CALIFORNIA STATE AUDITOR

Bureau of State Audits

Implementation of State Auditor's Recommendations

Audits Released in January 2009 Through December 2010

Special Report to
Senate Budget and Fiscal Review Subcommittee #3—Health and Human Services

SPECIAL REPORT

March 2011 Report 2011-406 S3

The first five copies of each California State Auditor report are free. Additional copies are $3 each, payable by check or money order. You can obtain reports by contacting the Bureau of State Audits at the following address:

California State Auditor
Bureau of State Audits
555 Capitol Mall, Suite 300
Sacramento, California 95814
916.445.0255 or TTY 916.445.0033

OR

This report is also available on the World Wide Web http://www.bsa.ca.gov

The California State Auditor is pleased to announce the availability of an on-line subscription service. For information on how to subscribe, please contact the Information Technology Unit at 916.445.0255, ext. 456, or visit our Web site at www.bsa.ca.gov.

Alternate format reports available upon request.

For questions regarding the contents of this report,
please contact Margarita Fernández, Chief of Public Affairs, at 916.445.0255.

Elaine M. Howle
State Auditor
Doug Cordiner
Chief Deputy

CALIFORNIA STATE AUDITOR
Bureau of State Audits

555 Capitol Mall, Suite 300 Sacramento, CA 95814 916.445.0255 916.327.0019 fax www.bsa.ca.gov

March 7, 2011 2011-406 S3

The Honorable Mark DeSaulnier, Chair
Senate Budget and Fiscal Review Subcommittee No. 3
State Capitol
Sacramento, California 95814

Dear Senator DeSaulnier:

The State Auditor's Office presents this special report for the Senate Budget and Fiscal Review Subcommittee No. 3—Health and Human Services. The report summarizes the audits and investigations we issued during the previous two years that are within this subcommittee's purview. Additionally, the report includes the major findings and recommendations, along with the corrective actions auditees reportedly have taken to implement our recommendations. To facilitate the use of the report, we have included a table that summarizes the status of each agency's implementation efforts based on its most recent response.

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 a table that identifies monetary values that auditees could realize if they implemented our recommendations, and 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, CPA
State Auditor

Contents

Introduction

This report summarizes the major findings and recommendations from audit and investigative reports we issued from January 2009 through December 2010, that relate to agencies and departments under the purview of the Senate Budget and Fiscal Review Subcommittee No. 3—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 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 State Auditor's Office (office) policy requests that the auditee provide a written response to the audit findings and recommendations before the audit report is initially issued publicly. As a follow-up, state law requires 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 to provide a response beyond one year or we may 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 2011. The table below summarizes the number of recommendations along with the status of each agency's implementation efforts based on its most recent response related to audit reports the office issued from January 2009 through December 2010. Because an audit report and subsequent recommendations may cross over several departments, they may be accounted for on this table more than one time. For instance, the state overtime costs report, 2009-608, is reflected under the Department of Developmental Services and the Department of Mental Health.

Table
Recommendation Status Summary

	FOLLOW-UP RESPONSE				STATUS OF RECOMMENDATION				
	INITIAL RESPONSE	60-DAY	SIX-MONTH	ONE-YEAR	FULLY IMPLEMENTED	PARTIALLY IMPLEMENTED	PENDING	NO ACTION TAKEN	PAGE NUMBERS
Community Services and Development, Department of									
Weatherization Program/Recovery Act Funds Letter Report 2009-119.2				●	2	2			3
Developmental Services, Department of									
State Overtime Costs Report 2009-608				●	3				9
Regional Centers Report 2009-118		●			1	4	1	1	17
Health Care Services, Department of									
Information Technology Contracting Report 2009-103				●	3	3			25
Medi-Cal Treatment Authorizations Report 2009-112			●				2	1	33
Mental Health, Department of									
State Overtime Costs Report 2009-608				●	4		1		9

continued on next page . . .

	FOLLOW-UP RESPONSE				STATUS OF RECOMMENDATION				
	INITIAL RESPONSE	60-DAY	SIX-MONTH	ONE-YEAR	FULLY IMPLEMENTED	PARTIALLY IMPLEMENTED	PENDING	NO ACTION TAKEN	PAGE NUMBERS
Public Health, Department of									
Information Technology Contracting Report 2009-103				●	3	1	1		25
Every Woman Counts Program Report 2010-103R			●			2	1		37
Dymally-Alatorre Bilingual Services Act Report 2010-106	●						3		41
Citation Penalty Accounts Report 2010-108			●		1	4			53
Social Services, Department of									
Investigations Report I2009-1 [I2007-0962]				●	1	1			59
CalWORKs and Food Stamps Programs Report 2009-101			●			1	4	1	63

Department of Community Services and Development

Delays by Federal and State Agencies Have Stalled the Weatherization Program and Improvements Are Needed to Properly Administer Recovery Act Funds

LETTER REPORT NUMBER 2009-119.2, FEBRUARY 2010

Department of Community Services and Development's response as of January 2011

The Joint Legislative Audit Committee requested that the Bureau of State Audits conduct a review of California's preparedness to receive and administer American Recovery and Reinvestment Act of 2009 (Recovery Act) funds. Using selection criteria contained in the audit request, we identified for review the Department of Community Services and Development (Community Services) preparedness to administer the Recovery Act funds provided by the U.S. Department of Energy (Energy) for its Weatherization Assistance for Low-Income Persons (Weatherization) program and Recovery Act funds awarded by the U.S. Department of Health and Human Services for its Community Services Block Grant (Recovery Act Block Grant) program.

Finding #1: Community Services has not yet disbursed Recovery Act funds to weatherize homes.

According to Community Services, as of December 1, 2009, no homes had been weatherized using Recovery Act funds even though by July 28, 2009, Energy had made available nearly $93 million of the $186 million awarded to Community Services and the Legislature had appropriated the funds for use. To gain access to the remaining $93 million awarded it, Community Services has until September 30, 2010, to meet certain performance milestones issued by Energy. However, delays in program implementation make it unlikely that Community Services will attain the performance milestones. Start-up of the Weatherization program has been delayed because federal oversight agencies and Community Services have not yet completed necessary tasks. For example, the U.S. Department of Labor (Labor) did not provide prevailing wage determinations for weatherization workers, as required by the Recovery Act, until September 3, 2009, and did not revise the wage rates for some workers until December 2009. In addition, Community Services has not yet developed the cost-effective measures to weatherize homes using the Recovery Act funds, has been slow in negotiating agreements with service providers that cover grant terms such as cash management, and has not developed procedures for monitoring the additional requirements service providers must comply with when using Recovery Act funds.

Furthermore, increases in the average cost of weatherizing a home will likely reduce the estimated number of eligible low-income persons Community Services can assist using Recovery Act funds. According to Community Services, the main factor that has increased the estimated cost to weatherize a home is the requirement that service providers pay workers the prevailing wage rates for the area specified by the federal Davis-Bacon Act. According to Community Services, prior to the Recovery Act contractors who provided weatherization assistance were exempt from paying prevailing wages and would use funding from multiple federal programs. However, the requirements of the Recovery Act to pay prevailing wages require contractors that use multiple funding sources to weatherize homes to compensate all workers—those funded by other federal sources and by Recovery Act funds—at the same prevailing wage rates. As a result, contractors may plan to perform Weatherization program services using only Recovery Act funds, further limiting the number of homes to be weatherized and increasing the average cost per home.

We recommended that to ensure it receives the remaining 50 percent of its $186 million award for the Weatherization program, Community Services seek federal approval to amend its plan for implementing the Weatherization program and seek an extension from Energy for fulfilling the progress milestones. In addition, it should promptly develop and implement the necessary standards for performing weatherization activities under the program and develop a plan for monitoring subrecipients.

Finally, we recommended that Community Services make any necessary adjustments in its state plan to accurately reflect average costs per home for weatherization assistance and the estimated number of homes to be weatherized under the program.

Community Services' Action: Partial corrective action taken.

Community Services has executed contracts with weatherization service providers in the San Mateo, Los Angeles Service Area A, San Francisco Bay Area, Alameda, and Alpine/El Dorado counties service areas, and reports that contracts for all of its service areas are fully executed.

In addition, Community Services reported that it exceeded the September 30, 2010, production goal of weatherizating 12,945 units needed to gain access to the remaining $93 million awarded to it by Energy. Community Services reported that it weatherized 17,100 units by September 30, 2010, and weatherized 20,444 units by December 7, 2010, about 108 percent of its November 30, 2010, target.

Through its efforts to monitor its contractors, Community Services has determined that 29 contractors met 100 percent of their production goals and will likely spend their funding allocations by the end of the contract terms. However, Community Services also reported that seven of their contractors will either not meet production goals or spend Weatherization funds at a rate that assures all the funds will be spent by the end of their contracts. Two contractors assumed responsibility for additional areas and performed adequately to receive second allocations for those areas. Three contractors had not executed their contracts until June 2010 and were not included in Community Services' analysis.

Community Services reported that, based on the above performance information, it requested and received approval from Energy on November 29, 2010, for the remaining Weatherization funding. Community Services stated that it has released full or partial second-phase funding to 32 contractors, six contractors did not receive second-phase funding, and three contractors will receive additional funding once they demonstrate improved performance. Community Services stated that for territories that received partial or no funding, on December 31, 2010, it released a request for application to secure new providers.

Community Services reported that standards for performing weatherization activities, the Energy Audit Tool and Priority Measure List, were approved by Energy on October 4, 2010. Implementation of the new priority measures required development of a training curriculum and energy audit application processes. Community Services' consultant is currently training service providers on the application of the audit. The training is performed in three phases: (1) basic energy audit software application, (2) audit process and data collection, and (3) proctored field work and evaluation.

Additionally, Community Services and its consultant will conduct webinars in January 2011 on the new order of operations process and priority list application. Contract amendments incorporating the new Priority Measure List and Energy Audit protocols were released on December 31, 2010, and the standards will go into effect on February 1, 2011.

Community Services reported that it has implemented a guide for carrying out the monitoring and inspection protocol set forth in the Energy-approved State Plan. Community Services stated its State Plan for implementing the Weatherization program funded by the Recovery Act requires monitoring consisting of third-party inspections, annual onsite visits, quarterly desk reviews, fiscal monitoring, and visits as needed to respond to special issues. Community Services reported it has completed six Energy Davis-Bacon onsite compliance visits since August 2010 for a total of 19 Davis-Bacon compliance visits since the implementation of the Weatherization program funded by the Recovery Act. In addition, 31 Energy onsite comprehensive monitoring visits were conducted since August 2010 for a total of 38 comprehensive monitoring visits completed since the implementation of the Weatherization program funded by the Recovery Act.

Community Services also reported that as of September 30, 2010, its consultant, RHA, completed 932 quality assurance inspections at 34 agencies, representing 109 percent of the 853 targeted inspections. During the months of October and November 2010, RHA completed an additional 160 inspections.

As directed by Energy, Community Services completed the Request for Proposal (RFP) process to procure third-party inspection services to replace RHA, and selected ConSol as its new quality assurance inspection contractor. ConSol's services, covering clients in several western states, include energy code compliance documentation, builder energy code training, and inspections. The ConSol contract requires the Department of General Services' approval. RHA will continue to perform inspections only until the new quality assurance contractor is fully trained and ready to assume this duty, which is expected to occur no later than February 25, 2011.

Additionally, Community Services stated it has employed a retired housing inspector with extensive experience in program and code compliance. The retired annuitant is tasked with developing internal quality assurance oversight processes, assisting in the transition from RHA to ConSol, and training Community Services' staff in quality assurance oversight. Two additional retired annuitants began working in Community Services' quality assurance unit on January 3, 2011.

According to Community Services, with Energy's approval of the Energy Audit Tool and Priority List, its training of providers, and implementation of the new protocols, Community Services can collect the necessary data to update production and expenditure goals in the Weatherization State Plan. The new protocols are expected to significantly increase average per unit costs, and substantially decrease the production goal. With data from production experience under the new protocols, Community Services will recalculate production goals and update the State Plan accordingly. Community Services expects to submit a State Plan amendment to Energy by March 31, 2011.

Finding #2: Community Services needs to improve its controls over cash management for the Weatherization program.

Community Services' cash management policy allows advances of Weatherization program funds to subrecipients without obtaining the required authorization. Our review of Community Services' records revealed that as of December 28, 2009, it had advanced about $966,000 in Weatherization program funds to four subrecipients. Roughly $748,000 of the advance is still outstanding, and $99,000 has been outstanding for over 100 days. Federal regulations allow Community Services to provide cash advances to subrecipients for its Weatherization program under certain conditions. For example, Community Services and its subrecipients must follow procedures to ensure that the advances are made as close as possible to the time the subrecipient organization actually makes disbursements for direct program or project costs, as well as for allowable indirect costs.

Community Services' policy allows a subrecipient to receive a cash advance of 25 percent of the total grant award by providing a listing of the expenses that will be paid using the advance and certifying it has no other source of funds available. Under Community Services' current policy, subrecipients are required to offset at least 30 percent of the cash advance against their expenditures within three months and the remaining balance within six months. If less than 100 percent of the advance is offset against expenditures within six months, Community Services will apply subsequent claimed expenses toward the cash advance beginning in the seventh month following issuance of the advance until the advance is fully extinguished. Because of the extended period allowed by its current policy for liquidating advances, Community Services is not complying with the federal requirement to minimize the amount of time between when the cash is advanced and when disbursement of funds takes place. When we requested documentation that the federal government had given Community Services the authority to provide a 25 percent cash advance for its Weatherization program, management referred us to the regulations for a different grant program, the Community Services Block Grant, which is overseen by a different federal agency, and it did not provide its authority to use those regulations for the Weatherization program.

Moreover, Community Services lacks proper separation of duties for drawdowns of Weatherization program funds. According to the accounting supervisor, the accounting unit's internal controls require that duties be separated such that the person preparing claim schedules for the payment of invoices is prevented from also performing the cash drawdown. However, our review determined that three of 12 disbursements we tested were included in claim schedules that were prepared by the same individual who performed the drawdown. Failure to separate these duties heightens the risk that federal funds could be drawn in an incorrect amount or used for unallowable purposes and remain undetected. The accounting supervisor implemented a new policy after our testing was complete, and now all claim schedules will be reviewed by management prior to the cash drawdown and submission to the State Controller's Office.

To comply with federal cash rules that govern the use of Weatherization program funds, we recommended that Community Services ensure it has the authority to provide advances as outlined in its current policy. In addition, Community Services should segregate the duties of preparing claim schedules requesting payments from the duties of accessing Weatherization program funds.

Community Services' Action: Corrective action taken.

Community Services stated that in consultation with Energy and according to its guidance, Community Services has revised the advance payment provisions in its contracts to ensure compliance with federal rules. Community Services reported the new advance payment provisions were included in contract amendments released to all Weatherization program providers funded by the Recovery Act on December 31, 2010.

Finding #3: Community Services needs to improve its procedures for monitoring Recovery Act Block Grant subrecipients.

Community Services needs to follow its current monitoring practices for block grants not covered under the Recovery Act, and it has not yet developed an adequate process for monitoring additional requirements specific to the Recovery Act Block Grant to ensure that the funds are used only for authorized purposes and that the potential for fraud, waste, and abuse is promptly mitigated. The federal grant authorized by the Recovery Act requires that services be provided by September 30, 2010, and that recipients be paid by December 29, 2010. We believe monitoring of Recovery Act Block Grant funds to ensure the proper use of the funds should occur well before September 30, 2010, to allow subrecipients sufficient time to take corrective action on any findings that may result. According to the manager of program development and technical support for the block grant, if monitoring identifies questionable program expenses after Recovery Act Block Grant funds are spent, Community Services will take the appropriate steps to recover the unallowable expenses, but she did not specify the steps that Community Services would take in such a situation. However, under the federal cost principles applicable to the Recovery Act Block Grant, settlements resulting from violations of federal laws or regulations are an unallowable use for block grant funds unless authorized by the awarding agency.

Community Services told us it plans to use existing procedures, with some modification, to monitor the Recovery Act Block Grant funds. However, we reviewed its existing monitoring activities and found Community Services does not always follow its monitoring procedures. Specifically, it does not sufficiently track the resolution of findings it identifies during site visits and desk reviews. In addition, while the Recovery Act money will more than double the existing level of $62 million in block grant funding for a total of $151 million, Community Services is not prepared to address the additional Recovery Act monitoring requirements. It has not yet developed a timeline for completing its monitoring of Recovery Act Block Grant funds, identified the resources or designed a risk-based approach needed to carry out its monitoring activities, or developed a monitoring guide for new requirements. As a result, Community Services may not monitor a large number of subrecipients until after Recovery Act Block Grant funds are already spent. Although the manager of program development and technical support told us that audits and accounting could take steps to recover any unallowable expenses, she did not explain what those steps would be.

We recommended that to strengthen its abilities to monitor Recovery Act Block Grant subrecipients, Community Services do the following:

- Finalize the monitoring guide that focuses on the specific requirements of the Recovery Act.
- Create a timeline and develop a risk-based monitoring plan to ensure that subrecipients of block grant funds authorized by the Recovery Act are monitored in time to allow them to correct any findings and implement recommendations prior to the September 30, 2010, deadline for providing block grant services.
- Follow its procedures to track the results of monitoring subrecipients that will allow management to ensure findings of program noncompliance are promptly followed up by program staff and corrected by subrecipients.

Community Services' Action: Corrective action taken.

As recommended by the Bureau of State Audits, Community Services' field staff used the new Recovery Act Block Grant Monitoring tool for all onsite monitoring visits. As of December 15, 2010, field staff completed all 43 scheduled onsite reviews. The Recovery Act Block Grant program ended September 30, 2010, with the final close-out completed on December 29, 2010. The SharePoint automated tracking system captures relevant monitoring data and provides the capability to generate monthly status reports. According to Community Services, monthly status reports developed to-date include the following:

- Status of monitoring follow-up
- Closed findings
- Status of open findings and recommendations
- Status of open Recovery Act findings and recommendations
- Recovery Act Block Grant and Block Grant expenditure reporting activity

Finding #4: Community Services needs improvement in its cash management procedures for Recovery Act Block Grant funds.

Federal cash management regulations allow for advance payments, but require that advances be timed as close as administratively feasible to the actual cash disbursements by the subrecipients. Community Services provides cash advances to its subrecipients if they can justify a financial hardship. However, Community Services has not defined what constitutes a financial hardship in justifying a request for an advance payment. Without defining financial hardship, Community Services cannot know when a subrecipient that requests an advance payment has met that standard. Community Services provided advances of Recovery Act Block Grant funds, totaling $3 million, to 56 service providers.

Further, Community Services did not require supervisory review of draws of federal cash to ensure that federal funds were drawn in the correct amounts and from the correct grants. As a result, in April 2009 Community Services mistakenly drew $180,000 from the Low-Income Home Energy Assistance Program grant that it should have drawn from the block grant.

To comply with federal cash management regulations that govern Recovery Act Block Grant funds, we recommended Community Services define the financial hardship under which it will provide cash advances to subrecipients. In addition, Community Services should implement procedures to ensure that it accurately draws federal program funds from the correct grant.

Community Services' Action: Partial corrective action taken.

Community Services provided its amended contract agreement that does not contain a requirement that subrecipients justify a financial hardship to receive an advance payment of Recovery Act Block Grant funds. Rather, the contract agreement states that subrecipients will receive an advance payment equal to 25 percent of their total contract amount, in accordance with California Government Code section 12781(b).

According to Community Services, for its nine major accounting processes, staff has identified 51 procedures whose write-ups need to be updated or developed. As of December 31, 2010, 15 written desk procedures are close to being final, 15 procedures are about 50 percent completed, and 21 have not been initiated. The Financial Services Unit will continue to develop and structure the updated write-ups into a more formalized desk manual format that will include detailed step-by-step instructions with examples. Written procedures are being developed in accordance with all applicable federal and state requirements. The Financial Services Unit's timeline to complete the entire desk manual, including procedures for the drawdown of federal program funds is March 25, 2011.

High Risk Update—State Overtime Costs

A Variety of Factors Resulted in Significant Overtime Costs at the Departments of Mental Health and Developmental Services

REPORT NUMBER 2009-608, OCTOBER 2009

Responses from the Departments of Mental Health and Developmental Services as of October 2010

California Government Code, Section 8546.5, authorizes the Bureau of State Audits (bureau) to establish a process for identifying state agencies or issues that are at high risk for potential waste, fraud, abuse, and mismanagement or that have major challenges associated with their economy, efficiency, or effectiveness.

This current report, which addresses the significant amount of overtime compensation the State pays to its employees, is part of the bureau's continuing efforts to examine issues that will aid decision makers in finding areas of government that can be modified to help improve efficiency and effectiveness.

