



FEB 24 2003

TO: Neil Donovan
Director, Audit Liaison Staff
Centers for Medicare and Medicaid Services

FROM: Dennis J. Duquette
Deputy Inspector General
For Audit Services

A handwritten signature in black ink, appearing to read "D. Duquette", written over the printed name and title.

SUBJECT: Review of Medicaid Payments for School-Based Health Services, Boston, Massachusetts - July 1999 through June 2000 (A-01-02-00001)

As part of the Office of Inspector General's (OIG) self-initiated audit work, we are alerting you to the issuance within 5 business days of our final audit report entitled, "Medicaid Payments for School-Based Health Services, Boston, Massachusetts - July 1999 through June 2000." A copy of the report is attached. This report is one in a series of reports in our multi-state initiative focusing on costs claimed for Medicaid school-based health services. We suggest you share this report with the Centers for Medicare and Medicaid Services' components involved in program integrity, provider issues, and state Medicaid agency oversight, particularly the Center for Medicaid and State Operations.

The objective of our audit was to determine whether costs claimed for school-based health services by the Boston Public Schools through the Commonwealth of Massachusetts were reasonable, allowable, and adequately supported in accordance with the terms of the state Medicaid plan and applicable federal regulations. The audit period included Medicaid payments made during the period July 1, 1999 through June 30, 2000.

We found that the Boston Public Schools need to improve their system of controls to ensure that school-based health records are assembled and maintained to support the dates and types of services provided and that all providers possess the required licenses. Specifically, the Boston Public Schools billed the Medicaid program:

- (1) For several students for which the school system did not locate any documentation to demonstrate that services prescribed in the Individualized Education Plan (IEP) were delivered,
- (2) For services rendered by providers that did not have the qualifications required by Massachusetts Medicaid regulations,
- (3) For a student before the IEP was implemented,
- (4) When a student was absent, and
- (5) When the school was not open to students.

We recommended that the Boston Public Schools:

- (1) Develop written policies and procedures requiring service providers to document all health services delivered to Medicaid recipients which details client specific information regarding all specific services actually provided for each individual recipient of services and retain those records for review,
- (2) Research Medicaid eligibility for all current health service providers and establish procedures to ensure that health services are rendered by Medicaid eligible providers,
- (3) Strengthen procedures to ensure that Medicaid billings are based on a current IEP which has been implemented,
- (4) Strengthen procedures to ensure that Medicaid billings are based on accurate attendance records that support the students' presence to receive services, and days for which the school was open, and
- (5) Refund through the Division of Medical Assistance, the \$1,240,526 (federal share) that was inappropriately paid by the Medicaid program to the Boston Public Schools.

While Boston Public Schools agreed with the findings concerning the need for attendance, IEP, and prototype records, they strongly disagreed with the findings related to service documentation and provider qualifications. Further, Boston Public Schools rejected OIG's assertion concerning internal control weaknesses. In this regard, Boston Public Schools believed they instituted rigorous internal controls to ensure all payments made are for eligible children, at appropriate rates, by qualified personnel. Accordingly, it is Boston Public Schools' view that, except for \$3,105, the monetary findings contained in the OIG's report are without merit.

We acknowledge that Boston Public Schools made a good faith effort to institute comprehensive internal controls. However, we found that improvements are still needed to ensure that Medicaid claims are billed in accordance with program requirements. We reported what we found to aid Boston Public Schools in making further improvements to its internal controls. We summarized and commented on their response in the AUDITEE'S RESPONSE AND ADDITIONAL OIG COMMENTS section of the report. We made changes, where appropriate, to our final report to address Boston Public Schools' concerns. The Boston Public Schools' response is included in its entirety in APPENDIX C to the report.

Any question or comments on any aspect of this memorandum are welcome. Please address them to George M. Reeb, Assistant Inspector General for the Centers for Medicare and Medicaid Audits, at (410) 786-7104 or Michael J. Armstrong, Regional Inspector General for Audit Services, Region I, at (617) 565-2689.

Attachment



FEB 27 2003

Office of Audit Services
Region I
John F. Kennedy Federal Building
Boston, MA 02203
(617) 565-2684

Report Number: A-01-02-00001

Dr. Thomas Payzant
Superintendent
Boston Public Schools
26 Court Street
Boston, Massachusetts 02108

Dear Dr. Payzant:

Enclosed are two copies of the Department of Health and Human Services (HHS), Office of Inspector General (OIG), Office of Audit Services' (OAS) report entitled, "Medicaid Payments for School-Based Health Services, Boston, Massachusetts - July 1999 through June 2000." A copy of this report will be forwarded to the action official noted below for his/her review and any action deemed necessary.

Final determination as to actions taken on all matters reported will be made by the HHS action official named below. We request that you respond to the HHS action official within 30 days from the date of this letter. Your response should present any comments or additional information that you believe may have a bearing on the final determination.

In accordance with the principles of the Freedom of Information Act (5 U.S.C. 552, as amended by Public Law 104-231), OIG, OAS reports issued to the department's grantees and contractors are made available to members of the press and general public to the extent information contained therein is not subject to exemptions in the Act which the department chooses to exercise. (See 45 CFR part 5.) As such, within 10 business days after the final report is issued, it will be posted to the internet at <http://oig.hhs.gov>.

To facilitate identification, please refer to report number A-01-02-00001 in all correspondence relating to this report.

Sincerely yours,

A handwritten signature in cursive script that reads "Michael J. Armstrong".

Michael J. Armstrong
Regional Inspector General
for Audit Services

Enclosures - as stated

Direct Reply to HHS Action Official:

Ms. Lynda Silva
Acting Regional Administrator
Centers for Medicare and Medicaid Services
Department of Health and Human Services
John F. Kennedy Federal Building, Room 2325
Boston, Massachusetts 02203-0003

cc: Frank McNamara, Director, Internal Control and Audit, Division of Medical Assistance
Executive Office of Health and Human Services, Commonwealth of Massachusetts
John Robertson, Associate Vice Chancellor, Center Director, Center for Health Care
Financing University of Massachusetts

Department of Health and Human Services

**OFFICE OF
INSPECTOR GENERAL**

**MEDICAID PAYMENTS FOR
SCHOOL-BASED HEALTH SERVICES
BOSTON, MASSACHUSETTS
– JULY 1999 THROUGH JUNE 2000 –**



**JANET REHNQUIST
Inspector General**

**FEBRUARY 2003
A-01-02-00001**

Office Of Inspector General Notices

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In accordance with the principles of the Freedom of Information Act, 5 U.S.C. 552, as amended by Public Law 104-231, Office of Inspector General, Office of Audit Services reports are made available to members of the public to the extent information contained therein is not subject to exemptions in the Act. (See 45 CFR part 5.)

OAS FINDINGS AND OPINIONS

The designation of financial or management practices as questionable or a recommendation for the disallowance of costs incurred or claimed as well as other conclusions and recommendations in this report represent the findings and opinions of the HHS/OIG/OAS. Final determination on these matters will be made by authorized officials of the HHS divisions.



EXECUTIVE SUMMARY

Background

The Medicaid program was established by title XIX of the Social Security Act and is jointly funded by the federal and state governments to provide medical assistance to pregnant women, children, and needy individuals who are aged, blind, or disabled. Within broad federal guidelines, states design and administer the program under the general oversight of the Centers for Medicare and Medicaid Services. In Massachusetts, the Division of Medical Assistance (DMA) is the state agency responsible for administering the Medicaid program. The DMA contracts with the University of Massachusetts Medical School, Center for Health Care Financing, Municipal Medicaid to administer the school-based health services portion of the Medicaid program.

