

Office of the City Auditor

INFORMATION CALENDAR

April 22, 2008

To: Honorable Mayor and Members of the City Council
From: Ann-Marie Hogan, City Auditor
Subject: Revised Interim Audit Report on Medi-Cal Mental Health Revenue at Risk

INTRODUCTION

This is an informational report to provide the Council with updates to our audit report “Revenue at Risk? Medi-Cal Mental Health Interim Audit - Scope Limitation/Lack of Contract with County / Insufficient Monitoring of Remittances.” On March 25, the Council directed the City Manager to report back on or before October 2008, and every six months thereafter, regarding the implementation status of the audit recommendations in this audit report until each recommendation is fully implemented.

SUMMARY

Changes were made to Findings 1 and 2 to reflect Alameda County’s comments, but no changes were made to the rest of the report including the recommendations.

BACKGROUND

On March 12, 2008, after the report had been submitted to the City Clerk, we received additional information from Alameda County that we were asked to incorporate into the report. We revised the report to include their comments; however, the earlier version of the report was included in the March 25 Council packet. We are submitting the revised report, which includes the comments provided by Alameda County.

POSSIBLE FUTURE ACTION

None anticipated as a result of changes to the report.

FISCAL IMPACTS OF POSSIBLE FUTURE ACTION

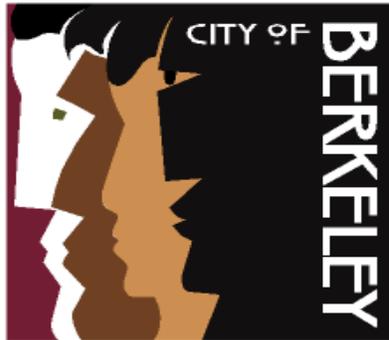
None anticipated as a result of changes to the report.

CONTACT PERSON

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Attachments: Revenue at Risk? Medi-Cal Mental Health Interim Audit - Scope Limitation / Lack of Contract With County / Insufficient Monitoring of Remittances

City of Berkeley



REVENUE AT RISK? MEDI-CAL MENTAL HEALTH INTERIM AUDIT

SCOPE LIMITATION
LACK OF CONTRACT WITH COUNTY
INSUFFICIENT MONITORING OF REMITTANCES

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Presented to Council on March 25 and April 22, 2008

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INTERIM REPORT ON MENTAL HEALTH DIVISION MEDI-CAL BILLINGS

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I. OBJECTIVES OF THE AUDIT

The objectives of our performance audit were to identify risks that could jeopardize revenue the City receives for providing mental health services under the State Medi-Cal program, and to evaluate the effectiveness of controls in place to mitigate those risks. The audit was also designed to determine if the City: 1) uses the appropriate indirect cost rate for Medi-Cal cost reports, and 2) complies with federal and state retention requirements for documentation in support of billings. Our audit was initiated at the request of the City Manager.

II. AUDIT RESULTS TO DATE

The auditors were restricted from making sufficient progress on meeting all the audit objectives.

Due to denial of access to mental health service records imposed by the City's Department of Health and Human Services (HHS) management and HIPAA Privacy Officer, the audit objectives were not completed (see "Audit Status"). Audits are a primary tool used for oversight of City departments and functions. However, audit procedures and test work such as determining the adequacy of supporting documents and the completeness of billings, or performing a review of the effectiveness of the internal control system, cannot be performed without sufficient access to records.

The City Charter and the Berkeley Municipal Code provide the City Auditor with unrestricted access to all City records. However, HHS has cited Section 5328 of the California Welfare and Institutions Code as the basis for denying the auditors access to mental health service records. A request to the City Attorney's Office for a formal legal opinion on the matter has been submitted. Once the auditors obtain acceptable access to records, the audit will be completed and a second audit report will be issued.

