

Department of Health and Human Services

DEPARTMENTAL APPEALS BOARD

Appellate Division

SUBJECT: Texas Health and Human
Services Commission
Docket No. A-07-97
Decision No. 2187

DATE: July 28, 2008

DECISION

The Texas Health and Human Services Commission (Texas) appealed the decision of the Centers for Medicare & Medicaid Services (CMS) to disallow federal financial participation (FFP) in the amount of \$2,408,218 claimed under title XIX of the Social Security Act (Medicaid). LaPorte Consortium (LaPorte), which participated in the appeal as an intervenor, prepared the claims on behalf of numerous school districts for costs they identified as incurred for reimbursable school-based Medicaid administrative activities during federal fiscal year 2000. CMS based the disallowance on an Office of the Inspector General (OIG) audit that reviewed a sample of 120 claims and estimated that Texas was overpaid \$2,408,218 FFP. Most of that amount consisted of salaries and related costs for certain categories of school personnel whom the OIG reported as not performing activities related to Medicaid, primarily school principals, superintendents and their clerical support staff. According to the OIG, the remaining amount consisted of: 1) expenditures for which there was no supporting documentation; 2) expenditures for unallowable operating costs; 3) expenditures for personnel who did not qualify as skilled professional medical personnel (SPMP) but were claimed at the enhanced rate for SPMP; 4) expenditures for personnel funded 100% by other federal programs; 5) expenditures for contractors whom the OIG understood would render only direct services and not perform Medicaid administrative activities; and 6) expenditures for costs overstated due to clerical errors. CMS disallowed the full amount recommended by the OIG in all categories.

Texas appealed in full the disallowance of salaries and related costs for school personnel found not to perform activities related to Medicaid. Texas also appealed parts of the amounts

disallowed in categories 1, 4 and 6 and all of the amount disallowed in category 5. As explained in detail below, we reverse in part and uphold in part.

The record for this appeal includes the parties' briefs and appeal files submitted pursuant to 45 C.F.R. § 16.8, the parties' responses to the Board's Order to Develop Record, Texas's reply to CMS's response to the Board's Order, and the transcript of an oral proceeding held by the Board on April 29, 2008.¹ The participants in the oral proceeding included counsel for both parties, counsel for LaPorte, a CMS auditor, and a Senior Manager from DeLoitte Consulting LLP, which implemented the time study methodology for LaPorte and prepared the claims at issue here. The CMS auditor indicated that she had not participated in the OIG audit and appeared to be reviewing some of the documents in the record for the first time at the oral proceeding. See, e.g., Tr. at 16, 18. Based on that review, she offered her opinion regarding whether the disallowance of some of the disputed cost items was supportable, and CMS deferred to her opinion in changing its position on certain issues.

Background

The federal Medicaid statute, title XIX of the Social Security Act (Act), authorizes a program that furnishes medical assistance to low-income individuals and families as well as to blind and disabled persons.² Act § 1901. Each state operates its own Medicaid program in accordance with broad federal requirements and the terms of its Medicaid state plan. Act §§ 1902(a)(10), 1905(a); 42 C.F.R. Part 435. A state receives federal reimbursement for a share of its Medicaid program expenditures. Act §§ 1903(a), 1905(a).

A state's expenditures for direct school-based health services that are within the scope of Medicaid coverage and furnished to Medicaid-eligible children are considered payments for medical assistance within the meaning of the Act. Expenditures for school-based Medicaid administrative activities may be claimed as

¹ For ease of reference, we identify submissions and arguments made jointly by Texas and LaPorte as made by Texas only.

² The current version of the Social Security Act can be found at www.ssa.gov/OP_Home/ssact/comp-ssa.htm. Each section of the Act on that website contains a reference to the corresponding United States Code chapter and section.

costs of administering the state plan. See Medicaid School-Based Administrative Claiming Guide, May 2003 (TX Ex. 3), at 2. Administrative activities for which Medicaid funding is available may include outreach, facilitating eligibility determination, program planning and coordination, training, and referral, coordination and monitoring of services. Id. at 15. Such administrative activities do not include activities that are integral to the delivery of a direct service (sometimes referred to as "indirect services") which are included in the rate set for the direct service. Id. at 11, 27. The costs of Medicaid administrative activities are generally reimbursable at 50% FFP, while a state is entitled to a higher rate of reimbursement (its federal medical assistance percentage (FMAP)) for direct services costs. See Medicaid and School Health: A Technical Assistance Guide, August 1997 (TX Ex. 7), at 7. Until January 1, 2003, administrative activities performed by school-based SPMP were reimbursable at 75% FFP if the activity required the use of their professional experience and expertise. See TX Ex. 3, at 14-15.

