

California Department of Corrections and Rehabilitation

It Needs to Improve Its Processes for Contracting and Paying Medical Service Providers as Well as for Complying With the Political Reform Act and Verifying the Credentials of Contract Medical Service Providers

REPORT NUMBER 2006-501, APRIL 2007

California Prison Health Care Receivership Corporation's¹ response as of June 2008

The state auditor has the authority to audit contracts involving the expenditure of public funds in excess of \$10,000 entered into by public entities, at the request of the public entity. The court-appointed receiver requested that the Bureau of State Audits (bureau) conduct an audit of a variety of issues related to existing contracts between the California Department of Corrections and Rehabilitation (Corrections) and certain medical care providers. Specifically, the receiver requested that the bureau review Corrections' processes for procuring medical registry services and its practices involving these services for fiscal year 2005–06 and to determine whether the process is fair and adequate and complies with all applicable laws and regulations, whether the language used in medical registry contracts is adequate and complete and written in the best interests of the State, and whether conflicts of interest exist related to procuring the medical services.

Additionally, the bureau was asked to examine Corrections' medical registry contracts and payment practices for fiscal year 2005–06 and to determine whether contractors comply with the terms and conditions of the contracts, and whether Corrections' accounting and payment practices for contracts comply with laws, regulations, and industry practices. Finally, the bureau was directed to review the medical registry contracts and compare the rates Corrections pays contractors with the amounts the contractors pay their medical care providers, and to determine whether the contractors and medical care providers rendering services in the prisons meet all applicable licensing and certification requirements.

¹ In May 2005, four years after the Plata Davis (Plata) lawsuit was filed, and after meeting regularly with the parties to the Plata settlement, the court conducted hearings to determine if it was necessary to appoint an interim receiver. In February 2006 the court appointed a receiver. The court order making the appointment gave the receiver the authority to "provide leadership and executive management of Corrections' medical health care delivery system with the goal of restructuring day-to-day operations and developing, implementing, and validating a new, sustainable system that provides constitutionally adequate medical care to all members of the class action lawsuit as soon as practicable." To achieve those goals, the receiver has the duty to control, oversee, supervise, and direct all administrative, personnel, financial, contractual, legal, and other operational functions of Corrections' medical health care delivery system. In making these recommendations to Corrections, we understand that they would be implemented at the direction of the court-appointed receiver. We do, however, expect that if control and management of Corrections' medical health care delivery system is returned to it, that Corrections would then become responsible for implementing these recommendations.

Audit Highlights . . .

Our review of the California Department of Corrections and Rehabilitation's (Corrections) contracts for medical services revealed the following:

- » *Corrections improperly awarded nine of 18 competitively bid contracts with a total maximum amount of more than \$385 million.*
- » *Corrections did not provide complete justifications for awarding two noncompetitively bid contracts totaling almost \$80 million.*
- » *Some aspects of Corrections' treatment of some medical providers raises concerns about whether they are, in fact, treated more as employees than independent contractors, which may expose the State to potential liability and penalties.*
- » *Only 16 of the 21 contracts we reviewed contained terms that meet the standard of medical care called for in Corrections' regulations.*
- » *Many of the contracts we reviewed did not contain terms that Corrections considers standard in medical service contracts to adequately protect the confidentiality, privacy, and handling of inmate medical records under the federal Health Insurance Portability and Accountability Act.*
- » *Although all contracts in our sample gave Corrections the ability to inspect and monitor the quality of contractor performance, only five of the 21 contracts imposed a similar obligation on the medical care service providers.*

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- » *Corrections overpaid registry contractors by \$4,050 for five invoices because prisons did not consistently ensure that payment amounts agreed with contract terms.*
- » *Corrections failed to ensure that prisons require their consultants to complete statements of economic interests or to document why it was appropriate for them not to do so.*
- » *Corrections did not verify the credentials of providers who treat inmates outside of Corrections' facilities because it incorrectly believed these reviews were being conducted by the Department of Health Services.*
- » *Of the 22 physicians and nurse practitioners for which we requested credentialing files, Corrections was only able to provide 12. Of these 12, eight were credentialed after they had begun providing services to inmate patients.*

Finding #1: Corrections did not always award contracts according to state policy or its own policy.

Corrections awarded nine of 18 competitively bid contracts incorrectly. Specifically, in awarding these nine contracts, Corrections assigned incorrect hierarchy positions to bidders, primarily because its practice was to apply the small business preference—a 5 percent preference given to small businesses bidding on state contracts—to the bidders' hourly rate rather than the bid price. As a result, for seven contracts Corrections failed to limit the preference to \$50,000, as state law and regulations require, and for all nine contracts it gave bidders a larger preference than allowed, causing some bidders to incorrectly receive higher-ranking positions.