Though the auditors were restricted from making sufficient progress on meeting all the audit objectives, the auditors did identify certain risks that could jeopardize revenue the City receives for providing mental health services under the State Medi-Cal program. The restrictions imposed on the auditors prevented an evaluation of the effectiveness of controls in place to mitigate those risks. In addition, two issues in the Mental Health Division were identified that should be addressed. First, Alameda County has provided Medi-Cal reporting services to the City since July 1999, without a written contract or memorandum of understanding (MOU) in place to establish the rights and obligations of each party (Finding 1). Initially, a formal MOU, which was considered an interim agreement, covered the period July 1, 1998 through June 30, 1999, but was never renewed or replaced.

Second, the Mental Health Division experienced difficulty in reconciling payments received from Alameda County to mental health service information reported to the County. The Mental Health Division had not requested an available report that might facilitate the reconciliation (Finding 2).

III. BACKGROUND

The Mental Health Division is under the City's Department of Health and Human Services (HHS). The HHS Mental Health Division provides a range of community based mental health services to residents of Berkeley and Albany. The Mental Health Division utilizes a staff of licensed mental health professionals to help:

- People in crisis;
- Children, teens, and families experiencing emotional difficulties;
- People with serious mental illness and disabilities, and;
- Others who are in need of mental health or related social services.

The Mental Health Division operates separate clinics for Adult Services and Family, Youth, and Children Services. HHS was budgeted over \$25 million for fiscal year 2007, including more than \$8.2 million budgeted for the Mental Health Division. The Mental Health Division budget included over \$1.2 million allocated from the General Fund.

There are only two city based mental health jurisdictions in California

By statute, the City is responsible for providing outpatient mental health services to uninsured residents of Berkeley and Albany. Berkeley and Albany together constitute one of only two city based mental health jurisdictions in California. The other is the Tri-City Mental Health Center, which provides services to residents of the cities of Pomona, Claremont, and La Verne, which are in Los Angeles County. Except for the two city based mental health jurisdictions, mental health services in California are provided at the County level.

Medi-Cal

Medi-Cal, which is California's Medicaid program, was created in 1965 to channel federal and state funding to local public health care systems. Legislation enacted in 1972 tied Medi-Cal to a community based mental health care system that had previously been created under the Short-Doyle Act. The resulting Short-Doyle/Medi-Cal program reimburses up to 50% of allowable costs that local government agencies incur in providing mental health care.

In addition, the Medi-Cal Administrative Activities (MAA) program channels federal funding to local government agencies to reimburse costs incurred for mental health care support effort, such as planning and policy development, community outreach, and training. The Mental Health Division received almost \$3 million in Medi-Cal funding for the fiscal year ended June 30, 2006, including more than \$1.5 million of Short-Doyle cost reimbursement, and almost \$1.3 million under MAA.

Since 1991, through a program known as “realignment,” a portion of sales taxes and vehicle license fees is diverted directly to counties (and to the City as a mental health jurisdiction) to provide mental health services to the seriously and persistently mentally ill.¹ The City received more than \$2.6 million in realignment revenue in the fiscal year ended June 30, 2006. Realignment revenue was the City’s largest source of Medi-Cal matching funds.

Partnership With Alameda County

Prior to 1998, the City directly billed the state for Medi-Cal cost reimbursement. In that year the City entered into an arrangement with Alameda County in which the Berkeley mental health program functions as a contracted mental health provider to the County. The County submits consolidated County and Berkeley mental health client and service data to the California Department of Mental Health (CDMH). In addition, the County includes Berkeley cost information in an annual cost report that it submits to CDMH. Medi-Cal remittances that the County receives from the state include payment for services provided by the City. The County in turn remits payments to the City. In effect, the County provides Medi-Cal billing services to the City.

**All City
Medi-Cal
reporting is
processed
through
Alameda
County.**

Basis for Reimbursement of Mental Health Costs

There are two factors that determine the amount of Short-Doyle/Medi-Cal mental health funding the City receives each year. The first factor is the number of allowable units of mental health service that the City provides to eligible clients.² The second factor is the allowable costs, including indirect costs that the City incurs in providing allowable service. During the year, CDMH reimburses the City (through the County) by applying a Statewide Maximum Allowance to reported service units.

¹ Realignment was created by the Bronzan-McCorquodale Act.

