

# CALIFORNIA STATE AUDITOR

Bureau of State Audits

## Implementation of State Auditor's Recommendations

Audits Released in January 2010 Through December 2011

Special Report to  
*Assembly Budget Subcommittee #1—Health and Human Services*



March 2012 Report 2012-406 A1

SPECIAL REPORT

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](http://www.bsa.ca.gov).

Alternate format reports available upon request.

Permission is granted to reproduce reports.

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](http://www.bsa.ca.gov)

March 30, 2012

2012-406 A1

The Honorable Holly J. Mitchell, Chair  
Assembly Budget Subcommittee No. 1  
State Capitol  
Sacramento, California 95814

Dear Assemblymember Mitchell:

The California State Auditor presents this special report for the Assembly Budget Subcommittee No. 1—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 entities 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 entity's implementation efforts based on its most recent response.

This information is also available in a special report that is organized by policy area that summarizes all audits and investigations we issued from January 2010 through December 2011. The special policy area report includes a table that identifies monetary values that entities could realize if they implemented our recommendations, and is available on our Web site at [www.bsa.ca.gov](http://www.bsa.ca.gov).

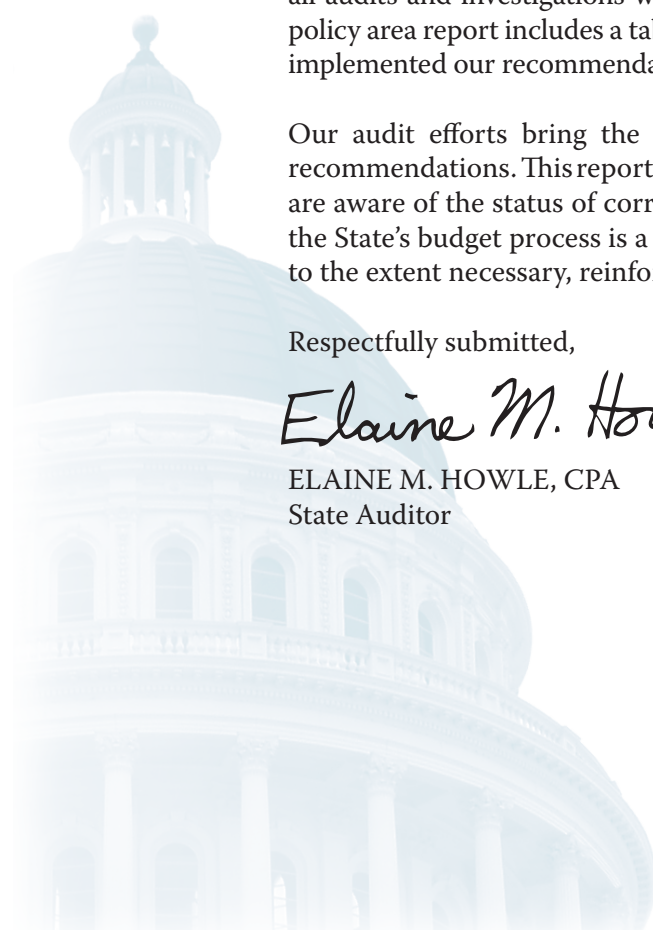
Our audit efforts bring the greatest returns when the entity acts upon our findings and recommendations. This report is one vehicle to ensure that the State's policy makers and managers are aware of the status of corrective action entities report they have taken. Further, we believe the State's budget 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	1
Table	
<i>Recommendation Status Summary</i>	1
<b>Developmental Services, Department of</b>	
<b>Report Number 2009-118, Department of Developmental Services: A More Uniform and Transparent Procurement and Rate-Setting Process Would Improve the Cost-Effectiveness of Regional Centers</b>	3
<b>Health Care Services, Department of</b>	
<b>Report Number 2011-106, Intellectual Property: An Effective Policy Would Educate State Agencies and Take Into Account How Their Functions and Property Differ</b>	7
<b>Report Number 2011-104, Medi-Cal Managed Care Program: The Departments of Managed Health Care and Health Care Services Could Improve Their Oversight of Local Initiatives Participating in the Medi-Cal Two-Plan Model</b>	11
<b>Report Number 2009-112, Department of Health Care Services: It Needs to Streamline Medi-Cal Treatment Authorizations and Respond to Authorization Requests Within Legal Time Limits</b>	15
<b>Managed Health Care, Department of</b>	
<b>Report Number 2011-104, Medi-Cal Managed Care Program: The Departments of Managed Health Care and Health Care Services Could Improve Their Oversight of Local Initiatives Participating in the Medi-Cal Two-Plan Model (see summary on page 11)</b>	
<b>Mental Health, Department of</b>	
<b>Report Number 2010-116, Sex Offender Commitment Program: Streamlining the Process for Identifying Potential Sexually Violent Predators Would Reduce Unnecessary or Duplicative Work</b>	19

**Report Number I2011-1, Investigations of Improper Activities by State Agencies and Employees: Waste of State Funds, Misuse of State Resources, Falsification of Records, Inexcusable Neglect of Duty, Failure to Monitor Time Reporting, and Other Violations of State Law, July 2010 Through March 2011**

**Allegation [I2009-0644]** 23

**Public Health, Department of**

**Report Number 2010-108, Department of Public Health: It Reported Inaccurate Financial Information and Can Likely Increase Revenues for the State and Federal Health Facilities Citation Penalties Accounts** 25

**Report Number 2010-106, 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** 31


**Report Number 2010-103R, Department of Public Health: It Faces Significant Fiscal Challenges and Lacks Transparency in Its Administration of the Every Woman Counts Program** 39

**Social Services, Department of**

**Report Number 2011-101.1, Child Welfare Services: California Can and Must Provide Better Protection and Support for Abused and Neglected Children** 43

**Report Number 2010-121, Foster Family Home and Small Family Home Insurance Fund: Expanding Its Coverage Will Increase Costs and the Department of Social Services Needs to Improve Its Management of the Insurance Fund** 51

## Introduction

This report summarizes the major recommendations from audit and investigative reports we issued from January 2010 through December 2011<sup>1</sup>, that relate to agencies and departments under the purview of the Assembly Budget Subcommittee No. 1—Health and Human Services. The purpose of this report is to identify what actions, if any, these entities have taken in response to our findings and recommendations. We have placed this symbol  in the margin of the entity’s action to identify areas of concern or issues that we believe have not been adequately addressed.

For this report, we have relied upon periodic written responses prepared by entities to determine whether corrective action has been taken. The California State Auditor’s (state auditor) policy requests that the entity 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 entities to provide updates on their implementation of audit recommendations. The state auditor requests these updates at 60 days, six months, and one year after the public release of the audit report. However, we may request an entity 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 entity for corrective action. These entities 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 entities. All corrective actions noted in this report were generally based on responses received by our office as of December 31, 2011. The table below summarizes the status of an entity’s implementation of our recommendations based on its most recent response received from each one. Because an audit or investigation may cross over several departments, it may be accounted for on this table more than one time. For instance, the Medi-Cal Managed Care Program Report, 2011-104, is reflected under the Department of Health Care Services and the Department of Managed Health Care.

**Table**  
**Recommendation Status Summary**

AUDIT REPORTS	FOLLOW-UP RESPONSE				STATUS OF RECOMMENDATION				PAGE NUMBERS
	INITIAL RESPONSE	60-DAY	SIX-MONTH	ONE-YEAR	FULLY IMPLEMENTED	PARTIALLY IMPLEMENTED	PENDING	NO ACTION TAKEN	
<b>Developmental Services, Department of</b>									
Regional Centers Report 2009-118				●	12			1	3
<b>Health Care Services, Department of</b>									
Intellectual Property Report 2011-106	●						1		7
Medi-Cal Managed Care Program Report 2011-104	●				1		3		11
Medi-Cal Treatment Authorizations Report 2009-112				●	1	1		1	15
<b>Managed Health Care, Department of</b>									
Medi-Cal Managed Care Program Report 2011-104	●				1		2		11

*continued on next page...*

<sup>1</sup> We have modified the format of this report from prior years’ reports. Specifically, in previous reports, we often grouped multiple recommendations under one finding and, when determining the total number of recommendations by status, we counted findings rather than recommendations. In this report, we have chosen to modify our calculations counting each individual recommendation by its status rather than findings. Thus, the total numbers by status are higher than those from previous reports and, therefore, are not comparable.

AUDIT REPORTS	FOLLOW-UP RESPONSE				STATUS OF RECOMMENDATION				PAGE NUMBERS	
	INITIAL RESPONSE	60- DAY	SIX-MONTH	ONE-YEAR	FULLY IMPLEMENTED	PARTIALLY IMPLEMENTED	PENDING	NO ACTION TAKEN		
<b>Mental Health, Department of</b>										
Sex Offender Commitment Program Report 2010-116		●				2	3			19
<b>Public Health, Department of</b>										
Citation Penalty Accounts Report 2010-108				●	10	2	3	2		25
Dymally-Alatorre Bilingual Services Act Report 2010-106				●	3					31
Every Woman Counts Program Report 2010-103R				●	3	2				39
<b>Social Services, Department of</b>										
Child Welfare Services Report 2011-101.1		●			1	4	14	1		43
Foster Family Home and Small Family Home Insurance Fund Report 2010-121		●			1		6			51
<b>INVESTIGATIVE REPORT</b>										
<b>Mental Health, Department of</b>										
Waste of State Funds, Misuse of State Resources Investigations Report I2011-1, Allegation I2009-0644	June 2011				4					23



# 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, ISSUED AUGUST 2010

This report concludes that while most of the expenditures we reviewed for the purchase of services appeared allowable and were supported by proper vendor invoices, the regional centers—nonprofit entities the Department of Developmental Services (Developmental Services) contracts with to coordinate services for Californians with developmental disabilities (consumers)—could not consistently demonstrate the rationale behind their rate-setting and vendor-selection decisions or how contracts are procured. In some cases, the ways in which the regional centers established payment rates and selected vendors had the appearance of favoritism or fiscal irresponsibility and did not demonstrate compliance with recent statutory amendments attempting to control the costs of purchased services. Further, we found that Developmental Services systematically audits and reviews whether services purchased for consumers are allowable but generally did not examine how regional centers established rates or selected particular vendors for services. Lastly, a survey of employees at the six regional centers we visited identified several issues in the working environment at some regional centers, including a concern that many regional centers' employees do not feel safe reporting suspected improprieties.

After discussing our concerns with Developmental Services, it has made a number of improvements to its oversight processes, including new fiscal audit procedures designed to evaluate how regional centers establish vendor rates and to ensure compliance with a statutory rate freeze on all negotiated rates. Developmental Services also developed a written process for receiving and reviewing complaints from regional center employees.

In the report, the California State Auditor (state auditor) made the following recommendations to Developmental Services. The state auditor's determination regarding the current status of recommendations is based on Developmental Services' response to the state auditor as of August 2011.

#### **Recommendation 1.1—See pages 23 and 24 of the audit report for information on the related finding.**

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

#### ***Developmental Services' Action: Fully implemented.***

As of December 2011 Developmental Services appears to be on track to complete fiscal audits of each regional center every two years as required.

#### **Recommendation 1.2—See pages 25 and 26 of the audit report for information on the related finding.**

Developmental Services should require that the regional centers prepare and follow written procedures for their purchase of services that detail what documents will be retained for payment of invoices. Additionally, if regional centers move to an electronic authorization process, Developmental Services should determine whether it needs to revise its regulations.

#### ***Developmental Services' Action: Fully implemented.***

Developmental Services issued a directive dated August 16, 2010, to regional centers requiring them to update their administrative policies and procedures for purchasing consumer services and retain required documentation for payment of invoices. Developmental Services revised its regulations to allow for electronic authorizations and record keeping for regional centers' purchase of services.

**Recommendation 1.3—See pages 26—28 of the audit report for information on the related finding.**

Developmental Services should ensure that the system the Valley Mountain Regional Center (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: Fully implemented.***

Based on the results of a follow-up review Developmental Services performed in October 2010, Valley Mountain implemented a new invoicing process that is now in compliance with Medicaid Waiver requirements.

**Recommendation 1.4.a—See pages 28 and 29 of the audit report for information on the related finding.**

To ensure that negotiated rates are cost-effective, Developmental Services should require regional centers to document how they determine that the rates they negotiate or otherwise establish are reasonable for the services to be provided. Developmental Services should encourage regional centers to use, when applicable, the cost-statement approach exemplified by Far Northern. 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: Fully implemented.***

Developmental Services issued a directive dated August 16, 2010, to regional centers requiring them to maintain documentation on the process used to determine and the rationale for granting any negotiated rate.

