Implementation of State Auditor's Recommendations

Audits Released in January 2005 Through December 2006

Special Report to

Assembly Budget Subcommittee #1—Health and Human Services

February 2007
Report No. 2007-406 A1

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CALIFORNIA STATE AUDITOR

ELAINE M. HOWLE
STATE AUDITOR

DOUG CORDINER
CHIEF DEPUTY STATE AUDITOR

February 28, 2007 2007-406 A1

The Governor of California
Members of the Legislature
State Capitol
Sacramento, California 95814

Dear Governor and Legislative Leaders:

The Bureau of State Audits presents its special report for the Assembly Budget Subcommittee No. 1—Health and Human Services. This report summarizes the audits and investigations we issued during the previous two years that are within this subcommittee's purview. This report includes the major findings and recommendations, along with the corrective actions auditees reportedly have taken to implement our recommendations.

This information is also available in a special report that is organized by policy areas that generally correspond to the Assembly and Senate standing committees. This special policy area report includes appendices that summarize recommendations that warrant legislative consideration and monetary benefits that auditees could realize if they implemented our recommendations. This special policy area report is available on our Web site at www.bsa.ca.gov. Finally, we notify auditees of the release of these special reports.

Our audit efforts bring the greatest returns when the auditee acts upon our findings and recommendations. This report is one vehicle to ensure that the State's policy makers and managers are aware of the status of corrective action agencies and departments report they have taken. Further, we believe the State's budget process is a good opportunity for the Legislature to explore these issues and, to the extent necessary, reinforce the need for corrective action.

Respectfully submitted,

Elaine M. Howle

ELAINE M. HOWLE
State Auditor

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INTRODUCTION

This report summarizes the major findings and recommendations from audit and investigative reports we issued from January 2005 through December 2006, that relate to agencies and departments under the purview of the Assembly Budget Subcommittee No. 1—Health and Human Services. The purpose of this report is to identify what actions, if any, these auditees have taken in response to our findings and recommendations. We have placed this symbol ➲ in the left-hand margin of the auditee action to identify areas of concern or issues that we believe an auditee has not adequately addressed.

For this report, we have relied upon periodic written responses prepared by auditees to determine whether corrective action has been taken. The Bureau of State Audits' (bureau) policy requests that the auditee provides a written response to the audit findings and recommendations before the audit report is initially issued publicly. As a follow-up, we request the auditee to respond at least three times subsequently: at 60 days, six months, and one year after the public release of the audit report. However, we may request an auditee provide a response beyond one year or initiate a follow-up audit if deemed necessary.

We report all instances of substantiated improper governmental activities resulting from our investigative activities to the cognizant state department for corrective action. These departments are required to report the status of their corrective actions every 30 days until all such actions are complete.

Unless otherwise noted, we have not performed any type of review or validation of the corrective actions reported by the auditees. All corrective actions noted in this report were based on responses received by our office as of January 2007.

To obtain copies of the complete audit and investigative reports, access the bureau's Web site at www.bsa.ca.gov or contact the bureau at (916) 445-0255 or TTY (916) 445-0033.

CALIFORNIA CHILDREN AND FAMILIES COMMISSION

Its Poor Contracting Practices Resulted in Questionable and Inappropriate Payments to Contractors and Violations of State Law and Policies

Audit Highlights . . .

Our review of the California Children and Families Commission's spending practices and contracting procedures revealed that it:

- ☑ *Allowed one of its media contractors to circumvent the payment provisions of a contract by paying invoices totaling $673,000 for fees and expenses of some of the contractor's employees that were prohibited under the terms of the contract.*
- ☑ *Did not fully use the tools available to it to ensure its contractors provided appropriate services.*
- ☑ *Could not always demonstrate it had reviewed and approved final written subcontracts and subcontractors' conflict-of-interest certificates.*
- ☑ *Did not always follow state policy when it used a competitive process to award three contracts valued at more than $47.7 million and failed to provide sufficient justification for awarding one $3 million contract and six amendments totaling $27.6 million using the noncompetitive process.*

REPORT NUMBER 2006-114, OCTOBER 2006

California Children and Families Commission's response as of January 2007

The Joint Legislative Audit Committee (audit committee) requested that the Bureau of State Audits (bureau) review the California Children and Families Commission's (state commission) spending practices, planning efforts, and contracting procedures.

Finding #1: The state commission did not enforce contract terms for one contractor, resulting in overpayments totaling more than $673,000.

The state commission, in paying invoices totaling $623,000 in fees and expenses submitted by one of its media contractors, allowed the contractor to circumvent the payment provisions of a contract. The contractor claimed the expenses by representing some of its employees as subcontractors. In addition, the state commission paid the media contractor an added $50,000 fee that was unallowable per the contract. These payments violated the terms of the contract, which allowed for payments based only on the contractor's own services, in the form of commissions applied to the cost of the advertising it placed; no other services or fees were to be charged.

We recommended that the state commission ensure that both it and its contractors comply with all contract terms.

State Commission's Action: Pending.

According to the state commission, its most concerted efforts have been on staff training to ensure that all staff with any contract management responsibility understand the State's contracting procedures. The state commission requested that the Department of General Services (General Services) schedule classes specifically for state commission staff. General Services responded by providing the state commission a schedule of classes for its staff that began

in December 2006 and conclude in April 2007. These classes cover the following topics: documentation, non-competitively bid contracts, evaluation criteria, leveraged procurement agreements, service contracting, non-IT goods under $5,000, and statement of work. The state commission also stated that it is continuing its own internal training of staff on contract policies and procedures. In addition to the contract monitoring training session it held in October 2006, the state commission plans to provide sessions on the use of the contract shell, invoice review and approval, and conducting bidder conferences, among others, between January and March 2007. Finally, the state commission indicated that it has appointed a specific staff member as the training coordinator both to take the lead on enrolling its staff in necessary training and to track the training status of staff with contract responsibility.

Finding #2: The state commission did not fully use the tools available to it to ensure that its contractors promptly provided appropriate services.

The state commission did not always include certain important elements when developing some of the contracts we reviewed. Specifically, the state commission's contracts did not always include a clear description of work to be performed, schedules for the progress and completion of the work, and a reasonably detailed cost proposal. Further, it did not always ensure that its contractors submitted adequate work plans, that it received all required work plans, and that it promptly approved them. As a result, the state commission cannot ensure that the resulting contracts clearly established what was expected from the contractor, that the contracts provided the best value, and that its contractors provided the agreed-upon services within established timelines and budgets.

We recommended that the state commission ensure that it fully develops its contracts by including clear descriptions of work, schedules for progress and completion of work, reasonably detailed cost proposals, a requirement for adequate supporting documentation for expenses, and clearly defined types of allowable expenses. We also recommended that it consistently enforce contract provisions requiring contractors to submit complete and detailed work plans before they perform services and incur expenses and to ensure that it promptly reviews and approves work plans.

State Commission's Action: Pending.

The state commission again indicated that it is ensuring all staff with any contract management responsibility understand contracting procedures by requiring them to attend various training courses as described in more detail in the state commission's action related to the first finding. Further, the state commission developed standard language addressing out-of-pocket expenses, which it plans to include in all new contracts that allow such expenses. In addition to describing allowable out-of-pocket expenses, this standard language requires the contractor to obtain clarification from the state commission in advance of incurring an expense when it is unclear under the terms of the contract whether the expense is authorized. The state commission also redesigned the work plans that it will be requiring its public relations contractors to provide beginning in January 2007. These work plans require the contractor to include a detailed description of services and to identify the deliverables, target audience, and proposed completion timeline, as well as other information.

Finding #3: The state commission did not document its oversight of subcontractor agreements and conflict-of-interest certificates.

The state commission could not demonstrate that it had reviewed and approved the final written subcontracts and subcontractors' conflict-of-interest certificates as required. Specifically, our review of a sample of nine contracts and 28 invoices associated with those contracts found that under each contract, the contractors charged for services provided by at least one and sometimes as many as six subcontractors. When we requested these subcontracts and conflict-of-interest certificates, the state commission had to forward our request to its contractors because it did not maintain copies of these documents in its files. Ultimately, it was only able to obtain 19 of a total of 22 requested subcontract agreements. Furthermore, the state commission was only able to obtain either the conflict-of-interest certificate or the conflict-of-interest language embedded within the subcontract for 14 of the 19 subcontracts it obtained. However, it was unable to locate the remaining five certificates. Because the state commission did not maintain these documents in its files, we question whether it reviewed and approved these documents as required before authorizing the use of subcontractors.

Additionally, subcontractors may be unaware of their obligation to preserve records that could be the subject of future audits. The state contracting manual requires contractors to include a provision in subcontracts indicating that the State has the right to audit records and interview staff in any subcontract related to the performance of the agreement. Our review of 19 subcontractor agreements found that five did not contain this language.

We recommended that the state commission establish a process to ensure that it obtains and reviews final written subcontracts and conflict-of-interest certificates before it authorizes the use of subcontractors. Additionally, it should ensure that its contractors include in all their subcontracts a provision indicating that the State has the right to audit records and interview staff in any subcontract related to the performance of the agreement.

State Commission's Action: Partial corrective action taken.

The state commission again indicated that it is ensuring all staff with any contract management responsibility understand contracting procedures by requiring them to attend various training courses. One of the internal sessions it plans to hold in February 2007 will discuss the review and approval of subcontractors and related documentation. The state commission also revised its standard language regarding the use of subcontractors to educate its contractors more clearly about their responsibilities in providing the necessary documentation for review and approval prior to commencement of work under a subcontract. This language generally requires the contractor to submit to the state commission the final written subcontract and the subcontractor's conflict-of-interest certificate prior to commencing work under the subcontract. Further, the state commission indicated that it uses a General Services' form that contains general terms and conditions as a standard part of its contracts. One of the clauses in that document indicates the State's right to audit records and interview staff in any subcontract related to the performance of the agreement.

Finding #4: The state commission sometimes paid unsupported and inappropriate contractor expenses.

Although prudent business practices and some of its contracts include provisions requiring its contractors to include documentation necessary to support the expenses claimed, our review found that the state commission did not always enforce these provisions. Although generally the state commission received documentation to support the expenses claimed in our sample of 62 payments made to its

contractors, we found both significant and minor instances in which this was not the case. Even when contractors included supporting documentation, the state commission did not always adequately review it before approving payment.

We recommended that the state commission consistently enforce contract provisions requiring contractors to submit supporting documentation for expenses claimed. Further, it should ensure that it performs an adequate review of such documentation before approving expenses for payment.

State Commission's Action: Pending.

The state commission again indicated that it is ensuring all staff with any contract management responsibility understand contracting procedures by requiring them to attend training courses. One internal session it held in October 2006 was on the topic of contract monitoring and it plans to hold a session in January 2007 on invoice review and approval. While the state commission indicates it is providing training, it does not directly address our recommendation.

Finding #5: The state commission inappropriately advanced funds to three contractors.

The state commission provided advance payments to three contractors even though it does not have the authority to do so. According to the state contracting manual, the State is permitted to make advance payments only when specifically authorized by statute, and such payments are to be made only when necessary. In addition, state laws are designed to ensure that public money is invested in and accounted for in the state treasury. Further, other state laws prohibit making a payment until services have been provided under a contract.

However, the state commission inappropriately advanced $2.5 million to a public relations contractor for the administration of the state commission's regional community-based organization program. The public relations contractor then took between 30 days and six months to disburse the funds to the selected community-based organizations. Our review of 13 other invoices from the same public relations contractor showed that the state commission advanced it funds for the regional community-based organization program totaling $6.8 million on three other occasions—invoices dated July 2003, February 2004, and September 2004. Further, the state commission made advance payments in December 2005 and March 2006 to two county commissions totaling more than $91,500 under memorandums of understanding. When the state commission makes advance payments without the proper authority, it loses the interest it would otherwise earn on these public funds.

We recommended that the state commission ensure it does not make advance payments to its contractors unless it has authority to do so.

State Commission's Action: Corrective action taken.

According to the state commission, the community-based organization program for which it made advances was completed before the bureau raised its concern about these advances. Additionally, the state commission indicated that based on the bureau's recommendation, it cancelled a similar program that was in the pre-disbursement phase. It further stated that it has no current plans to pursue other programs requiring advance payments absent sufficient legal authority to do so.

Finding #6: Although it held strategic planning sessions annually, the state commission has not updated its written strategic plan since 2004.

The state commission poorly managed its process for updating its strategic plan, which outlines the current progress of its initiatives and future plans to advance its vision of school readiness. According to the executive director, the state commission annually either develops a draft plan or updates the prior year's plan, and presents it to the commissioners for their review and approval. However, it last updated its strategic plan in 2004. According to the executive director, although the strategic plan was presented and discussed with the commissioners in January 2004 and January 2005, the state commission did not request their formal approval.

In October 2006 the executive director provided us with a draft copy of a commission proceedings manual. The manual includes an annual commission calendar that lists recurring issues the commissioners are required to consider, such as adopting the strategic plan. The executive director hopes to begin using the manual in January 2007 if the commissioners adopt it.

We recommended that the state commission ensure that it updates its strategic plan annually and presents it to the commissioners for review and approval.

State Commission's Action: Corrective action taken.

According to the state commission, the commissioners reviewed and approved the current strategic plan, which will be in effect until June 30, 2007, during a meeting in October 2006.

Findings #7: The state commission did not always follow state requirements when awarding competitive contracts and it provided insufficient justification for awarding two contracts and six amendments using the noncompetitive process.

The state commission did not always follow state policies during its process of competitively awarding contracts. For instance, it did not fully justify its reason for awarding three contracts, totaling more than $47.7 million, when it received fewer than the minimum required number of three bids. Also, the state commission was unable to demonstrate that it had advertised a $90 million contract in the state contracts register as required by state policy.

Moreover, when awarding some of its contracts and amendments using the State's noncompetitively bid (noncompetitive) contract process, the state commission did not provide reasonable and complete justifications for using the process or for the costs of the contracts awarded. Two of the five noncompetitive contracts we reviewed had insufficient justification of the costs of the contract. For one of these contracts, as well as for six of eight amendments to contracts originally awarded using either a competitive bid or the noncompetitive process, the state commission cited insufficient staff resources or time limitations as its reason for using the noncompetitive process. We do not believe that these circumstances are compelling reasons for avoiding a competitive bidding process.

To ensure that it protects the State's interests and receives the best products and services at the most competitive prices, we recommended that the state commission follow the State's competitive bid process for all contracts it awards, unless it can provide reasonable and complete justification for not doing so. Further, it should plan its contracting activities to allow adequate time to use the competitive bid process.

