

Department of Health and Human Services

**OFFICE OF
INSPECTOR GENERAL**

**NEW JERSEY IMPROPERLY CLAIMED
TENS OF MILLIONS FOR MEDICAID
SCHOOL-BASED ADMINISTRATIVE
COSTS BASED ON RANDOM
MOMENT SAMPLING THAT DID NOT
MEET FEDERAL REQUIREMENTS**

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**November 2019
A-02-17-01006**

Office of Inspector General

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Report in Brief

Date: November 2019

Report No. A-02-17-01006

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



Why OIG Did This Audit

As part of its oversight activities, the Office of Inspector General (OIG) is conducting a series of audits of Medicaid school-based costs claimed by States that used contingency fee contractors. In New Jersey, a prior OIG audit found that a contingency fee contractor made incorrect or unsupported changes to random moment timestudies used to calculate payment rates for Medicaid school-based health services. Because the contractor used similar timestudies to calculate Medicaid school-based *administrative* costs, we initiated this audit.

The objective of our audit was to determine whether New Jersey's use of random moment sampling in claiming Medicaid school-based administrative costs met Federal requirements.

How OIG Did This Audit

Our audit covered \$63.8 million in Federal Medicaid school-based administrative costs claimed by New Jersey for the period October 2011 through June 2016. Specifically, we reviewed New Jersey's random moment sampling methodology and a statistical sample that included 227 activity moments.

New Jersey Improperly Claimed Tens of Millions for Medicaid School-Based Administrative Costs Based on Random Moment Sampling That Did Not Meet Federal Requirements

What OIG Found

The random moment sampling methodology used by New Jersey to claim Medicaid school-based administrative costs did not meet Federal requirements. Specifically, it did not comply with statistical sampling requirements and was not adequately supported. Also, the methodology did not comply with New Jersey's approved cost allocation plan. In addition, New Jersey's coding of what school employees were doing during random moments was mostly incorrect or unsupported.

The random moment sampling methodology used by New Jersey did not comply with Federal requirements because New Jersey disregarded CMS guidance and assurances it made to CMS. Therefore, we determined that New Jersey claimed \$63.8 million in unallowable Federal Medicaid reimbursement.

What OIG Recommends and New Jersey Comments

We recommend that New Jersey refund \$63.8 million in Federal Medicaid payments and revise its random moment sampling methodology to comply with Federal requirements, its implementation plan, CMS guidance, and assurances it made to CMS.

In written comments on our draft report, New Jersey did not concur with our findings and described steps it has taken to modify its data system. New Jersey asserted that it has worked in good faith with CMS to develop a revised random moment sampling methodology to claim school-based Medicaid costs in compliance with Federal requirements. It also submitted a memorandum from its contractor providing a detailed explanation of how New Jersey operated under the proposed implementation plan while waiting for CMS to approve that plan. New Jersey also informed us that CMS approved its implementation plan.

After reviewing New Jersey's comments and the contractor's memorandum, we reclassified two sampled activity moments that did not affect our recommended disallowance and clarified one sub-recommendation based on CMS's approval of the implementation plan. We maintain that our findings and recommendations, as revised, are valid. The approved implementation plan was effective October 1, 2016, which was after the end of our audit period.

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INTRODUCTION

WHY WE DID THIS AUDIT

As part of its oversight activities, the Office of Inspector General (OIG) is conducting a series of audits of Medicaid school-based costs claimed by States that used contingency fee contractors. In New Jersey, a prior OIG audit found that a contingency fee contractor made incorrect or unsupported changes to random moment timestudies used to calculate payment rates for Medicaid school-based health services.¹ Because the contractor used similar timestudies to calculate Medicaid school-based *administrative* costs, we initiated this audit. Appendix B lists recent OIG reports related to Medicaid school-based audits.

OBJECTIVE

Our objective was to determine whether the New Jersey Department of Human Services' (State agency's) use of random moment sampling in claiming Medicaid school-based administrative costs met Federal requirements.

BACKGROUND

The Medicaid Program

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, the Centers for Medicare & Medicaid Services (CMS) administers the Medicaid 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. In New Jersey, the State agency administers the Medicaid program.

The Individuals with Disabilities Education Act

States may claim Federal Medicaid funds for health services provided by schools under the Individuals with Disabilities Education Act (IDEA), which requires schools to provide special education and related services for children with disabilities. Related services are services required to assist a child with a disability and may include healthcare services covered by Medicaid and non-healthcare services.

¹ *New Jersey Claimed Hundreds of Millions in Unallowable or Unsupported Medicaid School-Based Reimbursement (A-02-15-01010)*, issued November 27, 2017.

Medicaid School-Based Administrative Activities

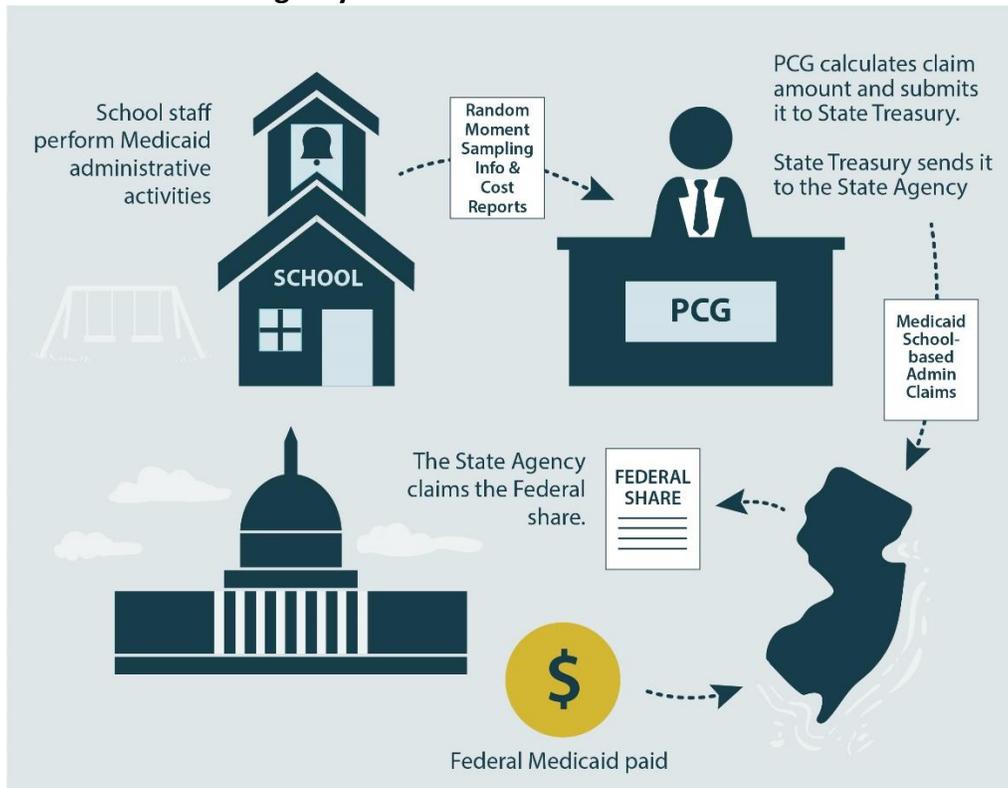
A State agency may claim Federal Medicaid funds for activities necessary for the “proper and efficient administration” of its State plan (Social Security Act § 1903(a)(7)). These administrative activities are functions other than providing direct medical services to Medicaid beneficiaries and may include school-based activities by school districts (e.g., Medicaid outreach, assistance with processing Medicaid applications, and assisting beneficiaries with receiving access to Medicaid services).

New Jersey’s Medicaid Administrative Claiming Program

The State agency claims Federal reimbursement for Medicaid administrative activities performed by schools through its Medicaid Administrative Claiming (MAC) program. The New Jersey Department of the Treasury (State Treasury) is responsible for most MAC program functions. The State Treasury entered into a contingency fee contract arrangement with Public Consulting Group (PCG)² to assist with MAC program cost calculations. Under the contract, PCG received a percentage of the Federal claims submitted as a result of its calculation.

Figure 1 illustrates how the State agency claims Medicaid school-based administrative activities.

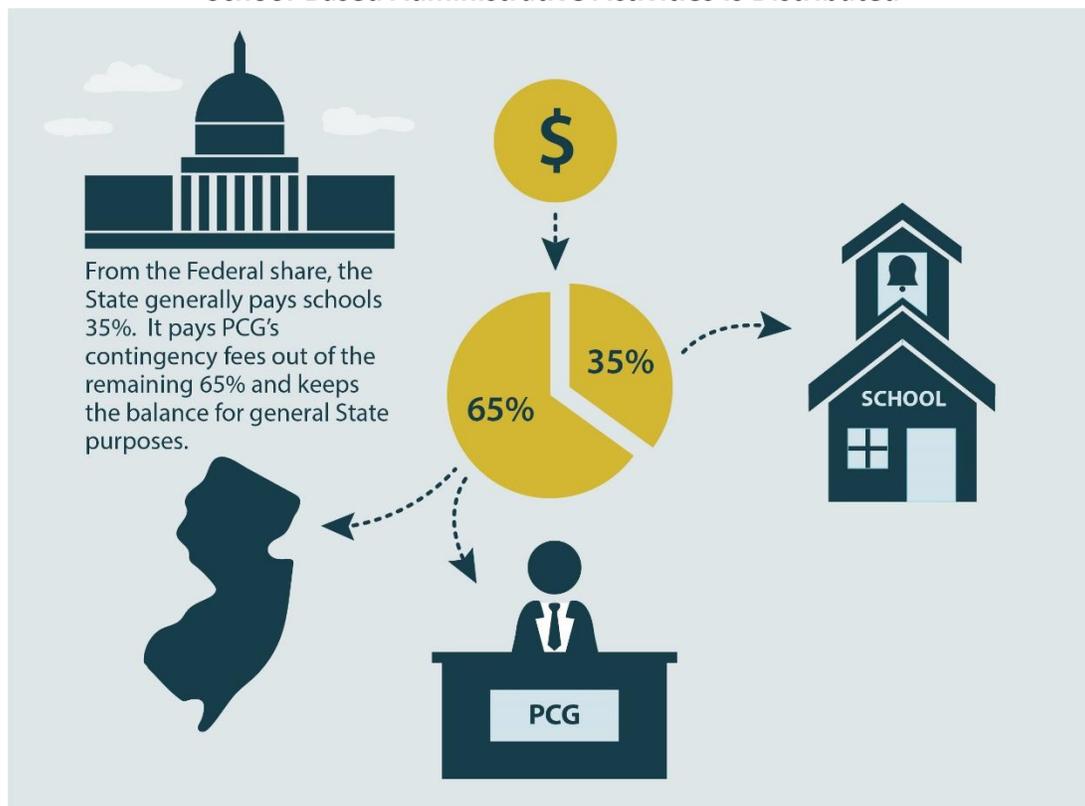
Figure 1: How the State Agency Claims Medicaid School-Based Administrative Activities



² PCG was awarded the contract in 2005. In 2011, PCG implemented new claiming systems and methodologies that have since been upgraded and revised.

New Jersey pays schools a percentage of Federal Medicaid funds obtained for administrative activities, pays PCG its contingency fee, and keeps the remainder. Figure 2 illustrates how the Federal share of Medicaid reimbursement for school-based administrative activities is distributed.

Figure 2: How the Federal Share of Medicaid Reimbursement for School-Based Administrative Activities Is Distributed



Medicaid School-Based Administrative Costs: CMS Guidance and Federal Requirements

Evaluating Children Who May Qualify for Special Education

CMS's *Medicaid School-Based Administrative Claiming Guide* (CMS Guide) explains how State agencies and schools may be reimbursed for performing MAC activities, including those associated with the provision of related health services for children with disabilities.³ To determine a child's special or specific educational needs (including related health services), schools must conduct an evaluation to assess whether the child has a disability and is therefore qualified for special education. Schools must prepare an individualized education plan (IEP) for

³ CMS, *Medicaid School-Based Administrative Claiming Guide* (issued May 2003). Available online at <https://www.cms.gov/research-statistics-data-and-systems/computer-data-and-systems/medicaidbudgetexpendsystem/downloads/schoolhealthsvcs.pdf>. Accessed on July 25, 2019.

every child that qualifies for special education.⁴ Pre-IEP activities, including those designed to identify whether the child had a disability and the development of the IEP, are not claimable MAC expenditures (CMS Guide, pp. 18, 56-57). Once a child's IEP is established, Medicaid will pay for administrative activities directly related to the provision of Medicaid-covered services identified in the child's IEP.⁵

Using Random Moment Sampling to Charge Personnel Costs

A State agency may only claim Federal funds for MAC activities under a cost allocation plan approved by the Department of Health and Human Services (HHS) Cost Allocation Services (formerly known as the Division of Cost Allocation) after consulting with CMS.⁶ The plan must be designed so that the State agency only claims costs in accordance with Federal regulations (45 CFR § 95.507).

Federal regulations require personnel costs charged to Federal programs be based on records that accurately reflect the work performed.⁷ Random moment sampling, as described in the Exhibit, is an approved method for charging personnel costs when approved by HHS Cost Allocation Services. If a State agency elects to use random moment sampling, its methodology must meet relevant Federal statistical sampling standards (45 CFR § 75.430(i)(5)).⁸ These include:

Exhibit: Random Moment Sampling

Random moment sampling, which makes use of random moment timestudies, is a statistical method used to identify the percentage of time personnel spent on a particular activity. It generally must reflect all of the time used and activities performed (whether or not allowable under Medicaid) by school district staff participating in the Medicaid program.

⁴ The IEP includes related services, which may contain Medicaid-covered health services. The IEP is prepared by a team that reviews the plan at least once a year (CMS Guide, pp. 55-57).

⁵ Administrative activities include assisting beneficiaries with obtaining Medicaid-covered transportation; Medicaid-related translation services; Medicaid program planning, policy development, and interagency coordination; and assistance with processing Medicaid applications.