***Legislative Action: Legislation enacted.***

Chapter 9, Statutes of 2011 (Senate Bill 74), includes a requirement for regional centers to timely disclose requests for proposals, contract awards, and payment rates for service providers on their Web sites.

**Recommendation 1.4.b—See page 24 of the audit report for information on the related finding.**

To ensure that negotiated rates are cost-effective, Developmental Services should 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. 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: Fully implemented.***

Developmental Services expanded its fiscal audit protocols to include a review of negotiated rates during its biennial fiscal audits.

***Legislative Action: Unknown.***

The state auditor is not aware of any action taken by the Legislature as of January 5, 2012.

**Recommendation 1.5—See pages 37 and 38 of the audit report for information on the related finding.**

Unless rescinded by the Legislature, Developmental Services should carry out its newly developed fiscal audit procedures for ensuring compliance with provisions of the Legislature's July 2008 rate freeze. 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, we encourage it to do so.

*Developmental Services' Action: Fully implemented.*

Developmental Services expanded its fiscal audit protocols to include testing for compliance with the July 2008 rate freeze.

**Recommendation 1.6—See pages 35 and 36 of the audit report for information on the related finding.**

Developmental Services should review the five instances of noncompliance with the rate freeze that we identified and require corrective action by the respective regional centers. 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: Fully implemented.*

Developmental Services completed its reviews of the five instances identified in our audit report and found over \$4.1 million in payments that violated rate freeze provisions (\$3.2 million at Inland Regional Center; \$742,000 at San Andreas Regional Center; \$146,000 at Tri-Counties Regional Center) and that must be repaid to the State.

**Recommendation 2.1—See pages 44—46 of the audit report for information on the related finding.**

To ensure that consumers receive high-quality, cost-effective services that meet the goals of their Individual Program Plans (IPP) consistent with state law, Developmental Services should require the regional centers to document the basis of any IPP-related vendor selection and specify which comparable vendors (when available) were evaluated. Developmental Services should then 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: No action taken.*

Developmental Services does not believe it has the legal authority to implement the recommendation, as 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. Finally, 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 the department has 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' assertions or interpretation of the Lanterman Act.

**Recommendation 2.2—See pages 46—49 of the audit report for information on the related finding.**

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, Developmental Services should require regional centers to adopt a written procurement process that specifies the situations and dollar thresholds for which contracts, request for proposals, and evaluations of competing proposals will be implemented, and 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.

*Developmental Services' Action: Fully implemented.*

Developmental Services' contract with each regional center now requires regional centers to have a board-approved policy specifying the circumstances under which the regional center will issue request for proposals, the applicable dollar thresholds, and how the submitted proposals will be evaluated.

**Recommendation 2.3—See pages 43 and 44 of the audit report for information on the related finding.**

To ensure that the regional centers adhere to their procurement process, Developmental Services should review the documentation for a representative sample of purchase-of-service contracts during its biennial fiscal audits.

***Developmental Services' Action: Fully implemented.***

Audit procedures are now in place to review the procurement policies and processes of regional centers during the department's biennial fiscal audits.

**Recommendation 2.4—See pages 47 and 48 of the audit report for information on the related finding.**

To deter unsupported and potentially wasteful spending of state resources by the regional centers, Developmental Services should 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: Fully implemented.***

Developmental Services conducted a review of Inland in fall 2010 and found over \$4.2 million in payments to the transportation vendor (roughly \$1 million related to the transportation assessment and \$3.2 million related to how the regional center established transportation vendor's rate of payment) that were not appropriate and that must be repaid to the State.

**Recommendation 3.1—See pages 57—59 of the audit report for information on the related finding.**

To ensure that regional center employees have a safe avenue for reporting suspected improprieties at the regional centers, Developmental Services should 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.

***Developmental Services' Action: Fully implemented.***

Developmental Services now has a formal intake and investigation process for complaints about regional centers and vendors. The department includes information about this process on its Web site and instructed the regional centers to do the same. All regional centers have posted Developmental Services' and their own whistleblower complaint policies on their Web sites.

**Recommendation 3.2—See page 58 of the audit report for information on the related finding.**

To ensure that appropriate action is taken in response to allegations submitted by regional center employees, Developmental Services should centrally log these allegations and track follow-up actions and the ultimate resolution of allegations, as required by its new procedures.

***Developmental Services' Action: Fully implemented.***

In July 2010 Developmental Services formally documented procedures that describe how it accepts, tracks, and resolves complaints from regional center employees and others. We confirmed, as of December 2011, that Developmental Services continues to use a central log of allegations that documents complaints, follow-up actions, and ultimate resolutions.

# Intellectual Property

## An Effective Policy Would Educate State Agencies and Take Into Account How Their Functions and Property Differ

### REPORT NUMBER 2011-106, ISSUED NOVEMBER 2011

Intellectual property typically consists of copyrights, trademarks, patents, and trade secrets. In November 2000, the California State Auditor (state auditor) issued a report titled *State-Owned Intellectual Property: Opportunities Exist for the State to Improve Administration of its Copyrights, Trademarks, Patents, and Trade Secrets*—report number 2000-110 (2000 audit report). The 2000 audit report recommended the Legislature take steps to help state agencies manage and protect the State’s intellectual property.

This report concludes that the State has not enacted a statutory framework, nor has it implemented the recommendations made in the 2000 audit report or otherwise provided guidance to state agencies regarding the management and protection of intellectual property. The four state control agencies we spoke to—the Department of Finance, the Department of General Services, the State Controller’s Office, and the California Technology Agency—generally do not provide policies or guidance to other state agencies regarding the management and protection of intellectual property because they do not believe that they are responsible for providing this type of guidance. However, more than half of the state agencies that responded to our survey about intellectual property stated that the State should establish statewide guidance for managing and protecting intellectual property. Moreover, the four state agencies we visited—the Department of Transportation (Caltrans), Department of Food and Agriculture (Food and Agriculture), California Energy Commission (Energy Commission), and Department of Health Care Services (Health Care Services)—had only limited written policies and instead generally relied on informal practices to manage and protect their intellectual property. To move forward, the State will need to clearly articulate the goals of any policy related to intellectual property. We believe that an effective policy would educate state agencies on their intellectual property rights and would be flexible and take into account that state agencies perform different functions and work with different types of intellectual property.

In the report, the state auditor made the following recommendations to Caltrans, Food and Agriculture, Energy Commission, Health Care Services, the Legislature, and the governor. The state auditor’s determination regarding the current status of recommendations is based on the agencies’ responses to the state auditor as of November 2011.

#### **Recommendation 1.1—See pages 19—21, 31—32, and 35—40 of the audit report for information on the related finding.**

Caltrans, the Energy Commission, Food and Agriculture, and Health Care Services should put in writing those policies and procedures related to intellectual property that they believe are necessary and appropriate to enable their staff to identify, manage, and protect their intellectual property.

#### ***Caltrans’ Action: Pending.***

Caltrans stated that it is in the process of implementing the recommendation by continuing its efforts to develop additional written policies and procedures related to all aspects of intellectual property and that it will complete its efforts by June 30, 2012.

#### ***Energy Commission’s Action: Pending.***

The Energy Commission stated that it has started working on policies and procedures to educate staff about intellectual property and how to protect it and that it will complete its policy and procedures by January 1, 2012.

***Food and Agriculture's Action: Pending.***

Food and Agriculture stated that it will work with appropriate staff to have policies and procedures in writing by December 31, 2011.

***Health Care Services' Action: Pending.***

Health Care Services stated that it agreed with the recommendation.

**Recommendation 1.2—See page 20 of the audit report for information on the related finding.**

Food and Agriculture should ensure that it has developed intellectual property terms and conditions that are appropriate for the types of agreements into which its contracts office enters.

***Food and Agriculture's Action: Pending.***

Food and Agriculture stated that it will work with appropriate staff to have appropriate terms and conditions in contract agreements by December 31, 2011.

**Recommendation 1.3—See pages 21 and 22 of the audit report for information on the related finding.**

The Energy Commission should take the necessary steps to strengthen its royalty process to ensure that it receives the proper amounts from all contractors that owe it royalties.

***Energy Commission's Action: Partially implemented.***

The Energy Commission stated that it has modified its annual Public Interest Energy Research (PIER) royalty letter to require a response and added language to its PIER solicitations indicating that bidders who have not responded to the royalty repayment letter may be screened out from participating in future PIER funding opportunities. The Energy Commission also stated that it is amending a contract with the State Controller's Office to include review of PIER royalty payments and has deployed an internal auditor to conduct royalty payment reviews. The Energy Commission stated it has drafted new PIER terms and conditions, which require certification that the royalty amount paid is correct. Finally, the Energy Commission stated that it is hiring a contractor to follow up with PIER researchers who may have commercialized a product and not paid royalties.

**Recommendation 1.4.a—See pages 25—28 of the audit report for information on the related finding.**

The Legislature and the governor should consider developing a statewide intellectual property policy that educates state agencies on their intellectual property rights without creating an administrative burden. Specifically, this policy should provide guidance to agencies that will give them the understanding necessary to identify when potential intellectual property may exist, including when contractors' work may result in intellectual property, and that will provide them with specific information on intellectual property protections.

***Legislative Action: Unknown.***

The state auditor is not aware of any action taken by the Legislature as of January 5, 2012.

**Recommendation 1.4.b—See pages 25—28 of the audit report for information on the related finding.**

The Legislature and the governor should consider developing a statewide intellectual property policy that educates state agencies on their intellectual property rights without creating an administrative burden. Specifically, this policy should recognize that not all agencies have the same needs and that a one-size-fits-all approach may not be feasible. An effective policy should provide agencies with flexibility regarding ownership of intellectual property rights.

***Legislative Action: Unknown.***

The state auditor is not aware of any action taken by the Legislature as of January 5, 2012.

**Recommendation 1.4.c—See pages 25—28 of the audit report for information on the related finding.**

The Legislature and the governor should consider developing a statewide intellectual property policy that educates state agencies on their intellectual property rights without creating an administrative burden. Specifically, this policy should have as one of its primary goals the promotion of the greatest possible public benefit from intellectual property the State creates or funds.

***Legislative Action: Unknown.***

The state auditor is not aware of any action taken by the Legislature as of January 5, 2012.

**Recommendation 1.4.d—See pages 25—28 of the audit report for information on the related finding.**

The Legislature and the governor should consider developing a statewide intellectual property policy that educates state agencies on their intellectual property rights without creating an administrative burden. Specifically, this policy should recognize that although additional revenue may be a potential benefit of the State's intellectual property, it is not the only benefit, nor should it be the driving force behind a state policy. However, the policy should provide guidance for identifying valuable intellectual property and how to commercialize it, if appropriate.

***Legislative Action: Unknown.***

The state auditor is not aware of any action taken by the Legislature as of January 5, 2012.

**Recommendation 1.4.e—See pages 25—28 of the audit report for information on the related finding.**

The Legislature and the governor should consider developing a statewide intellectual property policy that educates state agencies on their intellectual property rights without creating an administrative burden. Specifically, this policy should establish the minimum rights agencies should obtain for intellectual property developed by its contractors.

***Legislative Action: Unknown.***

The state auditor is not aware of any action taken by the Legislature as of January 5, 2012.

**Recommendation 1.5—See pages 28 and 43—51 of the audit report for information on the related finding.**

If the Legislature and governor believe it would be valuable to understand the amount of intellectual property the State holds on an ongoing basis, they should consider establishing a mechanism to track the State's intellectual property.

***Legislative Action: Unknown.***

The state auditor is not aware of any action taken by the Legislature as of January 5, 2012.



# Medi-Cal Managed Care Program

## The Departments of Managed Health Care and Health Care Services Could Improve Their Oversight of Local Initiatives Participating in the Medi-Cal Two-Plan Model

### REPORT NUMBER 2011-104, ISSUED DECEMBER 2011

This report concludes that both the departments of Managed Health Care (Managed Health Care) and Health Care Services (Health Care Services) have inconsistencies in the financial reviews they conduct of local initiatives that participate in the California Medi-Cal Assistance Program's (Medi-Cal) managed care two-plan model. Under this model, both a county entity, known as a local initiative and a commercial health plan provide managed care services to Medi-Cal beneficiaries. Managed Health Care is chronically late in completing its financial report reviews, thus seriously lessening their value as an oversight tool. Further, Managed Health Care does not have an effective process to monitor local initiatives' responses to corrective action plans that result from its financial examinations. For its part, Health Care Services is inconsistent in performing financial reviews, does not always ensure that all financial requirements are included, and has not performed financial reviews with the frequency outlined in its fiscal monitoring unit's internal policy. Analyses performed by Health Care services overlap the financial viability analysis that Managed Health Care generates from local initiatives' consolidated financial reports. Finally, both Managed Health Care and Health Care Services fail to conduct medical audits—intended to review several aspects of the provision of health care—of the health delivery system of each local initiative within the frequency required by law.

