

Department of Health and Human Services

**OFFICE OF
INSPECTOR GENERAL**

**TEXAS IMPROPERLY RECEIVED
MEDICAID REIMBURSEMENT FOR
SCHOOL-BASED
HEALTH SERVICES**

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EXECUTIVE SUMMARY

Texas received \$18.9 million in Federal reimbursement for the Medicaid school-based health services program that was not reasonable, adequately supported, and otherwise allowable in accordance with applicable Federal and State requirements.

WHY WE DID THIS REVIEW

The Social Security Act (the Act) permits Medicaid payment for medical services provided to children under the Individuals with Disabilities Education Act (IDEA). These services include, for example, physical and speech therapy, which are delivered to children in schools. To ascertain (for purposes of claiming Federal reimbursement) the portion of time and activities of a school-based health program that is related to the provision of Medicaid services, States may develop an allocation methodology that is approved by the Centers for Medicare & Medicaid Services (CMS). Random moment sampling, which makes use of random moment timestudies (RMTS), is an approved allocation methodology and must reflect all of the time used and activities performed (whether allocable or allowable under Medicaid) by employees participating in a school-based health program.

State Medicaid agencies are increasingly using random moment sampling to allocate school-based health costs to Medicaid, eliminating the need for health care providers to submit claims for services provided in school-based settings. Previous Office of Inspector General reviews of school district administrative costs and health services programs determined that the use of RMTS may allow costs that are not reasonable, adequately supported, and otherwise allowable. We have therefore undertaken a series of reviews of the use of RMTS for the claiming of direct medical service costs related to Medicaid school-based health services (SBHS), including this review of the Texas Health and Human Services Commission (State agency).

The objective of this review was to determine whether the direct medical service costs that the State agency claimed for Medicaid SBHS were reasonable, adequately supported, and otherwise allowable in accordance with applicable Federal and State requirements.

BACKGROUND

Congress amended section 1903(c) of the Act in 1988 to allow Medicaid coverage of health-related services provided to children under IDEA. The SBHS program permits children to receive health-related services that are specified in each child's individualized education program (IEP), generally without having to leave school.

SBHS included in a child's IEP may be covered under Medicaid as long as (1) the services are listed in section 1905(a) of the Act and are medically necessary; (2) all other relevant Federal and State regulations are followed; and (3) the services are included in the Medicaid State plan or are available under the Early and Periodic Screening, Diagnosis, and Treatment Medicaid benefit. Covered direct medical services may include, but are not limited to, physical therapy, occupational therapy, speech pathology/therapy, psychological counseling, nursing, specialized transportation services, and personal care services. Direct medical service costs include payroll

costs (e.g., salaries, benefits, and contract compensation) and other direct costs (e.g., materials, supplies, and travel).

The State agency administers the Medicaid program in Texas, including the SBHS program, in accordance with the CMS-approved State plan. The Texas Medicaid State plan amendment 06-005, effective September 1, 2006, refers to SBHS as School Health and Related Services (SHARS) and states that school districts deliver them.

In 2010, the State agency contracted with Fairbanks, LLC (the Contractor), to provide RMTS, cost reporting, and Medicaid administrative claiming services. Since 2007, the Contractor has worked with the State agency on the implementation and operation of the State-wide RMTS and cost settlement process for the direct medical service costs.

The State agency's CMS-approved *Texas Timestudy Implementation Guide for Direct Services and Medicaid Administrative Claiming* (Implementation Guide) contains the policies and procedures that Texas school districts follow to receive Medicaid reimbursement. The Implementation Guide also describes procedures for how the RMTS should be performed and applied.

On an ongoing basis, participating school districts submit claims to the State agency for SHARS provided to students. The State agency reimburses the school districts for direct medical services on an interim basis per unit of service at the lesser of the provider's (i.e., the school districts') billed charges or a provider-specific interim rate. The State agency claims Federal reimbursement for the payments quarterly.

According to the Implementation Guide, the purpose of the RMTS is to identify the portion of the direct medical service time allowable and reimbursable under Medicaid. After each participating school district reports its actual Federal fiscal year (FFY) costs associated with SHARS to the State agency, the Contractor applies the results of the RMTS to determine the Medicaid-allowable direct medical service costs for each district. The State agency then reconciles the total interim payments for the FFY for the participating school districts to the Medicaid-allowable direct medical service costs determined through the RMTS. After the reconciliation process, the State agency conducts an annual cost settlement.

When the State agency performs an annual cost settlement, the total Medicaid-allowable direct medical service costs are compared to the interim payments for SHARS delivered during the reporting period. If the interim payments exceed the Medicaid-allowable direct medical service costs, the State agency recoups the Federal share of the difference from the school district. However, if the interim payments are less than the Medicaid-allowable direct medical service costs, the State agency pays the school district the Federal share of the difference and receives reimbursement from CMS.

States use the standard Form CMS-64, Quarterly Medicaid Statement of Expenditures for the Medical Assistance Program (CMS-64 report), to report actual Medicaid expenditures for each quarter. CMS uses the CMS-64 reports to reimburse States for the Federal share of Medicaid expenditures.

WHAT WE FOUND

Not all of the direct medical service costs that the State agency claimed for Medicaid SHARS were reasonable, adequately supported, and otherwise allowable in accordance with applicable Federal and State requirements. Specifically, the Contractor coded random moments incorrectly. Of the 3,161 random moments coded as an IEP-covered direct medical service, 274 were coded incorrectly. As a result of these errors, the State agency received \$18,925,853 in unallowable Federal reimbursement for the Medicaid SHARS program during the period October 1, 2010, through September 30, 2011.

These errors occurred because the State agency did not always follow its policies and procedures to ensure that the costs claimed for direct medical services were accurate and supported.

Additionally, the State agency's random moment sampling was not in accordance with applicable Federal requirements. Specifically, the State agency did not include all eligible sample moments in the RMTS. The State agency conducts an RMTS for three of the four Federal fiscal year quarters (October 1 through December 31, January 1 through March 31, and April 1 through June 30). However, the State agency does not conduct a timestudy for the fourth quarter (July 1 through September 30). As a result, the RMTS was not representative of the cost period (the entire school year) because it did not include the eligible moments from August and September even though school was in session during those months and SHARS activities were being performed. Also, the Contractor used a random number generator that did not store or output the "seed" number that was used to generate the sample. As a result, we are unable to reproduce the sampling process or verify that the State agency and the Contractor did not make any unallowable changes to the sample. Thus, we are unable to verify whether the sample was valid.

The statistical validity findings occurred because the State agency did not follow Federal requirements to ensure its random moment sampling met acceptable statistical sampling standards.

WHAT WE RECOMMEND

We recommend that the State agency:

- refund to the Federal Government the \$18,925,853 Federal share of unallowable reimbursement that was claimed for the Medicaid SHARS program because the random moments were coded incorrectly and
- comply with Federal requirements for statistical validity to ensure its random moment sampling meets acceptable statistical sampling standards.

