.

We also found one provider who never received a background check from the Department and had unsupervised access to a Medicaid client. The Department is in the process of performing a background check for this individual.

Cause of Condition

The Department did not renew the background check for one provider. An incorrect determination was made for the second provider, who had previously contracted with the Department as a parent provider of a client. The case manager reviewed the background check requirement outlined in WAC 388-825-615 and assumed the individual did not require a background check to provide in-home care without supervision.

Effect of Condition and Questioned Costs

Providers who do not meet background check requirements are not eligible to provide services to Medicaid clients. Any payments made by the Department to ineligible providers are unallowable.

The following table summarizes the questioned costs:

Condition	Number of Providers	Total Unallowable Payments
Providers that did not renew their background checks in a timely manner and worked without a fingerprint background check	1	\$7,828
Providers working without a background check	1	\$21,024
TOTAL	2	\$28,852

We are questioning \$16,124, which is the federal share of the unallowable payments. When we project the results of the sample to the entire population of Community First Choice individual providers, we estimate the Department made \$2,452,456 in unallowable payments to providers.

The federal portion of the estimated total questioned costs is \$1,368,621. The federal share is calculated using the applicable Federal Medical Assistance Percentage rate, which can range from 50 percent to 100 percent for this particular program.

The tested population was also used to test compliance with requirements for activities allowed, and client eligibility. Since some payments we examined were unallowable because they violated multiple federal compliance requirements, some of the questioned costs reported here may also be reported in findings number 2016-043 and 2016-049.

We question costs when we find an agency has not complied with state or federal regulations, or when it does not have adequate documentation to support expenditures. We are required to report an audit finding when any known or likely questioned costs exceed \$25,000.

Recommendations

We recommend the Department:

- Ensure that all providers' background checks are completed as required by state law and Department rule
- Follow up on background check results and ensure ineligible providers do not have access to vulnerable Medicaid clients
- Consult with the U.S. Department of Health and Human Services to discuss repaying the question costs, including interest

Agency's Response

The Department concurs with the audit finding.

The Department recognizes client safety as a top priority and will ensure background checks are completed as required.

Employees are trained throughout the year and we have found training employees in the area of background checks has proven to be effective.

The Department took immediate action to remediate the two exceptions:

- *Provider worked with clients for 12 months without a background check and did not complete a fingerprint check. This was a parent provider. Parents did not require background checks or fingerprints until January 2012. Both actions are in the process of being completed.*
- *Provider never received a background check. – The provider received a background check in 2012, but a renewal background check was not submitted. The Department is in the process of performing a background check for this individual.*

Auditor's Concluding Remarks

We thank the Department for its cooperation and assistance throughout the audit. We will review the status of the Department's corrective action during our next audit.

Applicable Laws and Regulations

Title 2 U.S. Code of Federal Regulations Part 200, *Uniform Administrative Requirements, Cost Principles, and Audit Requirements for Federal Awards* (Uniform Guidance) established reporting requirements for audit findings.

Section 200.403 Factors affecting Allowability of costs.

Except where otherwise authorized by statute, costs must meet the following general criteria in order to be allowable under Federal awards.

- (a) Be necessary and reasonable for the performance of the Federal award and be allocable thereto under these principles.
- (b) Conform to any limitations or exclusions set forth in these principles or in the Federal award as to types or amount of cost items.

- (c) Be consistent with policies and procedures that apply uniformly to both federally financed and other activities of the non-Federal entity.
- (d) Be accorded consistent treatment. A cost may not be assigned to a Federal award as a direct cost if any other cost incurred for the same purpose in like circumstances has been allocated to the Federal award as an indirect cost.
- (e) Be determined in accordance with generally accepted accounting principles (GAAP), except, for state and local governments and Indian tribes only, as otherwise provided for in this part.
- (f) Not be included as a cost or used to meet cost sharing or matching requirements of any other federally financed program in either the current or a prior period. See also §200.306 Cost sharing or matching paragraph (b).
- (g) Be adequately documented. See also §§200.300 Statutory and national policy requirements through 200.309 Period of performance of this part.

Section 200.516 Audit reporting, state in part:

- (a) *Audit findings reported.* The auditor must report the following as audit findings in a schedule of findings and questioned costs:
 - (3) Known questioned costs that are greater than \$25,000 for a type of compliance requirement for a major program. Known questioned costs are those specifically identified by the auditor. In evaluating the effect of questioned costs on the opinion on compliance, the auditor considers the best estimate of total costs questioned (likely questioned costs), not just the questioned costs specifically identified (known questioned costs). The auditor must also report known questioned costs when likely questioned costs are greater than \$25,000 for a type of compliance requirement for a major program. In reporting questioned costs, the auditor must include information to provide proper perspective for judging the prevalence and consequences of the questioned costs.

Revised Code of Washington RCW 43.43.837, “Fingerprint-based background checks—Requirements for applicants and service providers—Shared background checks—Fees—Rules to establish financial responsibility,” states:

- (1) Except as provided in subsection (2) of this section, in order to determine the character, competence, and suitability of any applicant or service provider to have unsupervised access, the secretary may require a fingerprint-based background check through both the Washington state patrol and the federal bureau of investigation at any time, but shall require a fingerprint-based background check when the applicant or service provider has resided in the state less than three consecutive years before application, and:
 - (a) Is an applicant or service provider providing services to children or people with developmental disabilities under RCW 74.15.030;
 - (b) Is an individual residing in an applicant or service provider's home, facility, entity, agency, or business or who is authorized by the department to provide services to children or people with developmental disabilities under RCW 74.15.030; or
 - (c) Is an applicant or service provider providing in-home services funded by:
 - (i) Medicaid personal care under RCW 74.09.520;

- (ii) Community options program entry system waiver services under RCW 74.39A.030;
 - (iii) Chore services under RCW 74.39A.110; or
 - (iv) Other home and community long-term care programs, established pursuant to chapters 74.39 and 74.39A RCW, administered by the department.
- (2) Long-term care workers, as defined in RCW 74.39A.009, who are hired after January 7, 2012, are subject to background checks under RCW 74.39A.056.
 - (3) To satisfy the shared background check requirements provided for in RCW 43.215.215 and 43.20A.710, the department of early learning and the department of social and health services shall share federal fingerprint-based background check results as permitted under the law. The purpose of this provision is to allow both departments to fulfill their joint background check responsibility of checking any individual who may have unsupervised access to vulnerable adults, children, or juveniles. Neither department may share the federal background check results with any other state agency or person.
 - (4) The secretary shall require a fingerprint-based background check through the Washington state patrol identification and criminal history section and the federal bureau of investigation when the department seeks to approve an applicant or service provider for a foster or adoptive placement of children in accordance with federal and state law.
 - (5) Any secure facility operated by the department under chapter 71.09 RCW shall require applicants and service providers to undergo a fingerprint-based background check through the Washington state patrol identification and criminal history section and the federal bureau of investigation.
 - (6) Service providers and service provider applicants who are required to complete a fingerprint-based background check may be hired for a one hundred twenty-day provisional period as allowed under law or program rules when:
 - (a) A fingerprint-based background check is pending; and
 - (b) The applicant or service provider is not disqualified based on the immediate result of the background check.
 - (7) Fees charged by the Washington state patrol and the federal bureau of investigation for fingerprint-based background checks shall be paid by the department for applicants or service providers providing:
 - (a) Services to people with a developmental disability under RCW 74.15.030;
 - (b) In-home services funded by medicaid personal care under RCW 74.09.520;
 - (c) Community options program entry system waiver services under RCW 74.39A.030;
 - (d) Chore services under RCW 74.39A.110;
 - (e) Services under other home and community long-term care programs, established pursuant to chapters 74.39 and 74.39A RCW, administered by the department;
 - (f) Services in, or to residents of, a secure facility under RCW 71.09.115; and
 - (g) Foster care as required under RCW 74.15.030.
 - (8) Service providers licensed under RCW 74.15.030 must pay fees charged by the Washington state patrol and the federal bureau of investigation for conducting fingerprint-based background checks.
 - (9) Children's administration service providers licensed under RCW 74.15.030 may not pass on the cost of the background check fees to their applicants unless the individual is determined to be disqualified due to the background information.

- (10) The department shall develop rules identifying the financial responsibility of service providers, applicants, and the department for paying the fees charged by law enforcement to roll, print, or scan fingerprints-based for the purpose of a Washington state patrol or federal bureau of investigation fingerprint-based background check.
- (11) For purposes of this section, unless the context plainly indicates otherwise:
- (a) "Applicant" means a current or prospective department or service provider employee, volunteer, student, intern, researcher, contractor, or any other individual who will or may have unsupervised access because of the nature of the work or services he or she provides. "Applicant" includes but is not limited to any individual who will or may have unsupervised access and is:
 - (i) Applying for a license or certification from the department;
 - (ii) Seeking a contract with the department or a service provider;
 - (iii) Applying for employment, promotion, reallocation, or transfer;
 - (iv) An individual that a department client or guardian of a department client chooses to hire or engage to provide services to himself or herself or another vulnerable adult, juvenile, or child and who might be eligible to receive payment from the department for services rendered; or
 - (v) A department applicant who will or may work in a department-covered position.
 - (b) "Authorized" means the department grants an applicant, home, or facility permission to:
 - (i) Conduct licensing, certification, or contracting activities;
 - (ii) Have unsupervised access to vulnerable adults, juveniles, and children;
 - (iii) Receive payments from a department program; or
 - (iv) Work or serve in a department-covered position.
 - (c) "Department" means the department of social and health services.
 - (d) "Secretary" means the secretary of the department of social and health services.
 - (e) "Secure facility" has the meaning provided in RCW 71.09.020.
 - (f) "Service provider" means entities, facilities, agencies, businesses, or individuals who are licensed, certified, authorized, or regulated by, receive payment from, or have contracts or agreements with the department to provide services to vulnerable adults, juveniles, or children. "Service provider" includes individuals whom a department client or guardian of a department client may choose to hire or engage to provide services to himself or herself or another vulnerable adult, juvenile, or child and who might be eligible to receive payment from the department for services rendered. "Service provider" does not include those certified under *chapter 70.96A RCW.

RCW 74.39A.056, Criminal history checks on long-term care workers, states:

- (1) (a) All long-term care workers shall be screened through state and federal background checks in a uniform and timely manner to verify that they do not have a criminal history that would disqualify them from working with vulnerable persons. The department must perform criminal background checks for individual providers and prospective individual providers and make the information available as provided by law.
- (b) (i) Except as provided in (b)(ii) of this subsection, for long-term care workers hired after January 7, 2012, the background checks required under this section shall include checking against the federal bureau of investigation fingerprint

identification records system and against the national sex offenders registry or their successor programs. The department shall require these long-term care workers to submit fingerprints for the purpose of investigating conviction records through both the Washington state patrol and the federal bureau of investigation. The department shall not pass on the cost of these criminal background checks to the workers or their employers.

- (ii) This subsection does not apply to long-term care workers employed by community residential service businesses until January 1, 2016.
- (c) The department shall share state and federal background check results with the department of health in accordance with RCW 18.88B.080.
- (2) No provider, or its staff, or long-term care worker, or prospective provider or long-term care worker, with a stipulated finding of fact, conclusion of law, an agreed order, or finding of fact, conclusion of law, or final order issued by a disciplining authority or a court of law or entered into a state registry with a final substantiated finding of abuse, neglect, exploitation, or abandonment of a minor or a vulnerable adult as defined in chapter 74.34 RCW shall be employed in the care of and have unsupervised access to vulnerable adults.
- (3) The department shall establish, by rule, a state registry which contains identifying information about long-term care workers identified under this chapter who have final substantiated findings of abuse, neglect, financial exploitation, or abandonment of a vulnerable adult as defined in RCW 74.34.020. The rule must include disclosure, disposition of findings, notification, findings of fact, appeal rights, and fair hearing requirements. The department shall disclose, upon request, final substantiated findings of abuse, neglect, financial exploitation, or abandonment to any person so requesting this information. This information must also be shared with the department of health to advance the purposes of chapter 18.88B RCW.
- (4) The department shall adopt rules to implement this section.

RCW 74.15.030, Powers and duties of secretary, states:

The secretary shall have the power and it shall be the secretary's duty:

- (1) In consultation with the children's services advisory committee, and with the advice and assistance of persons representative of the various type agencies to be licensed, to designate categories of facilities for which separate or different requirements shall be developed as may be appropriate whether because of variations in the ages, sex and other characteristics of persons served, variations in the purposes and services offered or size or structure of the agencies to be licensed hereunder, or because of any other factor relevant thereto;
- (2) In consultation with the children's services advisory committee, and with the advice and assistance of persons representative of the various type agencies to be licensed, to adopt and publish minimum requirements for licensing applicable to each of the various categories of agencies to be licensed.
The minimum requirements shall be limited to:
 - (a) The size and suitability of a facility and the plan of operation for carrying out the purpose for which an applicant seeks a license;
 - (b) Obtaining background information and any out-of-state equivalent, to determine whether the applicant or service provider is disqualified and to determine the

- character, competence, and suitability of an agency, the agency's employees, volunteers, and other persons associated with an agency;
- (c) Conducting background checks for those who will or may have unsupervised access to children, expectant mothers, or individuals with a developmental disability; however, a background check is not required if a caregiver approves an activity pursuant to the prudent parent standard contained in RCW 74.13.710;
 - (d) Obtaining child protective services information or records maintained in the department case management information system. No unfounded allegation of child abuse or neglect as defined in RCW 26.44.020 may be disclosed to a child-placing agency, private adoption agency, or any other provider licensed under this chapter;
 - (e) Submitting a fingerprint-based background check through the Washington state patrol under chapter 10.97 RCW and through the federal bureau of investigation for:
 - (i) Agencies and their staff, volunteers, students, and interns when the agency is seeking license or relicense;
 - (ii) Foster care and adoption placements; and
 - (iii) Any adult living in a home where a child may be placed;
 - (f) If any adult living in the home has not resided in the state of Washington for the preceding five years, the department shall review any child abuse and neglect registries maintained by any state where the adult has resided over the preceding five years;
 - (g) The cost of fingerprint background check fees will be paid as required in RCW 43.43.837;
 - (h) National and state background information must be used solely for the purpose of determining eligibility for a license and for determining the character, suitability, and competence of those persons or agencies, excluding parents, not required to be licensed who are authorized to care for children or expectant mothers;
 - (i) The number of qualified persons required to render the type of care and treatment for which an agency seeks a license;
 - (j) The safety, cleanliness, and general adequacy of the premises to provide for the comfort, care and well-being of children, expectant mothers or developmentally disabled persons;
 - (k) The provision of necessary care, including food, clothing, supervision and discipline; physical, mental and social well-being; and educational, recreational and spiritual opportunities for those served;
 - (l) The financial ability of an agency to comply with minimum requirements established pursuant to chapter 74.15 RCW and RCW 74.13.031; and
 - (m) The maintenance of records pertaining to the admission, progress, health and discharge of persons served;
- (3) To investigate any person, including relatives by blood or marriage except for parents, for character, suitability, and competence in the care and treatment of children, expectant mothers, and developmentally disabled persons prior to authorizing that person to care for children, expectant mothers, and developmentally disabled persons. However, if a child is placed with a relative under RCW 13.34.065 or 13.34.130, and if such relative appears otherwise suitable and competent to provide care and treatment