⁶ A State agency may claim Federal funds based on a proposed cost allocation plan or amendment submitted to Cost Allocation Services but must retroactively adjust its claims in accordance with Cost Allocation Service's eventual decision (45 CFR § 95.517; CMS Guide, pp. 19-20, 44-45).

⁷ These regulations (45 CFR § 75.430(i)(1)) are part of the cost principles applicable to HHS grants, including those for Medicaid administrative costs. Previously, the cost principles were part of Office of Management and Budget (OMB) Circular A-87, which was located at 2 CFR part 225. OMB subsequently consolidated and streamlined its guidance, which is now located at 2 CFR part 200. HHS adopted the OMB guidance as 45 CFR part 75.

⁸ Federal regulations (45 CFR § 75.430(i)(5)(iii)) allow for an exception from these statistical sampling standards if the cognizant agency concludes that the system proposed will result in lower costs to Federal awards than a system that complies with the standards. The CMS Guide recognizes this exception, as long as the validity and reliability of the methodology are acceptable to CMS (see page 41).

- The sampling universe must include all of the employees whose costs are to be allocated based on the sample results (45 CFR § 75.430(i)(5)(i)(A)).
- The entire time period involved must be covered by the sample (45 CFR § 75.430(i)(5)(i)(B)).
- The results must be statistically valid and applied to the period being sampled (45 CFR § 75.430(i)(5)(i)(C)).

Results of random moment sampling must be sufficiently detailed to determine whether the claimed activities are necessary for the proper and efficient administration of the State plan. Appendix C contains details of random moment sampling documentation requirements.

New Jersey’s Cost Allocation Plan and Proposed Random Moment Sampling Methodology

In 2005, the Division of Cost Allocation approved the State agency’s cost allocation plan implementing a revised random moment sampling methodology.⁹ Among other things, the cost allocation plan required the State agency to (1) include all moments worked (i.e., employees’ workdays), (2) not include staff who did not perform Medicaid administrative activities such as contracted staff who performed nothing but direct health services, (3) record sampled moments for vacant positions as invalid, (4) provide questionnaires to participants only when their response was requested, (5) have participants code the activity they were performing, (6) include student names and case-related information to maintain an audit trail, and (7) be validated by a 10-percent sub-sample.

PCG developed and administered a revised random moment sampling methodology for the State’s Medicaid claim calculations. On a quarterly basis, school districts that participated in PCG’s random moment timestudies submitted to PCG a list of all school district staff participating in the Medicaid program and each school’s calendar of working days. PCG consolidated the lists into a State-wide pool, and employees and available moments were statistically selected for participation in random moment timestudies. At a randomly selected “moment,” a participant was required to identify the activity they were performing. Each moment was assigned a Medicaid-eligible or non-Medicaid-eligible activity code. The results were aggregated and used to allocate personnel costs to the Medicaid program.

⁹ The State agency revised its methodology based on the release of the CMS Guide in 2003.

In 2011, the State agency requested CMS's permission to use this new random moment sampling methodology as part of an amendment to its State plan.¹⁰ In its request, the State agency assured CMS that the new methodology was designed to capture 100 percent of employees' time and would ensure that no participants are added or deleted once a calendar quarter closes. The State agency also assured CMS that the sample would be maintained so that it could be duplicated for audit purposes.

HOW WE CONDUCTED THIS AUDIT

Our audit covered \$63,786,406 in Federal Medicaid school-based administrative costs claimed by the State agency for the period October 2011 through June 2016. We reviewed the random moment sampling methodology used to allocate costs to determine if it complied with Federal regulations, CMS guidance, and the State agency's approved cost allocation plan. We also reviewed a stratified random sample that included 227 random activity moments (selected from 19 quarterly timestudies) to determine if their associated coding was adequately supported by the State agency and PCG.

We did not review the overall internal control structure of the State agency or PCG. Rather, we limited our review to those controls related to the State agency's methodology for claiming Medicaid school-based administration costs.

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

Appendix A contains the details of our audit scope and methodology, Appendix D contains our sample design and methodology, and Appendix E contains our sample results and estimates.

FINDINGS

The random moment sampling methodology used by the State agency to claim Medicaid school-based administrative costs did not meet Federal requirements. Specifically, it did not comply with Federal statistical sampling requirements and was not adequately supported.

¹⁰ The State agency submitted a proposed State plan amendment for approval to claim direct medical costs using the new random moment sampling methodology and said that it intended to use the new methodology to claim administrative costs. The State agency began using the methodology on October 1, 2011, which it described in an implementation plan that accompanied its proposed State plan amendment and in assurances provided in response to CMS questions. On July 5, 2019, CMS approved the implementation plan prospectively, as of October 1, 2016, which is after the end of our audit period. CMS conditioned its approval on, among other things, the State agency agreeing that the methodology described in the implementation plan would serve as the basis for prospective Federal claims beginning October 1, 2016, and the State agency submitting a cost allocation plan amendment referencing the approved methodology.

Also, the methodology did not comply with the State agency's approved cost allocation plan. In addition, the State agency's coding of what school employees were doing during random moments was mostly incorrect or unsupported. Therefore, we determined that the \$63,786,406 the State agency claimed for Federal Medicaid reimbursement was unallowable.

The random moment sampling methodology used by the State agency did not comply with Federal requirements because the State agency disregarded CMS guidance and assurances it made to CMS.

METHODOLOGY DID NOT MEET FEDERAL REQUIREMENTS FOR STATISTICAL SAMPLING

Random moment sampling methods used to allocate salaries and wages to Federal awards must cover the entire time period unless CMS concludes that an exception would apply (45 CFR § 75.430(i)(5)).¹¹ Contrary to Federal regulations, the State agency's random moment sampling did not cover the entire time period. PCG documentation and our interviews with school district officials confirmed that PCG's random moment sampling methodology was not designed to sample moments from all work hours during the day or during the month of September. Therefore, it did not meet Federal requirements for statistical sampling.¹²

Public Consulting Group Did Not Sample From All Work Hours

PCG designed its random moment sampling methodology to select moments only from a portion of employees' workdays.

PCG maintained a calendar of school districts' work hours from which to randomly sample moments. The calendar was to be compiled from information reported by individual school districts, as each district often has many schools with different start and end times. However, for State fiscal years (SFYs)¹³ 2012 and 2014,¹⁴ PCG's calendar for each school district had a single start and end time. Moreover, its calendars included an unusually short workday for most school districts, including many that reported a workday of less than 5½ hours and one with a workday of 4 hours and 10 minutes. Figure 3 (following page) illustrates how these limited schedules resulted in randomly selected moments concentrated during the middle of the day.

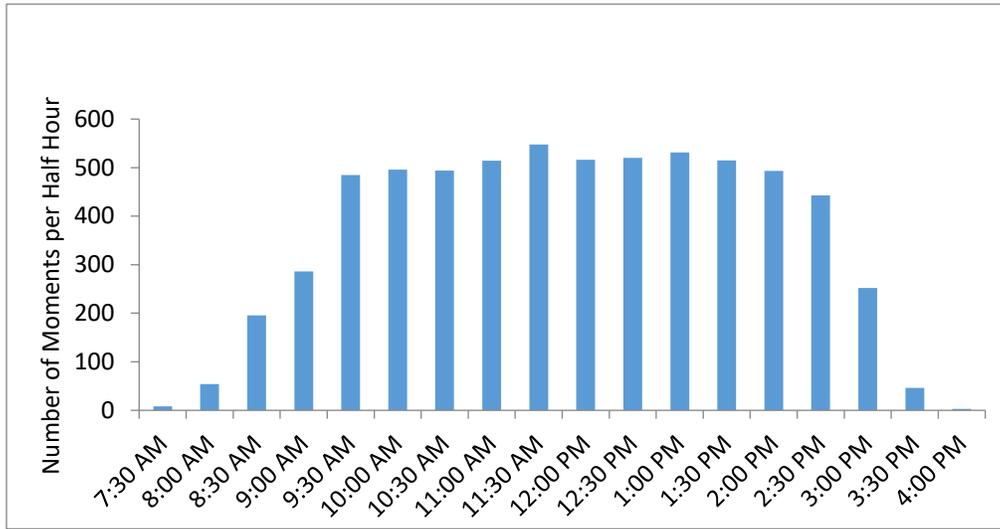
¹¹ See footnote 8. Less than full compliance may be allowed if CMS determines that the chosen methodology results in lower cost to the Federal awards.

¹² The cost allocation plan also required the random moment sampling to include all time spent during the workday. In correspondence related to the implementation plan, the State agency assured CMS that the proposed methodology is "designed to capture 100% of [staff] time." The CMS guide (page 8) states that "the [timestudy] must reflect all of the time and activities" of the employees participating in the program. (Emphasis in original.)

¹³ The SFY is July 1 through June 30 of the following year.

¹⁴ PCG did not provide calendar times for SFY 2013 but did provide the random moment sample for SFY 2013.

Figure 3: Distribution of Randomly Selected Moments (January Through March 2013)



For SFYs 2015 and 2016, PCG’s calendars included individual school times for some school districts and some specific employees’ hours. However, for random moment selection purposes, the vast majority of school districts had the same start time (8:30 a.m.) and number of hours in the workday (6 hours and 45 minutes). Therefore, the vast majority of school districts’ moments were only sampled between 8:30 a.m. and 3:15 p.m.

We interviewed officials from 50 judgmentally selected school districts from New Jersey’s nearly 300 school districts and found the following:

- None of the school district officials agreed that the work hours listed for their district on PCG’s calendars were accurate. For example, most school districts reported that individual schools operated on a staggered schedule. Further, none of the school districts agreed that they started at 8:30 a.m. and had a district-wide school day that lasted 6 hours and 45 minutes.
- Most school district officials stated that they did not provide individual school or staff work hours to PCG. Many stated that they reported the latest start time and earliest end time for schools in their district or estimated schedules for when district staff would be working.
- Some school district officials stated that they reported the duration of the school day—not the start and end times for employees in their district. Others reported the operating hours for special education administrative offices.

Public Consulting Group Did Not Sample Moments During September

PCG did not sample moments during the month of September. The CMS Guide states that States do not need to sample during the summer break when schools follow the usual practice of paying employees during the summer for activities performed when school is in session.¹⁵ However, the CMS Guide clarifies 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.

The methodology in the State's implementation plan states that "[t]he majority of [school] staff work during a traditional school year. Since the [timestudy] results captured during a traditional [timestudy] are reflective of any other activities that would be performed during the summer quarter, a summer quarter [timestudy] will not be conducted."¹⁶ In New Jersey, however, the school year begins during early September. Thus, unless CMS concludes that an exception would apply, September should be included in the population of moments to be sampled.¹⁷

METHODOLOGY WAS NOT ADEQUATELY SUPPORTED

Federal regulations require random moment sampling methods to be supported with documentation of the sample universe determination and sample selection.¹⁸ However, PCG's proprietary sample-selection software did not maintain the data files used to generate its random moment timestudy samples. In addition, PCG did not program the software to reproduce a sample. Therefore, PCG could not reproduce or verify its sample.¹⁹

¹⁵ CMS Guide, pp. 41-42.

¹⁶ Implementation plan, p. 34. The State's cost allocation plan states: "As school district staffs do not work during the summer months, but costs eligible for MAC reimbursement may be incurred, the RMS results for the three preceding quarters will be averaged and applied to the July - September costs incurred. Given that school employees are often not hired formally until the start of school, and due to the lead time 'required to develop sample pools, train staff, create and distribute sample forms, and obtain enough responses to validate the sampling process within any given quarter, it would be impossible to assure sampling validity for the July - September quarter.'" It is unclear whether consideration was given to the lowering of Federal costs.

¹⁷ Based on past experiences of auditing the State's school-based claims, we conclude that omitting September from the moment sampling population increased the costs to the Federal government. Nevertheless, we recognize that the State should have an opportunity to submit supporting documentation to CMS for its determination if an exception would apply.

¹⁸ 45 CFR § 75.403(g); CMS Guide, pp. 42-43.

¹⁹ The State agency assured CMS, in correspondence related to the implementation plan, that "the sample [would be] maintained in a manner in which it can be duplicated for audit purposes."

PCG also did not provide reliable staff lists used in its sample selection. PCG provided three different sets of staff lists to fulfill our initial and follow-up requests for the staff population used in its random moment timestudies. The three lists were inconsistent and contained anomalies (e.g., different numbers of employees, different dates, and vacant positions). Related explanations for these anomalies were not logical and indicated that some of the information was compiled *after* the sample period and so could not have been used by PCG to create its sample. Accordingly, we determined the staff lists to be unreliable.

METHODOLOGY DID NOT COMPLY WITH COST ALLOCATION PLAN REQUIREMENTS

A State agency may only claim Federal funds for MAC activities under a cost allocation plan approved by HHS's Cost Allocation Services (formerly known as the Division of Cost Allocation) after consulting with CMS.²⁰

The random moment sampling methodology did not comply with the State agency's CMS-approved cost allocation plan requirements related to the sample universe, sample selection, data collection, and data verification requirements. These provisions of the cost allocation plan were designed to ensure valid results.

Sample Universe Included Contract Staff and Employees Who Did Not Perform Medicaid Activities

The State agency's cost allocation plan stated that its random moment sampling methodology would exclude contracted staff that provided only direct healthcare services. However, PCG included healthcare professionals contracted by schools (e.g., nurses and occupational therapists) in its sample universe.

The State agency's cost allocation plan also stated that its random moment sampling methodology would not include staff who did not perform Medicaid administrative activities (indirect employees). However, we determined that PCG included indirect employees (e.g., accountants, business managers, and secretaries) in its sample population.²¹ Including them among the State agency's administrative costs resulted in an inaccurate estimate of Federal claims submitted for reimbursement.

²⁰ A State agency may claim Federal funds based on a proposed cost allocation plan or amendment submitted to Cost Allocation Services but must retroactively adjust its claims in accordance with Cost Allocation Service's eventual decision (45 CFR § 95.517; CMS Guide, pp. 19-20, 44-45).

²¹ The State agency's cost allocation plan included a list of positions that "may be included" in the timestudies. The list did not include indirect employee job titles, and the implementation plan stated that the timestudy would not include "support staff such as secretaries."