We focused our initial review of overtime costs on five state entities: the California Highway Patrol, the Department of Forestry and Fire Protection (Cal Fire), the Department of Veterans Affairs, the Department of Mental Health (Mental Health), and the Department of Developmental Services (Developmental Services). From these five entities, we further studied three—Cal Fire, Mental Health, and Developmental Services—because each had numerous individuals in one job classification code earning more than $150,000 in overtime pay, which represented 50 percent of their total earnings during the five fiscal-year period we chose for review. We eventually narrowed our focus to two classifications of jobs—registered nurses-safety classification (nurses) at Napa State Hospital and psychiatric technician assistants at Sonoma Developmental Center—because employees in these classifications at each of the facilities earned the majority of overtime pay.

Finding #1: Employees working excessive amounts of overtime may compromise health and safety.

The focus on voluntary rather than mandatory overtime at Mental Health and Developmental Services, as required by their respective bargaining unit agreements (agreements), has resulted in a relatively small group of employees working many hours of overtime, while other individuals are working little or no overtime. For example, in fiscal year 2007–08, Mental Health's Napa State Hospital (Napa) paid $9.6 million in overtime wages to its 489 nurses. However, $1.9 million—20 percent of its total overtime costs—was paid to only 19 (4 percent) of these nurses. Similarly, in fiscal year 2007–08, Developmental Services' Sonoma Developmental Center (Sonoma) paid $1.1 million—25 percent of the total overtime paid to

Review Highlights . . .

Our review of the State's overtime costs revealed the following:

- ***Employees at five entities, excluding the Department of Corrections and Rehabilitation, were paid at least $1.3 billion of the more than $2.1 billion in overtime pay during fiscal years 2003–04 through 2007–08.***
- ***Significant amounts of overtime were paid to a relatively small number of individuals in two job classifications at the departments of Mental Health (Mental Health) and Developmental Services (Developmental Services). For instance, in fiscal year 2007–08, at Mental Health's Napa State Hospital (Napa), 19, or 4 percent, of the 489 nurses in the registered nurse– safety classification averaged $78,000 in regular pay and $99,000 in overtime compensation.***
- ***According to various studies, individuals working excessive amounts of overtime may compromise their own and their patients' or consumers' health and safety.***
- ***One reason for the significant amounts of overtime at Napa and Developmental Services' Sonoma Developmental Center (Sonoma) is fluctuations in staffing ratios caused by the need to provide certain patients or consumers with one-on-one care.***

continued on next page . . .

» *Pursuant to their respective bargaining unit agreements (agreements), both Mental Health and Developmental Services allowed leave hours to be counted as time worked in calculating overtime. For instance, during our review of overtime at Sonoma, we identified one employee who was paid for 160 hours of overtime in one month, even though that same employee took 167 hours of leave during that same month.*

» *State law was changed in February 2009 to no longer allow leave to be counted in computing overtime for the two job classifications we tested. However, this same state law indicates that it may be superseded by agreements ratified subsequent to the law's effective date that once again could contain provisions that allow employees' leave time to be counted as time worked in computing overtime.*

psychiatric technician assistants—to only 27 (6 percent) of its 430 psychiatric technician assistants. Sonoma's psychiatric technician assistants were the largest overtime earners at Developmental Services.

Some nurses at Napa and psychiatric technician assistants at Sonoma work substantial amounts of overtime to meet internal staffing requirements, even though the vacancy rates were relatively low for these job classifications at the respective facilities in fiscal year 2007–08. We reviewed the payroll records for 10 nurses at Napa and 10 psychiatric technician assistants at Sonoma who earned significant amounts of overtime pay in fiscal year 2007–08 and found that these individuals worked an average of 36 hours of overtime each week. These hours were usually in addition to the employee's regular 40-hour workweek. In fact, we identified a nurse employed at Napa who earned $733,000, or 66 percent of his total earnings, in overtime during fiscal years 2003–04 through 2007–08. This amounts to about 51 overtime hours each week during the five-year period.

Based on our review, 38 nurses at Napa and 65 psychiatric technician assistants at Sonoma worked, on average, at least 20 hours of overtime each week during fiscal year 2007–08. At the same time, 451 nurses at Napa (92 percent) and 365 psychiatric technician assistants at Sonoma (85 percent) worked fewer than 20 hours of overtime each week, on average. If the overtime had been distributed equally among all nurses and psychiatric technician assistants, they would have worked only six and eight hours of overtime per week on average, respectively. This closely compares with the results of a 2004 National Sample Survey of Registered Nurses conducted by the U.S. Department of Health and Human Services that found that the typical full-time registered nurse works an average of 7.5 hours of overtime each week.

Although nothing came to our attention indicating that the overtime at Napa and Sonoma affected the quality of care provided to patients or consumers, an August 2004 study published in *Health Affairs* entitled "The Working Hours of Hospital Nurses and Patient Safety" suggested that working substantial amounts of overtime could increase the risk of medical errors. For example, the study found that when a nurse worked a shift lasting more than 12.5 hours, the incidence of medical errors tripled. The study also found that the risk of errors increased when a nurse worked more than 40 or 50 hours in a week. Another study published in the *American Journal of Critical Care* entitled "Effects of Critical Care Nurses' Work Hours on Vigilance and Patients' Safety Issues" in 2006 indicated that these results could be applied to nurses and to psychiatric technician assistants. This study also indicated that experience in other industries suggests that accident rates increase when employees work 12 hours or more in a day.

Finally, a 2004 study by the U.S. Department of Health and Human Services, Centers for Disease Control and Prevention, National Institute for Occupational Safety and Health, entitled "Overtime and Extended Work Shifts: Recent Findings on Illnesses, Injuries, and Health Behaviors" indicated that long hours also can increase the health and safety risks to the employee. Specifically, the report cited many studies in which overtime was associated with poorer perceived general health, more illnesses, increased injury rates, and increased mortality. Injuries and poor performance were particularly noted on

long shifts and when employees worked 12-hour shifts combined with working more than 40 hours a week. Thus, nurses and psychiatric technician assistants who work long shifts or more than 40 hours a week could place patients or consumers—and the employees themselves—at greater health and safety risk. Despite the increased risks associated with working long hours, our testing showed that during December 2007 and January 2008, nine of the 10 Napa nurses we reviewed regularly worked 12 or more hours in a day and on average worked more than 34 hours of overtime per week. Similarly, eight of the 10 psychiatric technician assistants we reviewed at Sonoma regularly worked 12 or more hours in a day and on average worked more than 35 hours of overtime per week.

To make certain that patients and consumers are provided with an adequate level of care, and that the health and safety of the employees, patients, and consumers are protected, we recommended that Mental Health and Developmental Services encourage Department of Personnel Administration (Personnel Administration)—which is responsible for negotiating labor agreements with employee bargaining units—to include provisions in future collective agreements to cap the number of voluntary overtime hours an employee can work and/or to require the departments to ensure that overtime hours are distributed more evenly among staff. One solution would be to give volunteers who have worked the least amount of overtime preference over volunteers who already have worked significant amounts of overtime.

Mental Health's Action: Corrective action taken.

Mental Health stated it raised the issue of having staff with the least amount of overtime receive preference over the employees who have worked significant amounts of overtime with Personnel Administration. In spite of that, Personnel Administration reached a tentative agreement as of October 7, 2010, with employee bargaining unit 17 and an agreement dated August 19, 2010, with employee bargaining unit 18, without a provision to have staff with the least amount of overtime receive preference over the employees who have worked significant amounts of overtime.

Developmental Services' Action: Corrective action taken.

Developmental Services states that the decision-making process for staffing and supervision continues to be influenced by the health and safety of consumers and retaining the facilities' certification with the Federal Centers for Medicare and Medicaid Services. However, Developmental Services stated it informed Personnel Administration of the bureau's recommendation. However, as discussed in Mental Health's response above, Personnel Administration reached agreements with the bargaining units, without the inclusion of having staff with the least amount of overtime receive preference over the employees who have worked significant amounts of overtime.

Finding #2: Several factors cause the need for significant amounts of overtime.

The annual authorized positions agreed to by state hospitals, Mental Health, and the Department of Finance (Finance) do not take into account fluctuations in patient needs, resulting in the need for overtime to meet the monthly, weekly, and sometimes daily changes in staffing required to provide proper care to patients. With assistance from its respective facilities, Mental Health determines the number of positions needed for the coming year based on the department's estimated patient needs and population. However, the estimate of positions needed does not take into consideration the need for certain patients to receive more intensive care, such as one-on-one observation. Therefore, mental health hospitals prepare internal staffing ratios in order to meet the fluctuating needs of their patients. These internal staffing ratios are based on the average number of patients each level-of-care staff member will monitor, which then dictates the ratios needed. In some of the residential units at Napa, the internal staffing ratios are double the minimum staffing ratios established by the Department of Public Health (Public Health). Additionally, some of Napa's internal staffing ratios include a fixed number of staff to meet the need for one-on-one observation. However, because the Public Health's annual authorized positions are generally insufficient to meet actual staffing needs, the facilities use overtime to meet their internal staffing ratios for level-of-care staff.

According to the assistant deputy director of Long-Term Care Services at Mental Health, the impact of federal law changes such as the Family Medical Leave Act (family leave), Enhanced Industrial Disability Leave (enhanced leave), and additional negotiated mandatory training and/or educational leave days has led to an overwhelming use of overtime to sustain the required staffing ratios in the state hospitals. When the current relief factor was established, it took into account a change in the number of holidays and the current average use of sick time and educational leave, among other things. All these issues were before implementation of family leave, enhanced leave, and the current consent judgment requirements, leaving a very outdated relief factor that results in overtime to cover for these shortages. As an example, the enhancement plan (the implementation tool for the consent judgment) requires significant hours of training regarding new processes and training to implement a new electronic clinical data tracking system. It also requires computer use and basic computer skills from job classifications that have not historically required these training hours.

As recommended by the deputy director of Public Health's Center for Health Care Quality, and as required by law, staffing for patients in general acute care hospitals is based on the patients' needs. Evaluations performed by trained experts at Napa may determine that patients require a higher level of care than can be provided with the minimum staffing ratios established by Public Health. For example, at Napa, the nurse administrator, the clinical administrator, and the program's management staff determine the level-of-care staffing needs for each residential unit. Based on this assessment of patients' level-of-care needs within these units, Napa develops its internal staffing ratios, which, as previously noted, may exceed the legally mandated minimum staffing requirements. For instance, one program at Napa includes eight residential units with three levels of care: acute psychiatric, skilled nursing, and intermediate care. This program houses individuals with more serious physical or complicated diagnostic conditions and multiple medical as well as psychiatric problems that require a higher level of observation from staff.

Because of recent furloughs and potential layoffs of level-of-care staff, overtime at Mental Health most likely will increase, adding to the State's overtime costs. Our testing was performed for fiscal year 2007–08, a year in which Mental Health had high overtime costs. In December 2008, in an attempt to reduce the State's spending, the governor issued an executive order directing Personnel Administration to implement a furlough plan. This plan required most state employees to take two unpaid days off each month, beginning in February 2009. Moreover, in July 2009, Executive Order S-13-09 was implemented, adding a third unpaid furlough day each month. For facilities such as Napa that provide services 24 hours a day, seven days a week, the employees accrue their unpaid furlough days and use them when feasible. Additionally, Mental Health has required its facilities to provide layoff notices to staff. Napa needs to ensure that an adequate number of licensed individuals are available to meet mandated and/or required internal staffing needs. Napa already relies on overtime to meet fluctuations in staffing ratios, and the impact on staffing levels due to furloughs and layoffs likely will result in additional overtime.

We also found that Napa occasionally overstaffed some of its residential units, having more level-of-care staff on duty than necessary to meet the internal staffing ratio. Specifically, within Program 4, Napa was overstaffed on six of the 10 days we tested during fiscal year 2007-08. According to Napa's central staffing officer, the overstaffing was due to the designated staffing units not accurately reporting patient and staffing needs to the central staffing office. However, based on discussions with Finance's Office of State Audits and Evaluations and the results of its audit of Mental Health's budget dated November 2008, the Legislative Analyst's Office has suggested that an independent consultant evaluate workload distribution, staffing ratios, and overtime at Mental Health. Among other things, Finance's audit concluded that the current staffing model might not reflect the true hospital workload and the hospital may not be using staff efficiently. Although no time frame has been set for its commencement, if the evaluation concludes that current staffing ratios are unwarranted or that staff are not being used efficiently, an updated staffing model that reflects the accurate hospital workload could offset some of the increased overtime costs.

The assistant deputy director of Long-Term Care Services at Mental Health agrees with the Legislative Analyst's Office recommendation to hire an independent consultant to perform a workload staffing study. Mental Health feels the staffing study will allow for changes to the existing ratios to better reflect the reality of staff workload. However, Mental Health would like to hold off on the study until the hospitals have reached and sustained full compliance with the consent judgment, which is expected in November 2011, in order to allow staff to focus their full attention on their compliance efforts.

To ensure that all overtime hours worked are necessary, and to protect the health and safety of its employees and patients, we recommended that Mental Health implement the Legislative Analyst's Office's suggestion of hiring an independent consultant to identify improvements necessary to the current staffing model of Mental Health's hospitals. The staffing levels at Mental Health may need to be adjusted, depending on the outcome of the consultant's evaluation.

Mental Health's Action: Pending.

According to Mental Health, it entered into a consent judgment with the United States Department of Justice under the Civil Rights of Institutionalized Persons Act on May 2, 2006. Since that time, Mental Health has worked diligently to implement new staffing standards included in the agreement. Mental Health plans to reevaluate staffing needs by requesting an augmentation to the state hospitals appropriation to fund the study in fiscal year 2011–12.

Finding #3: Agreements allowed leave time taken to count as time worked in calculating overtime payments.

Overtime provisions contained in the agreements for nurses and psychiatric technician assistants, bargaining units 17 and 18, respectively, contributed to the State's substantial overtime costs during fiscal years 2003–04 through 2007–08. Specifically, with the exception of sick leave for psychiatric technician assistants, the overtime provisions for bargaining unit 18 allowed employees to include hours they took as paid leave when computing overtime compensation. A similar provision was included in bargaining unit 17's agreement, but includes sick leave. Thus, for example, a nurse could use eight leave hours, including sick leave, to cover his or her regular shift, work an alternate eight-hour overtime shift during the same day, and ultimately earn pay for 20 hours in the same day (eight hours times the 1.5 overtime pay rate plus eight hours of paid leave). Therefore, staff covered by these agreements were paid at the overtime rate even though they may not actually have worked more than 40 hours during the week or more than eight hours in one day.

A new state law overrides these overtime provisions in current agreements and will reduce the State's overtime costs. California Government Code, Section 19844.1, which became effective in February 2009, provides that periods of paid or unpaid leave shall not be considered as time worked for the purpose of computing overtime compensation, Therefore, employees covered by the agreements for bargaining units 17 and 18 are paid overtime only if their actual hours worked cause them to exceed 40 hours per week or eight hours per day. However, language in Section 19844.1 indicates that agreements ratified after the effective date of the section may contain provisions that require certain entities, including Mental Health and Developmental Services, to again include periods of paid and unpaid leave as time worked in the calculation of overtime.

To ensure that the State is maximizing the use of funds spent on patients and consumers, we recommended that Mental Health and Developmental Services encourage Personnel Administration to resist the inclusion of provisions in agreements that permit any type of leave to be counted as time worked for the purpose of computing overtime compensation.

Mental Health's Action: Corrective action taken.

Mental Health stated it raised the issue of the methodology for computing overtime with Personnel Administration. Personnel Administration reached a tentative agreement as of October 7, 2010, with employee bargaining unit 17 and an agreement dated August 19, 2010, with employee bargaining unit 18. Under these agreements, the calculation of overtime will generally be based on the California Government Code, Section 19844.1 that states personal leave, sick leave, annual leave, vacation, bereavement leave, holiday leave, and any other paid or unpaid leave, shall not be considered as time worked by the employee for the purposes of computing overtime. However, when an employee is mandated to work overtime during a week with approved leave, other than sick leave, the employee will earn overtime pay.

Developmental Services' Action: Corrective action taken.

As discussed in Mental Health's response above, Personnel Administration reached agreements with the bargaining units and the calculation of overtime will be based on the California Government Code, Section 19844.1 with the one exception noted above.

Finding #4: Weak internal controls allowed over- and underpayments of overtime.

Our testing identified weaknesses in the internal controls at both Napa and Sonoma. Specifically, we found instances in which employees were overpaid or underpaid for overtime worked, instances when timekeeping and attendance records were not completed properly, and instances in which we were unable to locate timekeeping records at Sonoma.

During our review of 10 employees at Napa for December 2007 and January 2008, we found several discrepancies between attendance records and the payroll records. These discrepancies caused several over- and underpayments of overtime made to employees at Napa. Our analysis revealed five such errors in the two months we tested. For example, payroll staff at Napa erroneously omitted from the attendance records used to calculate overtime payments the overtime hours worked by and supported in the timekeeping records, causing over- and underpayments. Napa's human resources manager stated that these types of over- and underpayments were due to clerical error.

Finance identified similar issues at Napa during a review of internal controls conducted from July 2007 through December 2007. Specifically, the report cited inadequate personnel practices that do not provide reasonable assurance that attendance records are accurate and that payroll is proper, especially regarding overtime. As a result of its review, Finance made several recommendations to Mental Health. Among these was that Napa develop adequate timekeeping procedures to ensure that attendance records are adequately prepared, certified, and retained for audits. Although Napa has written timekeeping procedures, they were not always followed. For example, although Napa requires that the shift lead, unit supervisor, and nursing coordinator certify the accuracy of attendance sign-in sheets by signing them, we identified instances in which not all the authorizing signatures were present.

Finance also recommended that Napa improve its overtime reviews and preapprovals and include a second-level review outside the unit of the individual working overtime, and that these reviews be documented adequately in the personnel records. According to Napa's corrective action plan, as of April 1, 2008, overtime must be pre-approved by Napa's Central Staffing Office. However, for the five days we tested after this date, we identified four days when the tested unit did not obtain the required preapproval.

In addition, Napa's unit sign-in sheets and authorizations for extra hours were not always completed properly. For example, we noted instances in which the required authorizations were missing, the reasons for the overtime were not provided, and the number of overtime hours worked was not included. Finally, Finance recommended that Napa conduct random overtime auditing to help reduce fraud and abuse. Mental Health's October 29, 2008, corrective action plan stated that as of April 2008

Napa had conducted random overtime audits. However, Napa's human resources manager contradicted this assertion, stating that it has not performed any random overtime audits because of the combination of furloughs and the current overtime investigations of some employees that are taking significant staffing resources.

We also found several discrepancies at Sonoma between attendance records and the payroll records that caused over- and underpayments during December 2007 and January 2008, for the 10 employees reviewed. Our analysis revealed six such errors in the two months we tested. For example, some of the overpayments at Sonoma occurred because sick leave was counted as time worked for the purpose of calculating overtime payments, even though this practice is prohibited under the terms of the bargaining unit agreement. Sonoma's human resources manager attributed the mistakes to human error because personnel staff must enter information for hundreds of staff members into numerous complicated systems.

Sonoma uses overtime slips as its timekeeping records to approve and support its employees' overtime hours worked. We tested two employees' overtime slips for December 2007 and January 2008. Sonoma was able to locate only 96 of the 100 overtime slips it should have had on file for this period.

To improve internal controls over payroll processing, we recommended that:

- Napa and Sonoma research the overtime over- and underpayments we noted and make whatever payments or collections necessary to compensate their employees accurately for overtime earned.
- Napa and Sonoma review, revise, and follow procedures to ensure that their overtime documentation is completed properly; that timekeeping staff are aware of the overtime provisions of the various laws, regulations, and bargaining unit agreements; and that staff who work overtime are paid the correct amount.
- Mental Health fully implement Finance's recommendations cited in its report on Mental Health's internal controls dated December 2007.

Sonoma's Action: Corrective action taken.

According to Sonoma, the following have been implemented related to our recommendations:

- Sonoma worked with Developmental Services headquarters to reconcile the payment errors identified during the bureau's review and processed by the State Controller's Office.
- Sonoma has developed an ongoing process to audit the compensation transactions in an effort to avoid payment errors in the future. In addition, it provided training to all its human resources transaction personnel and timekeepers of applicable laws, regulations, contracts, rules, and policies. It provided training in February 2010 to all its managers and supervisors responsible for approving employees' time.

Napa's Action: Corrective action taken.

According to Napa, the following have been implemented related to our recommendations:

- All necessary salary adjustments that were identified during the bureau's review have been made and processed by the State Controller's Office.
- In October and November 2009 it informed its management team to carefully review timekeeping documents since their signatures on these documents indicate they have reviewed and approved the time. In addition, Napa issued an overtime reporting expectations memo in October 2010. This memo covers overtime expectations of staff, supervisors, and program directors/department heads.

Mental Health's Action: Corrective action taken.

Mental Health stated that Napa implemented a mandatory pre-approval from the Central Staffing Office prior to working overtime. Also, a new overtime reporting form, and a pre- and post-approval process have been developed, prior to any overtime payment being issued by Personnel Administration.