Corrections uses a cost threshold to limit the number of contract awards for its registry contracts but it does not have any written policies or procedures for determining the cost thresholds. Additionally, Corrections' solicitation documents did not inform the bidders of its use of a cost threshold or its methodology for calculating the threshold. Further, Corrections did not always apply the cost thresholds properly according to its stated methodology and, as a result, improperly awarded one contract and excluded another bidder from the opportunity to provide services. Finally, we found that Corrections did not always calculate the cost threshold using the methods it described to us and based on our calculations, it improperly awarded contracts. When Corrections does not apply the small business preference or its cost threshold properly, it may be unfairly preventing contractors from providing registry services or selecting contractors who do not meet its criteria.

We recommended that Corrections ensure that staff receive proper training on bidding methods, including the appropriate application of the small business preference, so that bidders are awarded contracts in the correct order. We also recommended that Corrections establish policies and procedures for determining the cost threshold used to limit the number of awards made to registry contractors and implement a quality control process to ensure staff calculate the cost threshold correctly and retain documentation to support their calculations in the contract files. Further, we recommended that Corrections notify potential bidders of its use of a cost threshold to determine the awards to be made and its methodology for calculating the threshold. Finally, we recommended that Corrections implement a quality control process to identify errors in the ranking of bidders before awarding contracts.

Corrections' Action: Partial corrective action taken.

The Office of the Receiver stated that it agrees that staff should receive additional training on bidding methods and its managers are currently providing informal training in the area of bidding and application of small business preferences. Although the Office of the Receiver anticipated developing formal training materials by March 2008, it stated that this process was delayed to May 2008 due to additional time required to enhance the Excel spreadsheet it uses to process calculations and improve its training materials and presentations. Formal training will begin in June 2008.

The Office of the Receiver stated that its Plata Contract Branch has developed and implemented an interim methodology to determine the cost threshold when establishing the number of contract awards. Staff are required to complete spreadsheets that capture and tabulate bid calculations. Staff then consider multiple requirements such as number of bids falling within the criterion, current contract rates and current civil service compensation, if applicable, to determine the number of awards. Staff submit the rate approval packages to managers for review and approval. After manager approval, the rate package is sent to a second level for review and approval.

Regarding our recommendation to implement a quality control process to ensure staff calculate the cost threshold correctly and retain documentation to support their calculations in the contract files, the Office of the Receiver stated that management oversight and review of the spreadsheets that capture and tabulate bid calculations is one of the current quality control processes utilized to ensure accurate calculation of cost threshold and document retention for the bid process. Also, the Office of the Receiver stated that it created a Post Review Unit in the fall of 2007 to address overall quality control issues in contract processes. According to the Office of the Receiver, the Post Review Unit developed its infrastructure, workforce, and initial documentation necessary to perform internal post reviews of individual contract processes with preliminary testing of documentation utilized to review individual contracts commencing in April 2008.

Regarding our recommendation to notify potential bidders of its use of a cost threshold to determine the awards to be made and its methodology for calculating the threshold, the Office of the Receiver stated that it issues a notification of contract awards and the bid matrix it utilized in determining the cost threshold to contractors who submitted bids or contractors requesting copies through the California Public Records Act. However, this information does not reflect the methodology it used for cut-off purposes. The Plata Contract Branch has no immediate plans of providing pre-notification to potential bidders of methodologies used to determine cost thresholds due to the complexity in determining the number of awards to be made which varies by medical specialty.

Finally, the Office of the Receiver stated that it obtained a consultant to provide a review of its current staffing resources and functions in the near future. The Post Review Unit only provides review of a contract after it is fully executed. Therefore, the current quality control process used to identify errors in the ranking of bidders before awarding contracts continues to be addressed through management oversight and review of the spreadsheets staff complete to rank bidders.

Finding #2: Corrections' justifications for awarding two competitively bid contracts were incomplete.

State policy requires a minimum of three competitive bids except in certain circumstances. Corrections did not always retain complete justifications for awarding contracts when receiving fewer than three bids. Specifically, for two of 18 competitively bid contracts, Corrections did not receive three bids and did not justify the reasonableness of the award amounts. Also, although Corrections advertised these two contracts in the California State Contracts Register, it could not demonstrate that it solicited all known potential contractors as state policy requires. Consequently, Corrections was not exempt from complying with state policy requirements for awarding contracts with fewer than three bids.

We recommended that Corrections fully comply with state policy, including justifying and documenting the reasonableness of its contract costs, when it receives fewer than three bids. We also recommended that Corrections retain documentation of its efforts to solicit all known potential contractors when it advertises in the California State Contracts Register.