Schools Made Changes to the Sample

The State agency's cost allocation plan specified that a sampled moment for vacant positions would be considered invalid and therefore not counted as a Medicaid allowable random moment. However, PCG allowed schools to make substitutions for vacant positions rather than treat the moments as invalid.²² Moreover, for the first 3 years it conducted random moment timestudies, PCG did not have a system to track substitutions.²³ PCG's policy of allowing changes to the sample put the validity of the sample at risk.

Advance Notice Was Provided to Sampled Participants

The State agency's cost allocation plan stated that the response form only be provided to the participant when their response was requested.²⁴ By withholding response forms until participants' responses are requested, surveyors prevent participants from adjusting their schedules for their sampled moment. However, PCG provided advance notice via email, to all sampled participants three times during the sampling process: 5 days, 3 days, and 24 hours before the selected moment, thereby creating a potential bias.²⁵

Participants Did Not Code Their Own Activities

The State agency's cost allocation plan stated that timestudy participants would code their own activities for their sampled moment as being related or not related to Medicaid. However, PCG coded the timestudy participants' activities based on their answers to PCG questions. As we describe below, PCG coded many moments incorrectly. Because PCG is paid on a contingency fee basis, it has an incentive to code more sampled moments as related to Medicaid, which could result in biased coding and in unallowable Federal Medicaid payments to the State agency.²⁶

²² This practice was contrary to the State agency's assurance to CMS that the random moment sampling would be operated so that school districts closed their staff lists at least 2 weeks before the beginning of the quarter and that no new participants would be added or deleted once the quarter closed.

²³ We did not evaluate the effectiveness of PCG's system for tracking staff over the final 2 years of our audit period.

²⁴ The response form includes the specific moment for which the randomly selected timestudy participant is to record their activity.

²⁵ In correspondence related to the implementation plan, CMS requested that the State agency revise its proposed random moment sampling methodology to adhere to CMS guidance that timestudy "[p]articipants be notified at the exact time and date of their assigned moment." CMS ultimately approved a 1-day advance notice for participants.

²⁶ Through correspondence related to the implementation plan, CMS expressed concern about the State agency's contingency fee arrangement with PCG.

Audit Trail Was Not Maintained

The State agency's cost allocation plan stated that students' names (i.e., students who receive services) and case information would be included with timestudy responses "to facilitate an audit trail" to the case file, because it may be needed by State or Federal auditors. However, PCG did not collect students' names and identifying case information with the responses. Without an audit trail, PCG's coding of timestudy responses cannot be verified.

Sample Was Not Adequately Validated

The State agency's cost allocation plan required a validation of a 10 percent subsample of the sample. However, a State Treasury official only reviewed a 5 percent subsample.²⁷ Moreover, the official could not validate PCG's activity coding because, as described above, PCG did not maintain an audit trail.

ACTIVITY CODING WAS INCORRECT OR UNSUPPORTED

As described earlier, schools may perform Medicaid administrative activities necessary for the administration of the State Medicaid plan such as Medicaid outreach, assisting with processing Medicaid applications, and assisting beneficiaries with receiving access to Medicaid services.²⁸ However, of the 227 activity moments included in our sample, only 5 moments PCG coded as related to Medicaid, were for such Medicaid administrative activities. The remaining 222 activity moments were either incorrectly coded or unsupported. On the basis of our sample results, we estimated that at least \$39,307,162²⁹ in Medicaid school-based administrative costs claimed during our audit period was unallowable because PCG's coding was incorrect or unsupported.

Incorrect Coding

PCG coded 129 of the 227 activity moments included in our sample as Medicaid administration. However, these activities were not necessary for the administration of the Medicaid State plan. Specifically:

²⁷ The implementation plan also requires that a 10-percent subsample be validated.

²⁸ The documentation for administrative activities must clearly demonstrate that the activities/services directly support the administration of the Medicaid program (CMS Guide, p. 37).

²⁹ To be conservative, we report the estimated unallowable costs using the lower limit of a two-sided 90-percent confidence interval. The corresponding point estimate for this total is \$59,537,232. These estimates are not listed in a separate finding because these claims are included in the \$63,786,406 we question below.

- **IEP Activities:** For 60 activity moments, PCG coded IEP-related activities as Medicaid administration. The CMS Guide states that activities related to identifying, evaluating, and developing IEPs for children with a disability under IDEA are education-related activities and are not eligible for Medicaid administrative reimbursement (CMS Guide, pp. 18, 56-57).³⁰
- **Medicaid Health Services:** For 25 activity moments, PCG coded Medicaid-eligible health services as Medicaid administration. These services are directly reimbursed as school-based health services and are ineligible for reimbursement as administrative costs (CMS Guide, p. 9).³¹ Allocating the services as administrative costs resulted in duplicate payments.
- **School and Educational Activities:** For 18 activity moments, PCG coded school-related and educational activities as Medicaid administration. The activities included providing or administering educational services, non-Medicaid-eligible social services, and student discipline. The CMS Guide states that school-related and educational activities may not be coded as Medicaid administration (CMS Guide, pp. 26-27).
- **Ineligible Training Activities:** For 16 activity moments, PCG coded training that was not related to the administration of the Medicaid program as Medicaid administration. The training was related to career development and crisis management and did not pertain to Medicaid administration. The CMS Guide states that training related to family access and child referral of the Medicaid program benefits are eligible Medicaid administrative activities (CMS Guide, pp. 32-33).

³⁰ Medicaid may pay for identifying children eligible for Medicaid but not for identifying children eligible for services under IDEA. Also, Medicaid may pay for medical evaluations but not for medical professionals' participation in other activities required by IDEA.

³¹ The CMS Guide states that administrative costs may not be claimed for services that have or should have been reimbursed through another funding source, such as direct medical services.

- **Non-Medicaid Health Services:** For 10 activity moments, PCG coded non-Medicaid-eligible direct health services (i.e., services not covered by Medicaid) as Medicaid administration.³² The CMS Guide states that direct Medical activities including patient follow-up, assessment, patient education, and counseling, may not be coded as Medicaid administrative services (CMS Guide, pp. 9, 27-28).

Unsupported Coding

PCG coded 93 activity moments as related to Medicaid administration without sufficient support to make such a coding decision. For these activity moments, responses to PCG's questions indicated that the respondent was likely performing an activity not related to Medicaid administration. Nevertheless, PCG did not obtain additional information from the respondent and coded the moment as Medicaid administration. Further, the State agency did not provide any case file information to support PCG's coding. Therefore, the State agency did not support that these moments were necessary for the administration of the Medicaid State plan.

THE STATE AGENCY DID NOT FOLLOW CMS GUIDANCE

The State agency failed to comply with Federal regulations because it disregarded CMS's efforts to ensure a random moment sampling methodology that would produce valid results. In the course of reviewing the State agency's proposed methodology, CMS provided guidance and sought assurances from the State agency. Through correspondence related to the proposed State plan amendment and accompanying implementation plan, the State agency assured CMS that the random moment sampling methodology was designed to capture 100 percent of employees' time and that the sample would be maintained so it could be duplicated for audit purposes. However, the State agency did not ensure that PCG followed the State agency's cost allocation plan requirements, such as maintaining an audit trail. Finally, the State agency disregarded CMS's concern about paying PCG on a contingency fee basis. Compensating a contractor according to how it codes timestudy responses could bias the contractor's coding and result in unallowable Federal Medicaid payments.

CONCLUSION

The random moment sampling methodology used by the State agency to claim Medicaid school-based administrative costs did not meet Federal requirements. Specifically, the State agency did not correctly design, conduct, and document the timestudies and disregarded CMS's efforts to ensure that the timestudies would produce valid results. The State agency's failure to

³² Before December 2014, CMS policy generally prohibited Medicaid reimbursement for school health services provided free-of-charge to *all* students. In a State Medicaid Director's Letter dated December 15, 2014, CMS withdrew this "free care" policy. However, CMS stated that if a State agency prefers to cover services provided free of charge, it must comply with all Medicaid requirements, including obtaining CMS approval. The implementation plan covers some of these services effective October 1, 2016—after the end of our audit period.

meet Federal requirements for statistical sampling and follow its cost allocation plan requirements resulted in \$63,786,406 in improper Federal Medicaid payments.

RECOMMENDATIONS

We recommend that the New Jersey Department of Human Services:

- refund \$63,786,406 in Federal Medicaid payments and
- revise its random moment sampling to comply with:
 - Federal requirements for statistical sampling, including maintaining sample documentation,
 - its implementation plan,
 - CMS guidance on random moment sampling, and
 - its assurances to CMS concerning the design and operation of random moment timestudies.

STATE AGENCY COMMENTS AND OFFICE OF INSPECTOR GENERAL RESPONSE

In written comments on our draft report dated July 5, 2019, the State agency did not concur with our findings and described steps it has taken to modify its data system to ensure its ability to recreate, or reproduce, a sample. The State agency asserted that it has worked in good faith with CMS to develop a revised random moment sampling methodology to claim school-based Medicaid costs in compliance with Federal requirements. In written comments dated July 12, 2019, the State agency informed us that CMS had approved the State agency's implementation plan prospectively, as of October 1, 2016. The State agency stated that, as the MAC program was operated in accordance with this plan, we should reevaluate our findings.

The State agency also submitted a memorandum from PCG regarding our draft report. In its memorandum, PCG provided a detailed explanation of how the State agency operated under the proposed implementation plan while waiting for CMS to approve it.

After reviewing the State agency's comments and the PCG memorandum, we reclassified two sampled activity moments that did not affect our recommended disallowance and clarified one sub-recommendation based on CMS's approval of the implementation plan. We maintain that our findings and recommendations, as revised, are valid. We further note that the effective date of October 1, 2016, for the approved implementation plan was after the end of our audit period.

The State agency's comments dated July 5, 2019, and PCG's memorandum, are included as Appendix F. We did not include the appendix to PCG's memorandum because of its length. The State agency's comments dated July 12, 2019, are included as Appendix G.

METHODOLOGY DID NOT MEET FEDERAL REQUIREMENTS FOR STATISTICAL SAMPLING

Public Consulting Group Did Not Sample From All Work Hours

State Agency Comments

The State agency asserted that its sampling methodology was designed to include all reported work times. PCG stated that its system allowed school districts to enter the earliest start and latest end times for individuals on staff lists. According to PCG, after our exit conference, it asked school districts that had entered only a single work time for the entire district to review and recertify these times. PCG said that 120 of these school districts recertified their work times and 179 school districts revised their work times. PCG concluded that the work hour issue we identified had virtually no effect on the State agency's Medicaid reimbursement. Finally, PCG said that the accuracy of school district staff times is the responsibility of the districts and that PCG relies on that information to be accurate.

Office of Inspector General Response

PCG's sampling methodology did not include all staff hours worked. As described in our report, the vast majority of school districts listed identical work schedules (8:30 a.m. to 3:15 p.m.). Our review of 50 school districts during our field work confirmed the inaccuracy of these schedules. We also note that many school districts stated that they reported the latest start time and earliest end time for schools in their district. Regarding PCG's assertion that it must rely on what school districts report, we maintain that it is the State agency's responsibility to ensure the accuracy of data used to claim Medicaid costs. Specifically, the implementation plan states that the "[timestudy] is designed to capture 100% of time."

Public Consulting Group Did Not Sample Moments During September

State Agency Comments

The State agency stated that it believes the inclusion of September as part of the summer break period (when samples are not collected) is consistent with the CMS Guide, and its implementation plan allows it to not sample during September. Further, PCG stated that not sampling during September is consistent with practice across the country during what the implementation plan calls the "summer quarter," which runs from July through September.

Office of Inspector General Response

We agree that the CMS Guide allows States to not sample during the *summer break*. However, in addition to not sampling during the summer break, the State agency did not sample during

September, when schools are in session. The CMS Guide states: “If the regular school year begins in the middle of a calendar quarter (that is, the end of August or sometime in September), the first [timestudy] for that school year should include all days from the beginning of the school year.”³³ Neither the State agency nor PCG address this point in their responses. In addition, this portion of the CMS Guide is consistent with Federal regulations that require the entire time period involved to be covered by the sample.³⁴ Therefore, we maintain that September should be included in the population of moments to be sampled.³⁵

METHODOLOGY WAS NOT ADEQUATELY SUPPORTED

State Agency Comments

The State agency stated that its interpretation of the CMS Guide regarding whether it is necessary to have the ability to reproduce a sample differs from that of OIG. Nevertheless, the State agency indicated that it has modified its data system so that samples can be reproduced for future reviews. The State agency also stated that the staff lists it provided only had slight variations and that anomalies in the data were not sufficient to make the staff lists unreliable.

PCG stated that it maintained all data necessary to verify the sample process. PCG also disagreed with our finding that its staff lists were not reliable and explained that differences among the provided lists were the result of our having requested different versions of staff lists at different times. Finally, PCG explained that the issues we identified with the lists concerning employees were not problematic because PCG sampled by position, not employee. Thus, information such as employee names, numbers, and employment dates may change after a sample is drawn. PCG acknowledged that it did not have the ability to reproduce samples applicable to our audit period and stated that Federal regulations or CMS guidance do not require them to have this ability.

Office of Inspector General Response

Federal regulations and the CMS Guide require random moment sampling to be supported with documentation of the sample universe determination and sample selection.³⁶ If PCG was able to replicate the sample, then that replication would allow PCG to support each step in the

³³ CMS Guide, p.42.

³⁴ 45 CFR § 75.430(i)(5)(i)(B).

³⁵ Federal regulations (45 CFR § 75.430(i)(5)(iii)) allow for an exception to this requirement if the cognizant agency concludes that the system proposed will result in lower costs to Federal awards than a system that complies with the standards. Based on past experiences of auditing the State agency’s school-based claims, we conclude that omitting September from the random moment sampling population increased the costs to the Federal Government. Nevertheless, we recognize that the State agency should have an opportunity to submit supporting documentation to CMS for its determination if an exception applies.

