

SAN BERNARDINO COUNTY

Audit Report

MENTALLY DISORDERED OFFENDERS' EXTENDED COMMITMENT PROCEEDINGS PROGRAM

Chapter 1418, Statutes of 1985; Chapter 858, Statutes of 1986;
Chapter 687, Statutes of 1987; Chapter 657, Statutes of 1988;
Chapter 658, Statutes of 1988; Chapter 228, Statutes of 1989;
Chapter 435, Statutes of 1991; and Chapter 324, Statutes of 2000

July 1, 2002, through June 30, 2007



JOHN CHIANG
California State Controller

March 2010



JOHN CHIANG
California State Controller

March 5, 2010

Gary Ovitt, Chairman
San Bernardino County Board of Supervisors
Government Center
385 N. Arrowhead Avenue, 5th Floor
San Bernardino, CA 92415-0110

Dear Mr. Ovitt:

The State Controller's Office audited the costs claimed by San Bernardino County for the legislatively mandated Mentally Disordered Offenders' Extended Commitment Proceedings Program (Chapter 1418, Statutes of 1985; Chapter 858, Statutes of 1986; Chapter 687, Statutes of 1987; Chapter 657, Statutes of 1988; Chapter 658, Statutes of 1988; Chapter 228, Statutes of 1989; Chapter 435, Statutes of 1991; and Chapter 324, Statutes of 2000) for the period of July 1, 2002, through June 30, 2007.

The county claimed \$2,367,395 for the mandated program. Our audit disclosed that \$1,980,764 is allowable and \$386,631 is unallowable. The costs are unallowable primarily because the county misclassified costs from other mandated programs, claimed unallowable and unsupported costs, overstated productive hourly rates and overstated indirect cost rates. The State paid the county \$1,536,678. Allowable costs claimed exceed the amount paid by \$444,086.

If you disagree with the audit findings, you may file an Incorrect Reduction Claim (IRC) with the Commission on State Mandates (CSM). The IRC must be filed within three years following the date that we notify you of a claim reduction. You may obtain IRC information at the CSM's Web site at www.csm.ca.gov/docs/IRCForm.pdf.

If you have any questions, please contact Jim L. Spano, Chief, Mandated Cost Audits Bureau, at (916) 323-5849.

Sincerely,

Original signed by

JEFFREY V. BROWNFIELD
Chief, Division of Audits

JVB/vb

cc: The Honorable Larry Walker
Auditor/Controller-Recorder
San Bernardino County
Jai Prasad, Accountant III
Auditor/Controller-Recorder's Office
San Bernardino County
Jeff Carosone, Principal Program Budget Analyst
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Contents

Audit Report

Summary	1
Background	1
Objective, Scope, and Methodology	2
Conclusion	2
Views of Responsible Official	3
Restricted Use	3
Schedule 1—Summary of Program Costs	4
Findings and Recommendations	6
Attachment—County’s Response to Draft Audit Report	

Audit Report

Summary

The State Controller's Office (SCO) audited the costs claimed by San Bernardino County for the legislatively mandated Mentally Disordered Offenders' Extended Commitment Proceedings Program (Chapter 1418, Statutes of 1985; Chapter 858, Statutes of 1986; Chapter 687, Statutes of 1987; Chapter 657, Statutes of 1988; Chapter 658, Statutes of 1988; Chapter 228, Statutes of 1989; Chapter 435, Statutes of 1991; and Chapter 324, Statutes of 2000) for the period of July 1, 2002, through June 30, 2007.

The county claimed \$2,367,395 for the mandated program. Our audit disclosed that \$1,980,764 is allowable and \$386,631 is unallowable. The costs are unallowable primarily because the county misclassified costs from other mandated programs, claimed unallowable and unsupported costs, overstated productive hourly rates, and overstated indirect cost rates. The State paid the county \$1,536,678. Allowable costs claimed exceed the amount paid by \$444,086.

Background

Penal Code sections 2970, 2972, and 2972.1 (added and amended by Chapter 1418, Statutes of 1985; Chapter 858, Statutes of 1986; Chapter 687, Statutes of 1987; Chapter 657, Statutes of 1988; Chapter 658, Statutes of 1988; Chapter 228, Statutes of 1989; Chapter 435, Statutes of 1991; and Chapter 324, Statutes of 2000) establish civil commitment procedures for the continued involuntary treatment of persons with severe mental disorders for one year following their parole termination date. These commitment procedures generally require the following:

- A civil hearing on the petition for continued involuntary treatment;
- The right to a jury trial, with a unanimous verdict by the jury before the offender can be committed;
- The appointment of defense counsel for indigent offenders; and
- Subsequent petitions and hearings regarding the recommitment of the offender for another year of involuntary treatment.

On January 25, 2001, the Commission on State Mandates (CSM) determined that the legislation imposed a state mandate reimbursable under Government Code section 17561.

The program's parameters and guidelines establish the state mandate and define reimbursement criteria. CSM adopted the parameters and guidelines on May 24, 2001. In compliance with Government Code section 17558, the SCO issues claiming instructions to assist local agencies and school districts in claiming mandated program reimbursable costs.

Objective, Scope, and Methodology

We conducted the audit to determine whether costs claimed represent increased costs resulting from the Mentally Disordered Offenders' Extended Commitment Proceedings Program for the period of July 1, 2002, through June 30, 2007.

Our audit scope included, but was not limited to, determining whether costs claimed were supported by appropriate source documents, were not funded by another source, and were not unreasonable and/or excessive.

We conducted this performance audit under the authority of Government Code sections 12410, 17558.5, and 17561. We did not audit the county's financial statements. We conducted the audit in accordance with generally accepted government auditing standards. Those standards require that we plan and perform the audit to obtain sufficient, appropriate evidence to provide a reasonable basis for our findings and conclusions based on our audit objectives. We believe that the evidence obtained provides a reasonable basis for our findings and conclusions based on our audit objectives.

We limited our review of the county's internal controls to gaining an understanding of the transaction flow and claim preparation process as necessary to develop appropriate auditing procedures.

Conclusion

Our audit disclosed instances of noncompliance with the requirements outlined above. These instances are described in the accompanying Summary of Program Costs (Schedule 1) and in the Findings and Recommendations section of this report.