Napa stated its Central Staffing Office continues to develop hospital-wide policy and procedures to define responsibility and accountability for personnel practices for overtime.

In January 2010 Napa stated it performed an audit of its November 2008 unit sign-in sheets where a report was provided to its executive policy team, which identified weaknesses and recommendations to ensure that overtime documentation is completed properly and staff who work overtime are paid the correct amount. Also, Napa affirmed it implemented a process for conducting random overtime audits and performed overtime audits in January 2010 and October 2010. These random audits are intended to reduce the instances of fraud and abuse.

Department of Developmental Services

A More Uniform and Transparent Procurement and Rate-Setting Process Would Improve the Cost-Effectiveness of Regional Centers

REPORT NUMBER 2009-118, AUGUST 2010

Department of Developmental Services' response as of October 2010

The Joint Legislative Audit Committee (audit committee) directed the Bureau of State Audits (bureau) to examine the Department of Developmental Services' (Developmental Services) oversight responsibilities for the regional centers and to determine the extent to which Developmental Services performs oversight at a sample of regional centers selected for review.

Finding #1: Developmental Services completed almost all fiscal audits within the required time frame.

The Lanterman Act requires Developmental Services to audit state funds provided to the regional centers, and Developmental Services generally accomplishes this responsibility through the fiscal audits it conducts every two years as a condition of participating in a federal reimbursement program called the Medicaid Waiver. During our review of its files, we found that Developmental Services completed 18 of the 21 fiscal audits required in fiscal years 2007–08 and 2008–09. According to the chief of Developmental Services' Regional Center Audit Section (audit chief), the remaining three audits were completed in fiscal year 2009–10 and did not meet the required two-year period. The audit chief explained that Developmental Services did not complete these audits within two years because it did not have staff available to perform the reviews and because the lack of a timely budget resulted in no funds being available for travel.

To ensure that it is providing oversight in accordance with state law and Medicaid Waiver requirements, we recommended that Developmental Services ensure it performs audits of each regional center every two years as required.

Developmental Services' Action: Pending.

Developmental Services reports that it is on schedule to complete all its biennial fiscal audits by December 2010.

Finding #2: Although expenditures were generally allowable, the regional centers could improve their documentation and written procedures for purchase of services.

Based on our review of a sample of 40 expenditures at each of the six regional centers we visited, we determined that the regional centers generally have controls in place to ensure that they purchase only allowable services for consumers. Even so, we noted a few areas in which improvements could be made in the documentation of expenditures and in the written description of important control

Audit Highlights . . .

Our review of the Department of Developmental Services (Developmental Services), as well as six of the nonprofit regional centers coordinating services and supports for Californians with developmental disabilities (consumers), revealed the following:

» *Developmental Services systematically audits and reviews whether services purchased for consumers are allowable but, at the time of our fieldwork, generally did not examine how regional centers establish rates or select particular vendors for services.*

» *Although the regional centers could improve their documentation of procedures in a few areas, most of the expenditures we reviewed for the purchase of services appeared allowable and were properly supported by vendor invoices.*

» *Regional centers, however, do not always document how rates are set, why particular vendors are selected, or how contracts are procured; thus, in some cases, the ways in which regional centers established payment rates and selected vendors had the appearance of favoritism or fiscal irresponsibility. For example, we found the following:*

- *A regional center procured $950,000 in services from a transportation provider under a so-called "negotiated rate" that appears to have been calculated to incur a specific level of spending before the end of the fiscal year rather than to obtain the best value for the consumers the regional center serves.*

continued on next page . . .

- *A different regional center negotiated a rate that was considerably higher than the rate of an existing vendor performing the same type of services and the vendor owner receiving the higher rate was the sister of the regional center's assistant director who approved the rate.*

- *Responses to a survey we conducted of regional center employees of locations we visited indicated that half of the roughly 400 employees who responded do not feel safe reporting suspected improprieties to their management.*

- *We could not systematically evaluate Developmental Services' process for responding to complaints from regional center employees, because, at the time of our fieldwork, it did not centrally log or track employees' complaints or have a written process for handling such complaints.*

processes. Specifically, because some have moved to electronic processes, two of the six regional centers we reviewed could not provide the authorizations for expenditures for purchase of services required by regulation.

Additionally, two regional centers could not provide up-to-date documentation of their procedures for approving and processing invoices for services. At San Andreas, the regional center's purchase-of-services manual was 20 years old, and the financial manager acknowledged that it needs to be updated. Although Valley Mountain Regional Center's (Valley Mountain) usual process for purchasing services is well documented, its method of processing transportation invoices relies on one person's expertise, and no written guidance exists for vital steps in the process. This lack of an established process for invoice reviews appears to be one of the factors that allowed Valley Mountain to pay a vendor based on insufficiently supported invoices. Although this issue did not necessarily result in inaccurate payments to the vendor, it called attention to a pattern of errors in its invoicing process that Valley Mountain agreed it needed to address.

We recommended that Developmental Services require the regional centers to prepare and follow written procedures for their purchase of services that detail what documents will be retained for payment of invoices. Additionally, we recommended that, if regional centers move to an electronic authorization process, Developmental Services should determine whether it needs to revise its regulations. Finally, we recommended that Developmental Services ensure that the system Valley Mountain implements to correct its transportation invoicing process collects individual consumer data as necessary to ensure compliance with Medicaid Waiver requirements.

Developmental Services' Action: Partial corrective action taken.

Developmental Services issued a directive dated August 16, 2010, to regional centers requiring them to update their administrative policies and procedures related to purchasing consumer services and to retain required documentation when paying invoices. Developmental Services also stated that it is developing regulations related to electronic authorizations. It plans to report its progress toward implementation in its six-month report to the bureau. Finally, Developmental Services indicated in its October 2010 response that audit fieldwork is in progress at Valley Mountain.

Finding #3: Left to their own discretion, regional centers often established rates that were not supported by an appropriate level of analysis.

State law and regulations allow regional centers to establish the payment rates for many types of vendor services through negotiation with the vendor but do not prescribe how regional centers are to accomplish or document completion of this responsibility. Also, Developmental Services provided little direct oversight through existing monitoring efforts of how regional centers establish rates. Within this framework, we found—based on our review of a sample

of regional-center-established rates—that regional centers often do not retain support demonstrating that they established rates using an appropriate level of analysis. When documentation was available, however, a cost statement from the vendor—such as used by Far Northern Regional Center (Far Northern)—was the most frequently used support for rate determination, and one we considered a best practice. We also found that regional centers sometimes established rates using inappropriate processes that gave the appearance of favoritism toward certain vendors or fiscal irresponsibility.

For example, we found that a regional center procured $950,000 in services from a transportation provider under a so-called "negotiated rate" that appears to have been calculated to incur a specific level of spending before the end of the fiscal year rather than to obtain the best value for the consumers the regional center serves. In another example, a different regional center negotiated a rate with a new vendor under circumstances giving the appearance of favoritism. The resulting rate was considerably higher than the rate of an existing vendor performing the same type of service and the vendor owner receiving the higher rate was the sister of the regional center's assistant director who approved the rate.

To ensure that negotiated rates are cost-effective, we recommended that Developmental Services:

- Require regional centers to document how they determine that the rates they negotiate or otherwise establish are reasonable for the services to be provided.
- Encourage regional centers to use, when applicable, the cost-statement approach exemplified by Far Northern.
- Follow and refine, as necessary, its newly established fiscal audit procedures requiring a review of a representative sample of negotiated rates as part of its biennial fiscal audit of each regional center.

We also recommended that, if Developmental Services believes it needs statutory or regulatory changes to provide effective oversight of the regional centers' rate-setting practices, the department should seek these changes.

Developmental Services' Action: Partial corrective action taken.

Developmental Services issued a directive dated August 16, 2010, to regional centers requiring them to maintain documentation on the process they use to determine, and the rationale for granting, any negotiated rate. Developmental Services also expanded its fiscal audit protocols to include a review of negotiated rates during its biennial fiscal audits of regional centers to ensure adequate documentation exists. However, we could not confirm whether Developmental Services is using these protocols because it had not—as of November 2010—completed fieldwork related to any fiscal audits it is conducting using the new protocols. Finally, Developmental Services indicated that it believes the statutory and administrative actions taken in recent years set parameters for rate negotiations and establish clear mechanisms for accountability.

Finding #4: The regional centers did not always comply with the requirements of the July 2008 rate freeze.

We found that the regional centers did not always conform to the requirements of legislation requiring them to freeze their negotiated rates for existing vendors or, for new vendors, to establish rates at or below the lesser of the regional center or statewide median rate for the pertinent service codes. These provisions, which were enacted in February 2008, specified that beginning on July 1, 2008, increases in payment rates for existing vendors were allowed only if required in contracts in effect on June 30, 2008, or authorized by Developmental Services in writing. In our review of 61 rates, we found four instances in which regional centers did not appear to follow the law requiring this rate freeze. As a result, these regional centers expended resources that the Legislature, in enacting the rate freeze, intended to preserve. We also found an additional instance of noncompliance with rate-freeze provisions in our review of regional center contracts.

We asked Developmental Services whether it reviews compliance with the rate freeze in its fiscal audits of the regional centers. The audit chief showed us that Developmental Services has procedures built into its fiscal audit process for reviewing compliance with the rate freeze within certain service codes. The audit chief stated that the scope of the fiscal audits includes transportation, day programs, and residential programs but did not generally involve other service codes for which regional centers establish rates. Therefore, other than for the services just mentioned, Developmental Services' audits division did not ordinarily review most regional-center-established rates for compliance with the rate freeze. In fact, four of the five rate-freeze violations we found are in service codes not typically reviewed during the fiscal audits.

In July 2010 Developmental Services provided us with revised fiscal audit procedures. These new procedures include a review of compliance with rate-freeze requirements for a sample of rates established by regional centers. Because these additions were provided to us after the end of our fieldwork, we could not evaluate their efficacy or the degree to which they had been implemented at that time.

We recommended that Developmental Services carry out its newly developed fiscal audit procedures for ensuring compliance with provisions of the Legislature's July 2008 rate freeze, unless these provisions were rescinded by the Legislature. We also recommended that, if Developmental Services needs to streamline its current fiscal audit program to enable it to incorporate this review of rate-freeze compliance and still adhere to mandated deadlines, it should do so. Finally, we recommended that Developmental Services review the five instances of noncompliance with the rate freeze that we identified and require corrective action by the respective regional centers, stating this corrective action should include remedies for future rate payments to these vendors as well as repayment by the regional centers of any state funds awarded in a manner not in compliance with state law.

Developmental Services' Action: Partial corrective action taken.

Developmental Services expanded its fiscal audit protocols to include testing for compliance with the July 2008 rate freeze. However, we could not confirm whether Developmental Services is using these protocols because it had not—as of November 2010—completed fieldwork related to any fiscal audits it is conducting using the new protocols. Additionally, in its October response, Developmental Services indicated that audit fieldwork is underway for one of the four regional centers that the bureau reported may have violated the rate-freeze provisions and it plans to begin the remaining reviews within 60 days. According to Developmental Services, it will report findings and the corrective actions it determines are appropriate when the audits are completed.

Finding #5: Developmental Services generally does not regulate or examine the regional centers' selection of vendors.

State law places the responsibility for securing needed services for consumers on regional centers and has traditionally imposed few restrictions on how the regional centers select vendors to provide these services. Although a recent amendment to the law now requires regional centers to select the least costly available provider of comparable services, Developmental Services has not adopted regulations or other requirements describing how regional centers are to demonstrate compliance with this amendment.

When we attempted to review documentation at the six regional centers we visited, we found that they do not maintain information showing how they chose from among the available providers. Because they do not document why a consumer's planning team selected particular vendors for a consumer's Individual Program Plan (IPP), oversight entities—Developmental Services in particular—cannot currently ensure that planning teams select the least costly providers of comparable services as required by the Lanterman Act, nor can they examine whether the regional centers mitigate, as much as feasible, the appearance of favoritism towards certain vendors.

To ensure that consumers receive high-quality, cost-effective services that meet the goals of their IPPs consistent with state law, we recommended that Developmental Services do the following:

- Require the regional centers to document the basis of any IPP-related vendor selection and specify which comparable vendors (when available) were evaluated.

- Review a representative sample of this documentation as part of its biennial waiver reviews or fiscal audits to ensure that regional centers are complying with state law—and particularly with the July 2009 amendment requiring selection of the least costly available provider of comparable service.

Developmental Services' Action: None.

Developmental Services does not believe it has the legal authority to implement this recommendation, as it states that it places the department in a role inconsistent with the intent of the Lanterman Act. Developmental Services asserts that to require documentation of all vendors considered and an explanation of why the vendor selected constitutes the least costly vendor, and presumably all other factors required by law, could delay needed services to consumers and their families. According to Developmental Services, by design it does not have a direct role in the IPP development. Developmental Services asserts that if it required extensive documentation of one factor and not all factors considered in the IPP process, the likely response would be litigation claiming that Developmental Services overstepped its authority. As outlined in the Comments section of our August 2010 audit report (notes 2 and 3), the bureau does not agree with Developmental Services' response to this recommendation.

Finding #6: Regional centers have not established protocols for determining when a contract is prudent and do not consistently require or advertise competitive bidding for contracts.

Although state law requires the regional centers to submit to Developmental Services their policies for purchasing services for consumers, the Lanterman Act—and the Title 17 regulations designed to carry it out—does not require the regional centers to define when or how they will use contracts to procure services with vendors. Also, Developmental Services does not examine how particular vendors were selected for regional center contracts.

More specifically, except when awarding startup funds to develop new community resources, none of the regional centers we visited have policies indicating when a contract is required or when they would allow a vendor to operate under the more common vendorization and rate process. Without protocols establishing when to use a contract for special instances, regional centers risk paying for specialized services that are ill-defined. For example, Inland Regional Center (Inland) entered into a rate agreement with a startup transportation company to assess consumer transportation needs. Inland paid this company a total of $950,000 in July and August 2008 to perform this service under a service code used for transportation broker services. The regulatory description of this service code would not be sufficient to hold this vendor accountable for a specific level of services. The only definition of the service the vendor was to perform was contained in the June 2008 rate agreement, which stated, "Contractor will assess, develop, implement and manage routing and time schedules to meet consumer transportation needs." The rate agreement contained no description of when or how the services would be performed, how the vendor would communicate the results of individual consumer assessments, or what form any end summary of results would take.

We asked Inland to provide us with the deliverables the vendor produced as a result of the rate agreement, and all it could provide was a six-page, high-level report that lacked the details necessary to identify how it could create a more efficient transportation system. Of particular concern was that a purpose of the assessment was to make transportation routing more efficient for individual consumers, but after repeated requests, Inland could not provide us a single example of a consumer rerouted as a result of the assessment. Furthermore, Inland's rate agreement was so general that we are not sure that it could have held the vendor to any specific level of performance.

Just as the regional centers did not establish a procedure for determining when to enter into a contract, some also did not have written policies specifying a competitive procurement process. The lack of established procurement requirements resulted in inconsistent documentation among and within regional centers. Additionally, we found that when entering into contracts, the regional centers missed opportunities to contain costs or attract the highest-quality service providers because they did not advertise the contracting opportunity or evaluate bids competitively. Specifically, the regional centers we visited issued Requests for Proposal (RFPs) or otherwise notified vendors about contracting opportunities for only nine of the 33 contracts we evaluated. In the nine instances when the regional centers issued RFPs, they evaluated some of the proposals competitively but, in two of these instances, one regional center—Westside Regional Center—did not retain documentation of its reviewers' analysis of the proposals. The lack of a consistent contracting process across the regional centers reduces transparency and can create the appearance of vendor favoritism.

To ensure that the regional centers achieve the greatest level of cost-effectiveness and avoid the appearance of favoritism when they award purchase-of-service contracts, we recommended that Developmental Services require regional centers to adopt a written procurement process that:

- Specifies the situations and dollar thresholds for which contracts, RFPs, and evaluation of competing proposals will be implemented.

- When applicable, requires the regional centers to notify the vendor community of contracting opportunities and to document the competitive evaluation of vendor proposals, including the reasons for the final vendor-selection decision.

To ensure that the regional centers adhere to their procurement process, we recommended that Developmental Services review the documentation for a representative sample of purchase-of-service contracts during its biennial fiscal audits. Finally, to deter unsupported and potentially wasteful spending of state resources by the regional centers, we recommended that Developmental Services determine the extent to which Inland needs to repay state funds it provided to a transportation vendor for an assessment of Inland's transportation conditions.

Developmental Services' Action: Partial corrective action taken.

Developmental Services states that it and the Association of Regional Center Agencies representing the 21 regional centers have agreed to language amending the contracts between Developmental Services and the regional centers. Developmental Services indicated that the contract amendments will require the regional centers to develop procurement policies and processes approved by their respective board of directors. According to Developmental Services, the policies and processes will address circumstances under which RFPs will be issued, the applicable dollar thresholds, and how the submitted proposals will be evaluated. Additionally, Developmental Services developed fiscal audit protocols for testing whether regional centers are complying with the newly developed procurement policies and processes. Finally, in its October 2010 response, Developmental Services indicated that an audit of Inland is underway and it has scheduled an audit of the transportation vendor to begin November 1, 2010.

Finding #7: Developmental Services' processing of allegations from regional center employees was only recently defined.

Employees at six locations we visited identified several problems in the working environment at the regional centers. Responses to a survey we conducted of these six regional centers' employees indicated that almost half of the roughly 400 employees who responded to the questions concerning this topic do not feel safe reporting suspected improprieties to their management. Consequently, we asked Developmental Services about its process for receiving regional center employees' complaints, concerns, or allegations and its procedures for reviewing this information. Although Developmental Services indicated that it has a process for receiving and reviewing allegations from regional center

employees, it had not documented this process, nor had it shared this process with regional center employees, until we brought our concern about this issue to its attention. Similarly, Developmental Services only recently began centrally logging allegations and tracking the status of its follow-up efforts and ultimate disposition of such allegations.

To ensure that regional center employees have a safe avenue for reporting suspected improprieties at the regional centers, we recommended that Developmental Services follow its newly documented process for receiving and investigating these types of allegations it put into writing in July 2010 and should continue to notify all regional centers that such an alternative is available. To ensure that appropriate action is taken in response to allegations submitted by regional center employees, we also recommended that Developmental Services centrally log these allegations and track follow-up actions and the ultimate resolution of allegations, as required by its new procedures.

Developmental Services' Action: Corrective action taken.

As we stated in our report, in July 2010 Developmental Services formally documented procedures that describe how it accepts, tracks, and resolves complaints from regional center employees, and it also informed the regional centers of this process. Developmental Services included information about its process on its Web site and instructed regional centers to do the same on their Web sites. Additionally, Developmental Services instructed regional centers to provide notification to employees, board members, consumers and their families, and the vendor community of the complaint process and their right to make reports of improper activity to Developmental Services. Finally, in July 2010, Developmental Services created and began using a log that summarizes allegations it has received and follow up it has taken.

Departments of Health Care Services and Public Health

Their Actions Reveal Flaws in the State's Oversight of the California Constitution's Implied Civil Service Mandate and in the Departments' Contracting for Information Technology Services

REPORT NUMBER 2009-103, SEPTEMBER 2009

Responses from the Departments of Health Care Services and Public Health and the State Personnel Board as of September 2010

The Joint Legislative Audit Committee (audit committee) requested that the Bureau of State Audits (bureau) examine the use of information technology (IT) consulting and personal services contracts (IT contracts) by the Department of Health Care Services (Health Care Services) and the Department of Public Health (Public Health). The audit committee specifically asked the bureau to review and assess the two departments' policies and procedures for IT contracts to determine whether they are consistent with state law. The audit committee also requested that we identify the number of active IT contracts at each department and—for a sample of these contracts—that we determine whether the departments are complying with California Government Code, Section 19130, and with other applicable laws, rules, and regulations. For the sample of contracts, the committee also requested that we collect various data and perform certain analyses, including determining whether the two departments are enforcing the knowledge-transfer provisions contained in the contracts.

The audit committee also asked us to identify the number, classification, and cost of IT positions budgeted at each department for each of the most recent five fiscal years. In addition, we were to determine the number of vacant IT positions, the turnover rate, and any actions that the departments are taking to recruit and retain state IT employees.

For a sample of contracts under review by the State Personnel Board (board), the audit committee asked us to identify the California Government Code section that the departments are using to justify an exemption from the implied civil service mandate emanating from Article VII of the California Constitution. For the contracts overturned by the board, we were asked to review the two departments' responses and determine whether corrective action was taken. Finally, the audit committee requested that we review and assess any measures that the two departments have taken to reduce the use of IT contracts.

Audit Highlights . . .