In order to identify the time spent by school personnel on activities that are related to administering the Medicaid program, states must develop an allocation methodology, usually based on a time study. The time study must capture 100% of the time spent by the school personnel participating in the study. Thus, the time study must use activity codes that reflect all administrative activities and direct services that may be performed in the school, whether they are allowable or unallowable under Medicaid. In addition, since the same individuals often perform both direct services (including the activities classified as indirect services) and Medicaid administrative activities, the time study must clearly distinguish direct services from such administrative activities. TX Ex. 3, at 7-8, 11.

CMS approved the time study methodology that Texas applied in making the claims in question here. TX Ex. 15 (1/16/96 letter approving proposed cost allocation plan for Texas's Medicaid Administrative Cost Claiming Project); Tr. at 20. The approved methodology included definitions of specific time study activity codes. School districts in the LaPorte Consortium were instructed to develop personnel rosters of individuals who were eligible to participate in the time study, including all individuals in some job categories and, for other job categories, only those individuals expected to spend 10% or more of their time on an annual basis on reimbursable activities. Contractors within specific job categories were eligible for inclusion in the pool of time study participants on the same basis as employees. TX Ex. 16. LaPorte selected a sample of individuals on the

personnel rosters to participate in quarterly time studies. TX Ex. 2 (OIG Audit of LaPorte Consortium's Administrative Costs Claimed for Medicaid School-Based Services, January 2006), at 2. Most of the disputed costs were personnel costs allocated to Medicaid administrative activities based on the time study results. Neither the OIG nor CMS requested or reviewed Texas's underlying time study documentation, however. TX Reply to CMS Response to Order, at 2.

Based on uniform administrative requirements for grants, the Board has consistently held that it is a fundamental principle of grants management that a grantee is required to document its costs, and that the burden of documenting the allowability and allocability of costs for which reimbursement is claimed rests with the grantee. See, e.g., Oklahoma Health Care Authority, Ruling No. 2008-4 (2008); Maryland Dept. of Human Resources, DAB No. 1875 (2003); 45 C.F.R. §§ 92.40-42.

Discussion

Below, we discuss in turn each of the disputed categories of costs. The amounts shown in our discussion are the gross expenditures disallowed and disputed before application of the FFP or FMAP rate. The record does not identify the amount of federal funds involved as to each issue (as opposed to the total federal funds being disallowed overall). We therefore leave it to the parties to calculate the effect of our resolution of each individual issue on the final total amount of the disallowance.

We note preliminarily that Texas asserts that the OIG audit on which the disallowance was based was "replete with factual errors" and was therefore not "a statistically sound enough audit to justify extrapolation" of the unallowable costs in the sample to the universe of costs claimed. Tr. at 56-57. We find, however, that the "factual errors" are not as numerous as Texas suggests since we reverse the disallowance as to only some of the disputed costs, which in turn represent only part of the total costs disallowed. In any event, Texas does not allege that the audit methodology itself was flawed. Accordingly, while the disallowance must be recalculated so that it no longer includes amounts projected from the sample claims that were disallowed in error, Texas has not identified any basis for setting aside the entire disallowance.

I. CMS conceded that the school personnel categorically disallowed based on the OIG audit were not precluded from performing Medicaid administrative activities.

The OIG challenged gross expenditures of \$7,194,672 claimed for the salaries and related costs of school principals, their secretaries, school superintendents, and certain other categories of school personnel on the ground that these individuals did not perform activities related to Medicaid. The OIG took the position that these costs were categorically ineligible for FFP at the 50% rate for administrative activities. TX Ex. 2, at 5-6.