School-based health services reimbursable under the Medicaid program are provided by or through the Massachusetts Department of Education or a local education agency to students with special needs pursuant to an Individualized Education Plan (IEP). Services are provided in the school setting or another site in the community and include speech therapy, physical therapy, occupational therapy, audiological services, behavior management, or counseling. The Boston Public Schools, a local education agency located in Boston, Massachusetts, operated 130 public schools and contracted with 119 private schools during our audit period. Of approximately 63,000 students who attended the Boston Public Schools during our audit period, 8,224 students received special education services for which the school system was reimbursed \$9,759,660 (federal share) under the Commonwealth of Massachusetts' Medicaid program.

Objective

The objective of our audit was to determine whether costs claimed for school-based health services by the Boston Public Schools through the Commonwealth of Massachusetts were reasonable, allowable, and adequately supported in accordance with the terms of the state Medicaid plan and applicable federal regulations. The audit period included Medicaid payments made during the period July 1, 1999 through June 30, 2000.

Summary of Findings

In Massachusetts, claims for school-based health services are based on a daily per diem rate for the prototype (level-of-service) developed in each Medicaid eligible student's IEP. Each school district must have accurate attendance records, a valid IEP for each student, an appropriate and accurate prototype, qualified Medicaid health care providers, and evidence that any Medicaid covered service in the IEP has been delivered before the Medicaid claim is submitted for federal reimbursement.

While our review indicated that Boston Public Schools and its billing agent had implemented many internal control procedures, we also found that further improvements can be made in internal controls.

The Boston Public Schools need to improve their system of controls to ensure that school-based health records are assembled and maintained to support the dates and types of services provided and that all providers possess the required licenses. Our review of payments contained in randomly selected months for 100 recipients showed that in 25 of the 100 sample months the Boston Public Schools billed the Medicaid program: (1) for several students for which the school system did not locate any documentation to demonstrate that services prescribed in the IEP were delivered, (2) for services rendered by providers that did not have the qualifications required by Massachusetts Medicaid regulations, (3) for a student before the IEP was implemented, and (4) when a student was absent. Relative to our review of the randomly selected months, we estimate that the Boston Public Schools were inappropriately overpaid at least \$1,237,421 (federal share).

In addition, the Boston Public Schools billed the Medicaid program for \$3,105 (federal share), which represented the daily per diem rate for school-based health services on 27 dates when the school was not open to students.

Chapter 766 (the Massachusetts special education law) and DMA instructions (*Operational Guide for School Districts*, revised May 1995) require written authorization to share educational information with the DMA. However, the Boston Public Schools did not require an "authorization" signed by either a parent or guardian to share information with the DMA for the purpose of submitting claims for Medicaid reimbursement for school-based health services. In this regard, all 100 of the sample months tested did not have the signed authorization forms. Accordingly, we have no assurance that the parents of special education students attending the Boston Public Schools were informed about or gave consent to sharing their child's confidential information with the state Medicaid agency. This requirement did not preclude the state agency from billing Medicaid for school-based health services.

Internal controls need to be strengthened in the Boston Public Schools to ensure that they appropriately submit Medicaid claims for school-based health services.

Recommendations

We recommended that the Boston Public Schools:

- Develop written policies and procedures requiring service providers to document all health services delivered to Medicaid recipients which details client specific information regarding all specific services actually provided for each individual recipient of services and retain those records for review,
- Research Medicaid eligibility for all current health service providers and establish procedures to ensure that health services are rendered by Medicaid eligible providers,
- Strengthen procedures to ensure that Medicaid billings are based on a current IEP which has been implemented,

- Strengthen procedures to ensure that Medicaid billings are based on accurate attendance records that support the students' presence to receive services, and days for which the school was open, and
- Refund through the DMA, the \$1,240,526 (federal share) that was inappropriately paid by the Medicaid program to the Boston Public Schools.

Boston Public Schools' Response to the Draft Report

While Boston Public Schools agreed with the findings concerning the need for attendance, IEP, and prototype records, they strongly disagreed with the findings related to service documentation and provider qualifications. Further, Boston Public Schools rejected the Office of Inspector General's (OIG) assertion concerning internal control weaknesses. In this regard, Boston Public Schools believed they have instituted rigorous internal controls to ensure all payments made are for eligible children, at appropriate rates, by qualified personnel. Accordingly, it is Boston Public Schools' view that, except for \$3,105, the monetary findings contained in the OIG's report are without merit.

We made changes, where appropriate, to our final report to address Boston Public Schools' concerns. The Boston Public Schools' response to our draft report is summarized in the body of our report and attached in APPENDIX C.

TABLE OF CONTENTS

INTRODUCTION	1
Background.....	1
Objective, Scope, and Methodology.....	2
FINDINGS AND RECOMMENDATIONS.....	3
REVIEW OF MEDICAID CLAIMS	4
Review of Sample Claims.....	4
<i>Documentation of Services Delivered</i>	4
<i>Medicaid Provider Qualifications</i>	5
<i>Individualized Education Plan</i>	6
<i>Student Absences</i>	6
Days Schools Were Not Open to Students	6
Recommendations.....	7
AUDITEE’S RESPONSE AND ADDITIONAL OIG COMMENTS	7
OTHER MATTERS.....	11
APPENDICES	
SCHEDULE OF SAMPLE ITEMS.....	A
RESULTS OF STATISTICAL SAMPLE	B
AUDITEE’S RESPONSE.....	C

INTRODUCTION

Background

The Medicaid program was established by title XIX of the Social Security Act and is jointly funded by the federal and state governments to provide medical assistance to pregnant women, children, and needy individuals who are aged, blind, or disabled. Within broad federal guidelines, states design and administer the program under the general oversight of the Centers for Medicare and Medicaid Services (CMS). In Massachusetts, the Division of Medical Assistance (DMA) is the state agency responsible for administering the Medicaid program. The DMA contracts with the University of Massachusetts Medical School, Center for Health Care Financing, Municipal Medicaid to administer the school-based health services portion of the Medicaid program.

School-based health services reimbursable under the Medicaid program are provided by or through the Massachusetts Department of Education (DOE) or a local education agency (LEA) to students with special needs pursuant to an Individualized Education Plan (IEP). Services are provided in the school setting or another site in the community and include speech therapy, physical therapy, occupational therapy, audiological services, behavior management, and/or counseling. The IEP describes the special education and related services, including school-based health services, which the student requires. An IEP must be in compliance with the Individuals with Disabilities Education Act (IDEA), P.L. 94-142, as amended, and in compliance with requirements of regulations implementing Chapter 766 of the Acts of 1972, M.G.L., Chapter 71B, as amended.

To seek Medicaid reimbursement for school-based health services, school districts must:

- Have a provider agreement with the DMA;
- Determine whether the student is enrolled in the Medicaid program;
- Provide services pursuant to a valid IEP that is in compliance with all Chapter 766 requirements (the Massachusetts special education law);
- Assemble and complete documentation that the Medicaid covered service in the IEP was delivered by a qualified provider before the Medicaid claim is submitted to UNISYS (the DMA Medicaid claims agent) for federal reimbursement;
- Comply with the Massachusetts Department of Education and DMA requirements concerning the authorization to share information with the DMA; and
- Submit a claim for reimbursement that details the student, dates of attendance, CMS procedure codes (level-of-service) and rates. (School districts submit claiming documents to UNISYS in order to obtain federal reimbursement.)

Massachusetts reimburses school districts for school-based health services based on the number of days in attendance times a statewide per diem rate for the program prototype per the student's IEP. According to the Massachusetts State Medicaid plan, the per diem rate is based on the Medicaid fee-for-service rate for each service and a statistically representative utilization rate for those services.