For the audit period, San Bernardino County claimed \$2,367,395 for costs of the Mentally Disordered Offenders' Extended Commitment Proceedings Program. Our audit disclosed that \$1,980,764 is allowable and \$386,631 is unallowable.

For the fiscal year (FY) 2002-03 claim, the State made no payment to the county. Our audit disclosed that \$313,459 is allowable. The State will pay allowable costs claimed that exceed the amount paid, totaling \$313,459, contingent upon available appropriations.

For the FY 2003-04 claim, the State made no payment to the county. Our audit disclosed that \$335,134 is allowable. The State will pay allowable costs claimed that exceed the amount paid, totaling \$335,134, contingent upon available appropriations.

For the FY 2004-05 claim, the State paid the county \$459,656. Our audit disclosed that \$383,570 is allowable. The State will offset \$76,086 from other mandated program payments due the county. Alternatively, the county may remit this amount to the State.

For the FY 2005-06 claim, the State paid the county \$627,884. Our audit disclosed that \$544,406 is allowable. The State will offset \$83,478 from other mandated program payments due the county. Alternatively, the county may remit this amount to the State.

For the FY 2006-07 claim, the State paid the county \$449,138. Our audit disclosed that \$404,195 is allowable. The State will offset \$44,943 from other mandated program payments due the county. Alternatively, the county may remit this amount to the State.

**Views of
Responsible
Official**

We issued a draft audit report on December 14, 2009. Bonnie Ter Keurst, Reimbursable Projects Section Manager, responded by letter dated February 1, 2010 (Attachment), agreeing with the audit results for Findings 1 and 2, but disagreeing with the results for Findings 3, 4, and 5. This final audit report includes the county's response.

Restricted Use

This report is solely for the information and use of San Bernardino County, the California Department of Finance, and the SCO; it is not intended to be and should not be used by anyone other than these specified parties. This restriction is not intended to limit distribution of this report, which is a matter of public record.

Original signed by

JEFFREY V. BROWNFIELD
Chief, Division of Audits

March 5, 2010

**Schedule 1—
Summary of Program Costs
July 1, 2002, through June 30, 2007**

Cost Elements	Actual Costs Claimed	Allowable per Audit	Audit Adjustment	Reference ¹
<u>July 1, 2002, through June 30, 2003</u>				
Direct costs:				
Salaries and benefits	\$ 187,869	\$ 178,013	\$ (9,856)	Findings 2, 6
Services and supplies	90,856	31,709	(59,147)	Findings 4, 6
Total direct costs	278,725	209,722	(69,003)	
Indirect costs	109,065	103,737	(5,328)	Findings 2, 6
Total program costs	<u>\$ 387,790</u>	313,459	<u>\$ (74,331)</u>	
Less amount paid by the State		—		
Allowable costs claimed in excess of (less than) amount paid		<u>\$ 313,459</u>		
<u>July 1, 2003, through June 30, 2004</u>				
Direct costs:				
Salaries and benefits	\$ 206,810	\$ 174,979	\$ (31,831)	Findings 1, 2, 3
Services and supplies	118,018	67,276	(50,742)	Findings 4, 6
Travel and training	6,860	—	(6,860)	Finding 3
Total direct costs	331,688	242,255	(89,433)	
Indirect costs	111,239	92,879	(18,360)	Findings 1, 2, 3
Total program costs	<u>\$ 442,927</u>	335,134	<u>\$ (107,793)</u>	
Less amount paid by the State		—		
Allowable costs claimed in excess of (less than) amount paid		<u>\$ 335,134</u>		
<u>July 1, 2004, through June 30, 2005</u>				
Direct costs:				
Salaries and benefits	\$ 230,865	\$ 224,094	\$ (6,771)	Finding 2
Services and supplies	104,653	38,969	(65,684)	Findings 4, 6
Total direct costs	335,518	263,063	(72,455)	
Indirect costs	124,138	120,507	(3,631)	Finding 2
Total program costs	<u>\$ 459,656</u>	383,570	<u>\$ (76,086)</u>	
Less amount paid by the State		(459,656)		
Allowable costs claimed in excess of (less than) amount paid		<u>\$ (76,086)</u>		

Schedule 1 (continued)

Cost Elements	Actual Costs Claimed	Allowable per Audit	Audit Adjustment	Reference ¹
<u>July 1, 2005, through June 30, 2006</u>				
Direct costs:				
Salaries and benefits	\$ 345,349	\$ 339,093	\$ (6,256)	Finding 1
Services and supplies	96,869	43,069	(53,800)	Findings 4, 6
Total direct costs	442,218	382,162	(60,056)	
Indirect costs	185,666	162,244	(23,422)	Findings 1, 5
Total program costs	<u>\$ 627,884</u>	544,406	<u>\$ (83,478)</u>	
Less amount paid by the State		(627,884)		
Allowable costs claimed in excess of (less than) amount paid		<u>\$ (83,478)</u>		
<u>July 1, 2006, through June 30, 2007</u>				
Direct costs:				
Salaries and benefits	\$ 248,473	\$ 254,926	\$ 6,453	Finding 1
Services and supplies	72,599	31,090	(41,509)	Findings 4, 6
Total direct costs	321,072	286,016	(35,056)	
Indirect costs	128,066	118,179	(9,887)	Findings 1, 5
Total program costs	<u>\$ 449,138</u>	404,195	<u>\$ (44,943)</u>	
Less amount paid by the State		(449,138)		
Allowable costs claimed in excess of (less than) amount paid		<u>\$ (44,943)</u>		
<u>Summary: July 1, 2002, through June 30, 2007</u>				
Direct costs:				
Salaries and benefits	\$ 1,219,366	\$ 1,171,105	\$ (48,261)	
Services and supplies	482,995	212,113	(270,882)	
Travel and training	6,860	—	(6,860)	
Total direct costs	1,709,221	1,383,218	(326,003)	
Indirect costs	658,174	597,546	(60,628)	
Total program costs	<u>\$ 2,367,395</u>	1,980,764	<u>\$ (386,631)</u>	
Less amount paid by the State		(1,536,678)		
Allowable costs claimed in excess of (less than) amount paid		<u>\$ 444,086</u>		

¹ See the Findings and Recommendations section.