Texas argued on appeal that school personnel in these job categories did engage in Medicaid administrative activities. Texas asserted that its claims were based on time studies identifying the percentage of time spent by these school personnel on such activities. TX Br. at 16-17. CMS ultimately disavowed the original basis for the disallowance and did not advance a new basis for the disallowance.³ Tr. at 15. Accordingly, we reverse this part of the disallowance. Our decision does not, however, preclude CMS from issuing a new determination disallowing these costs on a basis other than the one originally articulated in this case, should CMS and/or the OIG review the underlying documentation and identify inadequacies.

II. CMS agreed to accept time study documentation for two disputed expenditures for which the OIG found no supporting documentation, but a third expenditure remains unsupported.

The OIG recommended disallowing gross expenditures of \$1,238,050 on the ground that the school districts did not provide supporting documentation. TX Ex. 2, at 6-7. Texas disputed the disallowance of all or part of eight expenditure items totalling \$83,974. See TX Reply Br. at 7-8; TX Ex. 27, Tabs A and B. CMS agreed that five of the expenditure items were allowable. CMS Reply to Order at 6. We discuss each of the remaining items below.

³ The federal agency may raise new grounds for a disallowance after a disallowance letter is issued as long as the appellant is afforded an opportunity to respond. See, e.g., West Virginia Dept. of Health and Human Resources, DAB No. 2017 (2006).

A. CMS agreed to accept time study documentation as sufficient to support the challenged \$12,631 expenditure by Alief Independent School District.

This expenditure involved salary costs for an individual identified as Ms. Lupin. According to Texas, Ms. Lupin was a diagnostician but her salary costs were mistakenly included in the line item for school psychologists on the SPMP Quarterly Summary Schedule. TX Reply Br. at 8, citing TX Ex. 27, Tab C. Texas argues that her salary costs were properly included in its claim based on documentation from the time study showing that more than 25% of diagnosticians' time was spent on Medicaid administrative activities. TX Reply to CMS Response to Order, attachment at 3. Texas implies that the percentage of Ms. Lupin's salary costs that were allocable to Medicaid administrative activities was at least as high as that used for psychologists' costs. In its response to the Board's Order, CMS acknowledged that Ms. Lupin was a diagnostician but argued that "[a]s such she should have been claimed under SPMP." CMS Response to Order at 7, n.2. Even if Ms. Lupin qualified as SPMP, we see no reason why part of her salary costs could not be allocated to Medicaid administrative activities based on the time study results since both SPMP and non-SPMP were included in the time study and expected to perform some Medicaid administrative activities. CMS ultimately stated that the time study documentation described by Texas "would probably be acceptable" to document the expenditure if this documentation "was in the format that they have all the activity reports in[.]" Tr. at 18-19. CMS did not allege, and the record does not identify any basis to suggest, that the activity reports in the time study documentation for Ms. Lupin were not in the same format as the other activity reports. In addition, CMS identified no other basis for questioning the time study results used to allocate Ms. Lupin's salary costs to Medicaid administrative activities. Accordingly, we reverse the disallowance with respect to the Alief Independent School District expenditure.

B. CMS agreed to accept time study documentation as supporting the \$31,113 expenditure by New Boston Independent School District.

Texas argues that this expenditure represented salary costs for an individual that are supported by documentation from the time study showing the percentage of time spent on administrative activities by individuals in the job category in question. TX Reply to CMS Response to Order, attachment at 3. Neither the name of the individual nor the job category are identified in the record. However, CMS stated at the oral proceeding that it took

the same position with respect to this expenditure and the Alief Independent School District expenditure. Tr. at 19-20. Accordingly, we reverse the disallowance with respect to this expenditure.