³⁶ 45 CFR § 75.403(g); CMS Guide, pp. 42-43.

sampling process. However, PCG was unable to replicate its sample selection process, and the materials it provided to take the place of replication are insufficient to support its methodology.

For example, although PCG maintained a database of staff information, the database is dynamic: continuously changing as school districts add, delete, or modify staff information. PCG is unable to recover the version of the data files used to select the sample. Contrary to PCG's assertion, we did not request different versions of staff lists at different times. Rather, we made multiple requests for the staff lists used to create PCG's sample. At various times, PCG provided several different versions of these staff lists. Without the ability to replicate PCG's process, we cannot identify which, if any, of the lists were actually used to select the sample.

The State agency did not maintain the original data files and could not accurately reproduce the data used to create the sample; therefore, the State agency did not support its sample selection as required by Federal regulation and the CMS guide.

METHODOLOGY DID NOT COMPLY WITH COST ALLOCATION PLAN REQUIREMENTS

State Agency Comments

The State agency stated that we audited the MAC program against the 2005 approved cost allocation plan, whereas the State agency was operating the program based on the 2011 methodology (i.e., the implementation plan) submitted for CMS approval. Both the State agency and PCG stated that the State agency was in compliance with the 2011 implementation plan.

Office of Inspector General Response

The implementation plan was approved by CMS prospectively, effective as of October 1, 2016, after the end of our audit period. Thus, as we describe throughout the report, the State agency was required to comply with its original cost allocation plan, approved in 2005, during our audit period.

We note that, even if CMS had approved the implementation plan for our audit period, the State agency would not have been in full compliance with the plan or its assurances about how the plan would operate:

- The implementation plan states that support staff (e.g., secretaries) will not be included in the timestudy. PCG included such support staff.³⁷

³⁷ In its response, PCG stated that including support staff such as secretaries was insignificant. We disagree with PCG's characterization but agree that the effect was less significant than other issues.

- The implementation plan states that participants will have no longer than 1-day advance notice of the sample moment. PCG provided advance notice up to 5 days before the sample moment.³⁸
- The implementation plan states that the State agency will validate 10 percent of the sample. It did not validate any of sample moments but performed cursory reviews of 5 percent of the sample.
- The State agency assured CMS that the school districts closed their staff list files at least 2 weeks before the beginning of each quarter. PCG allowed districts to add or change participants *during* the quarter.

ACTIVITY CODING WAS INCORRECT OR UNSUPPORTED

State Agency Comments

The State agency stated that PCG reviewed the sampled 227 moments and concluded that all but 5 were correctly coded. The State agency requested that we reconsider our findings before finalizing our report.

In its memorandum, PCG discussed in detail our finding on incorrect or unsupported coding. PCG stated that five moments required more information before being coded as Medicaid administration but did not indicate which moments were unsupported. PCG said that our analysis was incorrect because we did not recognize the following:

- **IEP Activities**—The IEP has an educational and often a medical component, and thus development of an IEP often includes care-planning discussions that may be coded as Medicaid administration.
- **Medicaid Health Services**—The only moments that may be coded as Medicaid health services are medical services that are provided to special education students and related paperwork. Creation of the health-related plan of care is an administrative activity.
- **School and Educational Activities**—Discussions with teachers are not always for education purposes.
- **Ineligible Training Activities**—Healthcare provider employees perform an allowable Medicaid administrative activity when they attend training for the purpose of improving delivery of medical/Medicaid related services.

³⁸ Also, CMS requested that participants submit their description of the sampled moment within 2 days of the moment. (Ultimately CMS agreed to 3 days.) However, the implementation plan states that participants must submit within 3 days after the end of the timestudy period. “Timestudy period” is not defined in the implementation plan. PCG’s practice has been to allow submissions until 3 days after the end of the quarter.

- **Non-Medicaid Health Services**—Healthcare providers perform an allowable Medicaid administrative activity when they refer a patient to another healthcare provider arising from healthcare services that they provided.
- **Unsupported Coding**—When necessary, PCG asked sampled participants follow-up questions and obtained enough information to code moments as Medicaid administration.

Office of Inspector General Response

Based on the State agency’s comments and PCG’s memorandum, we reviewed all 222 moments whose coding we found incorrect or unsupported and reclassified 2 sampled activities (from incorrect to unsupported). We maintain that the remainder of our determinations are valid:

IEP Activities—We agree that IEPs may include elements of a medical plan of care. However, as we describe in the report, Medicaid administration does not include administrative activities performed during the development, review, or revision of IEPs.³⁹ Specifically, the CMS Guide states that “Medicaid does not pay for . . . IEP team meetings or for costs related to attendance at those meetings by medical professionals.”⁴⁰

- **Medicaid Health Services**—We do not agree that creation of the health-related plan of care is an administrative activity. The CMS Guide states that “[t]he medical plan of care is developed as part of the medical service being provided to the child, and may not be considered an administrative activity for purposes of claiming for the associated costs under Medicaid.”⁴¹
- **School and Educational Activities**—We agree that discussions with teachers are not always for educational purposes. After an IEP has been established, a child’s case manager may have a discussion with a teacher to enhance the quality of care provided to that child. However, none of the sample moments we categorized as school and education activities were for Medicaid administration. Examples include school-mandated meetings other than IDEA, student discipline, and educational assessments.

³⁹ CMS Guide, p. 56.

⁴⁰ CMS Guide, p. 56. The implementation plan has conflicting provisions regarding the coding of care planning activities related to development of an IEP. One section states that these activities are coded as medical services; however, another section states these activities are coded as Medicaid administration. We note that the CMS Guide states that these activities are not Medicaid administration. Further, CMS officials reviewed examples of PCG’s coding of IEP meetings and development as Medicaid administration and confirmed the coding was incorrect.

⁴¹ CMS Guide, p. 15.

- **Ineligible Training Activities**—We agree that employees may perform an allowable Medicaid administrative activity when they attend training regarding the benefits of medical/Medicaid-related services, how to assist families to access such services, and how to more effectively refer students for services, as this improves the delivery of these services.⁴² However, PCG coded professional development activities, such as a social worker attending a psychiatry workshop, as Medicaid administration without evidence that it improved the delivery of medical/Medicaid-related services.⁴³
- **Non-Medicaid Health Services**—We do not agree with PCG’s assertion that health care providers perform an allowable Medicaid administrative activity when they refer a patient to another health care provider arising from health care services that they provided. The CMS Guide states that Medicaid administration does not include “[a]ctivities that are integral parts or extensions of direct medical services. . . .”⁴⁴ A health care provider’s referral to another provider arising from services provided is a care planning activity that is an integral part or extension of the health care service provided.⁴⁵
- **Unsupported Coding**—PCG did not provide evidence that it always asked follow-up questions when required and obtained enough information to code moments as Medicaid administration. The CMS Guide states that the “burden of proof and validation of [timestudy] sample results remains the responsibility of the [S]tates.” It further notes that, to meet this requirement, some States include student names or case information in the sample results, and encourages States to “consider this approach to documentation.”⁴⁶ As discussed in the section of the report titled “Audit Trail Was Not Maintained” (see page 12), the State agency’s cost allocation plan required this information. We found that many sampled moments required additional information to be properly coded. If PCG had included student names and case information in the sample results, the State agency would have been able to provide additional information that may have allowed it to satisfy its burden of proof.

⁴² CMS Guide, p. 32.

⁴³ CMS officials reviewed examples of PCG’s coding of training activities as Medicaid administration and confirmed that the coding was incorrect.

⁴⁴ CMS Guide, p. 9.

⁴⁵ See CMS Guide, p. 11.

⁴⁶ CMS Guide, p. 37.

THE STATE AGENCY DID NOT FOLLOW CMS GUIDANCE

State Agency Comments

The State agency stated that it followed the CMS Guide and worked cooperatively with CMS to develop its sampling methodology.

Office of Inspector General Response

As stated throughout this report, the State agency did not follow the CMS Guide or always work cooperatively with CMS to ensure a sampling methodology compliant with Federal regulations and CMS guidance. In addition, contrary to PCG's assertion, it did not actually sample in accordance with the subsequently approved implementation plan.

APPENDIX A: AUDIT SCOPE AND METHODOLOGY

SCOPE

Our audit covered \$63,786,406 in Federal Medicaid reimbursement that the State agency claimed for its school-based administrative claims for services provided from October 2011 through June 2016. We reviewed a stratified random sample that included 227 random activity moments (selected from 19 quarterly timestudies) to determine if their associated coding was adequately supported by the State agency and PCG.

Our audit allowed us to establish reasonable assurance of the authenticity and accuracy of the claims data obtained from the State agency for our audit period. We established reasonable assurance of the completeness of these data by reconciling them to the State agency's reimbursement claims on the Quarterly Medicaid Statement of Expenditures (Form CMS-64) and to the cost reports submitted by school districts to the State Treasury contractor. We reviewed the random moment sampling methodology and data files used to support the sampling, as well as the coding of the 227 random moments included in our sample.

During our audit, we did not review the overall internal control structure of the State agency, its contractor, or the Medicaid program. Rather, we reviewed only the internal controls that pertained directly to our objective.

We performed fieldwork at the State agency's offices in Trenton, New Jersey; the CMS office in Baltimore, Maryland; and at various school districts throughout New Jersey.

METHODOLOGY

To accomplish our objective, we:

- reviewed applicable Federal and State requirements;
- reviewed the proposed implementation plan, the approved revisions, and related correspondence;
- held discussions with officials from the State agency and State Treasury to gain an understanding of the random moment sampling methodology and the State agency's monitoring and oversight;
- held discussions with PCG to understand how it administered the random moment timestudies and calculated the claims;

- reviewed cost summary files from the State agency, State Treasury, and PCG that were used to claim Medicaid school-based administrative costs for services provided from October 1, 2011, through June 30, 2016;
- reconciled the Medicaid school-based administrative costs claimed for Federal reimbursement by the State agency on Forms CMS-64 for our audit period with the data obtained from the State agency and PCG to establish reasonable assurance of completeness and accuracy;
- discussed the purpose for the various adjustments on the claim summaries, with State officials, to understand and reconcile the differences;
- obtained and reviewed documents from the State agency and PCG that PCG used to calculate the claim amount by reviewing:
 - staff lists and school calendars,
 - timestudy responses and participant comments to PCG questions,
 - training materials prepared by PCG for school districts, and
 - cost reports and calculation sheets to obtain claim amounts;
- interviewed officials from 50 school districts to verify work schedules and employees included in the timestudy population;⁴⁷
- consulted with the OIG’s statistician on the statistical validity and related aspects of the random moment sampling methodology;
- selected a stratified random sample that included 227 activity moments from a sampling frame of all moments coded as eligible for Medicaid administrative reimbursement joined with all possible school districts in that quarter;⁴⁸
- reviewed the stratified random sample that included 227 activity moments that were coded as Medicaid-eligible administrative activities and:
 - determined if coding was correct and supported by documentation provided,

⁴⁷ The 50 school districts were judgmentally selected based on inconsistencies between the school calendars’ work hours and the work hours included in PCG’s sample.

⁴⁸ Each item in our sample corresponded to a unique combination of an activity moment and a school district. See Appendix D for details on our sample design.

- determined the effect of any incorrect or unsupported code on its corresponding school district for the sample item,
 - calculated the related unallowable claim amount for Federal reimbursement, and
 - estimated the total amount of overpayment for Medicaid school-based administrative costs related to incorrect or unsupported activity moment coding;⁴⁹
- met with CMS officials to discuss our findings; and
 - discussed our results with State agency officials and PCG.

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.

⁴⁹ See Appendix E for our sample results and estimates.

APPENDIX B: RELATED OFFICE OF INSPECTOR GENERAL REPORTS

| Report Title | Report Number | Date Issued |
|---|--------------------------------------|--------------------|
| <i>Vulnerabilities Exist in State Agencies' Use of Random Moment Sampling to Allocate Costs for Medicaid School-Based Administrative and Health Services Expenditures</i> | <u>A-07-18-04107</u> | 12/06/2018 |
| <i>New Jersey Claimed Hundreds of Millions in Unallowable or Unsupported Medicaid School-Based Reimbursement</i> | <u>A-02-15-01010</u> | 11/27/2017 |
| <i>Texas Improperly Received Medicaid Reimbursement for School-Based Health Services</i> | <u>A-06-14-00002</u> | 08/14/2017 |
| <i>Mississippi Claimed Millions in Unallowable School-Based Medicaid Administrative Costs</i> | <u>A-04-15-00103</u> | 03/15/2017 |
| <i>North Carolina Claimed Millions in Unallowable School-Based Medicaid Administrative Costs</i> | <u>A-04-15-00101</u> | 10/06/2016 |
| <i>Alabama Claimed Millions In Unallowable School-Based Medicaid Administrative Costs</i> | <u>A-04-13-00094</u> | 07/03/2016 |

APPENDIX C: RANDOM MOMENT SAMPLING DOCUMENTATION REQUIREMENTS

To claim Federal reimbursement, the allocation of costs for Medicaid eligible and non-eligible activities requires careful documentation of all work performed by certain school staff over a set period of time and is used to identify, measure, and allocate the school staff time that is devoted to activities reimbursable by Medicaid.

Federal regulations require costs to be adequately documented (45 CFR § 75.403(g)). The CMS Guide requires that documentation be retained to support sampling used to allocate costs, including the sample universe determination, the sample selection, and the sampling results (CMS Guide, pp. 42-43).

Documentation of results must be sufficiently detailed to determine whether the claimed activities are necessary for the proper and efficient administration of the State plan. The burden of proof and validation of sample results remains the responsibility of the State agency. To meet this requirement, the timestudy documentation can include a narrative description of the Medicaid activity being performed, including student names or case information where applicable (CMS Guide, p. 37). Regardless of how the State validates sample results, the State must maintain appropriate documentation for audit purposes.

APPENDIX D: SAMPLE DESIGN AND METHODOLOGY

TARGET POPULATION

The target population consisted of the combination of quarterly school district cost pools and Medicaid allowable random moments used to calculate the school-based administrative cost from October 1, 2011, through June 30, 2016, that the State agency claimed for Federal reimbursement.