STATE AGENCY COMMENTS AND OFFICE OF INSPECTOR GENERAL RESPONSE

STATE AGENCY COMMENTS

In written comments on our draft report, the State agency neither agreed nor disagreed with our recommendations but instead described actions that it had completed or planned to complete to resolve the recommendations. For the first recommendation, the State agency stated that it reviewed its approach to monitoring RMTS coding activity and revised its processes and procedures for monitoring coding activity moments as direct medical services. In addition, the State agency stated that it will coordinate with CMS regarding the overpayment, and once a final overpayment amount, if any, is identified, it will refund the amount to CMS.

For the second recommendation, the State agency stated that although a “seed” number is a recognized approach used to replicate the sampling process, the use of a “seed” number is not stated as a requirement in the Federal Cost Principles, the Implementation Guide, or in any CMS guidance regarding school-based health services. However, the State agency said that it and the Contractor took steps to begin capturing a “seed” number should it be requested in the future. In addition, the State agency stated that it followed the CMS-approved Implementation Guide, which states that there would be no fourth-quarter timestudy. However, the State agency said that it would communicate with CMS regarding potential changes to the Implementation Guide that would include a fourth-quarter timestudy.

OFFICE OF INSPECTOR GENERAL RESPONSE

After reviewing the State agency’s comments, we maintain that our findings and recommendations are valid. We have not reviewed the State agency’s revised processes and procedures for monitoring coding activity moments as direct medical services, but we maintain that responses to RMTS surveys must indicate that the activities performed qualify as IEP-covered direct medical services and that the responses capture what the participants did in their exact 1-minute sampled moment.

We maintain that random moment sampling must meet acceptable statistical standards, which require that the results be statistically valid. Without a “seed” number, it is impossible to reproduce the sampling process and verify whether the sample was valid. In addition, by not including all eligible sample moments in the RMTS (i.e., excluding the fourth quarter), the results are not representative of the cost period (the entire school year).

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INTRODUCTION

WHY WE DID THIS REVIEW

The Social Security Act (the Act) permits Medicaid payment for medical services provided to children under the Individuals with Disabilities Education Act (IDEA). These services include, for example, physical and speech therapy, which are delivered to children in schools. To ascertain (for purposes of claiming Federal reimbursement) the portion of time and activities of a school-based health program that is related to the provision of Medicaid services, States may develop an allocation methodology that is approved by the Centers for Medicare & Medicaid Services (CMS). Random moment sampling, which makes use of random moment timestudies (RMTS), is an approved allocation methodology and must reflect all of the time used and activities performed (whether allocable or allowable under Medicaid) by employees participating in a school-based health program.

State Medicaid agencies are increasingly using random moment sampling to allocate school-based health costs to Medicaid, eliminating the need for health care providers to submit claims for services provided in school-based settings. Previous Office of Inspector General (OIG) reviews of school district administrative costs and health services programs (Appendix A) determined that the use of an RMTS may allow costs that are not reasonable, adequately supported, or otherwise allowable. We have therefore undertaken a series of reviews of the use of RMTS for the claiming of direct medical service costs related to Medicaid school-based health services (SBHS), including this review of the Texas Health and Human Services Commission (State agency).

OBJECTIVE

Our objective was to determine whether the direct medical service costs that the State agency claimed for Medicaid SBHS were reasonable, adequately supported, and otherwise allowable in accordance with applicable Federal and State requirements.

BACKGROUND

Medicaid Program and Health-Related Services to Children

The Medicaid program provides medical assistance to low-income individuals and individuals with disabilities. The Federal and State Governments jointly fund and administer the Medicaid program. At the Federal level, CMS administers the program. Each State administers its Medicaid program in accordance with a CMS-approved State plan. Although the State has considerable flexibility in designing and operating its Medicaid program, it must comply with applicable Federal requirements.

Congress amended section 1903(c) of the Act in 1988 to allow Medicaid coverage of health-related services provided to children under IDEA. The SBHS program permits children to

receive health-related services that are specified in each child's individualized education program (IEP),¹ generally without having to leave school.

SBHS included in a child's IEP may be covered under Medicaid as long as (1) the services are listed in section 1905(a) of the Act and are medically necessary; (2) all other relevant Federal and State regulations are followed; and (3) the services are included in the Medicaid State plan or are available under the Early and Periodic Screening, Diagnosis, and Treatment Medicaid benefit. Covered direct medical services may include, but are not limited to, physical therapy, occupational therapy, speech pathology/therapy, psychological counseling, nursing, specialized transportation services, and personal care services.² Direct medical service costs include payroll costs (e.g., salaries, benefits, and contract compensation) and other direct costs (e.g., materials, supplies, and travel).

States use the standard Form CMS-64, Quarterly Medicaid Statement of Expenditures for the Medical Assistance Program (CMS-64 report), to report actual Medicaid expenditures for each quarter. CMS uses the CMS-64 reports to reimburse States for the Federal share of Medicaid expenditures. The amounts that States report on the CMS-64 report and its attachments must be actual expenditures with supporting documentation.

Texas School-Based Health Services Program

The State agency administers the Medicaid program in Texas, including the SBHS program, in accordance with the CMS-approved State plan. The Texas Medicaid State plan amendment 06-005 (SPA), effective September 1, 2006, refers to SBHS as School Health and Related Services (SHARS) and states that school districts deliver them.

In 2010, the State agency contracted with Fairbanks, LLC (the Contractor), to provide RMTS, cost reporting, and Medicaid administrative claiming services. Since 2007, the Contractor has worked with the State agency on the implementation and operation of the State-wide RMTS and cost settlement process for the direct medical service costs.

The State agency's CMS-approved *Texas Timestudy Implementation Guide for Direct Services and Medicaid Administrative Claiming* (Implementation Guide) contains the policies and procedures that Texas school districts follow to receive Medicaid reimbursement. The Implementation Guide also describes procedures for how the RMTS should be performed and applied.

¹ An IEP is a written plan that is designed to meet a disabled child's special education and/or health related service needs. The disabled child must meet the eligibility requirements as described in the Individuals with Disabilities Education Act.

² The information on Medicaid coverage in this paragraph is drawn from CMS's *Medicaid and School Health: A Technical Assistance Guide*, issued in August 1997, which contains specific technical information on the Medicaid requirements that govern State agencies seeking Federal reimbursement for coverable services provided in a school-based setting ("Coverage of School Health Services (SHS)" section).

Interim Payments

On an ongoing basis, participating school districts submit claims to the State agency for SHARS provided to students. The State agency reimburses the school districts for direct medical services on an interim basis per unit of service at the lesser of the provider's (i.e., the school districts') billed charges or a provider-specific interim rate. The State agency claims Federal reimbursement for the payments quarterly.

Random Moment Timestudy Methodology

The Implementation Guide defines the sampling period as the 3-month period comprising each quarter of the Federal fiscal year (FFY) calendar. No timestudy is conducted for the fourth quarter, which is July 1 through September 30. At the beginning of each of the three sampled quarters, each school district gives the Contractor a list of all staff eligible to participate in the RMTS. The Contractor then identifies the total pool of moments by calculating the number of working days in the sample period, multiplying them by the number of work hours each day, then multiplying that number by the number of minutes per hour, and finally multiplying that number by the number of participants in the timestudy. The Contractor then selects the desired number of random moments from the total pool of moments, and each of these moments is matched with an individual from the total pool of participants. For FFY 2011, the Contractor statistically selected 2,860, 2,858, and 2,859 random moments for quarters one, two, and three, respectively.