Our review also included the local initiatives' administration of the Medi-Cal two-plan model. Although most local initiatives hold tangible net equity (TNE) balances—the central measure of financial viability under the Knox-Keene Health Care Service Plan Act of 1975—that are significantly higher than the required TNE minimum balances—Health Care Services' performance indicators show that California's eight local initiatives in operation during the time covered by our audit provide a satisfactory level of care to beneficiaries. The four local initiatives we visited generally had adequate fiscal processes and internal controls to monitor their administrative expenses, although weak past policies at Kern Health Systems allowed it to enter into two contracts for medical claims reviews that were not cost-effective. Our review also found that the four local initiatives we visited use similar methods to set and approve salaries, although the salaries and retirement benefits of their highest-paid executives vary significantly.

In the report, the California State Auditor (state auditor) made the following recommendations to Managed Health Care and Health Care Services. We made no recommendations to the local initiatives. The state auditor's determination regarding the current status of recommendations is based on Managed Health Care and Health Care Services' responses to the state auditor as of December 2011.

#### **Recommendation 1.1—See pages 16—19 of the audit report for information on the related finding.**

To monitor local initiatives' financial viability and compliance with the Knox-Keene Act requirements, Managed Health Care should develop a formal policy to ensure that it reviews financial reports in a timely manner, and that administrative expenses are correctly categorized.

#### ***Managed Health Care's Action: Pending.***

Managed Health Care indicates it will develop and implement formal policies and procedures, make necessary changes or additions to its financial filing system to help implement and monitor the policies and procedures, ensure that staff and management are informed and trained on the new policies and procedures, and develop a management reporting tool to monitor adherence to the policies and procedures. Managed Health Care also stated that it will remind staff that review of administrative expenses, and correct categorization of such expenses, is part of the overall financial review process.

**Recommendation 1.2—See pages 20 and 21 of the audit report for information on the related finding.**

To ensure that all four financial soundness elements included in Health Care Services' contract are being reviewed, it should conduct financial reviews consistently and update its review tool to include working capital.

***Health Care Services' Action: Fully implemented.***

Health Care Services' Fiscal Monitoring Unit has developed and implemented a revised worksheet that includes all four financial soundness elements.

**Recommendation 1.3—See pages 20 and 21 of the audit report for information on the related finding.**

Health Care Services should develop a formal policy to ensure that it conducts financial reviews in a timely manner.

***Health Care Services' Action: Pending.***

Health Care Services states it drafted a written policy that addressed the timeliness of the financial reviews, which it anticipates executive management will review and approve by the end of January 2012.

**Recommendation 1.4—See pages 21 and 22 of the audit report for information on the related finding.**

To make its financial solvency reviews more efficient and reduce the risk of errors, Health Care Services should coordinate with Managed Health Care when analyzing local initiatives' consolidated financial reports.

***Health Care Services' Action: Pending.***

Health Care Services said that it would collaborate with Managed Health Care to eliminate duplication of effort in to the consolidated review of financial statements and that it will place reliance on the automated ratios that Managed Health Care generates.

**Recommendation 1.5—See pages 22—24 of the audit report for information on the related finding.**

To ensure that local initiatives implement corrective action plans, Managed Health Care should devise a more effective process to track, monitor, and review the status of local initiatives' corrective actions as they relate to financial examination requirements.

***Managed Health Care's Action: Pending.***

Managed Health Care said it will develop a corrective action plan tracking feature in its database to allow for the ready identification of corrective action plans and their status, as well as the decisions staff make concerning the corrective actions taken.

**Recommendation 1.6—See pages 25—27 of the audit report for information on the related finding.**

Health Care Services should ensure that it performs annual medical audits of local initiatives as required by law.

*Health Care Services' Action: Pending.*

Health Care Services asserts that it will resume annual medical audits of all Medi-Cal managed care plans in early 2012 and that it will work in conjunction with Managed Health Care, to the extent feasible.

**Recommendation 1.7—See pages 25—27 of the audit report for information on the related finding.**

Managed Health Care should ensure that it obtains timely medical audits from Health Care Services. If it is unable to obtain timely medical audits from Health Care Services, it should conduct them itself.

*Managed Health Care's Action: Fully implemented.*

Managed Health Care has developed and implemented a written policy to track and secure copies of Health Care Services' medical audits and findings, and to the extent necessary, to timely schedule a Knox-Keene Act medical audit in the event that Health Care Services does not conduct its annual medical audit.



# 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, ISSUED MAY 2010

This report concludes that the Department of Health Care Services (Health Care Services) is missing opportunities to streamline the provision of California Medical Assistance Program (Medi-Cal) services and improve its level of service. Specifically, Health Care Services manually adjudicates all medical treatment authorization requests (TAR) even though it only denied a relatively small portion of these TARs in almost half of the instances in fiscal years 2007–08 and 2008–09. Health Care Services' data indicates that the TAR process as a whole saves substantially more money in claims it avoids having to pay to Medi-Cal providers than it costs to administer. However, despite 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, low service costs, or high administrative costs it has not done so. We believe a cost-benefit analysis of such TARs would identify opportunities for Health Care Services to streamline the TAR process and improve its overall response times.

Health Care Services is not processing drug TARs within legal time limits for prescriptions requiring prior approval. Specifically, it took longer than 24 hours to respond to 84 percent and 58 percent of manually adjudicated drug TARs in fiscal years 2007–08 and 2008–09, respectively. Finally, Health Care Services does not specifically monitor its processing times for prior-authorization medical TARs despite its acknowledgement that state law requires that TARs submitted for medical services not yet rendered must be processed within an average of five working days.

In the report, the California State Auditor (state auditor) made the following recommendations to Health Care Services. The state auditor's determination regarding the current status of recommendations is based on Health Care Services' response to the state auditor as of May 2011.

#### **Recommendation 1.1—See pages 18—22 of the audit report for information on the related finding.**

To streamline the provision of Medi-Cal services and improve its level of service, Health Care Services should 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.

#### ***Health Care Services' Action: Fully implemented.***

Health Care Services' contractor completed a cost-benefit analysis of the TAR process and found that a small number of medical services did not meet the cost benefit test and recommended that Health Care Services consider auto-adjudicating those services. The contractor also identified certain drugs with low costs and high approval rates that would be the best candidates for auto-adjudication and recommended that Health Care Services use the analysis as the basis for further study to identify any additional opportunities for auto-adjudication.

#### **Recommendation 1.2—See pages 25—29 of the audit report for information on the related finding.**

To ensure that Medi-Cal recipients receive timely access to prescribed drugs, Health Care Services should abolish its policy of responding to drug TARs by the end of the next business day and should 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: No action taken.***

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.

***Legislative Action: Unknown.***

The state auditor is not aware of any action taken by the Legislature as of January 5, 2012.

**Recommendation 1.3—See pages 30—34 of the audit report for information on the related finding.**

To ensure that Medi-Cal recipients are receiving timely medical services from providers, Health Care Services should start tracking prior-authorization medical TARs separately and should 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: Partially implemented.***

Health Care Services reported that it implemented a manual sorting process that identifies prior-authorization paper TARs as they are received. These TARs are placed in a designated location and are processed before retroactive paper TARs. 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.

***Legislative Action: Unknown.***

The state auditor is not aware of any action taken by the Legislature as of January 5, 2012.





# Sex Offender Commitment Program

## Streamlining the Process for Identifying Potential Sexually Violent Predators Would Reduce Unnecessary or Duplicative Work

### REPORT NUMBER 2010-116, ISSUED JULY 2011

This report concludes that the Department of Corrections and Rehabilitation (Corrections) and the Department of Mental Health's (Mental Health) processes for identifying and evaluating sexually violent predators (SVPs) are not as efficient as they could be and at times have resulted in the State performing unnecessary work. The current inefficiencies in the process for identifying and evaluating potential SVPs stems in part from Corrections' interpretation of state law. These inefficiencies were compounded by recent changes made by voters through the passage of Jessica's Law in 2006. Specifically, Jessica's Law added more crimes to the list of sexually violent offenses and reduced the required number of victims to be considered for the SVP designation from two to one, and as a result many more offenders became potentially eligible for commitment. Additionally, Corrections refers all offenders convicted of specified criminal offenses enumerated in law but does not consider whether an offender committed a predatory offense or other factors that make the person likely to be an SVP, both of which are required by state law. As a result, the number of referrals Mental Health received dramatically increased from 1,850 in 2006 to 8,871 in 2007, the first full year Jessica's Law was in effect. In addition, in 2008 and 2009 Corrections referred 7,338 and 6,765 offenders, respectively. However, despite the increased number of referrals it received, Mental Health recommended to the district attorneys or the county counsels responsible for handling SVP cases about the same number of offenders in 2009 as it did in 2005, before the voters passed Jessica's Law. In addition, the courts ultimately committed only a small percentage of those offenders. Further, we noted that 45 percent of Corrections' referrals involved offenders whom Mental Health previously screened or evaluated and had found not to meet SVP criteria. Corrections' process did not consider the results of previous referrals or the nature of parole violations when re-referring offenders, which is allowable under the law.

Our review also found that Mental Health primarily used contracted evaluators to perform its evaluations—which state law expressly permits through the end of 2011. Mental Health indicated that it has had difficulty attracting qualified evaluators to its employment and hopes to remedy the situation by establishing a new position with higher pay that is more competitive with the contractors. However, it has not kept the Legislature up to date regarding its efforts to hire staff to perform evaluations, as state law requires, nor has it reported the impact of Jessica's Law on the program.

In the report, the California State Auditor (state auditor) made the following recommendations to Mental Health and Corrections. The state auditor's determination regarding the current status of recommendations is based on Mental Health's and Corrections' responses to the state auditor as of September 2011.

#### **Recommendation 1.1—See pages 15—17 of the audit report for information on the related finding.**

To enable it to track trends and streamline processes, Mental Health should expand the use of its database to capture more specific information about the offenders whom Corrections refers to it and the outcomes of the screenings and evaluations that it conducts.

#### ***Mental Health's Action: Pending.***

Mental Health reported that it has identified database enhancements that will enable it to track more specific information and that these changes will enable Mental Health to track trends and streamline processes. In August 2011 Mental Health's project team began discussing development of the enhancements and estimates fully implementing this recommendation by January 2013.

**Recommendation 1.2.a—See pages 19 and 20 of the audit report for information on the related finding.**

To eliminate duplicative effort and increase efficiency, Corrections should not make unnecessary referrals to Mental Health. Corrections and Mental Health should jointly revise the structured screening instrument so that the referral process adheres more closely to the law's intent.

***Mental Health's Action: Pending.***

Mental Health stated that it is working with Corrections to further streamline the referral process to eliminate duplicative effort and increase efficiency. Mental Health also stated that in July 2011 it began meeting with Corrections bi-weekly to focus on referrals, access to records, systems and equipment.

**Recommendation 1.2.b—See pages 19—23 of the audit report for information on the related finding.**

To eliminate duplicative effort and increase efficiency, Corrections should not make unnecessary referrals to Mental Health. For example, Corrections should better leverage the time and work it already conducts by including in its referral process: (1) determining whether the offender committed a predatory offense, (2) reviewing results from any previous screenings and evaluations that Mental Health completed and considering whether the most recent parole violation or offense might alter the previous decision, and (3) using STATIC-99R to assess the risk that an offender will reoffend.

***Corrections' Action: Pending.***

Corrections stated that it will explore the best method to evaluate the circumstance of the qualifying conviction to determine if the elements of the offense were predatory in nature and evaluate the circumstance of the new parole violation and or new conviction to determine if the new elements alter the previous decision. Corrections stated that in September 2011 its Board of Parole Hearings met with Mental Health to discuss the screening process and plans to meet again to evaluate and discuss Mental Health's screening process, whether the current screening process could be replicated within Corrections using existing resources, and to work with Mental Health to develop a screening form for use by Corrections to determine which cases will be referred to Mental Health for full evaluations.

**Recommendation 1.3—See pages 23 and 24 of the audit report for information on the related finding.**

To allow Mental Health sufficient time to complete its screenings and evaluations, Corrections should improve the timeliness of its referrals. If it does not achieve a reduction in referrals from implementing recommendation 1.2.b, Corrections should begin the referral process earlier than nine months before offenders' scheduled release dates in order to meet its six-month statutory deadline.