SAMPLING FRAME

Random moment data were obtained from the State agency and PCG. Of the 99,100 random moments generated during October 2011 through June 2016, PCG coded 5,696 as indicating that a Medicaid administrative activity had been performed. Based on the 5,696 moments PCG coded as Medicaid allowable, the State agency claimed Federal funds of \$63,786,406.

Direct service and administrative staff can perform Medicaid eligible administrative activities, so each Medicaid moment was joined to each school district that claimed for the “direct service” or “administrative” cost pool during that quarter. For the summer quarters, each Medicaid moment for the preceding three school-year quarters was joined to each school district that claimed during that quarter.

The sampling frame consisted of Access databases containing 2,560,438 school district quarterly cost pool-Medicaid activity moment combinations.

SAMPLE UNIT

The sample unit was defined as the combination of an activity moment and a school district.

SAMPLE DESIGN AND SAMPLE SIZE

We selected 230 sample items which corresponded to 227 unique activity moments.⁵⁰ The sample was based on the following stratified design:

- 100 items from Stratum 1, which included all direct service activity moments for the school-year quarters of October-June;

⁵⁰ The coding of a moment from one school district could impact reimbursements associated with other school districts in the same cost pool. Our sample was composed of combinations of activity moments and school districts. For each sample item, we examined the impact of any errors in the coding of the activity moment on the reimbursement for the school district that was part of that sample item. Because the sample unit was a combination of an activity moment and a school district, it was possible for the same activity moment to appear multiple times within the sample. Within our sample, 3 activity moments were selected multiple times. As a result, the 230 items in our sample corresponded to 227 activity moments.

- 70 items from Stratum 2, which included all administrative activity moments for the school-year quarters of October-June;
- 30 items from Stratum 3, which included all direct service activity moments for the summer quarters of July-September;
- 30 items from Stratum 4, which included all administrative activity moments for the summer quarters of July-September.

SOURCE OF RANDOM NUMBERS

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

METHOD OF SELECTING SAMPLE ITEMS

We consecutively numbered each stratum within the sampling frame. After generating the random numbers for each of these strata, we selected the corresponding frame items for our sample.

ESTIMATION METHODOLOGY

We determined the effect of any incorrect or unsupported code on the corresponding district cost pool for the sample item and calculated the related unallowable claim amount for Federal reimbursement. We used the OIG/ OAS statistical software to estimate the total amount of overpayment for Medicaid school-based administrative costs related to incorrect or unsupported activity moment coding at the lower limit of the two-sided 90-percent confidence interval. We also used this program to calculate the corresponding point estimate and upper limit of the 90-percent confidence interval.

APPENDIX E: SAMPLE RESULTS AND ESTIMATES

Sample Details and Results

| Stratum | Frame Count⁵¹ | Sample Size | Unique Activity Moments | Incorrect or Unsupported Moments |
|----------------|---------------------------------|--------------------|--------------------------------|---|
| 1 | 1,039,496 | 100 | 99 | 99 |
| 2 | 415,076 | 70 | 68 | 64 |
| 3 | 789,951 | 30 | 30 | 30 |
| 4 | 315,915 | 30 | 30 | 29 |
| Totals | 2,560,438 | 230 | 227 | 222 |

Estimated Unallowable Medicaid School-Based Administrative Claims Related to Incorrect or Unsupported Activity Moment Coding
(Limits Calculated for a 90-Percent Confidence Interval)

| | |
|----------------|----------------------------|
| Point Estimate | \$59,537,232 |
| Lower Limit | \$39,307,162 |
| Upper Limit | \$63,786,406 ⁵² |

⁵¹ The frame count refers to the number of unique school district and activity moment combinations in the sampling frame.

⁵² The upper limit calculated using the OIG/OAS statistical software for the total overpayment amount was \$79,767,303. We adjusted the estimate downward to reflect the known value of the sampling frame.

APPENDIX F: STATE AGENCY COMMENTS (JULY 5, 2019)



**State of New Jersey
Department of Human Services**
P.O. BOX 700
TRENTON NJ 08625-0700

PHILIP D. MURPHY
Governor

SHEILA Y. OLIVER
Lt. Governor

CAROLE JOHNSON
Commissioner

SARAH ADELMAN
Deputy Commissioner

July 5, 2019

Ms. Brenda M. Tierney
Regional Inspector General for Audit Services
Office of Audit Services, Region II
Office of the Inspector General
U.S. Department of Health and Human Services
Jacob K. Javits Federal Building
26 Federal Plaza, Room 3900
New York, NY 10278

RE: OIG Draft Report Number A-02-17-01006

Dear Ms. Tierney:

We are writing in response to the draft audit report entitled *New Jersey Improperly Claimed Tens of Millions for Medicaid School-Based Administrative Costs Based on Random Moment Sampling That Did Not Meet Federal Requirements* ("Draft Report"), which reviews the methodologies used by the State to calculate school district costs related to various outreach and administrative functions that ensure access to medical services for students who are Medicaid eligible.

The State has made both technical and process changes over the past several years while working in good faith with the Centers for Medicare and Medicaid Services (CMS) on the revised State Plan Amendment and Implementation Guide submitted to them in September 2011. We have worked diligently during this review period to design and implement a School-Based program that complies with all applicable rules and guidance.

We respectfully request that the OIG consider the information below outlining several areas where we believe the draft report findings are the result of differing interpretations of the CMS claiming guide, data issues of a technical nature, and the fact that the audit judged the program against the 2005 approved plan despite the fact that the State was operating the program based on submitted revisions to the State Plan as allowed under 45 CFR 95.517. The State also asked its contracted vendor, Public Consulting Group, to review the draft report. Their detailed response is included for your reference.

Methodology did not meet federal requirements for statistical sampling: The State does not concur with this finding. The methodology implemented in New Jersey is consistent with standard practices in other

states and was specifically designed to include all reported work times in the sample process as validated by the State's contracted vendor and an outside accounting firm hired by that vendor to review this finding.

The State acknowledges that as part of the audit review, its contracted vendor asked participating school districts to re-certify data related to precise staff working hours, resulting in a number of districts updating the data they provided. Following this revision and recertification process, the amount of staff time qualifying for reimbursement increased meaningfully over the same quarter of the previous year. This suggests the federal government was not negatively impacted by the fact that some districts had been reporting district-wide work schedules, rather than schedules that were school specific. Further, this finding also raises questions about performing time samples in September. We believe the inclusion of September as part of the summer break period, during which samples are not collected, is consistent with CMS guidelines and this methodology is outlined in the State's proposed plan amendment as submitted to CMS.

Methodology was not adequately supported: The State does not concur with this finding. Findings in this area appear to be subjective in nature, and are partially attributable to variances in data that were pulled multiple times with slight variations to ensure auditors were provided with the information they needed. The State believes the anomalies in staff list data outlined in the audit do not render the supporting documentation unreliable and are the result of data that was misinterpreted or unclear.

Additionally, this finding includes an OIG concern regarding the data system's ability to recreate a sample. The State's interpretation of the CMS claiming guide in this area differs from that of the OIG regarding whether it is necessary to have the ability to precisely replicate a previous sample. Nevertheless, the system has been modified to ensure it is capable of recreating samples in the event of future reviews. It is the State's belief that the data system as designed and operating during the audit period did provide adequate support for the claims, but further improvements since the time of the audit will allow us to more readily demonstrate this in the future.

Methodology did not comply with cost allocation plan requirements: The State disagrees with this finding, as it is predominantly the result of the auditors comparing program operations during the audit period to the 2005 approved plan rather than the updated 2011 methodology that had been submitted to CMS prior to the audit period. While this revised methodology is still with CMS, the program operations during the audit period were consistent with this plan.

Activity coding was incorrect or unsupported: The State disagrees with the draft audit finding that virtually all of the sampled activity moments were either miscoded or unsupported. Subsequent to this audit, the State's contracted vendor conducted a detailed review of the sample moments reviewed by the OIG, and believe that all but five of the 227 moments were correctly coded and supported. Given the fact that State findings on this matter are so significantly different from the auditors, we believe the auditors should reconsider these moments before finalizing its report.

The State agency did not follow CMS guidance: The State does not concur with this finding. The State has followed the 2003 CMS guidance, updated its methodology based on CMS recommendations, and has been working cooperatively with CMS since the 2011 submission of a revised State Plan and Implementation Guide for the school-based program. As additional evidence of the State's commitment to a compliant school based program, and as noted in footnote #2 of the Draft Audit, the State system used to claim for the program has been upgraded and revised since 2011, with the goal of enhanced compliance.

Thank you for the opportunity to review the draft report. Please contact Brian Francz, the New Jersey Department of Human Services Chief Financial Officer at (609) 984-9357 with any follow-up questions. The State remains committed to strong and efficient school-based medical services and will continue to work closely with CMS on administration of the program.

Sincerely,



Carole Johnson
Commissioner

C:
Sarah Adelman, Deputy Commissioner
Brian Francz, Chief Financial Officer
Carol Grant, Acting Director, Division of Medical Assistance and Health Services
Richard Hurd, Chief of Staff, Division of Medical Assistance and Health Services

FROM: Bryan Hawkom, Public Consulting Group, Inc. (PCG)
RE: OIG Draft Report No. A-02-17-01006
DATE: July 5, 2019

The New Jersey Department of Human Services (DHS) has requested that the State of New Jersey's contracted vendor for school-based Medicaid administrative claiming, Public Consulting Group (PCG), provide a written response to the Office of Inspector General (OIG) Draft Report No. A-02-17-01006 entitled *New Jersey Improperly Claimed Tens of Millions for Medicaid School-Based Administrative Costs Based on Random Moment Sampling That Did Not Meet Federal Requirements* (Draft Report). PCG disagrees with each finding in the Draft Report and appreciates this opportunity to respond.

We believe it is important to provide clarification that sets the record straight on the inaccurate statements presented within the OIG report. PCG's methodology for the Random Moment Time Study and the coding of the completed time study moments for the State of New Jersey was reasonable, appropriate, and in compliance with the law and applicable guidance.¹ The following pages provide specific examples and evidence supporting that position.

Background

For the past 25 years, PCG has helped states and school districts across the nation design, develop, implement, and administer aspects of the School-Based Medicaid Administrative Claiming (MAC) Program. Under the MAC Program, the federal government reimburses school districts for part of the administrative costs they incur in the delivery of services covered by Medicaid.

¹ The OIG Draft Report states that the OIG is performing this audit because PCG is paid on a contingency fee basis, implying that this fact somehow may have affected the work performed by PCG and the amount of reimbursements claimed. PCG rejects any suggestion that there was anything inappropriate about its contingency fee, or that it biased the PCG work product in any way.

A contingency fee compensation model is used by many state Medicaid agencies for this type of work, as well by the federal government, including the Centers for Medicare and Medicaid Services (CMS) itself for its Medicaid and Medicare Recovery Audit Contractors (RACs). The RAC auditors contracted with CMS during the period of this audit received fees of 9-12.5% for every claim they denied.

Regardless of the compensation methodology, PCG's approach is conservative. PCG and the State took positions that likely resulted in districts not submitting millions of dollars in potential claims. For example, if PCG did not receive follow-up from a sampled staff person to provide additional detail about their response to a sampled moment, those moments were coded to a non-reimbursable code, reducing the level of reimbursement.

In short, it is simply incorrect to suggest that the contingency fee model is improper or results in inappropriate claiming.

These costs include staff time spent to identify, refer, link, and coordinate covered services for the students served.

The Centers for Medicare and Medicaid Services (CMS) released a Guide for School-Based Medicaid Administrative Claiming in 2003 (the 2003 CMS Guide), but subsequent CMS guidance has not always adhered to it.² As a result, the MAC Program operates without complete and definitive guidance from CMS.

For example, in 2010, CMS required that New Jersey implement a cost settlement methodology. At the time, CMS was working with states throughout the country to move the School-Based Medicaid Direct Service Program to a cost settlement methodology by which the actual reimbursement is based not on a calculated rate for every encounter, but on the actual cost incurred by the school district. The cost settlement methodology had been implemented in other contexts, such as hospitals, for many years. Cost settlement was to utilize the Random Moment Time Study methodology as outlined in the 2003 CMS Guide, the last official guidance on Random Moment Time Studies for schools provided by CMS. However, while the 2003 CMS Guide required sampling at a 95% confidence level with an error rate of +/-5%, CMS required a 95% confidence level with an error rate of +/-2% for cost settlement. Also, the 2003 CMS Guide had only a single activity code for medical services, but CMS required that code to be separated into two activity codes to distinguish between IEP and non-IEP medical services for cost settlement.

CMS then required states to submit new Implementation Guides to CMS for approval, outlining the methodology for both the MAC process and the cost settlement process. Thus, after CMS recommended that the State of New Jersey implement a cost settlement methodology, the State in August 2011 submitted both a State Plan Amendment (the 2011 SPA) and a new Implementation Guide for the MAC Program (the 2011 Implementation Guide). The State outlined the changes that would need to be made to the Special Education Medicaid Initiative (SEMI) and the MAC time study, which is also used in the cost settlement process. New Jersey implemented those changes to the time study beginning with the October – December 2011 quarter, per CMS recommendations, to capture the data required for the cost settlement CMS requested. The State's changes to its prior Implementation Guide were based on best practices utilized in states across the country that both operated a MAC program and utilized a cost settlement process for its Medicaid School-Based Direct Service Programs (called SEMI in New Jersey).

CMS is now working with the State to finalize the 2011 Implementation Guide.

² The 2003 CMS Guide was originally released as a draft, but subsequently the draft designation was deleted.

Overview of the New Jersey MAC Process

PCG was initially selected by the State of New Jersey through a competitive bidding process in 2005 to help implement aspects of the MAC program and reselected through a subsequent RFP process in 2014 to continue the work. For the MAC program, PCG collects from participating school districts the data necessary to generate the quarterly Random Moment Time Study (RMTS). The RMTS is used to determine the percentage of allowable costs that are eligible for reimbursement. The RMTS is a process in which a random sample of one-minute increments are sampled throughout the quarter from all eligible staff positions included by the school districts. The sampled participant will document what he or she was doing at that one minute in time. The responses are then submitted electronically.