C. We uphold the disallowance of the \$25,650 expenditure by Lufkin Independent School District.

Texas argues that this expenditure was properly included in its claim because there is supporting documentation in the form of a receipt for the purchase. TX Reply Br. at 7-8, citing TX Ex. 27, Tab I. The cited exhibit includes a requisition and an invoice (dated 8/1/00 and 8/16/00, respectively) for an item described as "Stage B Read 180" purchased from "Scholastic Read 180" (or "Scholastic Publishers") at a cost of \$25,000 plus \$650 shipping. CMS takes the position that "[i]t is impossible to tell from the receipt what the item . . . represents" and that the expenditure is therefore unallowable because it cannot be determined how and to what extent, if any, the expenditure is allocable to Medicaid. CMS Response to Order, at 8. Texas asserts, however, that "gross expenditures in the claim calculation do not need to be specifically related to Medicaid administration in order to be included in the total costs" since under its claiming methodology "total costs are allocated by the time study results and therefore only the percentage allocable to Medicaid administration are included for reimbursement." TX Reply to CMS Response to Order, attachment at 4, citing TX Ex. 9, Tab F. Texas asserts specifically that the time study allocates "not only salary and benefits but also materials, supplies, travel and other operating costs." Tr. at 54.

Texas's argument is not persuasive. Under Texas's claiming methodology, a school district reports "gross expenditures associated with all staff eligible for reimbursement," i.e., those staff on the personnel rosters developed by the school district. TX Ex. 9, Tab F, 1st page (emphasis added); see also TX Ex. 12, at 20; Tr. at 53. The reportable expenditures are comprised of "direct expenditures," i.e., salaries, benefits, travel and training, for the individuals on the personnel rosters and their direct support staff, and "other operating expenditures directly related to staff participating in the timestudy population, as well as the related direct support[.]" Other operating expenditures that are "not attributable to a specific position in the financial accounting system" are not allocated using the time study results but are instead allocated using "a 'head count' or percentage based methodology." TX Ex. 12, at 20-21; TX Ex. 9, Tab G, at 1st page.

Texas has not alleged, much less shown, that its purchase of "Stage B Read 180" was directly related to any particular individual(s). Thus, assuming that "Stage B Read 180" could be considered an operating expenditure, it was not properly included in the gross expenditures that were allocated using the time study results. Moreover, since the vendor was an academic publishing house, it is likely that the item purchased was educational material, not an operating expenditure. Accordingly, we uphold the disallowance with respect to this expenditure.

III. CMS accepted documentation proffered to show that expenditures for personnel whom the OIG found were funded 100% by other federal programs were removed from the disputed claims.

The OIG recommended disallowing gross expenditures of \$608,734 that it determined were paid for by federal programs other than Medicaid. TX Ex. 2, at 9. Texas does not dispute that it may not claim Medicaid funding for expenditures for which it was reimbursed by another federal program, but nevertheless disputes parts of the disallowance relating to five of the school districts for which there were disallowed claims.⁴ According to Texas, most of the disputed amount represents the expenditures for personnel costs remaining after revenues from other federal programs had already been subtracted. TX Br. at 27; TX Reply Br. at 8-10; TX Reply to CMS Response to Order, attachment at 4-5; TX Ex. 28, Tab A, 3rd and 4th pages. Texas cites to quarterly summary schedules for each of the school districts, at Tabs B and C of its Exhibit 28, as showing that federal revenues were subtracted from provider salaries and related costs.

At the oral proceeding, CMS acknowledged that the quarterly summary schedules show that federal revenues were subtracted from provider salaries and related costs but questioned whether the school districts might nevertheless have claimed the salaries and related costs without subtracting federal revenues. In particular, CMS questioned whether the amount of salaries and related costs transferred from the quarterly summary schedules to the Quarterly Financial Certification forms (on which the claims were based) might have been the amounts before offset of federal revenues. Tr. at 25-27. In response, Texas pointed out that its

⁴ Texas identified the total amount in dispute for these five school districts as \$324,195 in its initial brief and as \$325,588 in its reply brief. TX Br. at 27; TX Reply Br. at 8. The total of the disputed expenditures identified in Texas Exhibit 28, Tab A, is significantly more than the latter amount. We leave it to the parties to resolve these discrepancies.

pre-printed certification form includes separate lines for the total expenditures and the federal revenues from the summary schedules. Tr. at 28-29, citing TX Ex. 28, Tab C, 1st page (K.9.3). CMS did not raise any further question about this documentation. Thus, it is clear that Texas claimed only the amounts on the summary schedules from which the funds received from other federal programs had been subtracted.

