California State Auditor's

Recommendations for Legislative Consideration From Audits Issued During 2005 and 2006

January 2007

CALIFORNIA STATE AUDITOR

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January 25, 2007

Dear Governor and Legislative Leaders:

As you know, the Bureau of State Audits is a resource to the Legislature for oversight and accountability and as such, conducts independent, non-partisan audits as mandated or as directed by the Joint Legislative Audit Committee. While our recommendations are typically directed to the auditee, we may also make recommendations for the Legislature to consider in striving for efficient and effective government operations. This special report summarizes recommendations we made during the 2005–06 legislative session for the Legislature to consider or for the auditee to seek legislative changes.

If you would like more information or assistance on any of the recommendations or background provided in this report, please contact my Legislative Liaison, Margarita Fernandez, at 445-0255 extension 343.

Respectfully submitted,

Elaine M. Howle

ELAINE M. HOWLE
State Auditor

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K-12 EDUCATION

Establish Designation Criteria for English Learners

Recommendation

The Department of Education (department) should work in conjunction with relevant parties to establish required designation and redesignation criteria for English learners, seeking legislation as necessary.

Background

Students in kindergarten through grade 12 with limited proficiency in English—designated as "English learners"—represented approximately one-quarter of the State's public school students at the time of our report. Roughly $630 million in state and federal funding was provided to school districts to supplement English learner programs in fiscal year 2003–04, just over 1 percent of the total kindergarten through grade 12 education revenues that year.

Although the department has provided guidance to school districts for establishing criteria to identify students as English learners and to redesignate them as fluent in English, because these are not regulations, school districts are not required to adhere to the department's guidelines. Differences in school districts' identification and redesignation criteria result in funding variation and reduced ability to compare performance results across districts. In order to provide greater consistency in the English learner population across the State, we recommended that the department work in conjunction with stakeholders to establish required initial designation and redesignation criteria related to statewide tests.

Report

2004-120 *Department of Education: School Districts' Inconsistent Identification and Redesignation of English Learners Cause Funding Variances and Make Comparisons of Performance Outcomes Difficult* (June 2005)

Monitor California Indian Education With Additional Reporting

Recommendation

Require the Department of Education (department) to submit annual or biannual reports on the California Indian Education Center program (program) that monitor the progress of the program and supplement a report submitted on this topic in late 2005.

Background

The department administers and oversees the program, which was established in 1974 to address the challenges facing American Indian students enrolled in California's public schools. The program comprises 30 centers that received $4.4 million in fiscal year 2005–06.

We reported in February 2006 that state law requires the department to collect data annually to measure the academic performance of the students the centers serve and how well the centers are meeting the goals established by law. Guidelines adopted by the State Board of Education in 1975 further require that centers design their programs after assessing the needs of their respective communities. However, until 2005 the department did not ensure that centers reported the annual academic performance data of their students, and the department had no record of the centers' needs assessments on file and thus has no way of knowing whether the services the centers assert they are providing are the services most needed by the populations they serve. Although the department submitted an evaluation of the program to the Legislature by January 1, 2006, as required by state law, because the department was slow to start collecting data for the report, the evaluation lacked sufficient analysis to adequately support its recommendations to improve the program.

Report

2005-104 *Department of Education: Its Flawed Administration of the California Indian Education Center Program Prevents It From Effectively Evaluating, Funding, and Monitoring the Program* (February 2006)

Note: Although SB 1710 (2006) increased the department's statutorily defined oversight duties and mechanisms, it did not directly address the above recommendation.

Allow a Waiver for Public Schools' Primary Language Translations

Recommendation

The Department of Education (department) should seek legislation to amend the law to allow parents to waive the requirement that they receive materials from their child's public school translated into their primary language.

Background

Education Code, Section 48985, requires that when 15 percent or more of students enrolled in a public school speak a single primary language other than English, all materials sent to the parent by the school or school district must be provided in that language as well as in English. About half of California's 10,100 public schools had at least one primary language that required translation in fiscal year 2004–05.