***Corrections' Action: Pending.***

Corrections stated that it is taking various steps to evaluate potential efficiencies to streamline its screenings and is establishing a new database for tracking cases requiring review. These actions are scheduled to be completed during the last quarter of 2011 and Corrections plans to complete a six-month report in January 2012. Corrections did not provide documentation of its efforts but we look forward to its report and corroborating documentation of its efforts in its six-month update.

**Recommendation 1.4—See pages 27—29 of the audit report for information on the related finding.**

To reduce costs for unnecessary evaluations, Mental Health should either issue a regulation or seek a statutory amendment to clarify that when resolving a difference of opinion between the two initial evaluators of an offender, Mental Health must seek the opinion of a fourth evaluator only when a third evaluator concludes that the offender meets SVP criteria.

*Mental Health's Action: Pending.*

Mental Health stated that it is preparing rulemaking packages, which will include the submission of regulations, to the Office of Administrative Law by the end of 2011.

*Legislative Action: Unknown.*

The state auditor is not aware of any action taken by the Legislature as of January 5, 2012.

**Recommendation 1.5—See pages 29—32 of the audit report for information on the related finding.**

To ensure that it will have enough qualified staff to perform evaluations, Mental Health should continue its efforts to obtain approval for a new position classification for evaluators. If the State Personnel Board (SPB) approves the new classification, Mental Health should take steps to recruit qualified individuals as quickly as possible. Additionally, Mental Health should continue its efforts to train its consulting psychologists to conduct evaluations.

*Mental Health's Action: Partially implemented.*

Mental Health stated that its SVP Evaluator classification proposal is to be heard by SPB in October 2011 and if approved, Mental Health will immediately recruit and train evaluators once the position is approved. Additionally, Mental Health reported that Senate Bill 179, approved in September 2011, allows for an extension to use contractors until January 2013.

**Recommendation 1.6—See page 32 of the audit report for information on the related finding.**

To ensure that the Legislature can provide effective oversight of the program, Mental Health should complete and submit as soon as possible its reports to the Legislature about Mental Health's efforts to hire state employees to conduct evaluations and about the impact of Jessica's Law on the program.

*Mental Health's Action: Partially implemented.*

Mental Health submitted a combined report on its efforts to hire state employees in July 2011. This report covered its activities for the period July 2009 through January 2011. Mental Health stated that it planned to submit two additional reports to the Legislature by October 1, 2011: a report covering its efforts to hire state employees through July 2011 and a report on the impact of Jessica's Law on the program.



# Department of Mental Health

## Waste of State Funds, Misuse of State Resources (Case I2009-0644)

### REPORT NUMBER I2011-1, CHAPTER 1, ISSUED AUGUST 2011

The investigation found that an executive at the Department of Mental Health (Mental Health) wasted at least \$51,244 in state funds in 2009, the one-year period that we examined, by employing a long-time senior official to perform activities that either were undertaken on behalf of a nonstate organization or did not serve a state purpose. In fall 2010 the executive directed the senior official to discontinue using state-compensated time for activities that we found did not benefit the State. Soon thereafter the executive retired from state service, and the senior official began using leave while he awaited new work assignments.

In reporting on the investigation, the California State Auditor (state auditor) made the following recommendations to Mental Health. The state auditor's determination regarding the current status of recommendations is based on Mental Health's response to the state auditor as of June 2011.

#### **Recommendation 1.a—See pages 5—12 of the investigative report for information on the related finding.**

To address the waste and misuse of state resources, Mental Health should evaluate the need for the senior official's position.

#### *Mental Health's Action: Fully implemented.*

Mental Health reported that in following our recommendations, it reevaluated the necessity of the senior official's position and concluded that the position was unnecessary. Mental Health stated that although a former administration created the position for desirable purposes, it determined that these functions were no longer essential and should not be maintained given current fiscal constraints. The senior official resigned from state service in May 2011, and Mental Health eliminated his position.

#### **Recommendation 1.b—See pages 10 and 11 of the investigative report for information on the related finding.**

If Mental Health determines that the senior official's position can provide a benefit to the State, clarify the job duties associated with the position and increase oversight of the position's activities to ensure that the State receives material benefits from the activities.

#### *Mental Health's Action: Fully implemented.*

Mental Health eliminated the senior official's position. Thus, it had no need to clarify the job duties and increase oversight for this position.

#### **Recommendation 1.c—See pages 6—12 of the investigative report for information on the related finding.**

Mental Health should evaluate the senior official's workdays during the past three years to determine whether the senior official should have charged leave on workdays that he claimed to have worked but actually devoted himself to nonstate activities.

*Mental Health's Action: Fully implemented.*

Mental Health reported that it was unable to evaluate fully the senior official's workdays during the past three years to determine whether the senior official should have charged more leave. Instead, Mental Health stated that it found scant evidence of how the senior official spent his workdays even though it tried to reconstruct his daily work activities. Mental Health thus concluded that compiling the necessary evidence would require extensive work by staff to evaluate daily activities that occurred "long ago." The official resigned from state service in May 2011.

**Recommendation 1.d—See pages 7—9 of the investigative report for information on the related finding.**

Mental Health should require the senior official to use leave for workdays on which he did not actually perform work for the State or to repay the State the amount of salary he received for those days.

*Mental Health's Action: Fully implemented.*

Mental Health stated that it is unlikely to recover any portion of the senior official's salary. In addition to its inability to evaluate the senior official's workdays, Mental Health stated that even though it expected a 40-hour workweek from the senior official, more or less than eight hours on individual days was permissible. Further, it stated that it had no documented evidence that the senior official failed to perform many of his duties. Finally, Mental Health indicated that even if it were able to determine the salary amount the senior official earned on workdays he did not actually perform work for the State, it could not seek to recover those costs since he no longer is employed by the State.

## 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, ISSUED JUNE 2010

The report concludes that the Department of Public Health (Public Health) and the former California Department of Health Services have overstated the fund balances for the State and Federal Health Facilities Citation Penalties Accounts (state and federal accounts) on the fund condition statements since at least fiscal year 2004–05. Of particular note is that Public Health's budget section overstated the federal account's ending fund balance by \$9.9 million for fiscal year 2008–09. Errors made in the fund condition statements have masked the fact that the federal fund is now nearly insolvent and this condition may adversely affect services provided by the Department of Aging's (Aging) Long-Term Care Ombudsman Program designed to help protect residents of long-term health care facilities (facilities) from abuse and neglect.

Revenue for the state and federal accounts is derived from citations imposing Civil Money Penalties (monetary penalties) that Public Health's Licensing and Certification Division (division) or the Centers for Medicare and Medicaid Services (CMS) issue depending on whether the violation cited is with state or federal requirements. Although the division generally collects payments for all of the citations it issues for which the facilities choose not to appeal that are collectable, the amounts it ultimately collects are less than those originally imposed mainly because state law permits a 35 percent reduction to the monetary penalty if it is paid within a specified time frame. Specifically, during the nearly seven-year period we reviewed, the division imposed \$8.4 million in monetary penalties but collected only \$5.6 million. Furthermore, a significant amount of monetary penalties imposed by the division are stalled in the appeals process. From fiscal year 2003–04 through March 15, 2010, facilities appealed citations totaling \$15.7 million in monetary penalties. Of this amount, citations comprising nearly \$9 million were still under appeal and some of these citations were contested roughly eight years ago. The large number of citations stalled in the appeals process is likely due to incentives the appeals process offers facilities, including the delay of payment until the appeal is resolved and the potential that the monetary penalty will be significantly reduced. In fact, 71 percent of the citations issued, appealed, and resolved in the time period we reviewed received reductions to the original amount imposed. In particular, of the \$5.3 million imposed by citations that were appealed and ultimately reduced, facilities were required to pay only \$2.1 million.

Finally, we identified several opportunities for Public Health to increase revenue for both the state and federal accounts by seeking changes to state law and by ensuring the division adheres to current law. For instance, Public Health should seek the authority to revise the monetary penalties specified in state law—some were last revised in 2001 and others in 1985. We estimate that had the monetary penalties for citations been revised at the rate of inflation, Public Health could have collected nearly \$3.3 million more in revenue for the state account.

In the report, the California State Auditor (state auditor) made the following recommendations to Public Health. The state auditor's determination regarding the current status of recommendations is based on Public Health's response to the state auditor as of June 2011.

#### **Recommendation 1.1.a—See pages 20—21 of the audit report for information on the related finding.**

To ensure that the governor's budget does not overstate funds available for appropriation for the federal account, Public Health should 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.

***Public Health's Action: Fully implemented.***

Public Health has updated its budget section procedure manual with the revised fund condition statement procedures. Included in the manual are requirements for budget section staff to reconcile the revenues, expenditures, and fund balance prior to inclusion of the fund condition statement in the governor's budget. Additionally, Public Health stated that its budget section has implemented the procedures manual and held training for staff in March 2011 related to the revised procedures.

**Recommendation 1.1.b—See page 21 of the audit report for information on the related finding.**

To ensure that the governor's budget does not overstate funds available for appropriation for the federal account, Public Health should ensure that supervisory review is performed of the reconciliation of the fund condition as supported by Aging's and Public Health's accounting records to the fund condition statement prepared for inclusion in the governor's budget.

***Public Health's Action: Fully implemented.***

The fund condition statement procedures, included in Public Health's budget section procedures manual, require that a supervisor review the fund condition and indicate approval with a signature and date.

**Recommendation 1.2.a—See pages 23—24 of the audit report for information on the related finding.**

To increase revenue for the state account, Public Health should update its Electronic Licensing and Management System (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, the division should update its monetary penalty assessment form to ensure it contains language that is consistent with state law. 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: Fully implemented.***

In December 2010 Public Health enhanced ELMS to use the citation issuance date when calculating whether a facility's payment was received in time to warrant a 35 percent reduction. Further, in September 2010, Public Health updated its monetary penalty assessment form with language that is consistent with state law. Finally, Public Health stated that it does not believe that 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.

**Recommendation 1.2.b—See pages 25—30 of the audit report for information on the related finding.**

To increase revenue for the state account, Public Health should seek legislation authorizing it to require facilities that want to contest the monetary penalty to pay the penalty upon its appeal, which could then be deposited into an account within the special deposit fund. The original monetary penalty deposited, plus interest accrued in the account, should then be liquidated in accordance with the terms of the decision.

***Public Health's Action: No action taken.***

- Although Public Health originally agreed in its 60-day and six-month response with our recommendation, in its one-year response it stated that it is changing its position after meeting with stakeholders in January 2011. Public Health indicated that changing the collection process to require facilities to prepay penalties, and placing the penalties in an interest bearing account, would



result in a cost to the department of approximately \$65,000 a year. Public Health explained that the administrative cost of maintaining such an account would need to be paid either by the imposition of a nonrefundable administrative fee upon filing of an appeal or by an increase in licensing fees.

However, as we explain in our report, Public Health could probably generate more than enough interest revenue to outweigh the costs to administer the account. Further, establishing an account within the special deposit fund could help increase revenue for the state account and deter some facilities from appealing citations solely to defer or reduce payments of their monetary penalties.

***Legislative Action: Unknown.***

The state auditor is not aware of any action taken by the Legislature as of January 5, 2012.

**Recommendation 1.3—See pages 29—30 of the audit report for information on the related finding.**

To ensure consistency with federal guidance related to federal requirements, and that it is not creating incentives for facilities to appeal citations issued for noncompliance with state requirements, Public Health should 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. If Public Health believes instances occur when it is appropriate to reduce a monetary penalty by more than 35 percent, it should document which statutory or regulatory factors that formed the basis for concluding that the original class of citation and corresponding monetary penalty amount were no longer considered valid or relevant.

***Public Health's Action: No action taken.***

Public Health stated that it disagrees with our recommendation 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 our report, 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 for facilities to appeal citations.

**Recommendation 1.4.a—See pages 31—33 of the audit report for information on the related finding.**

To ensure that citation review conferences are completed expeditiously, Public Health should continue to take steps to eliminate its backlog of appeals awaiting a citation review conference.

***Public Health's Action: Partially implemented.***

To address the backlog of appeals awaiting a citation review conference, Public Health stated that it conducted citation review conferences for all Class A violations that were pending when we issued our report. In July 2010 Public Health entered into a contract with the Office of Administrative Hearings (OAH) to address the backlog of appeals for Class AA violations. However, Public Health stated that it terminated this contract in April 2011 due to escalating costs and because OAH was unable to conduct the citation review conferences consistent with Public Health's protocols. As a result, Public Health stated there is still a backlog of one Class AA, 162 Class A, and 337 Class B violations awaiting citation review conferences. Public Health recently hired three retired annuitants to conduct citation review conferences.