Our review of the personal services and consulting contracts for information technology (IT contracts) used by the Department of Health Care Services (Health Care Services) and the Department of Public Health (Public Health) revealed the following:

- *Over the last five years, the State Personnel Board (board) has disapproved 17 of 23 IT contracts challenged by a union.*
- *Many of the board's decisions were moot because the contracts had already expired before the board rendered its decisions.*
- *Of the six IT contracts still active at the time of the board's decisions, only three were terminated because of board disapprovals.*
- *Health Care Services did not comply with state policy regarding the use of blanket positions and was disingenuous with budgetary oversight entities.*
- *Neither Health Care Services nor Public Health has a complete database that allows it to identify active IT contracts and purchase orders.*
- *The departments complied with many, but not all, state procurement requirements.*
- *The departments did not obtain the requisite financial interest statements from half the sampled employees responsible for evaluating contract bids and offers.*

Finding #1: The board disapproved most of the departments' challenged IT contracts, but these decisions had limited impact.

Over the last five years, the board has disapproved 17 IT contracts executed by Health Care Services, Public Health, and their predecessor agency—the Department of Health Services (Health Services).[1] The board disapproved the IT contracts because the departments, upon formal challenges from a union, could not adequately demonstrate the legitimacy of their justifications for contracting under the California Government Code, Section 19130(b), which provides 10 conditions under which state agencies may contract for services rather than use civil servants to perform specified work. These conditions include such circumstances as the agencies needing services that are sufficiently urgent, temporary, or occasional, or the civil service system's lacking the expertise necessary to perform the service.

Although the union prevailed in 17 of its 23 IT contract challenges, many of the board's decisions were moot because the contracts had already expired before the board rendered its decisions. This situation occurred primarily because the union raised challenges late in the terms of the contracts and because the board review process was lengthy. The board's former senior staff counsel stated that if the board disapproves a contract, the department must immediately terminate the contract unless the department obtains from the superior court a stay of enforcement of the board decision. However, as the board's executive officer explained, the board's decisions usually do not state that departments must immediately terminate disapproved contracts, and she is unaware of the historical reasons behind this practice. Of the six IT contracts that were active at the time of the board's decisions, only three were terminated because of board disapprovals. For each of the other three IT contracts, the departments either terminated the contract after a period of time for unrelated reasons or allowed it to expire at the end of its term. We found that one contract was not terminated because the department was unaware of the board's decision and another because of miscommunications between the department's legal services and program office managing the contract. Because the board lacks a mechanism for determining whether state agencies comply with its decisions, the departments experienced no repercussions for failing to terminate these contracts.

Additionally, our legal counsel believes that uncertainties exist about whether or not a contract disapproved by the board is void and about the legal effect of a void contract. However, if a court were to find that the disapproved contract violated public contracting laws, the contractor may not be entitled to any payment for services rendered.[2] Because the legal effect of a board-disapproved contract is uncertain, it may be helpful for the Legislature to clarify when payments to the related contractors must cease and for what periods of service a vendor may receive payments.

To provide clarity to state agencies about the results of its decisions under California Government Code, Section 19130(b), we recommended that the board explicitly state at the end of its decisions if and when state agencies must terminate disapproved contracts. Additionally, we recommended that the board obtain documentation from the state agencies demonstrating the terminations of disapproved contracts.

To vet more thoroughly the Section 19130(b) justifications put forward by the departments' contract managers, to ensure the timely communication of board decisions to the contract managers, and to make certain that disapproved contracts have been appropriately terminated, we recommended that legal services in both departments take these actions:

- Review the Section 19130(b) justifications put forward by the contract managers for proposed personal services contracts deemed high risk, such as subsequent contracts for the same or similar services as those in contracts disapproved by the board.

[1] Only July 1, 2007, Health Services became Health Care Services, and Public Health was established. All contracts disapproved by the board were originally executed by Health Services. However, the management of these contracts was performed by Health Services, Health Care Services, or Public Health.

[2] *Amelco Electric v. City of Thousand Oaks* (2002) 27 Cal. 4th 228, 234, upholding *Miller v. McKinnon* (1942) 20 Cal. 2d 83, 89, and *Zottman v. San Francisco* (1862) 20 Cal. 96, 101, 105-106.

- Notify contract managers of the board's decisions in a timely manner and retain records in the case files showing when and how the notifications were made.

- Require documentation from the contract managers demonstrating the termination of disapproved contracts and retain this documentation in the case files.

Board's Action: Pending.

The board stated that all of its future decisions disapproving a contract will include a deadline for when the contract should be discontinued and a requirement that the affected department submit written confirmation of the discontinuation of the contract to it and the interested labor organizations.

Health Care Services' Action: Partial corrective action taken.

Health Care Services stated that its legal services is available to review personal services contracts identified by its contract managers as high risk but—as of November 2010—its instructions as to how its contract managers would identify contracts as high risk had only been verbal. Health Care Services added that it is in the process of developing training for its contract managers regarding Section 19130 of the California Government Code requirements and what types of contracts need review by legal services.

Health Care Services also stated that notifying contract managers of relevant board decisions is in accordance with its current practices and that it would request notifications from program managers of contract terminations related to board-disapproved contracts and document them in the case files.

Public Health's Action: Corrective action taken.

Public Health issued a policy effective November 3, 2009, that requires its program staff to obtain approval from its legal services before entering into personal services contracts. Public Health stated that it has developed procedures to ensure that contract managers receive timely notification of board decisions and to maintain documentation for all notices of contract terminations in legal services' case files.

Finding #2: Although it saved the State $1.7 million by replacing IT consultants with state employees, Health Care Services failed to follow budgetary instructions and rules.

Partly in response to the disapproved contracts, the two departments sought to replace IT contractors with state IT employees. For this purpose, in January 2009, the Department of Finance (Finance) approved the creation of an additional 28 IT positions within the information technology services division (IT division) of Health Care Services and 11 IT positions within the IT division of Public Health. Health Care Services began the process of converting IT contractor positions into state positions as early as October 2006, but it did not clearly disclose this effort in its budget change proposal (BCP) requesting additional positions. Specifically, despite language in Health Care Services' January 2009 BCP stating that the 28 requested positions "will replace contractors *currently* providing IT support functions" and that these conversions will occur over three fiscal years, it had already replaced nine contractors, and the termination dates for the contracts associated with these nine contractors had already expired.

Because permanent positions had not yet been approved in the state budget, Health Care Services funded the new employees—who were hired as permanent civil servants—using temporary-help positions authorized in the budget as *blanket positions*, which are positions in the approved budget that an agency may use for short-term or intermittent employment needs when expressing those needs as classified positions has proven impracticable. According to the *State Administrative Manual*, an agency may not use temporary—help positions provided under its blanket authority to fund permanent employees. Although it did not comply with state policy regarding the use of blanket positions and was disingenuous with budgetary oversight entities, we estimate that Health Care Services saved the State more than $1.7 million when it converted IT contracts to IT positions. Public Health stated that it will not be able to replace its IT contracts with state employees until fiscal year 2010–11, which is when it anticipates it will be able to hire and train employees who have the appropriate skill sets to make the transition successful.

To ensure that Finance and relevant legislative budget subcommittees are able to assess its need for additional IT positions, we recommended that Health Care Services prepare BCPs that provide more accurate depictions of the department's existing conditions.

To comply with requirements in the *State Administrative Manual*, we recommended that Health Care Services refrain from funding permanent full-time employees with the State's funding mechanism for temporary-help positions.

Health Care Services' Action: Partial corrective action taken.

Health Care Services stated that it strives to provide clear and precise BCPs and that it would continue to provide training to staff on the preparation of BCPs, based on guidance from Finance, that are accurate and complete. Health Care Services also stated that it moved all of the individuals identified by the audit out of temporary-help positions and into newly authorized positions and provided us with a report indicating the same.

However, we requested that Health Care Services provide this report for the department as a whole and found—as of November 2010—other permanent full-time employees in temporary-help positions. Four of these employees had been in these positions for more than one year. Health Care Services stated that it will endeavor to limit the use of temporary-help positions to those instances that meet the definition in the *State Administrative Manual*.

Finding #3: The two departments cannot readily identify active IT contracts.

Neither Health Care Services nor Public Health has a complete database that allows it to identify active IT contracts and purchase orders. Consequently, the departments cannot readily identify such procurements. The best source of information for the purposes of this audit was the contracts database maintained by the Department of General Services (General Services) and populated with self-reported data from state agencies. However, we found errors in the data reported by Health Care Services and Public Health indicating that the information in General Services' database is incomplete and inaccurate for these departments.

Public Health stated that it is in the process of developing a new database that will identify all contracts that are active and IT-related. The database will include this information for all completed contracts and those in progress. Public Health anticipates implementing its database in October 2009. The chief of its Contracts and Purchasing Support Unit stated that Health Care Services is monitoring the development of Public Health's database, and Health Care Services will consider its options for creating a similar database if the implementation of Public Health's database is successful.

To readily identify active IT and other contracts, we recommended that Public Health continue its efforts to develop and implement a new contract database. Additionally, we recommended that Health Care Services either revise its existing database or develop and implement a new contract database.

To ensure that reporting into General Services' contracts database is accurate and complete, we recommended that both departments establish a review-and-approval process for entering their contract information into the database.

Health Care Services' Action: Partial corrective action taken.

Health Care Services stated that it completed an assessment of the feasibility of creating a new contract database, but determined that it is not economically feasible at this time. Health Care Services also stated that it provided training and instructions to staff on the importance of entering accurate information into the General Services database and that a supervisor regularly reviews reports from the database to ensure the accuracy and completeness of the data.

Public Health's Action: Partial corrective action taken.

Public Health stated that it plans to fully implement its new contract database by December 2010. Public Health added a reminder for entering information into General Services' database to its procurement checklists and indicates that it has and will continue to regularly conduct reviews to ensure staff enter the information appropriately.

Finding #4: The departments generally complied with the procurement requirements that we tested.

The departments complied with many, but not all, state procurement requirements we reviewed. For a sample of 14 contracts, the departments obtained the requisite number of supplier responses, encouraging competition among suppliers. The departments also complied with requirements related to maximum dollar amounts and allowable types of IT personal services, except in one instance. In this instance, Public Health procured some unallowable printer maintenance services under its contract with Visara International (Visara). Visara's master agreement with General Services allows it to provide maintenance on numerous printer types. However, 13 of the 17 printer types listed in Public Health's contract with Visara are not included in General Services' master agreement. Therefore, the prices negotiated between Public Health and Visara for maintenance on these 13 printer types were not subject to the required level of scrutiny that is designed to ensure that Public Health is not paying too much.

To make certain that it procures only maintenance services allowed in the State's master agreement with Visara, we recommended that Public Health either make appropriate changes to its current Visara contract or have General Services and Visara make appropriate changes to Visara's master agreement.

Public Health's Action: Corrective action taken.

Public Health processed an August 2009 amendment to remove noncovered printers from its Visara contract and, after working with General Services to add these printers to its Visara master agreement, executed a January 2010 amendment to add these printers back into its VIsara contract.

Finding #5: The departments have not provided suppliers with selection criteria.

The *State Contracting Manual* establishes the requirements for departments to follow when conducting supplier comparisons, and it provides a request-for-offer template. The request-for-offer template states that if departments use the best-value method to select suppliers, they should detail their selection criteria and the corresponding points that will be used to determine the winning offer.[3] The best-value

[3] The *State Contracting Manual* provides departments with limited discretion regarding policy requirements prefaced by the term "should." It states that such policies are considered good business practices that departments need to follow unless they have good business reasons for deviating from them.

method, which is the basis for all California Multiple Award Schedules (CMAS) contracts, refers to the requirements, supplier selection, or other factors used to ensure that state agencies' business needs and goals are met effectively and that the State obtains the greatest value for its money.

Three of the requests for offer associated with the five CMAS contracts we reviewed contained only brief, vague statements regarding how the departments would determine the winning offers. Further, none of the requests for offer for these five contracts included information on the corresponding points. Without specific selection criteria, potential suppliers are left to guess the criteria and their relative importance using what they can glean from the departments' requests for offer.

To promote fairness and to obtain the best value for the State, we recommended that the two departments demonstrate their compliance with General Services' policies and procedures. Specifically, in their requests for offer, they should provide potential suppliers with the criteria and points that they will use to evaluate offers.

Health Care Services' Action: Corrective action taken.

Health Care Services modified its request-for-offer template to include evaluative criteria that it will use on all CMAS procurements.

Public Health's Action: Pending.

Public Health stated that by November 2010 it plans to develop and distribute to staff a new form they can use to inform potential suppliers of the criteria it will use to evaluate their offers.

Finding #6: The departments did not obtain some required approvals and conflict-of-interest information for the contracts that we reviewed.

The departments did not always obtain prior approvals from their agency secretary, directors, and—in the case of Public Health, IT division—as required by state procurement rules and departmental policies. In particular, we found that the departments did not obtain the appropriate agency secretary's or director's approvals for three of the seven CMAS and master agreement contracts for which the requirement was applicable. Additionally, despite a policy requiring its IT division to review all IT contracts, we found that Public Health's IT division did not review two of the 14 Public Health contracts we reviewed.

The departments also did not consistently obtain requisite annual financial interest statements from bid or offer evaluators. Health Care Services failed to obtain this statement from one employee and Public Health failed to obtain the financial interest statement from six of its employees. For three of the six employees, Public Health stated that the employees were not in positions designated in the department's conflict-of-interest code as needing to file the financial interest statement. Our review raised questions about whether Public Health's conflict-of-interest code appropriately designated all employees engaged in procurement. We believe that state employees who regularly participate in procurement activities may participate in the making of decisions that could potentially have a material financial effect on their economic interests. To maintain consistency with the Political Reform Act, state agencies should designate such employees in their conflict-of-interest codes. Without the approvals mentioned earlier and these financial interest statements, the departments are circumventing controls designed to provide high-level purchasing oversight and to deter and expose conflicts of interest.

To ensure that each contract receives the levels of approval required in state rules and in their policies and procedures, we recommended that the departments obtain approval by their agency secretary and directors on contracts over specified dollar thresholds. In addition, we recommended that Public Health obtain approval from its IT division on all IT contracts, as specified in departmental policy.

To make certain that it fairly evaluates offers and supplier responses, Public Health should amend its procedures to include provisions to obtain and retain annual financial interest statements from its offer evaluators. Further, both departments should also ensure that they obtain annual financial interest statements from all designated employees. Finally, Public Health should ensure that its conflict-of-interest code is consistent with the requirements of the Political Reform Act.

Health Care Services' Action: Corrective action taken.

Health Care Services stated that it would obtain the necessary approvals, as required. Health Care Services did not indicate that any revision of policy or procedure would be necessary. Health Care Services also stated that in February 2010 it provided specific instructions to staff regarding the disclosure categories related to offer evaluators. Health Care Services provided documents showing that its contracts management unit added language to its user guides stating that disclosure requirements apply to all persons involved in contractor selection.

Public Health's Action: Corrective action taken.

Public Health revised its IT Manual and provided us with training material demonstrating its efforts to make procurement staff aware of the IT approval policies.

Effective November 3, 2009, Public Health issued a policy that requires each staff member who participates in the procurement process to file a conflict-of-interest and confidentiality statement it created. To its procurement checklists, Public Health added a reminder that each member of the evaluation team must complete conflict-of-interest and confidentiality statements.

Finding #7: Health Care Services could not always demonstrate fulfillment of contract provisions requiring IT consultants to transfer knowledge to IT employees.

Health Care Services and Public Health did not always include specific contract provisions in their contracts with IT consultants to transmit the consultants' specialized knowledge and expertise (knowledge transfer) to the State's IT employees because these knowledge-transfer provisions were not always applicable. However, when its IT contracts included knowledge-transfer provisions, Public Health was generally able to demonstrate that the department met these provisions, while Health Care Services had difficulty doing so for all three of its contracts in our sample that contained knowledge-transfer provisions.

To verify that its consultants comply with the knowledge-transfer provisions of its IT contracts, and to promote the development of its own IT staff, we recommended that Health Care Services require its contract managers to document the completion of knowledge-transfer activities specified in its IT contracts.

Health Care Services' Action: Corrective action taken.

Health Care Services stated that it would remind all managers and supervisors who are responsible for managing IT contracts to document the completion of knowledge-transfer activities. Health Care Services did not indicate that any revision of policy or procedure would be necessary.

Department of Health Care Services

It Needs to Streamline Medi-Cal Treatment Authorizations and Respond to Authorization Requests Within Legal Time Limits

REPORT NUMBER 2009-112, MAY 2010

Department of Health Care Services' response as of November 2010

The Joint Legislative Audit Committee (audit committee) requested that the Bureau of State Audits review the Department of Health Care Services' (Health Care Services) administration of the California Medical Assistance Program (Medi-Cal) treatment authorization request (TAR) process. Health Care Services instituted the TAR process to monitor and control the provision of certain Medi-Cal services and drugs. The audit committee asked us to determine whether Health Care Services has performed a cost-benefit analysis or any other review of the TAR process. In addition, the audit committee requested that, for a two-year period, we identify Health Care Services' average response time for TARs by provider category and by the method used to request the TAR.

Finding #1: Health Care Services has not performed a cost-benefit analysis of its least-frequently denied TARs.

Overall, Health Care Services' data indicates that the TAR process as a whole saves substantially more money in avoided paid claims to Medi-Cal providers than it costs to administer. However, there are compelling reasons for Health Care Services to perform a cost-benefit analysis of the segment of its TAR process associated with service categories with low denial rates, but it has not done so. Our analysis revealed that Health Care Services may have spent $14.5 million annually—40 percent of its total TAR-related expenditures—processing roughly four million medical TARs with denial rates of less than 4 percent in fiscal years 2007–08 and 2008–09. Consequently, the cost of processing this population of TARs is high. Health Care Services has performed limited analyses that considered the costs and benefits of its TAR process. However, these analyses did not consider whether administrative costs to process TARs for service categories with low denial rates were greater than or equal to how much Health Care Services saved in the form of costs avoided by denying inappropriate services.

To streamline the provision of Medi-Cal services and improve its level of service, we recommended that Health Care Services conduct cost-benefit analyses to identify opportunities to remove authorization requirements or to auto-adjudicate those medical services and drugs with low denial rates, low paid claims, or high TAR administrative costs.

Audit Highlights . . .

Our review of the administration of the California Medical Assistance Program treatment authorization request (TAR) process revealed that the Department of Health Care Services:

- *Manually adjudicates all medical TARs including those rarely denied.*
- *Did not consider administrative costs to process TARs associated with service categories with low denial rates in its previous analyses.*
- *Does not separately track costs related to administering the TAR process.*
- *Is not processing drug TARs within the legal time limits for prescriptions requiring prior approval.*
- *Does not monitor its processing times for prior-authorization medical TARs even though state law requires them to be processed within an average of five working days.*

Health Care Services' Action: Pending.

Health Care Services reported that a contractor will perform a cost-benefit analysis to identify opportunities to remove authorization requirements or to auto-adjudicate those medical services and drugs with low denial rates, low paid claims, or high TAR administrative costs. According to Health Care Services, it is currently finalizing the work authorization agreement necessary for the contractor to begin this project. Health Care Services stated that the project is tentatively slated to be completed within 12 weeks of a signed work authorization agreement.

Finding #2: Health Care Services has failed to process drug TARs within federal and state time limits.

Health Care Services is not processing drug TARs within legal time limits for prescriptions requiring prior approval. Federal and state law generally require that, when Health Care Services requires a prior authorization before a pharmacist may dispense a drug, it must respond within 24 hours of its receipt of the request for authorization. The TAR is the means by which Health Care Services conducts its prior-authorization process. However, Health Care Services took longer than 24 hours to respond to 84 percent of manually adjudicated drug TARs in fiscal year 2007–08 and 58 percent in fiscal year 2008–09. Health Care Services does not monitor its TAR processing times in such a way that it can accurately assess its compliance with legal time limits. For example, Health Care Services tracks the date it receives a TAR, but it does not track the specific time it receives a TAR through the mail or by fax. In contrast, TARs submitted electronically have date and time stamps that reflect precisely when they were received. Further, Health Care Services has interpreted the 24-hour limit in law improperly to mean the next business day. Health Care Services considers TARs received between midnight and 5 p.m. on a business day as received on that day's date, and TARs received between 5:01 p.m. and 11:59 p.m. as received the following business day. Therefore, Health Care Services considers a drug TAR received at 8 a.m. on a Monday as received that day, but a response would not be due until Tuesday at 5 p.m., 33 hours after it actually was received. However, it considers a TAR it physically receives at 5:01 p.m. on Friday as officially received on Monday, giving it until close of business on Tuesday to process the TAR. As a result, Health Care Services' next business day could be as long as 96 hours—well beyond the 24 hours the law allows.

To ensure that Medi-Cal recipients receive timely access to prescribed drugs, we recommended that Health Care Services abolish its policy of responding to drug TARs by the end of the next business day and instead ensure that prior-authorization requests to dispense drugs are processed within the legally mandated 24-hour period. Alternatively, it should seek formal authorization from the Centers for Medicare and Medicaid Services (CMS), the federal agency that administers the Medicaid program, to deviate from the 24-hour requirement, and should seek a similar modification to state law. In addition, Health Care Services should begin recording the actual time it receives TARs through the mail or by fax, so that it can begin to measure accurately its processing times for these paper TARs.