Each selected moment is defined as a specific 1-minute unit of a specific day from the total pool of timestudy moments. Timestudy participants are notified via paper, email, or other method 3 days before the selected random moment of the requirement to participate in a survey and of the exact random moment. Each of the selected participants is required to respond to the survey's questions about the activity he or she was performing at the random moment. The Contractor then codes the random moment on the basis of the responses provided. If the participant does not respond, the random moment is coded as "not coded" and removed from the total pool of moments. For FFY 2011, 125 selected participants did not respond to the survey's questions.

The Contractor analyzes the results of the RMTS responses for each school district to determine the direct medical service percentage—that is, the percentage of time that school district staff spends on Medicaid-allowable SHARS activities—and then reports that information to the State agency. For each FFY, the Contractor applies the direct medical service percentage to each school district's actual annual costs associated with SHARS to determine the Medicaid direct medical service costs. For FFY 2011, the Contractor calculated the direct medical service percentage to be 50.88 percent.³

³ The State agency conducts an RMTS for three of the four Federal fiscal year quarters. For each of the three quarters, the Contractor reviews the results of the RMTS responses for each school district and calculates the direct medical service percentage. Because there is no RMTS for the fourth quarter, the three quarterly direct medical service percentages are added together and divided by 3 to arrive at the final direct medical service percentage for the FFY. For FFY 2011, the results of the calculations for the three quarters were 49.57 percent, 51.13 percent, and 51.96 percent, respectively. The final direct medical service percentage for FFY 2011 was calculated to be 50.88 percent.

In addition to the direct medical service percentage, to determine the total Medicaid direct medical service costs, each school district applies its:

- IEP student utilization ratio⁴ to the personnel costs and other direct medical service costs;
- specialized transportation ratio⁵ to transportation costs (if applicable); and
- indirect cost rate to personnel costs, other direct medical service costs, and transportation costs.

Cost Reconciliation and Cost Settlement

According to the Implementation Guide, the purpose of the RMTS is to identify the portion of the direct medical service time allowable and reimbursable under Medicaid. After each participating school district reports its actual FFY costs associated with SHARS to the State agency, the Contractor applies the results of the RMTS to determine the Medicaid-allowable direct medical service costs for each district. The State agency then reconciles the total interim payments for the FFY for the participating school districts to the Medicaid-allowable direct medical service costs that had been determined through the RMTS. After the reconciliation process, the State agency conducts an annual cost settlement.

When the State agency performs an annual cost settlement, the total Medicaid-allowable direct medical service costs are compared to the interim payments for SHARS delivered during the reporting period.⁶ If the interim payments exceed the Medicaid-allowable direct medical service costs, the State agency will recoup the Federal share of the overpayment by offsetting all future claim payments from the school district until the amount of the Federal share overpayment is recovered, or the school district may return (by sending a check) to the State agency an amount equal to the overpayment.

⁴ This ratio compares the number of Medicaid-eligible students with IEPs with the total number of students with IEPs to estimate the percentage of services provided to Medicaid-eligible students.

⁵ Specialized transportation services are transportation services in a school setting that may be reimbursed under SHARS when they are provided on a specially adapted vehicle (e.g., the addition of a wheelchair lift, seatbelts or harnesses, or child protective seating) for IEP students. When a school district is not able to separate the specialized transportation costs from general education transportation costs, the specialized transportation ratio is applied to its transportation costs. The specialized transportation ratio compares IEP students receiving specialized transportation with the school district's total student population receiving transportation. The resulting costs are further discounted to determine the portion of the specialized transportation costs related to Medicaid-eligible students.

⁶ The State agency completes the SHARS reconciliation report that includes the total Medicaid-allowable direct medical service costs and the total amount of the interim payments the Texas Medicaid & Healthcare Partnership (TMHP) paid to the school districts. TMHP, under contract with the State agency, is the claims administrator for the Medicaid program in Texas. The calculation of the costs and interim payments results in an overpayment or underpayment to the school district. The State agency reports the underpayment or overpayment result on the CMS-64 quarterly report.

If the Medicaid-allowable direct medical service costs exceed the interim payments, the State agency will pay the Federal share of the difference to the school district and submit claims to CMS for reimbursement of that payment in the Federal fiscal quarter following payment to the provider.

HOW WE CONDUCTED THIS REVIEW

We reviewed Medicaid direct medical service costs claimed for SHARS provided during our audit period, FFY 2011 (October 1, 2010, through September 30, 2011). For this period, the State agency received \$389,997,584 in Federal reimbursement for expenditures related to Medicaid direct medical service costs associated with 572 participating school districts. The \$389,997,584 consisted of \$163,559,042 for interim payments that the State agency made to school districts and an additional \$226,438,542 in cost settlements.

Federal regulations allow State agencies up to 2 years to claim Medicaid expenditures (45 CFR § 95.7). Therefore, to ensure completeness of the interim payments for claims with dates of service in our audit period, we reconciled the CMS-64 reports for the quarter ended December 2010 through the quarter ended June 2014 (13 quarters⁷).⁸

We reviewed all 3,161 survey responses that the Contractor coded as IEP-covered direct medical services to determine whether the responses were coded appropriately. Because the Contractor statistically selected the random moments from the State-wide pool of calculated moments and participants, our review of the RMTS included random moments from all school districts.

Also, we selected a stratified random sample of 317 random moments that the Contractor coded as allowable SHARS activities⁹ to determine whether they were supported by sufficient documentation. In addition, we reviewed the cost settlement process at the State agency, including a review of the interim payments to each school district.

We performed an indepth review of the SHARS expenditures claimed on behalf of the Austin independent school district (AISD) and the Dallas independent school district (DISD). For these school districts, we focused on the portion of SHARS related to Medicaid direct medical service costs. We selected these districts, in part, on the basis of the amounts claimed by the State agency for SHARS provided during FFY 2011. Of the \$389,997,584 claimed in Federal reimbursement for FFY 2011, the State agency paid \$19,405,646 to AISD and \$10,392,367 to DISD.

⁷ We did not reconcile the CMS-64 reports for the third and fourth quarters of FFY 2013 because interim payments were not made for FFY 2011 SHARS expenditures during this period. Therefore, no cost settlements occurred during these quarters for FFY 2011 SHARS expenditures.

⁸ Under provisions of the American Recovery and Reinvestment Act of 2009, P.L. No. 111-5 (Recovery Act), as amended by P.L. No. 111-226, States' Federal medical assistance percentages (FMAP) were temporarily increased for the period October 1, 2008, through June 30, 2011. All Federal share amounts given in this report include reimbursements for the Recovery Act's temporary increase in FMAPs.

⁹ Allowable SHARS activities would include services such as nursing services, psychological services, and transportation services.

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 contains the details of our audit scope and methodology, Appendix C contains our statistical sampling methodology, Appendix D contains our sample results and estimates, and Appendix E contains the Federal and State requirements and guidance related to SHARS.