Although schools should use a home language survey the department developed to determine whether a language meets the 15 percent threshold, this survey may overstate the need for translations because it was not designed to identify those parents who are bilingual. In fact, some of the school districts we visited as part of our review indicated they did not meet the translation requirements because they believed there was little demand for translated materials, and in two instances districts indicated they received complaints from parents who did not want to be sent translated documents.

Report

2005-137 *California Public Schools: Compliance With Translation Requirements Is High for Spanish but Significantly Lower for Some Other Languages* (October 2006)

Clarify Expectations for the Mathematics and Reading Development Program

Recommendation

Redefine the expectations for the Mathematics and Reading Professional Development Program (program) and require the Department of Education (department) to provide meaningful data against which to evaluate program success. Additionally, the department should seek legislation authorizing it to make program payments to school districts without Board of Education (board) approval.

Background

This voluntary program aims to provide standards-based instructional training to 176,000 teachers statewide. Although the Legislature originally envisioned achieving this goal over a four-year period with annual appropriations of $80 million, only a small percentage of teachers had completed the full 120 hours of training for their current assignments more than five years after the program's enactment. Additionally, the department's report to the Legislature in July 2005 regarding the program's effectiveness was of little value because the reporting requirements are insufficient to assess the program's success. Although districts we surveyed indicated lack of teacher interest as the primary reason for nonparticipation, a significant number of districts also reported funding concerns: because the board approves payments for this program, the timeline for payment is a minimum of four to six months following receipt of the school district's claim.

Given that only a small percentage of teachers had completed the full 120 hours of program training at the time of our report, and given that teacher participation is voluntary, we recommended that the Legislature consider redefining its expectations for the program, clearly stating the number of teachers to be fully trained as well as any gains in student achievement expected. Based on how it defines the program's goals, the Legislature should consider enacting statutory changes to ensure that the department provides meaningful data with which to evaluate program success, including unduplicated counts of teachers who have completed the training with the aid of program and nonprogram funding as compared to the total number of teachers who are eligible to participate in the program, and including measures of the resulting gains in student achievement for teachers who have completed the program's training, such as higher student scores on standardized tests.

Report

2005-133 *Department of Education: Its Mathematics and Reading Professional Development Program Has Trained Fewer Teachers Than Originally Expected* (November 2006)

HIGHER EDUCATION

Monitor California Student Aid Commission's and EDFUND's Abilities to Sustain the FFEL Program

Recommendation

Closely monitor the California Student Aid Commission (Student Aid) and EDFUND to ensure that they are able to remain competitive with other Federal Family Education Loan Program (FFEL program) guaranty agencies; the Operating Fund to ensure that the FFEL Program is generating a sufficient operating surplus so that it can supplement funding for Student Aid's other services and programs; and Student Aid's progress toward completing critical tasks, including the renegotiation of its voluntary flexible agreement with the U.S. Department of Education (Education) and the development of a business diversification plan. Additionally, we recommended that if EDFUND is unable to generate a sufficient operating surplus, the Legislature should require Student Aid to dissolve EDFUND and contract with another guaranty agency to administer the FFEL program or should reconsider the need for a state-designated guaranty agency.

Background

At the time of our audit, the State's ability to sustain the FFEL program was uncertain because of changes recently made to the federal laws governing the program. We reported how Student Aid and, more importantly, its competitors, choose to implement these changes could reduce Student Aid's share of the FFEL program market significantly.

Additionally, we reported that ongoing tensions between Student Aid and EDFUND had hampered efforts to complete essential tasks and that Student Aid may have lost the opportunity to receive $24 million in revenue for the FFEL program and had the potential to generate even more. In particular, Student Aid was required to renegotiate an agreement with Education that would earn revenue for performing activities related to improving FFEL program services to borrowers and schools. Despite working on a new agreement since June 2004, Student Aid did not yet have an approved agreement.