Findings and Recommendations

FINDING 1— Misstated salaries and benefits and related indirect costs

The county claimed \$1,219,366 for salaries and benefits during the audit period. We determined that salaries and benefits were overstated by \$13,623 (overstated by \$13,820 for fiscal year [FY] 2003-04 and \$6,256 for FY 2005-06, and understated by \$6,453 for FY 2006-07). The county claimed unsupported costs for District Attorney's Office salaries and benefits totaling \$20,819 and understated \$7,196 for time spent by the Public Defender's Office performing mandated activities. The related indirect costs totaled \$8,015 (\$11,521 overstated for the District Attorney's Office and \$3,506 understated for the Public Defender's Office).

The following table summarizes the audit adjustment by fiscal year and department.:

	Fiscal Year			Total
	2003-04	2005-06	2006-07	
Salaries and benefits:				
District Attorney	\$ (13,820)	\$ (6,256)	\$ (743)	\$ (20,819)
Public Defender	—	—	7,196	7,196
Subtotal	<u>(13,820)</u>	<u>(6,256)</u>	<u>6,453</u>	<u>(13,623)</u>
Indirect costs:				
District Attorney	(7,765)	(3,350)	(406)	(11,521)
Public Defender	—	—	3,506	3,506
Subtotal	<u>(7,765)</u>	<u>(3,350)</u>	<u>3,100</u>	<u>(8,015)</u>
Audit adjustment	<u>\$ (21,585)</u>	<u>\$ (9,606)</u>	<u>\$ 9,553</u>	<u>\$ (21,638)</u>

The misstatements occurred for the following reasons:

- The District Attorney's Office claimed 251 unsupported hours for the performance of mandated activities (176 hours for FY 2003-04, 68.5 hours for FY 2005-06, and 6.50 hours for FY 2006-07) based on our review of attorney time logs. For FY 2003-04, we adjusted 156 hours for the classification of DDA IV, and 20 hours for the classification of Investigating Technician II. For FY 2005-06, we adjusted 68.5 hours for the classification of DDA IV and for FY 2006-07, we identified 6.50 unsupported hours for the classification of DDA IV.
- The Public Defender's Department erroneously understated 71.5 hours in its claim for FY 2006-07. We reviewed the attorney time logs and recalculated allowable hours spent on mandated activities.

The program's parameters and guidelines (section V.A.1., Salaries and Benefits) require the claimant to "Identify the employee(s) and/or show the classification of the employee(s) involved. Describe the reimbursable activities performed, and specify the actual time devoted to each reimbursable activity by each employee, productive hourly rate, and related fringe benefits."

The parameters and guidelines (section VI., Supporting Data) require state that “for auditing purposes, all costs claimed shall be traceable to source documents (e.g., invoices, receipts, purchase orders, contracts, worksheets, calendars, declarations, etc.) that show evidence of the validity of such costs and their relationship to the state mandated program.”

Recommendation

We recommend that the county establish and implement procedures to ensure that claimed costs include only eligible costs, are based on actual costs, and are properly supported.

County’s Response

The county agreed with the audit finding.

**FINDING 2—
Overstated productive
hourly rates**

We determined that the county overstated allowable salaries by \$17,762 during the audit period (\$10,422 by the District Attorney’s Department and \$7,340 by the Public Defender’s Department). The related unallowable indirect costs totaled \$9,772. The county understated annual productive hours in its calculation of countywide productive hourly rates for FY 2002-03, FY 2003-04, and FY 2004-05. Understated productive hours resulted in overstated productive hourly rates.

The following table summarizes the audit adjustment by fiscal year and department.

	Fiscal Year			Total
	2002-03	2003-04	2004-05	
Salaries and benefits:				
District Attorney	\$ (2,703)	\$ (3,269)	\$ (4,450)	\$ (10,422)
Public Defender	(2,671)	(2,348)	(2,321)	(7,340)
Subtotal	<u>(5,374)</u>	<u>(5,617)</u>	<u>(6,771)</u>	<u>(17,762)</u>
Indirect costs:				
District Attorney	(1,870)	(1,836)	(2,500)	(6,206)
Public Defender	(1,291)	(1,144)	(1,131)	(3,566)
Subtotal	<u>(3,161)</u>	<u>(2,980)</u>	<u>(3,631)</u>	<u>(9,772)</u>
Grand total	<u>\$ (8,535)</u>	<u>\$ (8,597)</u>	<u>\$(10,402)</u>	<u>\$ (27,534)</u>

Ineligible Meeting Hours

When calculating countywide annual productive hours, the county deducted administrative meeting time (52 hours each year) to arrive at the average annual productive hours.

The SCO’s claiming instructions include guidelines for preparing mandated cost claims. The instructions do not identify time spent on administration and meetings as deductions (excludable components) from total hours when productive hours are computed. In addition, the time excluded by the county for administration and meetings was estimated and not based on any actual time records associated with this activity. However, if a county chooses to deduct time for administration

activities and meetings in calculating countywide productive hours, its accounting system must separately identify the actual time associated with these two components.

The parameters and guidelines (section V.A.1., Salaries and Benefits) require the claimants to “identify the employee(s) and/or show the classification of the employee(s) involved, describe the reimbursable activities performed, and specify the actual time devoted to each reimbursable activity by each employee, productive hourly rate, and related fringe benefits.

The parameters and guidelines (section VI., Supporting Data), state that “for auditing purposes, all costs claimed shall be traceable to source documents (e.g., invoices, receipts, purchase orders, contracts, worksheets, calendars, declarations, etc.) that show evidence of the validity of such costs and their relationship to the state mandated program.”

Recommendation

We recommend that the county establish and implement procedures to ensure that claimed costs include only eligible costs, are based on actual costs, and are properly supported.

County’s Response

The county agreed with the audit finding.

**FINDING 3—
Unallowable
transportation costs-
Sheriff’s Department**

The county claimed \$26,869 for FY 2003-04 for costs incurred by the Sheriff’s Department to transport mentally disordered offenders. We determined that the costs were unallowable for reimbursement because they did not represent increased costs incurred by the county to comply with the mandated program. The unallowable costs included salaries and benefits totaling \$12,394, related indirect costs totaling \$7,615, and unallowable travel and training costs related to the transportation of prisoners totaling \$6,860.

The county claimed costs for transporting mentally disordered offenders (MDO) between state correctional facilities and the county jail. However, the Sheriff’s Department incurred no increased costs because these prisoners were transported in the same vehicles and at the same time as other non-MDO prisoners. Therefore the county did not incur additional labor or vehicle costs in order to comply with the mandate.