FINDINGS

Not all of the direct medical service costs that the State agency claimed for Medicaid SHARS were reasonable, adequately supported, and otherwise allowable in accordance with applicable Federal and State requirements. Specifically, the Contractor coded random moments incorrectly. Of the 3,161 random moments coded as an IEP-covered direct medical service, 274 were coded incorrectly. As a result of these errors, the State agency received \$18,925,853 in unallowable Federal reimbursement for the Medicaid SHARS program during the period October 1, 2010, through September 30, 2011.

These errors occurred because the State agency did not always follow its policies and procedures to ensure that the costs claimed for direct medical services were accurate and supported.

Additionally, the State agency's random moment sampling was not in accordance with applicable Federal requirements. Specifically, the State agency did not include all eligible sample moments in the RMTS. The State agency conducts an RMTS for three of the four Federal fiscal year quarters (October 1 through December 31, January 1 through March 31, and April 1 through June 30). However, the State agency does not conduct a timestudy for the fourth quarter (July 1 through September 30). As a result, the RMTS was not representative of the cost period (the entire school year) because it did not include the eligible moments from August and September even though school was in session during those months and SHARS activities were being performed. Also, the Contractor used a random number generator that did not store or output the "seed" number that was used to generate the sample. As a result, we are unable to reproduce the sampling process or verify that the State agency and the Contractor did not make any unallowable changes to the sample. Thus, we are unable to verify whether the sample was valid.

The statistical validity findings occurred because the State agency did not follow Federal requirements to ensure its random moment sampling met acceptable statistical sampling standards.

RANDOM MOMENT TIMESTUDY ACTIVITIES CODED INCORRECTLY

Appendix A of the Implementation Guide provides specific instructions on the coding of random moments based on participants' responses to the survey questions. According to the Implementation Guide, an RMTS code for an IEP-covered direct medical service is appropriately selected "... when school district staff (employees or contracted staff) provides direct client

services as covered services” In addition, this code covers “... functions performed pre and post of the actual direct client services (when the student may not be present), for example, paperwork, or staff travel directly related to the direct client services.”

The Contractor coded 3,161 random moments as IEP-covered direct medical services. Of the 3,161 random moments coded, the Contractor coded 274 random moments incorrectly because it did not follow the coding guidelines specified in the Implementation Guide. The responses to these RMTS surveys indicated that the activities performed did not qualify as IEP-covered direct medical services; alternative RMTS codes should have been selected. Additionally, some of the responses did not capture what the participant did in their exact 1-minute moment. Rather, the participants listed their daily job duties (what they do all day as opposed to what they did at their sampled 1 minute). For example, one moment was coded as an IEP-covered direct medical service although the respondent stated, “Upon arrival student is served breakfast [sic] then change of diaper, then to sensory center a little break, then lunch, then P.E. and again change of diaper before departing to their home.”

We treated the 274 random moments as non-IEP-covered direct medical services and recalculated the direct medical service percentage. The original direct medical service percentage the State agency used was 50.88 percent; the recalculated direct medical service percentage was 47.58 percent. We applied the recalculated direct medical service percentage to all of the school districts’ cost report information, resulting in a reduction of the total cost settlement amount for FFY 2011 by \$18,925,853.¹⁰

RANDOM MOMENT SAMPLING DID NOT MEET ACCEPTABLE STATISTICAL SAMPLING STANDARDS

Random Moment Timestudy Did Not Include All Eligible Sample Moments

According to the CMS *Medicaid School-Based Administrative Claiming Guide* (Claiming Guide), page 42, if the regular school year begins in the middle of a calendar quarter, the first timestudy for that school year should include all days from the beginning of the school year. The Claiming Guide further states, “if activities are actually performed during the summer period, the application of the results of time studies from the regular school year would not accurately reflect the costs associated with the summer period activities. In that case, a time study would also need to be conducted with respect to the summer period.” This is consistent with Federal

¹⁰ We found that 274 random moments were incorrectly coded as IEP-covered direct medical services, resulting in \$18,936,688 of unallowable Federal reimbursement for the Medicaid SHARS program. As part of this unallowable amount, DISD calculated its IEP Student Utilization Ratio (IEP ratio) incorrectly. Specifically, DISD overreported by five the number of Medicaid students with IEPs requiring direct medical services on its 2011 FFY SHARS cost report. According to the DISD cost report, 4,263 Medicaid students had IEPs requiring direct medical services; however, DISD was able to provide support for only 4,258 of the students. The overreporting directly affected the calculation of the IEP Student Utilization Ratio (IEP ratio). The original IEP ratio calculated by DISD was 57.55 percent. We recalculated the IEP ratio based on the number of supported students and determined it to be 57.49 percent. DISD’s cost settlement amount was \$7,170,265 with the original IEP ratio. However, the cost settlement amount recalculation with the 57.49 percent IEP ratio was \$7,159,430, resulting in a \$10,835 reduction of DISD’s cost settlement amount for FFY 2011. The overall effect of the incorrect DISD IEP ratio is immaterial, and we are not questioning these costs. As a result, the unallowable Federal reimbursement that the State agency claimed for the Medicaid SHARS program was reduced from \$18,936,688 to \$18,925,853.

Cost Principles, which state that random moment sampling must meet acceptable statistical sampling standards, which require that the entire time period involved be covered by the sample (2 CFR part 225, App. B, § 8.h.6.a.(iii)). Regarding the period involved, the Implementation Guide, page 5, allows the State agency to determine the dates that school districts are in session and further states that all days through the end of the school year would be included in the potential days to be chosen for the timestudy.

The State agency did not complete an RMTS for the 4th quarter (July 1 through September 30). However, for our audit period, Texas school districts were in session during part of August and all of September. Because the RMTS is not representative of the cost period (the entire school year), it does not meet the statistical sampling standards set forth in the Cost Principles or the sampling requirements in the Claiming Guide.

According to State agency officials, the Implementation Guide (which CMS approved) excludes moments from August and September; thus, the State agency used an average of the three previous quarters' direct medical percentages for the fourth quarter direct medical percentage. The Implementation Guide (page 9) states, "Since activities and services are not provided in the [school districts] when school is not in session, [the State agency] will not conduct a July-September time study, but will rather use an average of the three previous quarters to calculate a claim for the July-September period." However, for our audit period, school districts were in session during August and September. Therefore, the State agency should have conducted a timestudy for this quarter.

In our discussions with CMS officials, they told us that they did not intend for the State agency to use an average for the fourth quarter as a substitute for an actual RMTS. CMS officials stated that the August and September dates should have been included in the RMTS and that the Implementation Guide should not have been approved with language allowing the State agency to use an average for the fourth quarter.

Random Moment Timestudy Samples Were Not Reproducible

According to Federal Cost Principles, random moment sampling must meet acceptable statistical standards, which require that the results be statistically valid (2 CFR part 225, App. B, § 8.h.6.a.(iii)).

For a sample to be valid it must be selected without modification from a random process. A "seed" number is needed to replicate the sampling process and verify that no unallowable changes were made to the sample. The Contractor stated that it used the sampling methodology that was in the Implementation Guide. However, the Contractor used a random number generator that did not store or output the "seed" number that was used to generate the sample. As a result, we are unable to reproduce the sampling process or verify that the State agency and the Contractor did not make any unallowable changes to the sample. Thus, we are unable to verify whether the sample was valid.

