

California State Auditor

B U R E A U O F S T A T E A U D I T S

California Department of Corrections and Rehabilitation:

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



April 2007
2006-501

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CALIFORNIA STATE AUDITOR

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April 19, 2007

2006-501

The Governor of California
President pro Tempore of the Senate
Speaker of the Assembly
State Capitol
Sacramento, California 95814

Dear Governor and Legislative Leaders:

As requested by the court-appointed receiver, the Bureau of State Audits presents its audit report concerning the California Department of Corrections and Rehabilitations' (Corrections) processes for procuring medical registry services, paying medical registry contractors, credentialing medical care providers, and identifying conflicts of interest related to procuring the medical services.

This report concludes that Corrections improperly awarded nine contracts with a maximum amount of more than \$385 million using the competitive bid process, usually because it failed to correctly apply a 5 percent small business preference. As a result, Corrections gave bidders a larger preference than allowed, causing some to incorrectly receive higher-ranking positions in the hierarchy for responding to prisons' service requests than they should have had. Additionally, Corrections failed to provide complete justifications for awarding two noncompetitively bid contracts with a total maximum amount of almost \$80 million. Corrections could add certain key terms to its medical service contracts to better protect the State's interests. Specifically, some contracts did not provide sufficient assurance to the State that contractors were insured against civil rights claims brought by inmates, and some contracts failed to impose an obligation on the medical care service providers to inspect and monitor the quality of their performance. Prisons failed to demonstrate that they follow the established hierarchy when requesting services. Prisons also did not consistently ensure that rates charged on invoices agreed with contract terms, and both prisons and regional accounting offices failed to ensure that they took advantage of discounts for prompt payment.

Further, Corrections' oversight of its registry contractors' compliance with the licensing and certification requirements contained in its contracts is inadequate. Corrections' credentialing unit did not always verify the credentials of certain types of providers. Specifically, the credentialing unit did not verify the credentials of providers who treat inmates outside of Corrections' facilities or those acting in a supportive role such as pharmacists, laboratory technicians, and physical therapists, rather than independently. The credentialing unit also sometimes verified the credentials of providers after they had begun providing services to inmate patients. Finally, Corrections lacks adequate controls to ensure that it complies with the Political Reform Act of 1974, which is the central conflict-of-interest law governing the conduct of public officials in California.

Respectfully submitted,

ELAINE M. HOWLE
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SUMMARY

Audit Highlights . . .

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

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

continued on next page . . .

RESULTS IN BRIEF

The California Department of Corrections and Rehabilitation (Corrections) is responsible for providing adequate and timely medical care to the approximately 172,000 adult inmates in its prison population. Corrections' Division of Correctional Health Care Services (division) is responsible for delivering this care. However, Corrections' health care delivery system is being managed by a court-appointed receiver, as a result of a lawsuit alleging that the medical services provided to California inmates were "deliberately indifferent" and thus violated their rights under the Eighth Amendment to the U.S. Constitution, which protects individuals against "cruel and unusual" punishment.

When a prison has a vacant medical staff position, or when its medical staff are on long-term sick leave, Corrections uses temporary medical providers that it hires through contracts with medical registries. A medical registry supplies the temporary medical providers, such as physicians, nurses, or pharmacists. In awarding medical registry contracts, Corrections issues an invitation for bids (IFB) seeking bids from medical registries wishing to provide temporary medical care services. For each IFB, Corrections awards multiple contracts to ensure that it has adequate coverage when a need arises. In doing so, its policy is to establish a hierarchy of medical registry contractors, ranking them based on the hourly rate in their bids, with the lowest responsible bidder receiving the highest rank. When seeking a medical provider to provide a needed service, a prison is required to contact the contractors in the order established in the hierarchy until it finds one that is able to meet its needs.

Of the 18 competitively bid contracts in our sample, we found that Corrections improperly awarded nine contracts with a total maximum amount of more than \$385 million. In these nine contracts, it applied the small business preference—a 5 percent preference given to small businesses bidding on state contracts—incorrectly, giving the bidders a larger preference than allowed and causing some of them to receive a higher rank in the hierarchy than they should have had. Further, in awarding contracts, Corrections used a cost threshold to limit the number of registry contracts awarded. Registries whose bids were higher

- ☑ *Although all contracts in our sample gave Corrections the ability to inspect and monitor the quality of contractor performance, only five of the 21 contracts imposed a similar obligation on the medical care service providers.*
 - ☑ *Corrections overpaid registry contractors by \$4,050 for five invoices because prisons did not consistently ensure that payment amounts agreed with contract terms.*
 - ☑ *Corrections failed to ensure that prisons require their consultants to complete statements of economic interests or to document why it was appropriate for them not to do so.*
 - ☑ *Corrections did not verify the credentials of providers who treat inmates outside of Corrections' facilities because it incorrectly believed these reviews were being conducted by the Department of Health Services.*
 - ☑ *Of the 22 physicians and nurse practitioners for which we requested credentialing files, Corrections was only able to provide 12. Of these 12, eight were credentialed after they had begun providing services to inmate patients.*
-

than this threshold were excluded from the opportunity to provide services. However, Corrections' solicitation document did not inform the bidders of its use of a cost threshold or its methodology for calculating the threshold. In addition, Corrections did not always apply the cost threshold properly and as a result improperly awarded one contract and mistakenly excluded another bidder from providing services.

Additionally, Corrections did not fully justify its reasons for awarding two contracts, with a total maximum amount of almost \$600,000, when it received fewer than three bids, the minimum number required by state law. When an agency awards contracts despite receiving fewer than three bids, state policy requires the agency to prepare a complete explanation, including a justification of the reasonableness of the price, and to retain this information in its contract files. For both contracts, Corrections stated that its health care staff had determined that the rates in the bids were fair and reasonable. However, when we asked for documentation to support these determinations, Corrections was unable to supply any.

Corrections also did not provide complete justifications for awarding two of three noncompetitively bid contracts with a total maximum amount of almost \$80 million. One of these contracts, with a maximum amount of almost \$79 million, was awarded in response to a federal court order giving Corrections 10 days to modify an existing contract with a contractor to provide an hourly rate of pay adequate to attract certain medical care providers who meet Corrections' standards. However, Corrections was unable to locate relevant documents related to the development of the rates. Thus, Corrections could not demonstrate to us that the contract rates it agreed to pay the contractor and the minimum rates it recommends the contractor pay its medical providers are reasonable or appropriate.

In addition, state policy generally prohibits contractors from starting work until they receive a copy of the contract approved by the Department of General Services (General Services). However, we noted seven instances in which contractors provided services totaling almost \$20,000 before Corrections obtained General Services' final approval of the contracts.

The contracts in our sample generally contained the standard terms and conditions required by state law and state policy. They also generally included certain terms that Corrections has determined are essential to contracting for medical services in a

prison setting, such as ones requiring all providers to have the necessary licenses, permits, and certifications for the work they are to perform. All the contracts contained terms indicating that the medical providers are independent contractors rather than Corrections' employees. However, we found that some aspects of Corrections' treatment of these medical providers raises concerns about whether they are, in fact, treated more as employees than independent contractors. Potential liability and penalties for misclassification of an employee include substantial taxes, back pay, and reimbursement of expenses. Furthermore, California does not make a distinction between intentional and unintentional misclassification of an employee. Thus, the responsibility for proper conduct and classification of an independent contractor falls upon the employer.

In addition, the contracts were inconsistent in the way they addressed the standard of care to be provided. The standard of medical care called for in Corrections' regulations is based on medical necessity, meaning "health care services that are determined by the attending physician to be reasonable and necessary to protect life, prevent significant illness or disability, or alleviate severe pain, and are supported by health outcome data as being effective medical care." The regulatory standard also permits the cost-effectiveness of a treatment to be taken into account. Only 16 of the 21 contracts in our sample contained terms that appear to meet this standard of care. One contract did not contain any terms that reflect the standard of care set out in regulation. Further, some contracts contained multiple, inconsistent terms related to the standard of care, and some appeared to call for a standard of care that is higher than that required by Corrections' regulations. Although we do not question the importance of providing high-quality medical care to inmates, drafting contracts containing multiple terms that may suggest differing standards of care creates an ambiguity that may result in uncertainty on the part of the provider, and potential disagreement among the contracting parties, about just what is required under the contract.

Moreover, some contracts did not provide sufficient assurance to the State that contractors were insured against legal claims that might be brought by inmates, particularly claims that inmates' civil rights have been violated. Many of the contracts we reviewed also did not contain terms that Corrections' considers standard in medical service contracts that protect the confidentiality, privacy, and handling of inmate medical records adequately under the federal Health Insurance Portability

and Accountability Act (HIPAA). In addition, although all the contracts in our sample gave Corrections the ability to inspect and monitor the quality of contractor performance, only five of the 21 contracts imposed a similar obligation on the medical care service providers to monitor and assess the quality of their own performance. Given the importance of improving the delivery of health care in California's prisons and the extent to which contractors are responsible for providing medical services, we believe that these terms should be present in all medical services contracts.

Although Corrections' contracts with medical registries require the prisons to contact contractors in sequence according to the established hierarchy when they need temporary medical services, and to document their attempts, the prisons could not always demonstrate that they had done so. Specifically, for 22 of the 38 invoices we reviewed, prison staff could not provide sufficient documentation to support their attempts to follow the required hierarchy. In contrast, for 16 of the 38 invoices we reviewed, the prisons were able to provide us with sufficient documentation of their attempts to contact registries in accordance with the hierarchy.

Additionally, prisons sometimes fail to monitor invoices for medical services adequately, resulting in additional medical costs to the State. Our review also found that prisons did not ensure consistently that payment amounts agreed with contract terms. For example, our review of 50 invoices found that some registry contractors were overpaid by \$4,050 for five invoices totaling \$458,356. In addition, prisons sometimes approved payment for overtime, even though the contractors did not comply with contract provisions requiring written approval of overtime. Prisons and the regional accounting offices also failed to ensure that they took advantage of discounts available for prompt payment. We also found that contractors were owed late payment penalties for three of the 50 invoices we reviewed.

Although individual percentages varied widely, the 12 medical registry contractors in our sample that bill Corrections by the hour paid their medical service providers, on average, 65 percent of the hourly rate they received from Corrections. Contractors had varying explanations for the percentages they pay. For example, contractors supplying physician providers cited overhead costs such as workers' compensation, malpractice insurance, and travel expenses, while a contractor working with nurses indicated that he pays a lower hourly rate but reimburses

them for a portion of their housing and utility expenses. Further, some contractors hire their providers as employees while others employ them as independent contractors. Given these many differences, we found it difficult to compare the contractors and more fully explain the range of percentages.

The Political Reform Act of 1974 (political reform act) requires state officials and employees with decision-making authority to file statements of economic interests annually and upon assuming or leaving a designated position. These statements are intended to identify conflicts of interest that an individual might have. Corrections lacks adequate controls to ensure that it complies with the political reform act. Of the 124 employees whose statements of economic interests we reviewed, seven did not complete their statements correctly, 14 did not file statements, and 78 filed their statements after the deadline. Corrections also failed to ensure that prisons require their consultants to complete statements of economic interests or to document why it was appropriate for them not to do so.

Finally, Corrections' oversight of its registry contractors' compliance with licensing and certification requirements is inadequate. Corrections' credentialing unit, which performs database searches to verify the credentials of certain types of providers, did not always perform these searches. For example, it did not verify the credentials of providers who treat inmates outside of Corrections' facilities because it believed these reviews were being conducted by the Department of Health Services (Health Services) as part of its licensing process for the facilities. However, Health Services does not verify individual credentials and instead simply reviews the facility's process for doing so. In addition, Corrections did not verify the credentials of providers it considered to be working in a supportive role such as pharmacists, laboratory technicians, and physical therapists, rather than independently. Further, the credentialing unit performed database searches for providers only when prisons requested them. As a result, when we requested the credentialing files for 22 physicians and nurse practitioners, the credentialing unit was able to provide only 12 files. Of these 12 providers, eight were credentialed after they had begun providing services to inmate patients. Finally, Corrections wastes time on some credentialing activities because it duplicates database searches and reviews unnecessarily. Specifically, if the provider moves to another prison, the unit performs another search. For example, the credentialing unit verified the credentials of one physician who worked at two prisons three

times within a seven-month period. According to Corrections, it must register prisons as separate eligible entities with the U.S. Department of Health and Human Services for purposes of querying the databases.

It is important to point out that many issues we identify in this report also were identified in an audit report we issued in April 2004. Specifically, the report identified deficiencies hindering the effectiveness of Corrections' contracting process, including instances of prisons obtaining medical services for inmates before receiving General Services' approval and prisons failing to document consistently their efforts to obtain registry services. In addition, the report identified weaknesses in Corrections' processes for ensuring that it pays for valid medical claims. Specifically, the report notes instances when the prisons' analysts with the Health Care and Cost Utilization Program (HCCUP) did not always identify discrepancies between contract rates and medical charges on providers' invoices—or even obtain evidence that medical services actually were received, resulting in overpayments to contractors. Further, Corrections did not always ensure that contract discounts were taken and late penalty payments were averted.

RECOMMENDATIONS¹

To ensure that it protects the State's interests and receives the best possible services at the most competitive prices, Corrections should:

- Ensure that staff receive proper training on bidding methods, including the appropriate application of the small business preference, so that bidders are awarded contracts in the correct order.
- Notify potential bidders of its use of a cost threshold to determine the awards to be made and its methodology for calculating the threshold.
- Implement a quality control process to identify errors in the ranking of bidders before awarding contracts.

¹ In making these recommendations to Corrections, we understand that they would be implemented at the direction of the court-appointed receiver. We do, however, expect that if control and management of Corrections' medical health care delivery system is returned to it, that Corrections would then become responsible for implementing these recommendations.

- Fully justify and document the reasonableness of its contract costs when it receives fewer than three bids or when it chooses to follow a noncompetitive process.
- Ensure that it establishes internal control processes that prevent prisons from allowing contractors to perform services before receiving General Services' approval of the contract.

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

To ensure that Corrections' contracts contain terms for standard of care that meet its constitutional obligations as well as the standard of care that a practicing physician would provide if adhering to generally accepted ethical norms, Corrections should seek legal and other expert advice to determine whether the standard of care currently prescribed in state regulations allows contracting physicians to provide medical care in a manner consistent with the generally accepted standard of care in the medical community. If the standard of care is not consistent with the generally accepted standard of care in the medical community, Corrections should revise its regulatory standard to require that the standard of care called for in the State's prisons is, at a minimum, consistent with medical ethics and with the State's constitutional obligations.

To protect the State's best interests, all contracts that Corrections enters into with medical registries should meet these requirements:

- Require medical registries to submit proof that their insurance company has agreed explicitly to insure them against civil rights claims.
- Include Business Associate Agreements in all contracts subject to HIPAA and amend existing contracts to include those agreements.
- Require registry contractors to monitor and assess the quality of services they provide under the contract.

- Contain clear and consistent requirements related to the standard of care called for under the contract. At a minimum, this standard of care must meet the standard of care needed in order to satisfy Corrections' obligations under the *Plata v. Davis* settlement agreement.

To improve its procedures and practices for requesting registry services and paying for these services, Corrections should:

- Ensure that prison staff consistently follow procedures requiring them to document their efforts to obtain services from registry contractors.
- Ensure that prisons verify the services they receive from registry contractors before authorizing payment of invoices.
- Establish a quality control process to ensure that prisons pay rates that are consistent with the contract terms.
- Ensure that prisons obtain the necessary documentation for the services they were unable to verify or seek reimbursement from the registry contractors for the overpayments identified in this report.
- Ensure that prison staff responsible for authorizing overtime adhere to Corrections' overtime policies and contract terms.
- Evaluate its prisons and regional accounting offices' processes for paying invoices and identify weaknesses that prevent it from maximizing the discounts taken and complying with the California Prompt Payment Act.

To ensure that it complies with the political reform act, Corrections should:

- Establish an effective process for tracking whether its designated employees, including consultants, have filed their statements of economic interests timely.
- Review the statements of economic interests to ensure their accurate completion and to identify potential conflicts of interests.

To improve its oversight of registry contractors and their providers who provide medical services to inmate patients, Corrections should:

- Require the credentialing unit to verify the credentials of contracted providers who work in non-Corrections' facilities or, at a minimum, verify that these facilities have a rigorous process for verifying the credentials of their providers.
- Require the credentialing unit to determine whether the credentials of those medical and allied health providers who are performing services at prisons under registry contracts have been verified. If not, the credentialing unit should verify them.
- Ensure that prisons request database searches from the credentialing unit before allowing providers to perform services.
- Seek clarification from the U.S. Department of Health and Human Services regarding the criteria for eligible entities and whether all prisons can be combined into one eligible entity.