We also recommended that the state commission fully justify the reasonableness of its contract costs when it receives fewer than three bids or when it chooses to follow a noncompetitive bid process. It should also advertise all nonexempted contracts in the state contracts register.

State Commission's Action: Pending.

The state commission indicated that it is ensuring all staff with any contract management responsibility understand contracting procedures by requiring them to attend training courses, but again does not directly address our recommendations.

Finding #8: Documentation for the scoring of competitive proposals was inconsistent.

Inconsistencies in its documentation of the scoring process for contract bids may leave the state commission open to criticism and challenges to its decisions. It uses a consensus method to score proposals it receives on competitively bid contracts. For the nine competitively bid contracts we reviewed, the state commission retained only the consensus score sheet for each proposal submitted in six of the competitive contracts. Without all the individual scoring materials used in discussing and selecting a winning proposal, it is not possible for us or others to independently replicate the results.

To ensure that it promotes fair and open competition when it awards contracts using a competitive bid process, we recommended that the state commission ensure that it fully documents its process for scoring proposals, and that it retains the documentation.

➲ ***State Commission's Action: None.***

The state commission indicated that it is ensuring all staff with any contract management responsibility understand contracting procedures by requiring them to attend training courses, but does not specifically address its plans to ensure that it fully documents its process for scoring proposals and for retaining the scoring documentation.

Finding #9: The state commission did not always follow state policies when allowing subcontractors under its interagency agreements and contracts with government agencies.

Of the 24 interagency agreements and four contracts with other government agencies we reviewed, 25 included the services of subcontractors, for a total of at least $64.6 million. This represents 53.6 percent of the total of $120.6 million for these agreements and contracts. For 17 of 25 interagency agreements and contracts with other government agencies, the state commission did not always comply with state policies when justifying the use of subcontractors. Three of the 17 appear to have included subcontractors, but the amount of funds subcontractors are to receive is not clear. We also question the justification for the remaining 14 subcontracts totaling $38.3 million.

To ensure that it follows state policies and protects the State's interest when using interagency agreements and contracts with government agencies, we recommended that the state commission obtain full justification for the use of subcontractors when required and, if unable to do so, deny the use of subcontractors.

➲ ***State Commission's Action: None.***

The state commission's response did not address this recommendation.

Finding #10: The state commission agreed to reimburse contractors for indirect costs at higher rates than state policy allows.

The state commission did not always comply with state policies limiting the amount of administrative overhead fees paid to contractors for each subcontract. In fact, the state commission, in its interagency agreements, approved budgets to reimburse its contractors for over $1.2 million more than the state contracting manual allows.

To ensure that it follows state policies and protects the State's interests when using interagency agreements and contracts with government agencies, we recommended that the state commission limit the amount that it will reimburse its contractors for overhead costs to the rates established in the state contracting manual.

➲ ***State Commission's Action: None.***

The state commission's response did not address this recommendation.

Finding #11: The state commission circumvented contracting law when it used memorandums of understanding to obtain services.

In fiscal years 2004–05 and 2005–06, the state commission awarded five memorandums of understanding (MOUs) and two amendments totaling more than $595,000. It appears to have intentionally used some of these to avoid having to comply with state contracting requirements, and for at least two MOUs and one amendment the intention was explicit. Although state contracting law allows agencies to enter into contracts with local government entities without competitive bidding, it strictly prohibits agencies from using these contracts to circumvent competitive bidding requirements.

To ensure that MOUs it awards allow for fair and competitive contracting and protect the State's best interests, we recommended that the state commission follow laws and policies applying to contracts when awarding and administering MOUs.

State Commission's Action: Pending.

According to the state commission, it has suspended its MOU program pending further review.

Finding #12: The state commission consistently failed to obtain approvals for its contracts and amendments on time.

According to state law, all contracts entered into by agencies, except those meeting criteria for exemptions, are not in effect unless and until approved by the Department of General Services (General Services). The state commission failed to obtain the required approvals before the beginning of the contract term for 43 of 45 of the contracts we reviewed. Similarly, it did not obtain the required approvals for 22 of the 44 amendments we reviewed until after the related contract or prior amendment had ended. Although we did not review all of the contracts to determine whether work began before approval, we noted three instances in which the contractor provided services totaling more than $7 million before the state commission obtained final approval of the contracts. The state commission also failed to obtain the required approvals altogether on three amendments.

To ensure that it does not expose the State to potential financial liability for work performed before the contract is approved, we recommended that the state commission ensure that it obtains General Services' approval of its contracts and amendments before the start of the contract period and before contractors begin work.

➲

State Commission's Action: None.

The state commission did not directly address our recommendation other than to state it is ensuring all staff with any contract management responsibility attend training courses related to contracting procedures.

Finding #13: The commissioners may have improperly delegated authority to award contracts.

State law authorizes the state commissioners to enter into contracts on behalf of the state commission. The commissioners adopted a formal resolution in May 2001 delegating their contracting authority to enter into and amend contracts to state commission staff. In this same resolution, the commissioners took action to ratify all prior contracts. It is our understanding that although the commissioners meet in public session to authorize expenditure authority and specify amounts of money for particular purposes, the ultimate decision to enter into contracts and the selection of providers of goods and services is performed by state commission staff. Our legal counsel advised us that it is a well-accepted principle of law that a power given to a public official that involves the exercise of judgment or discretion may not be delegated to others without statutory authority. In this case, no statute authorizes the commissioners to delegate their contracting authority.

To ensure that the state commission staff may lawfully enter into or amend contracts on behalf of the commissioners, we recommended that the state commission seek appropriate legal counsel.

State Commission's Action: Pending.

The state commission stated that it is in the process of hiring a chief counsel, who it will ask to review the bureau's recommendation regarding delegation of contracting authority.

DEPARTMENT OF FISH AND GAME

Investigations of Improper Activities by State Employees, July 2005 Through December 2005

INVESTIGATION I2004-1057 (REPORT I2006-1), MARCH 2006

Department of Fish and Game's response as of February 2006

Investigative Highlights . . .

The Department of Fish and Game:

- ☑ *Provided gifts of free rent of more than $87,000 to employees and volunteers.*
- ☑ *Failed to report housing fringe benefits totaling almost $3.5 million over a four-year period.*
- ☑ *Deprived state and federal taxing authorities of as much as $1.3 million in potential tax revenues for tax years 2002 through 2005.*

Other state departments:

- ☑ *May have failed to report housing fringe benefits of as much as $7.7 million.*
- ☑ *May have failed to capture as much as $8.3 million in potential rental revenue.*

We investigated and substantiated the allegation, as well as other improper acts. The Department of Fish and Game (Fish and Game) allowed several state employees and volunteers to reside in state-owned homes without charging them rent. Consequently, Fish and Game violated the state law prohibiting state officials from providing gifts of public funds.

Finding #1: Fish and Game provided free housing to employees and volunteers and failed to report housing fringe benefits.

Fish and Game allowed several state employees and volunteers to reside in state-owned homes without charging them rent. Consequently, Fish and Game violated the state law prohibiting state officials from providing gifts of public funds. We identified seven volunteers and six employees who resided in state-owned homes in Fish and Game's North Coast Region but were not required to pay rent for a total of 718 months between January 1984 and December 2005. Because Fish and Game provided free rent to some employees and volunteers, the State did not receive more than $87,000 in rental revenue to which it was entitled between January 1984 and December 2005.[1] Therefore, that amount represents a gift of state funds to the employees and volunteers residing in the state-owned homes and a loss in revenue to the State. State regulations provide that departments shall review the monthly rental and utility rates of state-owned housing every year and report those rates to the Department of Personnel Administration (DPA).

Based on a review of state-owned housing conducted by DPA, as well as on information provided by the departments to DPA, it appears that Fish and Game understated its employees' wages by more than $867,000 each year from 2002 through 2005 because it did not report any fringe benefits for its employees who reside on state property at below-market rates. As a result, over the four-year period, state and federal tax authorities were unaware of the potential $1.3 million in taxes associated with a total of nearly $3.5 million in potential housing fringe benefits.

[1] This conservative amount is based on the nominal rents Fish and Game charges when it requires its employees to pay rent. However, if fair market value, as determined by the Department of Personnel Administration, were applied to the 718 months of free rent, this figure could be greater.

Fish and Game's Action: None.

➔ Fish and Game reported that it disagrees with the amount we show as being reportable housing fringe benefits and the associated potential tax revenues. Specifically, Fish and Game believes our report overstates the alleged taxable fringe benefits and associated potential tax revenues because it has determined that a majority of its resident employees meet the condition-of-employment test, and that the fair market values used in the DPA review do not accurately reflect the values of its properties.[2]

Based on our review of applicable tax law and the records we reviewed at Fish and Game's North Coast Region, we determined Fish and Game did not properly document and demonstrate that a majority of its employees met the condition-of-employment test. Further, although we acknowledge that the fair market values used in DPA's review may not reflect the actual value of all department holdings, DPA was unable to use actual fair market values because Fish and Game failed to determine and report to DPA the fair market value rates for any of its properties—rates it also needed to fulfill its responsibility to accurately report the housing fringe benefits realized by its employees. Fish and Game also reported that current budget constraints prohibit it from obtaining appraisals to determine the most accurate fair market values, but that it is considering requesting funding to do so. However, Fish and Game charges its employees rent at less than 25 percent of the fair market rates used by DPA. If current appraisals were to value the properties at half the values used by DPA, and if it were to raise rental rates to those fair market values, it appears that Fish and Game could recover the cost of such appraisals within one or two months.

In addition, Fish and Game reported that it disagrees with our conclusion that certain personnel received gifts of state funds because our report incorrectly presumes that Fish and Game is obligated to charge fair market rates for all of its housing and it is Fish and Game's understanding that rental rates are fixed and limited by state law, regulations, and employee collective bargaining agreements.

Our conclusion in the report that Fish and Game provided gifts of state funds of over $87,000 to specific personnel is not based on a comparison to fair market values as Fish and Game asserts. Rather, the amount we report is based on a comparison of free rent, versus the nominal rate Fish and Game charges when it requires its employees to pay rent, which appears to be well below fair market value. Additionally, we disagree with Fish and Game's assertion that rental rates are fixed by state law, regulations, and employee collective bargaining agreements. DPA is the agency responsible for administering state housing regulations, and state law provides that the director of DPA shall determine the fair and reasonable value of state housing. Using information reported by Fish and Game for DPA's 2003 survey, DPA directed Fish and Game to raise rental rates to fair market value and acknowledged that it should do so in accordance with employee collective bargaining agreements, which allow Fish and Game to raise rental rates by 25 percent annually. Additionally, our review of records in the North Coast Region found that Fish and Game has in fact adjusted the amount of rent it charges residents on numerous occasions in the past, thus demonstrating that the rates it charges its residents are not "fixed."

Finally, Fish and Game reported that it has been working with DPA for several years as part of its commitment to ensure that it is in compliance with laws and regulations applicable to its properties and is committed to continuing to do so. Fish and Game added that part of this commitment included providing updated information regarding housing-related reporting and withholding requirements to its employees and administrative personnel in July 2002 and again in August 2003. However, as we previously mentioned, Fish and Game has not reported a state-housing fringe benefit for any of its employees since 2001 and it appears it is not in compliance with IRS regulations governing reportable housing fringe benefits despite Fish and Game's assertion that it is committed to doing so.

[2] The difference between the fair market value and the rental amount paid by the resident represents a taxable fringe benefit to the resident unless residing on state property is a condition of employment. To meet the conditions of employment test, Internal Revenue Service guidelines provide that the employee's residence must be the same place in which he or she conducts a significant portion of his or her workday. The guidelines add that the employee must be required to accept on-site lodgings to perform their duties because the housing is indispensable to the proper discharge of their assigned duties.

Finding #2: Other state departments have also failed to report housing fringe benefits.

Although we focus on Fish and Game's management of state-owned housing in this report, the housing review conducted by DPA shows that all 13 state departments that own employee housing may be underreporting or failing to report housing fringe benefits. For example, the Table shows that in 2003 state departments may have failed to report housing fringe benefits totaling as much as $7.7 million, depriving state and federal tax authorities of as much as $3 million annually in potential tax revenues. Additionally, because state departments have chosen to charge employees rent that is well below market rates, the State may have lost as much as $8.3 million in potential rental revenue in that year.[3]

TABLE

Potential Income and Benefits Related to Rental Housing Units Held by State Departments, 2003

Department	Rental Units	Annual Income If Rented at Fair Market Value (FMV)	Annual Rent Charged	Lost State Revenue (Difference Between FMV and Rent Charged)*	Taxable Fringe Benefit Reported	Unreported Taxable Fringe Benefits†
Department of Parks and Recreation	487	$ 4,778,496	$ 763,488	$4,015,008	$373,198	$3,641,810
Department of Corrections and Rehabilitation	176	2,139,972	909,732	1,230,240	0	1,230,240
Department of Developmental Services	99	1,254,360	309,240	945,120	5,728	939,392
Department of Fish and Game	168	1,124,532	257,316	867,216	0	867,216
Department of Forestry and Fire Protection	72	559,332	218,400	340,932	53,078	287,854
Department of Mental Health	40	366,720	125,472	241,248	34,031	207,217
Division of Juvenile Justice	51	371,760	136,740	235,020	69,152	165,868
Department of Transportation	42	294,984	144,324	150,660	17,300	133,360
Department of Veterans Affairs	22	235,224	97,512	137,712	9,240	128,472
Santa Monica Mountains Conservancy‡	9	82,512	0	82,512	0	82,512
California Highway Patrol	6	41,184	12,732	28,452	0	28,452
Department of Food and Agriculture	5	29,18	5,844	23,340	0	23,340
California Conservation Corps	4	36,888	20,748	16,140	3,058	13,082
Totals	**1,181**	**$11,315,148**	**$3,001,548**	**$8,313,600**	**$564,785**	**$7,748,815**

Source: 2003 Department of Personnel Administration Departmental Housing Survey.

* This amount represents what should have been reported to taxing authorities as a taxable fringe benefit.

† Taxable housing fringe benefits exist when the rental rate charged is less than the fair market rate. Thus, no taxable fringe benefit exists when employees pay fair market rates.

‡ No rent was charged for any department properties.

[3] Taxable fringe benefits exist when the rental rate charged is less than the fair market rate. Thus, no fringe benefit exists when employees pay fair market rates.

Department of Parks and Recreation's Action: None.

