

Department of Health and Human Services

**OFFICE OF
INSPECTOR GENERAL**

**KENTUCKY CLAIMED MILLIONS IN
UNALLOWABLE SCHOOL-BASED
MEDICAID ADMINISTRATIVE COSTS**

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Office of Inspector General

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OFFICE OF AUDIT SERVICES FINDINGS AND OPINIONS

The designation of financial or management practices as questionable, a recommendation for the disallowance of costs incurred or claimed, and any other conclusions and recommendations in this report represent the findings and opinions of OAS. Authorized officials of the HHS operating divisions will make final determination on these matters.

Report in Brief

Date: June 2021

Report No. A-04-17-00113

U.S. DEPARTMENT OF HEALTH & HUMAN SERVICES
OFFICE OF INSPECTOR GENERAL



Why OIG Did This Audit

In prior audits of school-based administrative and health services costs that States allocated to Medicaid using random moment sampling (RMS), we identified significant overpayments. After conducting a risk assessment of Kentucky's Medicaid Administrative Claiming program, we determined that Kentucky claimed significant Medicaid school-based administrative costs based on its RMS. We conducted this audit because of the significant amount claimed and our prior findings related to costs that States allocated to Medicaid using RMS.

Our objective was to determine whether Kentucky claimed school-based Medicaid administrative costs in accordance with Federal requirements.

How OIG Did This Audit

Our audit covered \$58.9 million (\$29.4 million Federal financial participation (FFP)) in school-based administrative costs allocated to Medicaid using RMS and claimed on Kentucky's Medicaid expenditure reports for Federal fiscal years (FFYs) 2009 through 2014 (audit period). We reviewed Kentucky's RMS procedures, including random moment time study methodologies and documentation of the Department of Health and Human Services, Division of Cost Allocation (DCA) approvals of related cost allocation plan (CAP) amendments.

Kentucky Claimed Millions in Unallowable School-Based Medicaid Administrative Costs

What OIG Found

Kentucky did not claim school-based Medicaid administrative costs in accordance with Federal requirements. It used an invalid RMS to allocate costs to Medicaid, and it included unallowable costs in its cost pools. In addition, Kentucky claimed these costs without promptly submitting CAP amendments to DCA for review and without obtaining DCA approval. As a result, the \$58.9 million (\$29.4 million FFP) that it claimed in school-based Medicaid administrative costs for FFYs 2009 through 2014 was unallowable.

What OIG Recommends and Kentucky's Comments

We recommend that Kentucky: (1) refund \$29.4 million to the Federal Government; (2) amend its CAP to address the statistical validity issues we identified; (3) enhance RMS procedures to ensure that its RMTS methodology complies with Federal requirements for statistical validity; (4) enhance RMS procedures to ensure that its Medicaid administrative cost claim complies with Federal requirements for allocable costs; (5) enhance policies and procedures to ensure that changes to its RMTS methodology are incorporated into a CAP amendment and promptly submitted to DCA for review; and (6) review school-based Medicaid administrative costs claimed after our audit period and refund any unallowable amounts.

In written comments on our draft report, Kentucky generally disagreed with our findings, and it did not specifically address our recommendations. It agreed with certain elements of our findings and described actions it had taken or could take to address them. However, Kentucky did not agree with our findings that its RMS was invalid, that support staff costs included in its cost pools were unallowable, or that its CAP amendments were not promptly submitted for approval.

Kentucky did not provide any additional documentation with its comments, and nothing in Kentucky's comments warranted changing our findings and recommendations.

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INTRODUCTION

WHY WE DID THIS AUDIT

In prior audits of school-based administrative and health services costs that States allocated to Medicaid using random moment sampling (RMS), we identified significant overpayments.¹ After conducting a risk assessment of Kentucky's Medicaid Administrative Claiming (MAC) program, we determined that the Kentucky Department for Medicaid Services (State agency) used RMS to claim almost \$58.9 million (\$29.4 million Federal financial participation (FFP)) in school-based administrative costs, which are State public assistance agency costs,² for Federal fiscal years (FFYs) 2009 through 2014.³ We conducted this audit because of the significant amount that the State agency claimed and our prior findings related to costs that States allocated to Medicaid using RMS.

OBJECTIVE

Our objective was to determine whether the State agency claimed school-based Medicaid administrative costs in accordance with Federal requirements.

BACKGROUND

Medicaid Program

The Medicaid program provides medical assistance to low-income individuals and individuals with disabilities. Federal and State Governments jointly fund and administer the Medicaid program. At the Federal level, the Centers for Medicare & Medicaid Services (CMS) administers the program. Each State administers its Medicaid program in accordance with a CMS-approved Medicaid State plan. Although each State has considerable flexibility in designing and operating its Medicaid program, it must comply with Federal requirements. In Kentucky, the State agency administers the Medicaid program.

States can claim 50-percent FFP for the cost of certain Medicaid administrative activities that are necessary for the proper and efficient administration of the State plan (Social Security Act (the Act) §1903(a)(7)). However, a State must claim FFP for administrative costs associated with a program only in accordance with its cost allocation plan (CAP) approved by the cognizant Federal agency, the U.S. Department of Health and Human Services (DHHS), Division

¹ We conducted numerous audits of RMS used to allocate Medicaid school-based administrative and health services expenditures, and we identified at least \$435 million in costs that were not in accordance with Federal requirements and guidance. Appendix B contains a list of related Office of Inspector General reports.

² State public assistance agency costs are costs incurred by, or allocable to, the State public assistance agency, except expenditures for financial assistance, medical vendor payments, food stamps, and payments for services and goods provided directly to program recipients.

³ The audit period encompassed the most current data available at the time we planned our audit.

of Cost Allocation (DCA).⁴ If costs under a public assistance program are not claimed in accordance with the approved CAP, or if the State fails to promptly submit an amendment to its CAP when required, the costs improperly claimed will be disallowed (45 CFR § 95.519 and 45 CFR § 95.509(a)).

Medicaid Coverage of School-Based Administrative Costs

Section 1903(c) of the Act allows Medicaid coverage of health-related services provided to Medicaid-eligible children under the Individuals with Disabilities Education Act. In addition, the Act provides for States to be reimbursed for school-based administrative activities that directly support identifying and enrolling potentially eligible children in Medicaid. School-based Medicaid administrative costs are one type of public assistance cost that can be reimbursed, if costs claimed comply with Federal requirements.

Under Federal regulations, RMS is one acceptable method for allocating salaries and wages among Medicaid and other programs (2 CFR part 225, Appendix B 8.h.(6)). School or school district employees may perform multiple administrative activities related to Medicaid as well as to other programs that, unlike Medicaid, are not eligible for FFP. State Medicaid agencies may use either of two methods to allocate employees' salaries and wages to Medicaid: (1) personnel activity reports (e.g., timesheets) that reflect an after-the-fact distribution of the actual activity of each employee or (2) a substitute system, such as RMS.⁵ However, when using RMS, the sampling methodology must meet acceptable statistical sampling standards,⁶ the results must be statistically valid,⁷ and costs must be adequately documented to be allowable.⁸

CMS's Medicaid School-Based Administrative Claiming Guide (CMS Guide) provides information on the appropriate methods for claiming Federal reimbursement for costs of Medicaid administrative activities performed in a school setting. The CMS Guide requires that documentation be retained to support time studies used to allocate costs, including the sample universe determination, sample selection, and sample results. The CMS Guide clarifies the RMS requirements in 2 CFR part 225 by providing guidance pertaining to the sample universe,

⁴ CMS's *Medicaid School-Based Administrative Claiming Guide* (CMS Guide), dated May 2003, states that "a public assistance CAP must be amended and approved by the Division of Cost Allocation (DCA) within DHHS before FFP would be available for administrative claims in the Medicaid program CMS does not have direct authority for approval of the public assistance CAPs; that is the purview of the DCA" (pages 44 and 45). DCA is now called DHHS Cost Allocation Services.