Further, in spite of their efforts over the last eight years, Student Aid and EDFUND did not have a viable plan for business diversification, and lack of agreement between the two entities on the appropriate roles for each had made it impossible for them to forge an operating agreement for the FFEL program.

Report

2005-120 *California Student Aid Commission: Changes in the Federal Family Education Loan Program, Questionable Decisions, and Inadequate Oversight Raise Doubts About the Financial Stability of the Student Loan Program* (April 2006)

HEALTH AND HUMAN SERVICES

Obtain Documentation to Ensure the Receipt of Prescription Drug Rebates

Recommendation

Enact legislation to allow the California Public Employees' Retirement System (CalPERS) to obtain relevant documentation to ensure it is receiving all rebates to which it is entitled to lower the prescription drug cost of the health benefits program established by the Public Employees' Medical and Hospital Care Act.

Background

We examined the purchasing strategies of the three primary departments that contract for prescription drugs—the Department of General Services (General Services), the Department of Health Services (Health Services), and CalPERS. The costs to procure prescription drugs would be higher without the savings they obtain through manufacturers' discounts, federal and state supplemental rebates, co-payments, and third-party payments. We reported in May 2005 that CalPERS receives rebates, but only through entities it contracts with to provide pharmacy services to its members. In some instances CalPERS receives rebates under a pass-through method. In the pass-through method, the entity negotiates rebates and contracts with pharmaceutical manufacturers so that rebate payments between the manufacturer and the entity are based on historical and prospective pharmacy utilization data for all of the members of the health care plan that the entity administers. The entity then collects and passes through to plan sponsors, such as CalPERS, either a percentage or the entire amount of the rebates earned by the sponsors based on their member utilization.

Typically, these entities prohibit CalPERS from having access to any information that would cause them to breach the terms of any contract with the pharmaceutical manufacturers to which they are a party. Because CalPERS does not have access to the entities' rebate contracts with the manufacturers, CalPERS cannot directly verify that it is receiving all of the rebates to which it is entitled. According to CalPERS, this rebate practice between the entity and the manufacturer is an industry practice and is not unique to it. At the time of our report, CalPERS intended to continue to pursue greater disclosure requirements in future contracts with its contracting entities.

Report

2004-033 *Pharmaceuticals: State Departments That Purchase Prescription Drugs Can Further Refine Their Cost Savings Strategies* (May 2005)

Provide CalPERS Access to Relevant Documentation During Contract Negotiations

Recommendation

Allow the California Public Employees' Retirement System (CalPERS), during its contract negotiation process, to obtain relevant documentation supporting any analyses it will use to make decisions that materially affect the members of the health benefits program established by the Public Employees' Medical and Hospital Care Act.

Background

In an effort to control health care costs, the board of administration (board) of CalPERS voted on May 19, 2004, to approve an exclusive provider network for CalPERS members in the Blue Shield of California (Blue Shield) health maintenance organization (HMO). Twenty-four hospitals were subsequently excluded from the Blue Shield HMO provider network based on an analysis prepared by Blue Shield. However, Blue Shield's estimated savings did not consider the impact of members leaving its HMO provider network and joining other health care plans. We were unable to quantify the full effect that member movement has had on Blue Shield's savings estimate.

Additionally, Blue Shield did not adequately address a recommendation made by the actuary it hired to review its models, at the request of CalPERS, to investigate differences in the emergency room assumptions for one hospital system. Given the sensitivity of the hospital savings estimate to differences in emergency room assumptions, Blue Shield should have reconciled the two analyses to ensure that its estimate of emergency room costs was reasonable.

Our review in early 2005 found that the CalPERS board, committee, and health benefits branch staff relied primarily on Blue Shield's summary of its analyses and its presentations in deciding to approve the exclusive provider network. A provision of the contract between CalPERS and Blue Shield prohibits Blue Shield from disclosing information that would breach the terms of contracts—including payment rates—with its provider hospitals. As a result, CalPERS did not have access to either hospital rates or Blue Shield's cost model and was therefore unable to verify the model's accuracy.