➔ The Department of Parks and Recreation (Parks and Recreation) believes that the state regulations relevant to state-owned housing for employees not represented by collective bargaining agreements (non-represented employees) do not allow it to raise rental rates beyond those listed in the regulations and stated that non-represented employees reside in approximately one-third of its properties. However, after reviewing the information Parks and Recreation submitted to DPA, it appears that non-represented employees reside in less than one-tenth of its inhabited properties. Regardless, Parks and Recreation believes that in order for it to raise rental rates for its non-represented employees and not violate state regulations, DPA must update the rates listed in state regulations. Parks and Recreation added that many of the collective bargaining agreements, under which most of its remaining employee residents work, limit its ability to raise rental rates. However, DPA, the agency responsible for administering state housing regulations, has specifically given Parks and Recreation direction to raise rental rates to fair market value and acknowledges that it should do so in accordance with employee collective bargaining agreements. These agreements generally allow Parks and Recreation to raise rental rates by 25 percent annually up to fair market value. After receiving this direction, Parks and Recreation responded to DPA, requesting that DPA provide clear authority and policy direction to departments, and inform employee unions of this direction; however, DPA has not responded to this request.

Parks and Recreation also reported that it believes the fair market values used in DPA's review do not fairly represent the true value of its homes. We acknowledge that the fair market values used in DPA's review may not reflect the actual value of all department holdings; however, DPA was unable to use the actual fair market values because Parks and Recreation failed to determine and report to DPA accurate fair market value rates for all of its properties—rates it also needed to fulfill its responsibility to accurately report the housing fringe benefits realized by its employees. After reviewing the information it submitted to DPA, it appears that it provided fair market determinations for only 298 of the 817 properties it owns. Moreover, Parks and Recreation failed to indicate when the last appraisal was conducted for all but 90 of the 298 properties and had conducted appraisals on only 14 of those properties in the previous 10 years, thus demonstrating that it did not report accurate, up-to-date fair market rates to DPA.

Parks and Recreation also takes issue with the amounts identified by DPA as losses in state revenue and underreported fringe benefits because many of its employees live on state property as a condition of employment and therefore, there is no loss in rental revenue to the State or fringe benefit to report. However, after reviewing the information provided to DPA, it appears that Parks and Recreation did not clearly indicate which, if any, of its residents resided on state property as a condition of employment. Specifically, even though the survey guidelines instructed Parks and Recreation to indicate the reason for occupancy for each of its properties, it did not list as a reason condition of employment for any of its properties.

Department of Corrections and Rehabilitation's Action: Pending.

The Department of Corrections and Rehabilitation (Corrections) reported that it last established fair market value rates for all its properties in 1999 and that it subsequently raised rents to the 1999 fair market value rates for properties at all but one of its institutions. Corrections added that it has since raised rates at the remaining institution and is committed to hiring a consultant within six months to begin obtaining current fair market value appraisals.

Corrections reported that it attempted to obtain the services of a consultant to perform fair market appraisals for its properties through the state procurement process; however, Corrections decided not to contract with the lone responsive bidder because it believes that the consultant's fees were too high. Corrections added that it plans to use housing appraisal services through a master services agreement initiated by DPA that is projected to be in place in April 2007.

Department of Developmental Services' Action: Pending.

The Department of Developmental Services (Developmental Services) reported that it believes the fair market rates used by DPA do not accurately reflect the true value of its properties because many of its units are single rooms without kitchens and in some cases residents share bathrooms. We acknowledge that the fair market rates used in the DPA review may not reflect the actual value of all department holdings; however, DPA was unable to use the actual fair market rates because Developmental Services failed to determine and report to DPA the fair market value rates for any of its properties—rates it also needed to fulfill its responsibility to accurately report the housing fringe benefits realized by its employees.

Developmental Services also reported that it has initiated steps to obtain fair market appraisals for all its properties and will follow provisions in applicable collective bargaining agreements to increase rental rates commensurate with the fair market appraisals once they are established.

Department of Forestry and Fire Protection's Action: Partial corrective action taken.

The Department of Forestry and Fire Protection (Forestry) reported that it has taken several steps to resolve state housing issues since it reported information to DPA for its review in 2003. Specifically, Forestry reported that it now reviews rental rates each year and rents that are below fair market value will be raised by 25 percent annually in accordance with applicable collective bargaining agreements. It also reported that it currently reports taxable fringe benefits for residents in Forestry housing on a monthly basis. In addition, Forestry reported that the fair market rates used by DPA do not accurately reflect the true values of its properties because most are located within the boundaries of conservation camps primarily occupied by prison inmates; however, it acknowledged that annual appraisals are necessary to document the accurate value of each unit. Finally, due to increased rental rates and additional vacancies, Forestry reported that the difference between fair market value and actual rental income for all of its properties in 2005 was $32,805 and that by increasing rents 25 percent each year, the difference will continue to decline.

Department of Mental Health's Action: Partial corrective action taken.

The Department of Mental Health (Mental Health) reported that it believes the fair market rates used in DPA's review do not accurately represent the values of its properties but acknowledged that many, if not all, of its state hospitals have been using outdated fair market values. Mental Health also reported that it will update its special order concerning employee housing to include performing annual fair market value determinations and promptly reporting housing fringe benefits. The special order will be distributed to each of its four state hospitals and Mental Health will monitor the hospitals for ongoing compliance. Mental Health added that for certain purposes, such as the recruitment and retention of interns, its state hospitals charge less than fair market value and in these instances Mental Health will ensure that the hospitals report the housing fringe benefits in accordance with state and federal regulations.

Division of Juvenile Justice's Action: None.

The Division of Juvenile Justice reported that it last obtained fair market value appraisals for all of its properties in 1995 and that it subsequently raised rental rates to the 1995 fair market value rates.

Department of Transportation's Action: Corrective action taken.

The Department of Transportation (Caltrans) reported that it believes the fair market rates used by DPA do not accurately reflect the true value of its properties because all of its properties are located in remote areas situated within Caltrans maintenance facilities. Caltrans also reported that its policies require that it charge fair market value for all employee housing and that it update fair market values annually; however, Caltrans was unable to explain why it did not report fair market values to DPA. Although we did not validate its analysis, Caltrans reported that based on its most recent fair market value determinations, the loss of state revenue in 2003 was only $19,356 and the amount of underreported fringe benefits was much less than what DPA identified in its review.

Department of Veterans Affairs' Action: Corrective action taken.

The Department of Veterans Affairs (Veterans Affairs) reported that it conducted fair market assessments of its properties in September 2005 and that it submitted its corrected housing information to DPA in October 2005. Veterans Affairs also reported that it established new rental rates based on the assessments and informed its residents that the new rates would take effect March 1, 2006.

Santa Monica Mountains Conservancy's Action: Corrective action taken.

The Santa Monica Mountains Conservancy reported that it has only six employees, none of whom live on state property. It added that in lieu of rent, it currently allows non-state employees to reside on eight of its properties to provide and ensure resource protection, site management, facilities security and maintenance, and park visitor services.

California Highway Patrol's Action: Partial corrective action taken.

The California Highway Patrol (Highway Patrol) reported that it determines rental rates in accordance with applicable state regulations and that because all of its employees reside on state property as a condition of employment, it has not underreported housing fringe benefits. The Highway Patrol added that it is in the process of obtaining appraisal reviews for its properties and is updating its policies and procedures to reflect that assignments to its resident posts are classified as "condition of employment."

Department of Food and Agriculture's Action: Corrective action taken.

The Department of Food and Agriculture (Food and Agriculture) reported that its employees currently reside on two state properties as a condition of employment. As a result, there is no fringe benefit to report for those residents. Food and Agriculture added that because these properties are located near popular resort areas, fair market values are not comparable to values of homes in surrounding communities.

California Conservation Corps' Action: Pending.

The California Conservation Corps (Conservation) reported that it will be conducting new appraisals to determine updated fair market values for its properties and that rental rates will be increased to the extent allowed by law and applicable collective bargaining units. Conservation also stated it would report on the fringe benefit amount—the difference between the rent charged and the fair market value determined by these new appraisals—for employees residing on its properties, and has informed affected employees of this fact.

EMERGENCY PREPAREDNESS

More Needs to Be Done to Improve California's Preparedness for Responding to Infectious Disease Emergencies

REPORT NUMBER 2004-133, AUGUST 2005

Audit Highlights . . .

Our review of California's preparedness for responding to an infectious disease emergency revealed the following:

- ☑ *The Emergency Medical Services Authority has not updated two critical plans: the Disaster Medical Response Plan, last issued in 1992, and the Medical Mutual Aid Plan, last issued in 1974.*
- ☑ *The Department of Health Services (Health Services) does not have a tracking process for following up on recommendations identified in postexercise evaluations, known as after-action reports.*
- ☑ *Although Health Services has completed 12 of 14 critical benchmarks it was required to complete by June 2004 for one cooperative agreement, we cannot conclude it completed the other two. In addition, Health Services has been slow in spending the funds for another cooperative agreement.*

continued on next page . . .

Department of Health Services, Emergency Medical Services Authority, and five local public health department's responses as of October 2006[1]

The Joint Legislative Audit Committee (audit committee) requested that the Bureau of State Audits conduct an audit of the State's preparedness to respond to an infectious disease emergency requiring a coordinated response between federal agencies, the Department of Health Services (Health Services), local health agencies, and local infectious disease laboratories. Specifically, the audit committee requested that we (1) evaluate whether Health Services' policies and procedures include clear lines of authority, responsibility, and communication between levels of government for activities such as testing, authorizing vaccinations, and quarantine measures; (2) determine whether Health Services has developed an emergency plan; (3) determine whether California's infectious disease laboratories are integrated appropriately into statewide preparedness planning for infectious disease emergencies; (4) determine if the management practices and resources, including equipment and personnel, at the state health laboratories are sufficient to respond to a public health emergency; and (5) review Health Services' standards for providing oversight to local infectious disease laboratories, and determine whether its oversight practices achieved their intended results.

The audit committee further requested that we evaluate whether a sample of local infectious disease laboratories are operated and managed effectively and efficiently and have the necessary resources to respond to an emergency, including sufficient equipment and personnel with the appropriate level of experience and training. We also were asked to review the local laboratories' testing procedures for infectious diseases and determine if they meet applicable standards.

[1] The five local public health departments are: County of Los Angeles, Department of Health Services (Los Angeles); Sacramento County Department of Health and Human Services, Division of Public Health (Sacramento); County of San Bernardino, Department of Public Health (San Bernardino); Santa Clara County, Public Health Department (Santa Clara); Sutter County, Human Services Department (Sutter).

☑ *None of the five local public health departments we visited have written procedures for following up on recommendations identified in after-action reports.*

☑ *None of the five local public health departments we visited had fully completed the critical benchmarks for a cooperative agreement by the June 2004 deadline.*

Finding #1: The Emergency Medical Services Authority needs to update two critical plans.

The Emergency Medical Services Authority (Medical Services) has not updated two emergency plans: the *Disaster Medical Response Plan* and the *Medical Mutual Aid Plan*, the latest versions of which are dated 1992 and 1974, respectively. The state emergency plan, issued in 1998, mentions both plans and describes them as "under development." The state emergency plan indicates that state entities would use the two plans to help respond to emergencies caused by factors that include epidemics, infestation, disease, and terrorist acts, therefore, we believe the two plans are critical for California's successful response to infectious disease emergencies. Medical Services agrees that the plans must be updated to ensure that they reflect the State's current policies and account for any changes in roles or responsibilities since they originally were issued. According to the chief of the Medical Services' Disaster Medical Services Division, these plans have not been updated because Medical Services lacks resources and has competing priorities.

We recommended that Medical Services update the *Disaster Medical Response Plan* and the *Medical Mutual Aid Plan* as soon as resources and priorities allow.

Medical Services' Action: Pending.

Medical Services stated that it has completed initial drafts of a State Disaster Medical Plan and a Medical Mutual Aid component. As of December 2006, Medical Services was circulating the drafts for review and comment. Medical Services stated that revised drafts will be completed by December 31, 2006, and then forwarded to the Governor's Office of Emergency Services for its formal review.

Finding #2: Health Services does not have a tracking method to ensure that it benefits from the lessons it learned.

Health Services could improve its ability to learn from its experiences by developing and implementing a tracking process for following up on the recommendations made in its postexercise evaluations, known as after-action reports. According to guidelines developed by the U.S. Department of Homeland Security's Office for Domestic Preparedness, after-action reports are tools for providing feedback, and entities should establish a tracking process to ensure that improvements recommended in after-action reports are made. Similarly, the National Fire Protection Association also suggests in its Standard on Disaster/Emergency Management and Business Continuity Programs (2004 edition) that exercise participants establish procedures to ensure that they take corrective action on any deficiency identified in the evaluation process, such as revisions to relevant program plans. An exercise allows the participating entities to become familiar, in a nonemergency setting, with the procedures, facilities, and systems they

have for an actual emergency. The resulting after-action reports give these entities an opportunity to identify problems and successes that occurred during the exercise, to take corrective actions, such as revising emergency plans and procedures, and thus benefit from lessons learned from the exercise. Therefore, we believe that tracking the implementation status is a sound practice to ensure that state entities address all relevant recommendations in after-action reports, which can then serve as important tools for increasing overall preparedness levels.

In response to our concerns that Health Services lacked a written policy and procedures for following up on recommendations identified in after-action reports for exercises, the deputy director for public health emergency preparedness provided us on July 14, 2005, with the recently developed policy and procedures. However, our review of the policy found that it does not include a standard format for tracking the implementation of recommendations, such as assigning an individual the responsibility for taking action, the current status of recommendations, and the expected date of completion. Therefore, Health Services still needs to refine its policy further by developing and implementing written tracking procedures to ensure it addresses all relevant recommendations that it identifies in after-action reports. Without a tracking method, Health Services cannot be certain that it takes appropriate and consistent corrective action, such as revising emergency plans, and thus reduces its potential effectiveness to respond to infectious disease emergencies.

We recommended that Health Services develop and implement a tracking method for following up on recommendations identified in after-action reports.

Health Services' Action: Corrective action taken.

Health Services developed and implemented a policy on after-action reporting in response to our draft report on July 25, 2005. This policy and the associated procedures provide a specific tool for tracking recommendations identified in after-action reports.

Finding #3: We cannot conclude that Health Services completed a critical benchmark requiring it to assess its preparedness to respond to infectious disease emergencies.