⁵ RMS is one of the federally acceptable methods for allocating costs to Federal awards when employees work on multiple activities not allocable to a single Federal award (2 CFR part 225, Appendix B 8.h.(6)).

⁶ See 2 CFR part 225, Appendix B 8.h.(6)(a).

⁷ See 2 CFR part 225, Appendix B 8.h.(6)(a)(iii).

⁸ See 2 CFR part 225, Appendix A (C)(1)(j) and the CMS Guide.

sampling plan methodology, treatment of the summer period, documentation, training for participants, and State agency's monitoring process.

Kentucky Department for Medicaid Services

The State agency is responsible for the proper and efficient administration of the Medicaid State plan. Kentucky's MAC program allowed schools to claim reimbursement for costs that they incurred when performing allowable Medicaid administrative activities. Allowable activities that these schools perform focus on assisting children and their families to enroll in Medicaid and on identifying, referring, and linking Medicaid-eligible or potentially eligible students to appropriate health resources both in the schools and in the community. Because these schools performed certain services required under the State plan on behalf of children and their families, the allowable portion of their administrative costs allocable to Medicaid was eligible for FFP.

The State agency used the Kentucky Department of Education (Education) and its contractor to support the implementation and operation of its MAC program.⁹ Beginning at implementation in 2005, Education employees administered the MAC program and monitored the contractors that were responsible for conducting a random moment time study (RMTS) and calculating claims for school-based Medicaid administrative costs.

The State agency submitted its first implementation plan proposal, including using RMS and RMTS to calculate Medicaid administrative costs, for its MAC program in March 2004. Despite not having approval, it began claiming school-based Medicaid administrative costs in January 2005 and submitted the first claim for the quarter ended March 2005. After CMS instructed it to do so, the State agency stopped claiming school-based Medicaid administrative costs for April 1, 2007, through March 31, 2009; however, it used temporary amounts that were to be subsequently adjusted to claim such costs beginning in the quarter ended June 2009.¹⁰

Except for deviations addressed in our findings, the State agency claimed school-based Medicaid administrative costs for our audit period according to its RMS procedures, including

⁹ The State agency delegated responsibility for its school-based MAC program to the Kentucky Department of Education (Education), which used contractors to conduct the random moment time study (RMTS) and calculate school-based Medicaid administrative cost claims.

¹⁰ In its final Financial Management Report dated January 25, 2008, CMS agreed to consider a backcasting methodology that retroactively applied sampling results from current, approved time studies to determine school-based Medicaid administrative costs claimed for periods prior to July 1, 2008. CMS agreed to give the State agency until July 2008 to develop a new State plan amendment and reimbursement methodology and, according to State agency officials, advised the use of temporary amounts that were to be subsequently adjusted using the approved backcasting methodology to meet the 2-year timely filing requirement.

RMTS, for identifying, measuring, and allocating costs as outlined in its second and third implementation plans.¹¹

Beginning on October 1, 2008, the State agency used its second RMTS methodology to capture time spent by school staff on Medicaid administrative activities. On October 19, 2009, CMS approved the second implementation plan including the second RMTS methodology entitled “Kentucky School-Based Time Study,” subject to numerous conditions. The first condition was that the State agency submit a CAP amendment to DCA referencing the approved methodology. The second condition was that the State agency submit a backcasting methodology to CMS for approval.¹²

On April 1, 2011, the State agency began using a third RMTS methodology to calculate its school-based Medicaid administrative costs; however, it never submitted a third implementation plan including this new RMTS methodology to either CMS or DCA for review.¹³

Although the second and third RMTS methodologies involved polling employees at random moments over a given time period and determining the percentage of time spent on Medicaid administrative activities, they differed in ways affecting the allocation of costs. Specifically, the third RMTS methodology (1) recategorized certain positions from the “Administrative Service Providers Only” cost pool to the “Direct Service and Administrative Providers” cost pool¹⁴ and (2) added an overall 90 percent State average response rate as valid for compliance.

On its quarterly Medicaid expenditure reports for FFYs 2009 through 2014, the State agency claimed \$58,862,528 (\$29,431,268 FFP) for school-based administrative costs allocated to Medicaid using RMS. Of the \$58,862,528 claimed, \$11,075,820 (\$5,537,910 FFP) was claimed

¹¹ These two implementation plans were working documents that identified proposed RMS procedures (including RMTS methodologies, training guidance, backcasting, and time study codes) for operating the State agency’s MAC program. While the implementation plans may have served as the basis for CMS review and negotiation, they were neither CAPs nor plan amendments approved by the cognizant agency.

¹² On January 6, 2010, the State agency submitted for DCA approval a CAP amendment, which included the second RMTS methodology and the backcasting methodology. On May 4, 2010, the State agency received CMS approval for the backcasting methodology. On September 29, 2010, DCA retroactively approved this CAP amendment (approved CAP amendment) including the second RMTS methodology and the backcasting methodology, with an effective date of October 1, 2008.

¹³ On September 18, 2020, State agency officials submitted to DCA a CAP amendment for review and approval, which consolidated the third RMTS methodology and the State agency’s backcasting methodology into a fourth implementation plan, with a proposed effective date of January 1, 2020. At the time we issued this report, DCA had not approved this CAP amendment.

¹⁴ The “Administrative Service Providers Only” cost pool is composed of administrative claiming staff only and the respective costs for that staff. The “Direct Service and Administrative Providers” cost pool is composed of direct service staff, including those who conduct both direct services and administrative claiming activities, as well as direct service only staff, and the respective costs for that staff.

for five quarters (from April 2007 through June 2008) using the State agency’s backcasting methodology.

HOW WE CONDUCTED THIS AUDIT

Our audit covered \$58,862,528 (\$29,431,268 FFP) in school-based administrative costs allocated to Medicaid using quarterly RMS and claimed by the State agency on its Medicaid expenditure reports for FFYs 2009 through 2014 (audit period).¹⁵ We reviewed the State agency’s RMS procedures, including RMTS methodologies and documentation of DCA approvals of related CAP amendments.

We conducted this performance audit in accordance with generally accepted government auditing standards. Those standards require that we plan and perform the audit to obtain sufficient, appropriate evidence to provide a reasonable basis for our findings and conclusions based on our audit objectives. We believe that the evidence obtained provides a reasonable basis for our findings and conclusions based on our audit objectives.

Appendix A contains the details of our audit scope and methodology, and Appendix C contains applicable Federal requirements.

FINDINGS

The State agency did not claim school-based Medicaid administrative costs in accordance with Federal requirements. The State agency used an invalid RMS to allocate costs to Medicaid, and it included unallowable costs in its cost pools. In addition, it claimed these costs without promptly submitting CAP amendments to DCA for review and without obtaining DCA approval. As a result, the \$58,862,528 (\$29,431,268 FFP) that the State agency claimed in school-based Medicaid administrative costs for FFYs 2009 through 2014 was unallowable.

RANDOM MOMENT SAMPLING WAS INVALID

Substitute systems for allocating salaries and wages to Federal awards may be used in place of activity reports. These systems are subject to approval, if required, by the cognizant agency. Such systems may include, but are not limited to, RMS, case counts, or other quantifiable measures of employee effort. Substitute systems that use sampling methods “must meet acceptable statistical sampling standards including: [t]he sampling universe must include all of the employees whose salaries and wages are to be allocated based on sample results . . . ; [t]he entire time period involved must be covered by the sample; and [t]he results must be statistically valid and applied to the period being sampled” (2 CFR part 225, Appendix B, 8.h.(6)).

The CMS Guide instructs that a random moment sample “must reflect all of the time and

¹⁵ The audit period encompassed the most current data available at the time we planned our audit.

activities (whether allowable or unallowable under Medicaid) performed by employees participating in the Medicaid administrative claiming program” (page 8).