RECOMMENDATIONS

We recommend that the State agency:

- refund to the Federal Government the \$18,925,853 Federal share of unallowable reimbursement that was claimed for the Medicaid SHARS program because the random moments were coded incorrectly and
- comply with Federal requirements for statistical validity to ensure its random moment sampling meets acceptable statistical sampling standards.

OTHER MATTERS

THE STATE AGENCY DID NOT REQUIRE SUPPORTING DOCUMENTATION FOR PARTICIPANT RESPONSES

According to the Claiming Guide, validation of timestudy sample results is the responsibility of the States. To meet this requirement, States must adequately document Medicaid sampled activities. CMS officials informed us that the criteria in the Claiming Guide were applicable to the school districts' random moment participant responses.

Of the 317 random moments sampled, the school districts could not support the activities performed for 290 moments. Specifically:

- for AISD, 83 of the 96 moments sampled were unsupported;
- for DISD, 84 of the 91 moments sampled were unsupported; and
- State-wide, 123 of the 130 moments sampled were unsupported.

On the basis of our sample results, we estimated that 2,981 of the 3,161 random moments (approximately 94 percent) were not supported.

Annually, the State agency presents a mandatory RMTS training to the RMTS contacts for the participating school districts. The training discusses the RMTS and the RMTS contacts' and timestudy participants' responsibilities for the RMTS. Additionally, each timestudy participant must be trained annually by a trained RMTS contact. The slides presented in the training did not instruct the RMTS contacts or the timestudy participants to maintain supporting documentation for the participant responses. For the 290 sampled moments that were unsupported, the RMTS contacts at the various school districts State-wide either said they did not have supporting documentation for the moments or they were unaware that supporting documentation was required for the moments.

We have not questioned costs associated with the 290 unsupported moments. However, the use of random moment sampling without adequate documentation or an audit trail for the random

moment participant responses may allow costs that are not allowable. See Appendix D for more information on the sample results.

ISSUES IDENTIFIED AT AUSTIN AND DALLAS INDEPENDENT SCHOOL DISTRICTS

According to the 2011 *Texas Medicaid Provider Procedures Manual*, section 3.4.1, student-specific records that are required for SHARS become part of the student’s educational records and must be maintained for 7 years. Additionally, all records that are pertinent to SHARS billings must be maintained by the school district. Section 3.4.1 further states that all services, including SHARS services, require documentation to support the medical necessity of the service rendered. SHARS services are subject to recoupment if documentation does not support the service billed.

Direct Medical Service Claims Were Not Supported

For each school district, we reviewed a judgmental sample of direct medical claims. For AISD, 5 of the 44 claims reviewed were unsupported, as shown in the following table:

Table 1: Austin Independent School District Direct Medical Claims Review

Reason for Unsupported Claim	Number of Claims
Overbilling – claims were filed in excess of the services provided	4
Incorrect billing – administrative error	1
Total Errors	5

For DISD, 25 of the 50 claims reviewed were unsupported, as shown in the following table:

Table 2: Dallas Independent School District Direct Medical Claims Review

Reason for Unsupported Claim	Number of Claims
Overbilling – claims were filed in excess of the services provided	9
Units billed were not supported	5
Billed services were not included in the IEP	5
Billed services were not supported	2
Incorrect procedure code was billed	2
Billed for an unallowable SHARS service	1
Documentation did not validate the minutes billed	1
Total Errors	25

Weekend and Holiday Claims Were Not Supported

For each school district, we initially reviewed a judgmental sample of 10 claims with dates of service on a weekend or holiday.

For AISD, 7 of the 10 claims reviewed were not supported. AISD officials were unable to provide support showing that the provider of the service was working on the date of the claim or that the student was present if the procedure code required it. On the basis of our initial review of 10 claims, we asked AISD to provide support for 95 additional claims that had dates of service on a weekend or holiday. For 71 of those additional claims, AISD officials were unable to provide support showing that the provider of the service was working on the date of the claim or that the student was present if the procedure code required it. School district officials stated that these errors occurred because of possible system or data entry errors or both.

For DISD, 9 of the 10 claims reviewed were not supported. DISD officials were unable to provide support showing that the provider of the service was working on the date of the claim or that the student was present if the procedure code required it. On the basis of our initial review of 10 claims, we asked DISD to provide support for 163 additional claims that had dates of service on a weekend or holiday. For 158 of those additional claims, DISD officials were unable to provide support showing that the provider of the service was working on the date of the claim or that the student was present if the procedure code required it. A school district official stated that no employee worked on the weekend or school holiday for our sampled claims, and it was because of “human error” that the claims were entered on weekends and holidays.

Specialized Transportation Claims Not Adequately Supported

According to the 2011 *Texas Medicaid Provider Procedures Manual*, section 3.3.10, transportation services in a school setting may be reimbursed under SHARS when they are provided on a specially adapted vehicle (e.g., the addition of a wheelchair lift, seatbelts or harnesses, or child protective seating). Specialized transportation services reimbursable under SHARS require that the Medicaid-eligible special education student has documented in his or her IEP (1) that the student requires a specific physical adaptation or adaptations of a vehicle to be transported and (2) the reason the student needs the specialized transportation.

For each school district, we reviewed a judgmental sample of 30 specialized transportation claims. For AISD, 4 of the 30 specialized transportation service claims were unsupported, as shown in the following table:

Table 3: Austin Independent School District Specialized Transportation Claims Review

Reason for Unsupported Claim	Number of Claims
IEP did not support medical necessity	3
IEP stated that transportation was not needed	1
Total Errors	4

AISD officials stated that school officials lacked knowledge about Medicaid documentation requirements and that training was difficult because there were 129 schools in the district.

For DISD, 8 of the 30 specialized transportation service claims were unsupported, as shown in the following table:

Table 4: Dallas Independent School District Specialized Transportation Claims Review

Reason for Unsupported Claim	Number of Claims
IEP did not support required need for a physical adaptation of the vehicle	5
Physical adaptation not needed	3
Total Errors	8

This audit was conducted as a part of a nationwide policy review of the RMTS. Specifically, the overall objective was to determine the effectiveness of the use of random moment sampling as a basis to allocate school-based administrative and health services program expenditures. The

issues identified at AISD and DISD show that if CMS does change the allocation methodology for determining school-based health services program costs, there are still significant deficiencies at the ISD claim level that should be considered.

STATE AGENCY COMMENTS AND OFFICE OF INSPECTOR GENERAL RESPONSE

STATE AGENCY COMMENTS

In written comments on our draft report, the State agency neither agreed nor disagreed with our recommendations but instead described actions it had completed or planned to complete to resolve the recommendations. For the first recommendation, the State agency stated that it reviewed its approach to monitoring RMTS coding activity and revised its processes and procedures for monitoring coding activity moments as direct medical services. In addition, the State agency asserted that there are challenges involved in coding and documenting certain activities and contended that the guidance regarding proper supporting documentation for the RMTS is lacking. The State agency also stated that although the current guidance leaves room for interpretation, it is hopeful that the updated Claiming Guide that is currently pending release will clarify these issues. Finally, the State agency stated that it will coordinate with CMS regarding the overpayment, and once a final overpayment amount, if any, is identified, it will refund the amount to CMS.