- the criminal history background check required by this section need not be completed before placement, but shall be completed as soon as possible after placement;
- (4) On reports of alleged child abuse and neglect, to investigate agencies in accordance with chapter 26.44 RCW, including child day-care centers and family day-care homes, to determine whether the alleged abuse or neglect has occurred, and whether child protective services or referral to a law enforcement agency is appropriate;
 - (5) To issue, revoke, or deny licenses to agencies pursuant to chapter 74.15 RCW and RCW 74.13.031. Licenses shall specify the category of care which an agency is authorized to render and the ages, sex and number of persons to be served;
 - (6) To prescribe the procedures and the form and contents of reports necessary for the administration of chapter 74.15 RCW and RCW 74.13.031 and to require regular reports from each licensee;
 - (7) To inspect agencies periodically to determine whether or not there is compliance with chapter 74.15 RCW and RCW 74.13.031 and the requirements adopted hereunder;
 - (8) To review requirements adopted hereunder at least every two years and to adopt appropriate changes after consultation with affected groups for child day-care requirements and with the children's services advisory committee for requirements for other agencies; and
 - (9) To consult with public and private agencies in order to help them improve their methods and facilities for the care of children, expectant mothers and developmentally disabled persons.

Washington Administrative Code WAC 388-825-615 – “What is the process for obtaining a background check?” states:

- (1) Long-term care workers, including individual providers, undergoing a background check for initial hire or initial contract, after January 7, 2012, will be screened through a state name and date of birth check and a national fingerprint-based background check; except that long-term care workers in community residential service businesses are subject to background checks as described in subsection (1)(a) and (b) in this section. Parents are not exempt from the long-term care background check requirements.
 - (a) Prior to January 1, 2016, community residential service businesses as defined above will be screened as follows:
 - (i) Individuals who have continuously resided in Washington state for the past three consecutive years will be screened through a state name and date of birth background check.
 - (ii) Individuals who have resided outside of Washington state within the past three years will be screened through a state name and date of birth and a national fingerprint-based background check.
 - (b) Beginning January 1, 2016, community residential service businesses as defined above will be screened as described in subsection (1) of this section.
- (2) For adult family homes refer to chapter 388-76 WAC, Adult family home minimum licensing requirements. For assisted living facilities refer to chapter 388-78A WAC, Assisted living licensing rules.

WAC 388-825-320 – “How does a person become an individual provider?” states:

In order to become an individual provider, a person must:

- (1) Be eighteen years of age or older.
- (2) Provide the social worker/case manager/designee with:
 - (a) Picture identification; and
 - (b) A Social Security card.
- (3) Complete and submit to the social worker/case manager/designee the department's criminal conviction background inquiry application, unless the provider is also the parent of the adult DDD client and exempted, per chapter 74.15 RCW.
 - (a) Preliminary results may require a thumbprint for identification purposes.
 - (b) An FBI fingerprint-based background check is required if the person has lived in the state of Washington less than three years.
- (4) Provide references as requested.
- (5) Complete orientation, if contracting as an individual provider.
- (6) Sign a service provider contract to provide services to a DDD client.
- (7) Meet additional requirements in WAC 388-825-355.

2016-043

The Department of Social and Health Services, Developmental Disabilities Administration, did not have adequate internal controls over and did not comply with requirements to ensure Medicaid Community First Choice client support plans were properly approved.

Federal Awarding Agency:	U.S. Department of Health and Human Services
Pass-Through Entity:	None
CFDA Number and Title:	93.775 State Medicaid Fraud Control Units 93.777 State Survey and Certification of Health Care Providers and Suppliers (Title XVIII) Medicare 93.778 Medical Assistance Program (Medicaid; Title XIX)
Federal Award Number:	5-1605WA5MAP; 5-1605WA5ADM; 5-1605WAIMPL; 5-1605WAINCT
Applicable Compliance Component:	Activities Allowed/Unallowed Allowable Costs/Cost Principles Eligibility
Known Questioned Cost Amount:	\$79,912 (\$60,300 Direct Client Services) (\$19,612 Associated Costs)
Likely Questioned Costs:	\$12,523,061 (\$9,461,070 Direct Client Services) (\$3,061,991 Associated Costs)

Background

Medicaid is a jointly funded state and federal partnership providing coverage for about 1.9 million eligible low-income Washington residents who otherwise might go without medical care. Medicaid is Washington's largest public assistance program and accounts for about one-third of the state's federal expenditures. The program spent about \$11.6 billion in federal and state funds during fiscal year 2016.

The Developmental Disabilities Administration within the Department of Social and Health Services (Department) offers personal care and other services to support Medicaid clients in community settings through the Community First Choice program. Clients may receive personal care services, skills acquisition training, assistive technology, personal emergency response systems and other services that help them remain in community settings. The Department is required to ensure clients are eligible before authorizing services.

There are three parts to a client's eligibility: statutory, functional and financial. For statutory eligibility, individuals make initial application to the Department and applications are reviewed to determine if the client's disability meets Department eligibility requirements. Redeterminations are made on a varying schedule, based on a client's age and eligibility condition. Functional and financial eligibility must be re-determined every 12 months. A valid financial eligibility re-determination includes a review and verification of income and resources. A valid functional eligibility re-determination

includes an assessment of needs and a person-centered service plan completed before the end of each 12-month period. For a client's plan to be properly implemented, it must be agreed to in writing by the client (or their legal representative) and signed by the Department. If a client does not sign the plan within two months of their assessment completion, state rules authorize the Department to terminate services.

In fiscal year 2016, the state Medicaid program paid about \$168.5 million to providers on behalf of Community First Choice clients.

Description of Condition

We found the Department did not have adequate internal controls to monitor and ensure client person-centered service plans were fully implemented before paying providers for client services.

Prior to August 2015, Department staff accepted a verbal agreement of services from clients rather than requiring a signature from them or their legal representative. In August 2015 the Department trained staff on the federal rule to obtain client or legal representative signatures on the person-centered service plan. Not all Department staff followed training guidelines.

We used a statistical sampling method to randomly select 65 Community First Choice clients, receiving services from an individual provider, from a total population of 10,768. In addition, we judgmentally selected 13 clients who were missing a Social Security number in the payment data. We examined the client files and found 18 instances (23 percent) when a fully implemented plan was not in place.

Specifically, we found:

- 14 plans did not contain all required signatures or were returned more than two months past the client's assessment completion date
- Four plans were not signed by any of the required parties

We consider these internal control deficiencies to be a material weakness.

Cause of Condition

Obtaining client signatures was a new process for the Department during our audit period. Program managers acknowledged some staff may not have obtained all required signatures due to the significant change in practice and learning curve related to the new expectation.

Effect of Condition and Questioned Costs

Functional eligibility

By not monitoring to ensure a fully implemented plan was in place, the Department issued \$107,393 in unallowable payments to providers. We are questioning \$60,054, which is the federal portion of the unallowable payments.

When unallowable payments are identified, federal regulations suggest auditors consider if associated costs, such as benefits, were also paid. The Department pays payroll-related benefits on behalf of Community First Choice providers that are considered associated costs. Examples of these costs include health insurance, retirement, payroll taxes and training.

For the \$107,393 in payments we determined were unallowable, we identified \$35,022 in associated costs that are also considered unallowable. We are questioning \$19,612, which is the federal portion of the unallowable payments.

Financial eligibility

During our audit, we also identified one client, of the 65 randomly selected clients whose files we examined, who was not financially eligible. The client was paid for two months after she was determined ineligible. Total unallowable payments were \$439. We are questioning \$246, which is the federal portion of the unallowable payments.

We did not identify associated costs for these payments.

Likely questioned costs

Because a statistical sampling method was used to select the payments we examined, we estimate the amount of likely questioned costs to be \$16,899,956. We are questioning \$9,461,070, which is the federal portion of the unallowable payments.

For the \$16,899,956 in likely questioned costs, we estimate the amount of likely associated costs to be \$5,461,337. We are questioning \$3,061,991, which is the federal share of the unallowable payments.

We question costs when we find an agency has not complied with grant regulations or when it does not have adequate documentation to support payments. The statistical sample used for testing was also used to test compliance with activities allowed and provider eligibility requirements. Because some payments we examined were unallowable for violating multiple federal compliance requirements, some of the questioned costs reported here may also be reported in findings number 2016-042 and 2016-049

Recommendations

We recommend the Department establish policies and procedures sufficient to ensure person-centered service plans are signed by all required parties every 12 months as federal regulations require. The procedures should include a monitoring function to ensure federal requirements are met.

The Department should consult with the U.S. Department of Health and Human Services about repaying the questioned costs, including interest.

Agency's Response

DDA concurs with the findings in this audit.

The SAO review found that 18 of the cases reviewed did not have signatures or signatures were not timely. DDA acknowledges that the target for timely signatures is 100% and we seek to reach that mark.

The SAO also had one finding related to financial eligibility. DDA acknowledges that the target for financial eligibility is 100% and we seek to reach that mark.

Current practice includes training staff and annual monitoring performed by the compliance monitoring team. In addition, DDA will:

- *Clarify written policy regarding signature requirements;*
- *Provide additional statewide training regarding signature requirements; and*
- *Conduct an enhanced, targeted review to monitor compliance with signature requirements.*

Repayment will be made to the U.S. Department of Health and Human Services as required for the findings related to timely signatures and for the finding related to financial eligibility.

Auditor's Concluding Remarks

We thank the Department for its cooperation and assistance throughout the audit. We will review the status of the Department's corrective action during our next audit.

Applicable Laws and Regulations

Title 2 U.S. Code of Federal Regulations CFR Part 200, *Uniform Administrative Requirements, Cost Principles, and Audit Requirements for Federal Awards* (Uniform Guidance) established reporting requirements for audit findings.

Section 200.303 Internal controls.

The non-Federal entity must:

- (a) Establish and maintain effective internal control over the Federal award that provides reasonable assurance that the non-Federal entity is managing the Federal award in compliance with Federal statutes, regulations, and the terms and conditions of the Federal award. These internal controls should be in compliance with guidance in "Standards for Internal Control in the Federal Government" issued by the Comptroller General of the United States or the "Internal Control Integrated Framework", issued by the Committee of Sponsoring Organizations of the Treadway Commission (COSO).
- (b) Comply with Federal statutes, regulations, and the terms and conditions of the Federal awards.
- (d) Take prompt action when instances of noncompliance are identified including noncompliance identified in audit findings.

Section 200.403 Factors affecting Allowability of costs.

Except where otherwise authorized by statute, costs must meet the following general criteria in order to be allowable under Federal awards.

- (a) Be necessary and reasonable for the performance of the Federal award and be allocable thereto under these principles.
- (b) Conform to any limitations or exclusions set forth in these principles or in the Federal award as to types or amount of cost items.
- (c) Be consistent with policies and procedures that apply uniformly to both federally-financed and other activities of the non-Federal entity.
- (d) Be accorded consistent treatment. A cost may not be assigned to a Federal award as a direct cost if any other cost incurred for the same purpose in like circumstances has been allocated to the Federal award as an indirect cost.
- (e) Be determined in accordance with generally accepted accounting principles (GAAP), except, for state and local governments and Indian tribes only, as otherwise provided for in this part.
- (f) Not be included as a cost or used to meet cost sharing or matching requirements of any other federally-financed program in either the current or a prior period. See also §200.306 Cost sharing or matching paragraph (b).
- (g) Be adequately documented. See also §§200.300 Statutory and national policy requirements through 200.309 Period of performance of this part.

Section 200.410 Collection of unallowable costs.

Payments made for costs determined to be unallowable by either the Federal awarding agency, cognizant agency for indirect costs, or pass-through entity, either as direct or indirect costs, must be refunded (including interest) to the Federal Government in accordance with instructions from the Federal agency that determined the costs are unallowable unless Federal statute or regulation directs otherwise. See also Subpart D—Post Federal Award Requirements of this part, §§200.300 Statutory and national policy requirements through 200.309 Period of performance.

Section 200.516 Audit reporting, state in part:

- (a) Audit findings reported. The auditor must report the following as audit findings in a schedule of findings and questioned costs:
 - (1) Significant deficiencies and material weaknesses in internal control over major programs and significant instances of abuse relating to major programs. The auditor's determination of whether a deficiency in internal control is a significant deficiency or material weakness for the purpose of reporting an audit finding is in relation to a type of compliance requirement for a major program identified in the Compliance Supplement.
 - (2) Material noncompliance with the provisions of Federal statutes, regulations, or the terms and conditions of Federal awards related to a major program. The auditor's determination of whether a noncompliance with the provisions of Federal statutes, regulations, or the terms and conditions of Federal awards is material for the purpose of reporting an audit finding is in relation to a type of compliance requirement for a major program identified in the compliance supplement.

- (3) Known questioned costs that are greater than \$25,000 for a type of compliance requirement for a major program. Known questioned costs are those specifically identified by the auditor. In evaluating the effect of questioned costs on the opinion on compliance, the auditor considers the best estimate of total costs questioned (likely questioned costs), not just the questioned costs specifically identified (known questioned costs). The auditor must also report known questioned costs when likely questioned costs are greater than \$25,000 for a type of compliance requirement for a major program. In reporting questioned costs, the auditor must include information to provide proper perspective for judging the prevalence and consequences of the questioned costs.