In a simple random sample, each item in the sample frame must have an equal chance of being selected, and all items selected must be evaluated. If sample frame items are duplicated, excluded from sample selection, improperly included, or not evaluated, this produces an invalid sample and the extrapolation from this sample produces an invalid result.¹⁶

The State agency’s approved CAP amendment states, “A district must determine whether they meet all requirements above and if they are less than 100% federally funded. Individuals that are 100% federally funded will be excluded from the time study” (Attachment A, page 3).

We identified the following factors that rendered the State agency’s RMS results invalid:

- **Duplicates on the Participant Lists:** Our review of the participant lists identified duplicates in every quarter. For example, of 8,419 individual names on the participant lists for the quarter ending June 30, 2011, 80 names appeared more than once within a school district. Including an employee more than once increases the chances of that employee being selected. Therefore, all employees did not have an equal chance of selection.
- **Fully Federally Funded Individuals on the Participant Lists:** Contrary to its approved CAP amendment, which states that individuals who are 100 percent federally funded will be excluded from the time study, the State agency included 115 fully federally funded individuals on its participant lists for the last 7 quarters of our audit period.¹⁷
- **Entire Time Period Not Covered by the Sample:** Not all moments had an equal chance of selection because the sample universe did not account for the entire work period. When it selected the RMTS sample, the contractor advised the school districts to use the earliest start time and latest end time of the schools within each school district, which would have given all moments an equal chance of being selected. However, some school districts used the latest start time and the earliest end time. For example, if a district’s high school started at 8:15 a.m., middle school at 8:20 a.m., and elementary school at 8:25 a.m., it would use 8:25 a.m. as the district’s start time, eliminating the moments between 8:15 a.m. and 8:24 a.m. If the end times for a district’s schools were 2:15 p.m., 2:20 p.m., and 2:25 p.m., it would use 2:15 p.m. as the district’s end time, eliminating the moments between 2:16 p.m. and 2:25 p.m. Thus, not all available moments were included in the sample universe.

¹⁶ The term “invalid sample” here refers to a sample that does not follow the requirements outlined in 2 CFR part 225, Appendix B, 8.h.(6).

¹⁷ Financial documents used to identify potentially federally funded participants were not available for prior quarters.

In claiming school-based Medicaid administrative costs, the State agency relied on its second and third RMTS methodologies included in its RMS procedures. However, these RMS procedures were insufficient to ensure compliance with Federal requirements for statistical validity.

As a result, the State agency's RMS did not meet Federal requirements, was not reliable, and did not accurately identify school-based Medicaid administrative costs.

THE STATE AGENCY INCLUDED UNALLOWABLE COSTS IN ITS COST POOLS

Regarding its time study participants and cost pools, the State agency's approved CAP amendment states: "categories of staff have been identified as appropriate participants for the Kentucky time studies. Additions to the list may be dependent upon job duties. The decision and approval to include additional provider types requires an amendment to the existing State plan, which would be submitted to CMS by [the State agency] and involves CMS coverage staff, as well as, other Federal review staff (Attachment A, page 2)." The approved CAP amendment also states that no cost may be accounted for more than once and that direct costs related to staff not identified as eligible time study participants are unallowable and may not be included in the claim (Attachment A, page 13).

To be allowable under Federal awards, costs must "[b]e necessary and reasonable for proper and efficient performance and administration of Federal awards" and "[b]e allocable to Federal awards . . ." (2 CFR part 225, Appendix A (C)(1)(a) and (C)(1)(b)).

Furthermore, the CMS Guide states:

[R]esources should be expended in the most cost-effective manner possible. In determining the administrative costs that are reimbursable under Medicaid, duplicate payments are *not* allowable. That is, [S]tates may not claim FFP for the costs of allowable administrative activities that have been or should have been reimbursed through an alternative mechanism or funding source Furthermore, in no case should a program or claiming unit in a local jurisdiction be reimbursed more than the actual cost of that program or claiming unit, including [S]tate, local, and [F]ederal funds (page 9).

It also states:

[I]f the costs of such staff are completely offset (see Section V. C., Offset of Revenues), there would be no purpose to include them in the sample universe. That is, only staff for whom some costs remain after any applicable offsets should be included in the time study. For example, if [F]ederal funding sources or third party payors other than Medicaid meet 100 percent of the costs of social workers, then there would be no reason to include such workers in the time study and they must be excluded from participation. Furthermore, due to the

offset, the costs of such staff would also not be included in the costs to be allocated (page 39).

The State agency's cost pools, which served as the basis for allocating administrative costs to Medicaid using the RMTS, included the following unallowable costs:

- \$32,068,617 related to 5,345 support staff excluded from the participant lists and, therefore, from the RMTS sampling universe;¹⁸
- \$14,343 in duplicate costs for 2 staff members; and
- \$245,859 for 15 staff members identified as 100 percent federally funded (reimbursed through an alternative mechanism or funding source).

In claiming school-based Medicaid administrative costs, the State agency relied on its second and third RMTS methodologies included in its RMS procedures. Consistent with Federal requirements for allocable costs, these RMS procedures required excluding these unallowable costs from the cost pools. However, these RMS procedures were insufficient to ensure compliance with Federal requirements for unallowable costs.

As a result, the State agency incorrectly included unallowable costs in its cost pools and quarterly calculations of school-based Medicaid administrative costs.

COST ALLOCATION PLAN AMENDMENTS NOT PROMPTLY SUBMITTED OR APPROVED

States must submit to DCA for review a CAP that follows Federal requirements (45 CFR § 95.507(a)). States must also promptly amend the CAP and submit the amended CAP when certain conditions are met, including but not limited to changes affecting the validity of the approved cost allocation procedures (45 CFR § 95.509(a)). If costs under a public assistance program are not claimed in accordance with the approved CAP, or if the State fails to promptly submit an amendment to its CAP when required, the costs improperly claimed will be disallowed (45 CFR § 95.519 and 45 CFR § 95.509(a)).

Contrary to Federal requirements, the State agency improperly claimed school-based Medicaid administrative costs without promptly submitting CAP amendments to DCA for review and without obtaining DCA approval. From October 1, 2008, through March 31, 2011, the State

¹⁸ In 2008, CMS informed the State agency that support staff positions should not be included on the participant lists unless the individuals performed Medicaid administrative activities. Throughout our audit period, school districts correctly excluded these individuals from the participant lists; however, they incorrectly included the related costs in their cost pools. In 2017, the State agency informed school districts that support staff costs were no longer allowed to be claimed.

agency used its second RMTS methodology, which was retroactively approved by DCA,¹⁹ to calculate school-based Medicaid administrative costs.²⁰ Contrary to this approved methodology, the State agency changed its RMS procedures to include support staff costs in the cost pools without submitting a CAP amendment describing this change to DCA. As a result, the State agency did not obtain DCA approval of this change, and it did not claim school-based Medicaid administrative costs for this period in accordance with Federal requirements.

From April 1, 2011, through September 30, 2014, the State agency used its third RMTS methodology, which included additional changes to its RMS procedures, to calculate school-based Medicaid administrative costs. Initially, in April 2011, the State agency recategorized certain positions from the “Administrative Service Providers Only” cost pool to the “Direct Service and Administrative Providers” cost pool. Subsequently, in June 2013, the State agency added an overall 90 percent State average response rate, without regard to each school district’s response rate, as the threshold for excluding RMTS responses not returned or not accurately completed from the sample. The State agency made these changes without promptly submitting new CAP amendments to DCA.²¹ As a result, the State agency did not obtain DCA approval of these changes, and it did not claim school-based Medicaid administrative costs for this period in accordance with Federal requirements.²²

These changes to the RMS procedures for identifying, measuring, and allocating costs affected the validity of the approved cost allocation procedures and warranted the State agency’s prompt submission of CAP amendments to DCA for review and approval. However, because State agency officials were unaware of policies and procedures for submitting CAP amendments, they did not do so.