AGENCY COMMENTS

The court-appointed receiver has indicated that he intends to fully study the audit results and provide a realistic strategy to remedy the deficiencies identified in the report. The court-appointed receiver also stated that he will respond to the final report with a remedial plan within 60 days. ■

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INTRODUCTION

BACKGROUND

The Division of Adult Institutions of the California Department of Corrections and Rehabilitation (Corrections) operates 33 state prisons and 38 conservation camps, oversees a variety of community

correctional facilities, and supervises parolees' reentry into society. According to Corrections, on June 30, 2006, the total inmate population was about 172,500, an increase of 5.1 percent from the June 30, 2005, population. For fiscal year 2005–06, Corrections' budget of roughly \$7 billion included about \$4.5 billion for its adult operations and programs.

The U.S. Constitution and California laws require Corrections to provide adequate and timely medical care to inmates. Corrections authorizes its Division of Correctional Health Care Services (division) to deliver health care to adult inmates. The division's objective is to provide medical, dental, and mental health care to the State's inmate population that is consistent with adopted standards for the quality and scope of services within a custodial environment. To provide health care to inmates, Corrections operates six types of facilities—four general acute care hospitals, 18 correctional treatment centers, 17 outpatient housing units, an intermediate care facility, a skilled nursing facility, and two hospices to provide for inmates who are terminally ill. Additionally, it contracts with the Department of Mental Health to provide services for the California Medical Facility's Acute Psychiatric and Intermediate/Day Treatment programs and the Salinas Valley State Prison's Psychiatric Program.

Types of Facilities Used by Corrections to Provide Health Care to Inmates

General acute care hospitals—Provide 24-hour inpatient care, including basic services such as medical, nursing, surgical, anesthesia, laboratory, radiology, pharmacy, and dietary.

Correctional treatment centers—Provide inpatient health care to inmates who do not require acute care but need health care beyond that normally provided in the community on an outpatient basis.

Outpatient housing units—Typically house inmates who do not require admission to a licensed health care facility but need special housing for security or protection.

Intermediate care facilities—Provide inpatient care to inmates who need skilled nursing supervision and supportive but not continuous care.

Skilled nursing facilities—Provide continuous skilled nursing and supportive care to inmates on an extended basis, including medical, pharmacy, and dietary services and an activity program.

Hospices—Provide care to inmates who are terminally ill.

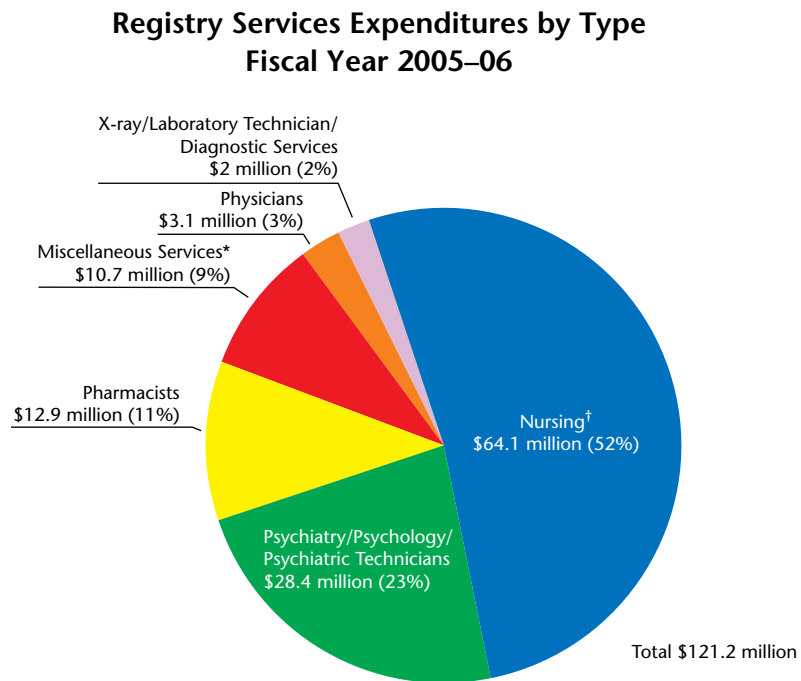
Sources: California Department of Corrections and Rehabilitation; Title 2, Division 5 of the California Code of Regulations.

Note: All facilities, except outpatient housing units, are licensed by the Department of Health Services.

Corrections uses medical registry contracts to provide temporary relief to prisons when they have vacant medical service staff positions or their medical staff are on long-term sick leave. A medical registry contractor typically coordinates the availability

of providers—physicians, nurses, or pharmacists, for example—when prisons have a need for the services. The Figure shows the types of medical services provided to Corrections by medical registry contractors in fiscal year 2005–06.

FIGURE



Source: California Department of Corrections and Rehabilitation's unaudited expenditure data.

* Includes various service providers such as medical assistants, social workers, and physical therapists.

[†] Includes expenditures for the following nursing providers: nurse practitioners, licensed vocational nurses, registered nurses, and certified nursing assistants.

Corrections' registry contractor expenditures continue to increase. According to its unaudited data, Corrections' expenditures for registry contracts in fiscal year 2005–06 totaled \$121.2 million, 259 percent more than its fiscal year 2001–02 expenditures of \$46.8 million.

FEDERAL COURT DECISIONS

In August 2001, after two years of unsuccessful negotiation with Corrections, the Prison Law Office, a nonprofit public interest law firm, along with private counsel, filed a class action lawsuit against Corrections and others in the federal District Court for the Northern District of California.

This lawsuit, *Plata v. Davis (Plata)*², brought on behalf of 10 male California inmates and other similarly situated inmates, alleged that the medical services provided to inmates by Corrections violated the inmates' rights under the Eighth Amendment to the U.S. Constitution (Eighth Amendment). The Eighth Amendment protects individuals against "cruel and unusual" punishment. In the landmark 1976 case of *Estelle v. Gamble (Estelle)*, the U.S. Supreme Court held that, under the Eighth Amendment, an inmate's right to be protected against cruel and unusual punishment is violated when prison officials are "deliberately indifferent" to the inmate's serious medical needs. Subsequent lawsuits across the country have applied the Supreme Court's decision in *Estelle* and have defined further the factual circumstances under which state officials have been found to have provided medical care that is deliberately indifferent to the serious medical needs of inmates.

Corrections' Obligations under *Plata*

- Corrections shall implement health care policies and procedures, to be filed with the court, that are designed to meet or exceed the minimum level of care necessary to fulfill Corrections' obligations under the Eighth Amendment.
- Corrections shall make all reasonable efforts to secure the funding necessary to implement these health care policies and procedures.
- Corrections shall implement the health care policies and procedures at each prison pursuant to a specified schedule.
- Corrections shall implement various practices or procedures at each institution, including a requirement to have registered nurses staffed at the emergency clinics 24 hours per day every day.

Source: *Plata* settlement agreement dated June 2002.

The complaint filed in the *Plata* lawsuit alleged that California officials violated the Eighth Amendment by subjecting inmates to medical care that was deliberately indifferent to their serious medical needs, and that these allegedly unconstitutional conditions had caused widespread harm, including severe and unnecessary pain, injury, and death. In June 2002 the parties to the lawsuit reached a settlement in which Corrections agreed to meet various conditions related to inmate medical care. Some of the more significant terms of that agreement are shown in the text box.

The parties to the *Plata* settlement also agreed to request that the court appoint experts to advise it on the adequacy of Corrections' implementation of the policies and procedures designed to satisfy the terms and conditions of the settlement. In June 2002 the federal district court appointed several individuals to act as court-appointed experts in this matter. In July 2004 these experts

submitted a report to the federal district court that described an "emerging pattern of inadequate and seriously deficient physician quality in CDC [Corrections] facilities."

In May 2005, four years after the *Plata* lawsuit was filed, and after meeting regularly with the parties to the *Plata* settlement, the court conducted hearings to determine if it was necessary

² Later *Plata v. Schwarzenegger*.

to appoint an interim receiver. In February 2006 the court appointed a receiver. The court order making the appointment gave the receiver the authority to “provide leadership and executive management of Corrections’ medical health care delivery system with the goal of restructuring day-to-day operations and developing, implementing, and validating a new, sustainable system that provides constitutionally adequate medical care to all members of the class action lawsuit as soon as practicable.” To achieve those goals, the receiver has the duty to control, oversee, supervise, and direct all administrative, personnel, financial, contractual, legal, and other operational functions of Corrections’ medical health care delivery system. The court also appointed a correctional expert to investigate and report to the receiver concerning the status of state contracts relating to health care services and of contract payments to service providers who provide health care services to Corrections’ inmates.

STATE CONTRACTING PROCESS

The State has established policies, procedures, and guidelines for agencies and departments to use when acquiring goods and services. Competition is typically at the core of these acquisitions to promote fairness, value, and the open disclosure of public purchasing. State law and the policies, procedures, and guidelines issued by the Department of General Services (General Services)—the State’s contracting and procurement oversight department—generally require agencies and departments to use a competitive bidding process that gives vendors an opportunity to submit price quotes or cost proposals for purchases of goods and services valued at \$5,000 or more, with certain exceptions. California public policy strongly favors competitive bidding, and contracts established without competitive bidding are limited by either statute or state policy.

Bidding Methods Used Under the Competitive Bid Process

State policy recommends two bidding methods. In those instances when agencies and departments request complex services that require varying professional expertise, approaches, and methods, the State recommends using the request for proposals (RFP) method.³ Alternatively, in those instances when

³ The RFP method consists of a primary and secondary method. The secondary method is used to request services that are complex, uncommon, or unique and that require unusual, innovative, or creative techniques, methods, and approaches.

agencies and departments request simple, common, or routine services that may require personal or mechanical skills guided by standard work methods, the State recommends the invitation for bids (IFB) method. In their IFBs, agencies and departments provide a clear statement of work that instructs bidders on what they will do and how, when, and where they will work. Unlike the RFP method, the IFB method does not rate or score the bidders' capabilities. Rather, the bidders must demonstrate that they meet the IFB requirements and the contract is awarded to the lowest responsible bidder. In addition, state policy allows agencies and departments to award multiple contracts through a bidding process when there is statutory authority to do so or when a variety of services or locations are involved.

Corrections uses the IFB method when soliciting services from medical registries that supply providers such as physicians, nurse practitioners, and pharmacists. It invites competing bidders to provide a bid price based on their hourly or daily rates and Corrections' estimate of hours for specific services needed at either a single prison or a group of prisons and awards the contract to the lowest responsible bidder. However, Corrections also awards multiple contracts to ensure that it has adequate coverage when a need arises. Corrections' policy requires that it establish a hierarchy of contractors based on the hourly rate bid for services. It awards one contract to each bidder and uses the hierarchy to identify the contractor's position in each prison (or group of prisons). For example, a bidder may be the primary contractor (lowest responsible bidder) for one prison group and the third contractor for another prison group. If a prison contacts the primary contractor and the contractor is unable to supply the requested services, the prison must contact the secondary contractor (second lowest responsible bidder). This process is repeated until the prison is able to find a contractor to fill its service needs. Furthermore, Corrections' policy requires that its prisons follow this process each time they need temporary medical services.

Exceptions to Competitive Bidding

With respect to contracts for goods or services (other than those related to information technology and telecommunications), state law allows limited exceptions to the competitive bidding requirements, such as (1) when only one good or service can meet the State's needs and (2) when the good or service is needed because of an emergency—that is, when immediate acquisition is necessary for the preservation of public health,

welfare, or safety or the protection of state property. State law also gives General Services the authority to prescribe the conditions under which a contract may be awarded without competition and the methods and criteria used in determining the reasonableness of contract costs. General Services exercises its authority based on what it determines is in the best interest of the State.

Only One Good or Service Can Meet the State's Needs

Under certain circumstances, a department may need to contract with a specific vendor whose goods or services are unique in some way. General Services refers to contracts awarded under this exception as noncompetitively bid contracts. The *State Contracting Manual* describes the conditions under which this type of procurement is appropriate, as well as the need for departments to complete a contract cost justification and to obtain the approval of General Services. Typically, to award this type of contract, departments must show that no other vendor in the marketplace can meet the State's needs. General Services also allows departments to request an exemption for a specific category of contracts using its special category noncompetitively bid contract request (SCR) process. The SCR process requires departments to submit a written application to General Services for approval.

Emergency Contracts

Emergency purchases can be made using a noncompetitively bid contract or an emergency contract, which is another type of contract that can be formed without competitive bidding. When a department experiences an emergency involving public health, welfare, or safety and consequently needs to purchase goods or services immediately, it must justify that immediate need. For example, the department must explain why the situation warrants an emergency purchase and the consequences that would arise from making the purchase through normal procurement processes. General Services must review and approve all emergency contracts.

STATE LAWS RELATED TO CONFLICTS OF INTEREST

Various state laws establish the conflict-of-interest requirements for public officials and for consultants and contractors who do business with the State. The central conflict-of-interest law governing public officials in California is the Political Reform

Act of 1974 (political reform act). The political reform act contains two core obligations related to public officials and their personal financial interests. First, it requires designated public officials to disclose certain financial interests by filing a statement of economic interests. Second, it prohibits a public official from making, participating in, or in any way attempting to influence a governmental decision in which he or she has a financial interest.

Under the political reform act, a contractor may be deemed to be a public official for purposes of both the disclosure requirement and the disqualification requirement if the contractor qualifies as a consultant. A consultant is essentially someone who acts in a decision-making capacity similar to that of a public official. For example, a contractor who has the authority to enter into a government contract or who performs essentially the same duties as a public official would if he or she were in that position is considered to be a consultant. In such cases, the political reform act requires the contractor to disclose certain financial interests and disqualifies the contractor from making or participating in any governmental decision in which he or she has a financial interest. A public official or a consultant has a disqualifying financial interest if it is reasonably foreseeable that the governmental decision will have a material financial effect on that individual that is different from the effect the decision will have on the public generally.

In addition to the political reform act, other provisions of law, contained in Section 1090 of the Government Code, prohibit public officials from making a government contract or purchase when they have a financial interest in that contract. The attorney general has opined that those who advise public officials are also subject to this prohibition and must abstain from advising public officials who are making contracts in which those advisers have a financial interest. Finally, other provisions of law, contained in the Public Contract Code, are designed specifically to prevent and prohibit certain conflicts of interest by current and former public employees in the public contracting process. For example, Section 10410 prohibits an officer or employee in state civil service from contracting on his or her own behalf as an independent contractor with any state agency to provide services or goods.

A PRIOR BUREAU OF STATE AUDITS' REPORT FOUND DEFICIENCIES IN CORRECTIONS' MEDICAL SERVICES CONTRACTS AND CLAIMS

California Department of Corrections: It Needs to Ensure That All Medical Service Contracts It Enters Are in the State's Best Interest and All Medical Claims It Pays Are Valid, a prior Bureau of State Audits' (bureau) report (2003-117 issued in April 2004), identified deficiencies hindering the effectiveness of Corrections' contracting process similar to those included in this report. Specifically, we noted instances of prisons obtaining medical services for inmates before receiving General Services' approval and prisons failing to document consistently their efforts to obtain registry services. To correct these deficiencies, we recommended that Corrections evaluate its contract processes to identify ways to avoid allowing contractors to begin work before General Services' approval and to modify procedures to require prisons to demonstrate their attempts to obtain services from registry contractors. In addition, we identified weaknesses in Corrections' processes for ensuring that it pays for only appropriate and valid medical claims. Specifically, our earlier report notes instances when the prisons' Health Care and Cost Utilization Program (HCCUP) analysts did not always identify discrepancies between contract rates and medical charges on providers' invoices—or even obtain evidence that medical services actually were received, resulting in overpayments to contractors. Further, Corrections did not always ensure that contract discounts were taken and late penalty payments were avoided. To correct these deficiencies, we recommended that Corrections establish a quality control process that includes a monthly review of a sample of invoices processed by the prisons' HCCUP analysts; recover overpayments made to providers for medical service charges; and evaluate its payment process to identify weaknesses that prevent it from complying with the California Prompt Payment Act.

SCOPE AND METHODOLOGY

The state auditor has the authority to audit contracts involving the expenditure of public funds in excess of \$10,000 entered into by public entities, at the request of the public entity. The court-appointed receiver requested that the bureau conduct an audit of a variety of issues related to existing contracts between Corrections and certain medical care providers. Specifically, the receiver requested that the bureau review Corrections' processes for procuring medical registry services and its practices involving

these services for fiscal year 2005–06 and to determine whether the process is fair and adequate and complies with all applicable laws and regulations; whether the language used in medical registry contracts is adequate and complete and written in the best interests of the State; and whether conflicts of interest exist related to procuring the medical services.