**Recommendation 1.4.b—See pages 25—30 of the audit report for information on the related finding.**

To ensure that citation review conferences are completed expeditiously, Public Health should 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 on the grounds that the citation review conference has not been completed before the effective date of the monetary penalty.

***Public Health's Action: Fully implemented.***

See the legislative action below.

***Legislative Action: Legislation enacted.***

Chapter 729, Statutes of 2011 (Assembly Bill 641), eliminates the citation review conference from the citation appeals process for long-term care facilities and allows fines to be levied from both state and federal agencies when an incident violates both state and federal laws.

**Recommendation 1.4.c—See pages 32—33 of the audit report for information on the related finding.**

To ensure that citation review conferences are completed expeditiously, Public Health should monitor its progress in processing appealed citations for Class AA and Class B violations as well as OAH's progress in processing appealed citations for Class A violations.

***Public Health's Action: Fully implemented.***

Public Health stated that it now has a project manager responsible for tracking and coordinating citation review conferences and noted that it decreased the backlog for Class AA and Class B violations. Public Health stated that the backlog of Class A violations has risen after terminating the OAH contract, but anticipates this number will decrease because three retired annuitants are dedicated to conducting citation review conferences.

**Recommendation 1.5.a—See pages 34—36 of the audit report for information on the related finding.**

To increase revenue for the penalty accounts, Public Health should seek legislation authorizing it to revise periodically the penalty amounts to reflect an inflation indicator, such as the Consumer Price Index.

***Public Health's Action: Partially implemented.***

Public Health recognizes that this recommendation requires a statutory change. Public Health stated that, as a first step, the legislation referenced below increased the fine for Class B violations to \$2,000. It asserted that, going forward, it will continue to evaluate increases to the monetary penalty amounts for the other classes of violations.

***Legislative Action: Legislation enacted to partially implement.***

Chapter 4, Statutes of 2011 (Assembly Bill 19), authorizes Public Health to increase the fine for Class B violations to \$2,000.

**Recommendation 1.5.b—See pages 34—36 of the audit report for information on the related finding.**

To increase revenue for the penalty accounts, Public Health should encourage the CMS to seek changes to federal regulations authorizing CMS to revise periodically the monetary penalty amounts imposed on facilities to reflect the rate of inflation.

***Public Health's Action: Fully implemented.***

In December 2010 Public Health issued a letter to CMS encouraging it to periodically revise the monetary penalties imposed on facilities that are not compliant with federal requirements to reflect the rate of inflation.

**Recommendation 1.5.c—See page 36 of the audit report for information on the related finding.**

To increase revenue for the penalty accounts, Public Health should ensure that it conducts all state surveys of facilities every two years, as required by state law.

***Public Health's Action: Pending.***

Public Health concurs that it should conduct all state surveys of facilities every two years as required by state law and is making a concerted effort to do so. However, Public Health stated that it is unable to meet this standard at this time due to insufficient staffing resources.

**Recommendation 1.5.d—See pages 36—37 of the audit report for information on the related finding.**

To increase revenue for the penalty accounts, Public Health should submit to the Pooled Money Investment Board a request that the board approve including both the state and federal accounts in the Surplus Monetary Investment Fund (SMIF) in order to increase revenue for both accounts.

***Public Health's Action: Fully implemented.***

Public Health stated that it submitted a request to the Pooled Money Investment Board to include the penalty accounts in the SMIF in June 2010. The request was approved and the penalty accounts began to accrue interest for the fourth quarter of fiscal year 2009–10.

**Recommendation 1.5.e —See pages 36—37 of the audit report for information on the related finding.**

To increase revenue for the penalty accounts, Public Health should seek authorization from the Legislature both to impose a monetary penalty and to recommend that CMS impose a monetary penalty when the division determines that a facility is not complying with both state and federal requirements.

***Public Health's Action: Fully implemented.***

See the legislative action below.

***Legislative Action: Legislation enacted.***

Chapter 729, Statutes of 2011 (Assembly Bill 641), removes the prohibition of the issuance of both a state citation and the recommendation to impose a federal monetary penalty when Public Health determines that a facility is in violation of any state or federal law, regulation, or statutory provision.

**Recommendation 1.5.f —See pages 37—38 of the audit report for information on the related finding.**

To increase revenue for the penalty accounts, Public Health should 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.

***Public Health's Action: Pending.***

Public Health did not entirely agree with our recommendation. However, Public Health indicates that it will explore proposing legislation for the 2012 legislative session that specifies a time frame within which nonappealed citations that do not qualify for a 35 percent reduction must be paid.

***Legislative Action: Unknown.***

The state auditor is not aware of any action taken by the Legislature as of January 5, 2012.

**Recommendation 1.5.g—See pages 37—38 of the audit report for information on the related finding.**

To increase revenue for the penalty accounts, Public Health should increase its coordination with CMS to ensure that it can track CMS's implementation of the recommendations that the division makes to CMS for the period before receiving training from CMS, and that it effectively use the Automated Survey Processing Environment (ASPEN) to track recommendations after the training.

***Public Health's Action: Fully implemented.***

Public Health stated that it worked with CMS to increase coordination. Public Health now generates a quarterly report from ASPEN that tracks the recommendations made by the State and related enforcement actions.

**Recommendation 1.6—See pages 38—40 of the audit report for information on the related finding.**

To make certain that it fully implements the recommendations made in our April 2007 audit report, Public Health should create written procedures specifying that expenditure reports should be reviewed monthly by an accounting analyst within the division to determine whether all charges 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.

***Public Health's Action: Fully implemented.***

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.

**Recommendation 1.7—See pages 39—40 of the audit report for information on the related finding.**

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: Pending.***

Public Health stated that it will complete the regulations for the administration of temporary management companies by 2016.

# 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, ISSUED NOVEMBER 2010

This report concludes that the State Personnel Board (Personnel Board) is not meeting most of its responsibilities under the Dymally-Alatorre Bilingual Services Act (Act). The Personnel Board has not informed all state agencies of their responsibilities under the Act and has not ensured that state agencies conduct language surveys to assess their clients' language needs. In addition, the Personnel Board does not obtain necessary information from state agencies that would allow it to evaluate their compliance with the Act and does not order deficient agencies to take the necessary actions to ensure they have sufficient qualified bilingual staff and translated written materials to address the language needs of their substantial populations of limited-English-proficient (LEP) clients. Moreover, the Personnel Board's complaint process needs improvement because it does not ensure that complaints are resolved in a timely manner and its report to the Legislature does not adequately address whether state agencies are complying with the Act.

We also found that state agencies are not fully complying with the Act. Although nine of the 10 agencies we reviewed conducted language surveys in 2008, four reported inaccurate survey results for one or more of their local offices, and two did not have sufficient documentation to support their survey results. In addition, 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. Further, 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 staffing deficiencies and translated written materials deficiencies. We also found that some state agencies are not maximizing opportunities to reduce their costs of providing bilingual services by leveraging existing state contracts for interpretation and translation services.

Finally, our survey of local government administrators and department managers in 25 counties and cities throughout California found that some are not fully addressing their clients' bilingual needs. As a result, their clients may not be receiving the government services to which they are entitled.

In the report, the California State Auditor (state auditor) made the following recommendations to the Personnel Board and other state and local agencies. The state auditor's determination regarding the current status of recommendations is based on the 11 audited state agencies' and three local agencies' responses to the state auditor as of November 2011.

#### **Recommendation 1.1—See page 17 of the audit report for information on the related finding.**

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

#### ***Personnel Board's Action: Fully implemented.***

The Personnel Board used the Department of Finance's Uniform Codes Manual to create a comprehensive state agency listing and has developed procedures to ensure that all state agencies are properly notified of the Act's requirements.

**Recommendation 1.2—See pages 17—19 of the audit report for information on the related finding.**

The Personnel Board should 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: Fully implemented.***

The Personnel Board developed a system to track state agencies' participation in the language survey and implementation plan processes. The Personnel Board also incorporated accurate exemption language, as specified in the Act, into the forms for the language survey and implementation plan and instituted a tracking mechanism and review process for each exemption approval to reduce the risk of error.

**Recommendation 1.3—See pages 19—20 of the audit report for information on the related finding.**

The Personnel Board should 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, the Personnel Board should 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: Fully implemented.***

The Personnel Board revised its forms to capture all of the information required by the Act. In addition, the Personnel Board has developed procedures to assess the adequacy of state agencies' language surveys and implementation plans, which includes evaluating the status of agencies' corrective action plans for addressing deficiencies in bilingual staffing and written materials. If it determines that agencies' corrective action plans do not adequately address deficiencies, the Personnel Board now requires such agencies to revise their plans accordingly. In addition, the Personnel Board requires deficient agencies to submit six-month progress reports. Further, the Personnel Board revised its procedures to invite nonexempt state agencies that do not submit language surveys or implementation plans to explain their noncompliance to its five-member board. Finally, the Personnel Board's bilingual services unit secured three student assistants to assist with its workload.

***Legislative Action: Legislation introduced.***

Assembly Bill 305 (as amended March 17, 2011) of the 2011-12 Regular Legislative Session would revise provisions relating to determining if there is a substantial number of non-English speaking people served by a state office and to expand the Personnel Board's reporting requirements under the Act.

**Recommendation 1.4—See page 20 of the audit report for information on the related finding.**

The Personnel Board should 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: Fully implemented.***

The Personnel Board revised its 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.

**Recommendation 1.5—See pages 21 and 22 of the audit report for information on the related finding.**

The Personnel Board should 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's next biennial report is not scheduled for release until March 2012. However, it stated that it will revise the format and content of that report and all subsequent reports to reflect more comprehensive and meaningful data.

**Recommendation 2.1—See pages 26—30 of the audit report for information on the related finding.**

To ensure that they meet their constituents' language needs, state agencies should make certain that they accurately assess and report their clients' language needs to the Personnel Board. State agencies should also analyze formally their language survey results and consider other available bilingual resources to determine their true staffing deficiencies. Further, state agencies should 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. Finally, state agencies should develop detailed corrective action plans describing how and when they will address their staffing and written materials deficiencies. In addition, they should submit their corrective action plans to the Personnel Board as part of the state agencies' overall implementation plans.

***California Emergency Management Agency's Action: Fully implemented.***

The California Emergency Management Agency (Emergency Management) developed procedures to help ensure the accuracy of its biennial language surveys. Emergency Management also participated in the 2010 language survey and submitted an implementation plan to the Personnel Board in 2011. Emergency Management's language survey indicated that it did not have any staffing or written materials deficiencies. In addition, Emergency Management's implementation plan described its procedures for identifying the written materials that the Act requires it to translate into other languages and how it ensures such materials are translated or made accessible to its LEP clients. Finally, Emergency Management also provides an option on its Web site that allows LEP clients to translate its Web site content into numerous other languages.

***California Highway Patrol's Action: Fully implemented.***

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. Highway Patrol also participated in the 2010 language survey and submitted an implementation plan to the Personnel Board in 2011. Highway Patrol also formally analyzed its language survey results and determined that it had no true staffing deficiencies. In addition, it established procedures for identifying written materials that the Act requires it to translate into other languages and a process for monitoring its compliance with this requirement. Finally, Highway Patrol developed a detailed corrective action plan describing how and when it will address its written materials deficiencies.

***Department of Corrections and Rehabilitation's Action: Pending.***

The Department of Corrections and Rehabilitation (Corrections) reported that it has made progress in several areas to address our recommendations. For example, Corrections stated that it is developing a bilingual coordinator manual and a language services manual for its staff to use as a resource. Corrections indicated that it is also developing criteria and an evaluation tool which it will use to evaluate future language survey results. In addition, Corrections stated that it is developing a mechanism to monitor and report translated written materials and to ensure the accessibility of such materials. Corrections also participated in the 2010 language survey and submitted an implementation plan to the Personnel Board in 2011, reporting that it did not have any true staffing deficiencies or written materials deficiencies.

***Department of Food and Agriculture's Action: Partially implemented.***

The Department of Food and Agriculture (Food and Agriculture) participated in the 2010 language survey and submitted an implementation plan to the Personnel Board in 2011. Food and Agriculture reported that its bilingual services program coordinator reviewed all the tally sheets from every participating division to make sure that the information gathered and reported would yield accurate survey results. Food and Agriculture also formally analyzed its language survey results and its implementation plan included a corrective action plan describing how it will address its true staffing deficiencies. However, Food and Agriculture acknowledged that it is still in the process of developing standard procedures for identifying written materials that require translation.