² A unit of service consists of a minute of clinician time associated with a service episode (client visit).

Interim Report on Mental Health Division Medi-Cal Billings

Approximately six months after the end of the fiscal year, the City submits an annual Medi-Cal cost report to the County. Eligible Short-Doyle/Medi-Cal costs are limited to the lower of the Statewide Maximum Allowance, or the City's actual cost per mental health service unit.³ Eligible MAA costs are determined by applying a CDMH published "eligibility factor" (percentage) to costs incurred. The actual amount of Medi-Cal reimbursement is limited to the Federal Financial Participation rate of 50% of eligible Short-Doyle costs, and either 50% or 75% of eligible MAA costs, depending on service function.

A state or federal audit could adjust the City's reported cost per service unit, as well as the number of eligible service units. The City would lose funding from adjustment of the unit cost only if the adjusted unit cost falls below the SMA. A reduction of eligible service units would always result in a loss of funding.

Mental Health Division is Subject to HIPAA and State Disclosure Rules. The Federal Health Insurance Portability and Accountability Act of 1996 (HIPAA) established stringent requirements for health care providers to restrict access to protected health information (information that can be used to identify a patient with services rendered). HIPAA regulations provide conditional access to protected health information for health oversight agencies and business associates.⁴ On August 28, 2007, a Statement of Intent was executed between the Director of HHS, the HIPAA Privacy Officer, and the City Auditor that established a protocol for providing the City Auditor with access to protected health information needed to complete the audit. In addition to HIPAA, the Mental Health Division is also subject to restriction on release of client information imposed by Section 5328 of the California Welfare and Institutions Code.

Mental Health Compliance Program

The Mental Health Division has an on-going quality assurance program designed to foster compliance by clinical staff with state and federal requirements for documenting services provided. According to Mental Health Division management, the Division conducts regulatory compliance activities under the authority of a Mental Health Program Supervisor, who meets weekly with senior staff at both clinic sites. The purpose of these meetings is to review patient records for medical necessity and compliance with State and Federal laws and regulations. Mental Health Division management also stated that they conduct regular staff training in compliance standards.

³ Reimbursable costs will be reduced to the extent that they are recovered from Medicare.

⁴ Health oversight agencies include agencies of the United States, a state, a territory, and political subdivisions of a state or territory i.e. a city that conduct oversight activities authorized by law, such as **audits**, investigations, and inspections. A business associate is an external entity that is engaged by a HIPAA covered entity to perform a service on behalf of the covered entity.

IV. Audit Status

Audit Progress Impeded by Denial of Access to Records

Audit Observations and Transaction Testing Delayed Indefinitely

In order to design appropriate audit tests, auditors need to review the processes used for screening mental health clinic clients, documenting mental health services in the client charts, and reporting services to the County. The auditors also need to evaluate the controls built into these processes. To obtain a sufficient level of understanding, the auditors need access to the clinic's visitor sign-in logs, actual client charts, and mental health service reports submitted to and received back from Alameda County. However, the Mental Health Division in consultation with the City's HIPAA Privacy Officer will not permit the auditors to see any documents or reports unless the Mental Health Division first redacts certain client identifying information. Information to be redacted includes (but is not limited to) the client's name, address, social security number, date of birth, and similar information on family members. This restriction was communicated to the auditors several days after execution of the Statement of Intent.

The auditors were denied access to records needed to complete the audit.

The City Charter and the Berkeley Municipal Code both provide the City Auditor with unrestricted access to all City records. However, the Mental Health Division and HIPAA Privacy Officer cited Section 5328 of the California Welfare and Institutions Code as the primary reason for denying the auditors access to non-redacted records. They assert that Section 5328, which applies only to mental health records, is more restrictive than HIPAA. Where HIPAA provides access to health oversight organizations (such as the City Auditor's Office), Section 5328 does not specify this exception. It also does not specify any right for the County auditors to have access to these records.

To select a sample of clients for testing clinic charts, the auditors would require a complete list of clients. HHS arranged for the County to create a list of all 2007 clients⁵ by client and Medi-Cal numbers only. However, the County was not willing to submit the list directly to the auditors. HHS downloaded the list from the County website and provided it to the auditors by email. HHS also offered to provide redacted client charts for testing a sample selected from the list.