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

To obtain an understanding of the State's contracting process for obtaining medical registry services, we reviewed relevant laws, regulations, and policies and identified those that were applicable and significant to the audit. In addition, we reviewed Corrections' policies and procedures. Finally, we interviewed Corrections' staff.

To assess Corrections' process for procuring medical registry services, we reviewed a sample of 21 original or amended contracts approved in fiscal year 2005–06. We asked Corrections' contract staff to identify the types of medical services provided by medical registry contractors. We then asked the court-appointed correctional expert to identify those services covered under the *Plata* court order. Using Corrections' Contracts database, we selected a random sample of contracts by type of service, resulting in 13 registry contractors with medical providers, such as physicians, nurses, pharmacists, and lab technicians. We then randomly selected four contracts related to three contractors specifically identified by the court-appointed correctional expert. Although we selected random samples, they are not statistically valid, and therefore it would be inappropriate to project our audit findings to the entire population of Corrections' contracts. To meet U.S. Government Accountability Office data reliability standards,

we assessed the reliability of Corrections' Contracts database. Based on our assessment, we found the data to be sufficiently reliable for the purposes of our audit.

For each contract, we determined whether it was executed in accordance with applicable state laws, regulations, and policies. Additionally, we reviewed the contracts to determine whether they contain language necessary to ensure adequate protection to the State. To perform this review, we analyzed our sample of contracts to determine whether they contained the standard terms and conditions that generally are required in most state contracts as well as the terms that Corrections considers standard for contracting for medical care in prisons. Although we reviewed the contracts in our sample for all of these terms, we ultimately narrowed our evaluation to focus more closely on terms that are tailored to providing quality medical care in a fiscally sound way, because we believe that these terms are most critical to protecting the State's interests.

In addition to reviewing the contracts for these standard terms, we reviewed them to determine whether they contained terms that reflect generally accepted best practices for providing medical care in a prison setting. Specifically, we attempted to determine what terms a model contract for prisoner medical care would contain if it were designed to provide medically appropriate care in a way that was also fiscally sound. To gain an understanding of what these best contracting practices might be, we reviewed various studies and reports prepared on this issue by public, private, and academic organizations. The Appendix identifies the various studies and reports we reviewed and summarizes their key findings.

To examine Corrections' payment practices and determine whether contractors comply with contract terms, we randomly selected 44 invoices associated with our sample of contracts from Corrections' HCCUP database. Although we selected a random sample, it is not statistically valid, and therefore it would be inappropriate to project our audit findings to the entire population of Corrections' invoices. We assessed the reliability of the data in Corrections' HCCUP database to ensure that the invoices were drawn from a complete set of data. We documented Corrections' internal controls for verifying the accuracy and completeness of the data. However, we were unable to reconcile the expenditure data in the database to

Corrections' financial reports. Based on our assessment, we found the data contained in the database to be of undetermined reliability for purposes of our audit. For three contracts in our sample, we found that Corrections had neither received nor paid any invoices. Therefore, we judgmentally selected six invoices, to ensure that our sample included invoices for all selected contractors. Our review of the invoices focused on determining whether Corrections' verification and authorization of the payments was consistent with the contract terms, state law and policies, and its own policies and procedures in effect during fiscal year 2005–06.

To determine whether Corrections ensures that registry medical care providers meet all applicable licensing and certification requirements, we evaluated Corrections' processes and controls. In addition, we interviewed the contractors in our sample to identify their processes for ensuring that their medical care providers comply with their licensing and certification requirements. Finally, we verified the licensing and certification status for certain medical care providers.

To compare the difference between the rates Corrections pays the contractors with the rates the contractors pay the medical care providers, we interviewed the contractors and obtained relevant documentation related to their invoices and payroll records. We also interviewed the contractors in an attempt to explain the differences between the rates.

To determine whether Corrections correctly identifies its contractual relationships with registry contractors as independent contractors or whether they are, in fact, employees, our legal counsel reviewed contract language and information gathered during interviews with the contractors regarding their contractual relationships and their interactions with the prisons.

Lastly, to determine if conflicts of interest exist related to the procurement of registry medical services, we reviewed the statements of economic interests for certain individuals in positions of trust (such as having contract or invoice approval authority) and their medical consultants among headquarters staff and nine prisons. Additionally, using information from a national, federally funded database, we looked for potential relationships between Corrections' staff and registry contractors and their medical providers. We also obtained listings from the contractors of all employees providing medical services under

the contracts in our sample and determined whether they are or were state employees during the period between July 1, 2003, and October 31, 2006, indicating a potential conflict of interest. During our review we noted some potential conflicts of interest that have been referred to our Investigations Division for further analysis. ■

CHAPTER 1

The California Department of Corrections and Rehabilitation Did Not Follow Policies and Procedures When Contracting for Medical Services, and Its Contracts Could Be Improved to Protect the State's Interests Better

CHAPTER SUMMARY

The California Department of Corrections and Rehabilitation (Corrections) did not award properly nine of 18 competitively bid contracts with a total maximum amount of more than \$385 million. State policy allows Corrections to award contracts to multiple providers and it ranks them according to their bids. However, because it did not always apply correctly the small business preference or a cost threshold it uses to limit the number of awards made for registry contractors, it may have unfairly prevented contractors from providing services or erroneously excluded bidders from the opportunity to provide services. Additionally, Corrections did not always follow state policies during its process of competitively awarding contracts. For instance, it did not fully justify its reasons for awarding two contracts, with maximum amounts totaling almost \$600,000, when it received fewer than three bids, the minimum number required by the State. It also did not provide complete justifications for awarding two of three noncompetitively bid contracts with maximum amounts totaling almost \$80 million.

State policy generally prohibits contractors from starting work before they receive a copy of the contract approved by the Department of General Services (General Services) or, if exempt from General Services' approval, a copy of the contract approved by Corrections. However, we noted seven instances in which contractors provided services totaling almost \$20,000 before Corrections obtained General Services' final approval of the contracts. Further, our review of 21 contracts found problems with the notice to proceed (NTP) process, by which Corrections

monitors authorization of prison spending on its master contracts. Specifically, we found that the contract unit's lists of NTPs were incomplete, preventing an accurate assessment of available funds. An audit report we issued in April 2004 found similar problems. Although Corrections' recent elimination of NTPs on future contracts eventually will remove this concern, current master contracts must continue under the NTP process until their contract terms expire.

Finally, we found that the contracts in our sample generally contained the standard terms and conditions required by state law or state policy. These contracts also generally included certain terms that Corrections has determined are essential to contracting for medical services in a prison setting. One exception was that many of the contracts in our sample did not contain required terms that protect the confidentiality, privacy, and handling of inmate medical records adequately under the federal Health Insurance Portability Accountability Act (HIPAA). However, in looking beyond the legally required terms and conditions to determine whether the contracts reflect generally accepted best practices for medical care in a prison setting, we found that certain key terms could be added or improved to strengthen Corrections' ability to protect the State's interests better. Specifically, contract terms related to the standard of care were inconsistent across our sample, inconsistent within the same contracts, and in some cases did not ensure the minimum standard of medical care that must be met to protect the constitutional rights of prisoners. Some contracts also did not provide sufficient assurance to the State that contractors were insured against civil rights claims that might be brought by inmates. Finally, we found that most contracts did not impose any significant obligations on contracting medical registries to monitor or assess the quality of care provided under their contracts with Corrections.

CORRECTIONS DID NOT ALWAYS COMPLY WITH ESTABLISHED POLICIES AND PROCEDURES FOR PROCURING REGISTRY SERVICES

Our review of 21 contracts for medical registry services found that Corrections did not always follow established state contracting policy. For example, it did not demonstrate that it pays contractors the lowest possible, or even reasonable, rates. In some cases, Corrections did not award contracts to the lowest responsible bidders. It also did not justify costs adequately when awarding contracts in situations when it did not obtain at least

three competitive bids or when it used the noncompetitively bid process. In a few instances, Corrections failed to obtain General Services' approval before allowing registry contractors to provide services. In addition, Corrections' method for monitoring authorization for prison spending requires improvement. These last two weaknesses are similar to those discussed in a previous audit report issued in April 2004. Table 1 presents the results of our review of 21 contracts and highlights the instances of noncompliance we found.

TABLE 1

Major Findings From Our Review of 21 Contracts

Requirement	Number of Contracts for Which Requirement Is Applicable	Number of Contracts Not Meeting Requirements	Percentage of Contracts Not Meeting Requirements
The invitation for bids process requires Corrections to award contracts to the lowest responsible bidder.	18	9	50%
Generally, three competitive bids are required. If fewer than three bids are received, Corrections must provide an explanation as to why it received fewer than three bids, must justify the reasonableness of the price, and must provide the names and addresses of those notified of the contracting opportunity.	18	2	11
The noncompetitively bid process generally requires Corrections to submit a contract cost justification to the Department of General Services.	3	2	67
State policy prohibits contractors from starting work before receiving a copy of the formally approved contract.	21	4	19

Sources: *State Contracting Manual* and the Department of Corrections and Rehabilitation's contract files.

Corrections Did Not Always Award Contracts According to State Policy or Its Own Policy

Corrections, in awarding contracts to multiple bidders for medical registry services, did not always award the contracts properly. As we discussed in the Introduction, Corrections uses the invitation for bids (IFB) method to award registry contracts. It awards contracts to the lowest responsible bidders, assigning a rank that indicates the order in which contractors will be contacted when temporary medical services are needed.

Corrections failed to limit the small business preference to \$50,000, as state law and regulations require, and gave bidders a larger preference than allowed, causing some bidders to incorrectly receive higher-ranking positions.

As previously shown in Table 1, in nine of the 18 competitively bid contracts Corrections awarded the contracts incorrectly, which have a total maximum amount of more than \$385 million. Specifically, in awarding these nine contracts, Corrections assigned incorrect hierarchy positions to bidders, primarily because its practice was to apply the small business preference—a 5 percent preference given to small businesses bidding on state contracts—to the bidders’ hourly rate rather than the bid price. As a result, for seven contracts Corrections failed to limit the preference to \$50,000, as state law and regulations require, and for all nine contracts it gave bidders a larger preference than allowed, causing some bidders to incorrectly receive higher-ranking positions. For example, Corrections incorrectly ranked one bidder in the fourth position for one prison when this bidder should have been ranked fifth. According to a contract manager, Corrections believes that it correctly applied the 5 percent preference to bidders’ hourly rates because state law does not state that the preference cannot be applied to the hourly rate. We disagree because, in applying its method, Corrections exceeded the prescribed preference limit. State law clearly limits the preference to \$50,000. Additionally, a purchasing manager at General Services stated that any application of the small business preference, other than to identify the net bid price,⁴ could lead to an inaccurate application of the preference.

State policy allows Corrections to award contracts to multiple bidders through a competitive process. State policy also requires agencies and departments to present a clear, objective standard for how awards will be made in their bid documents when awarding multiple contracts through a bidding process that involves a variety of services or locations. Corrections’ Division of Correctional Health Care Services (division) establishes a cost threshold that it uses to limit the number of awards made for registry contracts. The division does not have any written policies or procedures for determining this cost threshold. However, according to the manager of the Health Care Operations Support Section, the division calculates the cost threshold by generally using one of three methods. The division averages the bid amounts for each prison group, calculates a standard deviation, and adds .50 of the standard deviation to the average of the bid amounts. However, if it receives fewer than four qualified bidders, the division averages the bid amounts for each prison group, calculates a standard deviation,

⁴ State regulations define the net bid price as the verified price of a bid after all adjustments described in the notification to prospective bidders have been made.

and adds 1.0 standard deviation to the average of the bid amounts. Finally, when it does not have historical expenditure data to measure the bid amounts against, the division will use a flat average and not apply a standard deviation.

Nine of the 21 contracts we reviewed were awarded using this cost threshold as a means of limiting the number of contracts awarded for a given IFB. However, Corrections' solicitation document did not inform the bidders of its use of a cost threshold or its methodology for calculating the threshold. The manager of Central Medical Contracts within the *Plata* Compliance Unit referred us to Corrections' standard language for multiple award contracts, which states that "the State intends to award one or more agreements to the lowest responsible bidder(s). The State reserves the right to award either: (1) one agreement for all prisons, (2) one agreement per geographic group, or (3) one agreement per prison and that this determination will be based on what is in the best interests of the State." The manager also stated that all bid documents include a statement that "the State is not required to award an agreement and reserves the right to reject any and all bids and to waive any immaterial deviations in the bid." However, we do not believe Corrections' standard language provides bidders with a clear, objective standard for how awards will be made.

Corrections did not always apply the cost threshold properly and, as a result, improperly awarded one contract and excluded another bidder from the opportunity to provide services.

Corrections also did not always apply the cost threshold properly and, as a result, improperly awarded one contract and excluded another bidder from the opportunity to provide services. Specifically, it appears as though the excluded bidder submitted a bid that was below Corrections' cost threshold, but its staff noted on the bid tabulation sheet that the bid was above the cost threshold. Corrections could not provide an explanation for this error. In contrast, Corrections improperly awarded a contract even though the bid was above the established cost threshold. According to a contract manager, an analyst incorrectly applied the small business preference to the bidder's hourly rate. The effect of this error was to reduce the bidder's hourly rate below Corrections' cost threshold, which resulted in the award of the contract.

Finally, we found the division did not always calculate the cost threshold using the methods it described to us. Specifically, we reviewed 19 cost thresholds associated with various types of services that were covered under nine contracts. Five of the 19 cost thresholds were not calculated using any of the division's three methods. Our re-calculation of these five cost thresholds

using each of the three methods found that for four of the thresholds Corrections' use of an incorrect threshold caused it to improperly award up to 33 contracts and to exclude up to six bidders, depending on which of the three methods it would have chosen. In addition, seven of the 19 cost thresholds were calculated using Corrections' method of averaging the bid amounts, calculating a standard deviation, and adding a 1.0 standard deviation to the average bid amounts. However, for five cost thresholds this method was inappropriate because there were more than four qualified bidders. As a result, Corrections improperly awarded up to 59 contracts, depending on which of the other two methods it would have chosen. We also found that Corrections used a flat average to determine five cost thresholds. However, we were unable to determine if its use of this method was appropriate because Corrections did not provide documentation demonstrating that it did not have historical expenditure data to measure the bid amounts against.

Because prisons are required to request services from contractors based on their position in the hierarchy, it is particularly important that Corrections correctly apply the small business preference and its cost threshold. When it does not, Corrections may be unfairly preventing contractors from providing registry services or selecting contractors who do not meet its criteria. Further, when it incorrectly awards contracts, Corrections risks exposing itself to litigation. Although the California courts have not awarded damages for lost profits to bidders who were wrongfully denied a contract, they have allowed them to recover their bid preparation costs.

Corrections' Justifications for Awarding Two Competitively Bid Contracts Were Incomplete

Corrections did not always retain complete justifications for awarding contracts when receiving fewer than three bids. State law requires a minimum of three competitive bids except in certain circumstances, including when the agency advertises in the *California State Contracts Register* and has solicited all known potential contractors. State policy requires the agency to prepare a complete explanation as to why fewer than three bids were received, to provide a justification of the reasonableness of the price, and to provide the names and addresses of the firms or individuals specifically notified of the contracting opportunity. The agency also must retain this information in its contract files.

For two of the 18 competitively bid contracts, with a maximum total of almost \$600,000, Corrections did not justify the reasonableness of the award amounts.

As shown in Table 1 on page 25, for two of 18 competitively bid contracts, with a maximum total of almost \$600,000, Corrections did not receive three bids and did not justify the reasonableness of the award amounts. For one contract, with a maximum amount of more than \$460,000, Corrections' files indicated that the winning bid was the same as a previous contract and that the health care managers at two prisons had determined that the rates were fair and reasonable. For the other contract, with a maximum amount of more than \$115,000, Corrections received only two bids and awarded a contract to each bidder, stating again that division health care staff had determined that the rates were fair and reasonable. Although Corrections advertised these two contracts in the *California State Contracts Register*, it could not demonstrate that it solicited all known potential contractors. One way that Corrections can demonstrate that it has solicited all known potential contractors is to compile a listing of all known contractors from its Health Care Cost and Utilization Program (HCCUP) database and retain copies of the letters sent to the contractors. Instead, Corrections provided us with a list of potential bidders who were mailed bid packages or who downloaded them from General Services' Web site. Consequently, Corrections was not exempt from complying with state policy requirements for awarding contracts with fewer than three bids.

Further, Corrections' contract staff members were unable to provide us with documentation to support these determinations, as state policy requires. When Corrections does not document its justifications for awarding contracts when receiving less than three bids, it is unable to demonstrate that it is protecting the State's interest by obtaining fair and reasonable rates.