Corrections' Action: Partial corrective action taken.

According to the Office of the Receiver, it is currently tracking approved rates by discipline using an Excel spreadsheet. A component of the standardized rate package is verification of civil service pay scales and benefits, if applicable; inclusion of rate information from prior or active contracts; and documentation justifying reasonableness of rates and why current providers (for bid services) are unable to provide services. The Office of the Receiver also stated that staff continue to receive informal contract process training, and staff will be receiving formal training commencing in

June 2008 in the bid and contract packaging processes. Documentation including, but not limited to, list of bidders who requested bid packages through the Plata Contract Branch or accessed bid documents via the Department of General Services' Contracts Register will be maintained in the bid or contract files.

Finding #3: Corrections could not justify the prices contained in two noncompetitively bid contracts.

Corrections did not retain justifications for the rates found in two of three noncompetitively bid contracts we reviewed. For one contract, with a maximum amount of almost \$79 million, Corrections did not have documentation to support that the rates determined were fair and reasonable. For the second contract, with a maximum amount of \$1 million, Corrections obtained approval from the Department of General Services (General Services) using a special category noncompetitively bid exemption request. However, Corrections was unable to produce documentation to support compliance with specific conditions of approval including following the price analysis and methodology requirements of the special category exemption. When Corrections does not justify and document the reasonableness of the contract rates it agrees to pay, in accordance with the methodology approved by General Services, it is unable to demonstrate that the rates are appropriate and reasonable.

We recommended that Corrections fully comply with state policy including justifying and documenting the reasonableness of its contract costs when it chooses to follow a noncompetitive process. We also recommended that Corrections adhere to the price analysis and methodology approved by General Services when using the special category noncompetitively bid request process. For example, it should use Medicare rates as a benchmark for determining the reasonableness of its rates paid to contractors.

Corrections' Action: Partial corrective action taken.

The Office of the Receiver stated it is providing informal training to staff on General Services' Standardized State Contracting process for noncompetitive bid contracts. Additionally, the Office of the Receiver is scheduled to commence formal training in June 2008.

According to the Office of the Receiver, Medicare does not apply to registry contracts, which are typically based on hourly rates. Staff who process noncompetitive bid contracts submit rate approval packages that include documentation pertaining to the reasonableness of rates, market survey, and the reason for the noncompetitive bid contract if outside of a current approved rate package for the same services and geographic area. The Office of the Receiver stated that rates are approved using the Rate Approval Process guidelines it approved in April 2008. The Receiver's consultant submitted a report, dated September 2006, which provided a recommendation to convert exempt medical rates for physician, medical group, and hospitals to a percentage of Medicare. The Office of the Receiver implemented this recommendation and is currently tracking information pertaining to exempt medical rates in an Excel spreadsheet. Additionally, the related documentation on approved rate packages is scanned and stored on shared network drives.

Finding #4: Corrections paid some contractors for services provided before their contracts were approved by General Services.

For four contracts we reviewed, we noted seven instances, totaling almost \$20,000, in which registry contractors were performing service at prisons before Corrections obtained General Services' final approval of the contracts. When Corrections does not ensure that it obtains proper approval before allowing contractors to perform services, it exposes the State to potential litigation if General Services does not approve the contract.

We recommended that Corrections ensure that it establishes internal control processes that prevent prisons from allowing contractors to perform services before receiving General Services' approval of the contract.

Corrections' Action: Corrective action taken.

The Office of the Receiver stated that its Plata Contract Branch is striving to ensure contracts are fully executed before services are provided at the institutions. However, adequate medical care must be provided in order to mitigate mortality and morbidity based on various federal court cases.

Finding #5: Some contracts did not contain Corrections' standard contract terms.

Three of 21 contracts in our sample did not contain terms that required Corrections to provide 24 hours notice to a medical registry if services had been scheduled but were not needed for a particular shift. Our legal counsel advised us that the reviewing court would likely find that reasonable notice would be an implied term of the contract. However, litigation can be averted if the parties define what constitutes reasonable notice in the contract.

We recommended that Corrections' medical registry contracts contain express provisions related to the required notice period for cancellation.

Corrections' Action: Corrective action taken.

The Office of the Receiver agrees with this recommendation and stated that it has developed and incorporated standardized contract cancellation language into its renewal or new exempt and bid medical contracts.

Finding #6: Some contracts lack Business Associate Agreements that ensure compliance with federal requirements related to privacy, confidentiality, and transfer of inmate medical records.