⁵Clients that received mental health services in the year ended June 30, 2007.

Interim Report on Mental Health Division Medi-Cal Billings

This arrangement is not acceptable because:

- The auditors could not independently verify that the list received was not altered;
- The auditors would have to observe the time consuming redaction of client charts, which would prohibit selecting a sample size large enough to be representative of the population of either client charts or mental health service units; and
- The auditors would not be able to conduct reliable tests to determine if the Mental Health Division claimed all eligible services. Such testing would require access to the clinic's visitor sign-in logs, which identify visitors by name only, as well as printouts or files received from the County that list reported mental health services.

The audit sample should be large enough to reflect the general condition of client charts.

A request has been made for a formal legal opinion from the City Attorney on whether the City Auditor has the right to access non-redacted mental health service records to the minimum extent necessary to accomplish the audit objectives.

Inability to Verify That Supporting Data Is Retained for Required Period

According to a CDMH official, the City is required to retain supporting documentation for billed mental health service unit for a maximum period of seven years. Mental Health Division personnel stated that it retains the supporting documentation for at least seven years. Since the auditors were refused access to records, this information could not be verified.

Federal Approval of Indirect Cost Rate Pending

According to the same CDMH official, it is acceptable for the City to use a federally approved indirect cost rate for Medi-Cal cost reporting. In April 2007, Finance-Accounting submitted the City's Indirect Cost Allocation Plan for fiscal year 2006 for approval by the U.S. Department of Housing and Urban Development (HUD). The City is required to obtain HUD's approval for the allocation plan. The submitted plan includes proposed indirect cost rates for use on federal grants and contracts, including a proposed rate of 29.28% for HHS.

HUD had not approved the Indirect Cost Allocation Plan.

The City's Medi-Cal cost report for fiscal year 2006 was due by December 31, 2006, which was before the allocation plan was prepared. According to Mental Health Division staff, the cost report used an interim indirect cost rate of 30.72%,⁶ which was higher than the allocation plan rate for HHS. As of December 2007, HUD had not approved the Indirect Cost Allocation Plan. It is possible that the City could be required to adjust the indirect cost rates. Accordingly, a conclusion cannot be made as to whether the indirect cost rate used for the Medi-Cal cost report was appropriate.

As stated above, Short-Doyle/Medi-Cal reimbursement is based on the lower of its actual cost per mental health service unit, or the statewide maximum allowance (SMA). The City's reported cost per service unit in fiscal year 2006 was higher than the SMA. Calculations based on non-audited data in the cost report indicate that the City has a cushion of over \$550 thousand to absorb disallowed costs,⁷ including costs that might be disallowed as a result of adjustment of the indirect cost rate. In other words, the total costs reported by the City are \$550 thousand more than the maximum amount the state would pay for the reported service units.

V. FINDINGS AND RECOMMENDATIONS

Finding 1 Health and Human Services Has Been Operating Without A Contract or MOU With Alameda County Since 1999

The MOU that covered the Medi-Cal services that Alameda County provides to the City expired on June 30, 1999, and has not been renewed or replaced. Therefore, there is no written agreement that spells out the rights and obligations of each party.

A County representative said that both City of Berkeley and Alameda County Behavioral Health Care Services (BHCS) staff have been too busy to devote sufficient time to negotiating a contract. BHCS indicated that various issues, such as the impact of Medi-Cal Consolidation and the Mental Health Services Act, have delayed negotiations. BHCS added that the County has been trying to arrange a meeting between the City, BHCS, and consultant working for the State to discuss the matter. BHCS acknowledged that the County recognizes the need for a contract or MOU.

HHS staff expressed concern about certain aspects of the service the

⁶ The Medi-Cal cost report for fiscal year 2006, which follows a format required by the state, only shows the total indirect cost amount. It does not show the indirect cost rate, the base to which the rate was applied, or the calculation of indirect costs.