The Boston Public Schools, a LEA located in Boston, Massachusetts, operated 130 public schools and contracted with approximately 119 private schools during our audit period. Of approximately 63,000 students who attended the Boston Public Schools during our audit period, 8,224 students received special education services for which the school system submitted reimbursement claims to the Commonwealth of Massachusetts' Medicaid program. The Boston Public Schools contracted with Public Consulting Group, Inc. (PCG) to prepare and submit its Medicaid claims for school-based health services.

Objective, Scope, and Methodology

The objective of our audit was to determine whether costs claimed for school-based health services by the Boston Public Schools through the Commonwealth of Massachusetts were reasonable, allowable, and adequately supported in accordance with the terms of the state Medicaid plan and applicable federal regulations. Specifically, our audit included, but was not limited to, recipient and provider eligibility, payment rates, and billing processes. The audit period included Medicaid payments made during the period July 1, 1999 through June 30, 2000.

To accomplish our audit objective, we:

- Reviewed federal and state laws, regulations, and guidelines pertaining to the Medicaid program and special education related to school-based health services. We also reviewed the Commonwealth of Massachusetts State Plan Amendment 92-14 that describes the Department of Public Welfare's procedure for reimbursing school-based special needs services.
- Obtained an understanding of the Boston Public Schools' internal controls relative to recipient eligibility, provider qualifications, payment rates, billing processes, and contracts with out-of-district schools.
- Identified all individual claims, from a population of 302,347 claims, made for days when the schools were not in session, including holidays (e.g., Thanksgiving, Christmas, and Memorial Day), winter and spring vacations, professional in-service days, and snow and emergency days. We did not review claims for residential or preschool placements.
- Selected from a population of 64,463 recipient/months (federal share totaling \$9,759,660), a simple random sample of 100 recipient/months representing claims totaling a federal share of \$14,500 in Medicaid claims paid during our audit period for school-based health services in the Boston Public Schools.

- Obtained and analyzed information from the Boston Public Schools and out-of-district schools which supported claims for Medicaid reimbursement, including student eligibility for Medicaid, parental consent to bill Medicaid, student IEPs, student attendance, and provider qualifications.
- Held discussions with officials from the Boston Public Schools and out-of-district schools.

Our audit was conducted in accordance with generally accepted government auditing standards. We performed our field work at the Boston Public Schools in Boston, Massachusetts during the period November 2001 through August 2002.

FINDINGS AND RECOMMENDATIONS

In Massachusetts, claims for school-based health services are based on a daily per diem rate for the prototype (level-of-service) developed in each Medicaid eligible student's IEP. While our review showed that Boston Public Schools and its billing agent implemented many internal control procedures, we also found that further improvements can be made in internal controls. In this regard, the Boston Public Schools did not design a system of controls to ensure that school-based health records were assembled and maintained to support the dates and types of medical services provided and that all providers possess the required licenses. In this regard, each school district must have accurate attendance records, a valid IEP for each student, an appropriate and accurate prototype, qualified Medicaid health care providers, and evidence that any Medicaid covered service in the IEP was delivered before the Medicaid claim is submitted for federal reimbursement.

Relative to our review of Medicaid claims in randomly selected months, we estimate that the Boston Public Schools were inappropriately overpaid at least \$1,237,421 (federal share). In addition, the Boston Public Schools billed the Medicaid program for \$3,105 (federal share), which represented the daily per diem rate for school-based health services on 27 dates when the school was not open to students.

Furthermore, the Boston Public Schools did not require an "authorization" signed by either a parent or guardian to share information with the DMA for the purpose of submitting claims for Medicaid reimbursement for school-based health services. Accordingly, we have no assurance that the parents of special education students attending the Boston Public Schools were informed about or gave consent to sharing their child's confidential information with the state Medicaid agency. This requirement did not preclude the state agency from billing Medicaid for school-based health services.

REVIEW OF MEDICAID CLAIMS

Review of Sample Claims

As part of our review of the appropriateness of payments to the Boston Public Schools under the Medicaid program for school-based health care services, we reviewed payments totaling \$14,500 (federal share) for a random sample of months for 100 recipients paid during the period July 1999 through June 2000. We excluded payments for days when the Boston Public Schools were not in session as this is addressed in the section below.

We found that for payments contained in 25¹ of the 100 sample months reviewed, the Boston Public Schools claimed \$3,191 for school-based health services when: (1) the Boston Public Schools did not locate any documentation demonstrating that Medicaid services prescribed in the IEP were delivered (17 sample months), (2) services were rendered by providers that did not have the qualifications required by Massachusetts Medicaid regulations (2 sample months), (3) the student did not have a current IEP (1 sample month), and (4) the student was absent and did not receive services for at least 1 day (4 sample months). While the individual sample units total more than 25, 1 sample month had more than 1 condition, we did not question more than 100 percent of the claim. (See APPENDIX A.) As a result, we estimate that the Boston Public Schools were overpaid at least \$1,237,421 (federal share). (See APPENDIX B.)

Documentation of Services Delivered

For 17 of the 100 sample months reviewed, the Boston Public Schools claimed the daily per diem rate for school-based health services amounting to \$2,580 for which the school system did not maintain any documentation that services prescribed in the IEP were delivered. Specifically, the school system could not locate case/encounter notes for dates of service or progress notes spanning the sample month.

Page 40 of CMS's *Medicaid and School Health: A Technical Assistance Guide*, dated August 1997, states: "...A school, as a provider, must keep organized and confidential records that details client specific information regarding all specific services provided for each individual recipient of services and retain those records for review... Relevant documentation includes the dates of service...." In addition, the Commonwealth of Massachusetts' *Operational Guide for School Districts*, revised May 1995, required that in addition to attendance records, schools assemble and complete documentation that any Medicaid covered service in the IEP has been delivered before the Medicaid claim is submitted to UNISYS for federal reimbursement. Further, in the provider agreement Boston Public Schools entered into with the DMA, the Boston Public Schools agreed to "... keep such records as are necessary to disclose fully the extent of the services to recipients and to preserve these records for a minimum period of six years...."

¹ Boston Public Schools claimed two sample months for beneficiaries at a rate lower than the level of service indicated by the student's IEP. These errors resulted in under-billings that are included in the sample projection. We did not address this finding in the body of our report.

Accordingly, for the 17 sample months, for which the Boston Public Schools could neither locate case/encounter notes (itinerant service delivery logs) for dates of service nor progress notes spanning the sample month, the Boston Public Schools could not provide the required documented assurance that services prescribed in the IEP were delivered.

Boston Public Schools officials advised us that their health service providers are required to maintain monthly itinerant service delivery logs, which contain information on the specific health services provided to each student. However, Boston Public Schools did not have procedures that required the logs or progress notes to be maintained, therefore, logs and progress notes were generally being discarded at the end of each year and were not always available for our review.

Medicaid Provider Qualifications

For 2 of the 100 sample months reviewed, the Boston Public Schools claimed \$619 in daily per diem rates for school-based health services rendered by providers that did not have the qualifications required by Massachusetts Medicaid regulations. Specifically, 56 of the 100 sample months we reviewed had at least 1 health related service listed on the IEP. The remaining 44 sample months did not include any health related services on the IEP and, accordingly, were not required to meet Massachusetts Medicaid regulations on qualifications for health service providers. In addition, only 39 of the 56 sample months with health related services on the IEP identified the provider(s) that delivered the health related services. As a result, we could only test the qualifications on the 39 sample months. We found that in 2 of the 39 sample months the providers did not have the qualifications (licenses) required by Massachusetts Medicaid regulations.