In the aftermath of the terrorist attacks in September 2001, and the anthrax attacks later that year, two federal agencies—the Centers for Disease Control and Prevention (CDC) and the Health Resources and Services Administration (HRSA)—offered cooperative agreements to states, local jurisdictions, and hospitals and other health care entities. The cooperative agreements are intended to provide increased funding to improve the nation's preparedness for bioterrorist attacks and other types of emergencies, including those caused by infectious diseases. However, despite making progress toward completing many of the critical benchmarks established in the CDC cooperative agreement with a June 2004 deadline, we cannot conclude as of our review that Health Services completed critical benchmark number 3, which requires the State to assess its emergency preparedness and response capabilities related to bioterrorism, other infectious disease outbreaks, and other public health threats and emergencies with a view to facilitating planning and setting implementation priorities. Therefore, California may not be as prepared as it could be to respond to infectious disease emergencies.

According to its deputy director for public health emergency preparedness (Health Services' deputy director), Health Services prepared an assessment as did all local health departments. She also stated that some staff documented parts of their assessment and that Health Services' application

for CDC funding in 2004 included references to the assessments. However, she also acknowledged that Health Services did not prepare a single written summary of the assessment it prepared and the assessments prepared by local health departments. Without such a summary and without complete documentation of the assessments, Health Services has not demonstrated to our satisfaction that it has fully completed critical benchmark number 3. Health Services' deputy director also told us that to obtain a more current assessment, Health Services has entered into a contract with the Health Officers' Association of California (HOAC) to be conducted from mid-2005 through December 2006.

We recommended that Health Services should ensure that the contractor performing the current capacity assessment provides a written report that summarizes the results of its data gathering and analyses and contains applicable findings and recommendations.

Health Services' Action: Pending.

Health Services stated that it has contracted with HOAC for an assessment of public health emergency preparedness in 61 local health departments. Health Services indicated that 39 local assessments have been completed as of July 2006 and all assessments are to be completed by the end of December 2006. Further, it is requiring HOAC to provide written reports that summarize the results of the analyses and contain applicable findings and recommendations for improvements.

Finding #4: Local public health departments could do more to address after-action reports.

Local emergency plans, such as the counties' overall emergency operation plans and local public health departments' (local health department) emergency operations and response plans, generally included sufficient guidance for emergency preparedness; however, the plans did not include specific procedures for following up on recommendations identified in after-action reports. When we asked officials of the local health departments, they agreed with our assessment and confirmed that they did not have written procedures for following up on recommendations in after-action reports although Los Angeles County has developed a draft policy.

Moreover, the California Code of Regulations requires state entities to complete after-action reports for declared emergencies within 90 days of the close of the incident. There is no requirement for preparing after-action reports for an exercise or drill as there is for a declared emergency, but we believe that promptly writing after-action reports for exercises is prudent and equally relevant. Waiting longer than 90 days to complete the reports might make it more difficult for the individuals involved in the exercise to recall specific details accurately. Therefore, we expected all participants in the November 2004 exercise hosted by Medical Services to have prepared after-action reports within 90 days to identify any weaknesses in plans and procedures and to take appropriate corrective actions. However, as of July 2005, the after-action report from Los Angeles County's health department was still in draft stage, which is approximately seven months after the exercise. According to the executive director of the county's Bioterrorism Preparedness Program (executive director), the Los Angeles County health department had not yet implemented all the recommendations identified. The executive director stated that it experienced delays in drafting its after-action report because the individuals who participated in the exercise were inexperienced with the formalized after-action report process and completing the surveys and observations needed. She further stated that several drafts were reviewed and resubmitted by its management. However,

because the Los Angeles County health department did not complete its after-action report promptly, it did not address all the recommendations as quickly as it could have. Consequently, it is not as prepared as it could be to respond to infectious disease emergencies.

We recommended that local health departments establish written procedures for following up on recommendations identified in after-action reports and that they prepare after-action reports within 90 days of an exercise.

Local Public Health Departments' Actions: Partial corrective action taken.

The five local health departments we visited generally indicated that they have developed written procedures for following up on recommendations identified in after-action reports. Also, four of the five local health departments indicated they prepared after-action reports within 90 days. The fifth local health department, Sutter County, did not address this part of the recommendation.

Finding #5: Not all local public health departments have met the deadline to implement several federal benchmarks.

None of the local health departments we visited had met all 14 of the CDC 2002 critical benchmarks by the required deadline of June 2004. Specifically, Los Angeles and Sacramento counties health departments did not meet the June 2004 deadline, but they report that they have since completed the benchmarks. Further, Sutter and Santa Clara counties did not meet one of the 14 2002 critical benchmarks as of June 2005, and San Bernardino County did not meet three. The purpose of the CDC cooperative agreement is, in part, to upgrade local health departments' preparedness for and response to bioterrorism, outbreaks of infectious disease, and other public health threats and emergencies. Therefore, by not meeting the critical benchmarks, these jurisdictions may not be as prepared as possible to respond to an infectious disease emergency.

We recommended that local health departments complete the critical benchmarks set by the CDC cooperative agreement as soon as possible.

Local Public Health Departments' Actions: Partial corrective action taken.

Los Angeles and Sacramento counties' health departments reported that they had completed the critical benchmarks. Additionally, Santa Clara now reports that it has completed its last benchmark while San Bernardino reports completing two of three outstanding benchmarks. Finally, Sutter County indicated that it is still working to complete critical benchmarks.

EMERGENCY PREPAREDNESS

California's Administration of Federal Grants for Homeland Security and Bioterrorism Preparedness Is Hampered by Inefficiencies and Ambiguity

Audit Highlights . . .

Our review of California's administration of federal grants for homeland security and bioterrorism preparedness revealed that:

- ☑ *The State's two annual statewide exercises have not sufficiently tested the medical and health response systems.*
- ☑ *The Governor's Office of Emergency Services (Emergency Services) and the Governor's Office of Homeland Security have been slow in spending federal grant awards for homeland security.*
- ☑ *Emergency Services is behind schedule in its receipt and review of county and state agency emergency response plans.*
- ☑ *The California Department of Health Services has not finalized its plans to conduct on-site reviews of subrecipients.*
- ☑ *The State's organizational structure for ensuring emergency preparedness is neither streamlined nor well defined.*

REPORT NUMBER 2005-118, SEPTEMBER 2006

California Department of Health Services', the Governor's Office of Emergency Services', and the Governor's Office of Homeland Security's responses as of November 2006

The Joint Legislative Audit Committee (audit committee) requested that the Bureau of State Audits conduct an audit of the State's administration of federal grants for homeland security and bioterrorism preparedness. We were asked to determine whether state entities are administering these grants in an efficient and effective manner. Specifically, the audit committee requested that we identify the state entities responsible for homeland security and bioterrorism preparedness, their roles, and how they coordinate and communicate with each other. It also asked that we review and assess how state entities plan and train for responding to a terrorist attack and the scale or criteria the State uses to determine the seriousness of a potential terrorist attack. Additionally, the audit committee asked that we determine how state entities ensure compliance with their policies and procedures, including a review of the State's procedures for monitoring funds distributed to local entities. The audit committee further requested that we examine the State's homeland security and bioterrorism preparedness funding, expenditures, and encumbrance activities, including policies for prioritizing expenditures, how state entities have spent federal homeland security and bioterrorism preparedness funds, expenditure rates, and criteria for determining the amount of funding local entities receive from the State. Finally, the audit committee asked that we identify impediments to the efficient and effective investment of federal homeland security and bioterrorism preparedness funds. We performed most of our audit work at three state entities: the California Department of Health Services (Health Services), the Governor's Office of Emergency Services (Emergency Services), and the Governor's Office of Homeland Security (State Homeland Security).

Finding #1: Annual statewide exercises have not sufficiently tested California's medical and health systems.

Although the State has been conducting emergency exercises simulating various threats throughout the last few years, California's two major annual exercises—the Golden Guardian exercises created by State Homeland Security and the Statewide Medical and Health Disaster exercises created by the Emergency Medical Services Authority—have not exerted sufficient stress on the State's medical and health systems to determine how well they can respond to emergencies. In 2005, Golden Guardian included a simulation involving about 550 casualties suffering from moderate-to-acute injuries or who died at the scene. Because that number is at the low end of the range of 250 to 10,000 casualties estimated for a moderate-size emergency, Golden Guardian lacked sufficient realism. Also, according to one Golden Guardian participant, the exercise tested medical mutual aid from a source that would not be used during an actual emergency. Further, although the Statewide Medical and Health Disaster Exercise was designed to fulfill exercise needs for local medical and health systems, it has not tested the medical and health mutual aid systems on a statewide basis. As a result, California does not know how well its medical and health systems can respond to all emergencies.

Emergency Services is the lead agency for emergency management in California. One of the four phases of emergency management is preparedness. Exercises are a type of activity that occurs within the preparedness phase. Emergency Services raised concerns about the 2005 Golden Guardian exercise. In a February 2006 letter, Emergency Services' director stated that "inadequate integration of the [state emergency management system] by [State Homeland Security], coupled with unfocused objectives, caused exercise design flaws and problems in the exercise play." The director also noted, "local participants have stated that [Golden Guardian 2005] was confusing and frustrating and called into question the credibility of the State's level of preparedness."

To better prepare the State for responding to terrorism events and other emergencies, state entities, including State Homeland Security and Emergency Services, should ensure that future exercises are as realistic as possible and sufficiently test the response capabilities of California's medical and health systems.

Emergency Services' Action: Pending.

Emergency Services stated that stressing the medical and health systems will certainly be the focus of future statewide exercises. Further, under statutory authority as the lead emergency management agency in the State, Emergency Services is strengthening its statewide exercise program designed to test policy, plans, and procedures and its associated training program for an all-hazards concept of response and recovery. Emergency Services plans to develop an outline for the statewide exercise program by March 2007, present a final draft of the outline to stakeholders by September 2007, and implement the plan in December 2007.

State Homeland Security's Action: Partial corrective action taken.

State Homeland Security stated that it incorporated the Statewide Medical and Health Exercise into the 2006 Golden Guardian Exercise for the first time. It also stated that more than 100 hospitals participated in the 2006 Golden Guardian Exercise, which included 20,000 injuries that required hospital beds and 72,000 treated and released at the scene. State Homeland Security further stated that it will continue to test aspects of the medical health system in the next Golden Guardian exercise and that it will use a variety of exercises to test the medical system, including tabletop, functional, and full-scale exercises. Finally, State Homeland Security stated that it will build on previous and current Golden Guardian efforts as part of future planning.

Finding #2: California's spending of some federal funds has been slow.

The State has not promptly spent federal funds received since 2001 for homeland security. As of June 30, 2006, Emergency Services and State Homeland Security had spent only 42 percent of the funds granted to the State for homeland security. The slow pace of spending of the homeland security funds is a sign that California may not be as prepared as it otherwise could be. Local entities we contacted offered several reasons for the slow spending, including the State's slow process for reimbursing local entities. To determine the length of time it took the state to process reimbursement requests, we examined samples of payments made at two points during 2006. Our review of the first sample showed that it took Emergency Services and State Homeland Security an average of 66 days to process reimbursement requests. For the second sample, it took the two entities an average of 41 days. Based on the results of our testing, the State's current reimbursement process probably does not contribute significantly to the inability of subrecipients to spend federal grants. However, both averages exceed the 30-day maximum established in law for state entities to process invoices from its contractors. We believe this is a reasonable benchmark. Local entities also mentioned the combination of the short time allowed for developing budgets and the time-consuming budget-revision process as obstacles, and identified local impediments to quicker spending, including procurement rules and a lack of urgency.

To identify steps that could be taken to help increase the pace of spending for federal homeland security grants, State Homeland Security should create a forum for local administrators to share both best practices and concerns with state administrators. Further, to reduce the amount of time necessary to reimburse local jurisdictions for their homeland security expenditures, State Homeland Security and Emergency Services should collaborate to identify steps they can take.

Emergency Services' Action: Partial corrective action taken.

Emergency Services stated that it and Homeland Security are working cooperatively and are committed to reducing the processing time for all reimbursement claims. It also indicated that, although it is currently processing payments within 35 to 40 days, its goal is to reduce the processing time down to 30 days.

State Homeland Security's Action: Partial corrective action taken.

State Homeland Security stated, among other things, that it will continue to create forums for local administrators to share best practices and concerns with the State. State Homeland Security cited the expansion of its Program and Capability Review (PCR) from 200 participants to as many as 1,000 as an example. State Homeland Security stated that during the PCR, local administrators will have time to discuss grant issues and other types of issues with counterparts from around the State. It will also include best practices workshops as part of the PCR. State Homeland Security also mentioned that it will host an annual statewide conference in early spring 2007 at which it will encourage the sharing of best practices by giving local agencies the opportunity to explain what has worked for them and some of the problems they encountered along the way.

Regarding steps to reduce the time necessary to reimburse local jurisdictions, State Homeland Security indicated that it has been working with Emergency Services to coordinate activities. It also stated that it will implement a process for getting payments to Emergency Services' accounting office within 15 days and, to help achieve this goal, it will create and fill an additional payment processing position.

Finding #3: State reviews of emergency response plans are behind schedule.

The state emergency plan and other existing emergency and mutual aid plans guide public entities during their response to declared emergencies, in conjunction with the emergency operations plans established by local governments and state agencies. Emergency Services, however, is behind schedule in its receipt and review of the emergency operations plans for 35 of California's 58 counties and those of 17 of 19 state entities that are key responders during emergencies. As a result, California cannot ensure that these plans incorporate all relevant changes in agency reorganizations, new laws, and experience with both exercises and actual disasters. California also has less assurance that these plans will effectively guide the entities in their response to emergencies. The current status of the State's review of local and state agency plans is the result of weak internal controls.

To ensure that emergency plans of key state entities and local governments are as up-to-date as possible, integrated into the State's response system, and periodically reviewed, Emergency Services should develop and implement a system to track its receipt and review of these plans.

Emergency Services' Action: Partial corrective action taken.

Emergency Services stated that it will include the emergency planning process as part of its effort to update the state emergency plan. The revised state emergency plan will define the update schedule for the State's plan and define the supporting plans and their update schedule. Emergency Services estimates that the completion date for the updated state emergency plan is January 2008.

Emergency Services also stated that it is completing a database to include the emergency-related plans and other documents for state agencies and operational areas. It stated that it will work with state agencies and operational areas to enter the information into the database. It also stated that it will assign staff to oversee the database, notify entities of the need for upcoming updates, and monitor development of emergency plans. Emergency Services has set a target date of January 2007 for the completion of this database.

Finding #4: Grant monitoring efforts are expanding.