Texas also disputes the disallowance of \$822 claimed by Dripping Springs Independent School District for the salary and benefits of a secretary who supported a certified occupational therapy assistant and a speech pathologist. Texas states that its expenditures for the two professional employees, who were funded by federal programs other than Medicaid, should have been and were in fact backed out of the claims; however, Texas argues that there was no basis for an offset of its expenditures for the secretary since she was not funded by other federal programs. TX Reply Br. at 9-10; TX Ex. 28, Tab A, 3rd page. CMS did not claim that the secretary was funded by other federal programs or give any other reason why an offset would be required.

Accordingly, we reverse the disallowance with respect to all of the disputed expenditures in this category.

IV. CMS conceded that contractors could perform Medicaid administrative activities and properly participate in the time study but raised new concerns.

The OIG recommended disallowing gross expenditures of \$461,039 representing "all costs associated with contract providers" on the ground that they were contracted to provide only direct school-based services, not administrative activities. TX Ex. 2, at 10. CMS accepted this recommendation and disallowed all contractor costs without regard to the time study results used to allocate a percentage of the costs of contractors in the included job categories to reimbursable Medicaid administrative activities.

Texas challenges the total disallowance. Texas argues that "CMS has no statutory or regulatory authority to exclude an entire class of persons - contractors - simply because they are not permanent employees" and that the use of contractors to perform administrative activities "represents a sound business decision." TX Br. at 26; TX Response to Order, Question #5, 1st page. Texas asserts that, like school district employees, contractors may engage in Medicaid administrative activities such as "facilitating access to Medicaid, performing outreach activities, coordinating referrals and monitoring, program planning, and

developing interagency coordination.” TX Response to Order, Question #6. According to Texas, nothing precludes those contractors who are hired in job categories that provide the same type of direct services provided by school employees from also participating in such Medicaid administrative activities as an incidental part of their work. In addition, Texas states that some contractors who perform Medicaid administrative activities provide no direct services at all. Id.; TX Response to Order, Question #6, 1st page. Texas also points to an analysis of time study results it prepared to respond to concerns that the percentages of Medicaid administrative activities actually found in the various job categories might reflect only those staff members who were directly employed by the schools. The analysis, which compared contractors and employees as classes, documented that for the year as a whole, contractors overall spent 12.21% of their time on Medicaid administrative activities, which exceeded the percentage of time spent by employees on such activities. TX Br. at 26; TX Reply Br. at 12, citing TX Ex. 26, Tab A.

As indicated above, time study participants were selected from personnel rosters of all individuals in particular job categories identified as likely to engage in a significant amount of Medicaid administrative activities, regardless of whether the individuals were employees or contractors. CMS does not dispute that it approved this methodology without raising any question about whether contractors should be subject to any different criteria. Nor does CMS question Texas’s analysis of the time study results which showed that, overall, contractors participating in the time study reported a significant percentage of their time spent on Medicaid administrative activities. Moreover, CMS acknowledges that contractors may in fact perform any activities performed by employees and that use of contractors in lieu of employees may indeed make economic sense. Tr. at 30-31, 40. CMS ultimately conceded before us that there was no basis for categorically excluding all contractors’ expenditures from the expenditures allocated using time study results. Based on CMS’s effective withdrawal of its basis for disallowing the total costs claimed for contractors’ time spent on Medicaid administrative activities as allocated by the approved time study, we find that the disallowance as taken is unsupported.

CMS nevertheless suggests that some disallowance may be justified on other grounds. Two concerns which CMS raised during briefing on the appeal were whether some time coded by contractors as Medicaid administrative activities might actually represent indirect services (e.g., paperwork or clerical activities related to the provision of direct services and reimbursed as part of the direct services rates) and whether the contractors who did report

Medicaid administrative activities actually had contracts that permitted reimbursement for such activities.⁵

As to the first concern articulated by CMS, CMS takes the position that Texas might be making duplicate claims for indirect services that were already properly claimed at the FMAP rate as part of direct services. CMS Response to Order at 10; Tr. at 45.