Based on the provisions of pages 15 and 16 of CMS's *Medicaid and School Health: A Technical Assistance Guide*, dated August 1997, the services rendered by the 2 providers are not reimbursable under the Medicaid program. Specifically, the technical assistance guide provided that: "In order for schools or school providers to participate in the Medicaid program and receive Medicaid reimbursement, they must meet the Medicaid provider qualifications. It is not sufficient for a state to use Department of Education provider qualifications for reimbursement of Medicaid-covered school health services.... Any entity wishing to become a provider of Medicaid services, including schools or school districts, must be qualified to enroll to provide those services. Some Medicaid provider qualifications are dictated by the Federal Medicaid program by regulation, while other provider qualifications are established by the state.... Where a school or school district provides a variety of Medicaid covered services, the school must meet all Federal and state provider qualifications associated with each service it provides.... Schools may enroll as Medicaid providers, by qualifying to provide services directly, or, under certain conditions, by contracting with independent practitioners to provide the services...."

For 2 of the 39 sample months, Boston Public Schools officials did not provide us with support that an appropriately licensed provider delivered either the speech therapy or counseling to the students.

Individualized Education Plan

For 1 of the 100 sample months reviewed, the Boston Public Schools claimed the daily per diem rate for school-based health services amounting to \$84 based on an IEP, which did not cover the sample period. Accordingly, reimbursement should not have been sought. Specifically, the sample month was April 1999, however, the student's IEP did not begin until May 1999. Boston Public Schools believed there was a data entry error in the information given to PCG.

Student Absences

In Massachusetts, claims for school-based health services are based on a daily per diem rate for the prototype developed in each Medicaid eligible student's IEP. The LEA is entitled to bill Medicaid the per diem rate for each day the student attended school. In this regard, page 9 of the Massachusetts – *UNISYS Municipal Medicaid Billing Guide* provided that Medicaid providers should include in the span of dates (dates for which reimbursement is sought) only those days that the recipient was present in school.

For 4 of the 100 sample months reviewed, the Boston Public Schools claimed the daily per diem rate for school-based health services amounting to \$52 when the students were absent. Specifically, we found that on three of the sample months Boston Public Schools billed for 1 day more than the student attended school during that month. Additionally, on one of the sample months, they billed for 4 days more than the student attended school during that month.

The attendance records used by PCG to bill Medicaid differed from attendance records provided by Boston Public Schools. According to PCG, Boston Public Schools submits electronic attendance to PCG. This electronic attendance does not contain actual dates, but rather is configured to work in tandem with the school calendar. When claims are submitted by PCG, and then a calendar adjustment is made, the raw attendance data from Boston Public Schools and the PCG billing system will not match for the month(s) billed. According to PCG, these discrepancies cancel each other out and result in no under or over claiming. However, PCG did not inform us why these four errors occurred.

Days Schools Were Not Open to Students

The LEA is entitled to bill Medicaid the per diem rate for each day the student attended school. The Massachusetts - *UNISYS Municipal Medicaid Billing Guide*, page 9 stated, "Include in the span of dates [dates for which reimbursement is sought] only those days that the recipient was present in school. Do not bill for [emphasis added] weekends, sick days, vacations, or holidays unless the recipient is in a residential placement and was present in school."

We reviewed 100 percent of claims for days when the Boston Public Schools were not in session, including holidays (e.g., Thanksgiving, Christmas, and Memorial Day), winter and spring vacations, professional in-service days, and snow and emergency days. From the universe of 302,347 individual claims submitted by the Boston Public Schools during our audit period, we found 110 claims that included at least 1 day when school was not in session. As a result, we

found that \$3,105 (federal share) was paid to Boston Public Schools in error for 27 dates (151 days) when the student was not in school.

Based on our discussions with private school officials and a review of private school calendars, we determined that 120 of the 151 days billed incorrectly were for snow days at private schools. We found that the attendance records for these students indicated when the students were absent rather than present. Since the private schools did not indicate the students were not present on the snow day, Boston Public Schools billed Medicaid. The remaining 31 days billed when school was closed to students were generally due to data entry errors or attendance records that did not indicate that the student was not present.

Recommendations

We recommended that the Boston Public Schools:

- Develop written policies and procedures requiring service providers to document all health services delivered to Medicaid recipients which details client specific information regarding all specific services actually provided for each individual recipient of services and retain those records for review,
- Research Medicaid eligibility for all current health service providers and establish procedures to ensure that health services are rendered by Medicaid eligible providers,
- Strengthen procedures to ensure that Medicaid billings are based on a current IEP which has been implemented,
- Strengthen procedures to ensure that Medicaid billings are based on accurate attendance records that support the students' presence to receive services, and days for which the school was open, and
- Refund through the DMA, the \$1,240,526 (federal share) that was inappropriately paid by the Medicaid program to the Boston Public Schools.

AUDITEE'S RESPONSE AND ADDITIONAL OIG COMMENTS

The Boston Public Schools' response to our draft report is attached in APPENDIX C. While Boston Public Schools agreed with the findings concerning the need for attendance, IEP, and prototype records, they strongly disagreed with the findings related to service documentation and provider qualifications. Further, Boston Public Schools rejected the Office of Inspector General's (OIG) assertion concerning internal control weaknesses. In this regard, Boston Public Schools believed they instituted rigorous internal controls to ensure all payments made are for eligible children, at appropriate rates, by qualified personnel. Accordingly, it is Boston Public Schools' view that, except for \$3,105, the monetary findings contained in the OIG's report are without merit. We summarized the Boston Public Schools comments by topic below.

Documentation of Services Delivered

Auditee's Response The Boston Public Schools' response stated that the OIG's findings appear to inaccurately infer from the Commonwealth of Massachusetts' *Operational Guide for School Districts*, revised May 1995, that every claim submitted must have an associated service document recorded in the student's IEP.

Further, the guide sets forth what records a school district must submit and maintain to support a claim for Medicaid reimbursement including: (1) attendance records, (2) documentation that any Medicaid covered service in the IEP has been delivered and paid, and (3) a complete and submitted Invoice 9 Form. With regard to the second service documentation requirement, Boston Public Schools advised us that the school's payroll records satisfy this since services have been paid once payroll has been disbursed. Accordingly, Boston Public Schools believed that by furnishing the OIG with the school's payroll records, they satisfied the service documentation requirement.

Additional OIG Comments Based on the current Massachusetts claiming methodology, we agree that not every IEP must have a health related service prescribed in the student's IEP and that claims are based on attendance rather than the specific dates of service. However, for the IEPs that contained a health related service there should be documentation of the health related services provided. Specifically, the provider agreement between DMA and Boston Public Schools required the provider to keep such records as necessary to disclose fully the extent of the services to recipients and to preserve these records for a minimum period of 6 years. Furthermore, the provider agreed to furnish federal and state officials with such information, including copies of medical records, regarding any services for which payment was claimed.

For the IEPs that prescribe one or more health related service(s), we found the claim to be appropriate if at least one of the health related services was supported by service documentation. We accepted any documentation that indicated that services were delivered to recipients during our sample month including quarterly progress reports that covered our sample month. However, we did not accept documentation dated prior to our sample month since there was no assurance that services continued into the sample month. Furthermore, we did not accept IEPs, assessments, or evaluations as documentation that services were provided since they identify only those services that a child should receive and not the services that the child actually received. Finally, it is our position that payroll records validate providers were paid but not that services were actually delivered.

Medicaid Provider Qualifications

Auditee's Response The Boston Public Schools did not concur with our finding related to provider qualifications. The Boston Public Schools stated that the Commonwealth has not issued any specific guidelines for school-based providers. Furthermore, Boston Public Schools did not agree with OIG disallowing certain types of providers for counseling services.