THE STATE AGENCY CLAIMED MILLIONS IN UNALLOWABLE COSTS

The State agency used an invalid RMS to allocate costs to Medicaid, included unallowable costs in its cost pools, and claimed Medicaid administrative costs using new RMTS methodologies

¹⁹ The State agency submitted the related CAP amendment to DCA on January 6, 2010. On September 29, 2010, DCA retroactively approved this CAP amendment, including the second RMTS methodology and the State agency’s backcasting methodology, with an effective date of October 1, 2008.

²⁰ Except for the unapproved inclusion of support costs in its cost pools, the State agency followed this second, retroactively approved RMTS methodology when calculating and claiming \$34,067,704 (\$17,033,852 FFP) in school-based Medicaid administrative costs during this period.

²¹ The State agency followed this third, unapproved RMTS methodology when calculating and claiming \$24,794,824 (\$12,397,416 FFP) in school-based Medicaid administrative costs during this period.

²² On September 18, 2020, State agency officials submitted to DCA a CAP amendment for review and approval that consolidated the third RMTS methodology and the State agency’s backcasting methodology into a fourth implementation plan, effective January 1, 2020. At the time we issued this report, DCA had not approved this CAP amendment.

without promptly submitting CAP amendments. As a result, the \$58,862,528 (\$29,431,268 FFP) that the State agency claimed in school-based Medicaid administrative costs for FFYs 2009 through 2014 was unallowable.

RECOMMENDATIONS

We recommend that the Kentucky Department for Medicaid Services:

- refund \$29,431,268 to the Federal Government,
- amend its CAP to address the statistical validity issues we identified,
- enhance RMS procedures to ensure that its RMTS methodology complies with Federal requirements for statistical validity,
- enhance RMS procedures to ensure that its Medicaid administrative cost claim complies with Federal requirements for allocable costs,
- enhance policies and procedures to ensure that changes to its RMTS methodology are incorporated into a CAP amendment and promptly submitted to DCA for review, and
- review school-based Medicaid administrative costs claimed after our audit period and refund any unallowable amounts.

STATE AGENCY COMMENTS AND OFFICE OF INSPECTOR GENERAL RESPONSE

In written comments on our draft report, the State agency generally disagreed with our findings, and it did not specifically address our recommendations. It agreed with certain elements of our findings and described actions it had taken or could take to address them. However, the State agency did not agree with our findings that its RMS was invalid, that support staff costs included in its cost pools were unallowable, or that its CAP amendments were not promptly submitted for approval.

The State Agency's comments, redacted to exclude personally identifiable information, are included as Appendix D.

The State agency did not provide any additional documentation with its comments, and nothing in the State agency's comments warranted changing our findings and recommendations.

RANDOM MOMENT SAMPLING WAS INVALID

State Agency Comments

The State agency generally disagreed with this finding and maintained that including duplicates, including fully federally funded individuals, and excluding available moments did not invalidate the entire sample, entire sample process, or overall results achieved.

The State agency acknowledged that there appeared to be duplicates on the participant lists, but it maintained that this error was well within the desired error parameter of plus or minus 2 percent and should not be grounds to invalidate the entire sample. The State agency also commented that its RMTS contractor has modified its technology to address duplicates and that identifying duplicates on participant lists by matching solely on names is not a reliable method. It stated that staff may have the same name but be two different people or that some staff may be the same person but work in multiple districts as contracted or part-time employees.

The State agency acknowledged that the participant lists included fully federally funded individuals and that the CMS Guide and its approved implementation guide stated that staff that are 100 percent federally funded will be excluded from the time study sample. However, the State agency maintained that inclusion of these participants did not affect the validity of the time study. It commented that:

- staff could only be excluded if known to be fully federally funded at the time the participant lists were submitted,
- fully federally funded time study participants performed the same activities as participants who were not fully federally funded, and
- the majority of the related costs were excluded from the calculation of the claim to account for funds paid from Federal sources.²³

The State agency acknowledged that certain school districts erroneously used the latest start time and earliest end time (instead of the earliest start and the latest end time). However, it maintained that the exclusion of time at the beginning and end of the school day would have resulted in a decrease in the Federal award and, therefore, could be accepted by the Medicaid agency due to the exception identified in 2 CFR part 225, Appendix B, 8.h.(6)(c).²⁴ It noted that

²³ The State agency did not provide any additional documentation with these comments.

²⁴ “Less than full compliance with the statistical sampling standards noted in subsection 8.h.(6)(a) of this appendix may be accepted by the cognizant agency if it concludes that the amounts to be allocated to Federal awards will be

CMS had made exceptions to the rule requiring the entire time period to be accounted for in the sample universe. The State agency also maintained that this error was well within the desired error parameter of plus or minus 2 percent and should not have been the grounds to invalidate the entire sample. Although it acknowledged limitations in the time frames used, the State agency commented that the limits did not invalidate the entire sample process and did not have a material effect on the overall results achieved. The State agency also commented that its contractor has modified the RMTS system to address this issue.

Office of Inspector General Response

According to Federal requirements, substitute systems that use sampling methods “must meet acceptable statistical sampling standards including: [t]he sampling universe must include all of the employees whose salaries and wages are to be allocated based on sample results . . . ; [t]he entire time period involved must be covered by the sample; and [t]he results must be statistically valid and applied to the period being sampled” (2 CFR part 225, Appendix B, 8.h.(6)(a)).

The State agency acknowledged that there were some duplicates identified in a few districts, that its participant lists included fully federally funded individuals, and that certain school districts erroneously used the latest start time and earliest end time (instead of the earliest start time and the latest end time). We used a combination of factors (such as name, email, and school district) when reviewing participant lists and identifying 80 names that appeared more than once within a school district during the quarter ending June 30, 2011. The State agency did not provide any additional documentation to support that any of the duplicates were two different staff with the same name or the same person who worked in multiple districts as a contracted or part-time employee. Although we identified 5,801 possible duplicates for the entire audit period and the State agency acknowledged 80 apparent duplicates identified for one quarter, the total number and materiality of duplicates remain unknown. Thus, we do not agree with the State agency’s assertion that inclusion of duplicates was within the desired error parameter of two percent. Furthermore, we maintain that DCA (not the State agency or CMS) is the cognizant agency that would need to approve any exception to the statistical sampling standards (see 2 CFR part 225, Appendix A, B.6) and that the statistical issues we identified could have been avoided if the RMS methodology had been subject to the proper approval process.

Given that all moments did not have an equal chance of selection, fully federally funded individuals were improperly included on the participant lists, and all available moments were not included in the sample universe, our finding that the State agency’s RMS was invalid remains unchanged.

minimal, or if it concludes that the system proposed by the governmental unit will result in lower costs to Federal awards than a system which complies with the standards” (2 CFR part 225, Appendix B, 8.h.(6)(c)).

THE STATE AGENCY INCLUDED UNALLOWABLE COSTS IN ITS COST POOLS

State Agency Comments

The State agency generally disagreed with this finding, and it maintained that the support staff costs were allowable for inclusion in its cost pools. However, it agreed that duplicate and 100 percent federally funded costs were unallowable and should be removed from the claim calculation to determine the incorrect amount of FFP to be repaid, the State agency noted that the financial impact of these errors was insignificant.

The State agency acknowledged that its participant lists excluded 5,345 support staff; however, it maintained that the related costs could be included in its cost pools and factored into its claim because the staff had a direct reporting relationship to a person listed in the sample universe. Although the State agency did not specifically address the amount included in its cost pools, which we identified as \$32,068,617, it maintained that such costs were allowable. The State agency also commented that CMS had accepted these costs in other States and that the practice of including them is not uncommon. The State agency commented that even though they believe these costs are allowable, Kentucky decided in the interim to no longer allow districts to claim such costs.