Under the Health Insurance Portability and Accountability Act (HIPAA), Corrections may act as a covered entity in the provision of medical care to inmates and the various contractors with whom it does business may act as "business associates." As business associates, those contractors are obligated to follow HIPAA, which imposes various obligations related to the confidentiality and handling of prisoner medical information. HIPAA also requires that a business associate enter a Business Associate Agreement that imposes specific obligations designed to ensure compliance with HIPAA. Only six of 21 contracts we reviewed contained the required Business Associate Agreement.

We recommended that Corrections include Business Associate Agreements in all contracts subject to HIPAA and amend existing contracts to include those agreements.

Corrections' Action: Corrective action taken.

The Office of the Receiver agrees with this recommendation and has developed an exhibit that includes standard language pertaining to HIPAA. The Office of the Receiver stated that its Plata Contract Branch has developed a public-access Web site with anticipation that the HIPAA exhibit and other standard documents attached by reference will be available for public use beginning in September 2008.

Finding #7: Corrections' treatment of its independent contractors raises concerns about whether they are, in fact, employees.

Although all the contracts in our sample contained terms that indicate medical registries act as independent contractors, we surveyed each of the contracting medical registries in our sample to evaluate their relationship with Corrections based on 20 general factors that the U.S. Department of the Treasury, Internal Revenue Service (IRS), uses to determine whether a worker is an employee or an independent contractor. Most of the contractors noted that they are not required to comply with

specific instructions from Corrections on how to perform their services and half noted that they pay their workers directly, rather than having them paid by Corrections, which indicates a level of autonomy associated with that of an independent contractor. Other factors, however, suggest several areas in which Corrections appears to maintain a significant degree of control over the manner and means of performing the work. We noted that the IRS and the courts do not expressly state a single, definitive rule regarding what constitutes an independent contractor. Instead, the courts and the IRS make each decision based on the totality of the circumstances. As such, it is difficult to say whether medical registries would be deemed independent contractors or Corrections' employees.

Potential liability and penalties for misclassification of an employee include substantial taxes, back pay, and reimbursement of expenses. Furthermore, California does not make a distinction between intentional and unintentional misclassification of an employee. Thus, the responsibility for proper conduct and classification of an independent contractor falls upon the employer.

To ensure that there is no uncertainty surrounding the legal status of contract employees, we recommended that Corrections seek expert advice and legal counsel to determine whether its current treatment of certain medical registry service providers is such that those medical registry service providers should be considered employees rather than independent contractors.

Corrections' Action: Partial corrective action taken.

The Office of the Receiver stated that the issue as to whether or not registry employees are employees versus independent contractors is a statewide issue that will be referred to the State Personnel Board. This question has statewide implications and is beyond the scope of the Receiver.

The Office of the Receiver also stated that it is in the process of hiring full-time permanent civil service clinical staff, and there will be, over time, an elimination or significant reduction in Corrections' reliance on registries.

Finding #8: Contract terms related to the standard of care are inconsistent and sometimes ambiguous.

All 21 contracts in our sample contained terms related to the standard of care. However, only 16 contained terms that appear to meet the legally required standard contained in regulation. Even then, the language used to describe the standard of care in these 16 instances varies widely. Despite this variation, we considered all these terms to be essentially the same in that they appeared to call for the legally required standard of care set out in regulation. In four other contracts, the contracts contained terms that appear to have been drafted in an attempt to be consistent with the standard of care set out in regulation, but rather than requiring the contractor to meet that standard, they required the contractor to provide medical care "necessary to prevent death or permanent disability." According to our legal counsel, this language does not meet the minimum standard set out in regulation and appears to establish a potentially lower standard of care. In addition, one contract contained only a requirement that the contractor provide services consistent with scope of practice and did not prescribe a standard that was specific to a prison setting.

We also noted that many of the contracts in our sample contained multiple terms related to the standard of care within the same contract. In some cases, these terms appear to be inconsistent with one another. For example, 14 of 21 contracts contained terms requiring contracting medical care providers to follow the legally required standard in regulation and to follow generally accepted professional standards or national standards. We do not in any way question the value of following generally accepted professional standards or national standards. However, because it is not necessarily clear that Corrections' regulatory standard and the standard of care called for by professional or national standards are the same, this inconsistency may create an ethical dilemma and confusion on the part of medical care providers and may even result in litigation. We also noted a lack of consistency across our sample in terms of the standard of care being required. For example, only seven of 21 contracts required the contractors to meet national standards.

Finally, we found that some contracts contained terms related to the standard of care that were inconsistent with the American Medical Association's (AMA) recommendations. The AMA recommends that a contracting physician not obligate himself or herself to a standard of care that is higher than that required by law. Several contracts we reviewed called for the provider to meet Corrections' standard of care and called for "high quality" or even the "highest level of treatment within the scope of available resources" as the standard of care. Although we do not in any way question the importance of providing high-quality medical care to inmates, drafting contracts containing multiple terms that may suggest differing standards of care creates an ambiguity that may result in uncertainty on the part of the provider, and potential disagreement among the contracting parties, about just what is required under the contract.