Corrections Could Not Justify the Prices Contained in Two Noncompetitively Bid Contracts

Corrections also did not retain justifications for the rates found in two of three noncompetitively bid contracts we reviewed. As we discussed in the Introduction, a noncompetitively bid contract is a contract for goods or services or both in which only a single business receives the opportunity to provide the specified goods and/or services. The requirements for justifying noncompetitively bid contracts are shown in the text box on the following page.

Requirements for Noncompetitively Bid Contracts

State policy requires a justification for noncompetitively bid contracts unless specifically exempted by statute or policy. Further, it requires that departments awarding noncompetitively bid contracts provide a cost justification that addresses the appropriateness or reasonableness of the contract cost. The cost justification should include the following information:

- Cost information (budget) in sufficient detail to support and justify the cost.
- Cost information for similar services and explanations for any differences between the proposed services and similar services.
- Special factors affecting the costs under the contract.
- Reasons why the department believes the contract costs are appropriate.

Source: Section 5.70 of the *State Contracting Manual* issued by the Department of General Services.

We question the appropriateness and reasonableness of Corrections' costs for two of three noncompetitively bid contracts we reviewed. Corrections awarded one of these contracts, with a maximum amount of almost \$79 million, in response to a federal court order related to the *Plata v. Davis* (*Plata*) settlement filed on December 1, 2005. The court order required Corrections to modify its existing contract with this contractor within 10 business days of the date of the order in a manner that provides an hourly rate of compensation adequate to attract physicians and mid-level providers⁵ who meet Corrections' standards. Corrections chose to execute an emergency contract instead of modifying its existing contract. In the agreement summary found in the contract file, Corrections gave as its basis for determining that the rates were reasonable the explanation that the "contractor's rates were negotiated by Corrections' Community Provider Healthcare Network and have been determined to be fair and reasonable." However, we could find no documentation in the contract file as to how the rates were determined to be fair and reasonable.

Therefore, we contacted an assistant deputy director in the division, who we were told had been involved in the negotiations with the *Plata* court experts to determine the rates. She stated that determining the rates was not a hard and fast science given the urgency of the situation related to problems with access to care and quality of care. She also stated that the discussion of the proposed rate for this contract took place in the context at the time of other emergency contractors; and the reality that Corrections did not have enough qualified physicians and continued to be unsuccessful in hiring civil service or registry contract providers with its current compensation structures. In addition, she stated that she believed the *Plata* court experts may have completed some type of informal survey of other medical organizations in and out of California as the basis for their proposal. She later stated that, according to one of the *Plata* experts, the experts' rationale for the proposed rates was based, in part, on the existing contract compensation rates already in effect, which seemed inadequate to attract sufficient quantities of qualified physicians. Further, she stressed that the experts' proposal

⁵ The federal court refers to nurse practitioners and physician assistants in its discussion of mid-level practitioners.

served as the framework for the three-tiered rate structure used in the emergency contracts. Finally, she stated that the *Plata* court experts' proposal was discussed in high-level meetings with representatives from the Office of the Governor, Office of the Attorney General, Corrections, and the departments of Finance, General Services, and Personnel Administration.

Corrections could not demonstrate that the contract rates it agreed to pay one contractor were reasonable. In fact, the rates were double that of another registry contractor providing similar services.

The assistant deputy director agreed to try to locate relevant documents related to the development of the rates. However, the documents she gave us reiterated the emergency situation that Corrections was in, but did not explain how the rates were determined. For example, the assistant deputy director was unable to locate a copy of an informal salary survey. Thus, Corrections could not demonstrate to us that the contract rates it agreed to pay the contractor and the minimum rates it recommends the contractor pay its medical providers are reasonable or appropriate. In fact, our review of the contract for another registry contractor found that Corrections' rates are more than double the rate the other contractor receives for its physicians.

The other contract, which had a maximum amount of \$1 million, was subject to a process approved by General Services and known as the special category noncompetitively bid contract request process. Specifically, on July 29, 2005, Corrections submitted an application to General Services requesting an exemption from competitive bidding for contracts related to certain hospitals with medical guarding units and their associated staff physicians and medical groups. On September 1, 2005, General Services approved Corrections' application. One of General Services' conditions of approval requires Corrections to follow the price analysis and methodology described in its application and to include price analyses and documentation when submitting the contracts to General Services for approval. In its application, Corrections stated that "it would use the relative value for physicians (RVP)⁶ multiplied by the unit values and Medicare rates as the benchmark for determining the reasonableness of its rates and to justify prices for all medical groups, physicians, and various specialties." Corrections uses the RVP rates, which it computes using its established regional conversion factors for procedures in conjunction with a numerical value (called relative value

⁶ In the relative value system, values are provided for physician services contained in the American Medical Association's Physicians' Current Procedure Terminology system, as well as in Medicare's Healthcare Common Procedure Coding System Level II (National) Codes.

units) assigned to the procedure. In addition, Corrections stated that it would continue to conduct and maintain market surveys when considering new contracts.

Corrections received General Services' approval for this contract on January 25, 2006. However, it was unable to produce documentation to support its calculation of the Medicare benchmark, and no recent market surveys were performed. The manager of the Health Care Operations Support Section stated that at the time the contract was executed, the division did not routinely perform a comparison to Medicare if the rates were within the standard RVP rates. She also stated that there was a belief that a market survey was not necessary as long as the division was within the standard RVP rates. We question whether the division's standard RVP rates can reflect the current market when the regional conversion factors were established 15 years ago. When Corrections does not justify and document the reasonableness of the contract rates it agrees to pay, in accordance with the methodology approved by General Services, it is unable to demonstrate that the rates are appropriate and reasonable.

We question whether the division's standard RVP rates can reflect the current market when the regional conversion factors were established 15 years ago.

Corrections Has Paid Some Contractors for Services Provided Before Their Contracts Were Approved by General Services

State policy generally prohibits contractors from starting work before they receive a copy of the contract approved by General Services or, if exempt from General Services' approval, a copy of the contract approved by Corrections. For contracts less than \$75,000, state law allows General Services to grant an exemption from its approval if state agencies meet certain conditions. Corrections has been granted this exemption. However, all the contracts except one in our sample exceeded \$75,000 and therefore were subject to General Services' approval.

For four of the contracts we reviewed, we noted seven instances in which registry contractors were performing services at prisons before Corrections obtained General Services' final approval of the contracts. In such instances, state policy dictates that Corrections consider the contractor's services as volunteer work or notify the contractor of the process for pursuing payment by filing a claim with the Victim Compensation and Government Claims Board. The State has no legal obligation to pay for the services unless and until the contract is approved. However, we found that Corrections paid the contractors almost \$20,000 for these services once their contracts were approved by General Services. When we asked the prisons why they

approved invoices with charges for services occurring before Corrections obtained General Services' approval, three prisons stated that they approved their invoices because the services were within the contract terms. Further, another prison stated that headquarters had told staff that if they needed services to meet a court-ordered workload they did not need to wait for the contract approval. When Corrections does not ensure that it obtains proper approval before allowing contractors to perform services, it exposes the State to potential litigation if General Services does not approve the contract.

Corrections' Method for Monitoring Authorization of Prison Spending Still Requires Improvement

Corrections initiates master contracts with medical registries that agree to provide services to two or more prisons. The master contracts have an authorized maximum dollar amount. To save processing time and costs, Corrections developed the NTP, an internal document authorizing allocation of spending authority for any prison choosing to use services covered under a master contract. In our April 2004 audit report titled *California Department of Corrections: It Needs to Ensure That All Medical Service Contracts It Enters Are in the State's Best Interest and All Medical Claims It Pays Are Valid*, we found that the NTPs issued for four master contracts exceeded the authorized amount of the master contracts. In its 60-day response to this audit, Corrections stated that it would train staff to follow the guidelines outlined in its master contract procedures. Further, in its six-month response to this audit, Corrections stated that it would conduct random audits of master contracts to ensure compliance with the procedures.

Until Corrections' contracting staff establishes an effective process to periodically reconcile the master contracts and outstanding NTPs, it continues to run the risk of issuing NTPs that exceed the master contract amount.

Of the 21 contracts in our sample, 17 were master contracts with multiple NTPs issued to prisons. For 10 of the 17 master contracts, the contracting unit's lists of NTPs issued for the master contracts were incomplete. For example, for one master contract, the listing did not include five NTPs, totaling \$566,400 and for another master contract, 12 NTPs for \$6.4 million were not included in the listing. When we brought these errors to Corrections' attention, its contracting unit staff informed us that they experience errors when accessing data from the database. Therefore, they may not always be aware of the correct amount of the NTPs.

The total amount of NTPs that contracting staff issue for a given contract should not exceed the master contract amount. Fortunately, these errors were identified early and as a result did not cause Corrections to exceed the master contract amounts. On September 15, 2006, the deputy director of Corrections' Health Care Administrative Branch, which resides within the division, issued a memo stating that "effective August 28, 2006, all master contracts in process and any future master contracts no longer will require NTPs. Instead, staff will determine an 'informal' allocation of funding for each participating prison, using the prisons' historical utilization data, and will include a list of all allocations in the contract request submitted to the contracting unit." However, according to the memo, master contracts currently in effect must continue under the existing NTP process until their contract terms expire. Thus, until Corrections' contracting staff establishes an effective process to periodically reconcile the master contracts and outstanding NTPs, it continues to run the risk of issuing NTPs that exceed the master contract amount.

CORRECTIONS' MEDICAL SERVICE CONTRACTS GENERALLY INCLUDE STANDARD STATE TERMS, BUT OTHER KEY TERMS COULD PROVIDE BETTER PROTECTION TO THE STATE

Corrections has significant legal obligations related to prisoners' medical care. As discussed in the Introduction, consistent with the terms of the *Plata* settlement agreement, Corrections must develop and implement a plan for the medical treatment of inmates that meets or exceeds Corrections' legal obligations under the U.S. Constitution. Among other things, this plan must include specific practices related to staffing levels of registered nurses at each prison as well as specific medical treatment protocols.

Many of the contracts in our sample did not contain the terms Corrections considers standard in medical service contracts that protect the confidentiality, privacy, and handling of inmate medical records adequately under HIPAA.

In our review of a sample of 21 original or amended contracts entered into between Corrections and contracting medical registries between July 1, 2005, and June 30, 2006, we found that these contracts generally contained the standard terms and conditions required by state law or state policy. These contracts also generally included certain terms that Corrections has determined are essential to contracting for medical services in a prison setting. One notable exception was that many of the contracts in our sample did not contain terms Corrections considers standard in medical service contracts that protect the confidentiality, privacy, and handling of inmate medical records adequately under HIPAA.

In looking beyond the legally required terms and conditions to determine whether the contracts reflect generally accepted best practices for medical care in a prison setting, we found that certain key terms could be added or improved to strengthen Corrections' ability to provide better protection to the State's interests. Specifically, we found that the contract terms related to the standard of care were inconsistent across our sample, were sometimes inconsistent even within contracts, and in some cases did not ensure the minimum standard of medical care that must be met to protect the constitutional rights of prisoners. We also found that some contracts did not provide sufficient assurance to the State that contractors were insured against legal claims that might be brought by inmates under the Eighth Amendment to the U.S. Constitution (Eighth Amendment). Finally, we found that most contracts did not impose any significant obligations on contracting medical registries to monitor or assess the quality of care provided under their contracts with Corrections.

Corrections' Contracts for Prisoner Medical Services Generally Contain Standard Terms Required in Most State Contracts

State policy requires all state agencies to include certain standard terms and conditions in their contracts, including Corrections' contracts for medical services. These requirements generally are designed to ensure that contractors doing business with the State are aware of their legal obligations under various state or federal laws. For example, all state contracts must include provisions that require contractors to comply with laws prohibiting discrimination in hiring and employment. General Services, which is charged with oversight of state contracting, has developed various templates for use by state agencies that include these standard terms. In reviewing our sample of 21 contracts, we found that they generally contained the standard terms. Table 2 on the following page shows the results of our review of those standard terms most closely related to the specific objectives of this audit—namely, those that ensure the timely and efficient delivery of medical services—and describes the purpose of each contract term.

Although one contract in our sample did not include terms stating that time was of the essence, we did not consider this problematic because other terms in the contract imposed sufficient obligations on the contractor related to timely performance. Similarly, although some contracts did not contain a severability clause, our legal counsel has advised us that this is

not problematic, because if any of these contracts were challenged in court, a court likely would read that term into the contract and interpret it as though it contained a severability clause.

TABLE 2

Standard State Contracting Terms		
Category of Terms	Purpose of Term	Term Present in Our Sample of 21 Contracts?
Prior approval required	Requires General Services to approve the contract before the contractor may start work.	21
Amendment	Requires all contract changes to be in writing and signed.	21
Prohibition against assignment	Prohibits contractor from assigning work under the contract to another party without consent of the State.	21
Holding State harmless	Absolves the State from any responsibility for damages or other liability related to the performance of the contract.	21
Termination for cause	Allows the State to terminate the contract based on the contractor's failure to perform.	21
Independent capacity	Establishes that the contractor works as an independent contractor and not as an officer or employee of the State.	21
Nondiscrimination clause	Prohibits the contractor from discrimination in hiring and employment.	21
Conflict-of-interest certification	Prohibits conflicts of interest, consistent with various state laws.	21
Time is of the essence	Requires the contractor to perform the services under the contract in the time specified.	20
Compensation for all work	Provides that the amount paid to the contractor is full payment for services.	21
Severability	Provides that if a court finds some provisions of the contract illegal or void, they will be removed from the contract and the remaining provisions will remain in effect.	16*

Source: General Terms and Conditions for state contracts, issued by the Department of General Services.

* A court will likely read this term into a contract, so its absence is not significant.

Corrections' Medical Contracts Generally Contain Standard Terms Specific to Contracting for Services in a Prison Setting

In addition to the standard terms required by state policy in all state contracts, Corrections has developed standard terms and conditions that it includes in its contracts for the delivery of medical services in the State's prisons. For purposes of our review, the standard terms and conditions required by Corrections fell into two categories: (1) terms designed to ensure that providers who associate with inmates are notified of, and subject to, various laws related to associating with inmates and (2) terms designed to ensure adequate and timely delivery of services. As examples of contract terms related to associating with inmates, the contracts prohibit a provider who works

in a prison setting from giving or taking letters from inmates without the prison warden's permission or from encouraging and/or assisting a prison inmate to escape. Examples of terms related to the adequate and timely delivery of medical services included terms that require a provider to have the appropriate license, permit, or certification for the service called for under the contract; terms that require minimum qualifications for staff provided under the contract; terms that require minimum staffing levels; terms that require participation in training and orientation provided by Corrections; and terms that ensure the appropriate management of confidential health information under federal law. Table 3 shows the results of our review of those Corrections' terms that were related most closely to the specific objectives of this audit—namely, those that ensure timely and efficient delivery of medical services—and describes the purpose of each contract term.

TABLE 3

Standard Terms Used in Corrections' Contracts for Medical Services

Category of Terms	Purpose of Term	Term Present in Our Sample of 21 Contracts?
Licenses/permits/certification requirements	Requires applicable professional license, permits, and/or certifications to perform the work called for under the contract.	21
Minimum qualifications	Specifies minimum staff qualifications.	21
Staffing levels	Specifies staffing levels.	21*
Cancellation	Authorizes the State to cancel work assignments when staff is not needed.	18
Overtime rate allowances	Provides for overtime rate allowances.	16†
Overtime provisions consistent with law	Prescribes legal requirements related to overtime.	16†
On-call/standby services	Requires contractor to be available during off-duty hours.	12‡
Orientation	Requires personnel to attend an orientation class conducted by Corrections before reporting to work.	19
Inspections	Authorizes Corrections to inspect the contractor's work.	20
Failure to perform	Authorizes Corrections to end the contract for failure to provide services.	20
Agreement to protect privacy of prisoner information consistent with federal law	Prescribes legal requirements related to formalized Business Associate Agreement requiring the contractor to meet its obligations under HIPAA.	6

Source: California Department of Corrections and Rehabilitation contracts.

* Under these contracts, Corrections always retained the authority to ensure appropriate staffing levels.

† In the remaining five contracts in our sample, overtime provisions were not applicable.

‡ In the remaining nine contracts in our sample, on-call or standby was not applicable.

We found that, except for terms related to appropriate handling of confidential medical information, the 21 contracts in our sample generally contained these standard Corrections' terms. Where the terms were not present, we found that it was generally appropriate to omit them because they would not have applied to that particular type of contract. For example, some contracts did not require the contractor to provide on-call services 24 hours a day, seven days a week, but based on the nature of the services provided under that particular contract, such as physical therapy, that would not have been necessary.