The State agency acknowledged that its cost pools included \$14,343 in duplicated costs. It agreed that these costs were unallowable and would be removed from the claim calculation to determine the incorrect amount of FFP to be repaid. However, it noted that, based on claim and payment history, this overclaiming would generate approximately \$215 in unallowable FFP.

The State agency reiterated that it adjusts its claims to account for Federal funds retroactively applied. However, the State agency acknowledged that its cost pools included \$245,859 in fully federally funded costs. It agreed that these costs were unallowable and would be removed from the claim calculation to determine the incorrect amount of FFP to be repaid. It noted that, based on claim and payment history, this overclaiming would generate approximately \$3,688 in unallowable FFP.

Office of Inspector General Response

To be allowable under Federal awards, costs must “[b]e necessary and reasonable for proper and efficient performance and administration of Federal awards” and “[b]e allocable to Federal awards . . .” (2 CFR part 225, Appendix A (C)(1)(a) and (C)(1)(b)). Regarding support staff costs, the approved CAP amendment states that direct costs related to staff not identified as eligible time study participants are unallowable and may not be included in the claim (Attachment A, page 13).

The State agency acknowledged that its cost pools included support staff costs, duplicated costs, and fully federally funded costs. We agree with the State agency that the duplicated and fully federally funded costs are unallowable. However, because the approved CAP amendment

states that costs for staff not identified as eligible time study participants should not be included in the claim, we disagree that support staff costs are allowable. We maintain that these costs are unallowable and should be excluded from the cost pools. Thus, our finding that the State agency's cost pools included unallowable costs remains unchanged.

COST ALLOCATION PLAN AMENDMENTS NOT PROMPTLY SUBMITTED OR APPROVED

State Agency Comments

The State agency generally disagreed that its CAP amendments were not promptly submitted or approved. It acknowledged that filing the CAP is a requirement and commented that changes can be made to make sure this process is not missed going forward, but it stated that "this is not a sufficient reason to invalidate millions in FFP for activities that were appropriately conducted within the Commonwealth of Kentucky by participating school districts and are otherwise eligible for reimbursement." The State agency commented that its methodology "was submitted to CMS at several times and gained approval from CMS for implementation. If the submission to DCA was missed, the methodology was reviewed thoroughly by CMS during each of the submissions and received their approval. The methodology that is being utilized, in addition to being approved by CMS, is consistent with program methodologies that are in place in numerous states."

Office of Inspector General Response

States must submit to DCA for review a CAP that follows Federal requirements (45 CFR § 95.507(a)). States must also promptly amend the CAP and submit the amended CAP when certain conditions are met, including but not limited to changes affecting the validity of the approved cost allocation procedures (45 CFR § 95.509(a)). If costs under a public assistance program are not claimed in accordance with the approved CAP, or if the State fails to promptly submit an amendment to its CAP when required, the costs improperly claimed will be disallowed (45 CFR § 95.519 and 45 CFR § 95.509(a)).

The CMS Guide states that "a public assistance CAP must be amended and approved by the Division of Cost Allocation (DCA) within DHHS before FFP would be available for administrative claims in the Medicaid program CMS does not have direct authority for approval of the public assistance CAPs; that is the purview of the DCA" (pages 44 and 45).²⁵

DCA (not CMS) is the cognizant agency with authority to approve the CAP. Our findings detailed three instances during our audit period in which the State agency changed its RMS procedures without promptly submitting CAP amendments to DCA for review and without obtaining DCA approval.²⁶ Because this is contrary to Federal requirements, our finding that the State

²⁵ DCA is now called DHHS Cost Allocation Services.

²⁶ The three instances identified were: (1) including support staff costs in the cost pools, (2) recategorizing certain positions from the "Administrative Service Providers Only" cost pool to the "Direct Service and Administrative

agency's CAP amendments were not promptly submitted or approved remains unchanged, and the costs improperly claimed should be refunded.

Providers' cost pool, and (3) adding an overall 90 percent State average response rate as valid for compliance. To date, the State agency has never submitted to either DCA or CMS a CAP amendment for including support staff costs in its cost pools. Therefore, neither DCA nor CMS approved the methodology (including support staff costs) that Kentucky utilized for our entire audit period.

APPENDIX A: AUDIT SCOPE AND METHODOLOGY

SCOPE

Our audit covered \$58,862,528 (\$29,431,268 FFP) in school-based administrative costs allocated to Medicaid using quarterly RMS and claimed by the State agency on its quarterly Medicaid expenditure reports during FFYs 2009 through 2014 (audit period).²⁷

We did not review the overall internal control structure of the State agency, Education, Education's contractor, or the Medicaid program. Instead, we limited our internal control review to the State agency, Education, and contractor systems and procedures for claiming school-based administrative costs allocated to Medicaid using quarterly RMS.

We conducted this audit from November 2016 through December 2020.

METHODOLOGY

To accomplish our objective, we:

- reviewed applicable laws, regulations, and guidelines;
- interviewed State agency, Education, and contractor officials regarding their Medicaid administrative costs, CAP amendments, and related policies and procedures;
- reviewed the State agency's procedures for using RMS and obtaining DCA approval;
- reviewed the State agency's implementation plans and RMTS methodologies;
- reconciled each school district's total expenditures, which were included in the cost pools used to allocate Medicaid administrative costs, to underlying expenditure reports;
- reconciled the State agency's allocated Medicaid administrative costs to the quarterly Medicaid expenditure reports;
- reviewed participant lists for duplicates and for participants who were 100 percent federally funded;

²⁷ The audit period encompassed the most current data available at the time we planned our audit.

- reviewed school district documentation for participants who were possible duplicates or 100 percent federally funded to verify employment and to evaluate compensation included in the State agency's cost pools;
- consulted with the Office of Inspector General's contracted statistician on statistical validity issues; and
- discussed the results of our audit with State agency officials.

We conducted this performance audit in accordance with generally accepted government auditing standards. Those standards require that we plan and perform the audit to obtain sufficient, appropriate evidence to provide a reasonable basis for our findings and conclusions based on our audit objectives. We believe that the evidence obtained provides a reasonable basis for our findings and conclusions based on our audit objectives.

APPENDIX B: RELATED OFFICE OF INSPECTOR GENERAL REPORTS

Report Title	Report Number	Date Issued
<i>Nebraska Claimed Unallowable School-Based Administrative Costs Because of Improper Coding of Random Moment Timestudy Responses</i>	<u>A-07-19-03234</u>	8/14/2020
<i>New Jersey Improperly Claimed Tens of Millions for Medicaid School-Based Administrative Costs Based on Random Moment Sampling That Did Not Meet Federal Requirements</i>	<u>A-02-17-01006</u>	11/8/2019
<i>Vulnerabilities Exist in State Agencies' Use of Random Moment Sampling to Allocate Costs for Medicaid School-Based Administrative and Health Services Expenditures</i>	<u>A-07-18-04107</u>	12/6/2018
<i>Mississippi Claimed Millions in Unallowable School-Based Medicaid Administrative Costs</i>	<u>A-04-15-00103</u>	3/15/2017
<i>North Carolina Claimed Millions in Unallowable School-Based Medicaid Administrative Costs</i>	<u>A-04-15-00101</u>	10/6/2016
<i>Alabama Claimed Millions in Unallowable School-Based Medicaid Administrative Costs</i>	<u>A-04-13-00094</u>	7/13/2016
<i>Florida Claimed Some Medicaid Administrative Costs That Did Not Comply With Program Requirements</i>	<u>A-04-10-00076</u>	3/7/2013
<i>Arizona Improperly Claimed Federal Reimbursement for Medicaid School-Based Administrative Costs</i>	<u>A-09-11-02020</u>	1/22/2013
<i>Review of Kansas Medicaid Payments for the School District Administrative Claiming Program During the Period April 1, 2006, Through March 31, 2009</i>	<u>A-07-10-04168</u>	10/06/2011

APPENDIX C: FEDERAL REQUIREMENTS

CODE OF FEDERAL REGULATIONS

Definition of a Cost Allocation Plan

The State shall submit a cost allocation plan for the State agency as required below to the DCA Director in the appropriate DHHS Regional Office. The plan shall: (1) Describe the procedures used to identify, measure, and allocate all costs to each of the programs operated by the State agency; (2) Conform to the accounting principles and standards prescribed in Office of Management and Budget [OMB] Circular A-87 [2 CFR part 225], and other pertinent Department regulations and instructions; (3) Be compatible with the State plan for public assistance programs described in 45 CFR Chapters II, III and XIII, and 42 CFR Chapter IV Subchapter C and D; and (4) Contain sufficient information in such detail to permit the Director, Division of Cost Allocation, after consulting with the Operating Divisions, to make an informed judgment on the correctness and fairness of the State's procedures for identifying, measuring, and allocating all costs to each of the programs operated by the State agency [(45 CFR § 95.507(a))].