We recommended that Corrections' medical registry contracts contain clear and consistent requirements related to the standard of care called for under the contract. At a minimum this standard of care must meet the standard of care needed in order to satisfy Corrections' obligations under the Plata settlement agreement. Also, to ensure that Corrections' contracts contain terms for standard of care that meet its constitutional obligations as well as the standard of care that a practicing physician would provide if adhering to generally accepted ethical norms, Corrections should seek legal counsel and other expert advice to determine whether the standard of care currently prescribed in state regulations allows contracting physicians to provide medical care in a manner that is consistent with the generally accepted standard of care in the medical community. If the standard of care is not consistent with the generally accepted standard of care in the medical community, Corrections should revise its regulatory standard to require that the standard of care called for in the State's prisons is, at a minimum, consistent with medical ethics and with the State's constitutional obligations.

Corrections' Action: Partial corrective action taken.

According to the Office of the Receiver, it will ensure that Corrections' contracts include constitutional levels of care for prisoners, as the Receiver's mandate is to establish constitutional levels of medical care in California's prisons. However, the remainder of the recommendations that involve community standards of care may be more suitable for state consideration after the Receiver's work is completed and authority over Corrections' medical system is returned to the State.

Finding #9: Contract terms should impose clearer obligations for contractors to be insured against civil rights claims.

We found that all the contracts we reviewed called for the recommended level of liability coverage as specified by the State. However, although some of the contracts contained terms requiring the contractor to notify the insurance carrier that the contractor regularly provides services to inmates, it is not clear that this term necessarily would ensure that the contractor was insured against civil rights claims.

We recommended that Corrections require medical registries to submit proof that their insurance company has agreed explicitly to insure them against civil rights claims.

Corrections' Action: None.

According to the Office of the Receiver, no evidence has been provided that this recommendation is based upon specific cases of monetary loss. For example, no evidence has been submitted that the State has experienced losses due to civil rights violations by registry personnel. The Office of the Receiver states that while it agrees that a contract provision requiring an insurance company represent clinical registries concerning civil rights claims may seem desirable in theory, this requirement in practice is not one of the Receiver's top priorities for several reasons, including the following: (1) mandating such a clause may drive up the cost of registry contracts to a degree that is not fiscally justified; (2) private insurance carriers may not offer civil rights coverage because civil rights liability is, under certain circumstances, driven by "deliberate indifference" rather than negligence; and (3) given the existing unconstitutional conditions at many prisons, the insurance

carrier may defend claims against registry staff by cross-complaining against the State because of the situation the registry clinician was placed. Therefore, we do not intend to implement this recommendation at this time.

Finding #10: Although many contracts require Corrections to inspect and monitor performance, few impose obligations on contractors to monitor or assess their quality of service.

All of the contracts in our sample enabled Corrections to inspect and monitor the quality of contractor performance. However, only five contracts imposed a corresponding obligation on the part of medical registries to monitor and assess the quality of their own performance.

We recommended that Corrections require registry contractors to monitor and assess the quality of services they provide under the contract.

Corrections' Action: None.

- ➔ The Office of the Receiver stated that while it agrees that a contract provision requiring registries to monitor and assess the quality of their services may seem desirable in theory, in practice this requirement is not one of the Receiver's top priorities for several reasons, including the following: (1) mandating such a clause may drive up the cost of registry contracts to a degree that is not fiscally justified, (2) the monitoring and assessing of quality is a Receivership function and should not be delegated to private providers, and (3) there is no guarantee that the registry will perform this task adequately and therefore the Receiver will need to monitor the monitoring by the registry, which may be a fiscally unsound method of ensuring adequate clinical quality by registry staff. The Office of the Receiver also stated that it is in the process of hiring full-time permanent civil service clinical staff, and there will be, over time, an elimination or significant reduction in Corrections' reliance on registries.

Finding #11: Prisons did not always follow Corrections' procedures and contract terms for using registry contractors.

When prisons need to hire a service provider under a medical registry contract, Corrections requires them to follow the hierarchy outlined in the registries' contracts. For 22 of 38 invoices we reviewed that were subject to the hierarchy requirement, prisons did not provide us with sufficient documentation to demonstrate that they followed the hierarchy when obtaining services from registry contractors. When prisons do not consistently document their attempts to contact registry providers in accordance with the hierarchy, they expose the State to potential lawsuits from registry contractors for breach of contract terms and they hinder Corrections' ability to terminate registry contractors for nonperformance.