***Department of Housing and Community Development's Action: Fully implemented.***

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 participated in the 2010 language survey and submitted an implementation plan to the Personnel Board in 2011. In addition, Housing formally analyzed its language survey results and established procedures for identifying written materials that require translation. Finally, Housing's implementation plan included a corrective action plan describing how it will address its staffing and written materials deficiencies.

***Department of Justice's Action: Fully implemented.***

The Department of Justice (Justice) reported that it 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. Justice also participated in the 2010 language survey and submitted an implementation plan to the Personnel Board in 2011. In addition, Justice formally analyzed its language survey results and determined that it had no true staffing deficiencies. Justice also established procedures for identifying written materials that require translation and its implementation plan included a corrective action plan describing how it will address its deficiencies in written materials. Finally, Justice also provides an option on its Web site that allows LEP clients to translate its Web site content into numerous other languages.

***Department of Motor Vehicles' Action: Fully implemented.***

The Department of Motor Vehicles (Motor Vehicles) participated in the 2010 language survey and submitted an implementation plan to the Personnel Board in 2011. Motor Vehicles reported that it implemented improved procedures and incorporated additional checks and balances for the 2010 language survey to ensure that it accurately assessed and reported its LEP clients' language needs to the Personnel Board. In addition, Motor Vehicles formally analyzed its language survey results



and established procedures for identifying written materials that require translation. Finally, Motor Vehicles' prepared a corrective action plan describing how and when it will address its staffing and written materials deficiencies.

***Department of Public Health's Action: Fully implemented.***

The Department of Public Health (Public Health) reported that it will continue to ensure that it accurately assesses and reports its clients' language needs to the Personnel Board. Public Health participated in the 2010 language survey and submitted an implementation plan to the Personnel Board in 2011. Public Health formally analyzed its language survey results and established procedures for identifying written materials that require translation. In addition, Public Health prepared a corrective action plan describing how and when it will address its staffing and written materials deficiencies.

***Department of Toxic Substances Control's Action: Fully implemented.***

The Department of Toxic Substances Control (Toxic Substances Control) reported that it would continue to accurately assess and report its clients' language needs to the Personnel Board. Toxic Substances Control participated in the 2010 language survey and submitted an implementation plan to the Personnel Board in 2011. In addition, it established procedures for identifying written materials that require translation and formally analyzed its language survey results, concluding that it did not have any staffing or written materials deficiencies.

***Employment Development Department's Action: Partially implemented.***

The Employment Development Department (Employment Development) participated in the 2010 language survey and submitted an implementation plan to the Personnel Board in 2011. Employment Development reported that it designed and implemented corrective actions for the 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 also formally analyzed its language survey results and its implementation plan included a corrective action plan describing how it would address its true staffing deficiencies. However, Employment Development has not yet finalized a policy that contains provisions for ensuring that applicable written materials are translated into other languages as required by the Act.

**Recommendation 2.2—See pages 31 and 32 of the audit report for information on the related finding.**

State agencies should leverage the Department of General Services' (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: Fully implemented.***

Emergency Management reported that when it determines a need for translation and interpreter services which cannot be provided by one of its certified bilingual employees, it will utilize General Services' list of California Multiple Award Schedules (CMAS) vendors and consult with the Personnel Board.

***Highway Patrol's Action: Fully implemented.***

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: Fully implemented.***

Corrections indicated that it will routinely refer to General Services' and the Personnel Board's leveraged procurement agreements when bilingual service requests are within the ordering allowances for those contracts. In such instances, Corrections will utilize these agreements when they meet its specific business needs.

***Food and Agriculture's Action: Fully implemented.***

Food and Agriculture reported that it has explored General Services' CMAS and the Personnel Board's language service providers for cost effective translation, American Sign Language interpretation, and bilingual staff certification services.

***Housing's Action: Fully implemented.***

In an effort to achieve the best service at the lowest cost possible, Housing reported that its equal employment opportunity officer contacted the Personnel Board to obtain information and pricing on its bilingual services contracts, and compared those prices to the rates of the CMAS and other vendors that it currently uses for its bilingual services needs.

***Justice's Action: Fully implemented.***

Justice reported that it explored the state auditor's recommendation to leverage General Services' and the Personnel Board's contracts and found its current provider's services to be the most cost effective.

***Motor Vehicles' Action: Fully implemented.***

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

***Public Health's Action: Fully implemented.***

Public Health agrees that state agencies should leverage General Services' and the Personnel Board's contracts for interpretation and translation services to potentially reduce the costs of providing bilingual services. Public Health reported that it developed seven, two-hour training classes to educate its staff on various elements of the contracting and procurement process. It indicated that the fifth class in this series provides information on available leveraged procurement agreements, including General Services' and the Personnel Board's contracts for bilingual services. Public Health reported that it held the initial fifth class in October 2011, and it will repeat this training every 14 weeks.

***Toxic Substances Control's Action: Fully implemented.***

Toxic Substances Control reported that it conducted a formal analysis of General Services' and the Personnel Board's contracts to potentially reduce its costs of providing bilingual services. Based on this analysis, it has decided to obtain a new contract for bilingual services through the CMAS process.

***Employment Development's Action: Fully implemented.***

Employment Development reported 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.

**Recommendation 2.3—See pages 33 and 34 of the audit report for information on the related finding.**

Public Health and Corrections should develop procedures to detect and prevent contract splitting.

***Corrections' Action: Pending.***

Corrections reported that it is in the process of developing policies, procedures, and training materials to detect and prevent contract splitting. In the interim, its office of business services will review all incoming service orders to determine if existing contracts can satisfy these requests or if there are multiple requests pending for the same services.

***Public Health's Action: Fully implemented.***

Public Health reported that it developed seven training classes to educate its staff on the elements of the state's procurement and contracting process. It indicated that the first class in this series covered general procurement and contracting policies, including those governing service orders and the limitations on their use. Public Health reported that it held the initial class in July 2011, and it will repeat this training every 14 weeks. Public Health believes that these classes will enhance its adherence to its service order policies and mitigate the risk of future contract splitting.

**Recommendation 3.1—See pages 42 and 43 of the audit report for information on the related finding.**

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: Fully implemented.***

The City of Fremont developed a language access policy explaining how its clients can request language services and how they can complain if they feel these services are inadequate. The policy is available in multiple languages on the City's Web site.

***City of Santa Ana's Action: Fully implemented.***

The City of Santa Ana (Santa Ana) implemented a citywide bilingual complaint process. Santa Ana reported that each of its departments has a bilingual services representative available to respond to complaints or questions. It reported that information on the complaint process, along with bilingual services complaint forms, are available in several languages at all of its public counters and on the City's Web site.

***City of Garden Grove's Action: Fully implemented.***

The City of Garden Grove (Garden Grove) developed bilingual assessment and complaint procedures and a language barrier reporting form in November 2011. Garden Grove reported that this information will be made available to the public in all four of Garden Grove's major languages (English, Vietnamese, Spanish, and Korean) in all of its facilities and on its Web site.



## 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, ISSUED JULY 2010

This report concludes that the Department of Public Health (Public Health) could do more to maximize the funding available to pay for breast and cervical cancer screening services, which is—in our opinion—the primary focus of the program. Although total tobacco tax revenues supporting the Every Woman Counts (EWC) program are declining and costs to administer the program are rising, state law requires that Public Health provide services at the level of funding appropriated by the Legislature. When it requested \$13.8 million in additional funding from the Legislature in June 2009, Public Health claimed that redirecting funds from other areas of the EWC program—such as efforts aimed at providing health education to women and technical assistance to medical providers—to pay for additional screening services would not be possible given federal requirements and would jeopardize federal funding. However, our review of federal requirements and discussions with the Centers for Disease Control and Prevention indicate that Public Health has the flexibility to redirect funding to screening activities without risking the loss of federal funds. Unfortunately, Public Health's ability to identify and redirect funds toward paying for clinical aspects of the EWC program is hampered by the fact that it does not know how much its contractors are spending on specific activities. As a result, in an environment of scarce fiscal resources, Public Health lacks a basis to know whether paying for certain contract activities are a better use of funds than paying for additional mammograms or other screening procedures.

Finally, our audit found that Public Health should do more to improve the public transparency and accountability with which it administers the EWC program. For example, state law requires Public Health to develop regulations to implement the EWC program in a manner that considers the public's input. However, 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. State law also requires Public Health to report on the activities and effectiveness of the EWC program and submit an annual report to the Legislature. Although Public Health has provided information on an ad hoc basis, including during the State's budgetary process, it has provided only one formal report to the Legislature—in August 1996. This lack of information on the effectiveness of the EWC program limits Public Health's ability to effectively advocate for appropriate funding and hampers the Legislature's and the public's ability to exercise effective oversight.

In the report, the California State Auditor (state auditor) made the following recommendations to Public Health. The state auditor's determination regarding the current status of recommendations is based on Public Health's response to the state auditor as of June 2011 and a follow-up interview with Public Health's staff in July 2011.

#### **Recommendation 1.1—See pages 23—26 of the audit report for information on the related finding.**

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

Public Health provided members of the Legislature with a briefing on the EWC program on November 5, 2010. During that briefing, Public Health reported that it had renegotiated its contracts with many of the regional centers that had previously provided support services to the EWC program. The result of these renegotiations often reduced the total amounts to be paid to these contractors. For example, Table 4 of our audit report shows that the contract amounts for these regional centers, which expired on June 30, 2010, varied between \$332,000 and \$489,000 per year. In its November 2010 briefing, Public Health informed members of the Legislature that the budgeted amounts for each of these contracts for fiscal year 2010–11 had been reduced to roughly \$200,000 per year. In its one-year response to the audit, Public Health reported that it has completed its review of the EWC program's remaining contracts and has reduced the funds committed to one of its contracts with the San Diego State University Research Foundation by nearly 50 percent.

We reviewed several of Public Health's current contracts with its regional centers and observed that the value of these contracts had been reduced. However, our review found that Public Health has not developed budgets within these contracts indicating how much is to be spent on specific scope-of-work items. Instead, Public Health's process is to make payments to its contractors based on invoices that identify costs by type—such as salary or equipment costs—but not by specific task or objective. As a result, as we state on page 23 of the audit report, Public Health cannot measure the true cost of specific contractor activities and evaluate whether its spending on these areas is the best possible use of program funds.

**Recommendation 1.2.a—See pages 26—28 of the audit report for information on the related finding.**

To ensure that Public Health can maintain fiscal control over the EWC program, we recommend 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. One way Public Health could do this would be to estimate the number of women that can be screened at different levels of funding.

***Public Health's Action: Fully implemented.***

In its one-year response, Public Health indicated that it had developed a formal budget estimate package for the EWC program that was included in the Governor's Budget for fiscal year 2011–12. This package contained the estimated number of women served based on its projection of the amount of clinical claims the EWC program would pay during the fiscal year.

We reviewed the formal budget estimate package that Public Health provided to the Legislature as part of the fiscal year 2011–12 budget process and confirmed that it provided the Legislature with information on the expected number of women to be served. We also noted that Public Health has posted its estimate packages on the EWC program's Web site. Public Health's one-year response also indicated that it is attempting to track the social security numbers of the women who access the EWC program in an effort to better track caseload.

**Recommendation 1.2.b—See page 28 of the audit report for information on the related finding.**

To ensure that Public Health can maintain fiscal control over the EWC program, we recommend that it 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: Fully implemented.***

Public Health's one-year response to this recommendation focused on its efforts to develop and promulgate regulations that will direct its future administration of the EWC program, and discussed its efforts to develop a formal caseload estimation process as a tool to better communicate to the Legislature the affect of proposed appropriations.

***Legislative Action: Legislation enacted.***

Chapter 717, Statutes of 2010 (Senate Bill 853), requires Public Health to provide the Legislature with quarterly updates on caseload, estimated expenditures, and related program monitoring data for the EWC program. Moreover, Assembly Bill 1640 of the 2009–10 Regular Legislative Session would have, among other things, required Public Health to notify the Legislature at least 90 days prior to changing EWC eligibility requirements. However, the governor vetoed this bill on September 29, 2010

**Recommendation 1.3.a—See pages 29 and 30 of the audit report for information on the related finding.**

To ensure better public transparency and accountability for how the EWC program is administered, Public Health should comply with state law to develop regulations, based on input from the public and interested parties, that will 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.