A “[p]ublic assistance cost allocation plan [is a] narrative description of the procedures that will be used in identifying, measuring and allocating all administrative costs to all of the programs administered or supervised by State public assistance agencies . . .” (2 CFR part 225 (formerly OMB Circular A-87), Appendix A (B)(17)).

Substitute Systems

Substitute systems for allocating salaries and wages to Federal awards may be used in place of activity reports. These systems are subject to approval if required by the cognizant agency. Such systems may include, but are not limited to, random moment sampling, case counts, or other quantifiable measures of employee effort. (a) Substitute systems which use sampling methods (primarily for Temporary Assistance to Needy Families (TANF), Medicaid, and other public assistance programs) must meet acceptable statistical sampling standards including: (i) The sampling universe must include all of the employees whose salaries and wages are to be allocated based on sample results except as provided in subsection 8.h.(6)(c) of this appendix; (ii) The entire time period involved must be covered by the sample; and (iii) The results must be statistically valid and applied to the period being sampled [(2 CFR part 225, Appendix B 8.h.(6))].

Cost Allocation Plan Approval

A State must claim FFP for costs associated with a program only in accordance with its approved cost allocation plan. However, if a State has submitted a plan or plan amendment for a State agency, it may, at its option claim FFP based on the proposed plan or plan amendment, unless otherwise advised by the DCA. However, where a State has claimed costs based on a proposed plan or plan amendment the State, if necessary, shall retroactively adjust its claims in accordance with the plan or amendment as subsequently approved by the Director, DCA. The State may also continue to claim FFP under its existing approved cost allocation plan for all costs not affected by the proposed amendment [(45 CFR § 95.517(a))].

“If costs under a Public Assistance program are not claimed in accordance with the approved cost allocation plan (except as otherwise provided in § 95.517), or if the State failed to submit an amended cost allocation plan as required by § 95.509, the costs improperly claimed will be disallowed” (45 CFR § 95.519).

The State shall promptly amend the cost allocation plan and submit the amended plan to the Director, DCA if any of the following events occur: (1) The procedures shown in the existing cost allocation plan become outdated because of organizational changes, changes in Federal law or regulations, or significant changes in program levels, affecting the validity of the approved cost allocation procedures. (2) A material defect is discovered in the cost allocation plan by the Director, DCA or the State. (3) The State plan for public assistance programs is amended so as to affect the allocation of costs. (4) Other changes occur which make the allocation basis or procedures in the approval cost allocation plan invalid [(45 CFR § 95.509(a))].

Unallowable Costs

2 CFR part 225, Appendix A (C)(1)(a) states: To be allowable under Federal awards, costs must “[b]e necessary and reasonable for proper and efficient performance and administration of Federal awards.”

CENTERS FOR MEDICARE & MEDICAID SERVICES' *MEDICAID SCHOOL-BASED ADMINISTRATIVE CLAIMING GUIDE*

Cost Allocation Plans

The CMS Guide states, “In accordance with the [F]ederal regulations . . . and OMB Circular A-87, a public assistance CAP must be amended and approved by the DCA within DHHS before FFP would be available for administrative claims in the Medicaid program CMS does not have

direct authority for approval of the public assistance CAPs; that is the purview of the DCA” (pages 44 and 45).

Duplicate Payments

Federal, [S]tate and local governmental resources should be expended in the most cost-effective manner possible. In determining the administrative costs that are reimbursable under Medicaid, duplicate payments are *not* allowable. That is, [S]tates may not claim FFP for the costs of allowable administrative activities that have been or should have been reimbursed through an alternative mechanism or funding source. The [S]tate must provide assurances to CMS of non-duplication through its administrative claims and the claiming process. Furthermore, in no case should a program or claiming unit in a local jurisdiction be reimbursed more than the actual cost of that program or claiming unit, including [S]tate, local, and [F]ederal funds. The [S]tate may dispute CMS’s position on what is a duplicate payment through appeal of any disallowance to the Departmental Appeals Board (DAB) (page 9).

Sample Universe

Medicaid administrative activities may be performed by school employees who also provide direct medical services (for example, nurses, physical therapists, educational staff, such as the Director of Exceptional Student Education, and teachers aides). However, if the costs of such staff are completely offset (see Section V. C., Offset of Revenues), there would be no purpose to include them in the sample universe. That is, only staff for whom some costs remain after any applicable offsets should be included in the time study. For example, if [F]ederal funding sources or third party payors other than Medicaid meet 100 percent of the costs of social workers, then there would be no reason to include such workers in the time study and they must be excluded from participation. Furthermore, due to the offset, the costs of such staff would also not be included in the costs to be allocated (page 39).

APPENDIX D: STATE AGENCY COMMENTS



**CABINET FOR HEALTH AND FAMILY SERVICES
Department for Medicaid Services**

Andy Beshear
Governor

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Eric C. Friedlander
Secretary

Lisa D. Lee
Commissioner

April 26, 2021

Lori S. Pilcher, Regional Inspector General for Audit Services
Office of Audit Services, Region IV
61 Forsyth Street, SW, Suite 3T41
Atlanta, GA 30303

Report A-04-17-00113

Dear Ms. Pilcher:

The Kentucky Department for Medicaid Services, in collaboration with the Kentucky Department of Education, prepared the attached response to OIG Report Number A-04-17-00113. We appreciate your review and consideration of our response as it relates to Medicaid payments for school-based administrative costs.

Please do not hesitate to contact me if you have questions or need additional information related to specific areas of the response.

Sincerely,

A handwritten signature in blue ink, appearing to read "Lisa D. Lee".

Lisa D. Lee, Commissioner

C: Eric Bowen, Assistant Regional Inspector General for Audit Services
Robin Kinney, KDE
Lee Guice, DMS
Lucy Senters, DMS
Amy Richardson, DMS

OIG Report Number: A-04-17-00113 Audit Finding: "RANDOM MOMENT SAMPLE WAS INVALID"

a. Duplicates on the Participant Lists: The OIG states: "Our review of the participant lists identified duplicates in every quarter. For example, of 8,419 individual names on the participant lists for the quarter ending June 30, 2011, 80 names appeared more than once within a school district. Including an employee more than once increases the chances of that employee being selected. Therefore, all employees did not have an equal chance of selection."

Response: Based on the limited data provided it appears that the 80 names were duplicates; however, statistically it is not a significant impact on the sample. Sampling is done to achieve a 95% confidence level with an error rate of +/- 2%. With all 80 names duplicated in the quarter cited, the total pool of potential participants statewide would have been 8,339 individuals instead of 8,419 individuals. This means that staff had a 1 in 8,339 chance of being selected instead of a 1 in 8,419 chance of being selected. This increased the odds of being selected from 0.0118 to 0.0119% which is less than 1/100th of a percentage point. The duplicates had a 2 in 8,419 chance of being selected which only increased their odds to 0.024% chance of being sampled. So while there were some duplicates identified in a few districts, this error is well within the desired error parameter of +/-2% and should not be the grounds to invalidate the entire sample and recoup all reimbursement for activities that are reimbursable and clearly being provided in the schools participating in the program.

