

California State Auditor

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

Department of Health Services:

*Use of Its Port of Entry Fraud Detection
Programs Is No Longer Justified*



April 1999
98026

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April 5, 1999

98026

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

Dear Governor and Legislative Leaders:

As requested by Chapter 324, Statutes of 1998, the Bureau of State Audits presents its audit report concerning the Department of Health Services' (department) operation of its port of entry Medi-Cal fraud detection programs, Port of Entry Detection (PED) and California Airport Residency Review (CARR).

This report concludes that the department's operation of the PED and CARR programs is no longer justified. Although the department recently modified its procedures for the programs in response to lawsuits and federal government concerns, the modifications significantly diminished the cost-effectiveness of the PED and CARR programs. Consequently, the department is no longer recovering enough payments to justify its investment in the programs. Thus, the State and the Medi-Cal program would be better served if the department redirected its investment to other fraud detection programs that more effectively prevent or recover fraudulent payments.

Respectfully submitted,

A handwritten signature in cursive script, reading "Kurt R. Sjoberg".

KURT R. SJOBERG
State Auditor

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SUMMARY

Audit Highlights . . .

Our review of the Department of Health Services' (department) port of entry fraud detection programs discloses that:

- Because of operational and administrative deficiencies, continuation of the programs is no longer justified.*
 - The cost-effectiveness of the programs diminished after the department modified its operational procedures.*
 - The State and the Medi-Cal program would be better served if the department redirected its funds to other fraud detection programs.*
-

RESULTS IN BRIEF

The Department of Health Services' (department) operation of its port of entry Medi-Cal fraud detection programs—Port of Entry Detection (PED) and California Airport Residency Review (CARR)—is no longer justified. In response to lawsuits filed against the department and to concerns expressed by the U.S. Department of Health and Human Services (HHS) about the operation of the programs, the department recently modified its procedures for the port of entry programs. However, the modifications significantly diminished the effectiveness of the PED and CARR programs. Consequently, the department is no longer recovering enough fraudulent Medi-Cal payments to justify its investment of funds to staff and support these programs. If the department redirected its funds to other fraud detection programs that more effectively prevent or recover fraudulent payments, the State and the Medi-Cal program would be better served.

As part of its efforts to prevent fraud among Medi-Cal beneficiaries, the department has established various fraud detection programs. The port of entry fraud detection programs are intended to identify persons entering this country who fraudulently claim California residency in order to receive Medi-Cal benefits. The programs target people who enter the United States from Mexico and through the Los Angeles and San Francisco International airports. The department measures the success of the PED and CARR programs in two ways: by the funds repaid to the Medi-Cal program by past beneficiaries who are found to be ineligible, and by the future costs the Medi-Cal program will not incur for such persons, or costs avoided. The department compares these returns to the costs associated with the PED and CARR programs to determine the return on its investment.

The port of entry fraud detection programs ran into problems when plaintiffs in three separate lawsuits challenged the department on how it detained, interviewed, and investigated those persons entering the United States whom it suspected of residency fraud. In addition, the federal Health Care Financing Administration (HCFA), a division within the HHS, communicated its own concerns about the way the department operated the programs. The department responded by modifying its

operation of the PED and CARR programs beginning in May 1998. For example, it no longer seeks repayment from people it suspects of residency fraud until it completes a thorough investigation of their Medi-Cal eligibility.

Despite modifications, ongoing operations of the PED and CARR programs continue to raise concerns over legal vulnerabilities, program design, and administrative oversight. For example, the department discloses confidential information about public assistance benefits to the federal Immigration and Naturalization Service (INS), although such disclosure is not warranted. HHS, which oversees Medicaid programs such as Medi-Cal, shares our concern over the department's disclosure. In addition, when questioned by PED investigators, illegal residents may misrepresent themselves as residing outside of California in the hope of improving their chances to legally immigrate. Thus, PED interviews do not always provide reliable information and should not be used to solely determine beneficiary status.

Furthermore, since the department modified its operations of the programs, they are not as effective, nor do they produce as favorable a return on the department's investment as in prior years. For example, the CARR program averaged only 89 referrals per month in the 8 months following the changes in April 1998. In the 22-month period prior to the changes, it averaged 234 referrals per month. A similar decline is evident in the department's return on its investment in the programs. In fiscal year 1996-97, the department reported that these programs returned about \$6 for every \$1 invested in staffing and supporting the programs. However, during the 18 months between July 1, 1997, and December 31, 1998, the return on investment for the PED program dropped to \$2.31 for every \$1 invested while the return for the CARR program plummeted to 44 cents for every \$1 invested. For this reason, the Medi-Cal program would be better served if the department redirected its investment in these two programs to other fraud detection programs, which can return as much as \$11 per \$1 invested.

RECOMMENDATIONS

Because of the department's poor administration of its port of entry fraud detection programs, and since the programs no longer provide a favorable return on the State's investment, the

department should discontinue them. The department should then redirect its investment to other fraud detection programs that produce more favorable returns.