Current efforts by the State to monitor subrecipients' use of homeland security and bioterrorism preparedness funds appear to comply with the minimum requirements set by the federal government. Generally, the State performs the four types of monitoring suggested by federal guidance: technical assistance, desk reviews, independent audit reports, and on-site monitoring. However, only State Homeland Security performs on-site reviews to examine subrecipients' use of federal grant funds. Legislation enacted in July 2005 requires Health Services to begin reviewing subrecipient cost reports by January 2007. Planning documents indicate that Health Services intends to perform these reviews on site. Health Services was continuing with its planning efforts as of August 2006.

To ensure that it can implement in January 2007 the provisions of Chapter 80, Statutes of 2005, related to auditing cost reports from subrecipients of federal bioterrorism preparedness funds, Health Services should complete its planning efforts.

Health Services' Action: Partial corrective action taken.

According to Health Services, it remains on schedule to implement auditing of subrecipients. Health Services told us that audit instruments have been developed and staff will initiate audits in January 2007.

Finding #5: The State's preparedness structure is neither streamlined nor well defined.

Although California's structure for responding to emergencies is established in state law and is very streamlined, its structure for preparing for emergency response is a labyrinth of complicated and ambiguous relationships among myriad entities. Emergency Services and State Homeland Security, as well as the numerous committees that provide advice or guidance to the three state entities that administer federal grants for homeland security and bioterrorism preparedness, are working within a framework of poorly delineated roles and responsibilities. If this status continues, the State's ability to respond to emergencies could be adversely affected. It appears that the current structure for preparedness arose as the State reacted administratively to guidance from the federal government and created its own requirements to fill perceived needs.

To simplify and clarify California's structure for emergency response preparation, the following steps should be taken:

- The governor and the Legislature should consider streamlining the preparedness structure. For instance, they should consider establishing one state entity to be responsible for emergency preparedness, including preparedness for emergencies caused by terrorist acts.

- The Legislature should consider statutorily defining the preparedness structure in law.

- The Legislature should consider statutorily establishing State Homeland Security in law as either a stand-alone entity or a division within Emergency Services. Further, if it creates State Homeland Security as a stand-alone entity, the Legislature should consider statutorily defining the relationship between State Homeland Security and Emergency Services.

Legislative Action: Legislation proposed.

As of December 8, 2006, we are aware of only one bill that addresses our recommendations. On December 4, 2006, Assemblymember Nava introduced AB 38 to transfer State Homeland Security from the Governor's Office to become a division within Emergency Services. Further, Emergency Services told us that it was working with the legislative leadership to determine how to best structure the relationship between it and State Homeland Security in state law. We are unaware of other actions taken by the Legislature to address our recommendations.

DEPARTMENT OF HEALTH SERVICES

Investigations of Improper Activities by State Employees, January 2005 Through June 2005

INVESTIGATION I2004-0930 (REPORT I2005-2), SEPTEMBER 2005

Department of Health Services' response as of March 2006

Investigative Highlights . . .

Department of Health Services:

- ☑ *Improperly paid contract staff $57,788 for services it did not receive.*
- ☑ *Circumvented procurement procedures and purchased $40,698 in equipment on a services contract.*

We investigated and substantiated an allegation that the Department of Health Services (department), Genetic Disease Branch (branch) improperly paid a contractor for holiday time and improperly purchased equipment under personal and computer services contracts.

Finding #1: The branch improperly paid for contract staff holiday time.

We believe the branch may have violated state law prohibiting gifts of public funds by paying contract employees more than they were entitled to receive. Although terms of the contract did not require it to do so, the branch authorized payment for 13 holidays to Contractor A's staff from December 2003 through November 2004, costing the State $57,788 for services it did not receive. The contract under which the branch made these payments specifies that services shall be provided Monday through Friday, 8 a.m. to 5 p.m., except for official state holidays.

The branch stated that effective January 1, 2004, it amended Contractor A's three contracts to provide for holiday pay and provided a holiday pay schedule developed and approved by a former branch employee. However, it was never processed through the department's contracts section, and therefore, did not constitute a formal, authorized written amendment to the contract.

Finding #2: The branch circumvented procurement procedures.

The branch circumvented state procurement procedures by using services contracts with both Contractor A and Contractor B to purchase two computers, three fax machines, and two laser printers for the branch. The computers cost $35,000, the fax machines cost $1,845 and the printers cost $3,853, for a total of $40,698.

The branch's agreement with Contractor B was for the contractor to provide maintenance of computer hardware and software. The branch circumvented the goals of state law as well as state procurement procedures by using money from this computer services contract to purchase two computers.

Specifically, the branch approved a $15,500 invoice from Contractor B for what the invoice stated as "time and materials not covered under the terms and conditions of the regular maintenance agreement" but was actually for the cost of the two computers. We believe the information on this invoice was a misleading statement about the true nature of the transaction. Further, it appears that the branch was aware of the true nature of the amount claimed on the invoice when it approved payment, thereby not only circumventing state procurement procedures but also approving and perpetuating misleading information. The branch also approved a second invoice from Contractor B for $19,500 containing the same description of services. The branch told us this invoice was for the installation of emergency backup computers in Sacramento, something that was necessary as part of the recovery system required for critical public health services. It further said both invoices were approved under the mistaken impression that the contract had been amended to provide for this equipment.

Similarly, the branch used a personal services contract with Contractor A to purchase fax machines and laser printers. In taking this action, the branch circumvented state procurement procedures requiring departments to first obtain price quotes and compare prices for such purchases. Furthermore, the contractor charged the branch another 10 percent for "additional administrative and accounting expenses."

Department's Action: Pending.

The department reported its corrective action and adverse action is still under review.

DEPARTMENT OF HEALTH SERVICES

Participation in the School-Based Medi-Cal Administrative Activities Program Has Increased, but School Districts Are Still Losing Millions Each Year in Federal Reimbursements

Audit Highlights . . .

Our review of the Department of Health Services' (Health Services) administration of the Medi-Cal Administrative Activities program (MAA) revealed the following:

- ☑ *School districts' participation in, and reimbursements for, MAA have significantly increased since fiscal year 1999–2000.*
- ☑ *Despite receiving $91 million for fiscal year 2002–03, we estimate school districts could have received at least $57 million more had all school districts participated and certain districts fully used MAA.*
- ☑ *Health Services has not performed a sufficient number of local on-site visits.*
- ☑ *Simplifying the MAA structure would increase efficiency and simplify program oversight.*

REPORT NUMBER 2004-125, AUGUST 2005

Department of Health Services' response as of July 2006

The Joint Legislative Audit Committee (audit committee) asked the Bureau of State Audits to review the Department of Health Services' (Health Services) administration of the Medi-Cal Administrative Activities program (MAA). Specifically, we were asked to assess the guidelines provided by Health Services to local educational consortia (consortia) and local governmental agencies that administer MAA at the local level. Additionally, the audit committee asked us to evaluate the process by which Health Services selects consortia and local governmental agencies to contract with, how it establishes the payment rates under the terms of the contracts, and how it monitors and evaluates performance of these entities.

We were also asked to evaluate the effectiveness of a sample of consortia and local governmental agencies in administering MAA and in ensuring maximum participation by school districts. Furthermore, we were requested to conduct a survey of school districts regarding their participation in the program.

Finding #1: School districts underused MAA.

Although California school districts received $91 million in federal MAA funds for fiscal year 2002–03, we estimate that they could have received at least $53 million more if all school districts had participated in the program and an additional $4 million more if certain participating school districts fully used the program. School districts we surveyed identified a belief that the program would not be fiscally beneficial as one of the primary factors in their decision not to participate in MAA. However, several of the nonparticipating school districts we surveyed have not recently assessed the costs and benefits of the program, while many of the surveyed school districts that recently performed this assessment have now decided to participate. The main reasons offered by consortia and local governmental agencies as to why participating school districts did not fully use MAA were that they lacked an experienced MAA coordinator with sufficient time to focus on the program and generally resisted or lacked support for time surveying. If such issues are addressed, school districts may be able to obtain additional MAA reimbursements beyond our $57 million estimate.

Health Services and the consortia and local governmental agencies that help it administer the program have not done enough to help school districts participate in MAA. Health Services acknowledges that it does not try to increase MAA participation and federally allowable reimbursements, commenting that it has neither a mandate nor the resources to do so. However, it is the state entity in charge of Medi-Cal and could use its contracts with these local entities to mandate their performance of outreach activities designed to increase the use of MAA. None of the local governmental agencies we visited perform any outreach activities. Conversely, consortia have already voluntarily assumed some responsibility for increasing program participation in their regions even though Health Services does not contractually obligate them to do so. Consequently, Health Services has not established ways to measure and improve these outreach efforts. Consortia could improve their outreach to school districts by targeting nonparticipating school districts that have the potential for a high MAA reimbursement and by identifying participating school districts that underuse MAA and helping ensure that they have a correct understanding of those costs that are federally reimbursable.

To help ensure comprehensive MAA participation by school districts and that all federally allowable costs are correctly charged to MAA, Health Services should require consortia to perform outreach activities designed to increase participation and hold them accountable by using appropriate measures of performance. In addition to the mass forms of outreach consortia currently perform, Health Services should require them to periodically identify and contact specific nonparticipating school districts that have potential for high MAA reimbursement and periodically identify and contact participating school districts that appear to be underusing MAA to help ensure that they have a correct understanding of those costs that are federally reimbursable. If Health Services believes it does not have a clear directive from the Legislature to increase participation and reimbursements, it should seek statutory changes.

Health Services' Action: Partial corrective action taken.

Health Services amended its MAA contracts to include the requirement that consortia perform targeted outreach activities each year to a minimum of 15 percent of all nonparticipating school districts within their region that have the highest daily attendance. Health Services uses a site review tool to measure contractual compliance and adherence to program directives.

Health Services' School-Based MAA Unit provides ongoing consultation and program expertise to consortia to ensure that they have a correct understanding of those costs that are federally reimbursable. The unit also develops and conducts annual mandatory training for time surveys. Additionally, the unit's MAA database of participating and nonparticipating school districts by region has established baseline references to measure outreach activities. Finally, an annual report of participation information and performance measures is being developed for additional program oversight.

Finding #2: Without regular site visits, Health Services cannot determine if local entities complied with MAA requirements.

Health Services did not adequately monitor the MAA activities of consortia, local governmental agencies, or school districts. Effective November 2002, the federal Centers for Medicare and Medicaid Services (CMS) required Health Services to perform on-site reviews of each consortium and local governmental agency at least once every four years. According to the CMS requirements, these reviews may be performed in one of two ways. Health Services can elect to review a representative sample of claiming units—the entities within a consortium or local governmental agency, including school districts, that participate in MAA. Alternatively, the consortia and local governmental agencies can focus a portion of their annual single audit on MAA claiming every four years. However, based on our review, neither method was consistently employed.

From October 2001 to February 2005, Health Services conducted site visits of only nine of 31 consortia and local governmental agencies, including some school districts. During that period, it did not conduct any site visits during 2003 and only one during 2004. Additionally, four of the five consortia—the Los Angeles consortium performed some reviews—and three of the four local governmental agencies we reviewed did not perform onsite reviews of school districts. According to the chief of administrative claiming, Health Services has implemented new procedures as a result of its most recent MAA manual approved by CMS in August 2004 and has received the authority to hire additional staff to help implement the new manual, including performing site visits. According to the manual, Health Services is required to conduct site visits at a minimum of three consortia and one local governmental agency each year.

Health Services should ensure that the site visits of consortia, local governmental agencies, and school districts are conducted as required.

Health Services' Action: Corrective action taken.

The School-Based MAA Unit is now fully staffed. Oversight, monitoring, site visit and desk review protocols, and performance criteria are in place and exceed federal monitoring requirements. With the increased staff in the School-Based MAA Unit, regular mandatory site visits are occurring along with desk reviews of 50 time surveys and 100 invoices yearly for all of the consortia.

Finding #3: Health Services' existing procedures limit its ability to effectively measure MAA performance.

Health Services has decreased the time it takes to pay an invoice, but its current invoice and accounting processes need to be updated so that it can more easily collect data to monitor MAA and to identify where additional improvements could be made. For instance, because it uses a manual process, which has the potential for human error, Health Services cannot easily determine the total federal reimbursements California schools have received from MAA, identify participating school districts, or ascertain the amount each school district receives in MAA reimbursements. Without these basic statistics, it is difficult for Health Services to adequately monitor the success of the program, and its ability to use statistical methods to identify fraudulent or excessive claims is limited. It also does not require regular reporting from consortia and local governmental agencies on their program efforts (annual reports). Further, Health Services has not established a way to measure the performance of consortia and local governmental agencies, and has not outlined the actions it would take if one of these entities consistently neglected their responsibilities.

Health Services should update its current invoicing and accounting processes so it can more easily collect data on the participation and reimbursement of school districts. Additionally, Health Services should require consortia, and local governmental agencies should they continue to be part of MAA, to prepare annual reports that include participation statistics, outreach efforts and results, and other performance measures Health Services determines to be useful. Health Services should then annually compile the content of these reports into a single, integrated report that is publicly available. Finally, Health Services should develop written criteria for consortia, and local governmental agencies should they continue to be part of MAA, and take appropriate action when performance is unsatisfactory.

Health Services' Action: Partial corrective action taken.

Refinements to the invoice and accounting processes have been implemented. Invoice and claiming plan backlogs have been eliminated, and staff are meeting all deadlines. Additionally, Health Services has begun the MAA Automation project and has hired a consultant to develop a feasibility study scheduled to be completed by September 2006. The MAA Automation project will enable Health Services to analyze MAA data and develop management reports. Data collection and analysis and management reports focus on total federal MAA reimbursements, participating school district MAA reimbursements, and consortia performance measures, among other indicators. Additionally, Health Services and MAA coordinators have formed an "Annual Report Workgroup" to develop and finalize a yearly report that will be published on Health Services' Web site. The workgroup has developed interim management reports using existing data to identify trends within California and in comparison with other states.

Health Services' School-Based MAA Unit is actively assessing local MAA performance through site reviews and desk reviews to identify and correct unsatisfactory performance. The School-Based MAA Unit staff are correcting overpayments and repayments, returning incorrect invoices, and requiring improper invoice revisions to ensure program consistency and compliance. Health Services also continues to develop MAA policy and procedures letters to provide program guidance and directives to ensure proper and efficient implementation of the MAA program.

Finding #4: Some consortia and local governmental agencies are charging fees in excess of their administrative costs.