***Public Health's Action: Partially implemented.***

Public Health's one-year response acknowledged that it had only partially implemented this recommendation, indicating that it has identified the necessary steps to promulgate effective regulations and has formed an internal rulemaking team to provide program-specific expertise throughout the regulation-making process. Public Health indicated that it is developing draft articles to address key program components, such as definitions, patient eligibility, provider participation, clinical standards, and other program considerations. Public Health has not yet developed an expectation on when its draft regulations for the EWC program will be available for public comment.

**Recommendation 1.3.b—See pages 30 and 31 of the audit report for information on the related finding.**

To ensure better public transparency and accountability for how the EWC program is administered, Public Health should provide the Legislature and the public with a time frame indicating when Public Health 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: Fully implemented.***

Although Public Health acknowledged in its one-year response that it had not submitted its annual report to the Legislature regarding the effectiveness of the EWC program, we noted that it released its report on June 21, 2011. The report is available on Public Health's Web site under the EWC program's web page. According to the annual report, Public Health anticipates releasing its next report on the EWC program's effectiveness in February 2012.





# Child Welfare Services

## California Can and Must Provide Better Protection and Support for Abused and Neglected Children

### REPORT NUMBER 2011-101.1, ISSUED OCTOBER 2011

This report concludes that California can and must provide abused and neglected children better protection and support. Specifically, the Department of Social Services (Social Services), which oversees the child welfare services (CWS) system, needs to use the Department of Justice's (Justice) Sex and Arson Registry to better ensure that children—when removed from their homes—are provided safe out-of-home placements. Our comparison of addresses for registered sex offenders to Social Services' addresses for licensed facilities and out-of-home child placements found more than 1,000 matches. In July 2011 our office referred these address matches to Social Services for investigation. Social Services reported in October 2011 that it and county CWS agencies had investigated nearly all of these matches and found several registered sex offenders living or present in licensed facilities. Specifically, Social Services indicates it has begun legal actions against eight licensees (four temporary suspension orders and four license revocations) and issued 36 immediate exclusion orders (orders barring individuals from licensed facilities).

This report also concludes that county CWS agencies' increased reliance on foster family agencies has led to unjustified increases in out-of-home placement costs. The increased reliance on foster family agencies, which were originally meant as substitutes for expensive group homes for children with elevated treatment needs, has instead been accompanied by a matching drop in the use of less expensive licensed foster homes. One potential explanation for this trend is that Social Services does not require county CWS agencies to document the treatment needs of children who are placed with foster family agencies. Additionally, Social Services could not provide us with support for the monthly rate it pays foster family agencies—a rate that includes a 40 percent administrative fee.

Our review of county CWS agencies' investigatory and ongoing case management practices found that they generally comply with state regulations and county policies. Nonetheless, the agencies still need to improve the timeliness of investigations and the consistency of ongoing case visits. Our review also found that county CWS agencies generally performed required background checks before placing children in out-of-home placements, although they did not always forward information regarding instances of abuse or neglect to Justice, as required by state law at the time of our audit. Finally, we determined that county CWS agencies that do not formally conduct internal evaluations of the services they delivered to a family prior to a child's death from abuse or neglect are missing opportunities to identify needed changes that may prevent similar future tragedies.

In the report, the California State Auditor (state auditor) made the following recommendations to Social Services. The state auditor's determination regarding the current status of recommendations is based on Social Services' response to the state auditor as of December 2011.

#### **Recommendation 1.1—See pages 20—22 of the audit report for information on the related finding.**

To ensure that vulnerable individuals, including foster children, are safe from sex offenders, Social Services should complete follow-up on any remaining address matches our office provided in July 2011 and take appropriate actions, as well as relay information to Justice or local law enforcement for any sex offenders not in compliance with registration laws.

#### ***Social Services' Action: Fully implemented.***

Social Services reported that it finished following-up on the outstanding address matches that our office provided in July 2011. In addition, it stated that it reported erroneous address data that it identified through the investigations to Justice. In a few instances, we questioned the appropriateness

of the actions taken by county CWS agencies in which they allowed sex offenders to remain in homes of children in the CWS system. Social Services stated that in certain circumstances counties do not have an obligation under current regulation or policy to remove children from homes due to the presence of a registered sex offender. However, counties are still required to determine the immediate risk and take appropriate steps to ensure the safety of children in these instances. Social Services indicated that counties have discretion over the action they take and that in certain situations it may be determined appropriate for a child to be in the home of a registered sex offender.

Assembly Bill 493 was amended in January 2012 and, if enacted, would create a general prohibition on registered sex offenders living or working in licensed children facilities or CWS placements. The bill provides that a registered sex offender could live in these locations as a client or if the prohibition is waived by a court because the offender is a parent or relative, and the placement of the child in the residence is in his or her best interest.

**Recommendation 1.2—See pages 22—24 of the audit report for information on the related finding.**

Social Services should begin to conduct regular address comparisons using Justice’s sex offender registry and its Licensing Information System and Child Welfare Services/Case Management System (CWS/CMS). If Social Services believes it needs additional resources to do so, it should justify and seek the appropriate level of funding. If efforts to obtain additional resources fail, Social Services should assign this high-priority task to existing staff.

***Social Services’ Action: Partially implemented.***

Social Services indicated that, in late December 2011, it began its first address comparison using its databases and Justice’s sex offender registry. Social Services stated that it will continue to refine this process to perform these address comparisons in an efficient manner and on a regular basis. Social Services added that it will assess its resource needs after it has had a chance to refine its process and determine the actual impact on its existing workload. If enacted, Assembly Bill 493 would require Social Services to perform these address comparisons at least quarterly.

**Recommendation 1.3.a—See pages 24 and 25 of the audit report for information on the related finding.**

To help keep children safe, the Legislature should consider enacting a general prohibition of registered sex offenders living or working in licensed children’s facilities or CWS placements.

***Legislative Action: Legislation introduced.***

Assembly Bill 493 would create a general prohibition on registered sex offenders living or working in licensed children facilities or CWS placements. The bill provides that a registered sex offender could live in these locations as a client or if the prohibition is waived by a court because the offender is a parent or relative, and the placement of the child in the residence is in his or her best interest.

**Recommendation 1.3.b—See pages 24 and 25 of the audit report for information on the related finding.**

To help keep children safe, the Legislature should consider enacting a requirement that all law enforcement staff overseeing sex offenders make sure that the addresses sex offenders submit for registration do not match a licensed facility for children or a foster home.

***Legislative Action: Legislation introduced.***

Assembly Bill 493 would implement this recommendation by requiring entities responsible for registering sex offenders to ensure that the address submitted by a sex offender does not match the address of a licensed facility for children or a CWS placement.

**Recommendation 1.3.c—See pages 24 and 25 of the audit report for information on the related finding.**

To help keep children safe, the Legislature should consider enacting a requirement that Social Services make available to law enforcement in an efficient manner the addresses of its children's facilities and foster homes.

***Legislative Action: Legislation introduced.***

Assembly Bill 493 would implement this recommendation by requiring Social Services to provide the addresses of licensed facilities for children and CWS placements to entities responsible for registering sex offenders.

**Recommendation 1.4—See pages 25—27 of the audit report for information on the related finding.**

To provide sufficient oversight of county CWS agencies with delegated authority to license foster homes, Social Services should complete comprehensive reviews of these agencies' licensing activities at least once every three years.

***Social Services' Action: Partially implemented.***

Social Services stated that it completed nine of the 13 county licensing reviews in 2011 that its departmental standards require. Based on information from 2008, 2009, and 2010, these nine reviews represent a dramatic improvement on previous years' performance. Social Services added that the four remaining reviews will be completed in 2012, in addition to the 13 regularly scheduled reviews for 2012.

**Recommendation 1.5—See pages 25—27 of the audit report for information on the related finding.**

To ensure that its licensees, including state-licensed foster homes, foster family agencies, and group homes, are in compliance with applicable requirements and that children are protected, Social Services should complete on-site reviews at least once every five years as required by state law.

***Social Services' Action: Pending.***

Social Services stated that historically, it has substantially met the five-year-visit requirement and added that with a new, evidenced-based inspection tool that it is continuing to refine, it will be able to complete facility reviews more frequently than once every five years. Social Services indicated that full implementation of this recommendation will occur by July 2012.

**Recommendation 1.6—See page 31 of the audit report for information on the related finding.**

To encourage more effective communication from county CWS agencies regarding its licensees, Social Services should specify in regulations what types of situations or allegations the agencies should forward to its licensing division.

***Social Services' Action: Pending.***

Social Services believes a previous letter to counties specified when a report to its licensing division is necessary. However, Social Services stated that it is drafting a notice to all counties reminding them of reporting requirements and methods.

**Recommendation 1.7—See page 31 of the audit report for information on the related finding.**

To ensure that county CWS agencies send required reports of abuse and neglect to Justice, Social Services should remind these agencies of applicable requirements and examine the feasibility of using CWS/CMS to track compliance with these statutory provisions.

***Social Services' Action: Pending.***

Social Services indicated that it will draft a notice to all counties reminding them of the conditions that warrant cross reporting to appropriate law enforcement agencies. Social Services added that it is currently examining the feasibility of using CWS/CMS to automatically document reports to law enforcement agencies.

**Recommendation 2.1.a—See pages 35—37 of the audit report for information on the related finding.**

To ensure that rates paid to foster family agencies are appropriate, Social Services should analyze the rates and provide reasonable support for each component, especially the 40 percent administrative fee it currently pays these agencies.

***Social Services' Action: Pending.***

Social Services continues to assert that it will examine this recommendation in conjunction with its existing efforts on congregate care reform. Social Services projected that implementation of this recommendation would not occur until June 2013. Similar to our statement on page 89 of the audit report, we continue to be concerned that Social Services does not fully appreciate that establishing support for foster family agency rates—a portion of which is federally reimbursed—should be a high priority task that should be accomplished regardless of the timeline of any other reform effort.

**Recommendation 2.1.b—See pages 35—37 of the audit report for information on the related finding.**

Social Services should create and monitor compliance with clear requirements specifying that children placed with foster family agencies must have elevated treatment needs that would require a group home placement if not for the existence of these agencies' programs. Specifically, Social Services should revise its regulations so licensed foster homes have higher priority than foster family agencies for children that do not have identified treatment needs.

***Social Services' Action: Pending.***

Although Social Services agrees that licensed foster homes are the preferred placement type for children who do not have identified treatment needs, Social Services indicated that it will continue to consider this recommendation in the context of congregate care reform and realignment. We continue to believe, as we state on page 90 of the audit report, that Social Services should expeditiously establish a requirement that county CWS agencies provide adequate justification for placements with foster family agencies and this action should not be dependent on the timeline of some larger reform effort.

**Recommendation 2.1.c—See pages 35—37 of the audit report for information on the related finding.**

Social Services should require county CWS agencies to file in CWS/CMS a detailed justification for any child placed with a foster family agency.

***Social Services' Action: Pending.***

Social Services indicated that it would recommend to a CWS/CMS oversight committee that a workgroup be formed to determine the feasibility of standardizing the format and location of placement justifications.

**Recommendation 2.1.d—See pages 35—37 of the audit report for information on the related finding.**

Social Services should create a mechanism by which it can efficiently check for compliance with the needs-justification requirement.

***Social Services' Action: Pending.***

Social Services indicated that it will determine the feasibility of developing standards for counties to provide placement needs justifications based on the findings of the workgroup described previously.

**Recommendation 2.2—See pages 37—40 of the audit report for information on the related finding.**

To achieve greater cooperation from county CWS agencies and to make it possible for some of these agencies to improve their placement practices, Social Services should develop a funding alternative that allows the agencies to retain a portion of state funds they save as a result of reducing their reliance on foster family agencies and only making placements with these agencies when justified by the elevated treatment needs of the child. The agencies would use these funds to support placement activities necessary to achieve the savings (for example, assessment centers and placement resource units).

***Social Services' Action: Partially implemented.***

Social Services stated that the intent of this recommendation has been essentially implemented by the realignment of CWS funding. Social Services indicated that, under realignment, county CWS agencies now have financial incentives to place children in the lowest cost placement necessary to effectively meet the needs of individual children. However, Social Services added that it will consider the need for any alternative funding incentives when the impact of realignment can be assessed, and it will also assess the need for such incentives as part of its broader congregate care reform effort.

**Recommendation 3.1—See pages 50 and 51 of the audit report for information on the related finding.**

To encourage continued progress and innovation in keeping children safe, Social Services should add to its current CWS performance metrics a measure of the percentage of investigatory visits (both immediate and 10-day) completed on time that excludes attempted investigatory visits from its calculation of successful outcomes.