The American Institute of Certified Public Accountants defines significant deficiencies and material weaknesses in internal controls over compliance in its *Codification of Statements on Auditing Standards*, section 935, as follows:

- .011 For purposes of adapting GAAS to a compliance audit, the following terms have the meanings attributed as follows: ...

Material weakness in internal control over compliance. A deficiency, or combination of deficiencies, in internal control over compliance, such that there is a reasonable possibility that material noncompliance with a compliance requirement will not be prevented, or detected and corrected, on a timely basis. In this section, a reasonable possibility exists when the likelihood of the event is either reasonably possible or probable as defined as follows:

Reasonably possible. The chance of the future event or events occurring is more than remote but less than likely.

Remote. The chance of the future event or events occurring is slight.

Probable. The future event or events are likely to occur.

Significant deficiency in internal control over compliance. A deficiency, or a combination of deficiencies, in internal control over compliance that is less severe than a material weakness in internal control over compliance, yet important enough to merit attention by those charged with governance.

Material noncompliance. In the absence of a definition of material noncompliance in the governmental audit requirement, a failure to follow compliance requirements or a violation of prohibitions included in the applicable compliance requirements that results in noncompliance that is quantitatively or qualitatively material, either individually or when aggregated with other noncompliance, to the affected government program.

Title 42, Code of Federal Regulations, Section 441 Services: Requirements and Limits Applicable to Specific Services, states in part:

§ 441.540 Person-centered service plan.

- (b) The person-centered service plan. The person-centered service plan must reflect the services and supports that are important for the individual to meet the needs identified through an assessment of functional need, as well as what is important to the individual with regard to preferences for the delivery of such services and supports.

Commensurate with the level of need of the individual, and the scope of services and supports available under Community First Choice, the plan must:

- (9) Be finalized and agreed to in writing by the individual and signed by all individuals and providers responsible for its implementation.
- (c) Reviewing the person-centered service plan. The person-centered service plan must be reviewed, and revised upon reassessment of functional need, at least every 12 months, when the individual's circumstances or needs change significantly, and at the request of the individual.

§ 441.720 Independent assessment, states in part:

- (a) Requirements. For each individual determined to be eligible for the State plan HCBS benefit, the State must provide for an independent assessment of needs, which may include the results of a standardized functional needs assessment, in order to establish a service plan. In applying the requirements of section 1915(i)(1)(F) of the Act, the State must:
 - (1) Perform a face-to-face assessment of the individual by an agent who is independent and qualified as defined in § 441.730, and with a person-centered process that meets the requirements of § 441.725(a) and is guided by best practice and research on effective strategies that result in improved health and quality of life outcomes.
 - (i) For the purposes of this section, a face-to-face assessment may include assessments performed by telemedicine, or other information technology medium, if the following conditions are met:
 - (C) The individual provides informed consent for this type of assessment.
 - (3) Examine the individual's relevant history including the findings from the independent evaluation of eligibility, medical records, an objective evaluation of functional ability, and any other records or information needed to develop the person-centered service plan as required in § 441.725.
- (b) Reassessments. The independent assessment of need must be conducted at least every 12 months and as needed when the individual's support needs or circumstances change significantly, in order to revise the service plan.

Washington Administrative Code WAC 388-106-0045 When will the department authorize my long-term care services? states in part:

The department will authorize long-term care services when you:

- (1) Are assessed using CARE;
- (2) Are found financially and functionally eligible for services including, if applicable, the determination of the amount of participation toward the cost of your care and/or the amount of room and board that you must pay;
- (3) Have given written consent for services and approved your plan of care; and

WAC 388-106-0283 How do I remain eligible for CFC services? states in part:

- (1) In order to remain eligible for CFC, you must remain financially eligible and be in need of services in accordance with WAC 388-106-0310 as determined through a CARE

assessment. The assessment in CARE must be completed at least annually or more often when there are significant changes in your functional or financial circumstances; or

WAC 388-828-1500 When does DDD conduct a reassessment? A reassessment must occur:

- (1) On an annual basis if you are receiving a paid service or SSP; or
- (2) When a significant change is reported that may affect your need for support. (E.g., changes in your medical condition, caregiver status, behavior, living situation, employment status.)

Washington State Medicaid State Plan-Community First choice State Plan Option, states in part:

X. Person-Centered Service Plan Development Process

- a. Indicate how the service plan development process ensures that the person-centered service plan addresses the individual's goals, needs (including health care needs), and preferences, by offering choices regarding the services and supports they receive and from whom.

The person-centered service plan will be developed and implemented in accordance with 42 CFR 441.550 (b).

The person-centered service plan will be understandable to the participant, will indicate the individual and/or entity responsible for monitoring the plan, and will be agreed to in writing by the participant and those responsible for implementing the plan.

2016-044 **The Department of Social and Health Services, Aging and Long-Term Support Administration, did not have adequate internal controls and did not comply with regulations to adequately monitor Adult Family Home providers to ensure Medicaid providers and their employees had proper background checks.**

Federal Awarding Agency:	U.S. Department of Health and Human Services
Pass-Through Entity:	None
CFDA Number and Title:	93.775 State Medicaid Fraud Control Units 93.777 State Survey and Certification of Health Care Providers and Suppliers (Title XVIII) Medicare 93.778 Medical Assistance Program (Medicaid; Title XIX)
Federal Award Number:	5-1605WA5MAP; 5-1605WA5ADM; 5-1605WAIMPL; 5-1605WAINCT
Applicable Compliance Component:	Activities Allowed/Unallowed, Allowable Costs/Cost Principles, Special Tests and Provisions – Provider Eligibility
Known Questioned Cost Amount:	\$ 416,523
Likely Questioned Cost Amount:	\$4,760,604

Background

Medicaid is a jointly funded state and federal partnership providing coverage for about 1.9 million eligible low-income individuals in Washington who otherwise might go without medical care. Medicaid is Washington’s largest public assistance program and accounts for about one-third of the state’s federal expenditures. The program spent about \$11.6 billion in federal and state funds during fiscal year 2016. The Department spent about \$181 million to more than 2,300 Adult Family Home providers.

Medicaid is the primary funding source for long-term care providers. The Medicaid Home and Community Based Services program permits states to furnish long-term care services to Medicaid beneficiaries in community settings. These services are provided in adult family homes by individuals or agencies most often chosen by the Medicaid client or their family.

All providers must meet the basic qualifications to provide services to Medicaid clients, which include background checks, certifications and training. Adult Family Home providers and their employees must complete a Washington state background check every two years, and effective January 8, 2012, a national fingerprint background check through the Department’s Background Check Central Unit.

The Department’s Aging and Long-Term Support Administration, Residential Care Services Division, is responsible for ensuring all adult family homes and their providers meet and maintain minimum licensing requirements to serve Medicaid clients. The Department performs an inspection of all adult

family homes at least every 18 months to ensure the adult family home provider is in compliance with licensing requirements to remain eligible to provide Medicaid services to clients. During the inspection, Department staff review background check result letters for the provider, resident manager and all adult family home employees who have worked in the home since the previous inspection to ensure they are eligible to work and have completed a required background check within the past two years.

The Department's Secretary establishes a list of crimes that automatically disqualify individuals from having unsupervised access to vulnerable clients. This list was referred to as "the Secretary's List" but now has been incorporated in regulation (WAC 388-113). Individuals who commit any crime listed in state rule are automatically prohibited from "licensing, contracting, certification, or from having unsupervised access to children, vulnerable adults or to individuals with a developmental disability."

If an individual is found to have committed a crime not listed in state rule, they are not automatically disqualified from having unsupervised access to vulnerable clients. The provider must perform a Character, Competence and Suitability review to assess and determine if they or their employees may have unsupervised access to clients.

During fiscal year 2016, about 13 percent of all Medicaid payments the Department made under the Home and Community Based Services Program went to adult family home providers.

In prior audits, we reported the Department did not ensure providers completed background checks before providing services to Medicaid clients. We also found providers did not ensure staff met all background check requirements before providing care to vulnerable adult clients. The prior finding numbers were 2015-051, 2014-048 and 13-37.

Description of Condition

We reviewed evidence of background checks of Adult Family Home providers and their staff to ensure that:

- A proper background check had been completed within the last two years
- No individuals with disqualifying crimes listed in state rule provided care to vulnerable adult clients at the time of the audit, or during the month(s) when they were paid by the Department
- Providers and their staff who had committed crimes that were not listed in state rule of Automatically Disqualifying Convictions and Pending Charges passed a Character, Competence and Suitability review permitting them to work unsupervised with vulnerable adults
- The entire period when the provider had access to Medicaid clients was covered by a Washington state background check and, if required, a national fingerprint background check

We found the Department did not have adequate internal controls to ensure providers completed background checks in a timely manner, as Department rules require.

The Department currently lacks a centralized monitoring process for ensuring that Adult Family Home providers renew their background checks in a timely manner, and detecting provider non-compliance before it occurs.

We consider this internal control deficiency to constitute a material weakness.

Cause of Condition

The Department has procedures in place to ensure adult family homes meet minimum licensing requirements. However, the high rate of employee turnover in adult family homes increases the risk of provider noncompliance with state and federal background check requirements.

Residential Care Services licensors examine the records of all adult family home staff for background checks during their onsite visits. Due to the Department's regulatory scope and allotted resources, unless there is a complaint, up to 18 months may pass before an adult family home receives another inspection from the Department. This could allow an individual to work without a background check for a significant period of time before being terminated by their provider.

WAC 388-76-10930 requires that the adult family home must comply with all applicable licensing laws and regulations at all times. The Department has stated that each provider is responsible for renewing their own background checks, and preparing and documenting the results of their own Character, Competence and Suitability reviews. The Department relied on the providers to ensure they were complying with Adult Family Home licensing requirements.

Effect of Condition and Questioned Costs

Adult Family Home providers

We used a statistical sampling method and randomly sampled 130 of 2,337 total providers of Adult Family Homes authorized to accept Medicaid clients. We found nine of the 130 randomly selected providers did not renew their background checks in a timely manner, and therefore received unallowable Medicaid payments. We found the providers were between one and eight months overdue for a background check.

We also identified four providers who had criminal records for crimes that were not disqualifying. The Department did not ensure a Character, Competence, and Suitability review was completed and documented for those four providers.

The following table summarizes questioned costs paid to ineligible providers:

Condition	Number of Providers	Total Unallowable Payments	Likely Unallowable Payments
Providers that did not renew their background checks in a timely manner	9	\$371,445	\$3,558,339
Providers with non-disqualifying criminal histories who did not show evidence of completing a Character, Competence and Suitability review	4	\$372,298	\$4,942,125
TOTAL	13	\$743,743	\$8,500,465*

**Difference in total is due to rounding*

When providers who do not meet background check requirements have unsupervised access to vulnerable Medicaid clients, there is an increased risk of neglect, harm, exploitation and abuse. Therefore, providers who do not meet the background check requirement are not eligible to provide services to Medicaid clients. Any payments made by the Department to ineligible providers are unallowable.

In our sample, we found the Department made \$743,743 in unallowable payments to providers. We are questioning \$416,523, which is the federal share of the unallowable payments. When we project the results to the entire population of Adult Family Home providers, we estimate the Department made \$8,500,465 in unallowable payments to providers. The federal portion of the estimated total questioned costs is \$4,760,604.

We question costs when we find an agency has not complied with grant regulations or when it does not have adequate documentation to support its expenditures.

Adult Family Home employees

Using wage information reported by employers, we identified 348 employees working for the 130 adult family home providers in the audit sample in fiscal year 2016. We performed a Social Security number and date-of-birth match with the Department's background check database to determine if background checks were completed for each employee.

We found:

- 23 individuals with overdue background checks continued to work during the audit period without completing a renewal
- 10 individuals for whom there was no evidence to show a background check was completed
- 73 instances in which there was no evidence to show a fingerprint-based background check was completed for provider employees
- Two instances in which there was no evidence a Character, Competence and Suitability review was completed for provider employees

We were not able to determine if records for 32 adult family home employees selected for testing included proper background checks because their employer(s) did not respond to our request for information. Noncompliance related to Adult Family Home employees was not factored into the federal question costs.

Recommendations

We recommend the Department:

- Improve internal controls to ensure adult family home providers complete background checks in a timely manner
- Ensure that all adult family home providers renew their background checks every two years, as Department rules require
- Follow up on background check results for providers who did not have a documented Character, Competence, and Suitability review and ensure disqualified caregivers do not have unsupervised access to vulnerable Medicaid adults
- Consult with the U.S. Department of Health and Human Services about repaying the questioned costs, including interest

Agency's Response

The Department partially concurs with the audit findings.

While the Department agrees with the number of audit findings, the Department does not agree the findings should be tied to questioned costs. The SAO did not identify any providers who, did in fact, have a disqualifying crime or negative action. This is the critical question because the relevant minimum qualifications under the RCW only require that an AFH operator not have a disqualifying crime or negative action. RCW 70.128.120(8).

“Each adult family home provider, applicant, and each resident manager shall have the following minimum qualifications, except that only applicants are required to meet the provisions of subsections (10) and (11) of this section...:

(8) Not been convicted of any crime that is disqualifying under RCW 43.43.830 or 43.43.842, or department rules adopted under this chapter, or been found to have abused, neglected, exploited, or abandoned a minor or vulnerable adult as specified in RCW 74.39A.056(2); ...”

Neither RCW 70.128.120 nor RCW 74.39A.056 require that the department or the provider conduct additional background checks after the initial screening.

Consistent with the RCW requirement, WAC 388-76-10130 requires that an Adult Family Home must ensure that the operator “have no disqualifying criminal convictions or pending criminal charges under chapter 388-113 WAC” and “have none of the negative actions listed in WAC 388-76-10180.”

While the Adult Family Homes in question are out of compliance with the licensing requirements of chapter 388-76 WAC by not having current background check results in their files—and are therefore

subject to corrective action and sanctions by the department—the providers are not unqualified to provide Medicaid paid services. Thus, the payments to the providers were proper. The Department will consult with the U.S. Department of Health and Human Services regarding disagreement with repayment of questioned costs.

The Department has taken many action steps to address adult family homes out of compliance with background check licensing requirements:

In November 2016, the Department updated the AFH provider orientation and AFH provider administration training to include the importance of timely completion of background checks and possible penalties.