The following table summarizes the audit adjustment:

	<u>Amount</u>
Cost component:	
Salaries and benefits	\$ (12,394)
Travel	<u>(6,860)</u>
Subtotal	(19,254)
Indirect costs	<u>(7,615)</u>
Audit adjustment	<u><u>\$ (26,869)</u></u>

The parameters and guidelines (section II., Eligible Claimants) state that “any county or city and county which incurs increased costs as a result of this reimbursable state mandated program is eligible to claim reimbursement of those costs.”

The parameters and guidelines (section IV.B.6., Reimbursable Activities) state that claimants are eligible for reimbursement to “provide transportation and custody of each potential mentally disordered offender before, during, and after the civil proceedings by the County’s Sheriff Department.”

The parameters and guidelines (section VI., Supporting Data) require that “for auditing purposes, all costs claimed shall be traceable to source documents (e.g., invoices, receipts, purchase orders, contracts, worksheets, calendars, declarations, etc.) that show evidence of the validity of such costs and their relationship to the state mandated program.”

Recommendation

We recommend that the county ensure that costs claimed are eligible increased costs incurred as a result of the mandate and that they are supported by appropriate documentation.

County’s Response

We do not agree with the audit finding based on the following justification:

This classification of inmate requires special handling and in doing so, and for officer safety, is placed in “Protective Custody” for the duration of custody by the Sheriff’s Department until such time as custody is remanded to the State or other managing authority. While in this category of custody, this inmate classification is segregated from all other inmates during transportation to and from court, while being escorted or housed, and during any other activity. Additional costs are borne of this classification of inmate amongst the movement of the general inmate population resulting from the higher security risk due to the classification.

Pursuant to the original Parameters and Guidelines for this mandate, “Section IV REIMBURSABLE ACTIVITIES, sub-section B.6.,” no restrictions were articulated as to the specificity of transportation requirements. The mandate requirement simply stated is to “Provide transportation and custody of each potential mentally disordered offender before, during, and after the civil proceedings by the County Sheriff Department.”

The Sheriff’s Department has met the requirements of the mandate for transportation, for the safety of the inmate, and for the safety of the officer(s) involved. The policy governing transportation of inmates is identified in “**Section 2/100.005. VEHICLE STAFFING REQUIREMENTS.**” States that, “during vehicle operation, the driver is primarily responsible for control of the vehicle. The driver shares responsibility for security as driving permits.” “**Section 100.15. CO-**

DRIVER-GENERAL RESPONSIBILITY” states that, “The primary duty of the co-driver is to provide inmate security and full attention should be devoted to that function.” Therefore, the county believes that the increased labor costs and the associated indirect costs incurred for providing special care due to the MDO prisoners during transportation are mandated and fully reimbursable by the State.

SCO’s Comments

The finding and recommendation remain unchanged.

We concur with the wording from section IV.B.6. of the parameters and guidelines regarding reimbursement for transportation expenses, as cited in the county’s response. However, we already noted the language contained in Section II of the parameters and guidelines in the audit finding related to the requirement of only claiming increased costs. In addition, Government Code section 17514 states, “Costs mandated by the state “means any increased costs which a local agency or school district is *required* [emphasis added] to incur. . . .” To the extent that the county transported MDO prisoners with other non-MDO prisoners in the same vehicle, at the same time, and with the same correctional officers for security, the county did not incur any increased costs.

In its response, the county states that “special care” was required for MDO prisoners. However, the county has not yet provided any documentation supporting that it incurred increased costs for the special care provided. The county also quotes specific regulations regarding the transportation of prisoners. While we concur that the county complied with these requirements, these regulations are not applicable to the reimbursement of mandated costs, which are only provided through the provisions of parameters and guidelines as adopted by the Commission on State Mandates.

During fieldwork, we asked the county to provide supporting documentation to show that the MDO prisoners were transported separately and that the county incurred increased costs as a result of this mandate. Such documentation has not yet been provided. If the county can subsequently provide supporting documentation that it incurred increased costs to transport MDO prisoners to and from the county and state hospital facilities, we will modify the audit finding as appropriate.

FINDING 4— Overstated services and supplies

The county claimed \$72,599 under Services and Supplies for the audit period. We determined that costs totaling \$10,590 were unallowable (\$8,628 for costs claimed that were unrelated to this mandated program and \$1,962 for duplicate costs claimed). The unallowable costs for non-MDO cases (including Sexually Violent Predator and Not Guilty By Reason of Insanity) originated from each of the county departments (District Attorney, Public Defender, and Indigent Defense) that were included in the county’s claims. In addition, the Public Defender’s Department claimed duplicate costs totaling \$1,962 for FY 2002-03.

The following table summarizes the audit adjustments by individual department and fiscal year:

	Fiscal Year					Total
	2002-03	2003-04	2004-05	2005-06	2006-07	
District Attorney	\$ —	\$ (767)	\$ (3,592)	\$ (400)	\$ (449)	\$ (5,208)
Public Defender	(2,312)	—	—	—	—	(2,312)
Indigent Defense	—	—	(2,670)	(400)	—	(3,070)
Audit adjustment	<u>\$ (2,312)</u>	<u>\$ (767)</u>	<u>\$ (6,262)</u>	<u>\$ (800)</u>	<u>\$ (449)</u>	<u>\$ (10,590)</u>

The parameters and guidelines (section VI., Supporting Data) state that “for auditing purposes, all costs claimed shall be traceable to source documents that show evidence of the validity of such costs and their relationship to the state mandated program.”

Recommendation

We recommend that the county establish and implement procedures to ensure that claimed costs include only eligible costs, are based on actual costs, and are properly supported.

County's Response

We agree with the audit finding with the exception of the following cost disallowance.

- i) Public Defender. The State asserts that the department claimed duplicate costs totaling \$1,962 for FY 2002-03. Upon closer review of the vendor invoices, it is determined that only \$1,812 is a duplicate cost, while \$150 is an additional legitimate expense that is part of the duplicate billing invoice. Attached please find Public Defender's Invoice #1 (initial billing of \$1,812) and Invoice #2 (duplicate billing of \$1,812 plus \$150 new cost = \$1,962 total costs).

SCO's Comment

The finding and recommendation remain unchanged.