School districts are receiving a reduced share of MAA reimbursements because some consortia and local governmental agencies are charging fees that exceed their administrative costs. Furthermore, representatives for three of the local governmental agencies we reviewed stated they do not perform an analysis that would allow them to identify whether the fees they assessed exceeded their costs. State law requires that Health Services contract with a consortium or local governmental agency to claim MAA reimbursement for a participating school district and allows that administering entity to collect a fee from the school district for such a service. We reviewed fees assessed by some of these entities, anticipating that the fees charged would be sufficient to cover the administrative costs incurred. However, we found that the fees charged by some consortia and local governmental agencies exceeded costs. This condition does not result in the State receiving additional MAA funds from the federal government. Rather, it results in the school districts receiving a smaller share of MAA reimbursements than they could have. Health Services stated it has not developed policies governing consortium and local governmental agency fees because it was unaware of the overcharging issue.

Health Services should develop polices on the appropriate level of fees charged by consortia to school districts and the amount of excess earnings and reserves consortia should be allowed to accumulate. Health Services should do the same for local governmental agencies if such entities continue to be part of the program structure.

Health Services' Action: None.

Health Services' research found no federal authority to implement policies regarding the level of consortium fees or the amount of excess savings or resources the consortium can accumulate. Health Services believe that this issue should be handled at the local level to afford maximum flexibility to manage the program on local issues. We continue to believe it is critical that Health Services develop policies in this area. If Health Services believes it needs express authority to implement such policies, it should seek it.

Finding #5: Some school districts are losing money because of the terms of their vendor contracts.

School districts we reviewed lost an estimated $181,000 in federal MAA reimbursements for fiscal year 2003–04 because the fees they paid their vendors were based on the amount of MAA reimbursements they received. Although federal guidance has long prohibited requesting reimbursement for these types of fees, known as contingency fees, it was not until recently that Health Services issued guidance on this topic. In its 2004 MAA manual, Health Services indicates that claims for the costs of administering MAA may not include fees paid to vendors that are based on, or include, contingency fee arrangements. Although this guidance is helpful, it does not identify alternative fee arrangements that would allow federal reimbursement for vendor fees. Consequently, school districts may mistakenly believe vendor fees are not reimbursable under any circumstances.

We recommended that Health Services help school districts invoice for all reimbursable costs, including vendor fees, by issuing clear guidance on how to invoice for these costs and instructing consortia, and local governmental agencies should they continue to be part of MAA, to make sure school districts in their respective regions know how to take advantage of these revenue-enhancing opportunities.

Health Services' Action: Corrective action taken.

Health Services is fully staffed and the local MAA programs are receiving ongoing technical assistance, training, and guidance in obtaining all appropriate reimbursements under the MAA program.

Finding #6: Because of recent changes in billing practices, the federal government could be billed twice for the same services.

Some consortia and local governmental agencies are changing their fee structures to allow school districts to claim their fees as a federal reimbursable MAA cost. However, because consortia and local governmental agencies also request federal reimbursement for their administrative costs, this practice could result in the federal government reimbursing both a consortium or local governmental agency and a school district for the same services. Health Services has not adequately monitored the activities of these entities and therefore was unaware of these changes at the local level. Consequently, Health Services has not created the policies necessary to prevent activities from being claimed twice. Although we did not identify any duplicate payments to the entities we reviewed, the potential for duplicate payments exists.

We recommended that Health Services follow through on its plans to develop a policy governing the claiming of consortium and local governmental agency fees and instruct these entities to carefully monitor school districts' invoices to make sure that any claiming of consortium or local governmental agency fees does not result in duplicate payments.

Health Services' Action: Corrective action taken.

Health Services released a policy and procedure letter in February 2006 that requires consortia or local governmental agencies participating in MAA to ensure, by monitoring invoices, that administrative fees they charge school districts are not reported by both the consortia or governmental agencies and the school districts. The policy and procedure letter further provides that the cost of activities included on the MAA invoice may only be claimed by one entity. Therefore, if the activities are claimed on the consortia or governmental agency invoice, they may not be claimed on other invoices, such as the school district or subcontractor invoices.

Finding #7: Simplifying the MAA structure would make the program more efficient and effective.

MAA would be more efficient and effective if Health Services required participating school districts to submit invoices through a consortium and to use a vendor selected through a regionwide competitive process. School districts currently submit MAA invoices through 11 different consortia and 20 different local governmental agencies. To ensure that it adequately monitors the activities of these two sets of local administering entities, Health Services plans to conduct site visits of all 31 once every three years. However, although local governmental agencies represent nearly 65 percent of the 31 site visits to be performed, school districts only submit about 24 percent of their MAA invoices through local governmental agencies. Once Health Services implements the additional monitoring activities we recommend, its efforts would be better spent on the 11 consortia that process 76 percent of participating school districts' MAA invoices. Using such an approach, it would likely be able to increase its oversight activities without requiring a significant increase in staff resources.

We also recommended that Health Services require consortia to perform outreach activities designed to increase MAA participation and that it hold consortia accountable using appropriate measures of performance. We did not include local governmental agencies in this recommendation because the jurisdictions of consortia and local governmental agencies overlap. Efforts by both consortia and local governmental agencies to conduct outreach to the same school districts not participating in MAA would be a duplicative use of resources. In addition, if Health Services required simultaneous outreach efforts by consortia and local governmental agencies, it could confuse school districts and reduce the accountability of both entities for their outreach programs. Consortia are best suited to perform outreach to nonparticipating school districts because they are administered by educational units and thus may have a better understanding of school districts' needs than would local governmental agencies, which are typically county health agencies.

Finally, if each school district that needs MAA assistance is required to use a vendor competitively selected by its consortium, instead of entering into an individual contract with a vendor of its own choosing, vendors could be subject to stronger oversight and compelled to reduce their fees. Nearly all of the 27 participating school districts that responded to our survey used private vendors for some sort of MAA assistance. Some of these school districts used a vendor selected by consortia, but because not all consortia contract with vendors, many school districts do not have that option. Other school districts choose to contract directly with private vendors for MAA assistance, even though their consortia also contracted with vendors. This makes oversight of vendors difficult and does not take advantage of the volume discounts consortia may be able to achieve.

Health Services should reduce the number of entities it must oversee and establish clear regional accountability by eliminating the use of local governmental agencies from MAA. Because current state law allows school districts to use either a consortium or a local governmental agency, Health Services

will need to seek a change in the law. Additionally, we recommended that Health Services require school districts that choose to use the services of a private vendor, rather than developing the expertise internally, to use a vendor selected by the consortium through a competitive process. Depending on the varying circumstances within each region, a consortium may choose to use a single vendor or to offer school districts the choice from a limited number of vendors, all of which have been competitively selected. Health Services should seek a statutory change if it believes one is needed to implement this recommendation.

Health Services' Action: None.

Health Services disagrees with our recommendation to eliminate the use of local governmental agencies from MAA. Specifically, Health Services continues to support the school districts' decision to claim through either their consortia or their local government. Health Services believes this local flexibility allows MAA program implementation to be based on local variances and results in the most efficient use of resources.

Health Services agrees with the merits of requiring school districts that choose to use the services of a private vendor rather than develop the expertise internally to use a vendor selected by the consortium after a competitive selection process. However, Health Services continues to support local flexibility to allow management of the MAA to be based on local variances resulting in the most efficient use of local resources. Nevertheless, we continue to believe that simplifying the MAA structure to make the program more efficient and effective is important, and thus, Health Services should implement the recommendations. Further, Health Services should seek a statutory change if it believes one is needed to implement the recommendation regarding vendor selection.

PHARMACEUTICALS

State Departments That Purchase Prescription Drugs Can Further Refine Their Cost Savings Strategies

Audit Highlights . . .

Our review of the State's procurement and reimbursement practices as they relate to the purchase of drugs for or by state departments revealed the following:

- ☑ *Although the Department of General Services (General Services) generally got the best prices for the drug ingredient cost because of up-front discounts, it had the highest state cost after considering rebates, dispensing fees, co-payments, and third-party payments.*
- ☑ *The Department of Health Services' net drug ingredient cost and state cost are lower than General Services and the California Public Employees' Retirement System's (CalPERS) because it receives substantial federal Medicaid program and state supplemental rebates.*
- ☑ *Although CalPERS receives rebates through entities it contracts with to provide pharmacy services to its members, it cannot directly verify it is receiving all of the rebates to which it is entitled.*

continued on next page . . .

REPORT NUMBER 2004-033, MAY 2005

California Public Employees' Retirement System and the Department of General Services' responses from the State and Consumer Services Agency, and the Department of Health Services' response from the Health and Human Services Agency as of May 2006

Chapter 938, Statutes of 2004, required the Bureau of State Audits (bureau) to report to the Legislature on the State's procurement and reimbursement practices as they relate to the purchase of drugs for or by state departments, including, but not limited to, the departments of Mental Health, Corrections and Rehabilitation, the Youth Authority (Youth Authority), Developmental Services, Health Services (Health Services), and the California Public Employees' Retirement System (CalPERS). Specifically, the statutes required the bureau to review a representative sample of the State's procurement and reimbursement of drugs to determine whether it is receiving the best value for the drugs it purchases. The statutes also required the bureau to compare, to the extent possible, the State's cost to those of other appropriate entities such as the federal government, Canadian government, and private payers. Finally, the bureau was required to determine whether the State's procurement and reimbursement practices result in savings from strategies such as negotiated discounts, rebates, and contracts with multistate purchasing organizations, and whether the State's strategies result in the lowest possible costs. The bureau examined the purchasing strategies of the three primary departments that contract for prescription drugs—the Department of General Services (General Services), Health Services, and CalPERS. We found that:

Finding #1: In some instances, CalPERS cannot directly verify that it is receiving all of the rebates to which it is entitled.

Negotiating drug rebates is one tool available to reduce drug expenditures. Drug manufacturers typically offer rebates based on the extent to which health care plans influence their products' market share. Although CalPERS does not directly contract with drug manufacturers, it receives rebates from some entities it contracts with

☑ *In our comparison of 57 prescription drug costs across the three state departments and select U.S. and Canadian governmental entities, the Canadian entities got the lowest prices about 58 percent of the time. However, federal law strictly limits the importation of prescription drugs through the Food, Drug, and Cosmetic Act whose stringent requirements generally exclude any drugs made for foreign markets.*

for pharmaceutical services. In some instances CalPERS receives rebates under a pass-through method. In the pass-through method, the entity negotiates rebates and contracts with pharmaceutical manufacturers so that rebate payments between the manufacturer and the entity are based on historical and prospective pharmacy utilization data for all of the members of the health care plan that the entity administers. The entity then collects and passes through to plan sponsors, such as CalPERS, either a percentage or the entire amount of the rebates earned by the sponsors based on their member utilization.

Typically, these entities prohibit CalPERS from having access to any information that would cause them to breach the terms of any contract with the pharmaceutical manufacturers to which they are a party. Because CalPERS does not have access to the entities' rebate contracts with the manufacturers, CalPERS cannot directly verify that it is receiving all of the rebates to which it is entitled. According to CalPERS, this rebate practice between the entity and the manufacturer is an industry practice and is not unique to it. CalPERS intends to continue to pursue greater disclosure requirements in future contracts with its contracting entities.

We recommended that the Legislature consider enacting legislation that would allow CalPERS to obtain relevant documentation to ensure that it is receiving all rebates to which it is entitled to lower the prescription drug cost of the health benefits program established by the Public Employees' Medical and Hospital Care Act. Additonally, CalPERS should continue to explore various contract negotiation methods that would yield more rebates for the drugs it purchases and that would allow it to achieve greater disclosure requirements to verify that it is receiving all of the rebates to which it is entitled.

Legislative Action: Unknown.

CalPERS' Action: Corrective action taken.

CalPERS reports that the providers for two of its HMO plans will furnish rebate information as part of the financial statements that they regularly provide. CalPERS also stated the provider of another of its HMOs considers rebates proprietary and confidential, and the provider does not identify rebates in its financial statements. However, a pharmacy carve-out analysis, conducted by a consultant for pharmacy claims from May 2003 through April 2004, confirmed that this HMO's management of the pharmacy benefit is the most cost-effective of CalPERS' health plans. CalPERS stated that it will continue to assess this HMO's performance and management as part of its recurring rate analysis.

CalPERS also reports that it entered into a three-year contract with a new pharmacy benefits manager (PBM) for its self-funded PPO plans. The term of the contract is from July 2006 through June 2009. According to CalPERS, this contract contains extensive provisions regarding guarantees, rebates, transparency, disclosure, and cost accountability. Because CalPERS has only received the first quarterly payment of rebates and guarantees under the new contract, it cannot yet quantify the additional savings the contract will generate. However, CalPERS expects that the total rebate payment will be twice what it received under its contract with the prior PBM based on its first quarterly payment. CalPERS stated that its new contract also requires the PBM to provide a profit and loss report specific to the CalPERS account within 30 days of the end of each contract year, and allows a CalPERS representative to audit this report.

Finding #2: General Services is in the early stages of its direct negotiations with manufacturers and aims to increase its ability to reduce the net ingredient cost of prescription drugs.

Although rebates typically decreased the cost of prescription drugs for Health Services and CalPERS, General Services' net ingredient costs, drug ingredient cost minus any rebates or additional discounts, for the drugs in our sample are about the same as its costs for the drugs before any discounts or rebates. General Services says this is because it is still in the early stages of its direct negotiations with manufacturers to achieve reduced drug costs. Currently, departments purchasing drugs through General Services can obtain rebates only for one drug product class, a rebate General Services obtained through contract negotiation efforts. For that one drug product class, state agencies received at least $1.5 million in rebates for their purchases in fiscal year 2003–04.

To ensure that state departments purchasing drugs through General Services' contracts are obtaining the lowest possible drug prices, we recommended that General Services seek more opportunities for departments to receive rebates by securing more rebate contracts with manufacturers.

General Services' Action: Partial corrective action taken.

General Services reports that to obtain the best and lowest drug price, its primary strategy continues to be to negotiate price discounts upfront with the manufacturer. However, General Services notes that if rebates result in the State obtaining the best and lowest prices, they have been and will continue to be pursued.

Finding #3: Although General Services has made progress, it still needs to negotiate more contracts with drug manufacturers.

In a January 2002 report, *State of California: Its Containment of Drug Costs and Management of Medications for Adult Inmates Continue to Require Significant Improvements*, the bureau recommended that General Services increase its efforts to solicit bids from drug manufacturers to obtain more drug prices on contract. At that time, General Services had about 850 drugs on contract, but during most of fiscal year 2003–04 had only 665 drugs on contract. General Services states

that because of limited resources, it is focusing on negotiating contracts with manufacturers of high-cost drugs. However, opportunities still exist for General Services to increase the amount of purchases made under contract with drug companies.

We recommended that General Services continue its efforts to obtain more drug prices on contract by working with its contractor to negotiate new and renegotiate existing contracts with certain manufacturers.