⁷ We derived this amount by subtracting the SMA from the reported cost per service unit for each service function, and multiplying the difference times the number of units. The reported unit cost for each service function was greater than the SMA.

Interim Report on Mental Health Division Medi-Cal Billings

County provides, especially in regard to timeliness of remittances for billed services. Table 1 below shows the City's Short-Doyle Medi-Cal receipts from the County in fiscal year 2006. Note that the revenue stream was extremely uneven throughout the year.

**Table 1: Berkeley Short-Doyle Medi-Cal Receipts
By Month for Fiscal Year 2006
(Whole Dollars)**

Month	Amount
August 2005	\$ 430,828
September 2005	121,201
October 2005	129,756
November 2005	21,158
December 2005	0
January 2006	0
February 2006	58,548
March 2006	238,838
April 2006	0
May 2006	6
June 2006	533,586
Total for Year	\$ 1,533,921 ⁸

With no contract in place, it becomes more difficult for City staff to monitor the program.

As shown in the table, there were three months (December, January, and April) in which the City did not receive a remittance, and the remittance in May was only about six dollars. On the other hand, the remittances received in August, March, and June accounted for 78% of the remittances for the year. The remittance received in June alone accounted for almost 35% of the annual total. The lack of an agreed upon payment timeline makes it more difficult for the City to effectively manage the program. BHCS verbal agreement with the City of Berkeley is that BHCS will process claims on behalf of the City of Berkeley and as BHCS receives payments from such claims revenues will be forwarded to the City of Berkeley in a timely manner. There can be various explanations for seemingly erratic payment receipt, such as, upgrades to INSYST billing systems, claims held pending rate adjustments, delays in payment by the DMH.

⁸ This amount is the total posted to FUNDS (the City's automated financial system) for fiscal Year 2006. BHCS records indicate that the total was \$1,874,318. Once Berkeley Mental Health is able to refine its reconciliation process with additional reports from the County (see Finding 2 below), this disparity should be resolved.

Recommendation for Health and Human Service

- 1.1 Continue to pursue executing a new contract with Alameda County. The City Manager should consider discussing this matter with the County Administrator or the County Supervisor. If the County will not cooperate, explore the possibility of following-up with the California Department of Mental Health. Legislative action could also be considered.

City Manager's Response

HHS concurs with the finding and recommendation. Mental Health Division staff has initiated discussions with Alameda County to begin the development of a Master Agreement to cover all Medi-Cal mental health services. County staff has indicated a willingness to complete this overdue project. One component of the Master Agreement, which addresses Early and Periodic Screening, Diagnosis, and Treatment (EPSDT) Medi-Cal services, is currently in process by staff. EPSDT Medi-Cal reimbursement requires a separate calculation method from Short-Doyle Medi-Cal and will be differentiated in the Master Agreement. A work plan for development of the Master Agreement will be in place by August 2008. A status report will be presented to Council in October 2008.

Finding 2 Difficulty Reconciling Services Provided To Payments Received

According to key Mental Health Division staff, the Division experienced difficulty reconciling payments received from Alameda County to mental health service units reported to the County (claimed units). They attributed this difficulty to (1) untimely remittances, which were received six to eight months after services were provided, and (2) the lack of information provided by the County on mental health service units that were denied by the state and not paid.

Reconciling is necessary to ensure that the City was paid all allowable claimed units.

The remittance reports only listed paid service units, and the Mental Health Division did not receive corresponding reports that listed units that were denied by the state, with the reasons for denial. BHCS has advised City of Berkeley that there are reports available through INSYST that will provide any additional data needed to reconcile revenue received by the City of Berkeley. These reports can be requested through BHCS Information System Unit.

There are two significant results. First, the Mental Health Division could not readily determine if the City had been paid the correct amount. Second, systemic problems within HHS controls over data entry or reporting could be causing past and future disallowances. The City needs disallowance reports so they can monitor their own work.