Also, we found that Corrections' policy allows prisons to send requests for services concurrently to all registries listed in the hierarchy. During our interviews with the 16 contractors in our sample, a few commented that, as a result of this practice, the providers do not respond to the contractors with the lowest bid but instead wait to be called by the contractors with the higher bids because they can receive more money.

We recommended that prison staff consistently follow procedures requiring them to document their efforts to obtain services from registry providers. We also recommended that Corrections reevaluate its policy of allowing prisons to send out service requests concurrently to all registry contractors listed in the hierarchy.

Corrections' Action: Partial corrective action taken.

The Office of the Receiver reiterated the response it provided to us in finding number one to describe the efforts it has taken to ensure prison staff consistently follow procedures requiring them to document their efforts to obtain services from registry providers. Also, related to the recommendation that Corrections reevaluate its policy of allowing prisons to send out service requests concurrently to all registry contractors listed in the hierarchy, the Office of the Receiver stated that using the concurrent process to request services is effective, as once the deadline has passed and requests are received (or not), institutions follow the hierarchy ranking order to request services based on response received.

Finding #12: Prisons sometimes fail to monitor invoices for medical services adequately.

Prisons could not provide sufficient evidence of their verifications that services were performed before they authorized payment for three of 50 invoices we reviewed. Prisons also did not always identify and adjust discrepancies between contract rates and providers' invoice charges resulting in overpayment of \$4,050 for five invoices that totaled \$458,346. In addition, prisons paid overtime on seven invoices even though contractors did not adhere to the contract provisions for overtime. Further, prisons and regional accounting offices failed to take available discounts or took the wrong discounts for the wrong amounts in 14 instances, and paid contractors late penalty payments in four instances because they failed to pay the invoices in compliance with the California Prompt Payment Act (CPPA).

We recommended that Corrections ensure that prisons verify the services they receive from registry contractors before authorizing payment of invoices and continue to implement the draft of a departmentwide policy reiterating the need for prison medical staff to adhere to proper procedures for verifying registry contractors' hours before authorizing payment.

We also recommended that Corrections ensure that prisons obtain the necessary documentation for the services they were unable to verify or seek reimbursement from the registry contractors for the overpayments identified in this report and establish a quality control process to ensure that prisons pay rates that are consistent with contract terms.

Further, we recommended Corrections ensure that prison staff responsible for authorizing overtime adhere to overtime policies and contract terms. Corrections should also evaluate its prisons and regional accounting offices' processes for paying invoices and identify weaknesses that prevent it from maximizing the discounts taken and complying with the CPPA.

Corrections' Action: Partial corrective action taken.

According to the Office of the Receiver, it directed its invoice processing staff to ensure that all invoices are routed to the proper authorizing personnel for authorization of services before the invoices are sent to accounting for payment. The Office of the Receiver stated that its invoice processing system and processes require separate electronic review and approval steps prior to invoices being routed to accounting for processing of payment.

Regarding our recommendation to continue to implement the draft of a department-wide policy reiterating the need for prison staff to adhere to proper procedures for verifying registry contractors' hours before authorizing payment, the Office of the Receiver referred us to its previous discussion regarding management oversight and review of the spreadsheets that capture and tabulate bid calculations as one of the current quality control processes utilized to ensure accurate calculation of cost threshold and document retention for the bid process. Also, the Office of the Receiver stated that it created a Post Review Unit in the fall of 2007 to address overall quality control issues in contract processes.

The Office of the Receiver also stated that it conducted a review of the overpayments identified in our report and the total reimbursement amount was less than \$60 and that collection would likely cost more. However, we disagree with the Office of the Receiver's conclusion that the reimbursement amount was less than \$60. In fact, one of the overpayments we identified, Corrections' staff requested reimbursement from the contractor for \$160 during our audit. Additionally, our review of invoices indicated that Corrections did not pay invoices according to the contract rates resulting in overpayments to one contractor totaling \$3,890. Corrections indicated that it reviewed the invoices and that the contractor either billed according to the contractor or the net errors amounted to small amounts. However, Corrections did not provide us with documentation to support its conclusions that the errors did not exist or were minimal. Therefore, we stand by our original analysis and conclusion that the contractor was overpaid. Further, related to our finding that Corrections paid seven invoices that included overtime even though it could not demonstrate compliance with overtime provisions, the Office of the Receiver stated that six invoices were paid at the appropriate rates. However, as we state in the report, our finding was that the contractors must obtain written approval for overtime from the prison's health care manager, chief medical officer, or designee and must submit a copy of the written approval with the monthly invoice. Our review found that Corrections paid invoices without this documentation.