With respect to staffing levels, none of the contracts in our sample required a medical registry to meet a particular staffing level within the prison setting where that registry provided services. However, we do not believe that this is necessarily a flaw in the individual contracts. Although achieving appropriate staffing levels at prisons is critically important and is, in fact, mandated by the *Plata* settlement, we believe it is Corrections' responsibility, under the management of the receivership established by federal court order, to develop and implement effective strategies for ensuring adequate overall staffing levels throughout the entire state prison system. We believe this goal can be achieved best through effective overall management and operations at the institutions and is not necessarily a goal that can be accomplished through contract terms with individual medical registries.

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

Overtime Provisions for Contractors Are Consistent With State Law

As part of our review, we were asked to determine whether the contract terms were consistent with applicable laws related to the payment of overtime. Most of the contracts we reviewed contained terms related to overtime, and the text box summarizes those terms. We analyzed these provisions in light of the applicable laws related to the payment of overtime and found that they were consistent with those laws. However, it is important to note that under state law, there is no legal

Overtime Provisions for Corrections' Medical Service Contractors

- Contractor must rotate staff to avoid paying overtime.
- Corrections must pay overtime only for an unanticipated event, such as a prison emergency after a regular work schedule longer than eight hours or a prison lockdown, at the rate of one and one-half times the hourly rate.
- Payment of overtime is subject to written approval from the chief medical officer or the health care manager or designee; and proof of authorization must be attached to the monthly billing invoices to receive payment.
- Contractor must pay for any unauthorized overtime worked by affected personnel.
- Contractor must guarantee that various provisions of the California Labor Code have been followed when providing personnel to work. These provisions of state law prescribe the requirements for overtime payments for most workers paid on an hourly basis.

Source: California Department of Corrections and Rehabilitation contracts.

obligation to pay overtime to a contracting physician who is paid more than \$55 a day when that physician works more than an eight-hour day. Nonetheless, two of the three contracts we reviewed that called for physician services required Corrections to pay overtime for physicians.

Although the contract terms permit payment of overtime only under the limited conditions shown in the text box, routinely including these terms in its contracts with physicians may not be fiscally sound. Our review of 12 selected invoices related to the contracts we reviewed did not find any in which the physicians received overtime pay.

Some Contracts Lack Business Associate Agreements That Ensure Compliance With Federal Requirements Related to Privacy, Confidentiality, and Transfer of Inmate Medical Records

Various state and federal laws, including the state constitution, apply to the handling and protection of medical records and generally protect the confidentiality of medical information. In addition, HIPAA imposes various obligations on certain “covered entities” and the “business associates”

with whom they conduct business. Under HIPAA, Corrections may act as a covered entity in the provision of medical care to inmates and the various contractors with whom it does business may act as “business associates.”⁷ As business associates, those contractors are obligated to follow HIPAA, which imposes various obligations related to the confidentiality and handling of prisoner medical information. HIPAA also requires that a business associate enter into a Business Associate Agreement that imposes specific obligations designed to ensure compliance with HIPAA.

All the contracts in our sample required the contractor to comply with state confidentiality laws. However, only six contained the required Business Associate Agreement. An additional three contracts contained a general requirement to comply with HIPAA but did not include the necessary Business Associate Agreement.

⁷ Although the standard terms and conditions called for by Corrections require compliance with HIPAA and also require a Business Associate Agreement when contracting for medical services, the court-appointed receiver has indicated that he is seeking clarification regarding the applicability of HIPAA in the State's prisons.

Corrections' Treatment of Its Independent Contractors Raises Concerns About Whether They Are, in Fact, Employees

All the contracts in our sample contained terms that establish that the medical registries act as independent contractors. According to state law, an independent contractor is any person who provides services for a specified compensation and a specified result under the control of his or her principal. The principal controls only the result of an independent contractor's work and not the means by which the independent contractor accomplishes the result. That is, an independent contractor's work is largely independent of the control of the entity for which the services are performed. The advantage to a state agency of using independent contractors to perform work is that the agency does not have to pay for various employee taxes and benefits.

Case law regarding the distinction between an independent contractor and an employee is varied, and there is no specific, single definitive rule that determines a worker's status. One significant element that the courts have applied that establishes a worker as an independent contractor appears to be the degree of control the hiring person has over the manner and means of accomplishing the result or performing the work. However, in a recent appellate decision, the court held that even in the absence of control by the principal over the details of performing the tasks, an employee/employer relationship exists if "the principal retains pervasive control over the operation as a whole, the worker's duties are an integral part of the operation, and the nature of the work makes detailed control necessary."

In addition to case law, we reviewed the 20 general factors used by the U.S. Department of the Treasury, Internal Revenue Service (IRS) to determine whether a worker is an employee or an independent contractor. The IRS uses this test to determine whether an individual is an employee for federal tax withholding purposes. Although all the contracts in our sample contained terms that indicate medical registries act as independent contractors, we surveyed each of the contracting medical registries in our sample to evaluate their relationship with Corrections based on the IRS factors. Most of them noted that they are not required to comply with specific instructions from Corrections on how to perform their services. In addition, half of the medical registries noted that they pay their workers directly, rather than having them paid by Corrections, which indicates a level of autonomy associated with that of an independent contractor.

Other factors, however, suggested a significant degree of control by Corrections. For example, survey results also indicated that all the respondents noted that the services provided by the medical registries are an integral part of Corrections' operations, and that most respondents noted that there is a long and continuous relationship between Corrections and the medical registry. These factors suggest that the worker is subject to the employer's direction and control. Additionally, a continuing relationship between a worker and an employer is another indication that an employer/employee relationship exists. Further, most of the survey respondents indicated that the nature of the work requires that it be done on Corrections' premises, and a majority of respondents stated that Corrections furnishes the workers with the necessary tools and materials. Again, the IRS considers all these factors as further indications that an employer/employee relationship exists.

Potential liability and penalties for misclassification of an employee include substantial taxes, back pay, and reimbursement of expenses.

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

Based on the survey results, there are several areas in which Corrections appears to maintain a significant degree of control over the manner and means of performing the work. However, as we noted earlier, the IRS and the courts do not expressly state a single, definitive rule regarding what constitutes an independent contractor. Instead, the courts and the IRS make each decision based on the totality of the circumstances. As such, it is difficult to say whether medical registries would be deemed independent contractors or Corrections' employees.

Key Contract Terms Could Strengthen Corrections' Delivery of Medical Care to Inmates

As a result of our research into generally accepted best practices for providing medical care in a prison setting, seven key contract terms emerged as generally accepted best practices. Table 4 on the following page shows the results of our review of sample contracts to determine whether they contained these terms and describes the purpose of each term. For example, all the contracts in our sample contained terms that plainly state the rate and schedule of payment, including the obligation to make prompt payment in accordance with state law.

TABLE 4

Generally Recommended Contract Terms for Providing Medical Care in a Prison Setting

Type of Term	Purpose of Term	Term Present in Our Sample of 21 Contracts?
Standard of care	Defines the standard of medical care expected under the contract.	21
Insurance	Requires the contractor to be insured against liability.	21
Insurance coverage for civil rights claims	Specifically requires the contractor to be insured against civil rights claims filed by inmates that relate to the adequacy of medical care.	Unclear*
Prohibition of patient referral	Prohibits a contracting physician from referring a patient to an entity in which he or she has a prohibited business interest.	1 [†]
Monitor and access quality	Requires the contractor to monitor for effective and quality performance.	5
Rate of payment and schedule of payment including prompt payment provisions	Prescribes the actual rate and schedule of payment and requires prompt payment in accordance with state law.	21

Source: Please refer to the Appendix.

* Although most of the contracts required the contractor to notify the insurance carrier that services were to be provided to inmates, it is not clear that this would ensure coverage against civil rights claims.

† This term was only relevant to three of the contracts in our sample and was present in only one contract. Although the other two contracts did not contain an anti-self referral prohibition, other terms within the contract were sufficient to address this issue.

Contract Terms Related to the Standard of Care Are Inconsistent and Sometimes Ambiguous

The American Medical Association (AMA) considers it a recommended best practice for any contract between a medical care provider and an organization for which that provider provides medical services to state plainly the required *standard of care* called for under the contract. The phrase *standard of care* is understood within the medical community to refer to a diagnostic and treatment process that a practicing clinician should follow for a certain type of patient, illness, or clinical circumstance. In a legal context, the phrase *standard of care* is the level at which the average, prudent provider of medical care in a given community would practice. Stated differently, the standard of care is how similarly qualified practitioners would be expected to manage a patient's care under the same or similar circumstances.

In its Model Managed Care Contract for physicians, the AMA, a national organization whose mission is to promote the art and science of medicine and the betterment of public health, recommends that any contract between a physician and a managed care organization require that the standard of care

for services to be provided by the physician be based on the AMA's definition of medical necessity. That definition calls for a contracting physician to provide health care services or procedures that "a prudent physician would provide to a patient for the purpose of preventing, diagnosing, or treating an illness, injury, disease or its symptoms in a manner that is (a) in accordance with generally accepted standards of medical practice; (b) clinically appropriate in terms of type, frequency, extent, site, and duration; and (c) not primarily for the economic benefit of the health plans and purchasers or for the convenience of the patient, treating physician, or other health care provider." The AMA has published statements indicating that it believes that medical necessity should rely on an objective, prudent physician standard and that cost should not be considered. This standard of care is known as the "prudent physician" standard and is the standard applied in a medical malpractice lawsuit when a patient claims to have received negligent medical care.

An inmate who believes that he or she has received inadequate medical care in a prison setting may seek relief under various laws. One way to seek judicial relief is to claim that his or her civil rights have been violated under the Civil Rights Act of 1871, commonly known as a civil rights claim. To prevail on a civil rights claim, the inmate must show that his or her constitutional rights have been violated.

As we discussed in the Introduction, the constitutional prohibition against cruel and unusual punishment is violated in a prison setting when an inmate shows that he or she had a serious medical need and that prison officials responded with deliberate indifference to that need. A medical need is sufficiently serious if the failure to treat the condition could result in further significant injury or the unnecessary and wanton infliction of pain. Indications of a serious medical need include the presence of a medical condition that significantly affects an individual's daily activities. The text box shows some factors the courts have considered in finding that medical care in a prison setting was deliberately indifferent. The courts have held that contracting medical services providers act on behalf of the State when they provide medical care in prisons. As such, they are held to this same constitutional standard.

Factors That May Lead to a Finding of Deliberate Indifference

- Inadequate medical staffing.
- Inadequate organization and administration of the medical care system, with few, if any, written procedures.
- Inadequate access to the medical care system.
- Nonmedical personnel having discretion over who has access to medical care.
- Medication being dispensed by persons who are not properly licensed.

Source: *Hoptowit v. Ray* (9th Cir. 1982) 682 F.2d 1237.

The courts have recognized that an apparent distinction exists between the deliberate indifference standard required to establish an Eighth Amendment violation and the prudent physician or typical negligence standard. As one court noted, the Eighth Amendment does not require that prison officials provide the most desirable medical and mental health care; nor should judges simply “constitutionalize” the standards set forth by professional associations such as the AMA or the American Public Health Association. As the Ninth Circuit Court of Appeals has noted, “while poor medical treatment will at a certain point rise to the level of constitutional violation, mere malpractice, or even gross negligence does not suffice.” However, the courts have advised that the Eighth Amendment does require that prison officials “provide a system of ready access to adequate medical care.”

Regulations adopted by Corrections prescribe the standard of care required in California prisons and provide that Corrections shall “only provide medical services for inmates which are based on medical necessity and supported by outcome data as effective medical treatment.”

Regulations adopted by Corrections prescribe the standard of care required in California prisons and provide that Corrections shall “only provide medical services for inmates which are based on medical necessity and supported by outcome data as effective medical treatment. In the absence of available outcome data for a specific case, treatment will be based on the judgment of the physician that the treatment is considered effective for the purpose intended and is supported by diagnostic information and consultations with appropriate specialists.” For the purposes of these provisions, the term *medically necessary* means “health care services that are determined by the attending physician to be reasonable and necessary to protect life, prevent significant illness or disability, or alleviate severe pain, and are supported by health outcome data as being effective medical care.” By regulation, the outcome data may be based on studies that take cost-effectiveness into account.

Our legal counsel has advised us that this regulatory standard is consistent in some respects with the standard of medical necessity proposed by the AMA, in that it calls for health care services that are determined by the attending physician to be reasonable and necessary to protect life, prevent significant illness or disability, or alleviate severe pain. This regulatory standard takes cost-effectiveness into account, limits health care services to those that prevent significant illness rather than an illness, and also allows for pain treatment only to alleviate severe pain, however, this regulatory standard may impose a lower standard of care than the standard of care generally expected of a prudent physician.

However, the regulatory standard does appear to impose a standard of care that is consistent with the obligations imposed on prison officials under the Eighth Amendment. In particular, the regulatory language that defines what constitutes severe pain and significant illness or disability appears to be tied directly to the Eighth Amendment standard. The regulations define “severe pain” as “a degree of discomfort that significantly disables the patient from reasonable independent function.” “Significant illness and disability” means “any medical condition that causes or may cause if left untreated a severe limitation of function or ability to perform the daily activities of life or that may cause premature death.” When considering what constitutes deliberate indifference to an inmate’s serious medical needs under the Eighth Amendment, the courts have stated that indications of a serious medical need include the presence of a medical condition that significantly affects an individual’s daily activities. Accordingly, we believe that the regulatory standard adopted by Corrections is aligned with the minimal standard of care required to meet the State’s obligations under the Eighth Amendment.

Although all 21 contracts in our sample contained terms related to standard of care, only 16 contained terms that appear to meet the legally required standard contained in Corrections’ regulations.

At a minimum, we expected the contracts entered into by Corrections for the medical care of inmates to contain terms that reflect the substantive requirements of Corrections’ regulations. All 21 contracts in our sample contained terms related to the standard of care. However, only 16 contained terms that appear to meet the legally required standard contained in regulation. Even then, the language used to describe the standard of care in these 16 contracts varied widely. For example, some contracts required the contractor to meet the standard of care contained in the regulations, some referred to “CDC [Corrections] standards,” some referred to “state law,” and still others called for conformity with “CDC [Corrections] facility policies and procedures.” Despite the many variations, we considered all these terms to be essentially the same in that they appeared to call for the legally required standard of care set out in the regulations. In addition, four other contracts contained terms that appear to have been drafted in an attempt to be consistent with the standard of care set out in regulation, but rather than requiring the contractor to meet that standard, they required the contractor to provide medical care “necessary to prevent death or permanent disability.” According to our legal counsel, this language does not appear to meet the minimum standard set out in regulation and appears to establish a potentially lower standard of care. In addition, one contract contained only a requirement that the contractor provide services consistent with scope of practice and did not prescribe a standard that was specific to a prison setting.

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

In addition, we found a lack of consistency across our sample in terms of the standard of care being required. For example, seven of the 21 contracts in our sample included terms that call for the contractor to meet national standards. The use of national standards has been highly recommended. Although it may be a good practice, it is inconsistent to require this standard of some contracting medical service providers and not others.

Some contracts contained terms related to the standard of care that were inconsistent with the AMA's recommendation that contracting physicians not obligate themselves to standards that are higher than the law requires.

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

In light of the important legal obligations related to the standard of care imposed on Corrections under the *Plata* settlement, we believe it is imperative that all contracts contain clear, consistent terms that, at a minimum, meet or exceed the State's obligations under the U.S. Constitution. These terms should call for a standard of care that meets Corrections' constitutional obligations and that is consistent with the standard of care that a practicing physician would provide if adhering to generally accepted ethical norms.

Contract Terms Should Impose Clearer Obligations for Contractors to Be Insured Against Civil Rights Claims

State policy recommends that all contractors who enter into certain types of contracts with the State maintain specified amounts of liability coverage. We found that all the contracts we reviewed called for the recommended level of coverage. In the prison context, however, it is important to ensure not only that contractors have general and professional liability insurance, but also that their coverage extends to protection against civil rights claims. A likely basis for a lawsuit brought by a prisoner against a medical care provider would be a claim that the inmate's civil rights were violated under the Eighth Amendment, so this is important coverage for a medical registry and its providers. Although some of the contracts contained terms requiring the contractor to notify the insurance carrier that the contractor regularly provides services to inmates, it is not clear that this term necessarily would ensure that the contractor was insured against civil rights claims. Our legal counsel has advised that a better practice would be to require the contractor, to the extent feasible, submit proof to Corrections that the insurance company has agreed explicitly to insure it against civil rights claims.

