CALIFORNIA STATE AUDITOR
Elaine M. Howle, State Auditor
FACT SHEET

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The California State Auditor released the following report today:

Department of Public Health

It Reported Inaccurate Financial Information and Can Likely Increase Revenues for the State and Federal Health Facilities Citation Penalties Accounts

BACKGROUND

More than 2,500 long-term health care facilities (facilities) are licensed and monitored by the Department of Public Health (Public Health)—previously known as the California Department of Health Services. In addition to ensuring that these facilities comply with state requirements, Public Health also ensures that facilities accepting Medicare and Medicaid payments meet federal requirements through a cooperative agreement with the Centers for Medicare and Medicaid Services (CMS)—an agency within the U.S. Department of Health and Human Services. Public Health may impose monetary penalties, known as a Civil Money Penalty, on facilities to address noncompliance it finds during an inspection or complaint investigation of a facility. Although Public Health determines whether facilities comply with applicable state and federal requirements, it generally issues and collects monetary penalties resulting from noncompliance with state requirements only—CMS is responsible for assessing and collecting monetary penalties resulting from noncompliance with federal requirements.

KEY FINDINGS

During our review of the State and Federal Health Facilities Citation Penalties accounts (state and federal accounts) and Public Health's management of those accounts, we noted that Public Health:

- Excluded certain financial information when preparing the federal account's fund condition statements for at least five years causing an overstatement of $9.9 million as of June 30, 2009.
- Made significant prior-year adjustments attempting to resolve inaccuracies, yet the federal account fund balance will be near insolvency by June 30, 2011—the projected balance is expected to decline to roughly $249,000.
- Inappropriately reduced the monetary penalties for 135 citations, resulting in a loss of approximately $70,000 in revenue for the state account due to a calculation its automated system uses.
- May have created an incentive for facilities to appeal citations due to delays in processing those appeals and its history of significantly reducing original penalties imposed.
    - ✓ As of February 2010 more than 600 citations were backlogged awaiting citation review conferences—some were contested roughly eight years ago; other types of hearings take precedence over citation review conferences.
    - ✓ As of March 15, 2010, nearly $9 million in monetary penalties were still under appeal, and for 243 of 313 appealed citations, Public Health granted reductions amounting to $2.7 million. In one case, Public Health reduced the original monetary penalty from $100,000 to just $1,000.
- Could have generated nearly $95,000 in interest from nearly $6.7 million in monetary penalties under appeal if it could establish an interest-bearing account in which it would deposit appealed monetary penalties at the time the citations are contested.
- Could increase revenue—some monetary penalties have not been adjusted for inflation for as many as 25 years—nearly $3.3 million more than it actually collected if state law had adjusted monetary penalties to reflect the Consumer Price Index. Also, it has not surveyed the majority of facilities to ensure their compliance with state requirements.

KEY RECOMMENDATIONS

We made several recommendations to the Legislature and Public Health to increase revenue for both the state and federal accounts through changes to state law and by ensuring Public Health adheres to the current law. Such changes to state law include periodically adjusting monetary penalties to reflect the rate of inflation and amending the citation review conference process to reflect the federal process more closely; and to require facilities that contest their monetary penalties to pay the penalties upon their appeal and allow Public Health to deposit penalties in an interest-bearing account. Further, other recommendations include making changes to its policies and procedures to ensure funds are not overstated, and conducting all state surveys of facilities every two years, as required by law.