In December 2016, the Department worked with the AFH provider association to share information about background checks through the Association newsletter and intranet site, as well as BCCU's project Communication Plan. The Department also worked with the AFH association to ensure the link to AFH Association newsletter is accessible to all providers.

In December 2016, the Department revised the PowerPoint on the internet site to include information on background renewal process.

In January 2016, the Department added language to the contract renewal letter reminding providers they need a current background check to renew the contract.

In January 2017, a reminder regarding background check renewals was added to the annual license renewal statement.

In addition to the above, the Department has created a report that will proactively identify provider renewals coming due. When a provider has 60 days left before expiration, the Department will send a reminder notice. This report is currently in the testing phase with a target implementation of April 2017.

Auditor's Concluding Remarks

We thank the Department for its cooperation and assistance throughout the audit.

The requirement for renewing background checks of adult family home providers and their staff every two-years has been established under Department rule, specified in WAC 388-76-10165. We cite this rule under the Applicable Laws and Regulations.

We acknowledge the corrective measures taken by the Department as a result of previous audits, as well as changes implemented after the audit period which will take time to become effective.

We will review the status of the Department's corrective action during our next audit.

Applicable Laws and Regulations

Title 2 U.S. Code of Federal Regulations Part 200, *Uniform Administrative Requirements, Cost Principles, and Audit Requirements for Federal Awards* (Uniform Guidance) established reporting requirements for audit findings.

Section 200.303 Internal controls.

The non-Federal entity must:

- (a) Establish and maintain effective internal control over the Federal award that provides reasonable assurance that the non-Federal entity is managing the Federal award in compliance with Federal statutes, regulations, and the terms and conditions of the Federal award. These internal controls should be in compliance with guidance in “Standards for Internal Control in the Federal Government” issued by the Comptroller General of the United States or the “Internal Control Integrated Framework”, issued by the Committee of Sponsoring Organizations of the Treadway Commission (COSO).
- (b) Comply with Federal statutes, regulations, and the terms and conditions of the Federal awards.
- (d) Take prompt action when instances of noncompliance are identified including noncompliance identified in audit findings.

Section 200.403 Factors affecting Allowability of costs.

Except where otherwise authorized by statute, costs must meet the following general criteria in order to be allowable under Federal awards.

- (a) Be necessary and reasonable for the performance of the Federal award and be allocable thereto under these principles.
- (b) Conform to any limitations or exclusions set forth in these principles or in the Federal award as to types or amount of cost items.
- (c) Be consistent with policies and procedures that apply uniformly to both federally-financed and other activities of the non-Federal entity.
- (d) Be accorded consistent treatment. A cost may not be assigned to a Federal award as a direct cost if any other cost incurred for the same purpose in like circumstances has been allocated to the Federal award as an indirect cost.
- (e) Be determined in accordance with generally accepted accounting principles (GAAP), except, for state and local governments and Indian tribes only, as otherwise provided for in this part.
- (f) Not be included as a cost or used to meet cost sharing or matching requirements of any other federally-financed program in either the current or a prior period. See also §200.306 Cost sharing or matching paragraph (b).
- (g) Be adequately documented. See also §§200.300 Statutory and national policy requirements through 200.309 Period of performance of this part.

Section 200.410 Collection of unallowable costs.

Payments made for costs determined to be unallowable by either the Federal awarding agency, cognizant agency for indirect costs, or pass-through entity, either as direct or indirect costs, must be refunded (including interest) to the Federal Government in accordance with instructions from the Federal agency that determined the costs are

unallowable unless Federal statute or regulation directs otherwise. See also Subpart D—Post Federal Award Requirements of this part, §§200.300 Statutory and national policy requirements through 200.309 Period of performance.

Section 200.516 Audit reporting, state in part:

- (a) *Audit findings reported.* The auditor must report the following as audit findings in a schedule of findings and questioned costs:
- (1) Significant deficiencies and material weaknesses in internal control over major programs and significant instances of abuse relating to major programs. The auditor's determination of whether a deficiency in internal control is a significant deficiency or material weakness for the purpose of reporting an audit finding is in relation to a type of compliance requirement for a major program identified in the Compliance Supplement.
 - (2) Material noncompliance with the provisions of Federal statutes, regulations, or the terms and conditions of Federal awards related to a major program. The auditor's determination of whether a noncompliance with the provisions of Federal statutes, regulations, or the terms and conditions of Federal awards is material for the purpose of reporting an audit finding is in relation to a type of compliance requirement for a major program identified in the compliance supplement.
 - (3) Known questioned costs that are greater than \$25,000 for a type of compliance requirement for a major program. Known questioned costs are those specifically identified by the auditor. In evaluating the effect of questioned costs on the opinion on compliance, the auditor considers the best estimate of total costs questioned (likely questioned costs), not just the questioned costs specifically identified (known questioned costs). The auditor must also report known questioned costs when likely questioned costs are greater than \$25,000 for a type of compliance requirement for a major program. In reporting questioned costs, the auditor must include information to provide proper perspective for judging the prevalence and consequences of the questioned costs.

The American Institute of Certified Public Accountants defines significant deficiencies and material weaknesses in internal controls over compliance in its *Codification of Statements on Auditing Standards*, section 935, as follows:

.011 For purposes of adapting GAAS to a compliance audit, the following terms have the meanings attributed as follows: ...

Material weakness in internal control over compliance. A deficiency, or combination of deficiencies, in internal control over compliance, such that there is a reasonable possibility that material noncompliance with a compliance requirement will not be prevented, or detected and corrected, on a timely basis. In this section, a reasonable possibility exists when the likelihood of the event is either reasonably possible or probable as defined as follows:

Reasonably possible. The chance of the future event or events occurring is more than remote but less than likely.

Remote. The chance of the future event or events occurring is slight.

Probable. The future event or events are likely to occur.

Significant deficiency in internal control over compliance. A deficiency, or a combination of deficiencies, in internal control over compliance that is less severe than a material weakness in internal control over compliance, yet important enough to merit attention by those charged with governance.

Material noncompliance. In the absence of a definition of material noncompliance in the governmental audit requirement, a failure to follow compliance requirements or a violation of prohibitions included in the applicable compliance requirements that results in noncompliance that is quantitatively or qualitatively material, either individually or when aggregated with other noncompliance, to the affected government program.

Revised Code of Washington RCW 74.39A.056, Criminal history checks on long-term care workers, states:

- (1) (a) All long-term care workers shall be screened through state and federal background checks in a uniform and timely manner to verify that they do not have a criminal history that would disqualify them from working with vulnerable persons. The department must perform criminal background checks for individual providers and prospective individual providers and make the information available as provided by law.
- (b) (i) Except as provided in (b)(ii) of this subsection, for long-term care workers hired after January 7, 2012, the background checks required under this section shall include checking against the federal bureau of investigation fingerprint identification records system and against the national sex offenders registry or their successor programs. The department shall require these long-term care workers to submit fingerprints for the purpose of investigating conviction records through both the Washington state patrol and the federal bureau of investigation. The department shall not pass on the cost of these criminal background checks to the workers or their employers.
- (ii) This subsection does not apply to long-term care workers employed by community residential service businesses until January 1, 2016.
- (c) The department shall share state and federal background check results with the department of health in accordance with RCW 18.88B.080.
- (2) No provider, or its staff, or long-term care worker, or prospective provider or long term care worker, with a stipulated finding of fact, conclusion of law, an agreed order, or finding of fact, conclusion of law, or final order issued by a disciplining authority or a court of law or entered into a state registry with a final substantiated finding of abuse, neglect, exploitation, or abandonment of a minor or a vulnerable adult as defined in chapter 74.34 RCW shall be employed in the care of and have unsupervised access to vulnerable adults.
- (3) The department shall establish, by rule, a state registry which contains identifying information about long-term care workers identified under this chapter who have final substantiated findings of abuse, neglect, financial exploitation, or abandonment of a vulnerable adult as defined in RCW 74.34.020. The rule must include disclosure, disposition of findings, notification, findings of fact, appeal rights, and fair hearing requirements. The department shall disclose, upon request, final substantiated findings of abuse, neglect, financial exploitation, or abandonment to any person so requesting this information. This information must also be shared with the department of health to advance the purposes of chapter 18.88B RCW.

- (4) The department shall adopt rules to implement this section.

Washington Administrative Code WAC 388-76-10015, License-Adult family home-compliance required, states:

- (1) The licensed adult family home must comply with all the requirements established in chapters 70.128, 70.129, 74.34 RCW, this chapter and other applicable laws and regulations including chapter 74.39A RCW; and
- (2) The provider is ultimately responsible for the day-to-day operation of each licensed home.
- (3) The provider must promote the health, safety, and well-being of each resident residing in each licensed adult family home.

WAC 388-76-10161, Background checks -- Who is required to have.

- (1) An adult family home applicant and anyone affiliated with an applicant must have the following background checks before licensure:
 - (a) A Washington state name and date of birth background check; and
 - (b) If applying after January 7, 2012, a national fingerprint background check.
- (2) The adult family home must ensure that all caregivers, entity representatives, and resident managers who are employed directly or by contract after January 7, 2012, have the following background checks:
 - (a) A Washington state name and date of birth background check; and
 - (b) A national fingerprint background check.
- (3) All household members over the age of eleven, volunteers, students, and noncaregiving staff who may have unsupervised access to residents must have a Washington state name and date of birth background check. They are not required to have a national fingerprint background check.

WAC 388-76-10165 Background checks – Washington State name and date of birth background check – Valid for two years – National fingerprint background check – Valid indefinitely, states:

- (1) A Washington state name and date of birth background check is valid for two years from the initial date it is conducted. The adult family home must ensure:
 - (a) A new DSHS background authorization form is submitted to the department's background check central unit every two years for each individual listed in WAC 388-76-10161;
 - (b) There is a valid Washington state background check for all individuals listed in WAC 388-76-10161.
- (2) A national fingerprint background check is valid for an indefinite period of time. The adult family home must ensure there is a valid national fingerprint background check for individuals hired after January 7, 2012 as caregivers, entity representatives or resident managers. To be considered valid, the individual must have completed the national fingerprint background check through the background check central unit after January 7, 2012.

WAC 388-76-10166 Background checks – Household members, noncaregiving and unpaid staff – Unsupervised access, states:

- (1) The adult family home must not allow individuals specified in WAC 388-76-10161(3) to have unsupervised access to residents until the home receives results of the Washington state name and date of birth background check from the department.
- (2) If the background check results show that an individual specified in WAC 388-76-10161 has a criminal conviction or pending charge for a crime that is not automatically disqualifying under chapter 388-113 WAC, then the adult family home must:
 - (a) Determine whether or not the person has the character, competence and suitability to have unsupervised access to residents; and
 - (b) Document in writing the basis for making the decision.
 - (c) Nothing in this section should be interpreted as requiring the employment of any person against the better judgment of the adult family home.

WAC 388-76-10175 Background checks – Employment – Conditional hire – Pending results of Washington state name and date of birth background check, states:

An adult family home may conditionally employ a person directly or by contract, pending the result of a Washington state name and date of birth background check, provided the home:

- (1) Submits the Washington state name and date of birth background check no later than one business day after conditional employment;
- (2) Requires the individual to sign a disclosure statement and the individual denies having a disqualifying criminal conviction or pending charge for a disqualifying crime under chapter 388-113 WAC, or a negative action that is listed in WAC 388-76-10180;
- (3) Does not allow the individual to have unsupervised access to any resident;
- (4) Ensures direct supervision, as defined in WAC 388-76-10000, of the individual; and
- (5) Ensures the individual is competent and receives the necessary training to perform assigned tasks and meets the staff training requirements under chapter 388-112 WAC.

WAC 388-76-10176 Background checks – Employment – Provisional hire – Pending results of national fingerprint check.

The adult family home may provisionally employ individuals hired after January 7, 2012 and listed in WAC 388-76-10161(2) for one hundred twenty-days and allow those individuals to have unsupervised access to residents when:

- (1) The individual is not disqualified based on the results of the Washington state name and date of birth background check; and
- (2) The results of the national fingerprint background check are pending.

WAC 388-76-10180 Background checks – Employment – Disqualifying information. [Disqualifying negative actions] states:

- (1) The adult family home must not employ, directly or by contract, a caregiver, entity representative, or resident manager if:

- (a) The caregiver, entity representative or resident manager will have unsupervised access to vulnerable adults, as defined in RCW 43.43.830; and either:
- (b) The caregiver, entity representative or resident manager has a disqualifying criminal conviction or pending charge for a disqualifying crime under chapter 388-113 WAC; or
- (c) The caregiver, entity representative, or resident manager has one or more of the following negative actions:
 - (i) A court has issued a permanent restraining order or order of protection, either active or expired, against the person that was based upon abuse, neglect, financial exploitation, or mistreatment of a child or vulnerable adult;
 - (ii) The individual is a registered sex offender;
 - (iii) The individual is on a registry based upon a final finding of abuse, neglect or financial exploitation of a vulnerable adult, unless the finding was made by adult protective services prior to October 2003;
 - (iv) A founded finding of abuse or neglect of a child was made against the person, unless the finding was made by child protective services prior to October 1, 1998;
 - (v) The individual was found in any dependency action to have sexually assaulted or exploited any child or to have physically abused any child;
 - (vi) The individual was found by a court in a domestic relations proceeding under Title 26 RCW, or under any comparable state or federal law, to have sexually abused or exploited any child or to have physically abused any child;
 - (vii) The person has had a contract or license denied, terminated, revoked, or suspended due to abuse, neglect, financial exploitation, or mistreatment of a child or vulnerable adult; or
 - (viii) The person has relinquished a license or terminated a contract because an agency was taking an action against the individual related to alleged abuse, neglect, financial exploitation or mistreatment of a child or vulnerable adult.

WAC 388-76-10181 Background checks – Employment – Nondisqualifying information, states:

- (1) If any background check results show that an employee or prospective employee has a criminal conviction or pending charge for a crime that is not disqualifying under chapter 388-113 WAC, then the adult family home must:
 - (a) Determine whether the person has the character, competence and suitability to work with vulnerable adults in long-term care; and
 - (b) Document in writing the basis for making the decision, and make it available to the department upon request.
- (2) Nothing in this section should be interpreted as requiring the employment of any person against the better judgment of the adult family home.