We concur that the invoice #03/5, dated January 6, 2003, included a duplicate billing totaling \$1,812 plus an additional charge totaling \$150. We concur that the \$150 mentioned in the county's response was, in fact, an additional expense included in the duplicate billing invoice. However, this same amount totaling \$150 and with the same description of service dated December 12, 2002, appeared again in another subsequent invoice from the same vendor (invoice #03/50, dated March 26, 2003), which also included the same charge for \$150 mentioned by the county. The \$150 in question has already been included as an allowable cost and cannot be claimed twice.

**FINDING 5—
Overstated indirect
cost rates-District
Attorney's Office**

The county overstated allowable indirect costs for the District Attorney's Office by \$33,059 for the audit period (\$20,072 for FY 2005-06 and \$12,987 for FY 2006-07). We determined that the department's indirect cost rates were overstated because the county incorrectly identified various employee classification payroll costs as direct or indirect.

Our office reviewed the county's methodology and identified issues with certain classifications of employees in which salary and benefit costs were allocated to both the indirect and direct cost pools. The county provided detailed indirect cost rate proposal (ICRP) worksheets showing total District Attorney's Office payroll costs by employee classification. For certain classifications, the county identified some employees' costs as direct costs attributable to special revenue fund programs such as Child Abduction and Recovery, Real Estate Fraud, Auto Insurance Fraud, Workers' Compensation Fraud, Asset Forfeiture, and Special Prosecution. However, the county identified costs as both direct and indirect for general fund employees in the same classifications. The county allocated indirect costs to direct costs of both the general and special revenue funds.

The county included a percentage of the District Attorney Senior Investigator, District Attorney Supervising Investigator, Investigative Technician II, and Secretary I and II job classifications in its indirect cost pool, while also claiming the same classifications as direct costs to the special revenue funds mentioned above. The county did not provide documentation to support that the personnel classified as indirect performed activities that benefited the special revenue funds.

District Attorney (DA) Senior Investigator

The county identified this position in both its general and special revenue fund programs. The county allocated 10% of general fund employees' cost to the indirect cost pool. County representatives stated that the indirect costs represented time that DA Senior Investigators spent performing administrative activities. The county did not provide documentation to support the percentage allocated. In addition, the county did not provide evidence that the amount allocated included costs attributable to administrative activities performed by the special revenue fund employees.

**District Attorney (DA) Supervising Investigator;
Investigative Technician; and Secretary I and II**

The county identified these positions in its general and special revenue fund programs. County representatives stated that these employee classifications are "traditionally indirect." However, the county did not allocate all costs to its indirect cost pool. Instead, the county identified certain employees assigned to programs funded from outside sources and allocated these employees' costs as direct costs. The county allocated the remaining employees' costs as indirect costs. The county stated that it allocated some employees' costs as direct because the funded programs

benefit from these employees to a greater extent than other programs. For employee costs allocated as indirect, the county did not provide documentation showing that the employees performed activities that benefit the entire department.

The county suggested that it could perform a time study for the District Attorney Supervising Investigator and the DA Senior Investigator positions in order to show that the estimated percentage for each classification was accurate. However, a time study would not document how the costs benefited the direct units within the department.

The parameters and guidelines (section VI., Supporting Data) state:

... all costs claimed must be traceable to source documents and/or worksheets that show evidence of and the validity of such costs and their relationship to the state mandated program.

The parameters and guidelines (section V.B., Indirect Costs) state that compensation for indirect costs is eligible for reimbursement. Claimants have the option of using 10% of direct labor, excluding fringe benefits, or preparing an Indirect Cost Rate Proposal (ICRP) pursuant to Office of Management and Budget (OMB) Circular A-87 (now codified as Title 2, Code of Federal Regulations (CFR) Part 225). As the county prepared an ICRP, the A-87 criteria below are relevant.

Appendix A, part C.3(a), states:

A cost is allocable to a particular cost objective if the goods or services involved are chargeable or assignable to such cost objective in accordance with relative benefits received.

Appendix A, part C.3(c), states that any cost allocable to a particular cost objective may not be charged to other cost objectives to overcome fund deficiencies.

Appendix A, part F.1, states:

Indirect costs are those incurred for a common or joint purpose benefiting more than one cost objective . . . To facilitate *equitable* [emphasis added] distribution of indirect expenses to the objectives served, it may be necessary to establish a number of pools of indirect costs within a governmental unit department. . . .

Appendix B, part 8(h), states that employees must maintain personnel activity reports or equivalent documentation when they work on an indirect and a direct cost activity.

Appendix E, part A.1, states:

After direct costs have been determined and assigned . . . indirect costs are those remaining to be allocated to *benefited* [emphasis added] cost objectives. A cost may not be allocated . . . as an indirect cost if any other cost incurred for the same purpose, in like circumstances, has been assigned . . . as a direct cost.

Appendix E, part C.1(b), states:

Where a governmental unit's department or agency has several major functions which benefit from its indirect costs in varying degrees, the allocation of indirect costs may require the accumulation of such costs into separate cost groupings which then are allocated individually to benefited functions. . . .

We recalculated the indirect costs rates for the District Attorney's Department by reallocating all costs as direct associated with the following employee classifications: DA Senior Investigator, DA Supervising Investigator, Investigative Technician II, and Secretary I and II for FY 2005-06 and FY 2006-07.

The following table summarizes the audit adjustment related to overstated indirect cost rates by the District Attorney's Office:

	Fiscal Year		Total
	2005-06	2006-07	
Allowable indirect cost rate	43.22%	43.56%	
Less claimed rate	(53.54)%	(54.69)%	
Misstated indirect cost rate	(10.32)%	(11.13)%	
Allowable District Attorney's Office salaries and benefits	× \$194,496	× \$116,679	
Audit adjustment	<u>\$ (20,072)</u>	<u>\$ (12,987)</u>	<u>\$ (33,059)</u>

Recommendation

We recommend that the county consistently allocate costs incurred for the same purpose, in like circumstances, as either direct or indirect costs. When employees perform both direct and indirect activities, we recommend that the county allocate costs between those activities based on personnel activity reports or equivalent documentation that meet Title 2 CFR Part 225 requirements.

