

High Risk Update—State Overtime Costs

A Variety of Factors Resulted in Significant Overtime Costs at the Departments of Mental Health and Developmental Services

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Departments of Mental Health and Developmental Services' responses as of December 2009

California Government Code, Section 8546.5, authorizes the Bureau of State Audits (bureau) to establish a process for identifying state agencies or issues that are at high risk for potential waste, fraud, abuse, and mismanagement or that have major challenges associated with their economy, efficiency, or effectiveness. The law also authorizes the bureau to audit any state agency that it identifies as being at high risk and to publish related reports at least once every two years.

In February 2009 the bureau issued a report titled *High Risk: The California State Auditor Has Designated the State Budget as a High-Risk Area* (2008-603). This report concluded that the State's budget condition should be added to the bureau's list of high-risk issues because of the current fiscal crisis and history of ongoing deficits. This current report, which addresses the significant amount of overtime compensation the State pays to its employees, is part of the bureau's continuing efforts to examine issues that will aid decision makers in finding areas of government that can be modified to help improve efficiency and effectiveness.

We focused our initial review of overtime costs on five state entities: the California Highway Patrol, the Department of Forestry and Fire Protection (Cal Fire), the Department of Veterans Affairs, the Department of Mental Health (Mental Health), and the Department of Developmental Services (Developmental Services). From these five entities, we further studied three—Cal Fire, Mental Health, and Developmental Services—because each had numerous individuals in one job classification code earning more than \$150,000 in overtime pay, which represented 50 percent of their total earnings during the five fiscal-year period we chose for review. We eventually narrowed our focus to two classifications of jobs—registered nurses-safety classification (nurses) at Napa State Hospital and psychiatric technician assistants at Sonoma Developmental Center—because employees in these classifications at each of the facilities earned a large portion of their total savings in overtime.

Finding #1: Employees working excessive amounts of overtime may compromise health and safety.

The focus on voluntary rather than mandatory overtime at Mental Health and Developmental Services, as required by their respective bargaining unit agreements (agreements), has resulted in a relatively small group of employees working many hours of overtime, while other individuals are working little or no overtime. For example, in

Review Highlights . . .

Our review of the State's overtime costs revealed the following:

- » *Employees at five entities, excluding the Department of Corrections and Rehabilitation, were paid at least \$1.3 billion of the more than \$2.1 billion in overtime pay during fiscal years 2003–04 through 2007–08.*
- » *Significant amounts of overtime were paid to a relatively small number of individuals in two job classifications at the departments of Mental Health (Mental Health) and Developmental Services (Developmental Services). For instance, in fiscal year 2007–08, at Mental Health's Napa State Hospital (Napa), 19, or 4 percent, of the 489 nurses in the registered nurse– safety classification averaged \$78,000 in regular pay and \$99,000 in overtime compensation.*
- » *According to various studies, individuals working excessive amounts of overtime may compromise their own and their patients' or consumers' health and safety.*
- » *One reason for the significant amounts of overtime at Napa and Developmental Services' Sonoma Developmental Center (Sonoma) is fluctuations in staffing ratios caused by the need to provide certain patients or consumers with one-on-one care.*

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- » Pursuant to their respective bargaining unit agreements (agreements), both Mental Health and Developmental Services allowed leave hours to be counted as time worked in calculating overtime. For instance, during our review of overtime at Sonoma, we identified one employee who was paid for 160 hours of overtime in one month, even though that same employee took 167 hours of leave during that same month.
- » State law was changed in February 2009 to no longer allow leave to be counted in computing overtime for the two job classifications we tested. However, this same state law indicates that it may be superseded by agreements ratified subsequent to the law's effective date that once again could contain provisions that allow employees' leave time to be counted as time worked in computing overtime.

fiscal year 2007–08, Mental Health's Napa State Hospital (Napa) paid \$9.6 million in overtime wages to its 489 nurses. However, \$1.9 million—20 percent of its total overtime costs—was paid to only 19 (4 percent) of these nurses. Similarly, in fiscal year 2007–08, Developmental Services' Sonoma Developmental Center (Sonoma) paid \$1.1 million—25 percent of the total overtime paid to psychiatric technician assistants—to only 27 (6 percent) of its 430 psychiatric technician assistants. Sonoma's psychiatric technician assistants were the largest overtime earners at Developmental Services.