CMS also suggests that duplicate claims could occur if the separate methodology used to claim direct services already reimbursed 100% of contractors' time. Tr. at 41-42. Texas argues, however, that its time study methodology prevented any overlap between claims for Medicaid administrative activities and claims for direct services. Texas points out that both contractors and employees participating in the time study used an activity code to report their direct and indirect service activities ("Activity Code 13") that was different from the activity codes used for Medicaid administrative activities (such as codes 3 and 4). Activity Code 13 was a non-reimbursable code in the time study, meaning that no claim for Medicaid administrative activities was made based on the time study results for this code. TX Response to Order, Question #5; Tr. at 43.

⁵ During the oral proceeding, CMS raised for the first time a question about whether, under the cost principles in Office of Management and Budget Circular A-87, the rates paid to contractors were "reasonable" for the performance of Medicaid administrative activities if the contractors were paid at the rate for direct services. Tr. at 45. It is unclear why CMS would raise this question only as to contractors since the time study methodology clearly anticipates that both salaried employees and contractors might perform Medicaid administrative activities. In addition, CMS recognized that Medicaid administrative activities may be performed by skilled medical professionals such as nurses and physical therapists. TX Ex. 3, at 39. We also note that, even if the rates paid to contractors exceeded the rates paid to employees, it may still have been more economical to hire contractors than employees when factors such as the cost of employee benefits are taken into account. Since Texas did not have adequate notice that CMS was raising a question as to the reasonableness of amounts claimed for contractors' Medicaid administrative activities and the record does not provide any basis for us to resolve it, we do not consider it further here. However, as indicated below, CMS is not precluded from revisiting the question in any future review of the claims.

While it is conceivable that individual participants might incorrectly code some activities, CMS did not point to any evidence indicating that time study participants did not use Activity Code 13 as intended.⁶ Nor did CMS explain why contractors but not employees would have incorrectly coded their time. In addition, CMS did not dispute Texas's allegation that some contractors provided no direct services and hence would not have had indirect service activities related to direct service provision. Moreover, CMS presumably would not have approved the time study methodology unless it was satisfied that the methodology adequately distinguished between Medicaid administrative activities and indirect services. We see no reason to require Texas to somehow prove that there was no misclassification of administrative activities based on CMS's suspicion of a problem that was not specifically identified by the OIG and is not suggested by any evidence in the record.

CMS's further concern was that the time study results should not be applied to expenditures for any contractor who did not have a contract covering Medicaid administrative activities, even if they were included in a job category that had been included in the time study, since "the contract rules the relationship." Tr. at 44-45, 47-48. Texas responds that it is not aware of any requirement that a contract specify that the contractor will engage in Medicaid administrative activities in order for the state to make a claim for such activities. *Id.* at 48-49. Texas notes that the approved time study methodology included both employees and contractors in the identified job categories. Texas also maintains that the contracts of some of the time study participants are broad enough to cover Medicaid administrative activities as well as direct services even though they do not refer to the former explicitly. Tr. at 35, 50-51, citing TX Ex. 26, Tab B, at L11.5 and I11.7.

CMS only articulated this concern at the oral proceeding and the parties did not develop an adequate record in briefing or evidence to allow us to determine whether a disallowance of some or all of the contractors' costs is warranted on this basis. There are only a small number of contracts in the record, which were apparently those that happened to be included in the OIG workpapers. Texas provided an unchallenged analysis of the time study results showing that overall, across all included job

⁶ Before submitting Medicaid administrative claims, Texas corrected for coding errors identified in a quarterly audit of claims performed by Texas's inspector general. TX Ex. 9, at 18. Thus, it is unlikely that major coding errors went undetected.

categories, contractors spent at least as high a percentage of their time on Medicaid administrative activities as did employees. In addition, CMS did not state what contractual provisions it would view as necessary to authorize a contractor whose position was included in the time study to perform administrative duties. The record does not, however, include any review of the scope of work of contracts for those contractors who were included in the Medicaid administrative activities claims resulting from the time study.