County's Response

The auditor's written finding uses this quote from OMB A-87 Attachment A, Section F 1 "indirect costs are those incurred for a common or joint purpose benefiting more than one cost objective. To facilitate equitable distribution of indirect expenses to the objectives served, it may be necessary to establish a number of pools of indirect costs within a governmental unit department." To suggest that program-specific ICRPs should be developed. However, the entire quote leads to a different conclusion that establishing pools is based on a cost-benefit decision: "Indirect costs are those (a) incurred for a common or joint purpose benefiting more than one cost objective, and (b) **not readily assignable to the cost objectives specifically benefitted, without effort disproportionate to the results achieved** [Emphasis added]. The term 'indirect costs,' as used herein, applies to costs of this type originating in the grantee department, as well as those incurred by other departments in supplying goods, services, and facilities. To facilitate equitable distribution of indirect expenses to the cost objectives served, it may be necessary to establish a number of

pools of indirect costs within a governmental unit department or in other agencies providing services to a governmental unit department. **Indirect cost pools should be distributed to benefitted cost objectives on bases that will produce an equitable result in consideration of relative benefits derived.** [Emphasis added]”

For many years, the State and the County accepted that the effort required to develop program-specific rates would be disproportionate to the benefit received. In a department-wide ICRP, both departmental and program indirect costs are included in the indirect cost pool. The resulting cross allocation of total indirect costs to all programs inherently results in some costs being over-or under-allocated to specific programs. The rationale for using a department-wide rate is that program-level deviations are not significant enough overall to require the use of program rates. The added cost, to both the State and the County, of developing and auditing multiple rates is not justified by the related benefit. In addition, the Parameters and Guidelines for this program do not require the County to use a program-specific ICRP but state “the claimant shall have the choice of one of the following methodologies: [department-wide or program-specific].” For both of these reasons, we request that this finding be revised to approve the continued use of the department-wide rates on our claims.

SCO’s Comment

The findings and recommendations remain unchanged.

The county states that we cited OMB Circular A-87 criteria “to suggest that program-specific ICRPs should be developed.” Our finding contains no such suggestion.

The county emphasized OMB Circular A-87 language that states, “Indirect cost pools should be distributed to benefitted cost objectives on bases that will produce an equitable result in consideration of relative benefits received.” It appears that the county used this criterion to support its position that the subject costs are appropriate indirect costs because the county would otherwise expend a disproportionate effort to assign the costs to cost objectives specifically benefitted. The quoted criterion is irrelevant to the county’s argument; it does not address the effort that the county expends to distribute costs. The quoted criterion addresses instances when claimants use multiple bases to distribute indirect cost pools to benefitted cost objectives; it states that the bases used should produce an equitable distribution for each indirect cost pool. OMB Circular A-87, Appendix E, part C.3(c), explains this concept further, stating:

Actual conditions must be taken into account in selecting the base to be used in allocating the expenses in each grouping to benefitted functions. When an allocation can be made by assignment of a cost grouping directly to the function benefitted, the allocation shall be made in that manner. When the expenses in a grouping are more general in nature, the allocation should be made through the use of a selected base which produces results that are equitable to both the Federal Government and the governmental unit. In general, any cost element or related factor associated with the governmental unit’s

activities is potentially adaptable for use as an allocation base provided that: it can readily be expressed in terms of dollars or other quantitative measures (total direct costs, direct salaries and wages, staff hours applied, square feet used, hours of usage, number of documents processed, population served, and the like), and it is common to the benefitted functions during the base period.

The county also emphasized OMB Circular A-87 language that states, "Indirect costs are those . . . not readily assignable to the cost objectives specifically benefitted, without effort disproportionate to the results achieved." However, the county failed to consider the additional criteria cited in our audit finding.

OMB Circular A-87, Appendix A, part C.3, states that a cost is allocable to a cost objective in accordance with the relative benefits received. For the employee classifications that we identified, the county allocated some employees' costs from each classification directly to the mandated program. For the remaining employees in each classification, the county provided no documentation showing that the employees performed activities benefitting the mandated program.

OMB Circular A-87, Appendix A, part F.1, states that it might be necessary to establish several indirect cost pools to facilitate equitable distribution within a department. Further, Appendix E, part A.1, states that the county may not allocate a cost as an indirect cost if it assigns any other cost incurred for the same purpose as a direct cost. For the employee classifications identified, the county assigned some employees' costs as direct and allocated other employees' costs as indirect. This contradicts the criterion cited. For these employee classifications, the county stated that it did not assign all costs to the indirect cost pool because its funded programs (which include the mandated program) benefitted from these classifications to a greater degree. In this case, the county must either (1) allocate all costs as direct costs to comply with OMB Circular A-87, Appendix E, part A.1; or (2) allocate all costs as indirect costs by establishing separate indirect cost pools to facilitate equitable distribution within the department, in accordance with OMB Circular A-87, Appendix A, part F.1.

OMB Circular A-87, Appendix B, part 8.h(4), requires that employees maintain personnel activity reports when they work on both direct and indirect cost activities. For the DA Senior Investigator classification, the county allocated 10% of general fund employees' costs to the indirect cost pool. The county provided no documentation supporting the actual time that employees spent performing indirect cost activities. The county also provided no documentation showing that these employees performed activities that benefitted the mandated program. The county did not address this portion of the finding.

Regarding the parameters and guidelines, the county quotes language that does not exist. The parameters and guidelines state:

Compensation for indirect costs is eligible for reimbursement utilizing the procedure provided in the OMB Circular A-87. Claimants have the option of using 10% of direct labor, excluding fringe benefits, or preparing an Indirect Cost Rate Proposal (ICRP) for the department if

the indirect cost rate claimed exceeds 10%. If more than one department is claiming indirect costs for the mandated program, each department must have its own ICRP prepared in accordance with OMB Circular A-87. An ICRP must be submitted with the claim when the indirect cost rate exceeds 10%.

In any case, this is not an issue of a department-wide rate versus individual program rates. Our finding concludes that the county prepared its department-wide rate inappropriately. Our finding does not state or imply that the county must prepare "program-specific" rates.

**FINDING 6—
Misclassified costs**

We determined that the county misclassified costs totaling \$266,941 during the audit period (\$216,782 by the District Attorney's Office, \$9,849 by the Public Defender's Department, and \$40,310 by the Indigent Defense program) because the costs claimed were actually costs incurred pursuant to the requirements of Penal Code section 2966; such costs are reimbursable under the Mentally Disordered Offenders: Treatment as a Condition of Parole mandated program. Accordingly, these costs are unallowable for the purposes of this audit.