For the second recommendation, the State agency stated that although a “seed” number is a recognized approach used to replicate the sampling process, the use of a “seed” number is not stated as a requirement in the Federal Cost Principles, the Implementation Guide, or in any CMS guidance regarding school-based health services. Additionally, the State agency said that failure to retain a “seed” number does not render a sample statistically invalid, and even if a “seed” number is used to replicate a sampling process, further analysis is still needed to determine the validity of the sample. The State agency said that beginning with the October through December 2014 quarter, the State agency and the Contractor took steps to begin capturing a “seed” number to make it available for replication of the generated sample should it be requested in the future.

Regarding the fourth-quarter timestudy not being conducted, the State agency stated that it followed the CMS-approved Implementation Guide, which states that there would be no fourth-quarter timestudy. Additionally, the State agency stated that this is the first indication that CMS’s opinion is “that the August and September dates should have been included in the RMTS and that the Implementation Guide should not have been approved with the language allowing the State agency to use an average for the fourth quarter.” Finally, the State agency said that it would communicate with CMS regarding potential changes to the Implementation Guide that would include a fourth-quarter timestudy.

The State agency’s comments are included in their entirety as Appendix F.

OFFICE OF INSPECTOR GENERAL RESPONSE

After reviewing the State agency's comments, we maintain that our findings and recommendations are valid. We have not reviewed the State agency's revised processes and procedures for monitoring coding activity moments as direct medical services, but we maintain that responses to RMTS surveys must indicate that the activities performed qualify as IEP-covered direct medical services and that the responses capture what the participants did in their exact 1-minute sampled moment.

We maintain that random moment sampling must meet acceptable statistical standards, which require that the results be statistically valid. Without a "seed" number, it is impossible to reproduce the sampling process and verify whether the sample was valid. In addition, by not including all eligible sample moments in the RMTS (i.e., excluding the fourth quarter), the results are not representative of the cost period (the entire school year).

APPENDIX A: RELATED OFFICE OF INSPECTOR GENERAL REPORTS

Table 5: Improper Payments for School-Based Health Services

Report Title	Report Number	Date Issued
<i>Kansas Improperly Received Medicaid Reimbursement for School-Based Health Services</i>	A-07-13-04207	8/6/14
<i>Arizona Improperly Claimed Federal Reimbursement for Medicaid School-Based Administrative Costs</i>	A-09-11-02020	1/22/13
<i>Review of Colorado Direct Medical Service and Specialized Transportation Costs for the Medicaid School Health Services Program for State Fiscal Year 2008</i>	A-07-11-04185	4/3/12
<i>Review of Missouri Medicaid Payments for the School District Administrative Claiming Program for Federal Fiscal Years 2004 Through 2006</i>	A-07-08-03107	3/18/10

APPENDIX B: AUDIT SCOPE AND METHODOLOGY

SCOPE

We reviewed Medicaid direct medical service costs claimed for SHARS provided during the period October 1, 2010, through September 30, 2011. For this period, the State agency received \$389,997,584 in Federal reimbursement for Medicaid direct medical service costs associated with 572 participating school districts in Texas.

We performed an indepth review of the SHARS expenditures claimed on behalf of AISD and DISD. We focused on these two school districts in this review, with particular attention to that portion of SHARS that dealt with Medicaid direct medical service costs. We selected these districts, in part, on the basis of the amounts claimed by the State agency for SHARS provided during the period October 1, 2010, through September 30, 2011. Of the \$389,997,584 in Federal reimbursement, \$19,405,646 was associated with AISD and \$10,392,367 with DISD.

We did not perform a review of Medicaid direct medical service costs at the remaining 570 participating school districts in Texas. However, because the State agency used a State-wide RMTS percentage to calculate SHARS costs for all Texas school districts, any errors in the State-wide RMTS percentage affected the SHARS costs for every participating school district. Therefore, we applied the revised State-wide RMTS percentage to the costs for all 572 participating school districts.

We did not perform a detailed review of the State agency's internal controls because our objective did not require us to do so. We limited our internal control review to obtaining an understanding of the State agency's policies and procedures to claim SHARS expenditures.

We conducted fieldwork from January 2014 through December 2015 at the State agency in Austin, Texas, and at AISD and DISD offices.

METHODOLOGY

To accomplish our objective, we:

- reviewed applicable Federal and State requirements;
- reviewed the State agency's policies and procedures concerning SHARS, which included the State agency's monitoring and oversight procedures;
- interviewed State agency employees to understand how they administered the SHARS program State-wide;
- interviewed Contractor employees to understand how they administered the SHARS program and how the State-wide RMTS percentages were calculated;

- reconciled the State agency's CMS-64 reports to supporting documentation to determine whether interim costs claimed were adequately supported;¹¹
- reconciled the actual costs reported on the annual cost reports for AISD and DISD with accounting records;
- interviewed AISD and DISD employees to understand how they administered the SHARS program;
- judgmentally selected from AISD and DISD 33 and 30 health care providers, respectively, who were performing direct medical services and ensured that the providers were qualified to provide these services as defined by the State plan;
- judgmentally selected from AISD and DISD 44 and 50 direct medical service claims, respectively, to determine whether they were properly billed;
- judgmentally selected from AISD and DISD 105 and 173 weekend and holiday claims, respectively, to determine whether the provider was providing services on the date of the claim;
- judgmentally selected from both AISD and DISD 30 specialized transportation claims to determine whether they were medically necessary;
- reviewed all 3,161 survey responses that were (1) completed by employees of participating school districts in Texas and (2) coded by the Contractor as IEP-covered direct medical services, to determine whether the responses were coded appropriately;
- recalculated the Medicaid-allowable costs for all participating Texas school districts, including AISD and DISD, using the corrected State-wide RMTS percentage to determine the amounts that should have been claimed;
- determined the financial effect of the errors identified in the review of the 3,161 survey responses by recalculating the cost settlements for all participating Texas school districts, including AISD and DISD, and comparing the State agency's cost settlement amounts with the recalculated cost settlement amounts;
- reviewed a sample of 317 random moments that the Contractor coded as allowable SHARS activities used in the RMTS (we did this to estimate the number of unsupported responses provided by participants completing the RMTS surveys);
- shared the results of this review with AISD officials on May 16, 2014, and with DISD officials on November 13, 2015; and

¹¹ Federal regulations allow State agencies up to 2 years to claim Medicaid costs (45 CFR § 95.7). Therefore, to ensure completeness of the interim payments for claims with dates of service in our audit period, we reconciled the CMS-64 reports for the quarter ended December 2010 through the quarter ended June 2014 (13 quarters).

- shared the results of this review, including the details of our recommended adjustments, with State agency officials on February 19, 2016.

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 C: STATISTICAL SAMPLING METHODOLOGY

TARGET POPULATION

The population consisted of all moments and related participant responses selected in the RMTS sample coded as IEP-covered direct medical services which the State agency used to determine allowable costs for claiming Federal reimbursement for services provided during the period October 1, 2010, through September 30, 2011.