According to Alameda County representatives, the County receives a periodic report from the State (approximately 6 to 12 weeks after claims submission). This report lists denied service units for all mental health services providers in the County, including the Mental Health Division.⁹

This listing is a component of an explanation of benefits report. The County was not providing Berkeley with an equivalent version listing the City's denied units, but since the report was an electronic file, it should be possible to extract Berkeley data. Should the Mental Health Division request a report covering the City's denied mental health service units, the County would be willing to explore options for providing the requested information.

In March 2007, the auditors informed the Mental Health Division that it might be able to obtain a report of denied units from the County if requested. As of December 2007, the Mental Health Division still had not requested and was not receiving the listing of denied service units.

Recommendation for Health and Human Services

- 2.1 Immediately make a written request to Alameda County to receive the report of denied mental health service units. The report should be used as a tool for reconciling remittances and monitoring billings.

City Manager's Response

HHS concurs with the finding and recommendation. Staff already conducts partial reconciliation of billings and errors; however, the process is incomplete and does constitute a risk of revenue loss. With the recent filling of the Health Administrative Financial Specialist position, the Mental Health Division will be conducting an internal review of its billing data and business practices to identify specific areas of weakness, developing a corrective action plan to address those areas of weakness, and identifying the various types of financial reports needed from the County. All necessary reporting requirements will be included in the Master Agreement developed with Alameda County. HHS will make the request to the County by March 15, 2008.

⁹We did not have access to these reports to evaluate the information they provide.

VI. CONCLUSION

The planned audit was not completed due to restrictions placed by HHS on access to records. HHS has restricted the auditors' access to records based on Section 5328 of the California Welfare and Institution Code. Though the auditors were restricted from making sufficient progress on meeting all the audit objectives, the auditors did identify certain risks that could jeopardize revenue the City receives for providing mental health services under the State Medi-Cal program. The restrictions imposed on the auditors prevented an evaluation of the effectiveness of controls in place to mitigate those risks.

Audit work to date identified two concerns. First, the lack of a written contract or MOU with Alameda County weakens the City's position in negotiating issues such as timeliness and consistency of remittances. Second, the Mental Health Division experienced difficulty in reconciling remittances from Alameda County to mental health service units reported to the County. The remittances were not received timely and the remittance reports only listed paid service units. The Mental Health Division had not requested a report of denied units from the County for the purpose of reconciling and monitoring staffs' performance. Our recommendations include negotiating a new contract with Alameda County and requesting the County provide the City with a report on denied units.

Appendix A: Scope and Methodology

As part of the auditors internal controls test work of Medi-Cal mental health services billings, the audit was intended to cover the Mental Health Division's current policies and procedures for documenting Medi-Cal mental health services provided to residents of Berkeley and Alameda, and to cover transmitted service records that Alameda County requires to bill the California Department of Mental Health (CDMH) on behalf of the City. A state or federal audit might disallow service units if the Mental Health Division did not document all required information on clients, and mental health services provided. The auditors attempted to accomplish the audit objectives through interviews, direct observations of procedures and processes, and testing patient files and mental health service records to ensure that they adequately support services billed.

Audit work to date has been conducted in accordance with Generally Accepted Government Auditing Standards (GAGAS). GAGAS requires that our report disclose any constraint imposed on the audit approach by scope impairments due to denial of access to records. Because the Mental Health Division would not permit the auditors to see any document, client chart, or report unless it first redacted certain client identifying information, an audit that would provide any assurance necessary to support a conclusion as to the adequacy of supporting documents or the completeness of billings could not be performed. Our audit efforts to date have been limited to interviews of Mental Health Division, Alameda County, and CDMH staff, observations that were significantly restricted by the Mental Health Division, and background research. We identified reasonable risks of loss of mental health revenue, and documented federal and state requirements. For more than a year, the auditors devoted substantial effort to researching and complying with HIPAA requirements, and developing and negotiating the Statement of Intent that was intended to provide us with access to protected health information to the extent necessary to accomplish our audit objectives. HHS has chosen to deny the auditor's access to records based Section 5328 of the California Welfare and Institutions Code. The auditors have requested a formal opinion from the City Attorney's Office regarding our access rights to audit Mental Health Division records in an effort to exercise appropriate oversight.