General Services' Action: Partial corrective action taken.

General Services reports that its strategic sourcing contractor and its partners are providing support to General Services in its efforts to negotiate and renegotiate contracts with drug manufacturers. Specifically, the contractor has assisted General Services, as needed, in the negotiation of new and renegotiation of existing contracts within the atypical antipsychotic category of drugs, which make up approximately 30 percent of annual drug costs. In addition, General Services entered into two pharmaceutical contracts using its strategic sourcing methodology that should result in significant savings to the State. Namely, General Services implemented a contract with a new prime vendor responsible for distributing drugs purchased under the State's drug procurement program that it estimates will save the State $1.3 million annually. General Services also contracted with a PBM for the Department of Corrections and Rehabilitation to use to provide prescription drugs to parolees that General Services estimates will save the State an additional $3.8 million annually. However, General Services reports that its recent efforts to contract with manufacturers of gastrointestinal and anticonvulsant classes of drugs were not successful in delivering cost savings contracts.

Finding #4: General Services was not able to demonstrate that it fully analyzed how to improve its procurement process.

General Services was unable to provide documentation demonstrating that it addressed another recommendation in our January 2002 report: that it fully analyze measures to improve its procurement process, such as joining the Minnesota Multistate Contracting Alliance for Pharmacy (MMCAP) or contracting directly with a group-purchasing organization. General Services does contract with the alliance, but that contract covers only 16 percent of the drug purchases state departments made. With state departments purchasing almost half their prescription drugs at the prime vendor's price, General Services stands to reap benefits for the State by figuring out additional ways to procure prescription drugs.

General Services recognizes that it can do more to ensure that its strategies result in the lowest possible cost to the State. In September 2004, General Services hired a contractor to analyze state spending and identify opportunities to generate savings. General Services stated that, as resources become available, it intends to solicit bids to contract directly with a group-purchasing organization to determine if additional savings can be realized beyond the savings generated by the alliance.

We recommended that General Services follow through on its plan to solicit bids to contract directly with a group-purchasing organization to determine if additional savings can be realized. However, in doing so it should thoroughly analyze its ability to secure broader coverage of the drugs state departments purchase by joining MMCAP. The analysis should include the availability of current noncontract drugs from each organization being considered and the savings that could result from spending less administrative time trying to secure additional contracts directly with drug manufacturers.

General Services' Action: Partial corrective action taken.

General Services determined that an alternative method of accessing a group-purchasing organization should be assessed. It reports that this assessment will include an analysis of the benefits of joining the cooperative purchasing arrangement used by MMCAP. As part of this process, General Services is working with the alliance to identify ways of increasing value from a group-purchasing organization through enhanced reporting and formulary management activities. General Services is also working with the University of California and CalPERS to develop strategies and methods for using a group-purchasing organization. Finally, General Services plans to send a request for information to large and medium size group-purchasing organizations by early January 2007 to gather information to assist it in evaluating the pricing and services available through the alliance. If the information received indicates that additional savings or service benefits can be realized, General Services will promptly prepare and issue a request for proposals for a new method of accessing a group-purchasing organization.

Finding #5: General Services has not fully considered how to identify and mitigate obstacles to enforcing its statewide formulary.

In our January 2002 report, the bureau recommended that General Services fully consider and try to mitigate all obstacles that could prevent the successful development of a statewide formulary, such as departments not strictly enforcing such a formulary at their institutions. A drug formulary is a list of drugs and other information representing the clinical judgment of physicians, pharmacists, and other experts in the diagnosis and treatment of specific conditions. A main purpose of a formulary is to create competition among manufacturers of similar drugs when the clinical uses are roughly equal. However, the success of a statewide formulary and the State's ability to create enough competition to negotiate lower drug prices for certain products depends on how well state departments adhere to the formulary when they prescribe drugs. Although General Services has developed a statewide formulary, it has not identified the obstacles to enforcing it. General Services has not required departments to adopt a policy requiring strict adherence to the statewide formulary and does not monitor departments' adherence to the formulary. General Services does not believe its role is to enforce the formulary, but the goals of a statewide formulary in reducing drug costs cannot be realized without such enforcement.

We recommended that General Services facilitate the Common Drug Formulary Committee and Pharmacy Advisory Board's development of guidelines, policies, and procedures relating to the departments' adherence to the statewide formulary and ensure that departments formalize their plans for compliance.

General Services' Action: Corrective action taken.

General Services reports that at the Common Drug Formulary Committee's October 2005 meeting, and the Pharmacy Advisory Board's January 2006 meeting the formulary was approved. In addition, the departments of Corrections and Rehabilitation, Mental Health, and Developmental Services have provided General Services with implementation plans for the statewide formulary. Now that the statewide formulary has been implemented, General Services and the committee will begin to focus additional resources on the administrative and enforcement concerns raised in our report.

Finding #6: General Services does not have information concerning non-prime vendor drug purchases made by departments required to participate in its bulk purchasing program.

Although state law requires specific state departments to purchase drugs through General Services, our survey of various departments indicates they are not always doing so. Specifically, California Government Code requires the departments of Corrections and Rehabilitation, Developmental Services, Youth Authority, and Mental Health to participate in General Services' bulk purchasing program. In addition, California Public Contract Code requires that all state departments purchasing drugs totaling more than $100 must purchase them through General Services. California State University, the University of California, and some entities within the California Department of Veterans' Affairs are exempt from this requirement. Although we found that departments generally purchase most drugs through General Services' contract with its prime vendor, they also purchase drugs through other vendors.

Nine state entities purchased prescription drugs using General Services' prime vendor, but each of these entities also purchased drugs from non-prime vendor sources during fiscal year 2003–04. For example, although the Youth Authority purchased drugs from the prime vendor costing roughly $1.8 million, it also purchased drugs costing almost $451,000 through other vendors. Seven of the nine entities we surveyed purchased 20 percent to 100 percent of their drugs through non-prime vendor sources. General Services stated that it did not have insight into the amounts and kinds of drugs that entities were purchasing through other sources and therefore has not analyzed these purchases.

In order to make more informed decisions concerning the operation of its prescription drugs bulk-purchasing program and to be able to expand the program to include those prescription drugs that best serve the needs of state departments, we recommended that General Services ask those departments that are otherwise required to participate in the bulk purchasing program to notify General Services of the volume, type, and price of prescription drugs they purchase outside of the bulk purchasing program.

General Services' Action: Corrective action taken.

General Services reports that it now requires those departments that must participate in the bulk-purchasing program to provide it with quarterly reports on drugs purchased outside of the program. This information will aid General Services' pharmaceutical and acquisitions staff in making decisions about the bulk-purchasing program.

Finding #7: Health Services needs to improve the accuracy of its pharmacy reimbursement claim data.

Our review found that Health Services sometimes uses incorrect information when paying pharmacies. In several instances Health Services' payments to pharmacies were based on outdated or incorrect information. Health Services receives updates from a pricing clearinghouse and changes its prices monthly. One factor that Health Services uses to determine the appropriate drug price for a claim is the date of service. Specifically, Health Services uses this date to query its pricing file and identify the price in effect during the date of service on the claim. However, Health Services holds the price updates it receives from its primary reference source until the subsequent month because its budgetary authority only allows for monthly updates. Additionally, Health Services did not update its prices to reflect the elimination of the direct pricing method, which was the price listed by Health Services' primary or secondary reference source or the principal labeler's catalog for 11 specified pharmaceutical companies. Despite state law eliminating this method as of December 1, 2002, Health Services continued to use it during fiscal year 2003–04 to reimburse pharmacies. Health Services stated that the system change error related to the direct pricing method occurred prior to the July 2003 implementation of its fiscal intermediary's Integrated Testing Unit, which is responsible for performing comprehensive tests of system changes to prevent program errors. Health Services also incorrectly calculated drug prices. Although Health Services began corrective action after we brought the issues to its attention, its analyses to quantify the full extent and dollar impact of these errors was not complete as of April 2005.

To ensure that it reimburses pharmacies the appropriate amounts for prescription drug claims, we recommended that Health Services analyze the cost-effectiveness of increasing the frequency of its pricing updates. If this analysis shows that it would be cost-effective to conduct more frequent updates, Health Services should seek budgetary authority to do so. Health Services should also identify prescription drug claims paid using the direct pricing method, determine the appropriate price for these claims, and make the necessary corrections. In addition, we recommended that Health Services ensure that the fiscal intermediary's Integrated Testing Unit removes future outdated pricing methods promptly. Finally, Health Services should ensure that its fiscal intermediary's Integrated Testing Unit verifies that, in the future, drug prices in the pricing file are calculated correctly before authorizing their use for processing claims.

Health Services' Action: Partial corrective action taken.

Health Services reports that a 2005 budget health trailer bill amended the Welfare and Institutions Code to increase the frequency of drug price updates to weekly instead of monthly. Health Services began processing weekly updates in January 2006. In addition, Health Services determined that using the direct pricing method, which was eliminated by state law effective December 1, 2002, caused it to overpay 457,368 claims for a total of $2.9 million, and to underpay 199,380 claims by more than $450,000. Therefore, Health Services reports that its total net recoupment will be approximately $2.5 million for the period of December 1, 2002, through June 30, 2005. Health Services stated that its assessment of the provider impact and corrections to the pricing file must be implemented before it can move forward on this recoupment. As of early-December 2006, Health Services

was working with its fiscal intermediary to complete the corrections. Finally, Health Services has implemented safeguards within the fiscal intermediary's Integrated Testing Unit to assure that these types of errors in the pricing file will not occur on future system changes.

DEPARTMENT OF HEALTH SERVICES

Investigations of Improper Activities by State Employees, July 2004 Through December 2004

INVESTIGATION I2003-1067 (REPORT I2005-1), MARCH 2005

Department of Health Services' response as of February 2006

We investigated and substantiated an allegation that an employee of the Department of Health Services (Health Services) submitted false travel and attendance reports.

Investigative Highlights . . .

An employee with the Department of Health Services:

- ☑ *Falsely indicated on at least 22 occasions that she was working in order to receive $1,894 in wages and overtime she was not entitled to receive.*
- ☑ *Claimed and was paid $1,173 for expenses related to her travel that she either did not incur or was not entitled to receive.*

Finding: The employee submitted false travel and attendance reports in order to receive wages and travel expenses she was not entitled to receive.

The employee, whose duties require her to travel regularly throughout the State to monitor and provide training to retail businesses, improperly received $3,067 by submitting false claims for wages and travel costs. We determined that, by misrepresenting her departure and return times on her travel and attendance reports, the employee was paid $1,894 for overtime and regular hours she did not work. We also found that the employee claimed and was paid $1,173 for expenses related to her travel that she either did not incur or was not entitled to receive. Specifically, the employee claimed $253 for parking expenses that she acknowledged to us she did not incur. The employee also improperly claimed $151 in mileage reimbursements by routinely overstating the distance to and from the airport when conducting state business. Because the employee presented false information on her travel claims, she also received $259 for meal expenses that she was not entitled to receive. Finally, the employee improperly received $510 for travel expenses that she claimed on days she did not work or that otherwise were not allowed.

Health Services' Action: Corrective action taken.

Health Services provided training to all its supervisors in the employee's branch so they can better understand their responsibilities for reviewing travel claims and overtime requests submitted by those under their supervision. Those working in the employee's branch will also begin using the State's automated travel claim processing system (system). Because the business rules for travel are programmed into the system, Health Services believes the submission of improper travel claims will be reduced.

Finally, Health Services reduced the employee's pay by 5 percent for three months for inexcusable neglect of duty, dishonesty, and willful disobedience. Health Services reassigned the employee into a position with no travel responsibilities and required her to reimburse Health Services $943 for her improper parking expenses, excessive mileage claimed, and other improper expenses the employee claimed.

DEPARTMENT OF SOCIAL SERVICES

In Rebuilding Its Child Care Program Oversight, the Department Needs to Improve Its Monitoring Efforts and Enforcement Actions

Audit Highlights . . .

Our review of the Department of Social Services' (department) oversight of licensed child care facilities found that the department:

- ☑ *Has struggled to make required visits to the facilities and carry out its other monitoring responsibilities.*
- ☑ *Began a three-phase effort in 2005 to rebuild its oversight activities for its licensing programs.*
- ☑ *Usually conducted complaint visits within established deadlines but did not always complete the investigations within deadlines.*
- ☑ *Did not always determine whether child care facilities corrected the deficiencies it identified during its visits to facilities.*
- ☑ *Could increase its use of civil penalties as a response to health and safety violations.*
- ☑ *Appropriately prioritized and generally ensured that legal cases were processed within expected time frames; however, its regional offices did not always adequately enforce legal actions against licensed child care facilities.*

REPORT NUMBER 2005-129, MAY 2006

Department of Social Services' response as of November 2006

The Joint Legislative Audit Committee (audit committee) requested the Bureau of State Audits to review the Department of Social Services' (department) oversight of licensed child care facilities. Specifically, the audit committee requested that we assess the department's progress in meeting facility inspection requirements and determine whether the department's authority and resources were adequate to fully enforce the required health and safety standards in child care facilities. Additionally, we were asked to review the department's process for investigating and resolving complaints regarding facilities. Further, the audit committee asked us to examine the department's policies and procedures for categorizing health and safety risks identified at child care facilities and to review the reasonableness of the department's processes and practices for informing parents of problems it had identified. Finally, the audit committee requested that we review the disciplinary process the department uses when it identifies deficiencies in facilities.

Finding #1: The department has struggled with making periodic inspection visits required by statutes, and the data it uses to track these visits are not sufficiently reliable.

State law enacted in August 2003 established new requirements for how often the department should conduct periodic inspections of child care facilities. Under this new law, the department annually must make required visits to certain facilities and random visits to at least 10 percent of the remaining facilities. The requirements further state that the department must visit each child care facility at least once every five years, which means that it would conduct visits, on average, of approximately 20 percent of the facilities annually.

However, we found that the department did not meet those statutory requirements for fiscal year 2004–05, the only full year that had elapsed since the requirements were enacted. Specifically, the department performed 68 percent of the required or random visits needed for fiscal year 2004–05. In addition, these visits represented only 8.5 percent of the licensed child care facilities in the State during the same period.

Further, the department had yet to start tracking the "once every five years" requirement to determine the facilities it needs to visit so it can ensure that all are visited within the five-year period. Moreover, we found that the data the department uses to record and track inspection visits were not sufficiently reliable. For example, we found in the data numerous instances of multiple visits being made to the same facility on the same day. As a result of these and other problems, the data may not accurately reflect the department's progress toward meeting statutory requirements.