Related to our recommendation that Corrections establish a quality control process to ensure that prisons pay rates that are consistent with contract terms, the Office of the Receiver stated that the Healthcare Invoice, Data and Provider Services Branch (HIDPSB) has developed and trained invoice processing staff to utilize resources to research contracts and rate agreements in order to ensure invoices are paid in accordance with contract or rate agreements terms and conditions. The Office of the Receiver also stated that it has implemented a two-phased system to ensure all existing and new contracts, contract amendments, and interim rate agreements are readily available for all invoice processing analysts including actively transmitting all rate information electronically to each analyst and placing the same information into labeled folders on the division server for easy access reference. In addition, single points of contract have been identified within the entities producing rate-related documents from which HIDPSB receives that data.

Regarding our recommendation to ensure that prison staff responsible for authorizing overtime adhere to Corrections' overtime policies and contract terms, the Office of the Receiver referred us to its previous discussion regarding management oversight and review of the spreadsheets that capture and tabulate bid calculations as one of the current quality control processes utilized to ensure accurate calculation of cost threshold and document retention for the bid process. Also, the Office of the Receiver stated that it created a Post Review Unit in the fall of 2007 to address overall quality control issues in contract processes.

Finally, related to our recommendation that Corrections evaluate its prisons and regional accounting offices' processes for paying invoices and identify weaknesses that prevent it from maximizing the discounts taken and complying with the CPPA, the Office of the Receiver stated it agrees with the recommendation. Specifically, its new contracting and invoice processing system that was being piloted at four institutions has been expanded to include three more prisons. This expansion will continue and additional prisons will be centralized at headquarters at the rate of approximately two every four weeks, to the extent unforeseen software, hardware, or other delaying barriers are not encountered, until all 33 prisons are centralized. The Office of the Receiver expects that when the system is completed, Corrections will gain efficiencies that will improve the payment time frames and thereby maximize the discounts taken. The Office of the Receiver anticipates completing implementation of the system by June 30, 2009.

Finding #13: Corrections fails to demonstrate that it complies fully with certain political reform act requirements.

Corrections lacks adequate controls to ensure that it complies with the duties and responsibilities outlined in the political reform act for filing officers. Specifically, Corrections could not demonstrate that all employees and consultants required to file statements of economic interests and seek approval before engaging in outside employment did so. We reviewed 124 statements and found

that seven employees did not complete their statements correctly and 78 filed their statements late. Also, we found that 14 employees did not file statements at all. Further, seven of nine prisons did not submit a copy of the statements for their health care consultants or the chief executive officer's written determination that their consultants were not required to comply with disclosure requirements.

We recommended that Corrections establish an effective process for tracking whether its designated employees, including consultants, have filed their statements of economic interests timely. We also recommended that Corrections review the statements of economic interests to ensure their accurate completion and to identify potential conflicts of interests. Further, we recommended that Corrections ensure that the chief executive officer retains his or her written determinations for consultants.

Corrections' Action: Partial corrective action taken.

The Office of the Receiver agrees with the recommendations to establish an effective process for tracking whether its designated employees, including consultants, have filed their statements of economic interests timely, and to review the statements of economic interests to ensure their accurate completion and to identify potential conflicts of interests. According to the Office of the Receiver, it determined that current Corrections' regulations do not specifically cover positions in the California Prison Health Care Services Division. However, it has established an action plan for the 2009 filing period that will entail the development of regulations to cover these positions. The Office of the Receiver also reported that it identified 122 designated positions similar to those that would be designated as subject to filing in accordance with Corrections' regulations and that employees in the designated positions were asked to complete Form 700, Statement of Economic Interests for the 2008 annual filing year. Additionally, the Office of the Receiver completed a database that identifies and tracks established, assuming, and departing designated positions. Furthermore, the Office of the Receiver stated that it has developed an action plan for the 2009 annual filing year that includes the following: (1) working collaboratively with the Fair Political Practices Commission to develop training classes for designated filers to ensure their understanding of the process, law, and filing requirements; (2) enhancing the current tracking database to ensure follow-up activities are conducted timely and add a compliance component to ensure the California Prison Health Care Services Division adheres fully to all applicable laws and regulations; (3) implementing a newly developed personnel management system to establish an alert process for all assuming and departing positions for Form 700 filing purposes; and (4) working closely with the California Prison Health Care Services Division contract unit to identify and track consultants for Form 700 filing purposes and potential conflict-of-interest activities.

Finally, the Office of the Receiver does not agree that registry consultants should be interpreted as "consultants" for purposes of annual conflict of interest disclosure purposes. According to the Office of the Receiver, it requested a legal opinion from Corrections' legal office in October 2007 but has not received a response. Therefore, the Office of the Receiver plans to request a legal opinion from attorneys of the California Prison Health Care Receivership Corporations no later than August 15, 2008.