Report

2004-123 *California Public Employees' Retirement System: It Relied Heavily on Blue Shield of California's Exclusive Provider Network Analysis, an Analysis That Is Reasonable in Approach but Includes Some Questionable Elements and Possibly Overstates Estimated Savings* (March 2005)

Reconsider Retired Boxers' Pension Plans

Recommendation

Reconsider the need for a retired boxers' pension plan or decrease vesting requirements.

Background

To provide a small amount of financial security for professional boxers, the Legislature created a boxers' pension plan under the control of the State Athletic Commission (commission). In 1982 the commission established a defined benefit plan, and on May 1, 1996, the commission changed to a defined contribution plan. The average monthly benefit of the prior plan would have been $98 per month, and at the time of our report, the new plan would likely have provided an average of $170 per month.

However, we concluded that only a small percentage of participating boxers will ever receive a pension. Under the defined benefit plan, an average of 37 boxers a year vested, and under the defined contribution plan, this figure drops to four. The decrease is due in part to increasing the number of participating years required to qualify for benefits from three to four. Under either plan, boxers must fight at least 10 scheduled rounds during 36 consecutive months in order to vest; our review found that eliminating this requirement would increase the average number of boxers vesting per year to 10.

Because at the time of our review so few boxers annually met the vesting requirements, we recommended that the Legislature reconsider the need to provide a pension plan for retired professional boxers. If the Legislature decides to continue the program, we recommended that the commission consider decreasing vesting requirements to ensure that these requirements do not prevent the intended recipients of the pension from vesting.

Report

2004-134 *State Athletic Commission: The Current Boxers' Pension Plan Benefits Only a Few and Is Poorly Administered* (July 2005)

Streamline the School-Based Medi-Cal Administrative Activities Program

Recommendation

The Department of Health Services (Health Services) should seek changes in the law to eliminate the use of local governmental agencies in the school-based Medi-Cal Administrative Activities Program (MAA program) and to authorize Health Services to require that school districts that choose to use a vendor for program assistance use one that is selected by a consortium through a competitive process.

Background

At the time of our report, the MAA program allowed school districts to obtain federal reimbursement for 50 percent of the cost of certain administrative activities related to Medi-Cal, including health-related outreach programs. School districts submitted MAA invoices through 31 local intermediaries—11 consortia and 20 local governmental agencies.

We reported that simplifying the MAA structure would increase the program's efficiency and simplify oversight. At the time of our report, school districts could elect to submit invoices either through a consortium or a local government agency. Removing local governmental agencies from the invoice payment process would reduce the number of local entities Health Services must monitor and would establish clear regional accountability. Additionally, requiring school districts that need additional program assistance to use a vendor competitively selected by a consortium would further streamline the MAA structure, and it would likely result in more uniform, consistent service and potentially lower fees.

Report

2004-125 *Department of Health Services: Participation in the School-Based Medi-Cal Administrative Activities Program Has Increased, but School Districts Are Still Losing Millions Each Year in Federal Reimbursements* (August 2005)

Note: SB 496 (2005)—introduced but not passed—did not directly address these recommendations but would have created a committee to advise the department with respect to the above claims process.

Require Additional Penalties for Health and Safety Violations at Child Care Facilities

Recommendation

The Department of Social Services (department) should consider proposing statutes or regulations requiring it to assess additional civil penalties on child care homes for health and safety violations.

Background

The department is responsible for monitoring licensed child care facilities and investigating complaints against those facilities through the child care program in its Community Care Licensing Division. Although the department used civil penalties as a response to health and safety violations by both child care centers (centers) and family child care homes (homes), the department did not assess civil penalties against homes in many instances we reviewed because the regulations for homes prescribe a more limited use of civil penalties for violations than the regulations for centers do. When we questioned the department about the regulations for assessing civil penalties against homes, it pointed to legislative intent as expressed in statute that the program operated by the State for homes should be cost-effective, streamlined, and simple to administer in order to ensure adequate care of children placed in homes, while not placing an undue burden on the providers.