The RMTS contractor has modified its technology offering to address this issue. The system completes a series of automated checks to identify duplicates. No two participants can have the same email address in the same district. The system will not allow a second person to be added to the system if the email address is already assigned to an individual. The email address is also a required field, so every person placed on the Participant List is required to have an email address listed. In addition, review of the participant lists is done to search for people with the same name and job title in each district. Follow-up is conducted with the district on any potential duplicates. We have found that common name combinations occur and may occur also within a specific job category. However, email addresses are unique, so the email verification is the ideal way to prevent any potential duplicates from being listed on the Participant List in the same district.

Additionally, other contributing factors which appear as though there are duplicates on the staff pool list are:

- 1) Matching on names is not a reliable method. Some staff may have the same name (for example, ██████████), but be two unique and separate people in different school districts within the Commonwealth. In some cases, these individuals were in different school districts that were not even geographically close to each other. These are not "true" duplicates and should not have been labeled as such. (A few examples may be found at: See file name: A-Duplicates in Staff Pool List Summary/Compilation tab/ Line 22-23, 24-25, 28-29 and 30-31)

Office of Inspector General Note -- The deleted text has been redacted because it is personally identifiable information.

- 2) Some staff are truly the same person but are part-time or contracted staff who work in multiple districts. Small districts often cannot afford or do not have the demand for a full-time Occupational Therapist or Physical Therapist, for example, so they will hire a contractor or part-time employee to meet that need. In order for a district to claim costs for these positions, they must include those positions on the staff list. For example, [REDACTED], PT could be contracted by three small districts in an area and therefore would be properly included on the staff list of all three districts in which she works. While she is the same person, she is not a duplicate because she fills a specific position in each of those school districts.
- 3) Some staff have similar names but work in different positions within a school district and are not the same person. This can be seen in the fact that these individuals have different email addresses within the same district.

b. Fully Federally Funded Individuals on the Participant Lists: The OIG states: “Contrary to its approved CAP amendment, which states that individuals who are 100 percent federally funded will be excluded from the time study, the State agency included 115 fully federally funded individuals on its participant lists for the last 7 quarters of our audit period.”

Response: *The OIG stated that the “State Agency included 115 fully federally funded individuals on its participant lists for the last 7 quarters of the audit period.”* Here, the OIG is looking to invalidate the entire federal award for these quarters on the basis that individuals that were 100% federally funded per quarter were included in the time study. The time study guide does state that staff that are 100% federally funded will be excluded from the time study sample. The sentence before that in the approved implementation guide states “A district must determine whether they meet all requirements above and if they are less than 100% federally funded.” This is an important addition because it offers essential context on how the staff list process works, when it occurs, and how federal funds are accounted for in school districts.

School districts are required to submit a list of staff *prior* to the start of each quarter. At that time, they review the staff within their district, their funding status at the time, along with their role and eligibility to be included in the staff list. Once that is done, they certify the list and ALL of those staff members are included in the sample universe. Since ALL staff are included in the sample universe, the time study results can be statistically applied to ALL individuals.

Districts receive federal grants and awards at various time throughout the school year. Those funds do not come in at a specific period. As with many federal sources, the areas in which they can be used can be restricted and must be dedicated to specific areas. When funds come in, they often need to be retroactively applied in order for those funds to be utilized in accordance with the funding requirements. During the period of this audit, districts received substantial amounts of federal funds from the American Recovery and Reinvestment Act (ARRA). Many of those funds were received later in the year but had to be applied retroactively. This is important, because while some staff were identified that turned out to be 100% federally funded, the OIG

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has not stated that these people were actually **KNOWN** to be 100% federally funded at the time the staff pool list was submitted. This is the first reason for which this finding has no basis.

In addition to the known status of these individuals at the time of the staff list submission by the district, the vast majority did not claim dollars associated with those individuals. The 15 staff are discussed below in section C, Inclusion of Federal Funds. Districts were instructed to back out federal funds from ALL staff that had ANY portion of their costs paid from federal sources. The fact that the federal funds were excluded from the calculation of the claim meant that **\$0.00** in FFP was claimed for those individuals. Therefore, there was **NO** impact on the amount of federal reimbursement from these individuals.

While we agree that a staff person known to be 100% federally funded should be excluded from the staff study list, we do not agree with the reasoning provided in the report for that suggestion. Staff that are 100% federally funded should be excluded, not because they would alter the time study in some way but for the plain fact that if they are 100% federally funded, they do not have any allowable costs to be claim and therefore there is no need to be included in the time study. The OIG assertion that the inclusion of these staff violates the validity of the time study is incorrect for several reasons.

The claim that a 100% federally funded staff member invalidates the time study suggests that the time these people spend on activities documented through the time study vary drastically to the point that the time study is not representative. But the reality is that, in schools, many staff do not know the funding source through which they are paid. Does a Speech Pathologist who is 100% federally funded perform different activities than one that is funded 100% from state and local sources? How does that compare to a Speech Pathologist that is 10% federally funded? Or 50%? Or 95% federally funded? The point is that the funding source is irrelevant to the statistical validity of the time study. Since ALL staff submitted are included in the sample universe, the time study results obtained from those sampled are applicable to the entire universe. Including someone who is paid with various funds does not invalidate the results of the time study. The OIG does not present any data to show that a staff person that is 100% federally funded performs activities that are different from any other person in the time study. Therefore, the attempt to invalidate the entire quarterly time study because it included fewer than 17 people per quarter who may not have even been known to be 100% federally funded at the time of submission is not supported from any statistical or logical perspective.

Example 1: An Occupational Therapist is added to the participant list at the beginning of the school year in August, they are paid 100% general funds (non-federal monies). The district Finance Officer moves them to 50% federal funds in September during the quarter without being aware they are on the participant list. The participant list is locked by the vendor, which is a standard practice during the quarter, no changes can be made.

Example 2: ██████████ the Speech Language Pathologist was being paid 100% general funds at the beginning of the school year. It's not uncommon for finance officers to change staffs

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funding source throughout the year to accommodate the school district's needs. Beginning in October, the finance officer has changed [REDACTED] funding source to 100% federal funds due to a federal grant being available. Unfortunately, the Administrative Claiming quarter has already begun, and no changes can be made. [REDACTED] will be participating in the entire quarter for the October-December quarter. Her job duties have not changed, and she will be answering her moments appropriately and accurately. After the quarter is finished, the finance officer will only report the non-federal funds for [REDACTED].

c. Entire Time Period Not Covered by the Sample: The OIG states: "Not all moments had an equal chance of selection because the sample universe did not account for the entire work period. When it selected the RMTS sample, the contractor advised the school districts to use the earliest start time and latest end time of the schools within each school district, which would have given all moments an equal chance of being selected. However, some school districts used the latest start time and the earliest end time. For example, if a district's high school started at 8:15 a.m., middle school at 8:20 a.m., and elementary school at 8:25 a.m., it would use 8:25 a.m. as the district's start time, eliminating the moments between 8:15 a.m. and 8:24 a.m. If the end times for a district's schools were 2:15 p.m., 2:20 p.m., and 2:25 p.m., it would use 2:15 p.m. as the district's end time, eliminating the moments between 2:16 p.m. and 2:25 p.m. Thus, not all available moments were included in the sample universe."