Although Most Contracts With Physicians Lacked Terms Specific to Patient Referrals, Their Conflict-of-Interest Terms Were Sufficiently Broad to Address This Issue

As professionals, physicians are subject to specific requirements related to conflicts of interest. In particular, federal and state laws contain provisions that prohibit physicians from referring patients to an entity in which they have a financial or business interest. In our sample of 21 contracts, three called for physician services. Of these, only one contract contained an explicit reference requiring physicians under contract to comply with these laws related to physician referrals. However, our legal counsel has advised us that the other terms contained in those

contracts, namely those that address other conflict-of-interest prohibitions, were broad enough to include this prohibition. Therefore, we found the conflict-of-interest terms, which were present in all contracts, adequate.

Although Many Contracts Require Corrections to Inspect and Monitor Performance, Few Impose Obligations on Contractors to Monitor or Assess Their Quality of Services

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

Under the *Plata* agreement, Corrections is charged with implementing a health care system for inmates that meets or exceeds its obligations under the U.S. Constitution. It is a generally accepted best practice for a health care provider to have a process in place for assessing and monitoring the quality of medical care it provides. Although all the contracts in our sample enabled Corrections to inspect and monitor the quality of contractor performance, only five contracts imposed a corresponding obligation on the part of medical registries to monitor and assess the quality of their own performance. Given the importance of improving the delivery of health care in California's prisons and the extent to which contractors are responsible for providing medical services, we believe these terms should be present in all medical registries contracts.

RECOMMENDATIONS⁸

To ensure that it protects the State's interests and receives the best possible services at the most competitive prices, Corrections should:

- Ensure that staff receive proper training on bidding methods, including the appropriate application of the small business preference, so that bidders are awarded contracts in the correct order.
- Establish policies and procedures regarding the methodology for determining the cost threshold used to limit the number of awards made to registry contractors.
- Implement a quality control process to ensure staff calculate the cost threshold correctly and retain documentation to support their calculations in the contract files.

⁸ In making these recommendations to Corrections, we understand that they would be implemented at the direction of the court-appointed receiver. We do, however, expect that if control and management of Corrections' medical health care delivery system is returned to it, that Corrections would then become responsible for implementing these recommendations.

- Notify potential bidders of its use of a cost threshold to determine the awards to be made and its methodology for calculating the threshold.
- Implement a quality control process to identify errors in the ranking of bidders before awarding contracts.
- Fully comply with state policy, including justifying and documenting the reasonableness of its contract costs, when it receives fewer than three bids or when it chooses to follow a noncompetitive process.
- Retain documentation of its efforts to solicit all known potential contractors when it advertises in the *California State Contracts Register*.
- Adhere to the price analysis and methodology approved by General Services when using the special category noncompetitively bid request process. For example, it should use Medicare rates as a benchmark for determining the reasonableness of its rates paid to contractors.
- Reevaluate the regional conversion factors used to establish its standard RVP rates.
- Conduct periodic market surveys.
- Ensure that it establishes internal control processes that prevent prisons from allowing contractors to perform services before receiving General Services' approval of the contract.

To ensure that it minimizes the risk of authorizing prison spending that exceeds its master contracts, Corrections should ensure that contract staff periodically reconcile the master contracts and outstanding NTPs and conduct random audits to verify the reconciliation process.

To protect the best interests of the State, all contracts that Corrections enters into with medical registries should meet these requirements:

- Contain express provisions related to the required notice period for cancellation.

- Include Business Associate Agreements in all contracts subject to HIPAA and amend existing contracts to include those agreements.
- Contain clear and consistent requirements related to the standard of care called for under the contract. At a minimum this standard of care must meet the standard of care needed in order to satisfy Corrections' obligations under the *Plata* settlement agreement.
- Require medical registries to submit proof that their insurance company has agreed explicitly to insure them against civil rights claims.
- Require registry contractors to monitor and assess the quality of services they provide under the contract.

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

To ensure that Corrections' contracts contain terms for standard of care that meet its constitutional obligations as well as the standard of care that a practicing physician would provide if adhering to generally accepted ethical norms, Corrections should seek legal and other expert advice to determine whether the standard of care currently prescribed in state regulations allows contracting physicians to provide medical care in a manner that is consistent with the generally accepted standard of care in the medical community. If the standard of care is not consistent with the generally accepted standard of care in the medical community, Corrections should revise its regulatory standard to require that the standard of care called for in the State's prisons is, at a minimum, consistent with medical ethics and with the State's constitutional obligations. ■

CHAPTER 2

The California Department of Corrections and Rehabilitation Did Not Always Monitor Medical Service Invoices Adequately, Cannot Demonstrate Its Compliance With the Political Reform Act, and Failed to Verify Credentials of Contracted Providers Properly

CHAPTER SUMMARY

The prisons operated by the California Department of Corrections and Rehabilitation (Corrections) could not always demonstrate that they followed Corrections' policy requiring them to obtain services from registry contractors in the hierarchy in which Corrections awarded the contracts. Specifically, for 22 of the 38 invoices we reviewed that were subject to this requirement, prison staff could not provide sufficient documentation to support their attempts to follow the required hierarchy.

In addition, prisons sometimes failed to monitor invoices for medical services adequately, resulting in additional medical costs to the State. For three of the 50 invoices we reviewed, the prisons did not provide sufficient evidence that they verified receipt of services before authorizing payment. Our review also found that prisons did not ensure consistently that payment amounts agreed with contract terms. Prisons also sometimes approved payments for overtime, even though the contractors did not comply with contract provisions requiring written approval of overtime. Prisons and the regional accounting offices also failed to ensure that they took advantage of discounts available for prompt payment. It is important to point out that many of the issues we identify in this report also were identified in a previous audit report titled *California Department of Corrections: It Needs to Ensure That All Medical Service Contracts It Enters Are in the State's Best Interest and All Medical Claims It Pays Are Valid*, issued in April 2004.

Although individual percentages varied widely, the 16 medical registry contractors in our sample that bill Corrections by the hour paid their medical service providers, on average, 65 percent of the hourly rate they received from Corrections. Contractors had varying explanations for the percentages they pay. For example, contractors supplying physician providers cited overhead costs such as workers' compensation, malpractice insurance, and travel expenses, while a contractor working with nurses indicated that he pays a lower hourly rate but reimburses nurses for a portion of their housing and utility expenses. Further, some contractors hire their providers as employees while others employ them as independent contractors. Given these many differences, we found it difficult to compare the contractors and more fully explain the range of percentages.

Further, Corrections lacks adequate controls to ensure that it complies with the Political Reform Act of 1974 (political reform act). Of the 124 employees whose statements of economic interests we reviewed, seven did not complete their statements correctly, 14 did not file statements, and 78 filed their statements after the deadline. Corrections also failed to ensure that prisons require their consultants to complete statements of economic interests or to document why it was appropriate not to do so.

Corrections does not provide any oversight to ensure that contractors and providers adhere to the licensing and credentialing requirement in its contract terms. Additionally, Corrections' credentialing unit, which is responsible for performing database searches to verify the credentials of certain types of providers, did not always perform these searches. For example, it did not verify the credentials of providers who treat inmates outside of Corrections' facilities because it believed these reviews were being conducted by the Department of Health Services (Health Services) as part of its process for licensing the facilities. However, Health Services does not verify credentials of individual providers. It simply reviews the facility's process for doing so. In addition, Corrections failed to verify the credentials of some providers because it considered certain providers to be working in a supportive role rather than independently, or the prisons failed to request such a database search for their providers. Finally, Corrections wastes time on some credentialing activities because it unnecessarily duplicates the database searches and reviews.

CORRECTIONS DID NOT ALWAYS MONITOR ADEQUATELY THE MEDICAL SERVICE INVOICES OF ITS REGISTRY CONTRACTORS

The State's prisons did not always follow procedures requiring them to obtain services from medical registry contractors according to a specified hierarchy and to document their attempts. Prisons also could not demonstrate that they verified the receipt of services before authorizing invoices for payment. Moreover, prisons did not adhere to the contract terms specifying the rates to pay providers or ensure that they had the appropriate approval before paying invoices containing overtime. Finally, Corrections did not always take advantage of all available discounts, or took discounts for the wrong amount. Table 5 shows the prisons' noncompliance with procedures and contract terms for the invoices we reviewed.

TABLE 5

Corrections' Noncompliance With Procedures and Contract Terms Related to Invoicing

Procedure or Contract Term	Number of Invoices Subject to Requirement	Number of Invoices Not Meeting Requirement	Percentage of Invoices Not Meeting Requirement
Prisons must demonstrate proper use of hierarchy	38	22	58%
Prisons must have evidence of receiving services before making payment	50	3	6
Prisons must adjust invoices according to the rates in the contract terms	50	5	10
Prisons must ensure that they pay overtime in accordance with the contract terms	10	7	70
Prisons and regional accounting offices must take advantage of available discounts	30	14	47
Prisons and regional accounting offices must adhere to the California Prompt Payment Act	50	3	6

Sources: California Department of Corrections and Rehabilitation contracts, invoices, and other relevant records; Registry Contracts Usage policy; *Health Care Cost and Utilization Program Procedures Guide*; and the *State Administrative Manual*.

Prisons Did Not Always Follow Corrections' Procedures and Contract Terms for Using Registry Contractors

When prisons need to hire a service provider under a medical registry contract, Corrections requires them to follow the hierarchy outlined in the registries' contracts. To avoid a breach of contract, Corrections' procedures require prisons to document their attempts to obtain services from registry contractors, including those attempts in which they fail to secure services. The documentation is also necessary because the contract terms allow Corrections to terminate a contract for nonperformance when a registry contractor fails to provide requested services three times.

One prison obtained services from a registry contractor that was number 22 on the hierarchy of 26 registries, but was unable to locate any documentation of its attempts to contact the 21 registries ahead of the one used.

For 22 of the 38 invoices we reviewed that were subject to the hierarchy requirement, prisons did not provide us with sufficient documentation to demonstrate that they followed the hierarchy when obtaining services from registry contractors. For example, one prison obtained services from a registry contractor that was number 22 on the hierarchy of 26 registries. However, the prison was unable to locate any documentation of its attempts to contact the 21 registries ahead of the one used. According to the prison's correctional health services administrator, at the time the services were used, the prison had only two supervisors for obtaining the services of registry staff, training, and the overall operation of its health care unit. He stated that the prison now has the staff required to perform these functions and they are following the hierarchy on a daily basis. In contrast, for 16 of the 38 invoices we reviewed, the prisons were able to provide us with sufficient documentation of their attempts to contact registries in accordance with the hierarchy. For example, one prison could clearly demonstrate its attempts to contact 12 registries before using the one chosen.

During our interviews with the 16 contractors in our sample, a few commented on how prisons do not always follow the hierarchy and as a result Corrections may be paying more for services. Specifically, the contractors stated that the prisons send their service requests to the contractors simultaneously instead of sending the request to each contractor in turn, starting with the primary contractor. The contractors' statements are consistent with Corrections' policy that allows prisons to send requests concurrently to all registries listed in the hierarchy. The contractors also stated that, as a result of this practice, the providers do not respond to the contractors with the lowest bid but instead wait to be called by the contractors with the higher bids because they can receive more money.

When prisons do not consistently document their attempts to contact registry providers in accordance with the hierarchy, they expose the State to potential lawsuits from registry contractors for breach of contract terms and they hinder Corrections' ability to terminate registry contractors for nonperformance.

Prisons Sometimes Fail to Monitor Invoices for Medical Services Adequately

State policy requires contract managers to monitor contractors to ensure that they perform services according to the quality, quantity, objectives, time frames, and manner specified in the contract. Contract managers also must review and approve invoices before payment to substantiate the performance of the work and to prevent the assessment of penalties.

As shown in Table 5 on page 53, for three of 50 invoices we reviewed, prisons could not provide sufficient evidence of their verifications that services were performed before they authorized the payments. According to the deputy director of Corrections' Health Care Administrative Operations Branch within its Division of Correctional Health Care Services (division), Corrections is drafting a departmentwide policy to remind prison medical staff of the proper procedures for verifying registry contractors' hours before authorizing payment. The draft policy is undergoing review by the *Plata* Support Division and the deputy director anticipates its approval by April 2007.

Registry contractors were overpaid by \$4,050 on five invoices because HCCUP analysts did not always identify and adjust discrepancies between contract rates and charges shown on the providers' invoices.

Prisons also did not always identify and adjust discrepancies between contract rates and charges shown on the providers' invoices. Corrections' Health Care Cost and Utilization Program (HCCUP) is an integral part of the division's efforts to provide cost-effective health care to inmates. Each prison has an assigned HCCUP analyst responsible for reviewing invoices and adjusting them according to the rates shown in the contracts and for ensuring that authorized medical staff approve invoices for payment. However, our review of 50 invoices found that some registry contractors were overpaid by \$4,050 for five invoices that totaled \$458,346.

Specifically, one contract explicitly describes how to calculate the contractor's rate of compensation using a fee and coding guide. However, the rates shown on four of the contractor's invoices that were paid by two prisons were higher than the rates we calculated using the methodology stated in the contract. When we asked the two prisons to explain the

methodology they used to verify the rates, staff at both prisons stated that they had never been provided with a copy of the fee and coding guide. One prison stated that it received verbal instructions from HCCUP headquarters' staff on how to pay the contractor's invoice, and the other prison stated it has to rely on the contractor to bill invoices correctly. Using the methodology stated in the contract, we calculated that Corrections overpaid the contractor a total of \$3,890 for these four invoices. One prison stated that the difference, according to the contractor, was our omission of a geographic area factor when calculating the rates. However, the contract does not include a geographic area factor in the rate methodology. Moreover, if it was Corrections' intention to use a geographic area factor, we would expect the contract to describe explicitly the appropriate use of the factor, which can increase contractors' rates between 6 percent and 29 percent.

HCCUP analysts also did not always ensure that registry contractors adhered to the contract provisions for overtime. According to Corrections' contract terms, contractors are responsible for rotating staff and providing relief staff to avoid incurring overtime pay. However, Corrections will pay overtime for unanticipated events, such as a prison emergency or lockdown. When an unanticipated event occurs, the contractor must obtain written approval for overtime from the prison's health care manager, chief medical officer, or designee and must submit a copy of the written approval with the monthly invoice.

Nevertheless, as previously shown in Table 5, we found that prisons authorized seven invoices for payment even though the registry contractors did not follow the contract's overtime provisions. For example, one prison paid a contractor almost \$2,300 for overtime on two invoices even though the contractor did not provide the proper written approvals for the overtime. The prison's correctional health services administrator stated that one staff person was not aware of the need to submit written approval for overtime with invoices and was not informed by the HCCUP analyst of the need to do so. She further stated that training would be provided to the director of nursing and the nursing department. In addition, another prison paid a contractor \$6,300 for overtime on two invoices but could not demonstrate that any written approval was obtained. The prison's health care manager was unable to provide us with copies of the written approvals for overtime because the prison retains records for six months and then purges them. He stated that the prison is changing its policy to reflect a two-year record retention period.

One prison paid a contractor almost \$2,300 for overtime on two invoices even though the contractor did not provide the proper written approvals for the overtime.

**Portion of Invoice Payment Process
Related to Securing Discounts and
Preventing Late Payments**

- Regional accounting office (RAO) receives invoice from the contractor or provider.
- RAO date-stamps the receipt of the invoice and within three days forwards a copy to the prison HCCUP analyst.
- HCCUP analyst date-stamps the receipt of the invoices from the RAO.
- HCCUP analyst routes the invoice to the appropriate invoice reviewer after calculating the critical processing dates to comply with the California Prompt Payment Act (CPPA).
- Invoice reviewer, such as the contract monitor or utilization management nurse, routes the invoice back to the HCCUP analyst upon completion of his or her review, which should allow sufficient time to comply with CPPA.
- HCCUP analyst applies the rate and discount in accordance with the contract. The analyst also codes the invoice with the appropriate accounting information.
- HCCUP analyst routes the invoice to the health care manager or designee for approval.
- HCCUP analyst forwards a copy of the invoice to the RAO.
- RAO evaluates invoice for discounts and late payment penalties and processes the payment.

Sources: *HCCUP Procedure Guide*, dated November 1999. *California Department of Corrections' Regional Accounting Office Accounts Payable Desk Procedures*, dated July 2004.

Note: A separate process exists for disputed invoices.

HCCUP analysts and regional accounting office staff did not always ensure that contract discounts were taken, that they were taken for the correct amounts, and that invoices for medical services were paid promptly. The State expects agencies to take any discounts offered by its contractors or vendors. Both the prisons' HCCUP analysts and the regional accounting offices are responsible for ensuring that discounts are taken, as described in the text box. However, we found 14 instances in our sample totaling almost \$480 in which prisons either failed to take discounts or took discounts for the wrong amounts. For example, although one contract for providing services to two prisons offered a 1 percent discount for invoices paid within 30 days, the contractor's invoices stated that the discount was 0.05 percent if invoices were paid within 20 days. According to the regional accounting office, discounts were not taken for the two invoices in our sample and 15 other invoices billed by this contractor between August 29, 2005, and January 1, 2007, resulting in lost discounts of \$1,145. When we asked the prison about the discrepancy and why it did not take the contractual discount amount, it gave no explanation. According to the contractor, the discrepancy in the discount percentage on the invoices was an error.