To improve enforcement actions and better enable the department to effectively address health and safety violations by child care facilities, we recommended that the department consider proposing statutes or regulations requiring it to assess civil penalties on homes for additional types of health and safety violations.

Report

2005-129 *Department of Social Services: In Rebuilding Its Child Care Program Oversight, the Department Needs to Improve Its Monitoring Efforts and Enforcement Actions* (May 2006)

Streamline the State's Emergency Preparedness Structure

Recommendation

With the governor, streamline the State's structure for emergency response and define this structure in statute.

Background

Although California's structure for responding to emergencies is established in state law and is very streamlined, its structure for preparing for emergency response is a labyrinth of complicated and ambiguous relationships among myriad entities. The Governor's Office of Emergency Services (Emergency Services), Office of State Homeland Security (Homeland Security), and numerous committees that provide advice or guidance to these two offices and the Department of Health Services, which administer federal grants for homeland security and bioterrorism preparedness, were working within a framework of poorly delineated roles and responsibilities. We reported that if this status continues, the State's ability to respond to emergencies could be adversely affected.

To simplify, clarify, and define in law California's structure for emergency response preparation, we recommended that the governor and the Legislature should consider streamlining the emergency preparedness structure, and they should include in this process consideration of establishing one state entity to be responsible for emergency preparedness, including preparedness for emergencies caused by terrorist acts. Additionally, the Legislature should consider statutorily establishing Homeland Security in law as either a stand-alone entity or a division within Emergency Services, and if it creates Homeland Security as a stand-alone entity, the Legislature should consider statutorily defining the relationship between Homeland Security and Emergency Services.

Report

2005-118 *Emergency Preparedness: California's Administration of Federal Grants for Homeland Security and Bioterrorism Preparedness Is Hampered by Inefficiencies and Ambiguity* (September 2006)

Note: AB 38 (introduced 12/4/06) partially addresses the above recommendation by establishing the Office of Homeland Security as a division within the Office of Emergency Services.

RESOURCES

Specify Allowable Uses of General Fund Grants

Recommendation

Specifically define what is to be accomplished with any General Fund grants appropriated in the future to ensure grant funds are spent as intended.

Background

Between July 1996 and mid-October 2004, the grants office of the Department of Parks and Recreation disbursed more than $106 million in local grants from the General Fund. However, sometimes the intended uses of these grant funds were not specifically defined in the authorizing legislation. For example, in our review of the fiscal year 2000–01 budget act, we noted many instances in which the Legislature appropriated General Fund grants with only the recipients' names, grant amounts, and project names specified; the budget act provided no information on what was to be accomplished with the funds. In some cases the budget act only specified the recipients' names and the amounts of the grants. When not specifically defined in legislation, the intended benefit of the grant is subject to interpretation by the Department of Parks and Recreation's grants office, which may have little authority to deny subsequent scope change requests by the grant recipient. The resulting uncertainty, combined with a lack of a clear statement of what the recipient is expected to accomplish with the grant, can give rise to concerns or misunderstandings regarding how the recipient is to actually spend the funds.

Report

2004-138 *Department of Parks and Recreation: It Needs to Improve Its Monitoring of Local Grants and Better Justify Its Administrative Charges* (April 2005)

Clarify Laws Regarding the Off-Highway Motor Vehicle Program

Recommendation

Require the Off-Highway Motor Vehicle Recreation Commission (commission) to report annually on its grants and cooperative agreements program awards, clarify its intent for land on which Conservation and Enforcement Services Account restoration funds are spent, and clarify the allowable uses of the Off-Highway Motor Vehicle Trust Fund (OHV trust fund). Additionally, the Off-Highway Motor Vehicle Recreation Division (division) and commission should evaluate current spending and, if necessary, seek legislation to adjust such restrictions to support a balanced Off-Highway Motor Vehicle Recreation Program (OHV program).

Background

The Department of Parks and Recreation's (department) division operates eight state vehicular recreation areas (SVRAs) and administers a grants and cooperative agreements program that provides funding to local and federal government agencies for OHV recreation. The commission provides policy guidance to the division and approves its capital outlays and grants and cooperative agreements.