Once the response is submitted, PCG coders review the response and assign an activity code to the reported moment, as outlined in the 2011 Implementation Guide. Some activities and corresponding codes are eligible for Medicaid reimbursement, and some are not. Once the moments are submitted and coded, the time study determines what percentage of time was coded to reimbursable activities. That percentage is applied against the allowable costs submitted by the school district and other factors (e.g., the Medicaid Eligibility Rate, FFP) to determine the amount of allowable federal reimbursement.³

For the quarterly time study to be conducted, school districts first must submit *and certify* the following items:

- A complete list of eligible staff / positions to be included in the sample universe
- A calendar that reflects all days during the quarter in which the district is in session
- Start and end times that outline the entire period staff are required to work
 - Districts originally would submit a single start and end time for all staff
 - In October 2014, the system was updated to allow districts to enter multiple start and end times to account for variances in schedules of staff within the district⁴

After these data are submitted and certified by the participating school districts, PCG generates the sample. The sampling process randomly picks times and staff from the sample universe to meet the minimum number of sampled moments. The sample universe includes all the times for each staff member that they are working throughout the quarter. Every moment that any person is

³ The claim is calculated by multiplying the allowable costs by the time study results, the Medicaid Eligibility Rate, and the FFP to determine the amount of federal reimbursement on a quarterly basis for each participating school district. The time study results are calculated on a statewide basis and used for all participating school districts. The costs and Medicaid Eligibility Rate are district-specific factors.

⁴ This modification followed OIG findings in other states, which questioned the use of single start and end times for districts and demonstrates the continued efforts of PCG and the State to operate a flexible and fully compliant time study approach.

working during the quarter is included in the sample universe. The sample universe contains over 275 million moments each quarter. From the sample universe for each quarter, a sample pool of approximately 3,000 moments is randomly selected.

Once the sample pool has been drawn, PCG notifies staff participants in accordance with the 2011 Implementation Guide. As moments are completed by the sampled participants, PCG codes the moments. PCG finalizes the quarterly time study results after the window to submit moments has ended. Before finalizing the time study results for the quarter, PCG submits a subsample of coded moments to the State for its review and validation. At the end of the quarter, school districts submit allowable costs for positions that were included prior to the generation of the sample. PCG then calculates the quarterly claim and submits the claim to the State for submission to CMS.

PCG maintains all information necessary for review. This information includes the staff, calendar, and start and end time data submitted by the school districts, information needed to recreate the sample (e.g., seed numbers, sample code), response data submitted by the sampled participants, coding designations, financial data submitted by the districts, the calculated claim, and other support documentation.

The OIG Draft Report Findings

The Draft Report refers to the “Cost Allocation Plan” that the State filed with the Division of Cost Allocation in 2003 and used that plan as the basis for its audit. The 2003 Cost Allocation Plan essentially was a copy of the State Plan Amendment and Random Moment Time Study Guide previously approved by CMS. The OIG used the 2003 documents notwithstanding that the State filed changes with CMS in 2011 and has operated under them in good faith while awaiting CMS review and approval.⁵

The applicable federal regulation reads as follows:

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

⁵ The State cannot file a new Cost Allocation Plan until CMS has approved the pending SPA and Implementation Guide.

45 CFR § 95.517(a) (emphasis added).

Many of the findings in the Draft Report are directly contradicted by the 2011 SPA, which the State is entitled to implement pending CMS approval pursuant to 45 CFR 95.517. Likewise, many of the findings, including those relating to the coding of the time study moments, are contradicted by the 2011 Implementation Guide.

While the OIG is correct that the methodology utilized in New Jersey has not been officially approved by CMS, it is important to note that CMS, despite having been fully apprised of the methodology for years, has not requested any changes in the areas of the proposed methodology that the OIG outlines as findings in the Draft Report and has paid for claims under the methodology.

We also would like to comment preliminarily on the three regulations cited on page 5 of the Draft Report:

45 CFR § 75.430(i)(5)(i)(A) – Sample universe must include all of the employees whose costs are to be allocated based on the sample universe.

As previously noted in this response, *every position* for which costs were claimed were included in the sample universe. This process is outlined in further detail later in this memorandum.

45 CFR § 75.430(i)(5)(i)(B) – The entire time period involved must be covered by the sample.

The methodology that was utilized by PCG used all the time in the sample universe that was provided to us by the participating school districts. While the OIG cites this regulation in connection with its first finding (Draft Report, p. 7), it fails to note subsequent language that recognizes less than full compliance with the statistical sampling standards in paragraph (i)(5)(i) in specific circumstances.

45 CFR § 75.430(i)(5)(i)(C) – The results must be statistically valid and applied to the period being sampled.

The 2003 CMS Guide requires a minimum statistical validity level that meets a 95% confidence level with an error rate of +/- 5%. The 2011 Implementation Guide, based on the request of CMS, outlines a more stringent minimum statistical validity level that meets a 95% confidence level with an error rate of +/-2%. This more stringent sampling level requires a minimum of 2,016 more moments per sample pool each quarter. The State in fact operated at the 95% confidence level with an error rate of +/-2% for each quarter during the audit period. During that time, the minimum number of completed moments for each sampled quarter was met or exceeded.

Response to Specific Findings in the Draft Report

Please see below with respect to the specific OIG draft findings.

1. OIG Draft Report: “Methodology Did Not Meet Federal Requirements for Statistical Sampling”

The first finding in the Draft Report is that the methodology did not meet federal requirements for statistical sampling. Specifically, the Draft Report suggests that (1) PCG did not sample from all work hours; and (2) PCG did not sample moments during September. The Draft Report is mistaken on both points.

a. “Public Consulting Group Did Not Sample From All Work Hours”

The Draft Report incorrectly states that the time study did not sample moments from all work hours. In fact, the methodology implemented in New Jersey is consistent with standard practices in other states and was specifically designed to include all reported work times in the sample process. Moreover, every moment in the sample pool has the same likelihood of being sampled.

Start Times and End Times

By way of background, PCG designed its Random Moment Time Study system to capture exact start and end times from every participating school district. The system allows each district to enter into the system the earliest start time and latest end time for each of the staff working within the school district that were listed by the school district on the quarterly staff pool list. Specifically, districts can account for staggered start and end times and for part-time staff that may work a limited time or day schedule, as well as for variations by contractors. This was communicated to the OIG auditors in meetings also attended by the State, and through PCG’s submission of the actual computer code used to create the sample.

Even the most flexible systems still depend on the entry of accurate data. After the October 10, 2018 OIG audit exit conference, PCG asked participating school districts that had entered only a single start time and a single end time to review and re-certify whether those start and end times were accurate. As a result of that process, 120 districts re-certified that the start and end times they provided were accurate, and 179 districts updated the start and end times they provided. While some districts may have inadvertently excluded time from their original entries, the missing time had virtually no impact on the overall level of reimbursement – and the average reimbursable time actually increased after the review process, from 6.59% for the previous four January - March quarters, across all sample pools to 6.79% for the January - March 2019 quarter. This makes sense because the missing time tended to be time when more reimbursable activities were likely to be conducted.

The Draft Report states that the OIG interviewed officials from 50 “judgmentally selected school districts” and that none of the school district officials agreed with the hours listed for their district. (Draft Report, p. 8.) The fact remains that all the information regarding the school district calendars and their start and end times is entered into the system *by the district* and certified *by the district* every quarter. PCG does not enter any of this information, and the participating school districts can make changes to this information every quarter before the sample is generated. The school districts know that their information must be accurate, and PCG must rely on that information to be accurate.

It is important to reiterate:

1. Participating school districts can create multiple start and end times for staff within the system.
2. Participating school districts enter the start and end times, as well as calendar information directly into the system.
3. Many participating school districts had multiple start and end times for their staff in the system.
4. Before completing the quarterly data entry process, participating school districts must certify the accuracy of the data they have submitted, which will be used to generate the sample.
5. School districts that do not submit and certify data are not included in the time study and are not eligible to submit MAC claims or receive reimbursements for that quarter.

Sampling from the Pool

The Draft Report includes a chart for only a single quarter (January – March 2013) (Draft Report Figure 3, page 8), and suggests that the sample process improperly sampled moments “concentrated during the middle of the day.” (Draft Report, p. 7.) The data reflected in that chart does not track with the Draft Report’s conclusion.

In fact, there is a relatively even distribution of moments from 9:30 a.m. through 2:30 p.m., and this could be defined as “the middle of the day” in some contexts, but not for schools. Schools are typically in operation between 8:30 a.m. and 3:15 p.m.

What the Draft Report fails to recognize is that most staff members working in the school do so during the 9:30 a.m. - 2:30 p.m. period, so it is not unreasonable for those moments as a percentage of the total to have a higher likelihood of being selected.

Moreover, the OIG was provided with all of the computer code for the sampling software and all of the data used to generate the sample, and at no time during any of the meetings (or in the Draft

Report) has the OIG shown that the sample was not random or that the process was not designed to include all available moments in the sampling process.

As noted earlier, the Draft Report quotes 45 CFR § 75.430(i)(5)(i)(B), which states, “The entire time period involved must be covered by the sample.” However, the regulation goes on to say:

Less than full compliance with the statistical sampling standards noted in paragraph (i)(5)(i) of this section may be accepted by the cognizant agency for indirect costs if it concludes that the amounts to be allocated to Federal awards will be minimal, or if it concludes that the system proposed by the non-Federal entity will result in lower costs to Federal awards than a system which complies with the standards.

45 CFR § 75.430(i)(5)(i)(C)(iii).

In this case, as discussed earlier, the correction of start and end times by some school districts increased the amount of reimbursable time, and therefore increased the federal reimbursement payment. To the extent that school districts did not include all of the time they could have included, the error resulted in *lower* costs to the federal government. Consequently, under Subsection (C)(iii), less than full compliance should be acceptable under the regulation. PCG will continue to work with the State to correct such school district errors through increased training and communication, as well as through additional review processes.

b. “Public Consulting Group Did Not Sample Moments During September”

While we agree that moments were not sampled during the month of September, this is an acceptable practice and should not give rise to a finding.

Consistent with practice across the country, with the 2011 Implementation Guide, and even with the 2003 CMS Guide, a time study does not need to be conducted during the summer quarter.

The 2011 Implementation Guide states:

The majority of LEA staff work during a traditional school year. Since the time study results captured during a traditional time study are reflective of any other activities that would be performed during the summer quarter, a summer quarter time study will not be conducted. New Jersey will use an average of the three (3) previous quarter’s time study results to calculate a claim for the July-September period. The three previous quarters utilized for the average for the July – September quarter would be the previous October – December, January – March and April – June quarters. This is in accordance with the May 2003 Medicaid School-Based Administrative Claiming Guide, page 42.

2011 Implementation Guide, page 34.

Therefore, we believe the practice of excluding the month of September from the time study is a practice that is both consistent with CMS guidance as well as with established practice not only in New Jersey but across the country in states claiming MAC reimbursement.

2. OIG Draft Report Finding: “Methodology Was Not Adequately Supported”

We disagree with the Draft Report finding that the methodology was not adequately supported. In fact, PCG provided to the OIG all of the data necessary to support the sample process, including the computer code from our system, and the staff lists PCG provided were sufficiently reliable.

Data Files and Computer Code

PCG maintains all data, staff lists, calendars, seed number, and start and end times, as well as the computer code to verify the sample process. While all the data is and has been maintained to be able to recreate the sample, PCG did not have the ability to recreate the sample directly within our system at the time of the audit. The system was designed in a manner that would not allow an end user to recreate the sample, and this was done intentionally to avoid the risk that this could be perceived as corrupting the random process of the sample.

In any event, while we do not believe it was a requirement to be able to recreate the actual sample, PCG has now modified the system so the sample can be recreated when requested, to help avoid any confusion or similar criticism in the future.⁶

The OIG has not cited any federal regulation or guidance specifically requiring the system to be able to recreate the sample.

Staff Lists

The Draft Report suggests that PCG “did not provide reliable staff lists used in its sample selection.” (Draft Report, p. 10.) PCG believes that assertion is not accurate. The OIG asked for several different versions of the data across various requests during the audit process, each of which was provided.

When the OIG questioned apparent “anomalies” (e.g., different numbers of employees, different dates, and vacant positions), PCG explained those differences and how they were addressed in the methodology of the program. We will address each of these individually.

⁶ PCG is able to demonstrate this new functionality for the State and OIG. We believe that all of the data provided and maintained by PCG meets the requirements around record retention for the sampling process, and that the process utilized all of the data provided to generate a proper random sample each quarter.

- Different numbers of employees

The OIG is confusing people with positions. Sampling is done by position. The name of the person in the position is used to make sure any sampled moment is routed to the correct person as well as to simplify the process when costs are reported. At the beginning of the quarter the district submits a list of positions to be included in the time study as well as the name of the person “currently” occupying that position. Once the district has certified the list of positions, that count does not change throughout the quarter. However, the name of the person occupying that position may change if someone leaves or if the position was originally a vacancy that has been filled. All the data provided to the OIG maintained that consistent count of positions. Where the OIG identified anomalies, it was when OIG auditors compared the names of staff members for which financials were submitted, or in some cases complete moments against the list of names “originally” assigned to that position when the sample was generated, as discussed below.

It is important to note that there will be times during a quarter where two people may have consecutively held a position because one person left and was subsequently replaced by the district and added to the staff list by the district as a replacement within that same full-time position. That process does not change the number of positions for which the sample universe was based or for which costs are included.

As with most places of employment, school staff members may leave during the year (or in this case, during a specific quarter). When a person leaves a position that is on the staff pool list, a replacement may be hired to fill that position. If the position has been sampled for a moment, the moment would be sent to the person currently occupying that position to be completed. It is important to remember that the sample must be created prior to the start of the quarter.