Some nurses at Napa and psychiatric technician assistants at Sonoma work substantial amounts of overtime to meet internal staffing requirements, even though the vacancy rates were relatively low for these job classifications at the respective facilities in fiscal year 2007–08. We reviewed the payroll records for 10 nurses at Napa and 10 psychiatric technician assistants at Sonoma who earned significant amounts of overtime pay in fiscal year 2007–08 and found that these individuals worked an average of 36 hours of overtime each week. These hours were usually in addition to the employee's regular 40-hour workweek. In fact, we identified a nurse employed at Napa who earned \$733,000, or 66 percent of his total earnings, in overtime during fiscal years 2003–04 through 2007–08. This amounts to about 51 overtime hours each week during the five-year period.

Based on our review, 38 nurses at Napa and 65 psychiatric technician assistants at Sonoma worked, on average, at least 20 hours of overtime each week during fiscal year 2007–08. At the same time, 451 nurses at Napa (92 percent) and 365 psychiatric technician assistants at Sonoma (85 percent) worked fewer than 20 hours of overtime each week, on average. If the overtime had been distributed equally among all nurses and psychiatric technician assistants, they would have worked only six and eight hours of overtime per week on average, respectively. This closely compares with the results of a 2004 National Sample Survey of Registered Nurses conducted by the U.S. Department of Health and Human Services that found that the typical full-time registered nurse works an average of 7.5 hours of overtime each week.

Although nothing came to our attention indicating that the overtime at Napa and Sonoma affected the quality of care provided to patients or consumers, an August 2004 study published in *Health Affairs* entitled "The Working Hours of Hospital Nurses and Patient Safety" suggested that working substantial amounts of overtime could increase the risk of medical errors. For example, the study found that when a nurse worked a shift lasting more than 12.5 hours, the incidence of medical errors tripled. The study also found that the risk of errors increased when a nurse worked more than 40 or 50 hours in a week. Another study published in the *American Journal of Critical Care* entitled "Effects of Critical Care Nurses' Work Hours on Vigilance and Patients' Safety Issues" in 2006 indicated that these results could be applied to nurses and to psychiatric technician assistants. This study also indicated that experience in other industries suggests that accident rates increase when employees work 12 hours or more in a day.

Finally, a 2004 study by the U.S. Department of Health and Human Services, Centers for Disease Control and Prevention, National Institute for Occupational Safety and Health, entitled "Overtime and

Extended Work Shifts: Recent Findings on Illnesses, Injuries, and Health Behaviors” indicated that long hours also can increase the health and safety risks to the employee. Specifically, the report cited many studies in which overtime was associated with poorer perceived general health, more illnesses, increased injury rates, and increased mortality. Injuries and poor performance were particularly noted on long shifts and when employees worked 12-hour shifts combined with working more than 40 hours a week. Thus, nurses and psychiatric technician assistants who work long shifts or more than 40 hours a week could place patients or consumers—and the employees themselves—at greater health and safety risk. Despite the increased risks associated with working long hours, our testing showed that during December 2007 and January 2008, nine of the 10 Napa nurses we reviewed regularly worked 12 or more hours in a day and on average worked more than 34 hours of overtime per week. Similarly, eight of the 10 psychiatric technician assistants we reviewed at Sonoma regularly worked 12 or more hours in a day and on average worked more than 35 hours of overtime per week.

To make certain that patients and consumers are provided with an adequate level of care, and that the health and safety of the employees, patients, and consumers are protected, we recommended that Mental Health and Developmental Services encourage Department of Personnel Administration (Personnel Administration)—which is responsible for negotiating labor agreements with employee bargaining units—to include provisions in future collective agreements to cap the number of voluntary overtime hours an employee can work and/or to require the departments to ensure that overtime hours are distributed more evenly among staff. One solution would be to give volunteers who have worked the least amount of overtime preference over volunteers who already have worked significant amounts of overtime.

Mental Health’s Action: Pending.

Mental Health stated it will raise the issue of having staff with the least amount of overtime receive preference over employees who have worked significant amounts of overtime.

Developmental Services’ Action: Partial corrective action taken.

Developmental Services states that the decision-making process for staffing and supervision continues to be influenced by the health and safety of consumers and retaining the facilities’ certification with the Federal Centers for Medicare and Medicaid Services. However, Developmental Services stated it informed Personnel Administration of the bureau’s recommendation and it will work closely with them in future overtime contract negotiations. Also, Sonoma’s executive teams have implemented a weekly meeting to review overtime issues, activities, and actions. In addition, Sonoma is using existing and new reports to improve overtime monitoring.