Health Care Services' Action: None.

Health Care Services disagrees with our recommendation that it abolish its existing policy of adjudicating drug TARs by the end of the next business day. Health Care Services indicated that it has operationalized the 24-hour requirement as the end of the next business day because the offices where drug TARs are processed are not staffed or budgeted for 24-hour, seven-day-per-week operations. Health Care Services also reported that it has not sought formal authorization from CMS to deviate from the 24-hour requirement because it asserts that CMS is aware of Health Care Services' next business day practice and that emergency drug supplies are available to Medi-Cal beneficiaries as needed. In addition, Health Care Services stated that it does not plan to seek a modification to state law regarding the 24-hour time frame at this time. Health Care Services made similar statements in its response at the time we published our report in May 2010. However, as we indicated in our report, we are aware of no legal authority that authorizes Health Care Services to deviate from the unambiguous, plain language of federal and state law and, in the absence of an interpretative regulation, to "operationalize" the 24-hour requirement in a manner inconsistent

➲

with the law for any purpose, including staffing and budgetary constraints. Further, although Health Care Services has asserted that CMS has an awareness of Health Care Services' "next business day" practice, the department could provide no evidence that CMS actually approves of the practice. While we sought CMS' opinion about whether Health Care Services' interpretation of "24 hours" as meaning the "next business day" was appropriate, we received no official response. Accordingly, we concluded that, in the absence of any formal interpretation or guidance by the federal government, the plain language of the federal law and conforming state law controlled. We therefore stand by our recommendation that Health Care Services should abolish its policy of responding to drug TARs by the end of the next business day and comply with the legal mandate requiring it to process prior-authorization drug TARs within the specified 24-hour period. As we recommended, it may be more practical for Health Care Services to seek formal authorization from CMS to deviate from the 24-hour requirement, which could result in a change to the federal statute or implementing regulation or a formal waiver from CMS, whereupon it would be appropriate to make conforming changes to state law.

Finally, Health Care Services reported that it has identified the system and business processes that would need to be modified to record the actual time it receives TARs through the mail or by fax, and that these changes are complex and costly. Given the lengthy time frame to make the necessary changes and the high cost, Health Care Services concluded that modifying the current system is not viable. Health Care Services reported that it will instead implement this change through the system that the new California Medicaid Management Information System contractor will develop.

Finding #3: Health Care Services cannot ensure compliance with state requirements for response times.

Health Care Services does not specifically monitor its processing times for prior-authorization medical TARs despite acknowledging that state law requires that TARs submitted for medical services not yet rendered must be processed within an average of five working days. Although it has a reporting tool that allows it to monitor TAR processing times, it does not differentiate TARs requesting prior authorization to provide services from TARs requesting an authorization after services already have been provided. As a result, Health Care Services cannot ensure that it is approving prior-authorization TARs within the legal time limit and therefore may be preventing some Medi-Cal patients from receiving timely medical services.

To ensure that Medi-Cal recipients are receiving timely medical services from providers, we recommended that Health Care Services start tracking prior-authorization medical TARs separately and ensure that such TARs are processed within an average of five working days. Although state law and regulations specifically require prior authorization for certain medical services, Health Care Services generally does not require prior authorizations in practice. Consequently, Health Care Services should seek legislation to update existing laws and amend its regulations to render them consistent with its TAR practices.

Health Care Services' Action: Pending.

Health Care Services reported that it has developed a manual sorting process that will identify prior-authorization paper TARs as they are received in the field office mail rooms. These TARs will be placed in a designated location and will be processed before retroactive paper TARs. Health Care Services is also designing a system workaround that will enable it to track and report prior-authorization paper TAR processing turnaround times. However, Health Care Services indicated that it will defer modifying the current system to track all prior-authorization TARs due to the lengthy time frame and high cost to implement such changes, but it will ensure that the replacement system described in the previous finding includes the ability to track and report on prior-authorization TAR processing.

Finally, Health Care Services reported that it is not currently seeking legislation to update existing laws and amend its regulations to render them consistent with its TAR practices because California's health care system will change significantly with the implementation of a recently approved federal waiver of certain Medicaid requirements and through provisions of the Affordable Care Act. Health Care Services believes it is premature to make the recommended legislative changes at this time, but will consider seeking such legislation, as warranted, in the future.

Department of Public Health

It Faces Significant Fiscal Challenges and Lacks Transparency in Its Administration of the Every Woman Counts Program

REPORT NUMBER 2010-103R, JULY 2010

Department of Public Health's response as of December 2010

The Joint Legislative Audit Committee (audit committee) asked the Bureau of State Audits (bureau) to determine how the Every Woman Counts (EWC) program ended up in a budget crisis and whether the Department of Public Health (Public Health) has operated the EWC program efficiently over the past several years.

Finding #1: Opportunities exist for Public Health to identify and potentially redirect EWC program funds to screening services.

Our audit found that Public Health could do more to maximize the funding available to pay for screening services. When requesting additional funding from the Legislature in June 2009, Public Health claimed that redirecting funds within the EWC program from other areas—such as efforts aimed at providing outreach to women and training for medical providers—to pay for additional screening services would not be possible given federal requirements and would jeopardize federal funding from the Centers for Disease Control and Prevention (CDC). However, our analysis found that Public Health's claim was incorrect. We estimate that had Public Health redirected one-half of the amount it spent on various contracts for nonclinical activities in fiscal year 2008–09, it could have dedicated about $3.4 million to pay for screening activities. This funding would have allowed more than 27,500 additional women to obtain screening services from the EWC program.

However, Public Health's ability to identify and redirect funds toward activities that directly support women is hampered by the fact that Public Health cannot determine how much its contractors spend on other activities. For example, Public Health spent more than $6.7 million on various contracts with local governments and nonprofit organizations during fiscal year 2008–09; however, it does not know how much these contractors spent on each contracted activity because it lacks specific accounting mechanisms, such as detailed invoices to track expenditures for individual contracted activities. Instead, Public Health knows only the total amount payable under each contract and how much has been billed for general categories such as personnel costs and overhead to date. Without knowing how much contractors are spending on specific services that support the EWC program, Public Health lacks a basis to know whether the funds paid for these activities would have been better spent on additional mammograms or other screening procedures.

To ensure that Public Health maximizes its use of available funding for breast cancer screening services, we recommended that it evaluate each of the EWC program's existing contracts to determine whether the funds spent on nonclinical activities are a better use of

Audit Highlights . . .

Our review of the Department of Public Health's (Public Health) administration of the Every Woman Counts (EWC) program, revealed the following:

» ***Funding the EWC program will likely be more difficult in the future due to:***

- ***Declines in tobacco tax revenue.***
- ***Fiscal pressures placed on the State's budget resulting from the economic recession.***

» ***As a result of the budget problems, Public Health:***

- ***Asked for a budget augmentation of $13.8 million in June 2009.***
- ***Imposed more stringent eligibility requirements and froze new enrollment for six months beginning in January 2010.***

» ***Contrary to its previous claims, Public Health has a great deal of flexibility to use existing EWC program funds to provide screening services to women.***

» ***Public Health's ability to redirect funds is hampered because it cannot easily identify funds it uses for activities that do not directly support women.***

» ***Public Health does not provide the Legislature with estimates of the number of women it expects to serve in a fiscal year, even though it provides this information to the federal government to secure federal funds.***

continued on next page . . .

» *Public Health has not fully complied with certain aspects of state law. Specifically, it has not:*

- *Developed regulations that implement the EWC program—nearly 16 years after the program began.*
- *Evaluated the effectiveness of the EWC program in annual reports to the Legislature—since 1994, only one report was submitted.*

taxpayer money than paying for a woman's breast or cervical cancer screening. To the extent that Public Health continues to fund its various contracts, we further recommended that it establish clearer expectations with its contractors concerning how much money is to be spent directly on the different aspects of the EWC program and should monitor spending to confirm that these expectations are being met.

Public Health's Action: Partial corrective action taken.

Public Health's six-month response indicates that it has not evaluated all of its contracts to determine whether the funds spent are a better use of taxpayer funds than paying for additional screenings. In particular, Public Health's response indicates that it has only evaluated the contracts of its regional centers. However, it appears that Public Health's review has resulted in it taking steps to significantly reduce the costs associated with these contracts. According to a budget presentation that Public Health made to the Legislature on November 5, 2010, Public Health plans to spend between $200,000 and $220,000 over an 18-month period for each regional center. For context, these same regional centers previously had contracts spanning several years that averaged between $332,000 and $480,000 over a 12-month period. During its presentation to the Legislature, Public Health reported that two of the 10 regional centers declined to accept the reduced contracts, while another three regional centers had agreed to the reduced contract amounts. Public Health defined the contract status of the remaining five regional centers as "pending" or as requiring approval from a county board of supervisors.

Public Health's six-month response also indicated that it has communicated its expectations to the regional centers regarding their expected level-of-effort on different aspects of the program. Specifically, Public Health indicated that it has established a "percent of effort" next to each contract activity and requires contractors to perform quarterly time studies to ensure that the contractors are adhering to the contract's terms. Public Health provided a summary report of the results of the first time study that indicated where contractors were spending too little effort or too much effort relative to Public Health's expectations. The time study was based on information from one week's worth of work.

Finding #2: Public Health needs to provide the Legislature with better information regarding caseload and cost.

Although state law says that screening under the EWC program is not an entitlement, Public Health indicated that it has tried to provide all eligible women with screening services. However, rather than assess how much funding it needs to provide these services and how many women could be served as a result, our audit found that Public Health instead bases its funding requests on past expenditure trends and projected growth factors. Public Health could provide greater transparency and help establish clearer expectations for program outcomes if it gave the Legislature information on its projected caseload and the related cost, as it does with its federal grant from the CDC. The EWC program chief indicated that Public Health would like to use caseload data to be more precise in forecasting its

costs, but has not done so because it lacks confidence in the reliability of the caseload data it collects. In order to provide the federally required caseload data to the CDC, Public Health has entered into a contract with the University of California, San Francisco, to assure the quality of its caseload data. The data that Public Health submits to the CDC are the number of women served based on the federal funds provided. Had Public Health done the same at the state level, it could have helped the Legislature define expectations for the program—in terms of the number of women to be served or other similar measures—during the budget process for fiscal year 2008–09. In doing so, it would have been in a stronger position to explain to the Legislature why it needed an additional $6.3 million to pay for clinical claims for that year. Specifically, Public Health would have been able to explain to the Legislature whether it had already served the agreed-upon number of women based on the funding provided.

To ensure that Public Health can maintain fiscal control over the EWC program, we recommended that it develop budgets for the EWC program that clearly communicate to the Legislature the level of service that it can provide based on available resources. We further recommended that Public Health seek legislation or other guidance from the Legislature to define actions the program may take to ensure that spending stays within amounts appropriated for a fiscal year.

Public Health's Action: Partial corrective action taken.

In its 60-day update, Public Health indicated that it had developed a caseload estimate methodology using a time-series regression analysis and was pursuing a formal estimate process for fiscal year 2010–11. In its six-month response, Public Health indicated that it was finalizing its estimate package for inclusion in the Governor's Budget for fiscal year 2010–11; however, it did not provide a copy of its estimate package for our review. Public Health's six-month response also indicated that it had requested the State's Fiscal Intermediary, Hewlett Packard, to collect Social Security numbers for women enrolled in the program. Public Health intends to use Social Security numbers as a unique identifier to better track the program's caseload and to improve its caseload estimates in the future. Public Health expects Hewlett Packard to implement this system change in the summer of 2011.

Section 169 of the Budget Act of 2010 Trailer Bill on Health (SB 853, Chapter 717, Statutes of 2010), required Public Health to provide the Legislature with quarterly updates on program caseload, estimated expenditures, and related program monitoring. Public Health's six-month response to the audit included a copy of the report it submitted to the Legislature for the first quarter of fiscal year 2010–11. The report disclosed information regarding the amounts paid for various clinical services and the number of unique identification numbers—which are assigned to women—associated with the paid claims. Public Health also appropriately disclosed to the Legislature that the number of unique identification numbers included in its report would not equate to the unique number of women served, since one woman could have multiple identification numbers.

Finding #3: Public Health needs to provide more transparency regarding how it administers the EWC program to promote public input and enhance legislative oversight.

Finally, our audit found that Public Health could do more to improve the public transparency and accountability with which it administers the EWC program. State law requires Public Health to develop regulations that implement the EWC program. Nearly 16 years after the program began, such regulations still have not been developed. Public Health cited staff and funding limitations as the cause for the delay. Nevertheless, had Public Health developed the required regulations, it would have provided the public with an opportunity to comment and to provide input on important aspects of the EWC program, such as eligibility requirements and service priorities should funding be exhausted. State law also requires Public Health to evaluate the effectiveness of the EWC program annually and submit a report on its findings to the Legislature. Specifically, the report is required to contain information such as the number of women served and their race, ethnicity, and geographic area, as well as information on the number of women in whom cancer was detected through the screening services provided and the stage at which it was detected. Since this reporting requirement was placed in state law in 1994, the

Legislature has received only one report—in August 1996—in response to this requirement. This lack of information on the effectiveness of the EWC program limits Public Health's ability to advocate for appropriate funding and hampers the Legislature's and the public's ability to exercise oversight.

To ensure better public transparency and accountability for how the EWC program is administered, we recommended that Public Health comply with state law to develop regulations, based on input from the public and interested parties, that would direct how Public Health administers the EWC program. At a minimum, such regulations should define the eligibility criteria for women seeking access to EWC screening services. We further recommended that Public Health provide the Legislature and the public with a time frame indicating when it will issue its annual report on the effectiveness of the EWC program. Further, Public Health should inform the Legislature and the public of the steps it is taking to continue to comply with the annual reporting requirement in the future.

Public Health's Action: Pending.

Public Health indicated that it is in the process of developing regulations for the program that will further define how the program will be administered. Public Health indicated that certain staff have attended training provided by the Office of Administrative Law regarding the development of regulations. According to its six-month response, Public Health has also hired a consultant with rule-making experience. Public Health's six-month response did not provide an estimate on when the program's regulations would be finalized or available for public comment. Further, Public Health's response did not indicate whether it was contemplating defining eligibility requirements for women, or establishing protocols for responding to budget shortfalls. Finally, Public Health's six-month response indicated that it is finalizing its report to the Legislature regarding the program's performance and expects to release the report on February 1, 2011.

Dymally-Alatorre Bilingual Services Act

State Agencies Do Not Fully Comply With the Act, and Local Governments Could Do More to Address Their Clients' Needs

REPORT NUMBER 2010-106, NOVEMBER 2010

Responses from 11 audited state agencies as of November 2010 and three local agencies as of December 2010

The Joint Legislative Audit Committee (audit committee) asked the Bureau of State Audits to determine whether state and local agencies comply with the Dymally-Alatorre Bilingual Services Act (Act). The Act is intended to ensure that individuals who do not speak or write English or whose primary language is not English, referred to in our report as limited-English-proficient (LEP) clients, are not prevented from using public services because of language barriers. For a sample of state and local agencies, the audit committee asked us to determine the procedures and practices that the agencies use to identify the need for language assistance, to evaluate whether these processes accurately identify actual need, and to determine the effectiveness of the methods that the agencies use to monitor their own compliance with the Act. We selected a sample of 10 state agencies for our review, and we surveyed 25 counties and cities throughout the State. The audit committee also asked us to review the policies and procedures used by the State Personnel Board (Personnel Board) to monitor and enforce state agencies' compliance with the Act.

Finding #1: The Personnel Board does not inform all state agencies about their responsibilities under the Act.

The Personnel Board is not meeting the Act's requirement that it inform all state agencies of their duties under the Act. The Act requires the Personnel Board to notify state agencies of such responsibilities, including the need to conduct a language survey at each of their field offices by October 1 of each even-numbered year to identify languages other than English that 5 percent or more of the state agencies' LEP clients (substantial LEP populations) speak. In its efforts to meet this requirement, the Personnel Board created a master list to identify and track the agencies that were potentially required to comply with the Act during the 2008 biennial language survey and the 2009 biennial implementation plan cycle (2008–09 biennial reporting cycle). One of the sources for its master list is a report of state entities that it creates from a file it receives from the State Controller's Office. However, the Personnel Board's chief information officer explained that the Personnel Board is unsure of the parameters that determine which entities that file includes. He asserted that the file would include all major agencies but that some smaller boards or commissions might be omitted. We identified at least nine entities that the Personnel Board should have informed about their responsibilities under the Act but did not.

Audit Highlights . . .

Our review of state and local agencies' compliance with the Dymally-Alatorre Bilingual Services Act (Act) revealed that the State Personnel Board (Personnel Board):

» *Has not effectively implemented key recommendations from our 1999 report.*

» *Is not meeting most of its responsibilities under the Act, including:*

- *Informing state agencies of their responsibilities and ensuring they assess their clients' language needs.*
- *Evaluating compliance with the Act and ordering deficient state agencies to take corrective action.*
- *Ensuring complaints are resolved timely.*

» *Further, our review of 10 state agencies' compliance with the Act revealed the following:*

- *Nine conducted required language surveys, yet four reported erroneous results and two could not adequately support their results.*
- *None had adequate procedures in place to determine compliance with requirements for translation of certain written materials.*
- *Some are not maximizing opportunities to reduce their bilingual services costs by leveraging existing California Multiple Award Schedules or the Personnel Board's contracts.*

continued on next page . . .

Moreover, our survey of administrators and department managers in 25 cities and counties throughout California disclosed the following:

» *Some are not fully addressing their clients' bilingual needs.*

» *Several have not translated materials explaining their services.*

» *Many are not aware of the Act and do not have formal policies for providing bilingual services.*

To ensure that all state agencies subject to the Act are aware of their potential responsibilities to provide bilingual services, we recommended that the Personnel Board improve its processes to identify and inform all such state agencies of the Act's requirements.

Personnel Board's Action: Pending.

The Personnel Board concurs with this recommendation and stated that it has obtained the Department of Finance's Uniform Codes Manual to create a comprehensive state agency listing. In addition, the Personnel Board reported that its bilingual services program's processes will also include procedures to ensure that all newly created state agencies are properly notified and contacted with regard to both language surveys and implementation plans.

Finding #2: The Personnel Board does not sufficiently monitor state agencies' participation in language surveys.

The Personnel Board does not always ensure that state agencies conduct language surveys to identify their clients' language needs. The Personnel Board identified 151 state agencies as potentially subject to the Act in 2008; however, only 58 of these agencies conducted language surveys. Further, the Personnel Board's records also indicate that three of the 58 agencies did not follow through and submit implementation plans after completing their language surveys. Records also show that 33 of the 151 state agencies did not take part in the surveys, even though the Personnel Board did not exempt them from doing so. Finally, the Personnel Board exempted the remaining 60 agencies from participating in the 2008 biennial language survey, but the Personnel Board did not always adhere to the Act's exemption criteria when granting these exemptions. If the Personnel Board does not make certain that state agencies conduct language surveys and prepare implementation plans, or if the Personnel Board inappropriately grants exemptions, it is not ensuring that state agencies that provide services to the public are aware of and address the language needs of their LEP clients. The Personnel Board's bilingual services program manager acknowledged that the Personnel Board does not have formal procedures for following up with state agencies that do not submit language surveys or implementation plans, and also agreed that the Personnel Board's exemption process needs improvement.

We recommended that the Personnel Board make certain that every state agency required to comply with the Act conducts language surveys and submits implementation plans unless the Personnel Board exempts them from these requirements. The Personnel Board should also ensure that it adheres to the specific criteria contained in the Act when exempting agencies from conducting language surveys or preparing implementation plans.

Personnel Board's Action: Partial corrective action taken.

The Personnel Board concurs with this recommendation and stated that its bilingual services program's processes will include procedures to ensure that all newly created state agencies are properly notified and contacted with regard to both language

surveys and implementation plans. The Personnel Board also indicated that it has incorporated accurate exemption language as specified in the Act into the forms for the language survey and implementation plan. Finally, the Personnel Board reported that its bilingual services program has instituted a tracking mechanism and review process for each exemption approval to reduce the risk of error.

Finding #3: The Personnel Board does not require state agencies to submit key information.

The Personnel Board does not require state agencies to submit critical information that it needs to assess whether the agencies are meeting all of their responsibilities to serve their LEP clients. The Personnel Board receives state agencies' language survey results and implementation plans electronically through an online system that it has designed for this purpose. However, the Personnel Board does not require state agencies to identify their deficiencies in providing translated written materials, to provide detailed descriptions of how they plan to address any deficiencies in written materials or staffing, or to identify when they will remedy any noted deficiencies. Because the Personnel Board does not solicit all required information from state agencies, it cannot fulfill its monitoring and enforcement responsibilities.