2016-045

The Department of Social and Health Services, Developmental Disabilities Administration, did not have adequate internal controls over and did not comply with requirements to ensure Medicaid payments to supported living providers were allowable.

Federal Awarding Agency:	U.S. Department of Health and Human Services
Pass-Through Entity:	None
CFDA Number and Title:	93.775 State Medicaid Fraud Control Units 93.777 State Survey and Certification of Health Care Providers and Suppliers (Title XVIII) Medicare 93.778 Medical Assistance Program (Medicaid; Title XIX)
Federal Award Number:	5-1605WA5MAP; 5-1605WA5ADM; 5-1605WAIMPL; 5-1605WAINCT
Applicable Compliance Component:	Activities Allowed/Unallowed Allowable Costs/Cost Principles
Known Questioned Cost Amount:	\$ 43,573
Likely Questioned Cost Amount:	\$19,363,146

Background

Medicaid is a jointly funded state and federal partnership providing coverage for about 1.9 million eligible low-income Washington residents who otherwise might go without medical care. Medicaid is Washington's largest public assistance program and accounts for about one-third of the state's federal expenditures. The program spent about \$11.6 billion in federal and state funds during fiscal year 2016.

The Department's Developmental Disabilities Administration administers the Home and Community Based Services program for people with developmental disabilities. Supported living is a core service of this program, delivered by staff of contracted supported living providers. Contractor employees assist clients in daily living activities and with the social and adaptive skills needed to live in the community.

The Department uses an assessment to evaluate a client's support needs and to calculate the number of support hours a client needs to live in the community. The assessment predicts a level of care as if the client lives alone; however, most clients live with other clients. Because many support hours can be shared with roommates, the Department looks for shared hour opportunities to help providers care for clients in a cost effective manner.

Through a rate setting process, Department resource managers work with providers to determine how the assessed level of support will be delivered and the number of daily direct service hours that will be provided. A daily rate is loaded into the Department's payment system, and providers access the system to claim payment for each day of service that was provided. Providers are required to maintain adequate payroll records, including staff timesheets, work schedules and payroll vouchers, to support

payment claims. In fiscal year 2016, the state Medicaid program paid about \$381 million in federal and state funds to supported living agencies to support about 4,100 clients.

During the audit period, one Department employee was assigned to conduct periodic reviews of supported living providers. The reviews consisted of comparing employee hours worked to clients' contracted hours, and training providers about necessary payroll documentation. In fiscal year 2016, the employee conducted 24 reviews of provider payroll records. Since 2013, the Department has reviewed records for 95 of the 122 supported living providers in the state.

Supported living providers must submit a cost report at the end of each calendar year. The Department uses the cost reports to calculate if the total support hours claimed by providers for the year agree to authorized service hours. Cost reports are reconciled and analyzed based on total hours provided to all clients in the agency, while payments are based on individual client needs.

In prior audits, we reported the Department did not ensure providers maintained adequate documentation to ensure payments for supported living services were allowable. The prior finding numbers were 2015-049, 2014-042, 2013-036 and 12-39.

Description of Condition

Although the Department has improved its monitoring of provider payroll documentation, internal controls were still not effective to ensure Medicaid payments claimed by supported living providers were allowable.

The Department's review process was not effective to ensure payments claimed by providers for the assessed needs of each client were for actual support hours provided. For the 24 reviews the Department employee performed during the audit period, employee timesheets were not reconciled to provider payments.

During the Department's cost report reconciliation process, analysts relied on payroll hours reported by providers in summary level reports for all employees and clients, but did not compare the information with supporting payroll documentation, such as timesheets, to ensure the hours reported were accurate and clients received their assessed support hours.

Department policy allows providers to settle their cost reports over a two-year period to minimize settlements. The Department authorized 10 agencies to settle their cost reports in this manner for calendar year 2015. This practice allows providers to claim payment for hours they did not provide in the current year and intend to make up the following year. This practice resulted in unallowable payments made to providers for services they did not provide.

We consider the condition described above to be a material weakness in internal controls.

Cause of Condition

The Department has not established sufficient policies and procedures for service providers to follow to ensure payroll documentation was adequate. As a result, providers were unclear about what documentation was required to support payment claims.

The Department asserts its established cost report reconciliation process provides adequate support for provider payments. We concluded this process is inadequate to ensure Medicaid payments were paid only for allowable services and that services were actually provided.

Effect of Condition and Questioned Costs

We used a statistical sampling method to randomly select 86 monthly payments, totaling \$813,679, from a population of 47,044 monthly payments. We reconciled the payments with individual provider timesheets and work schedules and found 51 payments, totaling \$70,787, that were not supported by adequate payroll records, such as timesheets.

We are questioning \$35,397, which is the federal portion of the unallowable payments. When we project the results to the entire population of supported living payments, we estimate the Department made \$38,722,217 in unallowable payments. The federal portion of the estimated total questioned cost is \$19,363,146.

During our prior audit, we identified overpayments that resulted from system defects in ProviderOne – Washington’s primary Medicaid payment system. We conducted similar testing of the system defects during this audit and identified 27 payments, totaling \$16,344, that were improperly paid to supported living providers. We are questioning \$8,176, which is the federal portion of the unallowable costs. Because we did not use statistical sampling for this test, we did not project these questioned costs to the entire population.

We question costs when we find an agency has not complied with grant regulations or when it does not have adequate documentation to support its expenditures.

Recommendations

We recommend the Department:

- Compare provider payroll documentation with authorized hours and payments system billings to ensure services provided to individual clients reconcile with amounts claimed
- Develop sufficient policies and procedures for providers to follow when documenting service hours provided to clients and compiling payroll records
- Increase the rate and frequency of provider payroll reviews
- Require providers to submit cost reports annually
- Work with the federal grantor to determine if the cost report settlement process adequately supports provider payments
- Seek recovery of funds paid to providers that did not maintain adequate payroll documentation or who were overpaid due to payment system defects

- Consult with the U.S. Department of Health and Human Services about repaying the questioned costs, including interest

Agency's Response

The Department does not concur with this finding.

RCW 71A.12.060 clearly provides the Secretary of the Department the authority to authorize payments for individuals in community residential programs. To date, the Secretary has authorized a system that requires payment for the total annual contracted Instruction and Support Services (ISS) hours to be reconciled to the actual hours provided. The approved system allows for more efficient use of taxpayer resources, by allowing additional staffing for peak demand, and allows for better service and flexibility by allowing providers to move resources to meet the daily changing needs of clients.

Using the annual cost report process (Developmental Disabilities Administration Policy 6.04), the Department verifies the ISS hours provided are equal to or exceed the total hours of service the Department has authorized. Through this verification system, if the actual ISS hours reported in the annual cost report are less than the total authorized hours for all clients served by the Supported Living (SL) provider or are not supported by documentation that shows that the reported hours were actually worked, the Department seeks recovery of any overpayment through the cost report settlement process (DDA Policy 6.04 (III)).

The system is designed to allow for resource flexibility by the SL provider throughout the year to enable the provider to meet the changing needs of the individual client. The Department requires, over a year's time, that clients within the agency receive all authorized ISS hours. Providers are given the calendar year to maintain the flexibility needed to address client instruction and support needs. Any audit finding that considers a limited time frame does not accurately capture the entire delivery of service, or any corresponding annual underpayment or overpayment.

SL providers are required to complete an annual cost report. The cost report reconciles hours and ISS dollars authorized to hours and ISS dollars provided. The SL provider attests to the accuracy of the cost report. A settlement is issued to any SL provider who fails to meet either standard (delivery of hours or expenditure of dollars).

We believe the audit has erred in treating cost settlements in the same way as overpayments. Overpayments are the result of human or systemic errors or omissions in specific instances whereas cost settlements are based on reimbursement methodologies defined in policy, rule and contract. Cost settlements are typically done in the aggregate on an annual basis and not on a client by client or case by case basis. See 42 CFR, Section 413 –Principles of Reasonable Cost Reimbursement.

The Department has additional measures in place to further review or audit the provider cost reporting:

- *The Department's Aging and Long-Term Support Administration, Residential Care Services (RCS) performs a cursory review of hours provided as part of the certification evaluation process.*

- *If concerns are identified in the RCS certification evaluation, the Department will conduct an additional review of the SL provider.*
- *Agency staff review a sample of 24 agencies per year. Technical assistance and training are provided during these reviews. DDA will offer classroom training to providers during the fiscal year ending in June 2018.*
- *DDA has not approved any new two-year settlement request since calendar year 2014. Therefore, all two-year requests ended December 2016. In addition, DDA will remove the two-year option from the policy to be effective July 1, 2017.*
- *DDA policy 6.04 is submitted to CMS when waiver renewals/amendments are requested.*

The audit recommends the Department continues to improve internal controls to ensure SL providers maintain adequate documentation to support payments claimed against payroll records. Current Department policy requires additional schedules to report ISS hours in a format reconcilable to payroll records.

Currently, reviews are being conducted on roughly 20% of residential provider's ISS hours. The scope of this compliance review includes reconciliation of hours in the contract by households compared to employee payroll records delivered within the household. Consultation and training to service providers related to the tracking and documentation of ISS hours is provided at the time of the review.

Through policy revision, the Department has clarified the expectations that the service provider's payroll system must adequately document ISS hours delivered. Additionally, Department policy outlines acceptable margins of flexibility of ISS hour delivered. Training on these new policies occurred over the summer and fall of 2015.

DDA will reconcile the questioned cost, including "with interest" with U.S. Department of Health and Human Services.

Auditor's Concluding Remarks

We thank the Department for its cooperation and assistance throughout the audit.

We acknowledge the complexity of providing services to supported living clients and the changing needs of each client. Supported living payroll summaries reported in agency cost reports are reconciled at an agency-level while payments are made to providers based on hours authorized through individual client assessments. Neither the Department's review of annual cost reports, or its additional measures described in its response, reconcile provider payments to source documentation. Without a more detailed level of review, the Department was unable to demonstrate supported living agencies provided the individual assessed client hours they were paid for or met the federal requirement under 2 CFR 200.403 that payments be adequately documented.

Since fiscal year 2012, we have issued a finding regarding these matters. We are committed to working through the disagreement with Department management. However, we reaffirm our finding and will follow up in our next audit.

Applicable Laws and Regulations

Title 2 U.S. Code of Federal Regulations Part 200, *Uniform Administrative Requirements, Cost Principles, and Audit Requirements for Federal Awards* (Uniform Guidance) established reporting requirements for audit findings.

Section 200.303 Internal controls.

The non-Federal entity must:

- (a) Establish and maintain effective internal control over the Federal award that provides reasonable assurance that the non-Federal entity is managing the Federal award in compliance with Federal statutes, regulations, and the terms and conditions of the Federal award. These internal controls should be in compliance with guidance in “Standards for Internal Control in the Federal Government” issued by the Comptroller General of the United States or the “Internal Control Integrated Framework”, issued by the Committee of Sponsoring Organizations of the Treadway Commission (COSO).
- (b) Comply with Federal statutes, regulations, and the terms and conditions of the Federal awards.
- (d) Take prompt action when instances of noncompliance are identified including noncompliance identified in audit findings.

Section 200.403 Factors affecting Allowability of costs.

Except where otherwise authorized by statute, costs must meet the following general criteria in order to be allowable under Federal awards.

- (a) Be necessary and reasonable for the performance of the Federal award and be allocable thereto under these principles.
- (b) Conform to any limitations or exclusions set forth in these principles or in the Federal award as to types or amount of cost items.
- (c) Be consistent with policies and procedures that apply uniformly to both federally-financed and other activities of the non-Federal entity.
- (d) Be accorded consistent treatment. A cost may not be assigned to a Federal award as a direct cost if any other cost incurred for the same purpose in like circumstances has been allocated to the Federal award as an indirect cost.
- (e) Be determined in accordance with generally accepted accounting principles (GAAP), except, for state and local governments and Indian tribes only, as otherwise provided for in this part.
- (f) Not be included as a cost or used to meet cost sharing or matching requirements of any other federally-financed program in either the current or a prior period. See also §200.306 Cost sharing or matching paragraph (b).
- (g) Be adequately documented. See also §§200.300 Statutory and national policy requirements through 200.309 Period of performance of this part.

Section 200.410 Collection of unallowable costs.

Payments made for costs determined to be unallowable by either the Federal awarding agency, cognizant agency for indirect costs, or pass-through entity, either as direct or indirect costs, must be refunded (including interest) to the Federal Government in

accordance with instructions from the Federal agency that determined the costs are unallowable unless Federal statute or regulation directs otherwise. See also Subpart D—Post Federal Award Requirements of this part, §§200.300 Statutory and national policy requirements through 200.309 Period of performance.

Section 200.516 Audit reporting, state in part:

(a) *Audit findings reported.* The auditor must report the following as audit findings in a schedule of findings and questioned costs:

- (1) Significant deficiencies and material weaknesses in internal control over major programs and significant instances of abuse relating to major programs. The auditor's determination of whether a deficiency in internal control is a significant deficiency or material weakness for the purpose of reporting an audit finding is in relation to a type of compliance requirement for a major program identified in the Compliance Supplement.
- (2) Material noncompliance with the provisions of Federal statutes, regulations, or the terms and conditions of Federal awards related to a major program. The auditor's determination of whether a noncompliance with the provisions of Federal statutes, regulations, or the terms and conditions of Federal awards is material for the purpose of reporting an audit finding is in relation to a type of compliance requirement for a major program identified in the compliance supplement.
- (3) Known questioned costs that are greater than \$25,000 for a type of compliance requirement for a major program. Known questioned costs are those specifically identified by the auditor. In evaluating the effect of questioned costs on the opinion on compliance, the auditor considers the best estimate of total costs questioned (likely questioned costs), not just the questioned costs specifically identified (known questioned costs). The auditor must also report known questioned costs when likely questioned costs are greater than \$25,000 for a type of compliance requirement for a major program. In reporting questioned costs, the auditor must include information to provide proper perspective for judging the prevalence and consequences of the questioned costs.

The American Institute of Certified Public Accountants defines significant deficiencies and material weaknesses in internal controls over compliance in its *Codification of Statements on Auditing Standards*, section 935, as follows:

.011 For purposes of adapting GAAS to a compliance audit, the following terms have the meanings attributed as follows: ...