Finding #2: Several factors cause the need for significant amounts of overtime.

The annual authorized positions agreed to by state hospitals, Mental Health, and the Department of Finance (Finance) do not take into account fluctuations in patient needs, resulting in the need for overtime to meet the monthly, weekly, and sometimes daily changes in staffing required to provide proper care to patients. With assistance from its respective facilities, Mental Health determines the number of positions needed for the coming year based on the department’s estimated patient needs and population. However, the estimate of positions needed does not take into consideration the need for certain patients to receive more intensive care, such as one-on-one observation. Therefore, mental health hospitals prepare internal staffing ratios in order to meet the fluctuating needs of their patients. These internal staffing ratios are based on the average number of patients each level-of-care staff member will monitor, which then dictates the ratios needed. In some of the residential units at Napa, the internal staffing ratios are double the minimum staffing ratios established by the Department of Public Health (Public Health). Additionally, some of Napa’s internal staffing ratios include a fixed number of staff to meet the need for one-on-one observation. However, because the Public Health’s annual authorized positions are generally insufficient to meet actual staffing needs, the facilities use overtime to meet their internal staffing ratios for level-of-care staff.

According to the assistant deputy director of Long-Term Care Services at Mental Health, the impact of federal law changes such as the Family Medical Leave Act (family leave), Enhanced Industrial Disability Leave (enhanced leave), and additional negotiated mandatory training and/or educational leave days has led to an overwhelming use of overtime to sustain the required staffing ratios in the state hospitals. When the current relief factor was established, it took into account a change in the number of holidays and the current average use of sick time and educational leave, among other things. All these issues were before implementation of family leave, enhanced leave, and the current consent judgment requirements, leaving a very outdated relief factor that results in overtime to cover for these shortages. As an example, the enhancement plan (the implementation tool for the consent judgment) requires significant hours of training regarding new processes and training to implement a new electronic clinical data tracking system. It also requires computer use and basic computer skills from job classifications that have not historically required these training hours.

As recommended by the deputy director of Public Health's Center for Health Care Quality, and as required by law, staffing for patients in general acute care hospitals is based on the patients' needs. Evaluations performed by trained experts at Napa may determine that patients require a higher level of care than can be provided with the minimum staffing ratios established by Public Health. For example, at Napa, the nurse administrator, the clinical administrator, and the program's management staff determine the level-of-care staffing needs for each residential unit. Based on this assessment of patients' level-of-care needs within these units, Napa develops its internal staffing ratios, which, as previously noted, may exceed the legally mandated minimum staffing requirements. For instance, one program at Napa includes eight residential units with three levels of care: acute psychiatric, skilled nursing, and intermediate care. This program houses individuals with more serious physical or complicated diagnostic conditions and multiple medical as well as psychiatric problems that require a higher level of observation from staff.

Because of recent furloughs and potential layoffs of level-of-care staff, overtime at Mental Health most likely will increase, adding to the State's overtime costs. Our testing was performed for fiscal year 2007-08, a year in which Mental Health had high overtime costs. In December 2008, in an attempt to reduce the State's spending, the governor issued an executive order directing Personnel Administration to implement a furlough plan. This plan required most state employees to take two unpaid days off each month, beginning in February 2009. Moreover, in July 2009, Executive Order S-13-09 was implemented, adding a third unpaid furlough day each month. For facilities such as Napa that provide services 24 hours a day, seven days a week, the employees accrue their unpaid furlough days and use them when feasible. Additionally, Mental Health has required its facilities to provide layoff notices to staff. Napa needs to ensure that an adequate number of licensed individuals are available to meet mandated and/or required internal staffing needs. Napa already relies on overtime to meet fluctuations in staffing ratios, and the impact on staffing levels due to furloughs and layoffs likely will result in additional overtime.

We also found that Napa occasionally overstaffed some of its residential units, having more level-of-care staff on duty than necessary to meet the internal staffing ratio. Specifically, within Program 4, Napa was overstaffed on six of the 10 days we tested during fiscal year 2007-08. According to Napa's central staffing officer, the overstaffing was due to the designated staffing units not accurately reporting patient and staffing needs to the central staffing office. However, based on discussions with Finance's Office of State Audits and Evaluations and the results of its audit of Mental Health's budget dated November 2008, the Legislative Analyst's Office has suggested that an independent consultant evaluate workload distribution, staffing ratios, and overtime at Mental Health. Among other things, Finance's audit concluded that the current staffing model might not reflect the true hospital workload and the hospital may not be using staff efficiently. Although no time frame has been set for its commencement, if the evaluation concludes that current staffing ratios are unwarranted or that staff are not being used efficiently, an updated staffing model that reflects the accurate hospital workload could offset some of the increased overtime costs.