The Personnel Board's bilingual services program manager agreed that the limited information the Personnel Board collects inhibits its ability to monitor and enforce state agencies' compliance with the Act. She also said that the Personnel Board does not adequately review agencies' implementation plans or conduct other formal monitoring activities to evaluate whether the state agencies are complying with the Act's staffing and written materials requirements. Additionally, she acknowledged that the Personnel Board does not order agencies to make changes to their implementation plans or to provide periodic progress reports on their efforts to comply with the Act, and it does not otherwise order state agencies to comply with the Act. Finally, she told us that the bilingual services unit currently has only four staff, which she asserts is not enough to address all of the Personnel Board's responsibilities under the Act.

We recommended that the Personnel Board require state agencies to provide all of the information required by the Act. For example, the Personnel Board should ensure that state agencies identify their deficiencies in staffing and translated written materials and that the state agencies' implementation plans detail sufficiently how and when they plan to address these deficiencies.

In addition, we recommended that the Personnel Board assess the adequacy of state agencies' language surveys and implementation plans. If it determines that implementation plans do not address deficiencies in staffing or written materials adequately, the Personnel Board should order the agencies to revise or supplement their plans accordingly. The Personnel Board should also require state agencies to report to it every six months on their progress in addressing their deficiencies. If the Personnel Board determines that state agencies have not made reasonable progress toward complying with the Act, we recommended that it consider ordering them to comply with the Act. These actions could include ordering state agency officials to appear before the Personnel Board to explain why their agencies have not complied. If these actions or its other efforts to enforce the Act are ineffective, the Personnel Board should consider asking a court to issue writs of mandate under Section 1085 of the Code of Civil Procedure, to require agencies to perform their duties.

Finally, we recommended that the Personnel Board seek enough additional staff to fulfill its obligations under the Act, or seek changes to the Act that would reduce its responsibilities and make them commensurate with its staffing levels.

Personnel Board's Action: Partial corrective action taken.

The Personnel Board concurs with these recommendations and reported that it has revised its forms to capture all of the information required by the Act. In addition, the Personnel Board stated that if it determines that state agencies' implementation plans do not adequately address deficiencies,

its bilingual services program staff will follow up with the agencies to supplement their plans. The Personnel Board also indicated that it has revised its bilingual services program's procedures to incorporate a six-month progress report by deficient agencies. Further, the Personnel Board agreed that its five-member board should order noncompliant agencies to appear before the board to explain their noncompliance, and stated that its bilingual services program revised its procedures accordingly. The Personnel Board also indicated that it will consider additional appropriate measures to enforce compliance. Finally, the Personnel Board stated that it will consider options such as legislative changes and/or budget change proposals to increase staffing.

Finding #4: The Personnel Board generally does not ensure that language access complaints are resolved.

In identifying other practices the Personnel Board uses to monitor state agencies' compliance with the Act, the bilingual services program manager stated that the Personnel Board implemented a toll-free complaint line with mailbox options for the top 12 languages other than English reportedly encountered by state agencies. At that time, it sent both a memorandum informing state agencies of the complaint line and posters for the agencies to display in their field offices. The posters display a message in all 12 languages that informs clients of their right to receive services and information in their native languages and that directs them to call the Personnel Board's complaint line if state agencies do not meet the clients' language needs.

The Personnel Board intends its complaint process to ensure that clients' issues are directed to the appropriate government agency for resolution; consequently, in most cases the Personnel Board forwards the complaints to relevant state agencies for them to resolve. However, it generally does not follow up with the responsible state agencies to ensure that language access complaints are resolved; therefore, the Personnel Board does not have assurance that state agencies are addressing the language needs of these clients. In one instance, an individual repeatedly called the Personnel Board's complaint line over a period of nearly three weeks to report that he had not received language assistance from a state agency. If the Personnel Board had followed up with the agency to ensure that it resolved the initial complaint, the Personnel Board might have eliminated the need for this individual to make subsequent calls.

We recommended that the Personnel Board follow up with the responsible state agencies to ensure that the agencies resolve the language access complaints it receives in a timely manner.

Personnel Board's Action: Corrective action taken.

The Personnel Board revised the bilingual services program's procedures to incorporate additional fields to its tracking system to capture the date that a complaint was resolved and how it was resolved.

Finding #5: The Personnel Board's biennial report lacks substance.

The Act requires the Personnel Board to identify significant problems or deficiencies and propose solutions where warranted in its reports to the Legislature. We reviewed the most recent report, which the Personnel Board issued in March 2010, and we found that it does not clearly identify whether state agencies have the number of qualified bilingual staff in public contact positions that is sufficient to serve the agencies' substantial populations of LEP clients. As in the case of staffing deficiencies, the Personnel Board's March 2010 report also does not clearly address whether state agencies are meeting the Act's requirements for translating written materials. In addition, the Personnel Board's March 2010 report does not identify specific agencies that may not be complying with the Act. For example, it states that 13 state agencies accounted for 90 percent of the reported bilingual position deficiencies, but it does not identify these agencies by name. Further, although state agencies often have field offices located throughout the State, the report does not show these deficiencies by field office.

We recommended that the Personnel Board improve the content of its biennial report to the Legislature to identify problems more clearly and to propose solutions where warranted. Specifically, the report should clearly indicate whether state agencies have true staffing deficiencies or deficiencies in translated materials. In addition, the report should identify any agencies that are not complying with the Act and should present key survey and implementation plan results by state agency and field office to better inform policymakers and the public about the language needs of residents in certain areas of the State and about state agencies' available resources to meet those needs.

Personnel Board's Action: Pending.

The Personnel Board concurs with this recommendation and stated that it will revise the format and content of future biennial reports to reflect more comprehensive and meaningful data.

Finding #6: State agencies do not fully comply with the Act.

Although nine of the 10 agencies we reviewed conducted language surveys in 2008, four reported erroneous survey results for one or more of their local offices, and two did not have sufficient documentation to support their survey results. If agencies use inaccurate survey data or do not retain documentation supporting their survey results, they compromise their ability to evaluate their potential need for additional bilingual staff and to identify written materials they need to translate. The tenth agency we reviewed, the California Emergency Management Agency (Emergency Management), failed to conduct the 2008 biennial language survey. Additionally, only one of the state agencies we reviewed formally analyzed its survey results to determine whether the use of other available options, in addition to qualified bilingual staff in public contact positions, was serving the language needs of its clients, as the Act requires. None of the state agencies we reviewed had adequate procedures in place to determine whether they met the Act's requirements to translate certain written materials for their substantial LEP populations. Furthermore, most of the state agencies we reviewed have not developed plans to address their deficiencies in staffing and translated written materials.

To ensure that they meet their constituents' language needs, we recommended that state agencies do the following:

- Make certain that they accurately assess and report their clients' language needs to the Personnel Board.
- Analyze formally their language survey results and consider other available bilingual resources to determine their true staffing deficiencies.
- Establish procedures to identify the written materials that the Act requires them to translate into other languages and ensure that such materials are translated or made accessible to the agencies' LEP clients.
- Develop detailed corrective action plans describing how and when the state agencies will address their staffing and written materials deficiencies. In addition, they should submit these corrective action plans to the Personnel Board as part of the state agencies' overall implementation plans.

Emergency Management's Action: Partial corrective action taken.

Emergency Management stated that it will participate in the language survey that is held every even-numbered year, and will submit its language survey results to the Personnel Board by the due date. Emergency Management conducted its 2010 biennial language survey and submitted the results to the Personnel Board in October 2010. Based on its language survey results, Emergency Management indicated that it was able to determine which divisions may require the services of a bilingual employee within a specific program. Emergency Management also asserted that it will

ensure that translated written materials in the appropriate languages are made accessible for its LEP clients. In addition, Emergency Management stated that it is in the process of updating its bilingual services policy, which includes creating a bilingual services handbook that explains the responsibilities and requirements of the Act. Finally, Emergency Management reported that it is in the process of developing an implementation plan showing the corrective actions to be taken to ensure there are no staffing or translated written materials deficiencies, and it will submit this implementation plan to the Personnel Board by the October 2011 due date.

California Highway Patrol's Action: Pending.

The California Highway Patrol (Highway Patrol) stated that it will continue to assess its clients' language needs and to report accurate information to the Personnel Board. In addition, it will continue to enhance and formalize methods of analyzing language survey results and monitoring bilingual staff deficiencies. Highway Patrol also asserted that it will develop a list of documents that are required to be translated and compare this list to existing translations to identify any remaining translated material needs. Finally, Highway Patrol stated that it will submit to the Personnel Board corrective action plans that address any staffing and written materials deficiencies by April 2011.

Department of Corrections and Rehabilitation's Action: Pending.

The Department of Corrections and Rehabilitation (Corrections) agreed that there are deficiencies with regard to compliance with the Act, and stated that it will evaluate the deficiencies identified in our audit further and take corrective action. Corrections stated that it would address our specific recommendations in a corrective action plan at 60-day, six-month, and one-year intervals.

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

The Department of Food and Agriculture (Food and Agriculture) reported that it enhanced its training processes and provided education and guidance for all language survey reporting assistants prior to the commencement of its 2010 biennial language survey. In addition, its bilingual services program coordinator worked closely with its reporting assistants to ensure that they have a better understanding of their role and responsibilities, and are following the appropriate standards and procedures in tallying LEP contacts. Further, at the conclusion of the 2010 biennial language survey, its bilingual services program coordinator reviewed all the tally sheets from every participating division to make sure that the information gathered and reported will yield accurate survey results. In addition, Food and Agriculture stated that it has engaged in a dialogue with the Personnel Board and other state agencies to collaboratively share ideas, efforts, and resources to address the requirements of the Act. Finally, Food and Agriculture reported that its equal employment opportunity officer recently invited other equal employment opportunity professionals to form a collaborative group that will discuss and work together in defining and implementing the provisions of the Act.

Department of Housing and Community Development's Action: Partial corrective action taken.

The Department of Housing and Community Development (Housing) reported that beginning with the 2010 biennial language survey, it assigned responsibility for the survey to its equal employment opportunity officer, who also serves as its bilingual services program coordinator. This individual is responsible for coordinating, implementing, and overseeing the language survey, analyzing completed survey tally sheets, reporting the results of the analysis to the Personnel Board, and maintaining sufficient documentation. Housing also indicated that it will continue to formally analyze its language survey results, including considering other available options for bilingual services in determining staffing deficiencies. In addition, Housing indicated that by June 2011, it will begin to formally document such analyses. Housing also stated that by June 2011 it will confer with the Personnel Board and other Act-compliant departments to identify best practices for determining which written materials need to be translated. Furthermore, Housing indicated that it will develop procedures for identifying written materials to be translated, create a list of written materials that require translation,

and establish dates for the translation and distribution of written materials by June 2012. However, we believe that Housing should develop these procedures much earlier so that its LEP clients have access to this information sooner. In fact, we believe that Housing should develop these procedures and describe how and when it will address any written materials deficiencies in its next biennial implementation plan, which is due in October 2011. Housing also reported that by June 2011, it will submit a memorandum to the Personnel Board informing it that a detailed corrective action plan relative to staffing deficiencies is not required because its 2010 biennial language survey revealed that Housing no longer has staffing deficiencies. Finally, Housing indicated that by June 2011 it will also prepare and submit to the Personnel Board a detailed corrective action plan that describes how and when it will address its written deficiencies. As noted above, Housing will need to develop procedures for identifying materials requiring translation before it will be in a position to develop a detailed corrective action plan for addressing any written materials deficiencies.

Department of Justice's Action: Partial corrective action taken.

The Department of Justice (Justice) reported that it has recently appointed a new bilingual services program coordinator to monitor the program, the biennial language survey, and the subsequent implementation plan. Justice also indicated that it has adopted and implemented new procedures that provide a higher level of quality control regarding reviewing and analyzing the language survey data in order to avoid future reporting errors. In addition, Justice stated that it carefully analyzed its 2008 biennial language survey results and determined that its true staffing deficiencies were significantly less than originally reported. Justice indicated that these findings were included in an implementation plan follow-up report it submitted to the Personnel Board. Furthermore, Justice reported that it has made draft revisions to the bilingual services program portion of its administrative manual to detail the procedures used to identify written materials that require translation under the Act. Finally, Justice stated that the implementation plan follow-up report that it submitted to the Personnel Board in August 2010 included a corrective action plan to address the deficiencies of the 2008–09 biennial reporting cycle. Furthermore, Justice plans to take corrective actions to address any future identified staffing or written materials deficiencies.

Department of Motor Vehicles' Action: Partial corrective action taken.

The Department of Motor Vehicles (Motor Vehicles) reported that it implemented improved procedures and incorporated additional checks and balances for the 2010 biennial language survey to ensure that it accurately assesses and reports its LEP clients' language needs to the Personnel Board. Motor Vehicles formally analyzes its language survey results and considers other available bilingual resources to determine its true staffing deficiencies. Motor Vehicles will establish a taskforce and create a list of printed materials that require translation by April 2011. Finally, Motor Vehicles indicated that it will develop and submit to the Personnel Board a detailed corrective action plan that describes how and when it will address its written materials deficiencies by October 2011.

Department of Public Health's Action: Pending.

The Department of Public Health (Public Health) reported that it will continue to ensure that it accurately assesses and reports its client's language needs to the Personnel Board. Public Health will also analyze the language survey results and its available bilingual resources to determine its true staffing deficiencies by February 2011. Public Health also stated that it will develop procedures for identifying written materials needing translation for its LEP clients by March 2011. Finally, Public Health will submit an implementation plan to the Personnel Board that includes corrective action plans addressing any staffing and written materials deficiencies by October 2011.

Department of Toxic Substances Control's Action: Pending.

The Department of Toxic Substances Control (Toxic Substances Control) accurately assessed and reported its client's language needs to the Personnel Board. Toxic Substances Control also reported that it performs an internal analysis of its language survey results to determine whether it has true staffing deficiencies. However, it recognizes that it needs to formally document this analysis, and

thus it will ensure that all future analyses of its language survey results and resulting conclusions are formally documented and retained. Toxic Substances Control also indicated that it will develop procedures to identify the materials the Act requires to be translated, as well as a process to ensure that those materials are translated or made accessible to its LEP clients. Finally, Toxic Substances Control will develop a corrective action plan describing how and when it will address its staffing and written material deficiencies and it will include this plan in the implementation plan it submits to the Personnel Board.

Employment Development Department's Action: Partial corrective action taken.

The Employment Development Department (Employment Development) reported that it designed and implemented corrective actions for the recently completed 2010 language survey to ensure it collected all hard-copy documentation from all public contact employees so there would be no questions about the accuracy of data provided to the Personnel Board. In addition, Employment Development stated that it added controls over data collection, tabulation, and submission so that all information could be traced back to hard-copy documentation. Employment Development stated that it does not consider it cost-effective to implement procedures that require extensive analysis of how to remedy minor staffing deficiencies, but it will update its procedures to have managers document their analyses for significant deficiencies. We believe that Employment Development could determine whether it has sufficient alternative resources (i.e., certified staff from other units, contract staff, etc.) to mitigate the staffing deficiencies identified in its biennial language survey without having to perform an "extensive analysis." Employment Development also reported that it will supplement its existing policy and procedures to provide further guidance about translating materials into other languages. This guidance will include steps to identify and maintain lists of materials that need translation, and procedures to ensure that identified materials are translated.

Finally, Employment Development stated that it will obtain operational managers' reasons for choosing a particular remedy for a staffing deficiency along with implementation details should a significant staffing deficiency occur, and will submit that information to the Personnel Board. Likewise, Employment Development stated that if future language surveys identify any materials that need translation, it will identify its corrective action steps and timeline and submit that information to the Personnel Board.

Finding #7: State agencies are not maximizing opportunities to reduce the costs of providing bilingual services.

Some state agencies are not maximizing opportunities to reduce their costs to provide bilingual services by leveraging existing California Multiple Award Schedules (CMAS) contracts with the Department of General Services (General Services) and the Personnel Board's contracts for interpretation and translation services. For example, both Employment Development and Food and Agriculture entered into separate agreements with a contractor to translate documents into Spanish at a cost of 30 cents per word; however, this service is available from a CMAS vendor for 17 cents per word. If these departments purchase these services up to their maximum contracted amounts, they will collectively end up paying approximately $47,400 more than if they purchased these services from the CMAS vendor. Moreover, the savings could be greater because the prices listed in CMAS vendors' contracts represent the maximum rates they may charge for a given service; thus, General Services strongly encourages agencies to negotiate more favorable rates with these vendors.

The Personnel Board maintains one contract for sign language interpretation services and another contract for over the telephone interpretation services and written translation services. We found that these contracts contained rates that were sometimes lower than the rates negotiated by other state agencies. Thus, state agencies needing contract interpreters or translators should check with the Personnel Board to identify the vendors with which the Personnel Board contracts and the associated rates it is paying. State agencies can use this information as leverage when negotiating prices with CMAS or other vendors.

We recommended that state agencies leverage General Services' and the Personnel Board's contracts for interpretation and translation services to potentially reduce the costs of providing bilingual services.

Emergency Management's Action: Pending.

Emergency Management reported that it will research the possibility of utilizing General Services' and the Personnel Board's contracts as a cost-effective tool to provide written translation and interpretation services for its LEP clients, and will outline this process in its 2011 implementation plan.

Highway Patrol's Action: Corrective action taken.

Highway Patrol reported that it complies with this recommendation and will continue to negotiate the lowest possible rates for bilingual services while ensuring quality deliverables.

Corrections' Action: Pending.

Corrections reported that it would review its internal procurement controls to ensure it is utilizing the reduced rates offered by existing CMAS contracts for language access services.

Food and Agriculture's Action: Pending.

Food and Agriculture reported that its equal employment opportunity office will further educate all of its divisions regarding the availability of CMAS contracts for language access services. Food and Agriculture also indicated that in upcoming training sessions and workshops, the equal employment opportunity office will promote the utilization of CMAS contracts and the importance of negotiating with CMAS vendors as a cost-effective way of providing language access services.

Housing's Action: Pending.

In an effort to achieve the best service at the lowest cost possible, Housing's equal employment opportunity officer will contact the Personnel Board to obtain information and pricing on its bilingual services contracts, and will compare those prices to the rates of the CMAS and other vendors that it currently uses for its bilingual services needs. Housing reported that these activities will occur by June 2011.

Justice's Action: Pending.

Justice reported that it will consider exploring the bureau's recommendation to leverage General Services' and the Personnel Board's contracts when its current language interpretation and translation service contract expires.

Motor Vehicles' Action: Corrective action taken.

Motor Vehicles reported that it already complies with this recommendation, and therefore, no further action is required.

Public Health's Action: Pending.

Public Health reported that it will issue a contract bulletin by March 2011 outlining the usage of CMAS contracts to procure interpretation and translation services. Public Health indicated that this bulletin will also inform department employees that utilizing CMAS contracts could provide leverage to reduce costs.

Toxic Substances Control's Action: Pending.

Toxic Substances Control reported that it will consider General Services' and the Personnel Board's contracts for interpretation and translation services when appropriate in an effort to reduce the costs of providing bilingual services.

Employment Development's Action: Pending.

Employment Development asserted that it leverages all of General Services' master and statewide contracts, including CMAS contracts, when appropriate for use. However, Employment Development stated that before contracting out for personal services with a private vendor, as is available through CMAS, it first considers an agreement with another state agency. Nonetheless, the Employment Development contract described previously illustrates that state agencies have opportunities to reduce their costs of providing bilingual services by leveraging CMAS contracts.

Finding #8: Two state agencies did not follow contracting rules to pay for their bilingual services.

During the course of our audit, we discovered some inappropriate contracting practices at Public Health and Corrections. The Public Contracts Code generally requires state agencies to obtain a minimum of three bids when contracting for services valued at $5,000 or more. In addition, the State Contracting Manual prohibits state agencies from splitting into separate tasks, steps, phases, locations, or delivery times to avoid competitive bidding requirements any series of related services that would normally be combined and bid as one job.

Despite these requirements, during fiscal year 2007–08, Public Health used four individual service orders for $4,999.99 each to one vendor for interpreting services. Instead of executing multiple service orders having an aggregate value exceeding $5,000 with one vendor for the same service, Public Health should have combined the services into one job and solicited competitive bids. Public Health has a decentralized procurement process and does not track centrally the service orders that exist for language access services; thus, it places itself at risk for violating the State's contracting rules.

Corrections established five individual service orders for $4,999.99 each to purchase interpretation services from one vendor during fiscal year 2009–10. It agrees that these five service orders should have been consolidated into a single competitively bid contract. According to Corrections' service contracts chief, it inadvertently used the five service orders in this case to purchase services from one vendor because its headquarters office received these service orders from different parole regions at different times, and it did not identify the need for a single contract.

We recommended that Public Health and Corrections develop procedures to detect and prevent contract splitting.

Corrections' Action: Pending.

Corrections reported that it would review its internal procurement controls to ensure it is utilizing the reduced rates offered by existing CMAS contracts for language access services. In addition, Corrections stated that it would address our specific recommendations in a corrective action plan at 60-day, six-month, and one-year intervals.