Additional OIG Comments According to CMS's *Medicaid and School Health: A Technical Assistance Guide*, dated August 1997, Medicaid regulations required that provider qualifications be uniform and standard. This means that states cannot have one set of provider qualifications for school providers and another set of provider qualifications for all other providers. The guide stated that schools should check with the state Medicaid agency to determine specific state requirements regarding provider qualification for participation in the Medicaid program. We followed this process to identify the provider qualifications discussed in this area.

Based on our further review of Massachusetts regulations, we found that Licensed Independent Clinical Social Workers and Licensed Certified Social Workers are eligible to participate in Medicaid. We changed our report to consider these payments as appropriate.

Health Related Services

Auditee's Response The Boston Public Schools advised us that in several instances OIG reported that health service documentation was required when in fact Boston Public Schools did not provide any health related services to the student. The Boston Public Schools stated that under the bundled rate methodology these students were legitimately claimed. Furthermore, in discussion with Boston Public Schools, they stated that there were several types of counseling and not all counseling is health related.

Additional OIG Comments We did not require documentation or review the provider qualification for 44 of the 100 sample months because there was no health related services in the IEP. However, based on our review of the 100 IEPs, we determined that 56 recipients had health related services prescribed in their IEP. We determined a service to be health related if it was listed as a health related service on the state's bundle rate worksheets. During the course of our audit, Boston Public Schools indicated that six sample months did not have health related services prescribed in the recipient IEP. Based on our review of these six IEPs, we found that the IEP service delivery page and/or the IEP goals and objectives indicated that there were health related services listed in the IEP. Specifically, two IEPs prescribed counseling, two IEPs prescribe sensory training, one IEP prescribed adaptive physical education, and one IEP prescribed both counseling and adaptive physical education. The Boston Public Schools did not provide us with satisfactory evidence that the services prescribed were, in fact, not health related.

Individualized Education Plan, Student Absences, and Prototype

Auditee's Response The Boston Public Schools had no disagreement with our findings concerning the need for attendance, IEP, and prototype records. In this regard, Boston Public Schools recalculated the findings as identified in APPENDIX A to include only seven sample months with findings limited to IEP, attendance, and prototype errors amounting to overpayments totaling \$3.38.

Additional OIG Comments We do not agree that APPENDIX A should exclude findings related to documentation and provider qualification. Furthermore, the Boston Public Schools recalculation of the sample estimate was not based on OIG statistical parameters.

Days Schools Were Not Open to Students

Auditee's Response The Boston Public Schools agreed with OIG's finding of \$3,105 that was inappropriately paid for days when schools were not open to students. In addition, they pointed out that the error rate is only .0003 percent. Further, Boston Public Schools stated that 75 percent of the finding is due to attendance information submitted by a single out-of-district private school.

Additional OIG Comments We acknowledge that the majority of errors were related to a single out-of-district private school. However, the private school used a passive system to report the attendance information to Boston Public Schools. If the private school's attendance records indicated the dates the students were present, rather than absent, Boston Public Schools would have only billed for days when the student was in school.

Internal Controls

Auditee's Response The Boston Public Schools asserted that it has taken extraordinary steps and incurred significant expense to institute internal controls. Further, Boston Public Schools took issue with and vigorously rejected OIG's assertion that Boston Public Schools had internal control weaknesses around its preparation and submission of Medicaid claims for school-based health services. The Boston Public Schools stated that they have extensive policies and procedures in place and maintained a comprehensive monitoring system for compliance and quality assurance in connection with its special education program.

Additional OIG Comments We acknowledge that Boston Public Schools made a good faith effort to institute comprehensive internal controls. However, we found that improvements are still needed to ensure that Medicaid claims are billed in accordance with program requirements. We reported what we found to aid Boston Public Schools in making further improvements to its internal controls.

General Comments

Auditee's Response In their response, Boston Public Schools stated that they have done an outstanding job in implementing all federal and state guidelines, however, they believed that OIG wrote a negative report based primarily on its disagreement with guidelines approved by other oversight agencies.

Furthermore, in 1995 CMS audited several Massachusetts LEAs, including Boston Public Schools. The audits did not result in any findings associated with "undocumented" services.

Since CMS and DMA did not recommend any changes and DMA did not change its guidance to LEAs, Boston Public Schools understood that they were operating in compliance with all federal and state guidelines.

During our exit conference, Boston Public Schools stated that they do not think that LEAs should be held accountable for improper payments when state oversight agencies (DMA and DOE) did not advise them of applicable Medicaid documentation requirements. In addition, Boston Public Schools advised us that the tone of the report makes the audit findings appear more significant than they really are.

Additional OIG Comments The CMS agreed with the service documentation requirements identified by OIG and that the requirements were applicable for our audit period.

Further, CMS's audit in 1995 did not include service documentation or provider qualifications in the scope of the audit. Rather, the CMS audit included attendance, prototype, and Medicaid eligibility. Therefore, Boston Public Schools should not have assumed that they were operating in compliance with all state and federal guidelines.

OTHER MATTERS

We found that for all 100 sample months we reviewed, Boston Public Schools did not obtain an "authorization" signed by either a parent or guardian to share information with the DMA for the purpose of submitting claims for Medicaid reimbursement for school-based health services. Not obtaining written authorization to share educational information with the DMA is contrary to Chapter 766 (the Massachusetts special education law) and DMA instructions (*Operational Guide for School Districts*, revised May 1995).

On behalf of the Boston Public Schools, PCG mails parental consent forms to the Boston Public School students, however, the policy followed by the PCG is to have the parents/guardians sign and return the consent forms only if they do not want Medicaid billed for school-based health services provided to their child. Furthermore, the PCG sends out the consent forms in English and Spanish only. Based on this "passive consent" methodology, PCG assumes that the parent/guardian approves of the use of the student's Medicaid number if it has not received a notice to the contrary.

We have concerns about PCG assuming that the parents/guardians authorized the use of students' Medicaid numbers, because PCG did not receive a notice to the contrary. In this regard, PCG's passive consent method appears to overlook situations where PCG does not have a written consent document because the parent/guardian did not: (1) receive the consent document from the school department, (2) understand the consent document, or (3) appropriately adhere to the instructions in the consent document. We believe that PCG should discontinue using passive consent to verify that the parents/guardians approve of PCG transferring student information to the DMA.

Without such a change, there is no assurance the parents of special education students attending the Boston Public Schools are informed about or gave consent to sharing their child's confidential information with the state Medicaid agency. This requirement does not preclude the state agency from billing Medicaid for school-based health services.

In response to our draft report, Boston Public Schools stated that their procedures to inform parents are extensive, including mailing letters out in 10 different languages. The Boston Public Schools also stated that it is important to note the information being shared is not health data. Rather, it is "directory information" and included items such as name, address, telephone number, and date of birth. The students' medical conditions are not disclosed by the transmission notice because of the use of non-revealing codes. The decision the parent makes regarding consent has no bearing whatsoever on services delivered to the students.