The assistant deputy director of Long-Term Care Services at Mental Health agrees with the Legislative Analyst's Office recommendation to hire an independent consultant to perform a workload staffing study. Mental Health feels the staffing study will allow for changes to the existing ratios to better reflect the reality of staff workload. However, Mental Health would like to hold off on the study until the hospitals have reached and sustained full compliance with the consent judgment, which is expected in November 2011, in order to allow staff to focus their full attention on their compliance efforts.

To ensure that all overtime hours worked are necessary, and to protect the health and safety of its employees and patients, we recommended that Mental Health implement the Legislative Analyst's Office's suggestion of hiring an independent consultant to identify improvements necessary to the current staffing model of Mental Health's hospitals. The staffing levels at Mental Health may need to be adjusted, depending on the outcome of the consultant's evaluation.

Mental Health's Action: Pending.

According to Mental Health, it entered into a consent judgment with the United States Department of Justice under the Civil Rights of Institutionalized Persons Act on May 2, 2006. Since that time, Mental Health has worked diligently to implement new staffing standards included in the agreement. Once fully compliant, Mental Health will consider reevaluating staffing needs by requesting an augmentation to the state hospitals appropriation to fund the study in fiscal year 2011–12.

Finding #3: Agreements allowed leave time taken to count as time worked in calculating overtime payments.

Overtime provisions contained in the agreements for nurses and psychiatric technician assistants, bargaining units 17 and 18, respectively, contributed to the State's substantial overtime costs during fiscal years 2003–04 through 2007–08. Specifically, with the exception of sick leave for psychiatric technician assistants, the overtime provisions for bargaining unit 18 allowed employees to include hours they took as paid leave when computing overtime compensation. A similar provision was included in bargaining unit 17's agreement, but includes sick leave. Thus, for example, a nurse could use eight leave hours, including sick leave, to cover his or her regular shift, work an alternate eight-hour overtime shift during the same day, and ultimately earn pay for 20 hours in the same day (eight hours times the 1.5 overtime pay rate plus eight hours of paid leave). Therefore, staff covered by these agreements were paid at the overtime rate even though they may not actually have worked more than 40 hours during the week or more than eight hours in one day.

A new state law overrides these overtime provisions in current agreements and will reduce the State's overtime costs. California Government Code, Section 19844.1, which became effective in February 2009, provides that periods of paid or unpaid leave shall not be considered as time worked for the purpose of computing overtime compensation. Therefore, employees covered by the agreements for bargaining units 17 and 18 are paid overtime only if their actual hours worked cause them to exceed 40 hours per week or eight hours per day. However, language in Section 19844.1 indicates that agreements ratified after the effective date of the section may contain provisions that require certain entities, including Mental Health and Developmental Services, to again include periods of paid and unpaid leave as time worked in the calculation of overtime.

To ensure that the State is maximizing the use of funds spent on patients and consumers, we recommended that Mental Health and Developmental Services encourage Personnel Administration to resist the inclusion of provisions in agreements that permit any type of leave to be counted as time worked for the purpose of computing overtime compensation.

Mental Health's Action: None.

Mental Health did not directly address the recommendation to encourage Personnel Administration to resist the inclusion of provisions in agreements that permit any type of leave to be counted as time worked for the purpose of computing overtime compensation.

Developmental Services' Action: Pending.

Developmental Services stated it informed Personnel Administration of the bureau's recommendation and it will work closely with them in future overtime contract negotiations.

Finding #4: Weak internal controls allowed over- and underpayments of overtime.

Our testing identified weaknesses in the internal controls at both Napa and Sonoma. Specifically, we found instances in which employees were overpaid or underpaid for overtime worked, instances when timekeeping and attendance records were not completed properly, and instances in which we were unable to locate timekeeping records at Sonoma.

During our review of 10 employees at Napa for December 2007 and January 2008, we found several discrepancies between attendance records and the payroll records. These discrepancies caused several over- and underpayments of overtime made to employees at Napa. Our analysis revealed five such errors in the two months we tested. For example, payroll staff at Napa erroneously omitted from the attendance records used to calculate overtime payments the overtime hours worked by and supported in the timekeeping records, causing over- and underpayments. Napa's human resources manager stated that these types of over- and underpayments were due to clerical error.