***Social Services' Action: Pending.***

Social Services stated that, to develop a fully informed measure of investigatory visits, it is evaluating policy and regulations associated with these visits. Social Services indicated that when this evaluation is completed, it will have the ability to develop quantitative measures for investigatory visits.

**Recommendation 3.2—See pages 52—54 of the audit report for information on the related finding.**

Social Services should work with the Alameda County CWS agency to improve its percentage of ongoing case visits completed until it at least meets Social Services' compliance goal of 90 percent.

***Social Services' Action: Partially implemented.***

Social Services stated that it continues to work with all counties to improve the frequency of case worker visits to bring them above the 90 percent threshold. Social Services asserted that Alameda has made progress this last calendar year on case worker visits, exceeding the 90 percent threshold in several of those months.

**Recommendation 3.3—See pages 54—58 of the audit report for information on the related finding.**

To determine whether the hold harmless provision has been effective in reducing caseloads and whether it should be revised or rescinded, Social Services should refine and use CWS/CMS to calculate and report county CWS caseloads.

***Social Services' Action: No action taken.***

- ➔ In its October 2011 response to the audit report, Social Services disagreed that one purpose of the hold harmless provision was to reduce caseloads, but nonetheless agreed that CWS/CMS could and should be used to calculate and report county caseloads. Rather than provide an update on its progress towards creating this measure, Social Services once again asserted its disagreement regarding our description of the purpose of the hold harmless provision.

**Recommendation 4.1—See page 61 of the audit report for information on the related finding.**

To improve agency practices and increase the safety of children within the CWS system, all county CWS agencies should perform a formal internal review of the services they delivered to each child before he or she died of abuse or neglect and implement any resulting recommendations.

***Social Services' Action: Pending.***

Social Services stated that it will release, in spring 2012, a letter to all counties encouraging them, as a best practice, to conduct internal reviews of fatalities resulting from abuse or neglect. Additionally, Assembly Bill 1440, which was introduced in January 2012, would require each county CWS agency to conduct a formal death review within 60 calendar days of determining that abuse or neglect led to the death of a child. If enacted, Assembly Bill 1440 would also require counties to submit death review reports to Social Services within 10 days of their completion.

**Recommendation 4.2—See pages 69—71 of the audit report for information on the related finding.**

To encourage county CWS agencies to conduct formal internal death reviews, Social Services should revise its annual report on child deaths resulting from abuse or neglect to provide information on whether county CWS agencies conducted such a review of child deaths with prior CWS history. To obtain this information, Social Services should revise its regulations to require all county CWS agencies to not only report child deaths resulting from abuse or neglect but to also require a subsequent report indicating whether an internal child death review was completed.

***Social Services' Action: Pending.***

Social Services disagrees with this recommendation because it does not believe that its annual report on child deaths is an appropriate vehicle for encouraging counties to conduct formal death reviews. It also does not believe it has the statutory authority to require counties to conduct formal death reviews or report completion of these reviews to Social Services. Rather, Social Services points to the letter it is drafting that will encourage counties to conduct formal internal child death reviews. As we indicate on page 90 of the audit report, Social Services' plan for implementing this recommendation fails to create a mechanism to determine whether county CWS agencies are heeding its advice. If enacted, Assembly Bill 1440 would implement our recommendation by requiring county CWS agencies to submit death reviews to Social Services within 10 days of their completion and by requiring Social Services to include in its annual report information on whether county CWS agencies completed formal death reviews.

**Recommendation 4.3—See pages 69—71 of the audit report for information on the related finding.**

As part of its instructions related to its outcome review process, Social Services should direct county CWS agencies to include completed internal death reviews in the development of their self-assessments and improvement plans.

***Social Services' Action: Pending.***

Social Services stated that it agrees with this recommendation and is conducting research to determine how the death reviews can be incorporated into county self-assessments and improvement plans.

**Recommendation 4.4—See pages 66—69 of the audit report for information on the related finding.**

As part of its oversight of the outcome review process, Social Services should follow up on whether Fresno and Sacramento counties implemented recommendations resulting from their respective internal death reviews.

***Social Services' Action: Pending.***

Social Services stated that it will follow up with Fresno and Sacramento counties to determine whether they have implemented the recommendations resulting from their respective child death reviews. Social Services indicated that it will provide more information in its next update.

**Recommendation 4.5—See pages 69—71 of the audit report for information on the related finding.**

To ensure that they report all requisite child deaths to Social Services and investigate all child deaths involving abuse or neglect, county CWS agencies should annually reconcile their child death information with other reliable information on child deaths, such as county child death review team data.

***Social Services' Action: Pending.***

Social Services agrees that county CWS agencies should reconcile their child death information with other reliable information on child deaths, such as county child death review team data, and indicated it is researching best practices in this area. Social Services stated that it plans to issue a notice in spring 2012 to all counties describing best practices in this area.

**Recommendation 4.6—See pages 69—71 of the audit report for information on the related finding.**

To provide more useful information in its annual report, Social Services should provide child death information broken out by county, not just statewide totals. Further, Social Services should provide more analysis, such as comparing child death information over multiple years and presenting each county's child deaths as a percentage of its total child population.

***Social Services' Action: Pending.***

Social Services continues to disagree with this recommendation, stating that county-specific information is already available from each county. As we indicate on pages 90 and 91 of the audit report, Social Services' assertion that this information is already available from the 58 counties does little to help state decision makers and stakeholders who may be interested in this information. Social Services has this information by county readily available and could present this information in its annual report. If enacted, Assembly Bill 1440 would require Social Services to enhance its annual report to include the information we suggested.





# Foster Family Home and Small Family Home Insurance Fund

## Expanding Its Coverage Will Increase Costs and the Department of Social Services Needs to Improve Its Management of the Insurance Fund

### REPORT NUMBER 2010-121, ISSUED SEPTEMBER 2011

In September 1986 the Legislature established the Foster Family Home and Small Family Home Insurance Fund (insurance fund) to pay, on behalf of foster family homes and small family homes (licensed homes), the claims of foster children, their parents, or their guardians stemming from an accident that results in bodily injury or personal injury neither expected nor intended by the foster parent.

This report concludes that almost 90 percent of the foster parents running licensed homes who responded to our survey were unaware of the insurance fund's existence. In addition, approximately a third of these foster parents reported that the possibility of liability claims against them made them less likely to continue as foster parents in the future. Expanding the insurance fund's coverage to homes that are certified by foster family agencies (FFAs), which are organizations that recruit, certify, and train parents who provide foster family homes not licensed by the State, may be costly. If the Legislature desires to expand the insurance fund's coverage to include the FFAs' certified homes, it will have to make statutory amendments to expressly permit the insurance fund to pay claims on behalf of certified homes. Based on our survey results and the insurance fund's claims history, our consultant estimated that expanding the insurance fund's coverage to the FFAs' certified homes could potentially cost the State a minimum of \$967,500 each year. Further, if the Legislature desires to enable the insurance fund to cover legal guardians participating in the Kinship Guardianship Assistance Payment (Kin GAP) program, it will have to amend the pertinent statutes to expressly provide coverage for these guardians. Due to limitations in obtaining readily available and pertinent data, we were unable to survey the Kin GAP families and project the financial impact of adding them to the insurance fund.

This report also concludes that the Department of Social Services (Social Services) did not ensure that the Department of General Services (General Services), its designated contract agency, approved or rejected claims filed against the insurance fund within the 180 day time frame state law mandates. Social Services also failed to obtain key information from General Services, and as a result, Social Services has been unable to accurately project the insurance fund's budget needs. As of December 31, 2010, the insurance fund had a balance of roughly \$5.4 million, which is significantly higher than the \$1 million amount we estimate it needs to maintain as a reserve. Should the Legislature choose to expand the insurance fund's coverage to include certified homes and Kin GAP families, Social Services will need to reevaluate this reserve amount.

In the report, the California State Auditor (state auditor) made the following recommendations to Social Services and the Legislature. The state auditor's determination regarding the current status of recommendations is based on Social Services' response to the state auditor as of December 2011.

#### **Recommendation 1.1—See page 18 of the audit report for information on the related finding.**

To mitigate foster parents' concerns about liability and to increase the likelihood that they will continue to serve as foster parents, Social Services should develop more effective methods to inform and remind licensed homes about the availability of the insurance fund.

#### ***Social Services' Action: Fully implemented.***

Social Services issued a memo on September 28, 2011, instructing its Community Care Licensing Division (licensing division) program analysts to provide foster parents with General Services' insurance fund handout during the pre-licensing visit. In addition, Social Services posted the insurance

fund information on the licensing division's Web site on October 20, 2011. Finally, Social Services included the insurance fund information in the licensing division's fall 2011 Children's Residential Quarterly Update Newsletter.

**Recommendation 1.2—See pages 21 and 22 of the audit report for information on the related finding.**

If the Legislature desires that the insurance fund provide coverage to the FFAs' certified homes and Kin GAP families, it should amend the pertinent statutes to expand the insurance fund's coverage to include them.

*Legislative Action: Unknown.*

The state auditor is not aware of any action taken by the Legislature as of January 5, 2012.

**Recommendation 1.3.a—See pages 23—25 of the audit report for information on the related finding.**

To comply with state law and improve the timeliness of claims processing, Social Services should ensure that General Services approves or rejects all claims within the mandated 180-day deadline.

*Social Services' Action: Pending.*

Social Services stated that General Services has implemented a system to be in compliance with the mandated 180-day deadline, by either accepting or rejecting a claim within 180 days. In addition, Social Services stated that it has implemented a process to track claims pending at General Services to ensure they are processed in 180 days. However, Social Services did not provide us with supporting documentation to demonstrate that this process has been implemented.

**Recommendation 1.3.b—See pages 23—25 of the audit report for information on the related finding.**

To comply with state law and improve the timeliness of claims processing, Social Services should require General Services to ensure that claimants receive prompt notification of its decision to approve or reject their claims.

*Social Services' Action: Pending.*

Social Services stated that General Services has implemented a system to be in compliance with the mandated 180-day deadline, by either accepting or rejecting a claim within 180 days. In addition, Social Services stated that it has implemented a process to track claims pending at General Services to ensure they are processed in 180 days. However, Social Services did not provide us with supporting documentation to demonstrate that this process has been implemented.

**Recommendation 1.4—See pages 23—25 of the audit report for information on the related finding.**

To ensure the expedient disposition of claims, the Legislature should consider amending state law to provide claimants the option of litigating against the insurance fund if General Services does not approve or reject their claims within the 180-day deadline described in state law.

*Legislative Action: Unknown.*

The state auditor is not aware of any action taken by the Legislature as of January 5, 2012.

**Recommendation 1.5.a—See pages 26 and 27 of the audit report for information on the related finding.**

To ensure that the insurance fund makes the most efficient use of the State's limited resources, Social Services should ensure that General Services provides it with all the claims information specified in the interagency agreement.

***Social Services' Action: Pending.***

Social Services stated that it is working with General Services to obtain the most recent pending claims data. However, Social Services did not address how it will ensure that General Services provides it with all of the claims information specified in the interagency agreement on a quarterly basis.

**Recommendation 1.5.b—See pages 27—29 of the audit report for information on the related finding.**

To ensure that the insurance fund makes the most efficient use of the State's limited resources, Social Services should use these claims and expenditure data to determine the annual appropriation amount needed for the insurance fund to meet its anticipated liabilities.

***Social Services' Action: Pending.***

Social Services stated that it is working with General Services to obtain the most recent pending claims data and will adjust the fiscal year 2012–13 annual appropriation requested for the fund based on the variable factors that impact the submittal and adjudication of claims.

**Recommendation 1.5.c—See pages 27—29 of the audit report for information on the related finding.**

To ensure that the insurance fund makes the most efficient use of the State's limited resources, Social Services should establish a written policy or procedures to guide staff on the appropriate methodology to use when calculating these anticipated liabilities.

***Social Services' Action: Pending.***

Social Services stated that it has begun to draft procedures to document the methodology to use in determining an appropriate fund balance. However, Social Services did not state when it expects to complete and implement the procedures.

**Recommendation 1.5.d—See pages 27—29 of the audit report for information on the related finding.**

To ensure that the insurance fund makes the most efficient use of the State's limited resources, Social Services should establish an adequate reserve amount for the insurance fund and reevaluate it annually.

***Social Services' Action: Pending.***

Social Services stated that the insurance fund appropriation will be officially proposed to be adjusted in the 2012–13 Governor's Budget that will be released on January 10, 2012. However, Social Services did not address its plans for reevaluating the reserve amount annually.