Public Health's Action: Pending.

Public Health reported that it will strengthen its oversight of service orders by providing semi-annual reminders to its staff on the use of service orders to ensure that programs are complying with the guidelines of its service order manual. In addition, Public Health stated that its internal auditors will perform periodic inspections to ensure compliance with contract requirements, prevent splitting of service orders, and to ensure service orders do not exceed the maximum allowed amount of

$4,999.99 per service type and contractor in one fiscal year. Finally, Public Health indicated that it will issue a policy memo by January 2011 that outlines the appropriate and inappropriate uses of service orders and the tracking log that each program must keep for auditing purposes.

Finding #9: Some local agencies have no formal process for clients to complain about any lack of bilingual services.

Our survey of local government administrators and department managers revealed that residents in the cities of Fremont, Santa Ana, and Garden Grove may have insufficient means of voicing their need for bilingual services. Specifically, these jurisdictions reported that they do not have a complaint process at the city's administration offices or at the individual local department included in our survey that would allow the public to notify them about a lack of available bilingual staff or translated written materials. Local agencies without a formal complaint process that would allow their LEP clients to report formally any lack of bilingual services may not hear or address such complaints appropriately.

We recommended that the cities of Fremont, Santa Ana, and Garden Grove should consider establishing complaint processes through which the public can report the absence of bilingual services or resources.

City of Fremont's Action: Pending.

The city of Fremont reported that it is currently researching the complaint processes that other jurisdictions have in place and plans to adopt a complaint procedure in early 2011.

City of Santa Ana's Action: Pending.

The city of Santa Ana (Santa Ana) reported that it plans to provide complaint forms regarding bilingual services and resources at all of its public counters and on its Web site, and that these forms will be available in each of the primary languages spoken in Santa Ana. In addition, Santa Ana stated that it will ensure that a central department is responsible for addressing all complaints. Finally, Santa Ana asserted that it will ensure that any complaints are addressed in a timely manner.

City of Garden Grove's Action: Pending.

The city of Garden Grove (Garden Grove) reported that it will establish a central point of contact for complaints related to the Act. In addition, Garden Grove stated that over the next few months, it will draft a formal complaint process as an administrative regulation. When this regulation is adopted, the formal complaint process will be made available to the public in all of the city's public facilities and on its Web site, in each of the city's major languages.

Department of Public Health

It Reported Inaccurate Financial Information and Can Likely Increase Revenues for the State and Federal Health Facilities Citation Penalties Accounts

REPORT NUMBER 2010-108, JUNE 2010

Department of Public Health's response as of December 2010

The Joint Legislative Audit Committee (audit committee) requested that the Bureau of State Audits (bureau) conduct an audit of the Department of Public Health's (Public Health) management of the State Health Facilities Citation Penalties Account (state account) and the Federal Health Facilities Citation Penalties Account (federal account), into which monetary penalties collected from long-term health care facilities are deposited.

Finding #1: Public Health prepared fund condition statements for the federal account that overstated funds available for appropriation.

The federal account's fund condition statements for fiscal years 2004–05 through 2008–09, which appeared in the governor's budget, contained significant errors. Specifically, Public Health and its predecessor excluded financial information concerning the Department of Aging (Aging) when preparing the fund condition statements for the federal account, causing the fund balance to be overstated each year. The inaccurate reporting of the federal account's fund balance led to an overstatement of $9.9 million as of June 30, 2009.

The fund balance overstatements occurred in large part because Public Health's budget section excluded financial information concerning Aging when preparing the fund condition statements for the federal account. Since fiscal year 2003–04, Aging has received an annual budget act appropriation from the federal account for its Long-Term Care Ombudsman Program (ombudsman program). Until March 30, 2010, the procedure manual used by staff in Public Health's budget section when preparing the fund condition statements did not indicate that preparation of the fund condition statement for the federal account required merging the activity associated with the financial statements from Aging's ombudsman program. Further, according to a manager in Public Health's budget section, the section did not have a sufficient number of qualified staff to ensure that the fund condition statements were accurately prepared. As a result, Public Health prepared inaccurate fund condition statements for inclusion in the governor's budget.

We recommended that Public Health include text in its budget section procedure manual requiring staff to reconcile the revenues, expenditures, and fund balance as supported by Aging's and Public Health's accounting records to the fund condition statement prepared for inclusion in the governor's budget. We also recommended that a supervisory review be performed of the reconciliation of the fund condition to Aging's and Public Health's accounting records.

Audit Highlights . . .

Our review of the Department of Public Health's (Public Health) management of the state and federal Health Facilities Citation Penalties accounts (state and federal accounts) over a nearly seven-year period revealed the following:

- *Public Health's poor internal controls led to significant errors in the fund balance for the federal account—for at least five years, it or its predecessor overstated the fund balances that are included in the governor's budget.*
- *The federal account's ending fund balance for fiscal year 2008–09 was overstated by $9.9 million.*
- *Although Public Health generally collects all nonappealed monetary penalties, it inappropriately granted reductions to 135 citations.*
- *In part due to a lengthy appeals process, Public Health collects a significantly lower portion of monetary penalties for appealed citations.*
- *Opportunities exist for Public Health to increase revenue for both the state and federal accounts.*

Public Health's Action: Corrective action taken.

Public Health stated that the budget section procedures manual has been updated with the revised fund condition statement procedures, which include obtaining financial statements from other departments and performing a supervisory review of the reconciliation. Further, Public Health stated that the budget section performed the internal review of the fund condition statements in October 2010.

Finding #2: Public Health collects a high proportion of the monetary penalties it imposed on facilities that chose not to appeal, but some penalties were reduced inappropriately.

Although we found that Public Health generally collected all of the monetary penalties that were collectable for the citations it issued to facilities that decided not to appeal monetary penalties imposed from fiscal year 2003–04 through March 15, 2010, the original penalty amounts were often substantially decreased before facilities made their payments. These decreases were generally due to state law, which grants facilities an automatic 35 percent reduction in original monetary penalty amounts if the penalties are paid and not contested within time frames specified in law. We found that Public Health inappropriately granted reductions to facilities that paid their penalties after the time frames specified in law, depriving the state account of roughly $70,000 in revenues that it was otherwise due. These inappropriate reductions were mainly due to the inaccurate calculation made by the Electronic Licensing Management System (ELMS), the system used by Public Health to track facilities' enforcement penalties resulting from noncompliance with state requirements to determine whether a facility's payment was received in time to warrant a 35 percent reduction. Depending on the type of violation, state law specifies that to be eligible for a reduction, a facility must pay the monetary penalty within 15 or 30 business days after the issuance of the citation. However, ELMS was programmed instead to use the date that a facility certifies that it received the citation imposing the monetary penalty. In addition, we also noted that the monetary penalty assessment form that Public Health sends to a facility when issuing a citation incorrectly referenced state law, potentially giving facilities the impression that they have more time in which to make their payments to receive the reduction than is allowed under state law.

We recommended that Public Health update ELMS to use the issuance date of the citation as specified in state law when calculating whether a facility's payment was received in time to warrant a 35 percent reduction. Further, we recommended that Public Health update its monetary penalty assessment form to ensure it contains language that is consistent with state law. Finally, we recommended that to the extent Public Health believes state law should be revised to reflect the date on which the facility received the citation, rather than the date the citation was issued, it should seek legislation to make such a change.

Public Health's Action: Partial corrective action taken.

Public Health stated that it is finalizing the enhancement of the ELMS to calculate the 35 percent reduction based on the issuance date of the citation. Further, Public Health stated that the monetary penalty assessment form was updated in September to contain language consistent with state law. Finally, Public Health stated that it does not believe it needs to revise state law to reflect the date on which the facility received the citation, rather than the date the citation was issued. Thus, our related recommendation is not applicable.

Finding #3: Prompt collection of monetary penalties is affected by appealed citations and the backlog of facilities awaiting citation review conferences.

Public Health is unable to collect millions of dollars in monetary penalties that it imposed on facilities over the past several years because facilities have appealed the citations. Specifically, facilities appealed more than 1,400 citations issued from fiscal year 2003–04 through March 15, 2010, associated with roughly $15.7 million in monetary penalties. Of these, as of March 15, 2010, nearly 1,000 citations

comprising nearly $9 million in monetary penalties were still under appeal. Public Health may not collect appealed monetary penalties until a decision is reached to uphold, modify, or settle the monetary penalty. As a result, there are incentives for facilities to appeal citations, particularly those involving higher penalties, because facilities can defer payments of the penalties and possibly reduce the original amounts imposed.

Further, both Public Health and external parties, such as arbitrators or administrative law judges, may significantly reduce monetary penalty amounts. Public Health reduced monetary penalties by over $2.7 million from fiscal year 2003–04 through March 15, 2010. This resulted in an average reduction of 59 percent of the originally imposed citations that were appealed, much more than the 35 percent reduction allowed by state law for facilities that do not contest a penalty and pay it within a specified time frame. Rather than pursuing an appeal though the judicial system, a facility may request a citation review conference, in which an independent hearing officer from Public Health's Office of Legal Services makes a determination on whether to uphold, modify, or dismiss the citation. More than 600 citations were awaiting a citation review conference as of February 2010, with corresponding monetary penalties amounting to nearly $5 million. According to the deputy director of Legal Services, at the time of our audit, Public Health had begun taking steps to reduce the backlog of appealed citations awaiting a citation review conference, including hiring and training retired annuitants and entering into a contract with the Office of Administrative Hearings (OAH) to conduct citation review conferences for certain types of appealed citations.

Current federal law provides facilities the opportunity to refute any enforcement remedies, including monetary penalties, by way of an informal dispute resolution. Unlike the citation review conference, federal law prohibits a facility from seeking a delay of any enforcement action that the Centers for Medicare and Medicaid Services (CMS) has taken against it, including the imposition of a monetary penalty, on the grounds that the informal dispute resolution has not been completed before the effective date of the monetary penalty. Thus, if a facility has requested an informal dispute resolution that has not yet been completed by the due date of the penalty, the facility must still pay the monetary penalty.

We recommended that Public Health seek legislation authorizing it to require facilities that want to appeal a monetary penalty to pay the penalty upon its appeal, which could then be deposited into an account within the special deposit fund. In addition, we recommended that Public Health provide guidance to its staff that discourages settling appealed monetary penalties for a better term than had the facility not contested the citation and paid the penalty within the time frame specified in law to receive a 35 percent reduction, and, in instances where such a settlement did occur, document the factors that formed the basis for such a reduction. Further, we recommended that Public Health continue to take steps to eliminate its backlog of appeals awaiting a citation review conference and seek legislation amending its citation review conference process to more closely reflect the federal process by prohibiting facilities from seeking a delay of the payment of monetary penalties. Finally, we recommended that it monitor its and OAH's progress in processing appealed citations.

Public Health's Action: Partial corrective action taken.

Section 1417.5, added to the Health and Safety Code in October 2010, requires Public Health to develop recommendations to streamline its citation appeal process, and to collect citation penalty amounts upon appeal of the citation and place those funds into a special interest bearing account. The recommendations must be presented to the fiscal and policy committees of the Legislature no later than March 1, 2011.

Public Health stated that it disagrees with our finding related to establishing a policy that discourages settling appealed monetary penalties for a better term than had the facility not contested the citation, and will therefore not implement our recommendation. Additionally, Public Health stated that it will not implement our recommendation related to documenting the factors that formed the basis for reducing a monetary penalty by more than 35 percent. While Public Health agreed there should not be incentives for facilities to appeal citations, it asserted that it must maintain maximum discretion to weigh all factors in a final settlement. However, as we describe in the finding, using its discretion

in reducing monetary penalties has resulted in Public Health granting an average reduction to monetary penalties of 59 percent of the amount originally imposed over the past six years. Therefore, it appears that the manner in which Public Health is currently exercising its discretion to reduce monetary penalties could be an incentive to facilities to appeal citations.

To address the backlog of appeals awaiting a citation review conference, Public Health stated that it conducted citation review conferences for nearly all Class AA citations, which impose the highest monetary penalties. Further, Public Health set six citation review conferences and stated that 227 still need to be set for a conference. Finally, Public Health began transitioning the Class A violation citation review conferences to OAH in August 2010.

Finally, Public Health established a project manager position for the OAH interagency agreement and the coordinator of the citation review conferences. Public Health also developed a tracking system for following the progress of hearing the citations.

Finding #4: Opportunities exist to increase revenue for the state and federal accounts.

Monetary penalty amounts for three types of violations have not been updated regularly to reflect the Consumer Price Index (CPI). If state law had adjusted the monetary penalties to reflect the CPI, Public Health could have collected nearly $3.3 million more than it actually collected. Similar opportunities to increase revenue for the federal account might also exist. Although revising these monetary penalty amounts would require changes to federal regulations, Public Health could encourage CMS to seek such changes. Another opportunity for Public Health to increase revenue for the state account is to ensure that it conducts all inspections of facilities in accordance with the time frames specified in state law. Legislation effective July 1, 2007, required Public Health to incorporate both federal and state requirements into its federal survey process and thus conduct dual-purpose surveys. Although this law has been in effect for nearly three years, only about 10 percent of the surveys conducted by Public Health were dual-purpose. As a result, although Public Health currently surveys facilities for compliance with federal requirements, it has not surveyed or imposed the resulting monetary penalties for the majority of facilities in the State to ensure their compliance with state requirements. Further, Public Health may have the opportunity to increase revenue for both the state and federal accounts by requesting that they be included in the state's Surplus Money Investment Fund (SMIF). Currently, both accounts are included in the Pooled Money Investment Account and earn interest for deposit into the General Fund. The penalty accounts would earn interest that is returned to the respective accounts rather than the General Fund if they were included in the SMIF.

California is one of the few states whose laws prohibit Public Health from assessing a monetary penalty for noncompliance with state requirements and then recommending that CMS also impose a monetary penalty for noncompliance with federal requirements. Because some portion of monetary penalties resulting from Public Health's recommendations to CMS is deposited into the federal account, this law limits the amount of revenue deposited into the federal account. Further, although CMS collects interest on the monetary penalties it imposes on facilities that are not paid on time for noncompliance with federal requirements, state law does not authorize Public Health to do so. In addition, state law does not specify a time frame within which a monetary penalty must be paid if a facility elects not to appeal the citation. If state law prescribed a time frame within which a nonappealed citation must be paid, and if it authorized Public Health to collect interest on monetary penalties paid after that date, it too could collect additional revenues. An additional opportunity for Public Health to increase revenue for the federal account is by working more closely with CMS to track the outcomes of the recommendations it makes to CMS. Public Health does not currently have an effective system in place to perform this tracking.

To increase revenue for both the state and federal accounts, we recommended that Public Health seek legislation authorizing it to revise periodically the penalty amounts to reflect an inflation indicator, and encourage CMS to seek changes to federal regulations authorizing CMS to revise the monetary penalty amounts to reflect the rate of inflation. Further, we recommended that Public Health ensure

that it conducts all state surveys of facilities every two years. We also recommended that Public Health submit to the Pooled Money Investment Board a request that the board approve including both the state and federal accounts in the SMIF. Additionally, we recommended that Public Health seek authorization from the Legislature both to impose a monetary penalty and to recommend that CMS impose a monetary penalty, and to seek legislation specifying a time frame within which facilities with nonappealed citations that do not qualify for a 35 percent reduction must pay their monetary penalties and allowing Public Health to collect interest on late payments of monetary penalties. Finally, we recommended that Public Health increase its coordination with CMS to ensure that it can track CMS's implementation of the recommendations that Public Health makes to CMS.

Public Health's Action: Partial corrective action taken.

Section 1417.5, added to the Health and Safety Code in October 2010, requires Public Health to develop recommendations to increase penalty amounts, including late penalty fees, and to annually adjust penalty amounts to reflect an inflation indicator. The section also requires Public Health to recommend revisions to state law to enable the department to recommend that CMS impose a monetary penalty when Public Health determines that a facility is out of compliance with both state and federal requirements. The recommendations must be presented to the fiscal and policy committees of the Legislature no later than March 1, 2011. Additionally, Public Health stated that, in January 2011, it will forward to CMS a copy of our audit report with a cover letter that encourages CMS to periodically revise the monetary penalties.

Public Health concurs that it should conduct all state surveys of facilities every two years as required by state law. However, Public Health stated that it is unable to meet this standard at this time due to limited staffing resources.

Public Health did not entirely agree with our recommendation to seek legislation specifying a time frame within which facilities with nonappealed citations, that do not qualify for a 35 percent reduction, must pay their monetary penalties and collecting interest on late payments of monetary penalties. However, Public Health will explore proposed legislation for the 2011 Legislative Session that specifies a time frame within which nonappealed citations that do not qualify for a 35 percent reduction must be paid.

Public Health stated that it submitted a request to the Pooled Money Investment Board to include the penalty accounts in the SMIF in June. The request was approved and the penalty accounts began to accrue interest for the fourth quarter of fiscal year 2009–10.

Finally, Public Health also noted in its 60-day response that it met with CMS in June regarding tracking CMS's implementation of the recommendations that Public Health makes, and has initiated the process to track this information. In its six-month response, Public Health stated that it will request continued assistance from CMS to enable Public Health to more closely track the outcome of its recommendations.

Finding #5: Public Health has not fully implemented all 2007 audit recommendations related to the state account, and our follow-up audit identified additional concerns.

In April 2007 the bureau issued a report titled *Department of Health Services: Its Licensing and Certification Division Is Struggling to Meet State and Federal Oversight Requirements for Skilled Nursing Facilities*, Report 2006-106. This report concluded that the Department of Health Services had weak controls over its disbursement of funds from the state account and did little to ensure that the payments it made to temporary management companies were necessary or reasonable. As part of our review of Public Health's internal controls over expenditures, we performed follow-up procedures to determine whether Public Health had implemented controls over its disbursement of both state and federal account funds and whether it had taken steps to ensure that payments were necessary and reasonable.

During our follow-up review, we found that Public Health had not fully implemented the recommendation that it document its rationale for charging general support items to the state account. Specifically, Public Health made some erroneous charges totaling $15,000 to the penalty accounts, including charges for car rental expenses, in fiscal years 2007–08 and 2008–09. These charges were the result of posting errors made by Public Health in its accounting system. We also identified some additional concerns about Public Health's procedures for overseeing temporary management companies. For example, the California Health and Safety Code, Section 1325.5 (m), requires Public Health to adopt regulations for the administration of temporary managers. However, to date, they had not been developed. Rather than using formally adopted regulations, Public Health used internal procedures to guide its oversight of temporary management companies. The Administrative Procedure Act (act), which defines the process for adopting regulations, requires agencies to accept comments from interested parties regarding the proposed regulations and to hold public hearings if requested. Because Public Health followed internal policies that were developed without the process of public review, Public Health violated state law prohibiting agencies from enforcing regulations that have not been adopted in accordance with the act.

We recommended that, to ensure that it fully implements the recommendations made in the bureau's April 2007 audit report, Public Health create written procedures specifying that expenditure reports be reviewed by an accounting analyst within Public Health on a monthly basis to determine whether any charges do not apply to temporary manager payments. Further, Public Health should include in its written policies and procedures that general support items should not be charged to the penalty accounts. Finally, to ensure that it complies with current state law and increases transparency, Public Health should adopt regulations for the administration of temporary management companies.

Public Health's Action: Partial corrective action taken.

Public Health stated that it finalized and implemented the procedures specifying that expenditure reports should be reviewed by an accounting analyst within Public Health on a monthly basis. Additionally, in June 2010, Public Health circulated written policies and procedures to staff, which noted that general support items should not be charged to the penalty accounts. Finally, Public Health also stated that it will complete the regulations for the administration of temporary management companies by 2016.

Department of Social Services

Investigations of Improper Activities by State Employees, July 2008 Through December 2008

ALLEGATION I2007-0962 (REPORT I2009-1), APRIL 2009

Department of Social Services' response as of March 2010

The Department of Social Services (Social Services) failed to follow the requirements imposed by state civil service laws when a high ranking official arranged for the selection of a subordinate employee to fill a field analyst position. Social Services further violated state civil service laws by appointing the employee to a field analyst position even though she continued to perform the duties of a lower level analyst. As a result, Social Services paid the employee $6,444 more than what is permitted by the State for the duties she performed.

Investigative Highlight . . .

A high-ranking Department of Social Services (Social Services) official arranged for the selection of a subordinate employee to fill a field analyst position. However, the employee continued to perform the duties of a lower-level analyst, and Social Services paid her $6,444 more than what is permitted for the duties she performed.

Finding #1: The official's actions to reserve a field analyst position for her assistant were improper.

In 2005 the official decided that she wanted to promote her assistant to a higher paying position in Sacramento where they both were headquartered. The official located an unoccupied field analyst position in the San Jose field office she felt would be suitable for her assistant. She then contacted the regional manager at that field office and advised the regional manager that she wanted to reserve the position for her assistant in Sacramento but that she would have another field analyst position transferred to the San Jose office soon to make up for the position she was reserving.