An example of this process is as follows:

“June Smith, Speech Pathologist” is listed by the school district on the staff pool list when the sample is created (in December) for the January – March quarter. The sample process determines that she will receive a sampled moment during the quarter on March 8. (The sample must be drawn prior to the start of the quarter.) However, on February 15, June resigns her position and the school district hires Deb Thomas on February 16 to replace her in that Speech Pathologist position. Since Deb has been hired to fill that specific position, she would receive the sampled moment on March 8 to complete, and the system would note the replacement. The total number of positions the district has would not increase or decrease and the school district would document the change of the specific person

filling that position. Likewise, at the end of the quarter, the district would be eligible to claim the costs for that position. The school district would report the costs (salaries and benefits) associated with June Smith for her time in the Speech Pathologist position from January 1 through February 15, as well as the costs associated with Deb Thomas for her time in the Speech Pathologist position from February 16 through the end of the quarter (March 31).

When the OIG was reviewing the information, it appears that the auditors counted people, not positions, and made the incorrect assumption that the data was not consistent based on a comparison of completed moments and financial data against the list of positions and names included at the time the sample was created.

The data that was provided to the OIG was based on its specific requests but the number of positions that were included in the actual sample generation at the time the sample was generated did not change and could be used to recreate the actual sample. Controls are also in place in the system so that a person cannot be replaced by someone currently listed in another active position, and there are limitations to the costs that can be reported based on the time someone occupied the position during the quarter.

- Different dates

PCG tracks dates for positions to document who occupied the position at a specific moment in time. A person's end date is open until that person has been inactivated from a position. To clarify the position versus people misunderstanding the OIG had in this area, we provided the OIG with start and end dates for all staff. The OIG first noted future end dates for a quarter and claimed that there was an error. PCG explained that the end date remained blank in the database until that person was inactivated. When we provided revised participant data for the October – December 2015 quarter (submitted in 2018), which outlined changes to the name of the staff person that was in the position for any portion of the quarter, the OIG noted that some staff had end dates in 2016 and 2017 and asked how someone could know that a person would leave a year or two in the future. PCG explained that the end date was blank at the time the sample was drawn and had no effect on the sample generation, and we included end dates to show why a "specific name" in a position may have changed during a quarter.

- Vacant positions

Vacant positions are allowed for the participating school district to preserve a place on the quarterly staff list for a position that they plan to fill during the quarter. Since a school district can only claim costs for positions that were listed on the staff list at the time the sample was drawn, this process allows them to preserve that position. This is a recognized practice that is utilized for the MAC program not only in New Jersey but

in multiple states that operate a MAC program. If a position is filled during the quarter the district has the ability only to “update” the name for that position.

A district is not able to add new positions once the sample is drawn. If a district has 21 positions listed on its staff list submitted at the beginning of the quarter, and 2 of those are vacancies that are filled during the quarter, the district still only has 21 positions for which they can report costs for the quarter. Vacant positions are only considered invalid and not counted in the random moment time study if a vacant position was sampled and the moment was not filled at the time of the moment. Since the position was not filled, no costs are reported for that position when the quarterly expenditures are reported after the end of the quarter.

The Draft Report also states that “some of the information was compiled *after* the sample period and so could not have been used by PCG to create its sample.” (Draft Report, page 10.) The only information compiled “*after*” the creation of the sample were the updated names of the persons occupying a position, if a vacancy was listed and filled, or a resignation and new hire was made for a listed position, as well as the end dates for staff that were provided by the district. *This data was not needed or used to generate the sample since the sample was based on the information provided by the districts prior to the start of the quarter.*

All of the data provided to the OIG allowed them to easily verify that the sample was random, as well as to recreate the sample. During the exit conference, the OIG auditors orally acknowledged that they did not attempt to do so.

Recreating the Sample

The Draft Report on page 9 questions PCG’s documentation and suggests that PCG should have been able to recreate its sample, citing a federal regulation, the 2003 CMS Guide, and unidentified correspondence from the State to CMS. It is important to be clear that neither the regulation nor the Guide say that the State should be able to recreate the sample.

The regulation, 45 CFR§ 75.403(g), states in full as follows:

Except where otherwise authorized by statute, costs must meet the following general criteria in order to be allowable under Federal awards:

- (a) Be necessary and reasonable for the performance of the Federal Award and be allocable thereto under these principles.
- (b) Conform to any limitations or exclusions set forth in these principles or in the Federal Award as to types or amount of cost items.
- (c) Be consistent with policies and procedures that apply uniformly to both federally-financed and other activities of the non-Federal entity.

(d) Be accorded consistent treatment. A cost may not be assigned to a Federal Award as a direct cost if any other cost incurred for the same purpose in like circumstances has been allocated to the Federal Award as an indirect cost.

(e) Be determined in accordance with generally accepted accounting principles (GAAP), except, for state and local governments and Indian tribes only, as otherwise provided for in this part.

(f) Not be included as a cost or used to meet cost sharing or matching requirements of any other federally-financed program in either the current or a prior period. See also § 75.306(b).

(g) Be adequately documented. See also §§ 75.300 through 75.309.

The sampling methodology utilized was reasonable and in conformance with principles in this type of Federal award not only in New Jersey but in programs in states across the country. In addition, the OIG did not, as part of its review, look at costs reported at the district level and noted no issues with the way costs were allocated for Federal award through the claim calculation. The Draft Report does not find any inclusion of unallowed costs, any improper or inconsistent treatment of costs, any violation of GAAP, any improper cost sharing, or any inadequately documented costs. Nowhere does this regulation require that the system must be able to recreate the sample.

The OIG also quotes pages 42-43 of the 2003 CMS Guide, the relevant portion of which states:

Documentation to be retained must support and include the following: the sample universe determination, sample selection, sample results, sampling forms, cost data for each school district, and summary sheets showing how each school district's claim was compiled.

The language does not state that the sample must be able to be recreated within a system, just that the documentation must be maintained.

As stated above, PCG provided the OIG with all of the information regarding the 1) the sample universe data for each quarter: staff lists (positions by districts that were included in the sample universe); calendars (which outlined the days that were included in the sample universe); start and end times (which outlined which minutes on each day that were included in the sample universe); 2) the actual selected sample for each quarter (sample selection); 3) sample results for each quarter (the number of moments coded to each activity code); 4) sampling forms for each quarter (the responses from each completed sampled moment by the participants as well as any follow-up conducted); 5) the cost data reported by district by each individual position listed on the staff pool list for each quarter; and 6) the summary sheets showing how each school district's claim was compiled for each quarter.

Neither the methodology submitted to CMS, nor the guidance quoted by the OIG on the cited pages in the 2003 CMS guide, specifically require a state to be able to recreate the sample. The sample must be random, an item not disputed by the OIG in this Draft Report, and the data does not show any violation of CMS guidance. The Draft Report inaccurately interprets CMS policy.

Lastly, citing unidentified correspondence, the OIG states at footnote 20 of the Draft Report that, “The State agency assured CMS, in correspondence related to the proposed State plan amendment, that under its proposed random moment sampling methodology, ‘the sample [would be] maintained in a manner in which it can be duplicated for audit purposes.’” This statement is not found in the 2011 SPA (or the 2011 Implementation Guide), where it would need to be in order to be an actual requirement.⁷

In any event, as noted above, PCG has recently modified the system to include functionality that allows for the recreation of a sample. To be clear, however, the data maintained and provided by PCG meets the requirements around record retention for the sampling process, and that the process utilized all of the data provide to generate a proper random sample each quarter.

Finally, PCG engaged an independent accounting firm to determine whether the sample process used by PCG during the OIG audit period was random. The firm was provided the same data set that was provided to the OIG auditors, as well as the code used to generate the sample, and the firm found no evidence to indicate the sample was not random. The accounting firm also found, through a review of the code used to generate the sample, that the system utilized all dates and times-provided by the school districts, and that moments for the time study cannot be generated unless dates and times have been entered by the school district (and pass the edit checks).

3. OIG Draft Report Finding: “Methodology Did Not Comply with Cost Allocation Plan Requirements”

For reasons previously discussed, the Draft Report finding that the methodology did not comply with Cost Allocation Plan requirements is misplaced. As a part of this review, the OIG auditors utilized the 2003 CMS Guide, the previous New Jersey methodology, as well as proposed CMS policies that were not proposed until 2018 -- even though the audit covers the time from October 2011 through June 2016. The OIG has apparently decided not to consider the 2011 Implementation Guide, which outlines the process for the program during the audit period.

It is important to note that the State of New Jersey only made changes to the Implementation Guide and methodology at the request of CMS and has been working with CMS to complete that approval. Many of the items cited in the Draft Report as not compliant are outlined in the 2011 Implementation Guide and they are consistent with CMS-approved practice across the country.

In failing to utilize the current methodology under review by CMS, the OIG identified issues that were not current practice and have already been discussed in detail with CMS. Regarding CMS policies that were proposed, the State has updated the methodology under review, at the suggestion

⁷ PCG has been unable to locate the unidentified correspondence referenced by the OIG. As explained earlier in this response, the State and PCG reasonably and appropriately operated under the 2011 documents pending CMS review and approval.

of CMS, but it was not required to implement them during the period under review -- which began seven years before the changes were proposed by CMS.

a. “Sample Universe Included Contract Staff and Employees Who Did Not Perform Medicaid Activities”

As outlined in the 2011 Implementation Guide, contracted staff *are* allowed to be included on the quarterly staff list and claimed under the MAC program. This is consistent with practice in other states with plans approved by CMS. Regarding staff and employees who did not perform Medicaid activities, the statement that “[i]ncluding them among the State agency’s administrative costs resulted in an inaccurate estimate of Federal claims submitted for reimbursement” (Draft Report, page 10) is inaccurate for several reasons.

- Participating districts can include staff that perform Medicaid Administrative Claiming activities within their district. Some participating districts are small and therefore staff may wear various hats in their role that are not always tied to their primary job title.
- All staff that are included on the staff list are eligible to be selected for a moment. Likewise, under statistical sampling methodologies, the results of the sample can be applied to the entire universe from which the sample was drawn if the minimum statistical sampling confidence level and error rate have been achieved. Including staff that may not perform Medicaid activities would *lower* the reimbursable percentage and *reduce* the level of reimbursement.
- The number of “indirect employees” identified in the Draft Report was insignificant in the overall sample pool. The total universe of staff in New Jersey averages more than 11,500 staff per quarter. In the cited example of business managers, the total number of those individuals was only 13 from 10 unique districts. Secretaries similarly accounted for just 27 people from 19 school districts. These positions were on the staff lists certified by the school district, and they account for less than 0.35% of the total population included on the quarterly staff list.

b. “Schools Made Changes to the Sample”

The allegation in the Draft Report that schools made changes to the sample, and that PCG acted in a way that was inconsistent with the cost allocation plan, is inaccurate.

The Draft Report states that the “cost allocation plan specified that a sampled moment for vacant positions would be considered invalid and therefore not counted as a Medicaid allowable random moment.” (Draft Report at p. 11.) However, that language is not included in the 2011 Implementation Guide. The applicable regulation, 45 CFR § 75.430(i)(5)(i)(A), states instead: “Sample universe must include all of the employees whose costs are to be allocated based on the

sample universe.” And the 2011 Implementation Guide does not prohibit updating the names of individuals filling positions (see earlier discussion).

In fact, every position for which a cost was claimed was included in the sample universe. The changes that the school districts were allowed to make, updating the name of the person in the position at the time of the moment, is not a violation of 45 CFR § 75.430. The process PCG utilized to freeze the positions for which costs were claimed at the time of the sample is directly in line with the federal regulation and its intent. The intent is to allow school districts the ability to preserve positions for which they plan on filling during the quarter, not to bias or change the sample results. Given that a minimum number of moments must be generated each quarter to meet the statistical validity requirements, including vacant positions for which there is not an intent to fill those positions actually *reduces* the chances of meeting the statistical validity requirement. Also, if a position is not filled there are no allowable expenditures to claim, thus removing any incentive for a district to include these positions if they are not planning on filling them during the quarter. Vacant positions properly are considered invalid and not counted in the random moment time study only if a vacant position was sampled and the position was not filled *at the time of the moment*.

c. “Advance Notice Was Provided to Sampled Participants”

It was permissible to provide advance notice to sampled participants under the 2011 Implementation Guide, limited to no more than 5 days prior to the sampled moment, and doing so served the legitimate purpose of informing staff about sampled moments given travel schedules and limited access to email.

Beginning in 2018, CMS began to implement a policy calling for zero notification for sampled participants, under which sampled participants could not be notified of their sampled moment until it occurred. Recently, as part of its Implementation Guide review with the State, CMS has informed the State of the new policy and the State has been working with CMS to make the changes to the Implementation Guide to reflect this new policy. However, the 5-day notification policy utilized during the time period of this audit was consistent with the 2011 Implementation Guide, CMS guidance at the time, and programs in states throughout the country. (A CMS-approved 5-day notice period is still used in states including Arizona, Colorado, Florida, Georgia, Illinois, Kansas, Michigan, North Carolina, Pennsylvania, Texas, and Wisconsin.)

d. “Participants Did Not Code Their Own Activities”

The Draft Report finding that participants did not code their own activities ignores the 2011 Implementation Guide that the State used in good faith during the audit period and CMS guidance as well. A centralized coding model has been in place in New Jersey since 2005, and more than 20 states that operate MAC programs utilize a centralized coding process that have been approved by CMS. Centralized coding was requested by CMS to provide more consistency in coding a moment by moving it from each sampled participant to a centralized and more experienced team.

PCG disagrees with the claim that it coded incorrectly, and address that claim specifically on pages 17 to 21 below, and in the attached Appendix. The State regularly reviews for accuracy a subsample of moments coded by PCG, each quarter, and has consistently found no errors in our coding process.

e. “Audit Trail Was Not Maintained”

The Draft Report alleges that the State’s cost allocation plan states that student names and case information would be included with time study responses to “facilitate an audit trail” to the case file.” This language is not found in the 2011 Implementation Guide that the State used.

In fact, the time study has never included student names and case information. Medicaid Administrative Claiming does not include reimbursement for direct medical services (covered by the SEMI program), so the collection of student information is unnecessary. The 2011 Implementation Guide for the MAC program never required this information. Previous time study documents that were created by New Jersey’s previous vendor, dating back to 2003, also did not include this information on the time study forms.