Material weakness in internal control over compliance. A deficiency, or combination of deficiencies, in internal control over compliance, such that there is a reasonable possibility that material noncompliance with a compliance requirement will not be prevented, or detected and corrected, on a timely basis. In this section, a reasonable possibility exists when the likelihood of the event is either reasonably possible or probable as defined as follows:

Reasonably possible. The chance of the future event or events occurring is more than remote but less than likely.

Remote. The chance of the future event or events occurring is slight.

Probable. The future event or events are likely to occur.

Significant deficiency in internal control over compliance. A deficiency, or a combination of deficiencies, in internal control over compliance that is less severe than a material weakness in internal control over compliance, yet important enough to merit attention by those charged with governance.

Material noncompliance. In the absence of a definition of material noncompliance in the governmental audit requirement, a failure to follow compliance requirements or a violation of prohibitions included in the applicable compliance requirements that results in noncompliance that is quantitatively or qualitatively material, either individually or when aggregated with other noncompliance, to the affected government program.

Revised Code of Washington (RCW) 71A.12.060, Payment authorized for residents in community residential programs.

The secretary is authorized to pay for all or a portion of the costs of care, support and training of residents of a residential habilitation center who are placed in community residential programs under this section and RCW 71A.12.070 and 71A.12.080.

Washington Administrative Code WAC 388-101D-0025

Service provider responsibilities.

- (1) Service providers must meet the requirements of:
 - (a) This chapter;
 - (b) Each contract and statement of work entered into with the department;
 - (c) Each client's individual support plan when the individual support plan identifies the service provider as responsible; and
 - (d) Each client's individual instruction and support plan.
- (2) The service provider must:
 - (a) Have a designated administrator and notify the department when there is a change in administrator;
 - (b) Ensure that clients have immediate access to staff, or the means to contact staff, at all times;
 - (c) Provide adequate staff within contracted hours to administer the program and meet the needs of clients;
 - (d) Not routinely involve clients in the unpaid instruction and support of other clients;
 - (e) Not involve clients receiving crisis diversion services in the instruction and support of other clients; and
 - (f) Retain all records and other material related to the residential services contract for six years after expiration of the contract.

The Department's *Client Service Contract – Community Residential Services, General Terms and Conditions, Part 11* states in part:

Maintenance of Records. The Contractor shall maintain records relating to this Contract and the performance of the services described herein. The records include, but are not limited to, accounting procedures and practices, which sufficiently and properly reflect all direct and

indirect costs of any nature expended in the performance of the Contract. All records and other material relevant to this Contract shall be retained for six (6) years after expiration or termination of this Contract.

2016-046 The Department of Social and Health Services did not accurately claim the federal share of Medicaid payments processed through the Social Service Payment System.

Federal Awarding Agency: U.S. Department of Health and Human Services
Pass-Through Entity: None
CFDA Number and Title: 93.775 State Medicaid Fraud Control Units
93.777 State Survey and Certification of Health Care Providers and Suppliers (Title XVIII) Medicare
93.778 Medical Assistance Program (Medicaid; Title XIX)
Federal Award Number: 5-1605WA5MAP; 5-1605WA5ADM; 5-1605WAIMPL; 5-1605WAINCT
Applicable Compliance Component: Matching
Known Questioned Cost Amount: \$106,055

Background

Medicaid is a jointly funded state and federal partnership providing coverage for about 1.9 million eligible low-income individuals in Washington who otherwise might go without medical care. Medicaid is Washington’s largest public assistance program and accounts for about one-third of the state’s federal expenditures. The program spent about \$11.6 billion in federal and state funds during fiscal year 2016.

States use the Federal Medical Assistance Percentage (FMAP) to determine the amount of federal matching funds for Medicaid expenditures. The U.S. Department of Health and Human Services calculates this rate annually. There are different FMAP rates for different Medicaid services, such as Enhanced FMAP for newly eligible Affordable Care Act clients and Expansion State FMAP for Presumptive Supplemental Security Income clients who have long-term medical conditions that are likely to meet federal disability criteria, but whose disability determination is pending. States may receive additional FMAP for Community First Choice (CFC) services, including home and community-based attendant supports and services to individuals who would otherwise require an institutional level of care.

The Department’s cost allocation process automatically applies federal Medicaid matching rates to payments based on cost allocation codes, which are determined by service codes authorized by social service case managers. Through February 2016, the Department paid for CFC services through the Social Service Payment System for individual providers, which was replaced by Individual ProviderOne for services provided effective March 1, 2016.

The Department paid about \$310 million to CFC individual providers through the Social Service Payment System in fiscal year 2016.

Description of Condition

We found the Department had adequate internal controls to materially ensure the correct FMAP rate was entered and used. However, the Department applied incorrect FMAP rates in the payment system and over-claimed the federal share on \$2.7 million in Medicaid payments for CFC clients, and did not process an adjustment prior to June 30, 2016.

Cause of Condition

When the CFC program was implemented effective on July 1, 2015, most home and community service recipients were transitioned from their current program to the CFC. During the transition, all current program's authorizations were not correctly converted to CFC in the Social Service Payment System. In some cases, case managers also authorized incorrect cost allocation social service codes, which allowed incorrect federal matching rates to be used.

Effect of Condition and Questioned Costs

The Department over-claimed \$106,055 in Medicaid federal matching funds. The Department identified the errors and completed repayment of the federal share after the audit period. Because the repayments occurred after the end of the audit period, we are questioning the over-claimed amount of \$106,055.

We question costs when we find an agency has not complied with grant regulations or when it does not have adequate documentation to support expenditures.

Recommendation

We recommend the Department:

- Ensure questioned costs were repaid to the federal grantor
- Ensure it claims the correct federal share of Medicaid expenditures in the future

Agency's Response

The Department concurs with the audit finding.

During the implementation and data conversion for Community First Choice, not all data converted correctly in Social Service Payment System SSPS. Due to accounting and reporting staff workload related to the implementation of Provider One and IPOne, it took an unanticipated amount of time to obtain data reports from SSPS and process corrections in AFRS.

In addition, when it is discovered that a case manager authorized an incorrect service code, notice is sent to accounting staff and the expenditures are corrected and funds charged appropriately. This is normal business practice. During the audit process, the auditor's asked for all journal vouchers processed for expenditures made during the audit period and DSHS provided the journal vouchers for these transactions, which were then included in the questioned costs.

Effective March 1, 2016, with the exception of some minor prior authorization corrections, services are no longer authorized in SSPS. With the implementation of Provider One and IOne, there are more controls to limit the selections for case managers when authorizing services and the Home and Community Services Quality Assurance Unit will continue to monitor payment authorizations for compliance with requirements.

Effective October 2016, the charges related to the questioned costs have been completed and funds were returned to CMS.

Auditor's Concluding Remarks

We thank the Department for its cooperation and assistance throughout the audit. We will review the status of the Department's corrective action during our next audit.

Applicable Laws and Regulations

Title 2 U.S. Code of Federal Regulations CFR Part 200, *Uniform Administrative Requirements, Cost Principles, and Audit Requirements for Federal Awards* (Uniform Guidance) established reporting requirements for audit findings.

Section 200.403 Factors affecting Allowability of costs.

Except where otherwise authorized by statute, costs must meet the following general criteria in order to be allowable under Federal awards.

- (a) Be necessary and reasonable for the performance of the Federal award and be allocable thereto under these principles.
- (b) Conform to any limitations or exclusions set forth in these principles or in the Federal award as to types or amount of cost items.
- (c) Be consistent with policies and procedures that apply uniformly to both federally-financed and other activities of the non-Federal entity.
- (d) Be accorded consistent treatment. A cost may not be assigned to a Federal award as a direct cost if any other cost incurred for the same purpose in like circumstances has been allocated to the Federal award as an indirect cost.
- (e) Be determined in accordance with generally accepted accounting principles (GAAP), except, for state and local governments and Indian tribes only, as otherwise provided for in this part.
- (f) Not be included as a cost or used to meet cost sharing or matching requirements of any other federally-financed program in either the current or a prior period. See also §200.306 Cost sharing or matching paragraph (b).
- (g) Be adequately documented. See also §§200.300 Statutory and national policy requirements through 200.309 Period of performance of this part.

Section 200.516 Audit reporting, state in part:

- (a) *Audit findings reported.* The auditor must report the following as audit findings in a schedule of findings and questioned costs:
 - (3) Known questioned costs that are greater than \$25,000 for a type of compliance requirement for a major program. Known questioned costs are those specifically

identified by the auditor. In evaluating the effect of questioned costs on the opinion on compliance, the auditor considers the best estimate of total costs questioned (likely questioned costs), not just the questioned costs specifically identified (known questioned costs). The auditor must also report known questioned costs when likely questioned costs are greater than \$25,000 for a type of compliance requirement for a major program. In reporting questioned costs, the auditor must include information to provide proper perspective for judging the prevalence and consequences of the questioned costs.

42 CFR 441.590 - Increased Federal financial participation, states:

Beginning October 1, 2011, the FMAP applicable to the State will be increased by 6 percentage points, for the provision of Community First Choice services and supports, under an approved State plan amendment.

42 U.S. Code 1396d Definitions, states in part:

(z) Equitable Support for Certain States.—

(2) (A) For calendar quarters in 2014 and each year thereafter, the Federal medical assistance percentage otherwise determined under subsection (b) for an expansion State described in paragraph (3) with respect to medical assistance for individuals described in section 1902(a)(10)(A)(i)(VIII) who are nonpregnant childless adults with respect to whom the State may require enrollment in benchmark coverage under section 1937 shall be equal to the percent specified in subparagraph (B)(i) for such year.

(3) A State is an expansion State if, on the date of the enactment of the Patient Protection and Affordable Care Act, the State offers health benefits coverage statewide to parents and nonpregnant, childless adults whose income is at least 100 percent of the poverty line, that is not dependent on access to employer coverage, employer contribution, or employment and is not limited to premium assistance, hospital-only benefits, a high deductible health plan, or alternative benefits under a demonstration program authorized under section 1938. A State that offers health benefits coverage to only parents or only nonpregnant childless adults described in the preceding sentence shall not be considered to be an expansion State.

2016-047 Medicaid funds were overpaid to a supported living agency that contracted with the Department of Social and Health Services, Developmental Disabilities Administration.

Federal Awarding Agency: U.S. Department of Health and Human Services
Pass-Through Entity: None
CFDA Number and Title: 93.775 State Medicaid Fraud Control Units
93.777 State Survey and Certification of Health Care Providers and Suppliers (Title XVIII) Medicare
93.778 Medical Assistance Program (Medicaid; Title XIX)
Federal Award Number: 5-1605WA5MAP; 5-1605WA5ADM; 5-1605WAIMPL; 5-1605WAINCT
Applicable Compliance Component: Activities Allowed/Unallowed
Allowable Costs/Cost Principles
Known Questioned Cost Amount: \$1,258,250

Background

Medicaid is a jointly funded state and federal partnership providing coverage for about 1.9 million eligible low-income Washington residents who otherwise might go without medical care. Medicaid is Washington’s largest public assistance program and accounts for about one-third of the state’s federal expenditures. The program spent about \$11.6 billion in federal and state funds during fiscal year 2016.

The Department of Social and Health Services’ Developmental Disabilities Administration oversees the Home and Community Based Services program for people with developmental disabilities. Supported living is a core service of this program, delivered by staff of contracted supported living providers. In fiscal year 2016, the state Medicaid program paid about \$381 million in federal and state funds to supported living agencies to support about 4,100 clients.

When conducting a single audit, federal regulations require the auditor to report in a finding when questioned costs are identified for a federal award that exceed \$25,000.

Description of Condition

On August 1, 2016, our Office published an investigative report for the Department (report 1016927).

On September 23, 2015, the Department notified our Office of suspected illegal activity at a contracted supported living agency (agency). The Everett Police Department investigated and determined an employee of the agency misappropriated at least \$9,127 in client funds between May and December 2014. We reviewed the police department’s investigation and agreed with its conclusion.

The Department terminated its contract with the agency on September 22, 2015, due to a series of unresolved deficiencies. At the time of the contract termination, the agency had not repaid the clients for the loss of their funds, as required by Department policy.

During the investigation, we found the agency owed the Department \$117,048 for failing to provide contracted care hours to its clients between 2013 and 2014. In addition, the agency failed to submit its final cost report for 2015 as Department policy required, resulting in an overpayment of \$2,399,451.

Cause of Condition

The Department did not ensure the agency repaid the outstanding settlement amount before terminating its contract and did not ensure the agency submitted its final cost report to the Department.

Effect of Condition and Questioned Costs

The total overpayment was \$2,516,499. We are questioning \$1,258,250, which is the federal share of the overpayment. The Department collected \$10,321 from the agency.

We question costs when we find an agency has not complied with grant regulations or when it does not have adequate documentation to support its expenditures.

Recommendations

Consult with the U.S. Department of Health and Human Services about repaying questioned costs, including interest.

Agency's Response

The Department partially concurs with finding.

The Department processed the payment notice to the Office of Financial Recovery (OFR).

Per federal rules, the Department is not required to refund the Federal share of an overpayment made to a provider to the extent that the Department is unable to recover the overpayment because the provider has been determined bankrupt.

The agency in question has filed for bankruptcy. The Department has submitted the required information to the bankruptcy court for the amount owed. The Department will work with OFR to follow the Federal and State rules for financial recovery that pertain to bankruptcy proceedings.

Auditor's Concluding Remarks

We thank the Department for its cooperation and assistance throughout the audit. We will review the status of the Department's corrective action during our next audit.

Applicable Laws and Regulations

Title 2 U.S. Code of Federal Regulations Part 200, *Uniform Administrative Requirements, Cost Principles, and Audit Requirements for Federal Awards* (Uniform Guidance) established reporting requirements for audit findings.

Section 200.403 Factors affecting Allowability of costs.

Except where otherwise authorized by statute, costs must meet the following general criteria in order to be allowable under Federal awards.

- (a) Be necessary and reasonable for the performance of the Federal award and be allocable thereto under these principles.
- (b) Conform to any limitations or exclusions set forth in these principles or in the Federal award as to types or amount of cost items.
- (c) Be consistent with policies and procedures that apply uniformly to both federally-financed and other activities of the non-Federal entity.
- (d) Be accorded consistent treatment. A cost may not be assigned to a Federal award as a direct cost if any other cost incurred for the same purpose in like circumstances has been allocated to the Federal award as an indirect cost.
- (e) Be determined in accordance with generally accepted accounting principles (GAAP), except, for state and local governments and Indian tribes only, as otherwise provided for in this part.
- (f) Not be included as a cost or used to meet cost sharing or matching requirements of any other federally-financed program in either the current or a prior period. See also §200.306 Cost sharing or matching paragraph (b).
- (g) Be adequately documented. See also §§200.300 Statutory and national policy requirements through 200.309 Period of performance of this part.