SAMPLING FRAME

The State agency gave us an Excel spreadsheet for each quarter of random moments selected in the State's RMTS performed for the quarters ended December 31, 2010, March 31, 2011, and June 30, 2011,¹² and the related responses. We combined the 3 spreadsheets to create 1 list of 17,160 moments, which included sampled moments from 2 cost pools, "Admin Only" and "Direct Services and Admin." From this list, we removed all moments in the "Admin Only" category, which is used for Medicaid administrative claiming, leaving 8,577 moments of "Direct Services and Admin" costs. Finally, we removed from this list all moments not coded as "4.a Direct Medical Services – IEP on Code Final," leaving an Excel spreadsheet of 3,161 moments as our sampling frame.

SAMPLE UNIT

The sample unit was a selected random moment and the related participant responses to the RMTS survey.

SAMPLE DESIGN

We used a stratified random sample. To accomplish this, we separated the sampling frame into three strata and selected 317 moments, as follows:

Stratum 1 – DISD – 91 moments

Stratum 2 – AISD – 96 moments

Stratum 3 – All other school districts – 2,974 moments from which we selected 130 moments

SOURCE OF RANDOM NUMBERS

We generated the random numbers using the OIG, Office of Audit Services (OAS), statistical software.

¹² The Implementation Guide states: "Since activities and services are not provided in the [independent school districts] when school is not in session, [Texas Health and Human Services Commission] will not conduct a July – September time study, but will rather use an average of the three previous quarters to calculate a claim for the July – September period. This is in accordance with the May 2003 Medicaid School-Based Administrative Claiming Guide, page 42."

METHOD OF SELECTING SAMPLE ITEMS

We consecutively numbered the moments in stratum 3, generated 130 random numbers, and selected the corresponding moments. We reviewed all moments in stratum 1 and stratum 2.

ESTIMATION METHODOLOGY

We used the OIG/OAS statistical software to estimate the total number and percentage of unsupported RMTS responses.

APPENDIX D: SAMPLE RESULTS AND ESTIMATES

Table 6: Sample Results

Stratum	Frame Size	Sample Size	Number of Responses Not Supported
DISD	91	91	84
AISD	96	96	83
All other school districts	2,974	130	123
Total	3,161	317	290

Table 7: Estimated Totals and Percentages

(Limits Calculated at the 90-Percent Confidence Level)

	Percentage of Responses Not Supported	Number of Responses Not Supported
Point estimate	94.30	2,981
Lower limit	91.29	2,886
Upper limit	97.31	3,076

APPENDIX E: FEDERAL AND STATE REQUIREMENTS AND GUIDANCE FOR SCHOOL HEALTH AND RELATED SERVICES

FEDERAL REQUIREMENTS

Section 1903(c) of the Social Security Act (the Act) states that health-related services included in a child's IEP under the Individuals with Disabilities Education Act (IDEA) are covered by Medicaid.

Section 1905(a) of the Act lists the health-related services eligible for payment by Medicaid.

The IDEA states that an IEP for a child with a disability should include a statement of the special education and related services to be provided to the child.

Federal regulations state that to meet acceptable statistical sampling standards, the results of the sample must be statistically valid and applied to the period being sampled (2 CFR part 225, App. B, § 8.h.6.a(iii)).

CMS's *Medicaid and School Health: A Technical Assistance Guide*, issued in August 1997, contains specific technical information on the Medicaid requirements that govern State agencies seeking Federal reimbursement for coverable health services provided in a school-based setting.

The CMS *Medicaid School-Based Administrative Claiming Guide* (Claiming Guide) states on page 37 that the burden of proof and validation of timestudy sample results is the responsibility of the States and that States must adequately document Medicaid sampled activities. It also states on page 42 that if the regular school year begins in the middle of a calendar quarter, the first timestudy for that school year should include all days from the beginning of the school year.

STATE REQUIREMENTS

The Texas Medicaid State plan amendment 06-005 (the SPA), effective September 1, 2006, for SHARS states that services are delivered by school districts and include the following: audiology and hearing services, physician services, occupational therapy, physical therapy, psychological services, speech and language services, nursing services, counseling services, transportation services, and personal care services.¹³

The 2011 *Texas Medicaid Provider Procedures Manual* states in section 3.3.10 that transportation services in a school setting may be reimbursed under SHARS when they are provided on a specially adapted vehicle (e.g., the addition of a wheelchair lift, seatbelts or harnesses, or child protective seating). In section 3.4.1, it states that student-specific records that are required for SHARS become part of the student's educational records and must be maintained for 7 years. Additionally, all records that are pertinent to SHARS billings must be maintained by the school district. Section 3.4.1 further states that all services require documentation to support the medical necessity of the service rendered, including SHARS

¹³ Pages 25L.4 and 25L.5 of the SPA were revised and became effective September 1, 2008 (SPA 08-031), and describe the processes for the SHARS cost reports, cost reconciliation, and cost settlement.

services. SHARS services are subject to recoupment if documentation does not support the service billed.

The State agency's *Texas Timestudy Implementation Guide for Direct Services and Medicaid Administrative Claiming* (Implementation Guide) contains the policies and procedures that Texas school districts follow to receive Medicaid reimbursement. The Implementation Guide, page 5, states that school district calendars will be reviewed each quarter to identify the dates that the school districts will be in session and for which their staff members are compensated and that those dates will be included in the random moment sample. The Implementation Guide, pages 6 through 34, provides specific instructions on the coding of random moments based on participants' responses to the survey questions. According to this guideline, an RMTS code for an IEP-covered direct medical service is appropriately selected "... when school district staff (employees or contracted staff) provides direct client services as covered services ..." and "... also includes functions performed pre and post of the actual direct client services." The Implementation Guide, page 10, states that a participant will be notified 3 days before the selected random moment of the requirement to participate in a survey and of the exact random moment.

APPENDIX F: STATE AGENCY COMMENTS



TEXAS
Health and Human
Services

Texas Health and Human Services Commission

Charles Smith
Executive Commissioner

May 31, 2017

Ms. Patricia Wheeler
Regional Inspector General for Audit Services
Office of Inspector General, Office of Audit Services
1100 Commerce, Room 632
Dallas, Texas 75242

Reference Report Number A-06-14-00002

Dear Ms. Wheeler:

The Texas Health and Human Services Commission (HHSC) received a draft audit report entitled "Texas Improperly Received Medicaid Reimbursement for School-Based Health Services" from the U.S. Department of Health and Human Services Office of Inspector General. The cover letter, dated May 1, 2017, requested that HHSC provide written comments, including the status of actions taken or planned in response to report recommendations.

I appreciate the opportunity to respond. Please find the attached HHSC management response which includes (a) comments related to the content of the findings and recommendations and (b) detailed actions HHSC has completed or planned.

If you have any questions or require additional information, please contact David M. Griffith, Deputy IG for Audit, HHSC Inspector General. Mr. Griffith may be reached by telephone at (512) 491-2806 or by e-mail at David.Griffith@hhsc.state.tx.us.

Sincerely,

A handwritten signature in black ink, appearing to read "Charles Smith".