Finally, we also found that contractors were owed roughly \$500 in late payment penalties for three of the 50 invoices we reviewed. The California Prompt Payment Act (CPPA) requires state agencies to pay properly submitted, undisputed invoices within 45 days of receipt or to automatically calculate

and pay the appropriate late payment penalty. Small businesses generally receive the penalty regardless of the amount, but other businesses do not receive the penalty unless the penalty amount is greater than \$75. It appears that the delays resulting in late payments are attributed primarily to the prisons. For example, Corrections owed one contractor late penalties of almost \$410 for two invoices that were overdue by 28 to 60 days. The payments were late because the prison did not submit the invoices to the regional accounting office until 57 days and 93 days after it received them. Further, Corrections had to pay one contractor \$1,400 in late payment penalties because the prison did not

Corrections had to pay one contractor \$1,400 in late payment penalties because the prison did not notify the regional accounting office until almost two months after receiving the invoice that additional evidence supporting the invoice was needed from the contractor.

notify the regional accounting office until almost two months after receiving the invoice that additional evidence supporting the invoice was needed from the contractor. To avoid the late payment penalty, the CPPA requires Corrections to notify a contractor that it is disputing an invoice, within 15 days of receiving it.

Corrections' failure to observe controls and ensure adequate oversight of medical services invoices unnecessarily increases costs, and may discourage contractors from wanting to do business with the State. During our interviews with the 16 contractors in our sample, a few commented on how Corrections does not pay them on time nor does it pay the required late payment penalties.

MEDICAL REGISTRY CONTRACTORS BILLING CORRECTIONS AT AN HOURLY RATE PAID THEIR SERVICE PROVIDERS, ON AVERAGE, 65 PERCENT OF FEES RECEIVED

Corrections awards contracts to a variety of medical registry contractors to obtain temporary medical services in its prisons. Our review of 21 contracts included 16 medical registry contractors that coordinate staffing of medical professionals or provide services directly for Corrections' medical services needs.

Of these 16 contractors, 12 billed Corrections for medical services at an hourly rate. These contractors paid their medical service providers, on average, 65 percent of the hourly rate they received from Corrections. Table 6 illustrates the average percentages paid to the providers by the registry contractors we reviewed. However, Table 6 does not include information for the remaining four registry contractors, which billed Corrections using a daily rate or fee-for-service rates, because either we were unable to present this information without disclosing confidential data or we were unable to present the data in a manner that would be meaningful.

The three contractors for physicians paid their providers 64 percent to 85 percent of the rate they received from Corrections, with the average being 75 percent. The contractors stated that the difference between the rates they billed Corrections and the rates they paid their physicians includes factors such as premiums for workers' compensation and malpractice insurance and travel expenses they must pay for

the physicians. In addition, one contractor stated that he incurred an unexpected increase in costs to advertise and recruit physicians to meet Corrections' medical service needs.

TABLE 6

Average Percentages of the Registry Contractors Rates That Are Paid to Their Providers, by Provider Type

Provider Type	Number of Contractors Reviewed*	Average Percentage of Contract Rate Paid to Providers
Physicians	3	75%
Pharmacists and pharmacy technicians	3	72
Nurses†	4	57
Other‡	4	64

Sources: Contractor invoices, time sheets, and payroll records.

* Number will not total 12 because two hourly contractors provide services in multiple categories.

† Includes registered nurses and licensed vocational nurses.

‡ Includes lab technicians, dieticians, physical therapists, and phlebotomists.

Similarly, the contractors paid their pharmacists or pharmacy technicians 61 percent to 87 percent of the rates they received from Corrections, with the average rate being 72 percent. The contractors stated that the difference between the rates they billed Corrections and the rates they paid their pharmacists and pharmacy technicians includes employer costs such as payroll taxes, employee benefits, and insurance premiums for unemployment and workers' compensation. One contractor explained that contractors who choose to employ their providers are at a disadvantage compared to competitors who hire providers as independent contractors, because their competitors may not carry all insurances and can come in with lower bids.

Finally, the four contractors who provide nursing services paid their nurses 28 percent to 77 percent of the rates they received from Corrections, with an average of 57 percent. These contractors had similar explanations for the difference in the rates they billed Corrections and the rates they paid their providers. However, according to one contractor, he pays some of his nurses at a lower hourly rate but also reimburses them for a portion of their housing, utility, and water expenses. Therefore, the contractor's reimbursements would show up as an operating expense rather than the amount paid to the nurses.

Given the variety of services and operating costs associated with those services, the varying forms of compensation paid to providers such as living expenses, and the varying employment methods (employee versus independent contractors), we found it difficult to compare the contractors and more fully explain the differences between the rates the contractors billed Corrections and the rates paid to providers.

In our interviews and follow-up discussions with the contractors, we attempted to isolate operating expenses, administrative and overhead expenses, and profit to explain the difference between the rates the contractors billed Corrections and the rates they paid their providers. However, given the variety of services and operating costs associated with those services, the varying forms of compensation paid to providers such as living expenses, and the varying employment methods (employee versus independent contractors), we found it difficult to compare the contractors and more fully explain the differences.

CORRECTIONS FAILS TO DEMONSTRATE THAT IT COMPLIES FULLY WITH CERTAIN POLITICAL REFORM ACT REQUIREMENTS

The political reform act is the central conflict-of-interest law governing the conduct of public officials in California. The legislative intent expressed in the act states that public officials, whether elected or appointed, should perform their duties in an impartial manner, free from bias caused by their own financial interest or the financial interests of persons who have supported them. The political reform act places certain duties and responsibilities on Corrections to ensure that its designated employees, including consultants, comply with the act's reporting and disclosure requirements. The political reform act requires each designated employee to file an annual statement disclosing reportable investments, business positions, interests in real property and income (statement of economic interests). The political reform act also requires Corrections to report apparent violations to the appropriate agencies.

However, Corrections lacks adequate controls to ensure that its designated employees are complying with this reporting requirement. Specifically, Corrections does not have an effective process to determine if its designated employees file the required statements in a timely manner. For example, our review of 124 statements of economic interests found 78 designated employees who filed their statements after the deadline. Sixteen of these employees did not file statements within 30 days after assuming their designated positions, and 21 did not file their calendar year 2005 statements until January 2007—most likely in response to our request.

In addition, during our audit we obtained information that indicated that a contract employee who served as a Pharmacist-in-Charge at a Corrections' prison might have

violated the act by making governmental decisions in which he benefited financially. Although the final resolution of this issue rests with the Fair Political Practices Commission (commission) and with the courts, we believe that this individual may have made governmental decisions that had a direct impact on the income he earned from his registry in violation of the act. Accordingly, we have referred this matter to the commission for further inquiry and possible enforcement action.

Corrections Could Not Demonstrate That All Employees and Consultants Required to File Statements of Economic Interests and Seek Approval Before Engaging in Outside Employment Did So

As previously described, the political reform act prohibits a public official from making, participating in, or in any way attempting to influence a governmental decision in which he or she has a financial interest. The political reform act requires each state agency to adopt and promulgate a conflict-of-interest code, which outlines the designated positions that make or participate in

Duties and responsibilities of the agency's filing officer:

- Supply the necessary forms and manuals prescribed by the commission.
- Determine whether required documents have been filed and, if so, whether they conform on their face with the requirements.
- Notify promptly all persons and known committees who have failed to file a report or statement in the form and time period required.
- Report apparent violations of the political reform act to the appropriate agencies.
- Compile and maintain a current list of all reports and statements filed with the commission.

Source: California Government Code, Section 81010.

making decisions that could have a material effect on any financial interest and the specific types of investments, business positions, interests in real property, and sources of income that are reportable for the designated positions. The code also should require designated employees to file statements disclosing reportable investments, business positions, interests in real property, and income (statement of economic interests). The political reform act requires each designated employee to file an annual statement. The filing date for Corrections' employees generally coincides with the date set by the commission, which is primarily responsible for administering and implementing the political reform act. Annual statements for calendar year 2005 were due April 3, 2006. In addition, the political reform act requires each designated employee to file a statement within 30 days after assuming office and each designated employee

who leaves office to file within 30 days of leaving the office. The statements must be retained by the filing officer and made available for public inspection.

We requested copies of the calendar year 2005 statements as well as any statements for employees assuming or leaving their positions in calendar year 2005 or 2006 for certain

designated positions in Corrections' headquarters and nine prisons. These employees either have contract approval authority, the ability to influence the outcome of contract negotiations or payments, or are medical services staff. We received statements of economic interests for 124 employees. Our review found that seven employees did not complete their statements correctly. For example, one employee did not complete the schedule of reportable interests section of the statement and others did not include the period covered or their positions.

Twelve employees at one prison did not file a statement of economic interests, including four associate wardens and the chief medical officer.

In addition, we found that 14 employees did not file statements. For example, 12 employees at one prison did not file statements, including four associate wardens and the chief medical officer. Further, 78 employees filed their statements after the deadline. For example, 16 employees did not file statements within 30 days after assuming their designated positions. Also, 21 employees did not file their calendar year 2005 statements until January 2007, which was most likely in response to our request.

Finally, Corrections' conflict-of-interest code also includes consultants as designated employees and requires them to disclose all investments; sources of income; interests in real property; as well as any business entity in which they are a director, officer, partner, trustee, employee, or hold any position of management. Corrections allows its chief executive officer to determine in writing that a particular consultant may not be required to comply fully with the code's disclosure requirements. In these instances, the chief executive officer's written determination must include a description of the consultant's duties and, based upon that description, a statement of the extent of the disclosure requirements. Further, the determination is a public record and is to be made available for public inspection. The prisons were asked to provide copies of the disclosure statements for their health care consultants or a copy of the chief executive officer's written determination. However, seven of the nine prisons did not submit a copy of the statements for their health care consultants or the chief executive officer's written determinations. According to a section chief in Corrections' Office of Personnel Services, the staff who are conflict-of-interest liaisons at these prisons told her that they have very little to do with medical registry staff and did not know the registry staff were subject to the requirement to file a statement of economic interests.

Even though Corrections prohibits its employees from engaging in other employment or activities that are inconsistent or incompatible with their employment at Corrections, four pharmacists received between \$10,001 and \$100,000 from pharmacy-related activities.

During our review of the designated employees' statements of economic interests, we noted that four pharmacists indicated that they received additional income from pharmacy-related activities. Specifically, the pharmacists received gross income between \$10,001 and \$100,000 from working for hospitals and a medical corporation or as a lecturer for pharmaceutical companies. Corrections prohibits its employees from engaging in other employment or activities that are inconsistent or incompatible with their employment at Corrections. Moreover, before engaging in any outside employment or activities, the employee must submit a statement to his or her warden naming the prospective employer and an outline of the proposed duties or activities. The warden determines whether the employment or activity falls in a prohibited class and notifies the employee of the findings. We asked the wardens for a copy of their determinations for the pharmacists. One warden sent us a determination that was approved in February 2001. The second warden sent us determinations for two pharmacists working at his prison, which were prepared in response to our request. Finally, the third warden sent us a determination that was approved in April 2006, but later disapproved in March 2007.

Clearly, Corrections lacks adequate controls to ensure that it complies with the duties and responsibilities outlined in the political reform act for filing officers. For example, according to a manager in its Office of Personnel Services, Corrections does not have a database to track whether its designated employees have filed their statements of economic interests. When designated employees and consultants do not file statements of economic interests or seek approval before engaging in outside employment or activities, Corrections may be unaware of conflicts of interest. Further, Corrections cannot ensure that designated employees and consultants are aware that they should remove themselves from making decisions that may pose a conflict of interest. Finally, the consequences to designated employees for not filing the statements or participating in incompatible activities can include disciplinary action, civil penalties, or criminal prosecution.

A Contract Pharmacist-in-Charge May Have Violated the Political Reform Act When Selecting His Registry Corporation From a List of Approved Providers

The political reform act is the central conflict-of-interest law governing the conduct of public officials in California. The legislative intent expressed in the act states that public officials,

whether elected or appointed, should perform their duties in an impartial manner, free from bias caused by their own financial interest or the financial interests of persons who have supported them. This act also applies to consultants when they act as government decision-makers.

**The Fair Political Practices Commission's
Eight-Step Process**

1. Is the individual a public official?
2. Is the public official making, participating in making, or influencing a governmental decision?
3. Does the public official have one of the six qualifying types of economic interests?
4. Is the economic interest directly or indirectly involved in the governmental decision?
5. Will the governmental decision have a material financial effect on the public official's economic interest?
6. Is it reasonably foreseeable that the economic interest will be materially affected?
7. Is the potential effect of the governmental decision on the public official's economic interest distinguishable from its effect on the general public?
8. Despite a disqualifying conflict of interest, is the public official's participation legally required?

Source: Conflicts of Interest, California Attorney General's Office.

A violation of the act may subject an individual to administrative remedies and civil or criminal penalties. The commission, which administers and enforces the administrative enforcement aspects of this law, has developed an eight-step process, as shown in the text box, for determining whether an individual has violated the law.

During our audit, we obtained information indicating that a contractor who served as a Pharmacist-in-Charge at a Corrections prison might have violated the act by making governmental decisions in which he benefited financially. Under the terms of his contract with Corrections, this individual is required to comply with the act. As part of his ongoing job duties as a contract Pharmacist-in-Charge, he was required to ensure that there were a sufficient number of pharmacists on duty at the prison at any given time. To perform this duty, the individual was required to call upon pre-approved registry providers from a list that had been established by Corrections. Corrections' policy required that he call upon these providers in a prescribed order and that he document his attempts to call upon these providers.

In addition to contracting directly with a prison to act as the Pharmacist-in-Charge, this individual was the president of a registry provider firm that was among those on the list of approved providers that he called upon to cover gaps in Corrections' staffing. As the owner of the registry provider, he billed Corrections for services provided by his registry provider at an hourly rate. For each hour that he billed Corrections, he retained profits above and beyond what he paid the individual who worked for his firm.

Contrary to Corrections' policy that required this individual to document his attempts to call upon registry providers in the required order, this individual was not able to provide any documentation showing that he called these providers as required. Specifically, this individual stated he kept records

During the period that we examined, 93 percent of the invoices for pharmaceutical registry services paid by one prison were to an individual's registry provider firm when the same individual was also working as the Pharmacist-in-Charge at that prison.

but these records have since been lost. We do know, however, that he was able to call upon these registry providers without significant review by others at the prison. During the period that we examined, 93 percent of the invoices for pharmaceutical registry services paid by the prison where this individual worked were paid to this individual's registry provider firm.

Although the final resolution of this issue rests with the commission and with the courts, we believe that this individual may have made governmental decisions that had a direct impact on the income he earned from his registry in violation of the political reform act. Accordingly, we have referred this matter to the commission for further inquiry and possible enforcement action.

CORRECTIONS' CREDENTIALING UNIT OFTEN FAILED TO VERIFY PROPERLY THE CREDENTIALS OF REGISTRY CONTRACTORS' PROVIDERS

Corrections' contract language requires registry contractors to monitor providers' licensing and certification information throughout the term of the contract. During our site visits with 16 contractors, we asked their staff or management who were knowledgeable about this monitoring their processes for ensuring that medical providers properly maintain their licenses and certifications. Most contractors stated that they had processes to verify their medical providers' licenses and certifications as well as mechanisms to alert them when licenses and certifications are due to expire. For example, four contractors we visited use a database to notify them of their providers' license expiration dates, and one contractor maintains a calendar with each provider's license expiration date.

We noted differences in the type of information Corrections requires contractors to submit to the prisons before providing services. For example, one contract requires copies of the providers' licenses, while another requires the contractor to verify providers' status using the National Practitioner Data Bank (NPDB) and copies of their licenses.⁹ A third contract requires the contractor to provide proof of, among other things, credentialing of the providers by Corrections' Division of Correctional Health Care Services. However, Corrections does not provide any oversight to ensure that contractors and providers adhere to these contract terms.

⁹ The National Practitioner Data Bank was established through Title IV of Public Law 99-660, the Health Care Quality Improvement Act of 1986, as amended. The U.S. Department of Health and Human Services is responsible for implementing the data bank.

Corrections' credentialing unit is responsible for performing database searches for certain provider classifications. Specifically, a December 2003 policy requires the credentialing unit to perform a full check of all contractors who are physicians, psychiatrists, psychologists, and dentists. In addition, to comply with a *Plata* court order issued in December 2005, Corrections expanded its credentialing process to include nurse practitioners and physician assistants. The *Plata* court order requires that Corrections verify the credentials and licensure of contract physicians and mid-level providers, which the order defines as nurse practitioners and physician assistants, on a provisional basis within two business days for two specific contractors. The final verification must take place within five business days.