Section 200.410 Collection of unallowable costs.

Payments made for costs determined to be unallowable by either the Federal awarding agency, cognizant agency for indirect costs, or pass-through entity, either as direct or indirect costs, must be refunded (including interest) to the Federal Government in accordance with instructions from the Federal agency that determined the costs are unallowable unless Federal statute or regulation directs otherwise. See also Subpart D—Post Federal Award Requirements of this part, §§200.300 Statutory and national policy requirements through 200.309 Period of performance.

Section 200.516 Audit reporting, state in part:

- (a) *Audit findings reported.* The auditor must report the following as audit findings in a schedule of findings and questioned costs:
 - (3) Known questioned costs that are greater than \$25,000 for a type of compliance requirement for a major program. Known questioned costs are those specifically identified by the auditor. In evaluating the effect of questioned costs on the opinion on compliance, the auditor considers the best estimate of total costs questioned (likely questioned costs), not just the questioned costs specifically identified (known questioned costs). The auditor must also report known questioned costs when likely questioned costs are greater than \$25,000 for a type of compliance

requirement for a major program. In reporting questioned costs, the auditor must include information to provide proper perspective for judging the prevalence and consequences of the questioned costs.

2016-048 The Department of Social and Health Services, Aging and Long-Term Support Administration, made improper Medicaid payments to individual providers.

Federal Awarding Agency: U.S. Department of Health and Human Services
Pass-Through Entity: None
CFDA Number and Title: 93.775 State Medicaid Fraud Control Units
93.777 State Survey and Certification of Health Care Providers and Suppliers (Title XVIII) Medicare
93.778 Medical Assistance Program (Medicaid; Title XIX)
Federal Award Number: 5-1605WA5MAP; 5-1605WA5ADM; 5-1605WAIMPL; 5-1605WAINCT
Applicable Compliance Component: Activities Allowed/Unallowed
Allowable Costs/Cost Principles
Known Questioned Cost Amount: \$90,685
(\$67,981 - Direct care services)
(\$22,704 - Associated costs)

Background

Medicaid is a jointly funded state and federal partnership providing coverage for about 1.9 million eligible low-income Washington residents who otherwise might go without medical care. Medicaid is Washington’s largest public assistance program and accounts for about one-third of the state’s federal expenditures. The program spent about \$11.6 billion in federal and state funds during fiscal year 2016.

The Aging and Long-Term Care Administration within the Department of Social and Health Services (Department) offers personal care services to support Medicaid clients in community settings through the Community First Choice program. The Department uses an assessment to evaluate a client’s support needs and to calculate the number of personal care hours the client needs to successfully live in the community. Individual providers contract with the Department to provide personal care services to clients. In fiscal year 2016, the state Medicaid program paid about \$370 million to Aging and Long-Term Care Administration’s contracted Community First Choice individual providers.

Individual providers are paid an hourly rate for providing personal care and a mileage rate for providing transportation services to their clients. Individual providers use the Department’s Individual ProviderOne system to invoice the Department for their hourly service and mileage claims. If a client is hospitalized or temporarily admitted to a long-term care facility, individual providers are not allowed to bill for services because Medicaid pays the hospital or care facility for the client’s care while admitted in the facility.

Description of Condition

The Department made unallowable payments totaling \$121,644 to Community First Choice individual providers who claimed payment for personal care and mileage services while their client was either hospitalized or admitted to a long-term care facility.

Specifically we found the Department:

- Made unallowable payments to 589 individual billing providers for 1,695 personal care claims totaling \$119,331
- Made unallowable payments to individual providers for 557 mileage claims totaling \$2,313

Cause of Condition

Program managers said the Department encountered performance issues with the new payment system and that individual providers were unclear about the instructions on how to submit claims for payment.

Effect of Condition and Questioned Costs

We are questioning \$67,981, which is the federal portion of the unallowable payments.

When unallowable payments are identified, federal regulations suggest auditors consider if associated costs, such as benefits, were also paid. The Department pays payroll tax and health care, training, and retirement fringe benefits on behalf of Community First Choice providers that are considered associated costs.

For the \$121,644 in payments we determined were unallowable, we identified \$40,543 in unallowable associated costs. We are questioning \$22,704, which is the federal portion of the unallowable payments.

We question costs when we find an agency has not complied with grant regulations or when it does not have adequate documentation to support its expenditures.

Recommendation

We recommend the Department consult with the U.S. Department of Health and Human Services to discuss repaying the questioned costs, including interest.

Agency's Response

The Department partially concurs with the audit findings.

The SAO used payment data to identify payments made to individual providers who claimed payment for personal care and mileage services on the same date of service that payment was made to a hospital or long-term care facility. The Department concurs that unallowable payments were made, but it is not known whether payments were incorrectly claimed by the IP rather than the hospital or nursing facility.

The time frame of the audit was during the first three months of the Go-Live for the Department's new billing system, Individual ProviderOne (IPOne). During this time IPs were experiencing a learning curve in using the new system. This may have contributed to incorrect claiming during this time period.

Since the implementation of the IPOne system, the Department can more easily discover incidents when providers are claiming hours for a time period in which a client is in a hospital, nursing facility, or other institutional setting. This will strengthen the department's internal controls.

The Department is currently developing a process to research and remediate occurrences of payments made for personal care and mileage services while a client was either hospitalized or admitted to a long-term care facility.

Auditor's Concluding Remarks

We thank the Department for its cooperation and assistance throughout the audit. We will review the status of the Department's corrective action during our next audit.

Applicable Laws and Regulations

Title 2 U.S. Code of Federal Regulations Part 200, *Uniform Administrative Requirements, Cost Principles, and Audit Requirements for Federal Awards* (Uniform Guidance) established reporting requirements for audit findings.

Section CFR 200.53 *Improper Payment* states:

- (a) *Improper payment* means any payment that should not have been made or that was made in an incorrect amount (including overpayments and underpayments) under statutory, contractual, administrative, or other legally applicable requirements; and
- (b) *Improper payment* includes any payment to an ineligible party, any payment for an ineligible good or service, any duplicate payment, any payment for a good or service not received (except for such payments where authorized by law), any payment that does not account for credit for applicable discounts, and any payment where insufficient or lack of documentation prevents a reviewer from discerning whether a payment was proper.

Section 200.403 Factors affecting Allowability of costs.

Except where otherwise authorized by statute, costs must meet the following general criteria in order to be allowable under Federal awards.

- (a) Be necessary and reasonable for the performance of the Federal award and be allocable thereto under these principles.
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- (d) Be accorded consistent treatment. A cost may not be assigned to a Federal award as a direct cost if any other cost incurred for the same purpose in like circumstances has been allocated to the Federal award as an indirect cost.

- (e) Be determined in accordance with generally accepted accounting principles (GAAP), except, for state and local governments and Indian tribes only, as otherwise provided for in this part.
- (f) Not be included as a cost or used to meet cost sharing or matching requirements of any other federally-financed program in either the current or a prior period. See also §200.306 Cost sharing or matching paragraph (b).
- (g) Be adequately documented. See also §§200.300 Statutory and national policy requirements through 200.309 Period of performance of this part.

Section 200.410 Collection of unallowable costs.

Payments made for costs determined to be unallowable by either the Federal awarding agency, cognizant agency for indirect costs, or pass-through entity, either as direct or indirect costs, must be refunded (including interest) to the Federal Government in accordance with instructions from the Federal agency that determined the costs are unallowable unless Federal statute or regulation directs otherwise. See also Subpart D—Post Federal Award Requirements of this part, §§200.300 Statutory and national policy requirements through 200.309 Period of performance.

Section 200.516 Audit reporting, state in part:

- (a) *Audit findings reported.* The auditor must report the following as audit findings in a schedule of findings and questioned costs:
 - (3) Known questioned costs that are greater than \$25,000 for a type of compliance requirement for a major program. Known questioned costs are those specifically identified by the auditor. In evaluating the effect of questioned costs on the opinion on compliance, the auditor considers the best estimate of total costs questioned (likely questioned costs), not just the questioned costs specifically identified (known questioned costs). The auditor must also report known questioned costs when likely questioned costs are greater than \$25,000 for a type of compliance requirement for a major program. In reporting questioned costs, the auditor must include information to provide proper perspective for judging the prevalence and consequences of the questioned costs.

Office of Management and Budget OMB Uniform Guidance, Compliance Supplement for 2016, *Part 3 – Compliance Requirements*, states in part:

Improper Payments

Under OMB guidance, Public Law (Pub. L.) No. 107-300, the Improper Payments Information Act of 2002, as amended by Pub. L. No. 111-204, the Improper Payments Elimination and Recovery Act, Executive Order 13520 on reducing improper payments, and the June 18, 2010 Presidential memorandum to enhance payment accuracy, Federal agencies are required to take actions to prevent improper payments, review Federal awards for such payments, and, as applicable, reclaim improper payments. Improper payments include the following:

1. Any payment that should not have been made or that was made in an incorrect amount under statutory, contractual, administrative, or other legally applicable requirements, such as overpayments or underpayments made to eligible recipients resulting from

inappropriate denials of payment or service, any payment that does not account for credit for applicable discounts, payments that are for the incorrect amount, and duplicate payments.

2. Any payment that was made to an ineligible recipient or for an ineligible good or service, or payments for goods or services not received (except for such payments where authorized by statute).
3. Any payment that an agency's review is unable to discern whether a payment was proper as a result of insufficient or lack of documentation.

Washington Administrative Code 388-71-0515 states in part:

What are the responsibilities of an individual provider when providing services to a client?

An individual provider must:

- 11) Complete and keep accurate time sheets of authorized/paid hours that are accessible to the social worker/case manager[.]

2016-049

The Department of Social and Health Services, Developmental Disabilities Administration, did not have adequate internal controls over and did not comply with requirements to ensure Medicaid payments made through the Social Service Payment System to individual providers were allowable.

Federal Awarding Agency: U.S. Department of Health and Human Services
Pass-Through Entity: None
CFDA Number and Title: 93.775 State Medicaid Fraud Control Units
93.777 State Survey and Certification of Health Care Providers and Suppliers (Title XVIII) Medicare
93.778 Medical Assistance Program (Medicaid; Title XIX)
Federal Award Number: 5-1605WA5MAP; 5-1605WA5ADM; 5-1605WAIMPL; 5-1605WAINCT
Applicable Compliance Component: Activities Allowed/Unallowed
Allowable Costs/Cost Principles
Known Questioned Cost Amount: **\$161,299**
(\$120,352 – Personal Care Services)
(\$ 40,947 – Associated Costs)
Likely Questioned Cost Amount: **\$54,422,418**
(\$41,328,192 – Personal Care Services)
(\$13,094,226 – Associated Costs)

Background

Medicaid is a jointly funded state and federal partnership providing coverage for about 1.9 million eligible low-income Washington residents who otherwise might go without medical care. Medicaid is Washington's largest public assistance program and accounts for about one-third of the state's federal expenditures. The program spent about \$11.6 billion in federal and state funds during fiscal year 2016.

The Department's Developmental Disabilities Administration administers the Community First Choice program for people with disabilities. The program provides personal care services to Medicaid clients in a community setting. Services are delivered to clients by individual providers who contract with the Department. In fiscal year 2016, the state Medicaid program paid over \$113. million to individual providers through the Social Service Payment System (SSPS) on behalf of Community First Choice clients.

The Department had a policy (6.01) that established expectations about how payments made through SSPS should have been monitored. Part of the policy described how a quality compliance coordinator would randomly select providers and compare their timesheets to payments.

In August 2015, the Department issued a management bulletin that informed staff of additional monitoring procedures related to individual provider timesheets they were required to perform.

Description of Condition

We found the Department did not have adequate internal controls to ensure payments made to individual providers through SSPS were allowable.

The quality compliance coordinator did not perform the random reconciliations of provider timesheets to payments during the audit period. Additionally, Department staff confirmed that the requirements in the management bulletin were not followed.

We consider the condition described above to be a material weakness in internal controls.

Cause of Condition

The Department did not complete provider timesheet monitoring activities in 2016 due to the implementation of a new payment system (Individual ProviderOne). The new system requires Individual Providers to electronically submit their timesheets prior to payment instead of the paper timesheets the Department historically monitored.

Effect of Condition and Questioned Costs

Timesheets

We used a statistical sampling method to randomly select 86 monthly payments to providers, totaling \$173,452, from a population of 82,404 monthly payments to providers. In addition, we judgmentally selected the four most costly payments totaling \$40,298. We reconciled the payments with individual provider timesheets and found 48 payments totaling \$107,899 were not supported.

In these instances, we either found:

- There was no timesheet to support the payment; or
- The hours or mileage paid by the Department was more than the hours or mileage recorded on provider timesheets

We are questioning \$60,350, which is the federal portion of the unallowable payments. When we project the results to the entire population of individual provider payments, we estimate the Department made \$73,900,888 in unallowable payments. The federal portion of the estimated total questioned cost is \$41,328,192.

Costs associated with timesheets

The Department also made payments on behalf of the provider for the employer's share of payroll taxes and fringe benefits that include health care, retirement and training. When unallowable payments are identified, federal regulations suggest auditors consider these expenditures. The costs associated with the 48 unallowable payments made without adequate support total \$33,492.

We are questioning \$18,758, which is the federal portion of the unallowable associated cost payments. When we project the results to the entire population of individual provider payments, we estimate the

Department made \$23,378,470 in unallowable associated cost payments. The federal portion of the estimated total questioned costs is \$13,094,226.

Duplicate Payments

Using computer assisted auditing techniques, we identified overpayments that resulted from system weakness that did not prevent duplicate payments in SSPS. We identified 144 payments, totaling \$107,123 that were improperly paid to individual providers. We are questioning \$60,002, which is the federal portion of the unallowable payments. Because we did not use statistical sampling for this test, we did not project these questioned costs to the entire population.