Finding #14: Corrections' credentialing unit often failed to verify properly the credentials of registry contractors' providers.

The credentialing unit does not verify the status of all providers who treat inmate patients. Specifically, the credentialing unit does not perform database searches for providers who treat inmate patients outside of Corrections' facilities. The credentialing unit also does not perform database searches of providers who it classifies as allied health professionals, such as pharmacists, registered nurses, laboratory technicians, radiological technicians, dietitians, and physical therapists.

In addition, Corrections does not have a departmentwide policy directing the prisons to verify the credentials of these providers, which creates confusion and the risk that providers will not undergo any credentialing before performing services. The credentialing unit also does not perform database searches on all physicians and nurse practitioners who provide services to inmate patients. The credentialing unit performs a search only after the prisons submit a request.

Finally, the credentialing unit's database search method is inefficient. Specifically, providers' credentials are verified each time they move to another prison. According to Corrections' former credentialing coordinator, who is now the manager of the Plata Support Division's Pre-Employment Clearance Unit, based on information provided by the U.S. Department of Health and Human Services, she believed that because each prison has its own formal peer review process to further quality health care, federal law requires Corrections to register them as separate eligible entities for purposes of querying the databases. She also stated that Corrections' management has not formally adopted a written policy regarding her interpretation of federal law. This current process appears unnecessary and a waste of time and money.

We recommended that Corrections require the credentialing unit to verify the credentials of contracted providers who work in non-Corrections' facilities or, at a minimum, verify that these facilities have a rigorous process for verifying the credentials of their providers. Corrections should also establish a policy to define allied health professionals and to identify professionals who will be credentialed by the credentialing unit versus those credentialed by the prisons. We also recommended that Corrections require the credentialing unit to determine whether the credentials of those medical and allied health providers who are performing services at prisons under registry contracts have been verified. If not, the credentialing unit should verify them. Further, we recommended that Corrections ensure that prisons request National Practitioners Data Bank searches from the credentialing unit before allowing providers to perform services. Finally, we recommended that Corrections seek clarification from the U.S. Department of Health and Human Services regarding the criteria for eligible entities and whether or not all prisons can be combined into one eligible entity.

Corrections' Action: Partial corrective action taken.

According to the Office of the Receiver, it agrees with the recommendations and on August 30, 2007, it disseminated a contract provider policy that outlines the policy and procedure regarding what is required to credential contract providers that provide on-site services. The policy also defines allied health providers and details the providers that require credentialing. The Credentialing and Privileging Unit completes a pre-employment review on all designated licensed independent and allied health providers prior to services being started and for each individual institution the provider requests to work. This is done to gain better control and accountability of the providers, verify work performance of the providers, and ensure that providers that have been released from one prison for less than favorable cause are not gaining employment at another prison. The directive to comply with this pre-employment credential verification has been given to the health care management at all 33 institutions as well as regional and headquarters staff. Additionally, a new contract provider policy, also disseminated on August 30, 2007, instructs the Health Care Management and Institutional Personnel officers that they shall not hire any licensed independent provider until a credential verification has been completed and approved by headquarters' Credentialing and Privileging Unit and the medical contracts have had language added requiring a credential approval prior to a contract provider being allowed to provide services to each prison.

The Credentialing and Privileging Unit also compares reports to verify that a credential review and approval was completed for new hires. The Office of the Receiver reports that there are inconsistencies and compliance issues with the process that are being addressed. The Credentials Committee is developing a process and directive memo to health care management identifying the requirement, time frame to comply, and the consequences for failing to comply. The Receiver anticipates the memo to be completed and distributed by June 2008.

Additionally, related to the recommendation to require the credentialing unit to verify the credentials of contracted providers who work in non-Corrections facilities or, at a minimum, verify that these facilities have a rigorous process for verifying the credentials of their providers, the Office of the Receiver stated that the credentials committee has determined that the off-site services in licensed community hospitals will not require an additional credential review by Corrections as the licensed community facility is responsible for the credentialing and privileging activity and competency monitoring. Independent providers are and will be verified and approved by the Credentialing and Privileging Unit or the Credentials Committee prior to receiving a start or hire date commitment.

Finally, related to the recommendations regarding the National Practitioners Data Bank searches, the Office of the Receiver stated that with the establishment of the Corrections formal peer review structure within the Professional Practices Executive Committee, the Credentialing and Privileging Unit centrally using the National Practitioners Data Bank to complete all pre-employment credential activity, and the current implementation of a web-based credentialing IT solution, the issues we raised regarding the National Practitioners Data Bank reporting will be addressed.