Charles Smith

Attachment

Texas Health and Human Services Commission
Management Response to the
U.S. Department of Health and Human Services Office of Inspector General Report:
**Texas Improperly Received Medicaid Reimbursement for
School-Based Health Services**

DHHS - OIG Recommendation: *We recommend that the State agency refund to the Federal Government the \$18,925,853 Federal share of unallowable reimbursement that was claimed for the Medicaid School Health and Related Services (SHARS) program because the random moments were coded incorrectly.*

HHSC Management Response:

During the three quarterly random moment time studies (RMTS) covering October 1, 2010, through June 30, 2011, that were reviewed by DHHS-OIG, the Texas Health and Human Services Commission (HHSC) and its contractor, Fairbanks LLC (Fairbanks), assigned activity codes to 16,953 randomly selected moments. Of these moments, 3,161 (18.65 percent) were assigned an activity code as direct medical services covered by an individualized education program (IEP). The DHHS-OIG audit report states that 274 of these 3,161 (8.67 percent) moments were improperly coded as direct medical services.

Coding of Random Moments

The *Texas Timestudy Implementation Guide for Direct Services and Medicaid Administrative Claiming* (Implementation Guide) that was approved by the Centers for Medicare and Medicaid Services (CMS) in April 2007 and the May 2003 CMS *Medicaid School-Based Administrative Claiming Guide* (Claiming Guide) provide general examples of activities to assist in making coding decisions, and it is the intent of HHSC that the guides are followed during the coding process. However, the examples provided are illustrative, not exhaustive, and leave room for interpretation and judgment.

Coding of activities can sometimes be complicated and often require follow-up with the sampled participant to gain needed clarification. For example, one of the challenges faced by HHSC and Fairbanks is the coding of activities associated with Personal Care Services (PCS). 240 of the 274 (87.59 percent) moments DHHS-OIG deemed as not correctly coded were related to PCS. PCS is often challenging for sampled participants to describe and document and also for coders to interpret and code.

Supporting Documentation

CMS announced approximately 18 months ago that it would be releasing an updated Claiming Guide. The new guide has not yet been released, but HHSC is hopeful the guide will not only provide additional information on RMTS activity coding, but will also provide clarification on what is acceptable documentation necessary for school districts to maintain to support their sampled moment responses. While the matter of supporting documentation was not the basis for the above recommendation, HHSC takes this opportunity to respond to the issue of supporting documentation.

On page 39 of the Claiming Guide, CMS states that “the burden of proof and validation of time study sample results remains the responsibility of the states. To meet this requirement, some

states currently include space on the time study forms for a brief narrative description of the Medicaid activity, function, or tasks being performed. ... States should consider this approach to documentation, or some comparable procedure that adequately documents Medicaid sampled activities.” This guidance implies that including the narrative description as an approach to documentation would be considered adequate and would meet the documentation requirement.

As recommended by the Claiming Guide, HHSC employs the use of a narrative description in its RMTS response required by the sampled participant, and the recipients must certify the response as true at the time it is prepared and returned to Fairbanks. However, the DHHS-OIG audit report indicates DHHS-OIG requested selected school districts provide additional supporting documentation during the audit to prove the service was provided at the sampled moment. DHHS-OIG states the districts could not provide supporting documentation of the type and nature acceptable to the DHHS-OIG auditors.

For certain types of services such as nursing and therapy, it is standard professional practice for the service provider to maintain nurse’s notes and/or progress notes that would support RMTS responses by sampled participants. However, that is not the case when it comes to most services related to PCS or personal aides. But HHSC is unclear how the certified narrative responses do not meet the documentation requirements as described in the Claiming Guide. HHSC contends guidance regarding proper supporting documentation for the RMTS is lacking. HHSC is hopeful this issue will be addressed and clarified by the updated Claiming Guide that is currently pending release.

Actions Completed:

HHSC has reviewed its approach to monitoring RMTS coding activity. In addition to a random sample of all coded moments, HHSC also reviews all moments coded as direct medical services to help ensure proper coding by Fairbanks Central Coder staff.

Revisions to the processes and procedures for monitoring coding activity moments as direct medical services were implemented with the April – May 2016 (Q3-2016) claiming quarter.

Actions Planned:

HHSC will coordinate with CMS regarding DHHS-OIG's recommendation for HHSC to refund \$18,925,853. Once a final overpayment amount, if any, is identified, HHSC will refund that amount to CMS.

Estimated Completion Date:

One year from date of the final audit report

Title of Responsible Person:

Director of Cost Reporting, Data Support and Time Study Services, HHSC Rate Analysis Department

DHHS - OIG Recommendation: *We recommend that the State agency comply with Federal requirements for statistical validity to ensure its random moment sampling meets acceptable statistical sampling standards.*

HHSC Management Response:

HHSC and its contractor, Fairbanks, LLC (Fairbanks), contend the RMTS sampling methodology meets acceptable sampling standards and the processes used are valid and in compliance with the CMS-approved Implementation Guide.

Documentation was maintained to demonstrate the statistical validity of the RMTS results. This information was provided to the DHHS-OIG auditors to adequately demonstrate the RMTS sample to be valid. DHHS-OIG acknowledged in its report that Fairbanks used a random number generator that developed the RMTS sample. Federal Cost Principles state that random moment sampling must meet acceptable statistical standards which require that the results are statistically valid (2 CFR part 225, App. B, 8.h.6.a(iii)).

The DHHS-OIG audit report focuses on the absence of a “seed” number. While a “seed” number is a recognized approach used to replicate the sampling process, the use of a “seed” number is not stated as a requirement in the Federal Cost Principles, the Implementation Guide, or in any CMS guidance regarding school-based health services. Failure to retain a “seed” number does not render a sample statistically invalid. That is, even if a “seed” number is used to replicate a sampling process, further analysis is still needed to determine the validity of the sample. However, beginning with the October – December 2014 quarter (Q1-2015), HHSC and Fairbanks took steps to begin capturing the “seed” number so as to be available for replication of the generated sample should it be requested in the future.

DHHS-OIG also took issue that HHSC did not conduct a fourth quarter time study (July 1 through September 30). However, as acknowledged in the DHHS-OIG audit report, HHSC followed the CMS-approved Implementation Guide which states that there would be no fourth quarter time study. DHHS-OIG further included in its report an opinion from CMS “that the August and September dates should have been included in the RMTS and that the Implementation Guide should not have been approved with the language allowing the State agency to use an average for the fourth quarter.” This is the first indication HHSC has received that CMS is now taking this position. HHSC is willing to communicate with CMS regarding potential changes to the Implementation Guide that would include a fourth quarter time study.

Actions Completed:

The “seed” number capture process was completed with the October – December 2014 (Q1-2015) claiming quarter.

Actions Planned:

Given the new position from CMS stated for the first time in the DHHS-OIG audit report, HHSC will communicate with CMS regarding potential changes to the Implementation Guide for the inclusion of a fourth quarter time study.

Estimated Completion Date:

Should future discussions with CMS result in the necessity of the inclusion of a fourth quarter time study, the first opportunity for implementation would not occur until July – September 2018 (Q4-2018).

Title of Responsible Person:

Director of Cost Reporting, Data Support and Time Study Services, HHSC Rate Analysis Department