APPENDICES

SCHEDULE OF SAMPLE ITEMS

Sample Number	Documentaion			Provider Qualifications			IEP			Attendance			Prototype ¹			Totals ²	
	Error	Days	Dollars	Error	Days	Dollars	Error	Days	Dollars	Error	Days	Dollars	Error	Days	Dollars	Error	Dollars
60																	\$ -
61							yes	15	\$ 83.55							1	\$ 83.55
62	yes	17	\$ 207.23													1	\$ 207.23
63																	\$ -
64																	\$ -
65																	\$ -
66																	\$ -
67																	\$ -
68										yes	1	\$ 5.57				1	\$ 5.57
69	yes	17	\$ 207.23													1	\$ 207.23
70																	\$ -
71																	\$ -
72																	\$ -
73																	\$ -
74													yes	7	\$ (46.34)	1	\$ (46.34)
75																	\$ -
76	yes	14	\$ 170.66													1	\$ 170.66
77																	\$ -
78																	\$ -
79																	\$ -
80																	\$ -
81																	\$ -
82																	\$ -
83																	\$ -
84																	\$ -
85																	\$ -
86													yes	13	\$ (86.06)	1	\$ (86.06)
87	yes	16	\$ 195.04							yes	1	\$ 12.19				1	\$ 195.04
88																	\$ -
89																	\$ -
90																	\$ -
91	yes	1	\$ 12.19													1	\$ 12.19
92																	\$ -
93																	\$ -
94	yes	9	\$ 109.71													1	\$ 109.71
95																	\$ -
96																	\$ -
97				yes	19	\$ 424.08										1	\$ 424.08
98										yes	4	\$ 22.28				1	\$ 22.28
99																	\$ -
100																	\$ -
	17	238	\$ 2,580.20	2	35	\$ 619.12	1	15	\$ 83.55	4	7	\$ 52.23	2	20	\$ (132.40)	25	\$ 3,190.51

¹ Boston Public Schools claimed two sample months for beneficiaries at a rate lower than the level of service indicated by the student's IEP. These errors resulted in under-billings that are included in the sample projection. We do not address this finding in the body of our report.

² While sample number 87 had more than one condition, we did not question more than 100 percent of the claim.

Results of Statistical Sample

Sample Size	100
Value of Sample	\$14,500
Number of Errors	25
Value of Errors	\$3,191
Population Size	64,463
Value of Population	\$9,759,660

Point Estimate	\$2,056,698
Confidence Level	90%
Lower Confidence Limit	\$1,237,421
Upper Confidence Limit	\$2,875,976
Sample Precision	+/- 39.83%

Based on our statistical sample, we are 95 percent confident that the amount overpaid was at least \$1,237,421 (federal share).

Boston Public Schools

Office of the Superintendent

October 21, 2002

Michael J. Armstrong
Regional Inspector General for Audit Services
Department of Health and Human Services
Office of Inspector General
Office of Audit Services – Region 1
John F. Kennedy Building, Room 2425
Boston, MA 02203

Dear Mr. Armstrong:

Enclosed are Boston Public School's comments on the factual accuracy of the Office of Inspector General's (OIG) draft report entitled "Medicaid Payments for School-Based Health Services – July 1999 through June 2000." Boston Public Schools strongly disagrees with the key findings of your Audit Report on Medicaid Payments for School-Based Health in Boston for the period of July 1999 through June 2000. Specifically, we believe that BPS has instituted rigorous internal controls that insure the federal government and Medicaid program that all payments made are for eligible children, at appropriate rates, by qualified personnel. In addition, BPS has maintained full and sufficient documentation as required by the state Medicaid agency to support 99.999% (per OIG audit findings) of the claims submitted and paid by the Medicaid program.

The OIG findings appear to inaccurately infer from the Massachusetts Operational Guide for School Districts that every claim submitted by BPS must have an associated service document recorded in the student's IEP. OIG, however, recognizes in its audit report that Boston "claims for school-based health services based on a per diem rate for the prototype (level-of-service) developed in each Medicaid eligible student's IEP." The per diem billing rates were calculated by the state Medicaid agency using statewide cost and utilization survey data. This methodology neither anticipates nor mandates that students receive daily, weekly, or monthly health-related services. As in all other average or per diem payment methods, some students may receive services on a daily basis while others are weekly users – the rate is an average and certainly doesn't require monthly services as OIG concludes. In addition, state Medicaid agency policies and technical advisories up to and through the audit period never dictated to local educational authorities the type, duration or frequency of services that would be required to support statewide, average per diem billing.

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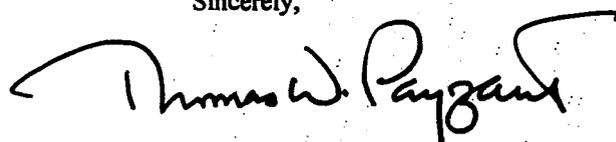


The per diem methodology simply and unequivocally does not require or even request such a level of documentation. We wholeheartedly agree with OIG that BPS, and possibly every other school system in the Commonwealth of Massachusetts, cannot produce a documented service in every IEP for every student we have claimed on a per diem basis. We are unaware of any per diem rate methodology that has such a requirement. However, BPS does assert that it has taken extraordinary steps and incurred significant expense to institute internal controls. These controls ensure the federal government is billed at authorized rates only for Medicaid-eligible students with approved IEPs who are in attendance at school as required by the per diem claiming methodology in Massachusetts.

The BPS commits to assist the federal government and OIG, if appropriate, to institute new and administratively feasible documentation standards above and beyond those we currently collect and maintain in our Department of Unified Student Services Monthly Data Management Reporting System. We feel that such a collaborative approach to develop additional audit standards related to support documentation in Massachusetts's school systems can be both reasonable and administratively feasible.

We await the final report of OIG findings. If you would like to discuss any matter that relates to these comments and documentation, please call Patricia Crowley, Manager of Compliance/Quality Assurance, at (617) 635-8599.

Sincerely,



Thomas W. Payzant
Superintendent

Cc: T.Menino
P.Crowley
J.McDonough
L.Signori

**Boston Public Schools/City of Boston Response to Office of Inspector General Audit:
"Medicaid Payments for School-Based Health Services"
October 2002**

Executive Summary

Boston Public Schools (BPS) has been participating in the Massachusetts Municipal Medicaid Program since its inception in the early 1990's. This program provides partial reimbursement to the City for the costly health-related services that BPS must provide to meet the needs of its disabled student population. BPS has made diligent efforts to comply with all Federal and State guidelines, has extensive policies and procedures in place to assure such compliance, and has in fact achieved an uncommonly high level of compliance. We must therefore respectfully take strong exception both to the unwarranted negative tone of the draft report as well as certain of its proposed findings.

The City of Boston has done an outstanding job in implementing all Federal and State guidelines. It has achieved a degree of compliance with these guidelines of which we are justifiably proud. Our goal is 100% compliance. But, instead of acknowledging the City's strong performance, the OIG has written a negative report based primarily on its disagreement with guidelines approved by other oversight agencies. We believe that the draft report must be extensively rewritten to draw a clear distinction between the nearly 100% compliance of the City of Boston with Federal and State guidelines versus disagreements OIG may have with the Centers for Medicare and Medicaid Services (CMS) and other agencies as to what their guidelines should specify.

Further, with regard to such disagreements, the report fails to explain adequately the basis for such disagreements with CMS and other agencies. There is essentially no legal or regulatory analysis to be found in the OIG report. The OIG auditors themselves offered different opinions at different times. It is our understanding that when designing the Massachusetts Municipal Medicaid Program, CMS and the Division of Medical Assistance carefully evaluated the requirements of Federal Medicaid law and regulations in designing the State plan amendment and the guidelines that apply to operations of BPS.