Although we reported in August 2005 that the law requires the commission to report biennially on some elements of the OHV program, it does not require the commission to account for its funding decisions. We concluded that the commission needed to improve accountability for the $17 million in grants and cooperative agreements program by reporting annually on the funding it awards by recipient and project category, as well as how the grants meet the commission's and division's shared vision for the OHV program.

We also reported that the law required a portion of the Conservation and Enforcement Services Account be used for restoration, conservation, and enforcement activities. However, the division, commission, and stakeholders disagreed as to whether this requirement contributes to a balanced OHV program, and the law is unclear as to whether land restored with these funds must be permanently closed to off-highway vehicles. Additionally, we reported that in fiscal year 2003–04 the department began using the OHV trust fund to pay for some of the costs to operate state parks that are not SVRAs and that the department's interpretation may be inconsistent with the Legislature's clear intent for the program.

Report

2004-126 *Off-Highway Motor Vehicle Recreation Program: The Lack of a Shared Vision and Questionable Use of Program Funds Limit Its Effectiveness* (August 2005)

GENERAL GOVERNMENT

Provide Incentives to Encourage Citizens to Join the California National Guard

Recommendation

The California Military Department (Military Department) should go through the legislative process in order to be able to provide incentives that will encourage citizens to join the California National Guard, and it should work with the Department of Finance and the Legislature to establish a baseline budget for maintaining and repairing California's armories.

Background

We reported that California's Army Guard and Air Guard did not meet their respective force strength goals for federal fiscal years 2004 or 2005. The Army Guard attributed increased difficulty in maintaining prescribed force levels to several factors, including a perceived lack of state incentives to join the Army Guard. The Air Guard indicated its diminished ability to meet force strength goals centered on the fact that these goals were consciously set high to achieve optimum force strength, the ongoing war, and a smaller pool of personnel with prior service to recruit from. We recommended that the Military Department identify and pursue steps to help meet the force strength goals set by the National Guard Bureau, including pursuing through the legislative process the ability to provide incentives that will encourage citizens to join the California National Guard.

At the time of our review, roughly 87 percent of the Military Department's armories were in need of repair and improvement. The Military Department's facilities director indicated that the solution to this problem is to create a balanced program of replacement, modernization, and maintenance and repair involving federal and state funds. The facilities director further indicated that the maintenance and repair component of this program has been under-funded. To help ensure the Military Department works towards improved maintenance of its armories, we recommended that it work with the Department of Finance and the Legislature to establish a baseline budget for the maintenance and repair of its armories.

Report

2005-136 *Military Department: It Has Had Problems With Inadequate Personnel Management and Improper Organizational Structure and Has Not Met Recruiting and Facility Maintenance Requirements* (June 2006)

Streamline the State's Emergency Preparedness Structure

Recommendation

With the governor, streamline the State's structure for emergency response and define this structure in statute.

Background

Although California's structure for responding to emergencies is established in state law and is very streamlined, its structure for preparing for emergency response is a labyrinth of complicated and ambiguous relationships among myriad entities. The Governor's Office of Emergency Services (Emergency Services), Office of State Homeland Security (Homeland Security), and numerous committees that provide advice or guidance to these two offices and the Department of Health Services, which administer federal grants for homeland security and bioterrorism preparedness, were working within a framework of poorly delineated roles and responsibilities. We reported that if this status continues, the State's ability to respond to emergencies could be adversely affected.

To simplify, clarify, and define in law California's structure for emergency response preparation, we recommended that the governor and the Legislature should consider streamlining the emergency preparedness structure, and they should include in this process consideration of establishing one state entity to be responsible for emergency preparedness, including preparedness for emergencies caused by terrorist acts. Additionally, the Legislature should consider statutorily establishing Homeland Security in law as either a stand-alone entity or a division within Emergency Services, and if it creates Homeland Security as a stand-alone entity, the Legislature should consider statutorily defining the relationship between Homeland Security and Emergency Services.