The activity codes for the MAC program are specifically designed to not be based on a particular student, but on the activity being performed at the time of the moment. No code in the 2003 CMS Guide, from which the codes in the 2011 Implementation Guide are derived, requires student specific identifiable information. Even the Medicaid status of a child that is the focus of a sampled participant’s activity at the time of the moment is not needed, since a districtwide Medicaid Eligibility Rate is applied to those codes during the calculation of the claim. Likewise, we are not aware of student information being gathered for MAC programs in other states.

It is important to note that PCG provided the OIG with all of the response information received from the sampled participant when they completed their sample moment. The responses to all the required questions were maintained and provided as well as any subsequent clarification sent to the sampled participant and the responses to those questions. PCG has always archived and maintained all the response information. That information is provided to New Jersey Treasury on a quarterly basis as part of its oversight and review of the coding conducted by PCG. As discussed above, and as outlined in the 2011 Implementation Guide, New Jersey Treasury staff review a 5% subsample of the moments coded by PCG from each sample pool every quarter.

f. “Sample Was Not Adequately Validated”

The Draft Report states that the State’s cost allocation plan requires a validation on a 10 percent subsample of moments, but this is incorrect. The State reviewed a 5 percent subsample, which is consistent with the 2011 Implementation Guide.

The Draft Report also claims that the State could not validate PCG's coding activity because, as outlined in its preceding finding, PCG did not maintain an audit trail. This finding is incorrect for the same reason noted above: student case information was never requested or required for audit purposes under the MAC program.

4. OIG Draft Report: "Activity Coding Was Incorrect or Unsupported"

PCG also strongly disagrees with the assertion on pages 12 to 14 of the Draft Report that PCG's activity coding was incorrect or unsupported.

The OIG based its assertion on a sample of 227 moments out of a total pool of more than 88,000 moments from October 2011 through June 2016 (0.26%). It states that it found that 222 out of the 227 moments were coded in error. PCG coding experts carefully reviewed those 227 moments provided by the OIG in an excel file to the State of New Jersey after the exit conference.

PCG's post-audit review determined that the OIG was incorrect on 217 of those 222 moments. PCG acknowledges only that 5 of the 227 moments should have had additional follow-up conducted with the sampled participant for additional information in order to clarify the moment and should not have been coded to a reimbursable activity absent information more clearly supporting a reimbursable moment.

A detailed analysis is provided in the attached Appendix. The six substantive points in the body of the OIG Draft Report are addressed here.

a. “IEP Activities”

The OIG Draft Report states on page 13:

For 60 activity moments, PCG coded IEP-related activities as Medicaid administration. The CMS Guide states that activities related to identifying, evaluating, and developing IEPs for children with a disability under IDEA are education-related activities and are not eligible for Medicaid reimbursement (CMS Guide, pp. 18, 56-57).

In fact, the 2003 CMS Guide quoted by the OIG also states:

Schools are conducting the activities listed above for the purpose of fulfilling education-related mandates under the IDEA; as such, the associated costs of these activities are not allowable as administrative costs under the Medicaid program. In developing and reporting under the time study activity codes, these education-related activities must be clearly identified and distinguished as non-Medicaid activities. In general, these activities could be reported under model time study Codes 1.a., 2.a., and 3. in subsection C. (2003 CMS Guide, p. 18, emphasis added.)

The IEP has multiple purposes. There is an educational component to the IEP and, for many children, there is also a medical component to the IEP. Time that staff members spend completing the educational mandates of the IEP – inviting parents to the meeting, completing general IEP paperwork, and discussing educational activities at the IEP meeting – is coded to the non-reimbursable education time study code (Code 3). However, time that staff spend in the meeting creating the medical plan of care – how much OT or PT service the child is going to receive, who is going to deliver that service, scheduling those services, etc. -- are all outlined as reimbursable in the 2003 CMS Guide.

Page 34 of the 2003 CMS Guide specifically cites as reimbursable activities:

- Participating in a meeting/discussion to coordinate or review a student’s needs for health-related services covered by Medicaid.
- Monitoring and evaluating the Medicaid service components of the IEP as appropriate.

b. “Medicaid Health Services”

The OIG Draft Report states (footnote omitted):

For 26 activity moments, PCG coded Medicaid-eligible health services as Medicaid administration. These services are directly reimbursed as school-based health services and are ineligible for reimbursement as administrative costs (CMS Guide, p. 9). Allocating the services as administrative costs resulted in duplicate payments.

The OIG has indicated moments should be coded as a Direct Medical (IEP) Service (Code 4.b). However, it is important to note that the only moments that can be coded as Direct Medical (IEP) Services are medical services that are directly provided to Special Education students, and any related paperwork, and those services are billable under the New Jersey SEMI program. Many of the moments identified by the OIG are *not* allowed for reimbursement under the SEMI program and cannot be reimbursed under that program. The SEMI program was not billed for these activities. Also, since the State has implemented a cost settlement reimbursement methodology for the SEMI program, only moments coded to activity code 4.b are used in the calculation of the final settlement amount. Having these moments coded to activity code 9.b *guarantees* that no duplication of payment can or did occur.

PCG has also identified apparent inconsistency in the OIG coding. In the previous point, the OIG asserted that activities for the development of an IEP are not reimbursed under Medicaid. However, as outlined in the Appendix, the OIG also asserted that moments addressing paperwork for the completion of an IEP should be billed as a direct medical service to Medicaid and not under the MAC Program.⁸

c. “School and Educational Activities”

The OIG Draft Report states:

For 18 activity moments, PCG coded school-related and educational activities as Medicaid administration. The activities included providing or administering educational services, non-Medicaid-eligible social services, and student discipline. The CMS Guide states that school-related and educational activities may not be coded as Medicaid administration (CMS Guide, pp. 26-27).

Here again, it is important to note that, when services are delivered in a school setting, there is a need for coordination of care between the child’s educational teacher and those providing medical services to the child. In some cases, there is a need for the teacher to be informed of the child’s progress so they can communicate that progress with the parent. Groups of staff will also work together to discuss children that have been identified as having a need for medical services. The OIG, in its review of moments in this category, assumes the purpose is educational in nature and not to identify, refer, or link a child with necessary medical services.

⁸ Under the State’s bundled rate approach for reimbursable evaluation services in the SEMI program, the date of the IEP meeting is the date that is used to bill for the evaluation services that were performed by qualified providers leading up to the IEP meeting. Health-related costs incurred at the IEP meeting itself, such as time spent by providers and other employees on the creation of a health-related plan of care, are billed under the MAC Program. Education-related costs are not billed under either program.

To the contrary, the 2003 CMS Guide specifically states on page 34 that the following activities are reimbursable:

- Making referrals for and/or coordinating medical or physical examinations and necessary medical/dental/mental health evaluations.
- Gathering any information that may be required in advance of medical/dental/mental health referrals.
- Providing follow-up contact to ensure that a child has received the prescribed medical/dental/mental health services covered by Medicaid.
- Providing information to other staff on the child's related medical/dental/mental health services and plans.
- Monitoring and evaluating the Medicaid service components of the IEP as appropriate.

d. "Ineligible Training Activities"

The OIG Draft Report states:

For 16 activity moments, PCG coded training that was not related to the administration of the Medicaid program as Medicaid administration. The training was related to career development and crisis management and did not pertain to Medicaid administration. The CMS Guide states that training related to family access and child referral of the Medicaid program benefits are eligible Medicaid administrative activities (CMS Guide, pp. 32-33).

Again, the OIG Draft Report fails to include the full definition of the code when highlighting its exception to some of the activity coding it reviewed. The 2003 CMS Guide (on page 34) specifically includes the following as examples of reimbursable training activity:

- 1) Participating in or coordinating training that improves the delivery of medical/Medicaid related services.
- 2) Participating in or coordinating training that enhances early identification, intervention, screening and referral of students with special health needs to such services (e.g., Medicaid EPSDT services).

As outlined in the Appendix, the moments that the OIG coded as "Ineligible Training Activities" in fact occurred during training that the sampled participants were receiving or providing for the purpose of improving delivery of medical / Medicaid related services or enhancing early identification, intervention, screening, and referral of a student with special health needs.

e. “Non-Medicaid Health Services”

The OIG Draft Report (page 14, footnote omitted) states:

For 11 activity moments, PCG coded non-Medicaid eligible direct health services (i.e., services not covered by Medicaid) as Medicaid administration.... The CMS Guide states that direct Medical activities including patient follow-up, assessment, patient education, and counseling, may not be coded as Medicaid administrative services (CMS Guide, pp. 9, 27-28).

The citation from the OIG is incorrect. Page 9 of the 2003 Guide refers to parallel coding – there is a code for a Medicaid related service and one for a non-Medicaid related service and avoiding duplicate payments. Pages 27-28 do not contain references to patient follow-up or patient education. Those pages do contain references to counseling and assessments.

The 11 moments cited by the OIG are not for direct medical services. The examples cited here include referrals that were made for failed vision or hearing screens and need a referral to an outside medical provider as well as referrals for Occupational Therapy and other health services. Page 34 of the CMS specifically states, “Making referrals for and/or coordinating medical or physical examinations and necessary medical/dental/mental health evaluations” and “Referring students for necessary medical health, mental health, or substance abuse services covered by Medicaid” are reimbursable activities. As demonstrated in the Appendix, the activities referenced are eligible as reimbursable activities.

f. “Unsupported Coding”

Finally, the OIG Draft Report states that PCG coded 91 activity moments as related to Medicaid administration without sufficient support to make that coding decision. In fact, PCG conducts follow-up with sampled participants if they do not respond with sufficient information to assign an activity code to the work they were performing at the time of the moment. As shown in the Appendix, many of the moments had follow-up conducted to obtain additional clarification, and that information was provided to the OIG. Also, other moments designated as unsupported clearly articulate the reimbursable activity that the sampled participant was completing at the time of the moment.

A detailed analysis is provided in the attached Appendix.

5. OIG Draft Report: “The State Agency Did Not Follow CMS Guidance”

The Draft Report claims, “The State agency failed to comply with Federal regulations because it disregarded CMS’s efforts to ensure a random moment sampling methodology that would produce valid results.” (Draft Report, p. 14.) This finding is inaccurate.

As discussed above, at the request of CMS, the State in 2011 filed a new State Plan Amendment and Random Moment Time Study Implementation Guide for approval. The State has been working consistently to obtain approval for both of those documents. The State also has made changes to both of those documents upon the request of CMS, and those changes have already been made in the implementation of the program where appropriate. As noted earlier, many of the findings in the Draft Report are due to the fact that the OIG did not utilize the 2011 SPA or the Implementation Guide, which the State and PCG have used in good faith as the basis for the program.

CONCLUSION

The processes utilized by PCG to support the New Jersey MAC program were not only consistent with the methodology proposed for the program by the State in 2011, but also in line with the 2003 CMS Guide, practices approved by CMS for MAC programs throughout the country, and the Code of Federal Regulations. We believe that all applicable rules, practices, and guidance have been followed. Our methodology for determining the amount of federal reimbursement under the MAC program was reasonable, appropriate, and in compliance with the law. For the reasons outlined above, PCG strongly disagrees with the findings in the OIG Draft Report.

APPENDIX G: STATE AGENCY COMMENTS (JULY 12, 2019)



State of New Jersey
DEPARTMENT OF HUMAN SERVICES
PO Box 700
TRENTON, NJ 08625-0700

PHILIP D. MURPHY
Governor

SHEILA Y. OLIVER
Lt. Governor

CAROLE JOHNSON
Commissioner

July 12, 2019

Ms. Brenda M. Tierney
Regional Inspector General for Audit Services
Office of Audit Services, Region II
Office of the Inspector General
U.S. Department of Health and Human Services
Jacob K. Javits Federal Building
26 Federal Plaza, Room 3900
New York, NY 10278

RE: OIG Draft Report Number A-02-17-01006

Dear Ms. Tierney:

We are writing today to provide follow-up information to the official audit response sent last week on July 5th. In that response we outlined our ongoing efforts to work with the Centers for Medicare and Medicaid Services (CMS) to gain approval of the school-based claiming methodology that we believed to be consistent with federal laws and rules. We are happy to report that on the same day that we provided our official audit response to your office, CMS issued formal approval for New Jersey's implementation plan for claiming of school-based direct medical services and administrative activities. While this CMS approval is prospective in nature, revisions to the implementation plan during the approval process did not substantially alter the plan, and New Jersey looks forward to working with CMS on approval for prior periods. This formal approval correspondence and New Jersey's final approved plan are attached for your reference.

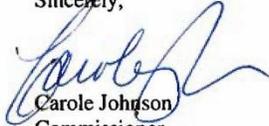
In light of this approval, we would ask that the following audit findings be reevaluated: "Methodology did not meet federal requirements for statistical sampling", "Methodology was not adequately supported", "Methodology did not comply with cost allocation plan requirements", and "The state agency did not follow CMS guidance". These findings, in whole or in part, were predicated on the auditors' belief that the State was operating a program that was out of compliance with CMS rules. The recent formal CMS approval of New Jersey's implementation plan, which outlines program operations that are not materially different than the program as it was operating during the audit period, serve as strong evidence of compliance with CMS rules.

Thank you for your attention to this supplemental information as you prepare your final audit report. We believe this new information, combined with the supporting evidence contained in our official audit response dated July 5, 2019 demonstrate that the State's school-based Medicaid Administrative Claiming program was operated in substantial compliance with all applicable rules during the audit period.

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Please contact Brian Francz, the New Jersey Department of Human Services Chief Financial Officer at (609) 984-9357 with any follow-up questions. The State remains committed to strong and efficient school-based medical services and will continue to work closely with CMS on administration of the program.

Sincerely,



Carole Johnson
Commissioner

C: Sarah Adelman, Deputy Commissioner
Brian Francz, Chief Financial Officer
Carol Grant, Acting Director, Division of Medical Assistance and Health Services
Richard Hurd, Chief of Staff, Division of Medical Assistance and Health Services