We recommended that the department develop a plan to measure its random and required visits against its statutory requirement to visit each facility at least once every five years, assess its progress in meeting this and other statutory requirements, and ensure that the data it uses to assess its progress in meeting the various requirements are sufficiently reliable.

Department's Action: Partial corrective action taken.

The department has developed an information technology strategic plan to provide systems and tools to eliminate or mitigate problems identified in the audit, such as for measuring its random and required visits. While the department seeks approval of its technology plan and explores methods for obtaining additional resources, it is using interim solutions. In particular, it stated that it has developed special reports to identify child care facilities that have not received a visit and the number of facilities visited each fiscal year. In addition, the department stated that it has taken efforts to improve the accuracy of the data maintained in its systems. For example, the department completed a project that allowed automated field data to be electronically shared with its licensing information system. Finally, the department stated that it would continue its efforts to prevent any duplication of information.

Finding #2: Although the department has recently begun rebuilding its oversight operations, much more remains to be done.

In the spring of 2005 the department's community care licensing division initiated a significant effort to rebuild its operations in three phases. The rebuilding effort is intended to increase and improve the department's oversight of its licensing programs, including the child care program. The first two phases focused on rebuilding the "foundation" of the monitoring program, hiring staff, and increasing the department's monitoring and enforcement activities. At the time of our review, the department had yet to fully develop plans for Phase III, which it envisioned as a time to analyze the increased information it will have gathered and to determine any follow-up or modifications needed. However, as the department continues its rebuilding efforts, a question for the State's decision makers to consider is whether the level of monitoring that the department is working toward is sufficient to ensure the health and safety of children in child care facilities.

In addition, although the department has some existing methods and has started to implement others to help it monitor the activities of its regional offices, it has yet to develop the automated management information that will allow it to effectively perform this monitoring. Further, even though the department has established a process to inform parents of certain deficiencies it has identified at child care facilities, it has yet to make nonconfidential information about its monitoring visits to facilities readily available to the public. The department has expressed its intent to put all nonconfidential information on its Web site, but stated that implementation will be dependent on funding.

We recommended that the department continue its efforts to rebuild the oversight operations of its child care program and assess the sufficiency of its current monitoring efforts and statutory requirements to ensure the health and safety of children in child care facilities. In addition, the department should develop sufficient automated management information to facilitate the effective oversight of its child care program regional offices. Further, the department should continue its efforts to make all nonconfidential information about its monitoring visits more readily available to the public.

Department's Action: Partial corrective action taken.

As part of the department's efforts to ensure the health and safety of children in child care facilities, the department stated it contracted with the University of California, Davis (UCD) to conduct a nationwide literature review about the frequency of inspection visits, caseloads, and measures that reduce risk and increase safety. A draft of the literature review is currently under review by the department. According to the department, it then plans to select certain studies for additional research by UCD. In addition, the department stated that it convened a team to evaluate how it could best oversee the effectiveness of its monitoring and enforcement activities. In addition to recognizing the importance of automated management information, the team recommended that the department develop a quality control function. Further, the department stated that child care program regional offices plan to conduct self-assessments, and the child care systems analyst will conduct reviews of the 12 regional offices over the next two years. Finally, as part of its strategic plan the department has begun to evaluate the options to consider for public access to information. However, the department stated that development and implementation of a web-based application depends on additional resources.

Finding #3: The department could improve its handling of complaint investigations.

Of the 40 complaint investigations we reviewed, the department completed eight outside its established 90-day deadline, ranging from 39 to 247 days late. In addition, our review of 54 complaint allegations the department deemed inconclusive revealed that in 19 instances it could have taken additional action to determine that the allegations were substantiated or unfounded. Further, we found little guidance in the department's evaluator manual about the actions the department should take in these instances. The department stated that its training in April 2006 was to include exercises designed to help new analysts evaluate evidence and reach conclusions on complaint allegations. At the time of our review, the department also planned to hold advanced complaint training for all child care licensing staff.

The department considers a complaint investigation complete when a supervisor approves the investigation. In six of its regional offices, the approval occurs after an analyst submits the investigation's findings but before corrective action is taken. The remaining six regional offices are taking part in a pilot project in which the approval occurs after the facility's plan of correction has been completed. However, the department has not yet determined which method of supervisory approval it intends to implement statewide.

Our review in one regional office of the department's complaint specialist pilot project, which it implemented in July 2005, disclosed several instances in which the department did not ensure that it took timely and appropriate action to enforce serious health and safety violations. For example, the department had taken follow-up action for only two of the seven facilities we reviewed since the complaint investigations were completed.

We recommended that the department complete complaint investigations within the established 90-day period, revise its policies to identify specific actions its child care program staff could take to reduce the number of inconclusive complaint findings, and continue its plans to train all of its analysts in evaluating evidence and reaching conclusions on complaint allegations. In addition, we recommended that the department evaluate its pilot project for supervisory approval after the plan of correction has been completed and implement a consistent process statewide for ensuring that licensees take appropriate corrective action. Further, the department should review the complaint specialist pilot project in its regional offices and use the results of its review to determine how it should modify its existing processes.

Department's Action: Partial corrective action taken.

The department reported that it reviewed the 90-day goal for completing investigations and believes the goal is reasonable. However, its review highlighted the need for valid automated management information to plan, track, and assess how well it is doing in meeting the 90-day goal. In addition, the department stated that it reviewed preliminary data on the findings of complaint investigations and found that about 30 percent were inconclusive, which was consistent with a past study. The department stated that it plans to review complaint data by regional office and will continue to study the possibility of reducing the number of inconclusive findings. Also, the department stated that it conducted advanced complaint training for its child care program managers in September 2006, and it has scheduled the training for child care program analysts. Further, according to the department, data from its pilot project about supervisory approval indicated that the most effective and timely method of supervisory approval for complaint investigations occurs before corrective action is taken. As a result, the department plans to institute the process statewide. Finally, the department reviewed its complaint specialist pilot project and stated that the time taken to investigate these serious complaints was shortened by 10 days. Nevertheless, it has established two workgroups, one of which has identified best practices and specified suggested improvements in a report to the department.

Finding #4: The department did not always determine that facilities corrected deficiencies identified during its visits, and often its prescribed corrective action was not verifiable.

Our review found that the department did not always determine whether facilities had corrected the deficiencies arising from complaint, random, and required visits. For example, we found no evidence in the facility files that the department had determined whether deficiencies were corrected for 32 (25 percent) of 127 deficiencies the department cited from random and required visits. The department requires facilities to correct deficiencies within 30 days of being cited unless it determines that more time is needed. However, of the 95 deficiencies the department determined were corrected, we found that 31 were corrected more than 30 days after the department issued the citations. In addition, we identified various instances in which the plan of correction was not written in a way that the department could verify or measure the corrective action the facilities had agreed to take. Thus, the department did not always have ongoing assurance that the deficiencies had been corrected.

We recommended the department ensure that deficiencies identified during its monitoring visits are corrected within its established 30-day time frame, that evidence of corrective action is included in its facility files, and that required plans of correction submitted by facilities are written so that it can verify and measure the actions taken.

Department's Action: Partial corrective action taken.

In an effort to ensure that deficiencies identified during monitoring visits are corrected within the established time frame, the department stated that it evaluated various methods for follow-up, procedures for granting extensions, and tools available to field staff in managing caseloads and tracking deadlines. In addition, the department stated that it is working to modify its evaluator manual to clarify areas of ambiguity and inconsistency related to plans of correction. Further, it stated that the information technology strategic plan includes automated enhancements that will assist field staff in monitoring the completion of plans of correction to ensure that follow-up occurs. Finally, the department evaluated its current activities and determined it needs to develop additional training to ensure that plans of correction submitted by facilities are written so that it can verify and measure the actions taken.

Finding #5: The department could increase its use of civil penalties as an enforcement tool.

Our review found that the department could increase its use of civil penalties as a response to health and safety violations by child care centers (centers) and family child care homes (homes). In particular, we found that the department did not assess civil penalties against homes in many instances we reviewed because the regulations for homes prescribe a more limited use of civil penalties for violations than the regulations for centers do. Further, our review of selected centers and homes found that the department did not always assess civil penalties for repeat violations, even though laws and regulations require it. Moreover, the department's evaluator manual prohibits civil penalties from being assessed if a follow-up visit is not conducted within 10 working days of the date specified for corrections to be made. However, the department is not precluded from conducting subsequent visits to previously cited facilities and citing them for repeat violations of the same regulations within a 12-month period. Nevertheless, we found several instances in which the department might have assessed civil penalties but did not because it did not make any follow-up visits.

We recommended that the department ensure that it assesses civil penalties in all instances where state laws and regulations require it. Additionally, it should consider proposing statutes or regulations requiring it to assess civil penalties on homes for additional types of violations. Further, the department should consider seeking changes to the requirement that it cannot assess civil penalties if follow-up visits are not conducted within 10 days of the time that corrective action was taken.

Department's Action: Partial corrective action taken.

The department stated that it proposed a "zero tolerance" policy that was included in a bill that would require civil penalties to be assessed for certain high-risk violations. The bill was considered by the Legislature in 2006 but did not pass. In addition, the department stated that it issued memos to department and county licensing staff in September 2006 that describe the statutes and policies requiring the assessment of civil penalties. At the same time, it developed and distributed to county licensing staff a civil penalty manual about the use of civil penalties. Further, the department stated it plans to modify the evaluator manual to further clarify the use of civil penalties. Finally, the department stated that it has not yet completed its review and evaluation about the requirement that follow-up visits be made within 10 days of the plan of correction date for civil penalties to be assessed.

Finding #6: The department has not consistently followed its guidance about using noncompliance conferences.

Our review of a sample of child care facilities at four regional offices revealed several instances in which the department did not follow guidance provided in a May 2004 memorandum about the use of noncompliance conferences to gain compliance from its licensees. For example, contrary to the May 2004 memorandum's requirements, the department did not require noncompliance conferences to be held after the initial citation for seven of 12 facilities we reviewed. In addition, we found that the department did not always conduct the noncompliance conferences promptly, given the severity of the noncompliance. In particular, the department took between two and five months to hold noncompliance conferences for five of 18 facilities we reviewed. Further, we identified instances in which the department's regional offices were inconsistent about the timing of noncompliance conferences. For example, one regional office required a licensee to attend a noncompliance conference 23 days after an incident occurred, whereas another regional office did not require a license to attend a noncompliance conference until nearly five months after an incident occurred.

We recommended that the department clarify its direction to regional office staff to help ensure that they are using noncompliance conferences promptly and in appropriate instances. Additionally, the department should reevaluate its May 2004 memorandum and, to the extent it reflects the department's current intent, incorporate the guidance into its evaluator manual. Further, the department should periodically review regional offices' use of noncompliance conferences to ensure that they are consistently following established policies.

Department's Action: Partial corrective action taken.

The department stated that it established a team to review its policies and directives involving noncompliance conferences. According to the department, the team determined that the evaluator manual provided the most complete guidance. However, the team found that the manual needs improvement. Therefore, the team recommended that the department focus on updating and improving the evaluator manual, including incorporating the directives from its May 2004 memorandum. In addition, the team recommended that the department revamp the noncompliance conference requirements in some instances. Further, the department agreed adherence to the noncompliance conference procedures should be part of its quality control efforts.

Finding #7: The regional offices may not always consult legal staff as early as possible.

The department's evaluator manual states that situations involving physical or sexual abuse or ones in which there is an imminent risk to children should be referred immediately to the legal division. In addition, the manual states that regional offices should consult with their legal staff in cases in which the regional office is unsure as to whether legal action is warranted. However, we noted some cases that caused us to question whether regional offices are consulting the legal division as early in the process as would be beneficial. The department acknowledged the need to use legal consultants more effectively by implementing in January 2006 a pilot project in Southern California to provide staff with more immediate access to legal consultants.

We recommended that the department ensure that regional office staff consult with legal division staff early in the process when circumstances warrant it by clarifying its policies as necessary and following up to determine that the policies are complied with.

Department's Action: Partial corrective action taken.

According to the department, preliminary data from the informal survey on its legal division's early consultation pilot project indicated that regional managers in Southern California were generally positive about the project. The department stated that its legal division was considering whether to expand the pilot project. Even if the project is not expanded, the department stated that it has stressed to all levels of licensing management the need for early as-needed consultations with legal division staff.

Finding #8: The department's enforcement of legal actions continues to need improvement.

Our review of 28 legal cases—15 in which the facility's license was revoked and 13 in which facilities were placed on probation—found that regional offices did not always adequately enforce legal actions against licensed child care facilities. Specifically, we found that as of March 2006, the department had not made visits to 12 of the 15 facilities that had their licenses revoked, although it had been longer than the required 90 days in each instance. In addition, we found that the department did not make follow-up visits to two of the 13 facilities placed on probation.

The department's policies require it in some instances to exclude employees or adult residents from the facilities and require the regional office to verify at the next evaluation visit that the licensee is complying with the exclusion order. Three cases we reviewed required the department to exclude employees or adult residents from the facilities. In the three cases, the regional office did not promptly make visits to the facilities to ensure the licensee's compliance. For example, the regional office did not conduct a visit for one of the three cases until nearly a year after the exclusion order became effective.

We recommended that the department require follow-up monitoring visits to ensure that child care facilities with revoked licenses are not operating and that individuals excluded from facilities are not present in the facilities. In addition, we recommended that the department ensure that visits to facilities on probation are made within the required deadline. Further, the department should revise its policies for following up on excluded individuals to ensure that it more promptly verifies that they are not present in facilities.

Department's Action: Partial corrective action taken.

The department reported that a team it established has reviewed findings about the failure to ensure that child care facilities with revoked licenses cease operation and that excluded individuals are removed from facilities. The team concurred that follow-up must occur. The department plans to revise the evaluator manual to make this requirement clear. However, the team determined that a follow-up visit is not always necessary to verify the closure of a facility or the absence of an individual. In such instances, the department stated that a licensing supervisor must approve when a visit is not necessary, and the determination should clearly be documented in the case file. The department also stated that its evaluator manual should be revised to identify the documentation requirements. Further, the team recommended that the department verify within 30 days that an excluded individual has left a facility. With regard to facilities on probation, the department issued a memorandum in July 2006 to remind licensing staff of the evaluator manual requirements about follow-up visits. In addition, the department stated that it has decided to treat monitoring visits to facilities on probation similar to the priority given to its complaint visits. Finally, according to the department, its information technology strategic plan includes enhancements to allow for automated tracking and notification for follow-up visits to facilities with either revoked licenses or excluded individuals or facilities that are on probation.