After the audit exit conference, the county re-submitted its Mentally Disordered Offenders: Treatment as a Condition of Parole claims to SCO for FY 2002-03, FY 2003-04, FY 2004-05, FY 2005-06, and FY 2006-07 in order to claim the associated costs identified during the audit under the proper mandate program. Even though the time within which to re-file these claims had expired, the SCO's Division of Accounting and Reporting accepted the re-filed claims in order to properly allocate the costs between mandate programs.

The county has indicated that it will not re-file corrected claims for the Mentally Disordered Offender's Extended Commitment Proceedings Program.

The following table summarizes the adjustments for misclassified costs by department and fiscal year:

	Fiscal Year					Total
	2002-03	2003-04	2004-05	2005-06	2006-07	
Salaries:						
Public Defender	\$ (4,482)	\$ —	\$ —	\$ —	\$ —	\$ (4,482)
Indirect costs	(2,167)	—	—	—	—	(2,167)
Subtotal	<u>(6,649)</u>	<u>—</u>	<u>—</u>	<u>—</u>	<u>—</u>	<u>(6,649)</u>
Services and supplies:						
District Attorney	(55,385)	(39,775)	(40,180)	(41,132)	(40,310)	(216,782)
Public Defender	(1,450)	—	(1,000)	—	(750)	(3,200)
Indigent Defense	—	(10,200)	(18,242)	(11,868)	—	(40,310)
Subtotal	<u>(56,835)</u>	<u>(49,975)</u>	<u>(59,422)</u>	<u>(53,000)</u>	<u>(41,060)</u>	<u>(260,292)</u>
Audit adjustment	<u>\$ (63,484)</u>	<u>\$ (49,975)</u>	<u>\$ (59,422)</u>	<u>\$ (53,000)</u>	<u>\$ (41,060)</u>	<u>\$ (266,941)</u>

The parameters and guidelines (section I., Summary of Mandate) state:

... the Commission adopted its Statement of Decision which concluded that Penal Code sections 2970, 2972, and 2972.1 impose a reimbursable state mandated program on local agencies.

The parameters and guidelines (section IV., Reimbursable Activities) identify only activities conducted under the provisions of Penal Code sections 2970, 2972, and 2972.1 as eligible activities for reimbursement.

Recommendation

We recommend that the county ensure that costs claimed are eligible increased costs incurred as a result of the mandate and that they are supported by appropriate supporting documentation.

County's Response

The county agreed with the audit finding.

**Attachment—
County's Response to
Draft Audit Report**

AUDITOR/CONTROLLER-RECORDER COUNTY CLERK



COUNTY OF SAN BERNARDINO

AUDITOR/CONTROLLER • 222 West Hospitality Lane, Fourth Floor
San Bernardino, CA 92415-0018 • (909) 387-8322 • Fax (909) 386-8830

RECORDER • COUNTY CLERK • 222 West Hospitality Lane, First Floor
San Bernardino, CA 92415-0022 • (909) 387-8306 • Fax (909) 386-8940

LARRY WALKER

Auditor/Controller-Recorder
County Clerk

ELIZABETH A. STARBUCK

Assistant Auditor/Controller-Recorder
Assistant County Clerk

February 1, 2010

Jim L. Spano, Chief
Mandated Cost Audits Bureau
Division of Audits
California State Controller's Office
P.O. Box 942850
Sacramento, CA 94250-5874

RE: Draft Audit Report Response
*Mentally Disordered Offenders' Extended Commitment Proceedings Program - Chapter
1418, Statutes of 1985*

Dear Mr. Spano:

We have examined the State Controller's Office (SCO) draft audit report regarding the claims filed by San Bernardino County for the above legislatively mandated program for the period of July 1, 2002 through June 30, 2007. Our comments on the findings are as follow:

Finding 1 – Misstated salaries and benefits and related indirect costs:

State's Recommendation:

The State recommends that the county establish and implement procedures to ensure that claimed costs include only eligible costs, are based on actual costs, and are properly supported.

County's Response:

We agree with the audit finding.

Finding 2 – Overstated productive hourly rates:

State's Recommendation:

The State recommends that the county establish and implement procedures to ensure that claimed costs include only eligible costs, are based on actual costs, and are properly supported.

County's Response:

We agree with the audit finding.

Finding 3 – Unallowable transportation costs – Sheriff's Department:

State's Recommendation:

The State suggests that the county ensure that costs claimed are eligible increased costs incurred as a result of the mandate and that they are supported by appropriate documentation.

County's Response:

We do not agree with the audit finding based on the following justification:

This classification of inmate requires special handling and in doing so, and for officer safety, is placed in "Protective Custody" for the duration of custody by the Sheriff's Department until such time as custody is remanded to the State or other managing authority. While in this category of custody, this inmate classification is segregated from all other inmates: during transportation to and from court, while being escorted or housed, and during any other activity. Additional costs are borne of this classification of inmate amongst the movement of the general inmate population resulting from the higher security risk due to the classification.

Pursuant to the original Parameters and Guidelines for this mandate, "Section IV. REIMBURSABLE ACTIVITIES, sub-section B. 6.," no restrictions were articulated as to the specificity of transportation requirements. The mandate requirement simply stated is to "Provide transportation and custody of each potential mentally disordered offender before, during, and after the civil proceedings by the County Sheriff Department."

The Sheriff's Department has met the requirements of the mandate for transportation, for the safety of the inmate, and for the safety of the officer (s) involved. The policy governing transportation of inmates is identified in "Section 2/100.005. VEHICLE STAFFING REQUIREMENTS." Further, "Section 2/100.10. DRIVER – GENERAL RESPONSIBILITY" states that, "during vehicle operation, the driver is primarily responsible for control of the vehicle. The driver shares responsibility for security as driving permits." "Section 100.15. CO-DRIVER – GENERAL RESPONSIBILITY" states that, "The primary duty of the co-driver is to provide inmate security and full attention should be devoted to that function." Therefore, the county believes that the increased labor costs and the associated indirect costs incurred for providing special care due to the MDO prisoners during transportation are mandated and fully reimbursable by the State.

Finding 4 – Overstated services and supplies:

State's Recommendation:

The State recommends that the county establish and implement procedures to ensure that claimed costs include only eligible costs, are based on actual costs, and are properly supported.