The OIG audit was conducted in two parts. One part of the audit reviewed attendance and school calendar information for the entire universe of claims paid during fiscal year 2000. The other part reviewed a sample of 100 randomly chosen students. With respect to the attendance review, we note that BPS received a total of \$9,759,660 in Medicaid revenue during the period in question. Through its review, OIG found a total of \$3,105 in claims that it contends were "erroneous" with regard to this area. This dollar amount represents a .0003% error rate. Further, of this amount, more than 75% of the error is due to attendance information which was submitted to BPS by a single out-of-district, private school. In fact, even as to this information we note that the written attendance information from the school (provided to OIG by BPS) actually supports the validity of the claims. However, we understand that OIG then called the principal at the private school, who stated to OIG that the written attendance data provided by his staff to BPS was in fact erroneous. Had this corrected information similarly been conveyed to

BPS, we would have filed the appropriate void claims. As you may know, BPS has already re-instructed the private school on the proper protocol for submitting written attendance information. Of course, BPS regrets there were any inadvertent, erroneous claims submitted due to data anomalies from even a single out-of-district school and we support the OIG goal of 100% compliance. Nevertheless, the way the report is currently written no one would ever know that BPS' compliance rate in fact was 99.99969%, or that a single outlier school, inadvertently operating outside of BPS procedures, was responsible for nearly all of the .0003% of errors.

With regard to the second part of the report, BPS must respectfully disagree with the proposed findings contained therein. Specifically, we take issue with the OIG findings as they relate to alleged lack of internal controls, service documentation, parental consent, and provider qualification requirements. Despite a dozen or more meetings over the past year, the presentation of reams of supporting documentation, and policy statements from the Massachusetts Department of Education and Division of Medical Assistance in support of BPS practices, OIG has reached the erroneous conclusion that BPS is out of compliance in certain areas.

These points, as well as a background of the Program, are more fully described below.

Overview of the School Medicaid Program

Under its Special Education Program, BPS serves approximately 13,000 students annually. In all cases, these students have a disability (as evidenced by an Individual Education Plan following an evaluation for special education services), and require a multitude of services so that they may be provided a free and appropriate public education as mandated by state and federal law. Many of these services are of a health-related nature, including costly physical therapy, occupational therapy, speech therapy, nursing, and mental health services. BPS employs approximately 2,300 staff to serve such students, and spends \$131 million on its Special Education Department each year. Approximately 75% of students who attend Boston Public Schools are Medicaid-eligible, and the \$9.7 million Boston received for the claims reviewed by OIG represents 7.4% of the Unified Student Services Budget, a small but nevertheless essential piece of the funding necessary to provide vitally needed services to those students.

Schools in Massachusetts have been able to receive Federal Medicaid dollars since the early 1990's. There are a variety of school health services that play an invaluable role in the health care of adolescents and children. Programs have been implemented across the country for children with special needs under the Federal Individuals with Disabilities Act (IDEA). School-centered programs are often able to provide medical care efficiently and easily, thereby permitting children to receive vital health-related services and avoid what would otherwise result in extended absences from school. In the absence of sufficient funding to support these programs, including funding from the federal government, students with disabilities and their parents would be put to the Hobson's choice of receiving either essential health care or equally essential educational instruction.

For decades, schools faced obstacles to billing Medicaid. These roadblocks were eliminated by an act of Congress in 1988. Under PL 100-360, the Medicare Catastrophic Coverage Act of 1988, Congress instructed Medicaid not to deny or restrict funding for services that were required in a child's Individual Education Plan. This paved the way for Medicaid reimbursement to schools. The Medicaid program has since articulated its support of school-centered health care as an effective method of providing access to essential medical care to eligible children. In order for schools to be eligible for reimbursement, the state Medicaid agency must submit a plan to the federal government, and this plan must be approved by the Centers for Medicare and Medicaid Services. To this end, the Massachusetts Division of Medical Assistance (DMA), working with the University of Massachusetts Center for Health Care Financing, developed a federally-approved program by which schools could obtain reimbursement through a composite rate methodology. The program allows schools to submit claims for Medicaid-eligible students with an IEP, based on school attendance and the student's prototype level of need, as delineated in the IEP. Under a rate-setting formula developed by the state and approved by the Federal government, the amount of the claim is based on this prototype. Boston has been preparing and submitting claims in accordance with these plan requirements since the program's inception. Specifically, we have been operating under written guidance provided to us in our Provider Agreement and the Operational Guide for School Districts, published by the Commonwealth.

Service Documentation Requirement

It is important to note that under the Massachusetts methodology, claims are not based on specific services provided on specific dates. Rather, Massachusetts schools submit claims for Medicaid-eligible students based on attendance and a valid IEP. According to the Operational Guide, the Massachusetts Municipal Medicaid Reimbursement System was developed to "minimize local administrative effort." (Operational Guide, p. 3). Consistent with this goal, "specifically developed composite rates were formulated based upon an analysis of the average hours of health-related services delivered to a 'typical student.' These 'composite rates' were developed using a stratified sample, and represent the statewide average of health-related services delivered within each prototype multiplied by the Massachusetts Medicaid established rate for each individual health-related system." (Id.) Accordingly, under this composite rate system, payments are not based on any particular service being provided to any particular student on any particular day. In this context, then, the concept of service documentation is different from that which may be appropriate for other systems of reimbursement. The Operational Guide sets forth what records a school district must submit and maintain to support a claim for Medicaid reimbursement under this system. Those instructions provide that once a school district has submitted a Provider Application and Agreement, only three things remain for the school district to assemble and complete:

- 1) Attendance Records;
- 2) Documentation that any Medicaid covered service in the I.E.P. has been delivered and paid;
- 3) Complete and submit an Invoice 9 Form.

Id. at p. 10. The Operational Guide goes on to describe what is encompassed by each of these requirements. Thus, attendance records "may consist of a standard school Attendance Calendar." With regard to the second "service documentation" requirement, this is satisfied by the school's payroll records (submitted to OIG in June 2002), since "in the case of services provided by a public school, services have been paid once payroll has been disbursed." Accordingly, by furnishing the OIG with the payroll records for the school, we have satisfied the service documentation requirement for the Massachusetts Municipal Medicaid Program.

The Provider Agreement with DMA does not require any further documentation. Nor did the 1997 CMS Technical Assistance Guide result in any alteration of the requirements of the Massachusetts Municipal Medicaid Program. To the contrary, CMS itself states of that guide: "Because Medicaid policy often changes and evolves, this guide should not be considered an authoritative source in itself. The guide is intended to be a general reference . . . in order to determine specific state requirements, schools should contact their state Medicaid agency." (CMS website, May 2002).

BPS has correctly and consistently followed DMA guidance for this program as described above since its inception. Furthermore, in 1995 CMS audited several Massachusetts school providers, including BPS. In connection with that audit, CMS made no changes to that methodology, nor did it require -- or even recommend -- that we maintain any specific additional documentation regarding the provision of services beyond that discussed above. Nor did the audit result in any findings associated with "undocumented" services claimed. Since neither the Federal oversight agency, nor DMA, required changes to our claiming and documentation processes, we continued the same approach to this day. Nor has DMA changed its guidance to LEA's. Therefore, BPS correctly understood that we were operating in compliance with all state and Federal guidelines made known to us by these oversight agencies.

Further, we take issue with and vigorously reject the OIG's assertion that BPS has internal control "weaknesses" around its preparation and submission of Medicaid claims for school-based health services. BPS is committed to compliance in all of the work it conducts. Nowhere is that more evident than in our Department of Unified Student Services. Boston has extensive policies and procedures in place and maintains a comprehensive monitoring system for compliance and Quality Assurance in connection with its special education program. Such policies and procedures have been developed under strict orders from the Department of Education and the Massachusetts General Court. Our 50 page policy manual, Instructions for Monthly Data Management Reporting, was provided to OIG for their review, and we met with OIG auditors in person to explain the manual. Further, our consultant shared with OIG their operating procedures and claiming policies, which include specific claim verification and validation rules for processing acceptable claims for Medicaid payment. The draft report does not identify any specific deficiencies in that extensive manual, nor are we aware of any.