Response: The OIG stated "*the contractor advised the school districts to use the earliest start time and the latest end time of the schools within each school district, which would have given all moments an equal chance of being selected. However, some school districts used the latest start and the earliest end time.*"

By way of background, the RMTS contractor specifically designed the system to capture exact start and end times from every participating school district. Districts, as noted in the OIG report, were specifically trained to enter into the system the earliest start time and latest end time for all of the staff working within the school district that were listed on the quarterly staff pool list. While the OIG has quoted 2 CFR part 225, Appendix B, 8.h.(6) which states in subsection (a)(ii) "The entire time period must be covered by the sample," it fails to account for 2 CFR part 225, Appendix B, 8.h.6.c, which states:

Less than full compliance with the statistical sampling standards noted in subsection 8.h.(6)(a) of this appendix may be accepted by the cognizant agency if it concludes that the amounts to be allocated to Federal awards will be minimal, or if it concludes that the system proposed by the governmental unit will result in lower costs to Federal awards than a system which complies with the standards.

It is important to note that any time incorrectly excluded from the study would typically have been at the beginning of the day, before students arrive, or the end of the day, after students have left. These times, because staff are not working directly with students, would have a higher likelihood of yielding a reimbursable moment and thus resulting in an increase in the overall

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federal award. Since students would not be present at these times, staff can follow up with parents on referrals or progress, as well as coordinating health related services with other staff thus leading to an increase in federal reimbursement. Ultimately, the exclusion of time at the beginning and end of the school day, would have resulted in a decrease in the federal award, which speaks directly to the circumstances described in 2 CFR part 225, Appendix B, 8.h.6.c. quoted above: it can be accepted by the Medicaid agency.

It is also important to note that CMS has also made exceptions to the rule that the entire time period must be accounted for in the sample universe. The State of California recently announced that CMS approved a modification to the time study process in California which allows the last 4 school days of the last quarter in the school year, statewide, to be excluded from the sample universe. The number of potential moments excluded from the last 4 days of school across the entire sample population in California far exceeds the number of potential moments excluded in error by Kentucky School Districts who may have failed to include 10 or 15 minutes on a day from a limited number of staff that work in those select school sites. (California has more than 8 times the number of staff on the staff pool lists statewide than Kentucky. Excluding 4 days at the end of the school year means that they are excluding more than 88.9 million moments from the sample pool.)

The OIG provided a list of 3 LEAs that said, contrary to the training and instructions provided, the LEAs used the latest start time and earliest end time instead of the earliest start and the latest end time. However, within that data, the OIG does not provide the data on how much potential time was excluded from the sample universe. While we agree that these districts made an error, sampling is done to achieve a 95% confidence level with an error rate of +/- 2%. Most schools start within a 10-15-minute window of each other and not all staff in the district work at every building. This further reduces the number of potential moments that may have been accidentally excluded from the sample universe. While we agree this is an error, and these 3 districts should have reported the correct times, we feel that this error is well within the desired error parameter of +/-2%. The error should not be the grounds to invalidate the entire sample, recoup ALL reimbursement for activities that are reimbursable, and invalidate activities clearly being provided in the schools participating in the program.

KDE will work our vendor partner, [REDACTED], to determine if there were differences in the calendars that were utilized to generate the sample. The data utilized was the best available for the sampling process at the time. However, while there were limitations in the time frames that were utilized, the limits do not invalidate the entire sample process. The portion of time that may have been excluded represents a small percentage of the overall available moments. Those limitations would not have a material effect on the overall results achieved. Also, [REDACTED] modified the system to allow participating school districts to create multiple start and end times for staff in the system to allow districts the ability to account for staggered start and end times, part-time staff that may work a limited time or day schedule, as well as for variations by contractors.

OIG Report Number: A-04-17-00113 Audit Finding: “THE STATE AGENCY INCLUDED UNALLOWABLE COSTS IN THE COST POOLS”

a. Direct Support Staff

Response: The OIG correctly identified that 5,345 support staff were excluded from the staff pool list and therefore the sampling universe over the quarters covered during the audit. The OIG is wrong to allege that the costs attributable to these support staff could not be factored into the claim.

These are administrative support staff with a direct reporting relationship to a person listed in the sample universe. These positions included administrative assistants and secretaries that work directly for someone listed in the time study universe and that relationship can be supported through an organizational chart or job description. Over a dozen states throughout the country are allowed to include costs for administrative support staff that have a direct reporting relationship to someone on the staff list. The basic principle is that if the person that directs their work spends 5% of their time on a reimbursable activity, the support staff member spends 5% of their time supporting those activities as well. This practice is not uncommon. The Medicaid agency specifically required that the district be able to support that relationship through an organizational chart or job description, which is more than what is required in some states. In California, for example, districts are allowed to claim ALL administrative costs across the district, which is then allocated and included in the claim. This amount would far exceed the amount yielded by the process Kentucky followed.

Given that this process has been accepted by CMS nationwide, we believe this process is allowable and the costs should not be excluded. It is important to note that while we believe these are allowable costs, the Commonwealth of Kentucky has decided in the interim to no longer allow districts to claim costs for these staff members.

b. Duplicated Costs

Response: The OIG has identified 2 individuals for which a school district duplicated costs, in the total amount of \$14,343. The Commonwealth of Kentucky asked the OIG to provide the specific quarter, district(s) and staff members in question. Per the request based on the data received, we agree that duplicated costs are not allowable, need to be removed, and the claim for the period in question recalculated to determine the incorrect amount of FFP to be repaid. [REDACTED] will recalculate the claim for the identified district to calculate an accurate amount of FFP that will have to be repaid. Note that, based on claim and payment history, an overclaiming of \$14,343 in claimed costs would generate approximately \$215.00 in unallowable FFP.

c. Inclusion of Federal Funds

Response: School districts are instructed to back out any portion of costs that are paid from federal sources. Based on the findings of the audit, it is apparent that the vast majority of participating school districts complied with these instructions and accurately excluded funds from federal sources. As part of the review process, districts are monitored throughout the year

**Kentucky Department for Medicaid Services and the Kentucky Department of Education's
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and the reported expenditures are verified against the source documentation. Federal funds are often retroactively applied, as noted earlier in this response, when a district may receive a new federal grant or source of funds. When funds are retroactively applied (or if they identify any type of error in previously reported costs), if a claim has already been filed, districts are instructed to contact [REDACTED] so an amendment can be opened for them to adjust costs. Once the costs are corrected a new claim is calculated and any adjustments to the amount of claimed FFP are filed on the next CMS-64 and adjusted from the totals.

While that process is in place, it appears from the findings that 15 staff members were identified for which federal funds, in the amount of \$245,859 were incorrectly claimed. We agree that federal costs are not allowable, need to be removed and the claim for the period in question recalculated to determine the correct amount of FFP to be repaid. [REDACTED] will recalculate the claims for the identified districts to calculate an accurate amount of FFP that will have to be repaid. Note that, based on claim and payment history, an over-claiming of \$245,859 in claimed costs would generate approximately \$3,688.00 in unallowable FFP.

**OIG Report Number: A-04-17-00113 Audit Finding: “COST ALLOCATION PLAN
AMENDMENTS NOT PROMPTLY SUBMITTED OR APPROVED”**

Response: Kentucky's methodology was submitted to CMS at several times and gained approval from CMS for implementation. If the submission to DCA was missed, the methodology was reviewed thoroughly by CMS during each of the submissions and received their approval. The methodology that is being utilized, in addition to being approved by CMS, is consistent with program methodologies that are in place in numerous states. The changes in methodology were the result of going from a Fee-for-Service to a Cost Settlement methodology. The change to that methodology was recommended by CMS, and again, was approved by CMS consistent with methodologies used in numerous states throughout the country. While filing the CAP is a requirement, and changes can be made to make sure this process is not missed going forward, we believe that this is not a sufficient reason to invalidate millions in FFP for activities that were appropriately conducted within the Commonwealth of Kentucky by participating school districts and are otherwise eligible for reimbursement.