County's Response:

We agree with the audit finding with the exception of the following cost disallowance:

- i) *Public Defender: The State asserts that the department claimed duplicate costs totaling \$1,962 for FY 2002-03. Upon closer review of the vendor invoices, it is determined that only \$1,812 is a duplicate cost, while \$150 is an additional legitimate expense that is part of the duplicate billing invoice. Attached please find Public Defender's Invoice #1 (initial billing of \$1,812) and Invoice #2 (duplicate billing of \$1,812 plus \$150 new cost = \$1,962 total costs).*

Finding 5 – Overstated indirect cost rates – District Attorney's Office:

State's Recommendation:

The State recommends that the county consistently allocate costs incurred for the same purpose, in like circumstances, as either direct or indirect costs. When employees perform both direct and indirect activities, the county is advised to allocate costs between those activities based on personnel activity reports or equivalent documentation that meets Title 2 CFR Part 225 requirements.

County's Response:

*The auditor's written finding uses this quote from OMB A-87 Attachment A, Section F.1 "indirect costs are those incurred for a common or joint purpose benefiting more than one cost objective... To facilitate equitable distribution of indirect expenses to the objectives served, it may be necessary to establish a number of pools of indirect costs within a governmental unit department..." to suggest that program-specific ICRPs should be developed. However, the entire quote leads to a different conclusion that establishing pools is based on a cost-benefit decision: "Indirect costs are those: (a) incurred for a common or joint purpose benefiting more than one cost objective, and (b) **not readily assignable to the cost objectives specifically benefitted, without effort disproportionate to the results achieved.** [Emphasis added] The term 'indirect costs,' as used herein, applies to costs of this type originating in the grantee department, as well as those incurred by other departments in supplying goods, services, and facilities. To facilitate equitable distribution of indirect expenses to the cost objectives served, it may be necessary to establish a number of pools of indirect costs within a governmental unit department or in other agencies providing services to a governmental unit department. **Indirect cost pools should be distributed to benefitted cost objectives on bases that will produce an equitable result in consideration of relative benefits derived.** [Emphasis added]"*

For many years, the State and the County accepted that the effort required to develop program-specific rates would be disproportionate to the benefit received. In a department-wide ICRP, both departmental and program indirect costs are included in the indirect cost pool. The resulting cross allocation of total indirect costs to all programs inherently results in some costs being over- or under-allocated to specific programs. The rationale for using a department-wide rate is that program-level deviations are not significant enough overall to require the use of program rates. The added cost, to both the State and the County, of developing and auditing multiple rates is not justified by the related benefit. In addition, the Parameters and Guidelines

for this program do not require the County to use a program-specific ICRP but state “the claimant shall have the choice of one of the following methodologies: [department-wide or program-specific].” For both of these reasons, we request that this finding be revised to approve the continued use of the department-wide rates on our claims.

Finding 6 – Misclassified costs:

State’s Recommendation:

The State suggests that the county ensure that costs claimed are eligible increased costs incurred as a result of the mandate and that they are supported by appropriate supporting documentation.

County’s Response:

We agree with the audit finding.

If you have any questions, please contact me at (909) 386-8850.

Sincerely,



Bonnie Ter Keurst
Reimbursable Projects Section Manager
Auditor/Controller Recorder’s Office

JOHN WATTS PODBOY Ph.D.

P.O. Box 488
Menwood, Calif. 95452

Caldera Review
MDO X-105500/2970

okay P. 9/11
Invoice

FWVRS024938

DATE	INVOICE #
10/31/2002	02/195

BILL TO	RE:
LYLY BRANTLEY, ATTY. AT LAW OFFICE OF THE PUBLIC DEFENDER 8303 HAVEN AVE. RANCHO CUCAMONGA, CA. 91730	RUBEN CALDERA P.C. 1017 EVALUATION

DATE	DESCRIPTION	HOURS	AMOUNT
10/25/2002	RECORDS REVIEW CONSULTATIONS WITH COUNSEL AND HOSPITAL STAFF	1	150.00
10/26/2002	RECORDS REVIEW	1	150.00
10/29/2002	EXAMINATION RECORDS REVIEW INTERVIEWS WITH STAFF AND SISTER PSYCHOLOGICAL TESTING - PATTON STATE HOSPITAL	6	900.00
	LODGING		103.00
	AIRFARE (1/2 TOTAL)		103.00
	AUTO RENTAL (1/2 TOTAL)		79.00
	PARKING (1/2 TOTAL)		27.00
10/31/2002	REPORT PREPARED AND SUBMITTED CONSULTATIONS WITH COUNSEL	2	300.00

OK to Pay
J. [Signature]
JOHN WAT 454

Please remit to above address.	Total \$1,812.00
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PUBLIC DEFENDER: INVOICE #1 - TOTAL \$1,812

JOHN WATTS PODBOY Ph.D.

P.O. Box 488
Kenwood, Calif. 95452

Invoice

DATE	INVOICE #
1/6/2003	03/5

BILL TO	RE:
STEVE BREMSER, ESQ. SAN BERNADINO PUBLIC DEFENDER 398 WEST 4TH STREET SAN BERNADINO, CA. 92415	RUBEN CALDERA P.C. 1017 EVALUATION

DATE	DESCRIPTION	HOURS	AMOUNT
12/12/2002	CONSULTATIONS WITH COUNSEL REPORT REVISION	1	150.00
1/6/2002	PRIOR BAL. INVOICE NO. 021007 YOUR IMMEDIATE A BE GREATLY APPRE DAYS OVERDUE.		1,812.00
1/16/2003	NB: THIS WAS ORIGI BRANTLEY, ATTY. A OFFICE OF THE PUBL 8303 HAVEN AVE. RANCHO CUCAMONC		

ADDITIONAL NEW COST →
DUPLICATE COSTS - ALREADY PAID -
-SEE INVOICE #1

W. Watts *R. Caldera*

Please remit to above address.

Total	\$1,962.00
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PUBLIC DEFENDER: INVOICE # 2 - INITIAL COSTS ⁽²⁾ \$1,812.00
FROM INVOICE #1
- ADDITIONAL COSTS ⁽¹⁾ \$150.00
TOTAL INVOICE \$1962.00

**State Controller's Office
Division of Audits
Post Office Box 942850
Sacramento, CA 94250-5874**

<http://www.sco.ca.gov>