Accordingly, we conclude that the disallowance is not warranted on the original basis, which CMS has withdrawn, or based on CMS's concerns that there may have been duplicate claims. We do not have an adequate record before us to resolve the concerns raised by CMS late in the process about the content of contracts of contractors included in the time study. We therefore reverse the pending disallowance but remand to CMS to permit it to determine whether further review may be appropriate and, if so, whether Texas can provide acceptable documentation regarding the contractual provisions under which contractors whose positions were included in the time study could perform Medicaid administrative activities. If CMS determines that some contractors' costs were improperly included in the claims, CMS may reissue a disallowance reflecting that determination. In the event such a disallowance is issued, Texas may then appeal, but we remind the parties that, if CMS finds the documentation inadequate, the burden will be on Texas as grantee to show that it can adequately document all costs.

V. CMS withdrew the disallowance as to one expenditure that the OIG considered overstated and did not adequately explain the basis for disallowing another expenditure, but did support its disallowance of travel and benefits costs.

The OIG recommended disallowing gross expenditures of \$427,829 on the ground that school districts overstated their gross expenditures by this amount due to clerical errors. TX Ex. 2, page 10 of audit report. Texas disputed part of the disallowance, including travel costs for nine school districts totalling \$68,475. TX Br. at 28; TX Ex. 29, Tab A, 3rd and 4th pages. Texas contends that the travel costs were properly allocated "across all employees in a job category" pursuant to its approved claiming methodology. TX Br. at 28; see also TX Reply Br. at 10. CMS maintains that the travel costs were properly disallowed because "there is no documentation to establish that the travel was required or necessary to perform the Medicaid administrative activities." CMS Response to Order at 12.

We conclude that the travel costs were properly disallowed. As we noted in the discussion of the expenditure by Lufkin County Independent School District, Texas's claiming methodology uses time study results to allocate certain costs, including travel costs, only if the expenditures were made for individuals on the personnel rosters of potential time study participants or their direct support staff. Texas has not alleged, much less shown, that the disallowed travel costs were for any of these individuals.

Texas also argues that CMS improperly disallowed \$1,247 claimed for Mullin Independent School District on the ground that the OIG "miscalculated benefits," \$134 claimed for Robert Lee Independent School District on the ground that the basis for the disallowance was "unclear & unsupported," and \$1,994 in salary and benefits costs claimed for Medina Valley Independent School District on the ground that the OIG "used roster from wrong quarter so all salary and benefits info was incorrect." TX Ex. 29, 3rd page. TX Ex. 29, 1st page; see also TX Br. at 28. CMS withdrew the disallowance as to Medina Valley Independent School District. CMS Br. at 12. CMS maintains that the disallowances with respect to the two remaining school districts should stand "because there is no supporting documentation." CMS Response to Order at 12. We uphold the disallowance with respect to Mullin Independent School District since Texas failed to provide any documentation to support its allegation that benefits were miscalculated. We reverse the disallowance with respect to Robert E. Lee Independent School District since CMS failed to explain the basis for the disallowance in response to Texas's contention that the basis was "unclear & unsupported."

Conclusion

Based on the foregoing analysis, we dispose of the disputed costs as follows:

- We reverse the disallowance with respect to salaries and related costs for certain school personnel whom the OIG found did not perform Medicaid administrative activities since CMS in effect withdrew the disallowance.
- We reverse the disallowance with respect to the expenditures by Alief Independent School District (ISD) and New Boston ISD since CMS in effect withdrew the disallowance.
- We uphold the disallowance with respect to the expenditure by Lufkin ISD.

- We reverse the disallowance with respect to expenditures for personnel whom the OIG found were funded 100% by other federal programs since CMS in effect withdrew the disallowance.
- We reverse the disallowance with respect to expenditures for contractors since CMS no longer relies on the original basis for this disallowance, but we remand to give CMS the opportunity to conduct a further review and determine whether to reissue the disallowance on other grounds.
- We uphold the disallowance with respect to travel expenditures.
- We uphold the disallowance with respect to the expenditure by Mullin ISD.
- We reverse the disallowance with respect to the expenditure by Robert Lee ISD since CMS did not provide an adequate explanation of the basis for the disallowance.

In addition, we uphold the disallowance of the amounts not disputed by Texas.

/S/
Sheila Ann Hegy

/S/
Constance B. Tobias

/S/
Leslie A. Sussan
Presiding Board Member