Finance identified similar issues at Napa during a review of internal controls conducted from July 2007 through December 2007. Specifically, the report cited inadequate personnel practices that do not provide reasonable assurance that attendance records are accurate and that payroll is proper, especially regarding overtime. As a result of its review, Finance made several recommendations to Mental Health. Among these was that Napa develop adequate timekeeping procedures to ensure that attendance records are adequately prepared, certified, and retained for audits. Although Napa has written timekeeping procedures, they were not always followed. For example, although Napa requires that the shift lead, unit supervisor, and nursing coordinator certify the accuracy of attendance sign-in sheets by signing them, we identified instances in which not all the authorizing signatures were present.

Finance also recommended that Napa improve its overtime reviews and preapprovals and include a second-level review outside the unit of the individual working overtime, and that these reviews be documented adequately in the personnel records. According to Napa's corrective action plan, as of April 1, 2008, overtime must be pre-approved by Napa's Central Staffing Office. However, for the five days we tested after this date, we identified four days when the tested unit did not obtain the required preapproval.

In addition, Napa's unit sign-in sheets and authorizations for extra hours were not always completed properly. For example, we noted instances in which the required authorizations were missing, the reasons for the overtime were not provided, and the number of overtime hours worked was not included. Finally, Finance recommended that Napa conduct random overtime auditing to help reduce fraud and abuse. Mental Health's October 29, 2008, corrective action plan stated that as of April 2008 Napa had conducted random overtime audits. However, Napa's human resources manager contradicted this assertion, stating that it has not performed any random overtime audits because of the combination of furloughs and the current overtime investigations of some employees that are taking significant staffing resources.

We also found several discrepancies at Sonoma between attendance records and the payroll records that caused over- and underpayments during December 2007 and January 2008, for the 10 employees reviewed. Our analysis revealed six such errors in the two months we tested. For example, some of the overpayments at Sonoma occurred because sick leave was counted as time worked for the purpose of calculating overtime payments, even though this practice is prohibited under the terms of the bargaining unit agreement. Sonoma's human resources manager attributed the mistakes to human error because personnel staff must enter information for hundreds of staff members into numerous complicated systems.

Sonoma uses overtime slips as its timekeeping records to approve and support its employees' overtime hours worked. We tested two employees' overtime slips for December 2007 and January 2008. Sonoma was able to locate only 96 of the 100 overtime slips it should have had on file for this period.

To improve internal controls over payroll processing, we recommended that:

- Napa and Sonoma research the overtime over- and underpayments we noted and make whatever payments or collections necessary to compensate their employees accurately for overtime earned.
- Napa and Sonoma review, revise, and follow procedures to ensure that their overtime documentation is completed properly; that timekeeping staff are aware of the overtime provisions of the various laws, regulations, and bargaining unit agreements; and that staff who work overtime are paid the correct amount.
- Mental Health fully implement Finance's recommendations cited in its report on Mental Health's internal controls dated December 2007.

Sonoma's Action: Partial corrective action taken.

According to Sonoma, the following have been implemented related to our recommendations:

- Sonoma worked with Developmental Services headquarters to reconcile the payment errors identified during the bureau's review and submitted the corrections to the State Controller's Office for processing.
- Sonoma has developed an ongoing process to audit the compensation transactions in an effort to avoid payment errors in the future. In addition, it provided training to all its human resources transaction personnel and timekeepers of applicable laws, regulations, contracts, rules, and policies. It also plans to provide training to all its managers and supervisors responsible for approving employees' time.

Napa's Action: Partial corrective action taken.

According to Napa, the following have been implemented related to our recommendations:

- All necessary salary adjustments that were identified during the bureau's review have been made and processed by the State Controller's Office.
- In October and November 2009 it informed its management team to carefully review timekeeping documents since their signatures on these documents indicate they have reviewed and approved the time.

Mental Health's Action: Pending.

Napa stated that, because of its staffs work on two investigations/audits of alleged overtime fraud and the effect of furlough days, it was unable to implement Finance's recommendation that it perform random audits of overtime worked. Napa also stated that, as of November 2009, the two investigations/audits previously mentioned were completed and it would begin conducting the recommended random audits in January 2010. These random audits are intended to reduce the instances of fraud and abuse.