Report

2005-118 *Emergency Preparedness: California's Administration of Federal Grants for Homeland Security and Bioterrorism Preparedness Is Hampered by Inefficiencies and Ambiguity* (September 2006)

Note: AB 38 (introduced 12/4/06) partially addresses the above recommendation by establishing the Office of Homeland Security as a division within the Office of Emergency Services.

STATE AND CONSUMER SERVICES

Require Additional Disclosures From Contractors

Recommendation

Grant the Department of General Services the ability to require state contractors to disclose information detailing portions of the project that subcontractors or employees outside the United States will perform.

Background

At the time of our report, state agencies received no guidance related to offshore contracting, were not required to track where their contracted services were being performed, and were not required to report the extent to which services were being performed offshore. Neither the State Contracting Manual nor any state law or regulations at the time addressed the use of offshore contracting, the practice of subcontracting portions of a contract offshore, or the issue of determining where contracted services are performed. We concluded that this lack of guidance could result in inconsistency in contract provisions among state agencies and make it difficult to judge the effects and prevalence of offshore contracting. If the Legislature desires information and data on this topic, we recommended that it may consider granting the Department of General Services the authority to require contracts to contain standard language requiring disclosure of this type of information.

Report

2004-115 *The State's Offshore Contracting: Uncertainty Exists About Its Prevalence and Effects* (January 2005)

Note: AB 524 (2005) addressing this recommendation was vetoed on September 29, 2005.

Obtain Documentation to Ensure the Receipt of Prescription Drug Rebates

Recommendation

Enact legislation to allow the California Public Employees' Retirement System (CalPERS) to obtain relevant documentation to ensure it is receiving all rebates to which it is entitled to lower the prescription drug cost of the health benefits program established by the Public Employees' Medical and Hospital Care Act.

Background

We examined the purchasing strategies of the three primary departments that contract for prescription drugs—the Department of General Services (General Services), the Department of Health Services (Health Services), and CalPERS. The costs to procure prescription drugs would be higher without the savings they obtain through manufacturers' discounts, federal and state supplemental rebates, co-payments, and third-party payments. We reported in May 2005 that CalPERS receives rebates, but only through entities it contracts with to provide pharmacy services to its members. In some instances CalPERS receives rebates under a pass-through method. In the pass-through method, the entity negotiates rebates and contracts with pharmaceutical manufacturers so that rebate payments between the manufacturer and the entity are based on historical and prospective pharmacy utilization data for all of the members of the health care plan that the entity administers. The entity then collects and passes through to plan sponsors, such as CalPERS, either a percentage or the entire amount of the rebates earned by the sponsors based on their member utilization.

Typically, these entities prohibit CalPERS from having access to any information that would cause them to breach the terms of any contract with the pharmaceutical manufacturers to which they are a party. Because CalPERS does not have access to the entities' rebate contracts with the manufacturers, CalPERS cannot directly verify that it is receiving all of the rebates to which it is entitled. According to CalPERS, this rebate practice between the entity and the manufacturer is an industry practice and is not unique to it. At the time of our report, CalPERS intended to continue to pursue greater disclosure requirements in future contracts with its contracting entities.

Report

2004-033 *Pharmaceuticals: State Departments That Purchase Prescription Drugs Can Further Refine Their Cost Savings Strategies* (May 2005)

Provide CalPERS Access to Relevant Documentation During Contract Negotiations

Recommendation

Allow the California Public Employees' Retirement System (CalPERS), during its contract negotiation process, to obtain relevant documentation supporting any analyses it will use to make decisions that materially affect the members of the health benefits program established by the Public Employees' Medical and Hospital Care Act.