In light of the very nature of the composite rate reimbursement system, the instructions contained in the Operational Guide, and the fact that CMS both approved that guide

and in the course of an audit never suggested that any other documentation was necessary to be maintained, it would be unfair in the extreme were Boston to be punished, after the fact, for not maintaining unspecified additional service documentation. It must also be noted that from the start of the audit in 2001 to present, OIG itself has provided inconsistent guidance as to what service documentation information would in its view be acceptable. For instance, at the beginning of the audit, OIG stated that all service documentation information must be dated during the audit month in question. Then, BPS was told that documentation dated *prior* to the month in question was acceptable. OIG subsequently revised that position to state that service documentation dated *during* the month in question *and up to and including 3 months after* the month in question but not for any time period *before* the month in question would be acceptable. Additionally, OIG initially stated they would accept *any* information containing service delivery information (though not the IEP). Subsequently, OIG excluded assessments or reports of the student's condition during the time in question. Finally, in several instances, OIG is stating that health service documentation is required, when, in fact, BPS provided no health services, but since these children were at a certain prototype, they were claimed. Though we have discussed the issue in detail, OIG persists in requiring health service documentation for certain students who received no health-related services. Of course, under the above-discussed bundled rate methodology, these students were legitimately claimed. While OIG may not now find favor with this payment methodology, it was specifically reviewed and approved by HCFA, now CMS, and BPS cannot be punished for operating under it, which is precisely the effect the report as currently drafted would have.

Of course, if CMS were to deem it appropriate to alter the composite rate methodology, or to specifically impose additional documentation requirements, we would fully comply with any such requirements. However, for claiming that has already occurred, we have provided OIG with all of the documentation which Boston was required to maintain, consistent with the current Massachusetts Division of Medical Assistance instructions. Indeed, although not required to be prepared, maintained, and retained with regard to Medicaid reimbursement, and notwithstanding the fact that the period covered by the OIG audit goes back some two to four years, BPS has in fact provided such related records that we have been able to locate (e.g. service logs, progress reports, etc.)

Provider Qualifications

BPS takes similar exception to those instances where OIG is alleging that services were not provided by a qualified provider. OIG was provided by BPS with its hiring policies, as well as evidence of certifications and licenses in excess of that required by the Massachusetts Department of Education. There have been no specific guidelines issued by the Commonwealth for school-based providers, nor was any issue ever raised regarding this point during the 1995 CMS audit. Accordingly, OIG cannot properly claim that BPS was "out of compliance" in this area. Additionally, the proposed findings do not make good fiscal sense and are inconsistent with Medicaid policy around the country. For instance, the report proposes to disallow claims for students who had services provided by a Licensed Independent Clinical Social Worker (LICSW). The report asserts that such services should have been provided by a Psychologist.

However, in virtually all other clinical settings, both in Massachusetts and around the nation, Medicaid and other health insurance companies reimburse for such services when provided by a LICSW, both because of the quality of the service delivered as well as their reduced cost. We are not aware of any clinical expertise by OIG qualifying it to judge whether services should be delivered by a licensed social worker or a psychologist. On a cost basis, a matter which clearly is within OIG's expertise, the provision of services by an LICSW is plainly beneficial to Medicaid, and therefore one which we understand OIG would wish to encourage.

With regard to the OIG's proposed findings concerning the need for attendance, IEP, and prototype records, BPS has no disagreement. In Appendix A of the OIG draft report, these items cumulatively account for \$3.38 in negative findings. As discussed above, it is our position that the OIG's draft findings regarding service documentation and provider qualifications are erroneous. Accordingly, we have re-calculated the monetary findings in the 100 student sample. Using the statistical formula applied by OIG, the proper findings for Boston are as follows:

Results of Statistical Sample

Sample Size	100
Value of Sample	\$14,500
Number of Errors	8
Value of Errors	\$3.38
Population Size	64,463
Value of Population	\$9,759,660
Point Estimate	\$91,118.45
Confidence Level	90%
Lower Confidence Level	-\$138,225
Upper Confidence Level	\$142,583
Sample Precision	+/-56.48%

Based on our statistical sample, we are 95 percent confident that the amount overpaid is at least -\$138,225 (Federal share).

Please note that when the formula is applied correctly using the OIG statistical parameters, there are no monetary findings that are statistically significant. Rather, the "findings," actually compute to a negative number (-\$138,225). This underscores the fact that in the areas that were required under the Massachusetts claiming methodology, BPS is in compliance. *Simply stated, for the 100 student sample, when OIG reviewed the areas of attendance, IEPs, and prototype, there are no monetary findings. For the 100% review of attendance and calendars, Boston claims were in 99.99969% compliance.*

Alleged Lack of Internal Controls

We believe that the error rate above supports the fact that BPS already has extensive internal controls in place to ensure service delivery and to submit valid claims. We have provided OIG with the following documents:

1. Procedure Manual detailing claiming policies, including steps taken by BPS vendor to ensure claims are based on valid attendance, IEP, and prototype data (approximately 200 pages).
2. Detailed policies and procedures regarding how BPS ensures the accuracy of its Student Attendance System (approximately 100 pages).
3. Procedure Manual detailing BPS policies to ensure valid IEPs and service delivery (approximately 50 pages).
4. Hiring policies and job descriptions detailing the qualifications required of a prospective staff person (approximately 10 pages).

Additionally, OIG was given a detailed presentation regarding the manner in which BPS submits its claims, including an in-person demonstration of the automated billing program and Quality Assurance edits that are conducted before a claim is filed. Consequently, we believe that the draft OIG "Recommendation" regarding lack of procedures, policies, and internal controls is without merit.

Parental Consent Requirements

Finally, we wish to address the draft OIG recommendation regarding BPS policy in obtaining parental consent. This policy is a Federal Department of Education requirement under the Federal Education Rights and Privacy Act (FERPA). BPS procedures to inform parents are extensive, including mailing letters out in 10 different languages. We mail letters to the child's home address via certified mail and we operate a toll free line specifically for the parent or guardian to call if they have any questions or concerns regarding the notice. If a parent or guardian calls to state they do not wish to have such information shared, then BPS does not submit a claim. Additionally, if we receive notice from the Post Office that the letter was not delivered, we do not submit a claim. It is important to note that the information being shared is not health data. Rather, it is "directory information" and includes items such as name, address, telephone number, and date of birth. The requirements for disclosing such information under FERPA are met by the methodology employed by BPS. The students' medical conditions are not disclosed by the transmission notice because of the use of non-revealing codes. It is also important to note that the decision the parent makes regarding consent has no bearing whatsoever on services delivered to the student. Boston respects the privacy rights of its students, and believes that its policy fully complies with FERPA regulations. Indeed, we provided OIG with a 22 page packet of legal analysis and supporting documentation. In the absence of case law or other precedent to the contrary, BPS believes we are in full compliance with FERPA.

Conclusion

We very much appreciate the time and effort the OIG has put into this audit, and BPS applauds OIG's goal of ensuring that only proper claims are submitted and paid. BPS shares these goals, and the evidence demonstrates that we have adhered to all stated guidelines put forth by the Massachusetts Division of Medical Assistance, consistent with the earlier CMS audit in 1995. Of course, if new guidelines or payment methodologies are put into place in the future by DMA and CMS, we will fully comply with them. However, fundamental fairness mandates that such requirements cannot be applied retroactively. Accordingly, for the reasons stated above, it is our view that the monetary findings contained in the proposed OIG report, beyond the \$3,105 that we acknowledge to be properly supported, are without merit and we respectfully urge that the report be revised to reflect these comments.

LIT 1364167v1