Costs associated with Duplicate Payments

The costs associated with the unallowable payments resulting from system weaknesses in the payment system total \$39,615. We are questioning \$22,189, which is the federal portion of the unallowable payments. Because we did not use statistical sampling for this test, we did not project these questioned costs to the entire population.

We question costs when we find an agency has not complied with grant regulations or when it does not have adequate documentation to support its expenditures. The statistical sample used for testing was also used to test compliance with client and provider eligibility requirements. Because some payments we examined were unallowable for violating multiple federal compliance requirements, some of the questioned costs reported here may also be reported in findings number 2016-042 and 2016-043.

Recommendations

We recommend the Department:

- Compare payment system billings with supporting documentation to ensure payments to individual providers are supported
- Conduct quality assurance reviews to identify improper payments and make adjustments for identified overpayments
- Develop sufficient policies, procedures and training for individual providers regarding payment claims
- Recoup the overpayments made to individual providers
- Identify the associated costs made for federal and state unemployment and report them to the grantor
- Consult with the U.S. Department of Health and Human Services to discuss repaying the questioned costs, including interest

Agency's Response

DDA partially concurs with the finding.

DDA concurs with the following:

- *The SAO review found 48 payments where there was no timesheet to support the payment, or the hours or mileage paid by the Department was more than the hours or mileage recorded on provider timesheets.*
- *DDA acknowledges that all payments made to individual providers must be supported by accurate timesheets. With the implementation of Individual ProviderOne, providers submit timesheets prior to receiving payment.*
- *In addition to the new payment system functionality:*
 - *ProviderOne/HCA will automatically send letters to a random sample of clients to verify services; and*
 - *DDA has implemented monthly telephone calls to a random sample of clients to verify services.*

DDA does not concur with all of the questioned costs associated with duplicate payments:

- *While DDA agrees with \$44,152.91 in improper payments, DDA maintains that \$62,970.09 were not improper payments. SAO and DDA met and agreed that if overpayments were submitted within the audit period, per policy, the costs would not be questioned because the federal funds had been accounted for and had been returned or were in the process of being returned.*

The Department will consult with the U.S. Department of Health and Human Services and make repayment as required.

Auditor’s Concluding Remarks

During our meeting with the Department, we agreed that costs would not be questioned if overpayments were submitted during the audit period, reported on the CMS 64 report and repaid to the federal grantor. While the Department indicated the overpayments had been submitted, they declined to provide evidence that the overpayments had been reported on the CMS 64 and repaid to their grantor.

We thank the Department for its cooperation and assistance throughout the audit. We will review the status of the Department’s corrective action during our next audit.

Applicable Laws and Regulations

Title 2 U.S. Code of Federal Regulations Part 200, *Uniform Administrative Requirements, Cost Principles, and Audit Requirements for Federal Awards* (Uniform Guidance) established reporting requirements for audit findings.

Section 200.303 Internal controls.

The non-Federal entity must:

- (a) Establish and maintain effective internal control over the Federal award that provides reasonable assurance that the non-Federal entity is managing the Federal award in compliance with Federal statutes, regulations, and the terms and conditions of the Federal award. These internal controls should be in compliance with guidance in “Standards for Internal Control in the Federal Government” issued by the Comptroller

General of the United States or the “Internal Control Integrated Framework”, issued by the Committee of Sponsoring Organizations of the Treadway Commission (COSO).

- (b) Comply with Federal statutes, regulations, and the terms and conditions of the Federal awards.
- (d) Take prompt action when instances of noncompliance are identified including noncompliance identified in audit findings.

Section 200.403 Factors affecting Allowability of costs.

Except where otherwise authorized by statute, costs must meet the following general criteria in order to be allowable under Federal awards.

- (a) Be necessary and reasonable for the performance of the Federal award and be allocable thereto under these principles.
- (b) Conform to any limitations or exclusions set forth in these principles or in the Federal award as to types or amount of cost items.
- (c) Be consistent with policies and procedures that apply uniformly to both federally-financed and other activities of the non-Federal entity.
- (d) Be accorded consistent treatment. A cost may not be assigned to a Federal award as a direct cost if any other cost incurred for the same purpose in like circumstances has been allocated to the Federal award as an indirect cost.
- (e) Be determined in accordance with generally accepted accounting principles (GAAP), except, for state and local governments and Indian tribes only, as otherwise provided for in this part.
- (f) Not be included as a cost or used to meet cost sharing or matching requirements of any other federally-financed program in either the current or a prior period. See also §200.306 Cost sharing or matching paragraph (b).
- (g) Be adequately documented. See also §§200.300 Statutory and national policy requirements through 200.309 Period of performance of this part.

Section 200.410 Collection of unallowable costs.

Payments made for costs determined to be unallowable by either the Federal awarding agency, cognizant agency for indirect costs, or pass-through entity, either as direct or indirect costs, must be refunded (including interest) to the Federal Government in accordance with instructions from the Federal agency that determined the costs are unallowable unless Federal statute or regulation directs otherwise. See also Subpart D—Post Federal Award Requirements of this part, §§200.300 Statutory and national policy requirements through 200.309 Period of performance.

Section 200.516 Audit reporting, state in part:

- (a) *Audit findings reported.* The auditor must report the following as audit findings in a schedule of findings and questioned costs:
 - (1) Significant deficiencies and material weaknesses in internal control over major programs and significant instances of abuse relating to major programs. The auditor’s determination of whether a deficiency in internal control is a significant deficiency or material weakness for the purpose of reporting an audit finding is in relation to a type of compliance requirement for a major program identified in the Compliance Supplement.

- (2) Material noncompliance with the provisions of Federal statutes, regulations, or the terms and conditions of Federal awards related to a major program. The auditor's determination of whether a noncompliance with the provisions of Federal statutes, regulations, or the terms and conditions of Federal awards is material for the purpose of reporting an audit finding is in relation to a type of compliance requirement for a major program identified in the compliance supplement.
- (3) Known questioned costs that are greater than \$25,000 for a type of compliance requirement for a major program. Known questioned costs are those specifically identified by the auditor. In evaluating the effect of questioned costs on the opinion on compliance, the auditor considers the best estimate of total costs questioned (likely questioned costs), not just the questioned costs specifically identified (known questioned costs). The auditor must also report known questioned costs when likely questioned costs are greater than \$25,000 for a type of compliance requirement for a major program. In reporting questioned costs, the auditor must include information to provide proper perspective for judging the prevalence and consequences of the questioned costs.

The American Institute of Certified Public Accountants defines significant deficiencies and material weaknesses in internal controls over compliance in its *Codification of Statements on Auditing Standards*, section 935, as follows:

.011 For purposes of adapting GAAS to a compliance audit, the following terms have the meanings attributed as follows:

Material weakness in internal control over compliance. A deficiency, or combination of deficiencies, in internal control over compliance, such that there is a reasonable possibility that material noncompliance with a compliance requirement will not be prevented, or detected and corrected, on a timely basis. In this section, a reasonable possibility exists when the likelihood of the event is either reasonably possible or probable as defined as follows:

Reasonably possible. The chance of the future event or events occurring is more than remote but less than likely.

Remote. The chance of the future event or events occurring is slight.

Probable. The future event or events are likely to occur.

Significant deficiency in internal control over compliance. A deficiency, or a combination of deficiencies, in internal control over compliance that is less severe than a material weakness in internal control over compliance, yet important enough to merit attention by those charged with governance.

Material noncompliance. In the absence of a definition of material noncompliance in the governmental audit requirement, a failure to follow compliance requirements or a violation of prohibitions included in the applicable compliance requirements that results in noncompliance that is quantitatively or qualitatively material, either individually or when aggregated with other noncompliance, to the affected government program.

Washington Administrative Code 388-71-0515, states in part:

What are the responsibilities of an individual provider when providing services to a client?

An individual provider must:

- 11) Complete and keep accurate time sheets of authorized/paid hours that are accessible to the social worker/case manager.

Developmental Disabilities Administration Policy 6.01 (rescinded May 1, 2016) states in part:

PROCEDURES

D. Monitoring and Review

1. Supervisor/Regional Monitoring and Review

e) Quality Compliance Coordinator (QCC) Monitoring

- 1) DDA Central Office will send letters to a random selection of service providers, at least annually, requesting they send timesheets to a central location.
- 2) Quality Compliance Coordinators will compare timesheets to payment systems billing to ensure that services billed for are consistent with the service provider timesheet.
- 3) Monitoring will be documented in the database on the DDA SSPS/SharePoint site.

DDA Management Bulletin D15-020 – Procedure dated August 25, 2015 states in part:

BACKGROUND:

- IPs serving DDA clients must use DSHS 15-051, Individual Provider Time Sheet. This form must be completed monthly and be signed by both the client and the provider. The IP must provide a copy to the client and, upon request, to DSHS.

ACTION:

DDA Central Office staff will:

1. Randomly select a list of IPs that provided personal care and/or DDA respite services. This will occur annually at a minimum.
3. Mail letters to the IPs requesting copies of their time sheets be submitted to Central Office for all clients served in a specific month.
6. Receive copies of the time sheets from IPs, scan them and save in the Provider Time Sheet Review database.

QCC staff will:

1. Compare time sheets to SSPS billing to ensure that services billed for are consistent with the documentation submitted.

Field Services staff will:

6. Process overpayment for IPs who:
 - a. Did not submit time sheets and the client or their representative did not verify the amount of service hours claimed by the IP; and
 - b. Did submit time sheets and the hours billed exceed the hours on the time sheet.

2016-050 **The Department of Social and Health Services did not have adequate internal controls over the level of effort requirements for the Block Grants for Prevention and Treatment of Substance Abuse.**

Federal Awarding Agency: U.S. Department of Health and Human Services
Pass-Through Entity: None
CFDA Number and Title: 93.959 Block Grants for Prevention and Treatment of Substance Abuse
Federal Award Number: 2B08TI010056-14; 2B08TI010056-15; 2B08TI010056-16
Applicable Compliance Component: Level of Effort
Known Questioned Cost Amount: None

Background

The Department of Social and Health Services, Division of Behavioral Health and Recovery, administers the Block Grants for Prevention and Treatment of Substance Abuse. The Department subawards some of the funds to counties, tribes, nonprofit organizations and other state agencies to develop prevention programs and provide treatment and support services. The Department spent over \$32.8 million in grant funds during fiscal year 2016.

Federal regulations require the Department to maintain state spending at certain levels in order to meet federal grant requirements. Specifically, for the Block Grants for Prevention and Treatment of Substance Abuse, the Department must maintain state spending for:

- Treatment services for pregnant women and women with dependent children at a level that is not less than the amount spent for the same services in 1994.
- Tuberculosis services at a level that is not less than the average calculated in fiscal year 1991 and 1992.
- Authorized activities at a level that is not less than the average of the previous two years spending for the program.

In prior audits, we reported the Department did not have internal controls over and did not comply with level of effort requirements. The prior finding numbers were 2015-053 and 2014-051.

Description of Condition

We examined all program monitoring reports for the three level of effort requirements and found that the third requirement had been monitored regularly throughout the year and that part of the prior reported condition had been corrected. However, the Department did not have adequate internal controls in place to ensure it complied with the first two requirements listed above. In both cases the Department had no ongoing monitoring and waited until the end of each fiscal year to determine whether they were in compliance. The Department was in compliance with all three requirements for the fiscal year.

We consider these internal control weaknesses to constitute a material weakness.

Cause of Condition

The Department had not fully implemented procedures put in place in response to the previous years' level of effort finding. For the tuberculosis requirement, the Department's procedures still do not address how to monitor spending levels, only how to identify the amounts after close of the state fiscal year.

Effect of Condition

Without adequate internal controls in place, the Department could not ensure it would meet all level of effort requirements during the audit period. By not adequately monitoring to ensure level of effort requirements are being met, the Department is at risk of noncompliance with federal requirements for the Block Grant.

Recommendation

We recommend the Department follow established policies and procedures and develop additional internal controls sufficient to ensure the monitoring and documentation of level of effort requirements is performed.

Agency's Response

The Department agrees with the SAO finding and will formalize a written procedure to monitor and manage maintenance of efforts for both pregnant women and women with dependent children, as well as for tuberculosis services. The procedure will reference the data sources necessary for monitoring expenditure levels; frequency of monitoring efforts; and the appropriate actions to be implemented if below the maintenance of effort levels. This includes collaborating with the Department of Health to establish routine tuberculosis expenditure reports for monitoring purposes.

Auditor's Concluding Remarks

We thank the Department for its cooperation and assistance throughout the audit. We will review the status of the Department's corrective action during our next audit.

Applicable Laws and Regulations

Title 2 U.S. Code of Federal Regulations Part 200, *Uniform Administrative Requirements, Cost Principles, and Audit Requirements for Federal Awards* (Uniform Guidance) established reporting requirements for audit findings.

Section 200.303 Internal controls.

The non-Federal entity must:

- (a) Establish and maintain effective internal control over the Federal award that provides reasonable assurance that the non-Federal entity is managing the Federal

award in compliance with Federal statutes, regulations, and the terms and conditions of the Federal award. These internal controls should be in compliance with guidance in “Standards for Internal Control in the Federal Government” issued by the Comptroller General of the United States or the “Internal Control Integrated Framework”, issued by the Committee of Sponsoring Organizations of the Treadway Commission (COSO).

Section 200.516 Audit reporting, state in part:

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Probable. The future event or events are likely to occur.

Significant deficiency in internal control over compliance. A deficiency, or a combination of deficiencies, in internal control over compliance that is less severe than a material weakness in internal control over compliance, yet important enough to merit attention by those charged with governance.

Title 45, Code of Federal Regulations

Section 96.124 – Certain allocations, states in part:

- (c) Subject to paragraph (d) of this section, a State is required to expend the Block Grant on women services as follows:
 - (3) For grants beyond fiscal year 1994, the States shall expend no less than an amount equal to the amount expended by the State for fiscal year 1994.

Section 96.127 – Requirements regarding tuberculosis, states in part:

- (c) With respect to services provided for by a State for purposes of compliance with this section, the State shall maintain Statewide expenditures of non-Federal amounts for such services at a level that is not less than an average level of such expenditures maintained by the State for the 2-year period preceding the first fiscal year for which the State receives such a grant. In making this determination, States shall establish a reasonable funding base for fiscal year 1993. The base shall be calculated using Generally Accepted Accounting Principles and the composition of the base shall be applied consistently from year to year.