Background

In an effort to control health care costs, the board of administration (board) of CalPERS voted on May 19, 2004, to approve an exclusive provider network for CalPERS members in the Blue Shield of California (Blue Shield) health maintenance organization (HMO). Twenty-four hospitals were subsequently excluded from the Blue Shield HMO provider network based on an analysis prepared by Blue Shield. However, Blue Shield's estimated savings did not consider the impact of members leaving its HMO provider network and joining other health care plans. We were unable to quantify the full effect that member movement has had on Blue Shield's savings estimate.

Additionally, Blue Shield did not adequately address a recommendation made by the actuary it hired to review its models, at the request of CalPERS, to investigate differences in the emergency room assumptions for one hospital system. Given the sensitivity of the hospital savings estimate to differences in emergency room assumptions, Blue Shield should have reconciled the two analyses to ensure that its estimate of emergency room costs was reasonable.

Our review in early 2005 found that the CalPERS board, committee, and health benefits branch staff relied primarily on Blue Shield's summary of its analyses and its presentations in deciding to approve the exclusive provider network. A provision of the contract between CalPERS and Blue Shield prohibits Blue Shield from disclosing information that would breach the terms of contracts—including payment rates—with its provider hospitals. As a result, CalPERS did not have access to either hospital rates or Blue Shield's cost model and was therefore unable to verify the model's accuracy.

Report

2004-123 *California Public Employees' Retirement System: It Relied Heavily on Blue Shield of California's Exclusive Provider Network Analysis, an Analysis That Is Reasonable in Approach but Includes Some Questionable Elements and Possibly Overstates Estimated Savings* (March 2005)

CRIMINAL JUSTICE

Consider Revising Attendance Provisions for Batterer Intervention Programs

Recommendation

Consider revising attendance provisions and the 18-month completion requirement on batterer intervention programs to be better aligned with what local probation departments and courts indicate is a reasonable standard. Additionally, if it is the Legislature's intent that individuals who commit domestic violence be consistently sentenced to 52 weeks of batterer intervention, enact statutory provisions that would not allow the courts to delay sentencing so that batterers complete a lesser number of program sessions.

Background

State law requires a person on probation for a domestic violence crime to complete a batterer intervention program of no less than one year and mandates that the batterer can miss no more than three of the program's weekly sessions and cannot extend the program beyond 18 months without a court's consent.

However, all five of the counties we selected for review found it necessary to adopt attendance policies that are more accommodating than state law, and four indicated they did not track the 18-month completion requirement. To maintain a balance between upholding the standard of batterer accountability and granting probation departments the flexibility needed to help batterers complete their assigned programs, we recommended that the Legislature consider revising the attendance provisions and 18-month completion requirement.

Although state law requires individuals on probation for domestic crimes to complete a batterer intervention program, we noted an instance in which a court in one county delayed sentencing and subsequently dismissed charges when an individual had completed only a portion of the program. Further, the judicial official handling the case commented that this situation occurs in numerous cases prior to a plea or disposition.

Report

2005-130 *Batterer Intervention Programs: County Probation Departments Could Improve Their Compliance With State Law, but Progress in Batterer Accountability Also Depends on the Courts* (November 2006)

LABOR AND WORKFORCE DEVELOPMENT

Amend Auditing Requirements for the Apprenticeship Program

Recommendation

To effectively implement program audits, we recommended the Department of Industrial Relations' Division of Apprenticeship Standards (division) request that the Legislature amend auditing requirements to allow it to select programs for audit using a risk-based approach.

Background

In addition to subjecting all apprenticeship programs to possible audits from a random selection process once every five years, at the time of our review, statutes directed the division to give priority to conducting audits of programs that have been identified as having deficiencies. Regulations defined deficiencies as previously determined violations of laws, regulations, or program standards. However, the division did not have explicit statutory authority to audit programs with high risk factors such as division-identified low graduation rates, high dropout rates, or low employment rates. A comprehensive audit plan that subjects all programs to possible random audits, gives priority to auditing programs with known deficiencies, and targets programs with a high risk profile would maximize the use of the division's limited audit resources.

Report

2005-108 *Department of Industrial Relations: Its Division of Apprenticeship Standards Inadequately Oversees Apprenticeship Programs* (September 2006)