Prisons must obtain a credentials verification disclosure form for each provider requiring credentialing. On these forms, the providers must disclose information such as name, Social Security number, and address, as well as their professional schools, degrees, and any licenses and certifications. The prisons are to forward the forms to the credentialing unit. The credentialing unit searches the databases of the appropriate licensing boards, the American Medical Association (AMA), the NPDB, and the Healthcare Integrity and Protection Data Bank (HIPDB).¹⁰ Once all the information has been obtained, it is placed in the provider's credential file and, depending upon the provider's classification, is submitted to the chief medical officer, chief psychiatrist, chief psychologist, chief dentist, or their designee for review. The credentialing unit then informs the prison whether the potential provider has been approved or denied. In addition, the credentialing unit maintains a copy of the provider's file at headquarters and sends the prison the original information.

However, the credentialing unit does not verify the status of all providers who treat inmate patients. Although not stated in a written policy, we found that Corrections' credentialing unit does not perform database searches for providers who treat inmate patients outside of Corrections' facilities. According to Corrections' former credentialing coordinator, who is now the manager of the *Plata* Support Division's Pre-Employment Clearance Unit, it does not do so because these facilities must be licensed before providing services to the community and, as

¹⁰ The Healthcare Integrity and Protection Data Bank was established through the Health Insurance Portability and Accountability Act of 1996, Section 221(a), Public Law 104-191. The U.S. Department of Health and Human Services, Office of the Inspector General, and the U.S. attorney general are responsible for implementing the data bank, which is designed to combat fraud and abuse in health insurance and health care delivery.

Corrections is relying on the assumption that Health Services is verifying providers' credentials when, in fact, this may not be the case.

part of the licensing process, certain classifications of providers already are verified by Health Services. According to the chief of Health Services' Licensing and Certification Program's State Facilities Unit, however, when Health Services licenses a privately owned facility, it reviews the facility's process for verifying providers' credentials but does not actually verify the providers' credentials. Therefore, Corrections is relying on the assumption that Health Services is verifying providers' credentials when, in fact, this may not be the case.

Moreover, we found that as a result of Corrections' practice it did not comply with the *Plata* court order. Specifically, as previously mentioned, Corrections was to verify the licensure and credentials of contract physicians for two specific contractors within five business days. The physicians working for one contractor performed the services outside of Corrections' facilities. According to the prison's medical contract analyst, the prison did not submit a credentials verification disclosure form for the physicians because the credentialing unit had stated it was not necessary to credential off-site providers. Because inmates are in Corrections' custody, we believe Corrections has a responsibility to verify the credentials of those providers who work in non-Corrections' facilities or, at a minimum, verify that these facilities have a rigorous process for verifying the credentials of their providers before sending inmate patients to them for treatment.

The credentialing unit also does not perform database searches of providers who it classifies as allied health professionals, such as pharmacists, registered nurses, laboratory technicians, radiological technicians, dietitians, and physical therapists, despite the fact that information is also available for these providers. According to the manager, the credentialing unit does not verify these providers' credentials because they work in a supportive role rather than independently, as physicians and nurse practitioners do. However, Corrections does not have a policy that defines allied health professionals and identifies those it excludes from the credentialing process. Further, the credentialing unit's actions are inconsistent with the guidance given to prisons by the Division of Correctional Health Care Services. Specifically, this guidance directs prisons to request database clearances for pharmacists, nurse practitioners, and psychiatric social workers as well as for those classifications identified in the 2003 policy.

Between 2004 and 2006, one prison used two registry pharmacists whose licenses had been placed on probationary status for substance abuse violations related to controlled substances.

Corrections also does not have a departmentwide policy directing the prisons to verify the credentials of these providers, which creates confusion and the risk that providers will not undergo any credentialing before performing services. For example, one prison's medical staff coordinator stated that she credentials physicians, psychiatrists, psychologists, and allied health professionals. However, the credentialing unit is already responsible for credentialing physicians, psychiatrists, and psychologists, and thus the medical staff coordinator is unnecessarily duplicating this effort. In another example, between 2004 and 2006, one prison used two registry pharmacists whose licenses had been placed on probationary status for substance abuse violations related to controlled substances. These two pharmacists were hired as state pharmacists at the same prison in January 2007. The prison employing these pharmacists had no policy in place regarding the hiring and retaining of providers with probationary licenses. In addition, the credentialing unit does not have a policy regarding the criteria the credentialing unit uses to approve or deny potential providers. Further, although the manager stated the unit was performing database searches on pharmacists until September 2006, it was not aware of the pharmacists' restricted licenses. After we brought this issue to the manager's attention, the credentialing unit completed the verification of the pharmacists' credentials.

Further, the credentialing unit does not perform database searches on all physicians and nurse practitioners who provide services to inmate patients. The unit performs a search only after the prisons submit a request. The credentialing unit will not perform a database search if the prison does not request it. Of the 22 physicians and nurse practitioners we requested credentialing files for, the credentialing unit was only able to provide files for 12. Furthermore, eight of the 12 providers were credentialed after they had begun providing services to inmate patients.

Finally, we found that the credentialing unit's database search method is inefficient. Specifically, if the provider moves to another prison, the unit performs another search. For example, the credentialing unit verified the credentials of one physician who worked at two prisons three times within a seven-month period. Based on information provided to the manager by the U.S. Department of Health and Human Services, she believes that because each prison has its own formal peer review process to further quality health care, federal law requires Corrections to register them as separate eligible entities for

purposes of querying the NPDB and HIPDB. She also stated the Corrections' management has not formally adopted a written policy regarding her interpretation of federal law. This current process appears unnecessary and a waste of time and money. According to the manager, Corrections pays roughly \$5 for each report resulting from a database search. Thus, until Corrections revisits this practice to determine if it can register as one eligible entity, it will continue to incur duplicative costs.

According to a manager, the *Plata* Support Division has taken or is taking actions to improve the credential verification of contract medical providers. For example, it is exploring the use of a Web-based Credential and Privilege Solution that will allow the automation of not only initial verification but also the constant license activity for medical service providers.

RECOMMENDATIONS¹¹

To improve its procedures and practices for requesting registry services and paying for these services, Corrections should:

- Ensure that prison staff consistently follow procedures requiring them to document their efforts to obtain services from registry contractors.
- Reevaluate its policy of allowing prisons to send out service requests concurrently to all registry contractors listed in the hierarchy.
- Ensure that prisons verify the services they receive from registry contractors before authorizing payment of invoices.
- Continue to implement the draft of a departmentwide policy reiterating the need for prison medical staff to adhere to proper procedures for verifying registry contractors' hours before authorizing payment.
- Ensure that prisons obtain the necessary documentation for the services they were unable to verify or seek reimbursement from the registry contractors for the overpayments identified in this report.

¹¹ In making these recommendations to Corrections, we understand that they would be implemented at the direction of the court-appointed receiver. We do, however, expect that if control and management of Corrections' medical health care delivery system is returned to it, that Corrections would then become responsible for implementing these recommendations.

- Establish a quality control process to ensure that prisons pay rates that are consistent with contract terms.
- Ensure that prison staff responsible for authorizing overtime adhere to Corrections' overtime policies and contract terms.
- Evaluate its prisons and regional accounting offices' processes for paying invoices and identify weaknesses that prevent it from maximizing the discounts taken and complying with the CPPA.

To ensure that it complies with the political reform act, Corrections should:

- Establish an effective process for tracking whether its designated employees, including consultants, have filed their statements of economic interests timely.
- Review the statements of economic interests to ensure their accurate completion and to identify potential conflicts of interests.
- Ensure that the chief executive officer retains his or her written determinations for consultants.
- Require wardens to enforce its policy prohibiting outside employment or activities without seeking prior approval.

To improve its oversight of registry contractors and their providers who provide medical services to inmate patients, Corrections should:

- Require the credentialing unit to verify the credentials of contracted providers who work in non-Corrections facilities or, at a minimum, verify that these facilities have a rigorous process for verifying the credentials of their providers.
- Establish a policy to define allied health professionals and to identify professionals who will be credentialed by the credentialing unit versus those credentialed by the prisons.
- Require the credentialing unit to determine whether the credentials of those medical and allied health providers who are performing services at prisons under registry contracts have been verified. If not, the credentialing unit should verify them.

- Establish criteria to use when approving or denying potential medical providers, including whether to hire registry contractors with restricted licenses.
- Ensure that prisons request NPDB searches from the credentialing unit before allowing providers to perform services.
- Seek clarification from the U.S. Department of Health and Human Services regarding the criteria for eligible entities and whether or not all prisons can be combined into one eligible entity.

We conducted this review under the authority vested in the California State Auditor by Section 8543 et seq. of the California Government Code and according to generally accepted government auditing standards. We limited our review to those areas specified in the audit scope section of this report.

Respectfully submitted,



ELAINE M. HOWLE
State Auditor

Date: April 19, 2007

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APPENDIX

The California Department of Corrections and Rehabilitation Could Strengthen Delivery of Medical Care to Inmates by Adding Key Terms to Its Contracts With Medical Providers

As we discussed more fully in the Introduction, in February 2006 the federal court issued an order appointing a receiver to provide leadership and executive management of the Department of Corrections and Rehabilitation's (Corrections) medical health care delivery system with the goal of restructuring day-to-day operations and developing, implementing, and validating a new, sustainable system that provides constitutionally adequate medical care to all members of the class action lawsuit as soon as practicable. To achieve these goals, the receiver has the duty to control, oversee, supervise, and direct all administrative, personnel, financial, contractual, legal, and other operational functions of Corrections' medical health care delivery system. The court also appointed a correctional expert to investigate and report to the receiver concerning the status of state contracts relating to health care services and of contract payments to service providers who provide health care services to Corrections' inmates.

The court-appointed receiver asked the Bureau of State Audits to determine whether the language used in medical registry contracts is adequate and complete and written in the best interests of the State. In doing so, our legal counsel attempted to determine what a model contract for prisoner medical care would look like if it were designed to provide medically appropriate care in a way that was also fiscally sound. Table A on the following pages summarize the key findings of reports by public, private, and academic organizations reviewed by our legal counsel to determine model terms.

TABLE A

**Study Citation and Brief Summary of 18 Studies Related
to Best Practices in Medical Care Contracts**

Study Citation	Brief Summary
American Medical Association, <i>Annotated Model Physician Agreement</i> (2000)	This manual provides sample agreements and information regarding employment contracts geared to assist both medical and physician groups as well as physician employees.
American Medical Association, <i>Model Managed Care Contract</i> , with Annotations and Supplemental Discussion Pieces (Fourth Edition 2005)	This manual provides sample Model Managed Care Contracts and information to assist both medical and physician groups.
California State Controller, California Department of Corrections and Rehabilitation, Review Report, Healthcare Delivery System (2006)	California State Controller's Office fiscal review of the California Department of Corrections and Rehabilitation's budget and spending practices for its health care delivery system.
Dickey, B. <i>Best Practices: Are Financial Incentives and Best Practices Compatible?</i> <i>Psychiatric Services</i> 55:130-131 (2004) http://www.psychservices.psychiatryonline.org/cgi/content/full/55/2/130	A study of best practices in a clinical setting examining whether financial incentives can promote best practices that will benefit patients and health systems.
Firestone, K. and LaRoux, K. <i>Prison Health Care: An Overview</i> (2000) http://www.senate.michigan.gov/sfa/Publications/Issues/PrisonHealthCare/PrisonHealthCare.pdf	This paper provides general information about managed care and health care in prison systems. The authors also present information about the costs of Michigan's prison health care system and provides a comparison to other states' systems.
Longman, P. <i>The Best Care Anywhere</i> (2005) Washington Monthly (electronically retrieved December 2006)	This article details the shift of veterans hospitals as they transitioned to providing significantly higher quality care compared to some other health care providers.
Maxor National Pharmacy Services Corporation, <i>An Analysis of the Crisis in the California Prison Pharmacy System Including a Road Map from Despair to Excellence</i> (2006)	An analysis of the California Department of Corrections and Rehabilitation's pharmacy operations, which includes data and findings from previous audits and reviews. The authors also provide detailed recommendations for improving operations.
Mercer Health and Benefits, <i>California Prison System: Assessment of Organizational Structures</i> (2006)	An overview and assessment of the organizational structure of California's prison system.
Raimer, B. and Sobol, J. <i>Health Care Delivery in the Texas Prison System: The Role of Academic Medicine</i> , <i>Journal of American Medicine</i> , 292:485-489 (2004)	A review of the organizational structure of Texas' prison health care system and the various levels of care that are provided to the state's prisoners.
Rosenthal, M. <i>Prescription for Recovery: Keeping South Carolina's Prison Health Care Public and Making it Better</i> (2004)	This report addresses South Carolina's proposed decision to privatize its prison health care delivery system and provides an analysis of how the costs and services compare to other states. The authors also provide recommendations for improvements.
State of California, Employment Development Department, <i>Information Sheet</i> (1997) http://www.edd.ca.gov	The Employment Development Department presents a table of determining factors that help to define the legal status of a working relationship as either "employment" or "independent contractor" status.
Stoller, N. <i>Improving Access to Health Care for California's Woman Prisoners: A Working Paper Prepared for the California Program on Access to Care</i> (2000) http://www.prisonerswithchildren.org/pubs/stoller.pdf	This report examines access to health care for women who are incarcerated in California state prisons and compares the current models of delivery to "best practices" models.
U.S. Department of Health and Human Services, Office of the Inspector General, Advisory Opinion relating to whether certain contractual arrangements for nurses violate the anti-kickback statute, Section 1128(b) of the Social Security Act (1998) (Advisory op. No. 98.9) http://oig.hhs.gov/fraud/docs/advisoryopinions/1998/ao98_9.html	Legal Analysis related to federal anti-kickback statute.

Study Citation	Brief Summary
U.S. Department of Justice, National Institute of Corrections. <i>Prison Medical Care: Special Needs Populations and Cost Control</i> (1997) [Electronic version]	This report is based on the results of a national survey of prison medical services exploring how correctional facilities provided care to the elderly, chronically ill, and terminally ill inmates and how each facility managed the health care costs for this special population.
U.S. Department of Justice, National Institute of Corrections. <i>Correctional Health Care: Guidelines for the Management of an Adequate Delivery System</i> (2001)	Provides a comprehensive guide to providing effective medical care in a prison setting.
U.S. Government Accountability Office, <i>Private and Public Prisons: Studies Comparing Operational Costs and/or Quality of Service</i> (1996) (GAO Publication No. GAO/GGD-96-158)	This report describes the findings of several studies that compare the operational costs and quality of services of prison health care systems that are public to those that have been privatized.
Vista Staffing Solutions, <i>General Tax Information for Independent Contractor Physicians</i> (2003) http://www.vistastaff.com/pdfs/physicians/physicians_tax.pdf	General guidance on tax issues for independent contractors.
Young, M. <i>Prison Privatization: Possibilities and Approaches to the Privatization of Prisoner Security and Services</i> (2006) [Electronic version]	A report on the privatization of prison services.

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Agency's comments provided as text only.

California Prison Health Care Receivership Corp.
501 J Street, Suite 605
Sacramento, CA 95814

April 4, 2007

Elaine M. Howle
State Auditor
555 Capitol Mall, Suite 300
Sacramento, CA 95814

Dear Elaine,

On behalf of the Receiver, I would like to thank you for the audit of the contracting and credentialing functions for the California Department of Corrections and Rehabilitation (CDCR) Division of Correctional Health Care Services (DCHCS). Due to the unique circumstances of the Receivership, you graciously changed your auditing schedule to accommodate our needs. I also wish to take this opportunity to commend the professionalism of your staff, under the leadership of Joanne Quarles, during the audit process and the briefing provided to me and the Receiver's staff.

At this time, the Receiver has decided not to provide a written response to the draft report. Instead, we intend to fully study the audit results and provide a realistic strategy to remedy the deficiencies. Unlike past audits of the DCHCS, when remedial promises were easily made and just as easily broken, the Receiver will actually fix the broken systems your staff has identified. The Receiver will respond to the final audit report with a remedial plan within sixty days.

If you have any questions please feel free to contact Rich Kirkland at (916) 327-1427.

Sincerely,

(Signed by: John Hagar)

John Hagar
Chief of Staff

cc: Members of the Legislature
Office of the Lieutenant Governor
Milton Marks Commission on California State
Government Organization and Economy
Department of Finance
Attorney General
State Controller
State Treasurer
Legislative Analyst
Senate Office of Research
California Research Bureau
Capitol Press