Apparently, Social Services had already begun the recruiting process for the unoccupied field analyst position in San Jose when the official contacted the regional manager and reserved the position. After the official contacted the regional manager, who was on the interview panel for the position, the panelists understood that the position had already been reserved for the official's assistant. Subsequently, the panelists selected the assistant to fill the first position, and then presumably they selected the candidate they considered the best of the other candidates to fill the later position.

We recommended that Social Services take corrective action against the official for her improper actions and provide training to management and other key staff regarding the laws, regulations, and policies governing the hiring process.

Social Services' Action: Corrective action taken.

In April 2009 Social Services informed us that the official had since retired but still worked at its headquarters as a retired annuitant. In May 2009 Social Services informed us that it had hired a replacement for the official, and that it no longer employed her as a retired annuitant. Nevertheless, Social Services stated that it discussed the findings of our investigation with the official along with the personnel policies and procedures that should have been

followed. Social Services also commented that it might hire the official as a retired annuitant in the future, but that she would not be placed in a supervisory position with the authority to hire or promote. In addition, Social Services stated that in its supervisor and manager training classes it would incorporate and emphasize the laws, regulations, and policies governing the hiring process and the need to ensure that employees are performing the duties described in their duty statements. Finally, in a June 2009 memo it reminded all supervisors of these rules.

Finding #2: The official's appointment of her assistant to a field analyst position, when she did not intend for the assistant to perform the duties of that position, was also improper.

After the assistant was selected for the field analyst position, the official directed her formal appointment to this higher paying position. The documentation for the appointment reflected that the assistant would be serving as a field analyst in San Jose. However, after the appointment, the official did not change the assistant's assigned duties but instead directed her to continue performing the same duties that she had performed previously. Moreover, after the appointment, the assistant continued working in Sacramento, even though her assigned position number and Social Services' organizational charts indicated that she was now headquartered in San Jose.

After we inquired about the employee's duties, Social Services reported to us in February 2008 that it had determined the employee was not performing the essential duties of a field analyst as described in the duty statement for the position, such as performing inspections in the field. Social Services then offered the assistant the option of either remaining as a field analyst and performing the duties of that position or transferring into an office analyst position and continuing to perform primarily the same duties she had been assigned as the official's assistant. In June 2008 the employee chose to maintain her current duties and transfer into the office analyst position. The transfer became effective retroactive to May 2008. Regarding the assistant having been assigned a San Jose position number even though she was performing her work in Sacramento, Social Services reported that this resulted from a "poor administrative practice."

We recommended that Social Services seek retroactive cancellation of the assistant's appointment to the field analyst position and seek repayment from the assistant of the $6,444 that it improperly paid her. In addition, we recommended that Social Services take steps to ensure that its position numbers and organization charts accurately reflect where employees are headquartered.

Social Services' Action: Partial corrective action taken.

In April 2009 Social Services reported that it consulted with the State Personnel Board (Personnel Board). Social Services stated that the Personnel Board determined that the appointment should not be rescinded and the overpayment should not be collected because the employee accepted that appointment in good faith more than one year prior to discovery. However, we learned subsequently that Social Services misled us about the Personnel Board's determination. Social Services had not shared any of the findings detailed in our report with the Personnel Board. Instead, it merely told the Personnel Board that when it had appointed the employee to the field analyst position, it had mistakenly appointed her to an incorrect salary range. Social Services stated subsequently it disagreed that it misled us. However, the facts remain that it did not provide the full details of our investigation to the Personnel Board. As a result of Social Services' failure to provide vital information, the Personnel Board was unable to make a sound determination regarding whether the employee's appointment to the field analyst position was made and accepted in good faith. Therefore, we still conclude that neither the employee nor Social Services acted in good faith in the appointment since evidence showed that the employee never intended to relocate to San Jose or to perform the primary duties associated with the field analyst position.

In addition, as part of the employee's incorrect classification, Social Services stated that it erred in its salary determination when the employee was appointed as an office analyst in May 2008. Thus, it had overpaid the employee by $1,516. As of March 2010 Social Services had collected the $1,516 overpayment it made to the employee from May 2008 through December 2008.

Finally, in its June 2009 memo, Social Services reminded all supervisors of the need to ensure that the department's position numbers and organization charts accurately reflect where employees are headquartered.

Department of Social Services

For the CalWORKs and Food Stamp Programs, It Lacks Assessments of Cost-Effectiveness and Misses Opportunities to Improve Counties' Antifraud Efforts

REPORT NUMBER 2009-101, NOVEMBER 2009

Department of Social Services' response as of November 2010

The Joint Legislative Audit Committee (audit committee) asked the Bureau of State Audits (bureau) to determine the fraud prevention, detection, investigation, and prosecution structure for the California Work Opportunities and Responsibility to Kids (CalWORKs) and the federal Supplemental Nutrition Assistance Program (food stamp) programs at the state and local levels and the types of early fraud detection or antifraud programs used. Additionally, the audit committee requested that the bureau determine, to the extent possible, the cost-effectiveness of the fraud prevention efforts at the state and county levels, and to review how recovered overpayments are used. Further, we were asked to estimate, to the extent possible, the savings resulting from fraud deterred by counties' antifraud activities and whether early fraud detection programs are more cost-effective than ongoing investigations and prosecutions. Lastly, we were asked to assess the Department of Social Services' (Social Services) justification for continuing to use both the Statewide Fingerprint Imaging System (SFIS) and the Income Eligibility and Verification System (IEVS).

Finding #1: Early fraud programs may not be cost-effective in all counties, but they are generally more cost-effective than ongoing investigations.

Although they have taken some steps, neither the counties nor Social Services have conducted meaningful analyses to determine the cost-effectiveness of counties' efforts to detect and deter fraud in the CalWORKs and food stamp programs. As a result, we developed our own analysis, which indicates that the cost-effectiveness of antifraud efforts varies among the counties. Using a three-month projection of savings, our calculations showed that counties generally realize greater savings per dollar spent on early fraud activities than for ongoing investigations. This difference is due largely to the fact that according to the data that counties report, early fraud activities generally result in a much greater number of denials, discontinuances, and reductions of aid than ongoing investigations produce, and also because early fraud activities cost less. Ongoing investigations generally result in fewer discontinuances or reductions of aid because the main purpose of these investigations is to prove suspected fraud that may have occurred in the past.

Further, the net savings resulting from early fraud activities and ongoing investigations vary widely across the six counties we reviewed. For example, in the three-month projection for the food stamp program, Los Angeles County's early fraud activities yielded only 35 cents for every dollar it spent, while Orange County yielded $1.82 in savings. Our calculations show similar variances among counties for the CalWORKs program. Differences in county practices may partially

Audit Highlights . . .

Our review of the Department of Social Services' (Social Services) oversight of counties' antifraud efforts related to the California Work Opportunities and Responsibility to Kids (CalWORKs) program and the federal Supplemental Nutrition Assistance Program, known as the food stamp program in California, found the following:

- ***Although they have taken some steps, neither the counties nor Social Services has performed any meaningful analyses to determine the cost-effectiveness of their efforts to detect and deter fraud in the CalWORKs or food stamp programs.***
- ***Our analysis of counties' investigative efforts found that the measurable savings resulting from early fraud activities exceed the costs for CalWORKs and approach cost neutrality for the food stamp program, assuming a three-month projection of savings.***
- ***Counties' early fraud efforts are more cost-effective than ongoing investigations.***
- ***Neither Social Services nor the six counties we visited took sufficient steps to ensure the accuracy of the data counties report on their investigation activities.***
- ***Social Services does not ensure that counties consistently follow up on information it provides them that might affect welfare recipients' eligibility.***
- ***Although Social Services asserts that the Statewide Fingerprint Imaging System (SFIS) deters welfare fraud, it has not assessed the cost-effectiveness of SFIS.***

account for variations in the cost-effectiveness of early fraud activities across the counties, to the extent that these practices affect the number of resulting denials, discontinuances, and reductions. For example, the counties that typically generated the highest measurable net savings in 2008—Orange and San Diego—not only accepted a high number of early fraud referrals but also had a high percentage of benefit denials, discontinuances, or reductions compared to their early fraud referrals.

Although neither Social Services nor the counties have performed a comprehensive analysis of the cost-effectiveness of the efforts to combat welfare fraud, some efforts have been made. One of the more promising efforts was the forming of a program integrity steering committee (steering committee) to follow up on the results of a 10-year statistical study on fraud prevention and detection activities in the CalWORKs and food stamp programs, and to identify cost-effective approaches for improving program integrity in both programs. In 2008 the steering committee approved eight recommendations for counties and 10 recommendations for Social Services regarding the most promising approaches it found. Social Services indicated that it is addressing four of the 10 recommendations directed to it and is considering how to address the remaining six.

We recommended that Social Services ensure that all counties consistently gauge the cost-effectiveness of their early fraud activities and ongoing investigation efforts for the CalWORKs and food stamp program by working with the counties to develop a formula to regularly perform a cost-effectiveness analysis using information that the counties currently submit. We also recommended that Social Services determine why some counties' efforts to combat welfare fraud are more cost-effective than others by using the results from the recommended cost-effectiveness analysis and that it seek to replicate the most cost-effective practices among all counties. Finally, we recommended that Social Services continue to address the recommendations of the steering committee and promptly act on the remaining recommendations.

Social Services' Action: Pending.

In November 2009, Social Services released to the counties a formula for measuring the cost-effectiveness of their fraud efforts. Because this formula is dependent on county-reported data, Social Services is working to revise the investigation activity report and instructions, with a target completion in early 2011. To allow for the sharing of cost-effective practices among counties, Social Services indicates it will soon issue an all-county letter to direct counties to its publication of the "Promising Approaches and State Recommendations" on its Web site that was derived from the 10-year study. In spring 2011, Social Services plans to establish a Web page for counties to post and share information on improving program integrity and cost-effectiveness. Finally, to determine the cost-effectiveness of counties' fraud efforts, Social Services believes an automated system is needed to track and monitor metrics and outcomes. Because Social Services lacks the funding for this system, it plans to implement an interim process by mid-2011, as resources permit.

Finding #2: Social Services does not ensure that counties report accurate data on their welfare fraud investigations.

Neither Social Services nor the six counties we visited have taken sufficient steps to ensure the accuracy of the counties' data in their investigation activity reports. These reports, which counties submit monthly to Social Services, summarize the counties' fraud investigative efforts. We found that the information these counties included on the investigation activity report is not always accurate, supported, or reported consistently. Social Services is aware of problems with the data and has taken some limited steps to clarify the instructions for preparing these reports. However, Social Services has not taken steps to improve the accuracy of the counties' reporting and its procedures for reviewing investigation activity reports are inadequate to detect even the most glaring errors in the data that counties report. For example, although counties reported reducing benefits on a total of nearly 5,000 cases during fiscal year 2007–08 as a result of ongoing investigations, only 41 of those cases were reported by Los Angeles County, a number that seems quite low considering the county spent over $23 million to perform ongoing investigations during 2008 and it represents 30 percent of the

State's CalWORKs caseload. In fact, Los Angeles County confirmed to us that it has been inadvertently underreporting the number of cases in this category. Despite the known problems with counties' reporting, Social Services uses these erroneous investigation activity reports to populate part of a report it submits to the federal government and to prepare reports submitted to internal decision makers and the Legislature.

To ensure the accuracy and consistency of the data counties submit on welfare fraud activities that counties report and that Social Services subsequently reports to other parties, we recommended that Social Services remind counties that they are responsible for reviewing the accuracy and consistency of investigation activity reports submitted, that it perform more diligent reviews of the accuracy of the counties' reports, provide counties with feedback on how to correct and prevent errors that it detects, and continue with its efforts to clarify the instructions for completing the investigation activity reports.

Social Services' Action: Pending.

Social Services is working to revise the investigation activity report and instructions, with a target completion in early 2011. Additionally, Social Services indicates once the instructions are revised, Social Services intends to provide technical assistance to the counties on how to complete the report accurately. Social Services further stated that it reviews the investigation activity reports during its county visits and discusses any inaccuracies it finds with county staff.

Finding #3: Social Services does not ensure that counties consistently follow up on welfare fraud matches.

Social Services does not ensure that counties consistently follow up on information it provides them that might affect welfare recipients' eligibility. Federal and state regulations require that Social Services distribute 10 lists of individuals' names that potentially could match certain criteria that would cause the individual's aid amounts to be reduced or make them ineligible for aid (match lists). Most of these lists are in paper form. For six of the 10 match lists, federal regulations mandate that the State must, within 45 days of receiving the match information, notify the welfare recipient of an intended action—a discontinuance of or reduction in benefits—or indicate that no action is required. For the remaining four match lists, there is no mandated time period for review. None of the counties we reviewed consistently followed up on all of the match lists that had to be completed within the 45-day timeline and only one county was consistently completing matches for the four match lists without a time requirement. According to representatives from the five counties we reviewed, the format of some match lists could be improved to make them more efficient to use. For example, all five counties told us that having all match lists in electronic form would allow them to process matches more efficiently. Social Services indicates it has attempted in the past to address counties' concerns with the format of the match lists and is taking steps to provide more lists in electronic form.

Although Social Services has a process in place to monitor the counties' efforts to follow up on match lists, it is missing opportunities to improve their efforts because it does not visit all counties on a regular basis and does not always enforce recommendations from these reviews. Specifically, Social Services has not reviewed 25 of the 58 counties during the three-year period from August 2006 to August 2009, including Los Angeles County, which represents 30 percent of the State's CalWORKs caseload and was last reviewed in 2005. Social Services asserts that it lacks resources to review the counties' efforts on a regular basis.

We recommended that Social Services remind counties of their responsibility under the state regulations to follow up diligently on all match lists and work with counties to determine reasons why poor follow-up exists and address those reasons. We also recommended that Social Services revive its efforts to work with counties to address their concerns about match-list formats. Further,

we recommended that Social Services perform reviews of all counties regularly and better enforce the counties' implementation of its recommendations to correct any findings and verify implementation of the corrective action plans required.

Social Services' Action: Pending.

Social Services says it will issue a notice to counties in early 2011 to remind them of their obligation to consistently follow up on match lists. Social Services indicates that five of the 12 match lists are available in electronic format for 35 counties on the Interim Statewide Automated Welfare System, but that automating the other matches will be addressed as resources permit. Social Services indicates it is working to complete the IEVS reviews scheduled for fiscal year 2009–10. Social Services indicates that revisions to match list format and criteria will be worked on as resources permit.

Finding #4: Social Services has not done a cost-benefit analysis of SFIS.

Although Social Services asserts that SFIS deters individuals from fraudulently applying for aid in multiple counties, it has not done a cost-benefit analysis of SFIS because it believes there is no way to measure the deterrence effect of the system. When justifying the implementation of SFIS, Social Services did not conduct its own study; instead, it used the estimates from an evaluation Los Angeles County performed in 1997 to project statewide savings that would result from SFIS. However, in a report we issued in 2003, we concluded that Social Services' methodology of projecting statewide savings using Los Angeles County's estimated savings was flawed, especially in its assumption that the incidence of duplicate-aid fraud in Los Angeles County was representative of the incidence of this type of fraud statewide. Although studies that Social Services conducted in 2005 and 2009 concluded that SFIS identifies fraud that other eligibility determination procedures do not, these studies were of limited scope.

The large and ongoing historical backlog of SFIS results awaiting resolution by county staff raises questions of how counties are using SFIS in deterring fraud. As of July 31, 2009, there was a statewide backlog of more than 13,700 cases that were awaiting resolution by county staff for more than 60 days. Moreover, the number of duplicate-aid cases SFIS has detected is fairly low, given its cost. In 2008 Social Services data show that statewide the counties used SFIS to identify 54 cases of duplicate-aid fraud, and they have identified a total of 845 instances of fraud through SFIS since its implementation in 2000. Social Services believes that SFIS does not identify many cases because it deters people from applying for duplicate aid, a benefit that it asserts cannot be measured. We acknowledge that fraud deterrence is difficult to measure. However, because the State is spending approximately $5 million per year to maintain SFIS, Social Services has an obligation to justify whether the continued use of SFIS is cost-beneficial to the State. Further, we noted that Arizona has developed a process to conduct a yearly cost-benefit analysis of its fingerprint imaging system.

Recognizing that the deterrence effect is difficult to measure, we recommended that Social Services develop a method that allows it to gauge the cost-effectiveness of SFIS. Social Services should include in its efforts to measure cost-effectiveness the administrative cost that counties incur for using SFIS. Based on its results, Social Services should determine whether the continued use of SFIS is justified.

Social Services' Action: None.

➲ Social Services believes that a new independent cost-benefit analysis of SFIS would not be beneficial because it believes that the studies it has conducted, including the original evaluation it performed in 1997, which we concluded was flawed, justifies the deterrence value of SFIS.

Finding #5: Social Services has not taken the necessary steps to claim its share of $42.1 million in food stamp overpayment collections.

Since December 2003 counties have received $42.1 million in overpayments recovered from food stamp recipients. However, Social Services has been delayed in taking the steps needed to claim its share of these overpayments or to distribute the shares of these funds due to counties and the administering federal agency, the U.S. Department of Agriculture (USDA). Overpayments to food stamp recipients can result from administrative errors by counties or inadvertent errors or fraud by recipients. Counties collect the overpayments from recipients through various means, including tax refunds intercepted and held by the federal government. For the distribution of overpayments to occur, Social Services must work with the USDA to reconcile tax intercepts and county collections, but it noted that its efforts have been delayed by staff turnover and past errors in counties' collection reports. Social Services' records show that of the $42.1 million balance, $17.2 million would go to the USDA, with the remaining $24.9 million split between Social Services and the counties. The counties we reviewed deposit the cash they collect in their bank accounts and receive the interest earnings on these collections until Social Services claims its and the federal government's share. As a result of the six-year delay in addressing this issue, we estimate that Social Services lost approximately $1.1 million in interest earnings on its share of the funds.

We recommended that Social Services continue to work with the USDA and make its reconciliation of the backlog of overpayments a priority to expedite the distribution of the $42.1 million in food stamp overpayment collections to the appropriate entities. Further, it should develop procedures to ensure that it promptly reconciles future overpayments. Additionally, Social Services should continue to monitor the counties' collection reports to ensure that counties are reporting accurate information.

Social Services' Action: Partial corrective action taken.

Social Services indicates that as of June 2010 all overpayment collections were recovered. The total overpayment collections changed from $42.1 million to $39.8 million due to adjustments and revisions. As for the interest that counties earned while holding these funds, Social Services indicated it collected and forwarded $465,000 to the federal government and that it is working with counties to collect the remaining interest earnings. Social Services also reports implementing a process to ensure the quarterly reconciliations are done timely and accurately. Finally, during the IEVS reviews, Social Services indicates staff are reviewing the accuracy of counties' collection reports.

Finding #6: Investigation and prosecution efforts vary by county.

County size, demographics, and county department staffing necessitate different approaches to investigating and prosecuting welfare fraud. Although the counties appear to have similar criteria for investigations, their procedures for conducting investigations and their criteria for prosecution and imposing administrative sanctions vary. For example, the monetary thresholds below which the district attorney generally does not prosecute fraud varied among the counties we visited and were as high as $10,000, depending on the type of offense. These variances may affect the number of cases referred and successfully prosecuted in each county. The data reported by counties statewide show variances in the number of referrals for prosecution of CalWORKs and food stamp fraud and in the outcomes of the prosecutions filed. It is in the best interest of Social Services to track these variances, as well as study the counties' prosecution practices to determine whether other counties could become more effective in their efforts by emulating the successful prosecution practices used elsewhere.

Finally, state regulations require counties to conduct administrative disqualification hearings for CalWORKs and food stamp fraud cases for which the facts do not warrant prosecution or cases that have been referred for prosecution and subsequently declined. However, many counties have stopped using the administrative disqualification hearing process, which Social Services attributes to county investigative staff believing that the administrative disqualification hearing standard of proof is higher than in criminal cases. Social Services told us that it has convened a workgroup with the State's

presiding administrative law judge to discuss county concerns and clarify the appropriate application of the administrative hearing process. Social Services plans to issue guidance to counties when the workgroup has completed its efforts.

We recommended that Social Services track how counties determine prosecution thresholds for welfare fraud cases and determine the effects of these thresholds on counties' decisions to investigate potential fraud, with a focus on determining best practices and cost-effective methods. We also recommended that Social Services either ensure that counties follow state regulations regarding the use of administrative disqualification hearings or pursue changing the regulations.

Social Services' Action: Pending.

Social Services did not address our recommendation to review the effect of counties' varying prosecution thresholds. Social Services indicates continuing to work on notices to remind the counties of their responsibility to use the administrative disqualification hearing process and to convene a workgroup on this issue. However, due to limited resources, Social Services reports these efforts have been delayed until mid-2011. Social Services reports taking no action on our recommendation to track and review the cost-effectiveness of the prosecution levels that counties use.