Until the department can discontinue its operation of the port of entry fraud detection programs, it should prohibit the disclosure to INS of confidential information regarding public assistance benefits unless it gains assurance that such disclosures meet federal requirements.

AGENCY COMMENTS

The Health and Human Services Agency (agency) agreed that the cost-effectiveness of the PED and CARR programs has declined and agreed that the staff and resources associated with the programs should be redirected to other fraud detection programs. Accordingly, the agency stated that it would cease the PED and CARR operations effective April 1, 1999. In addition, the agency suggested several wording changes to the draft report. We have accepted most of the agency's suggestions in developing our final report. ■

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INTRODUCTION

BACKGROUND

The Department of Health Services (department) directs the Medi-Cal program in conjunction with county welfare offices that administer it at the local level.

Authorized in 1965 under Title XIX of the Social Security Act, the State's Medi-Cal program furnishes health care services to the financially needy. To be eligible for Medi-Cal benefits and other types of public assistance, applicants must meet requirements for income and property holdings. They must also be residents of California. If they are not, but they receive benefits anyway, they commit residency fraud.

The investigations branch within the department's audits and investigations division has developed several programs to investigate allegations of fraud and abuse by Medi-Cal beneficiaries, including two programs to identify and prevent residency fraud. These fraud detection programs—Port of Entry Detection (PED) and California Airport Residency Review (CARR)—are known as the port of entry programs.

Investigators in both programs work at ports of entry to the United States, which the federal Immigration and Naturalization Service (INS) operates. INS is responsible for detecting and preventing illegal immigration, and for processing people for admission into the country. The department stations investigators at ports of entry along the Mexican border and at the Los Angeles International (LAX) and San Francisco International (SFO) airports. PED and CARR investigators focus on preventing residency fraud among foreigners entering California who have previously received, or currently receive, public assistance such as Medi-Cal. A profile of the individuals the port of entry programs investigate appears in Appendix A.

The department's investigators work with various federal, state, and county employees to achieve program goals. For example, although Los Angeles County is not a specified partner in either the PED or CARR programs, about 40 percent of the cases generated by the programs are passed on to Los Angeles County eligibility staff for further investigation. Since these staff make

the final determination of eligibility, their role is necessary to reach program goals. Following are descriptions of the PED and CARR programs.

The PED Program

The PED program operates at ports of entry along the United States and Mexican border. It is a cooperative effort between the department, INS, the Department of Social Services (DSS), and San Diego and Imperial counties. The department unofficially began this program in the late 1980s after INS found that foreigners were entering the country with Medi-Cal benefit documents. INS notified the department, which then provided INS inspectors information from its automated Medi-Cal Eligibility Data System (MEDS) to determine whether individuals entering at the ports were validly receiving public assistance.

In 1991, the department's investigators began making sporadic visits to the San Ysidro port of entry in California to identify individuals suspected of illegally receiving Medi-Cal benefits. After the investigators successfully identified a number of people illegally receiving benefits, the department placed a full-time investigator at the port in August 1993. The program officially started in November 1994 when the department allocated funding for it in the fiscal year 1994-95 budget. Currently, the program consists of a supervising investigator, support staff, and eight investigators who operate at three INS ports of entry along the border—San Ysidro, Tecate, and Calexico. In addition, the DSS funds county eligibility staff, who are also stationed at the ports, and project coordinators in San Diego and Imperial counties. The eligibility staff review the MEDS to determine previous or current eligibility for Medi-Cal or other public assistance while the project coordinators supervise the eligibility staff, maintain program data, and report to the department and DSS on the program's performance.

The CARR Program

The CARR program operates at ports of entry at LAX and SFO airports. The inception of this program, also a cooperative effort between the department and INS, was similar to the PED program's beginnings. In late 1993, INS inspectors at LAX expressed concerns about foreign visitors holding Medi-Cal and other public assistance documents. A department investigator began following up on the INS concerns and in 1994 was assigned to work on these cases full time. The department

expanded its operations to SFO in early 1996. Funding for three limited-term investigators began in fiscal year 1995-96 and continues through fiscal year 1998-99. Currently, two investigators—one at LAX and one at SFO—staff the program.

SCOPE AND METHODOLOGY

Chapter 324, Statutes of 1998, required the Bureau of State Audits to evaluate the department's port of entry programs and report to the Legislature by April 1, 1999. To review the protocols, procedures, and methods the department's investigators use to identify and determine potential beneficiary fraud in the Medi-Cal program, we reviewed state laws that govern the Medi-Cal program and federal laws that govern immigration issues relevant to the port of entry programs.

In addition, we researched the department's policies and procedures for the PED and CARR programs and for determining the eligibility of Medi-Cal beneficiaries. We reviewed correspondence between the department and the U.S. Department of Health and Human Services and the federal Health Care Financing Administration, as well as a memorandum of agreement between the department and the INS and memoranda of agreement between the department, San Diego, and Imperial counties.

We also reviewed lawsuits filed against the department related to its operation of the PED and CARR programs. Finally, we interviewed opponents of the port of entry programs for their perspective of the policies, procedures, and methods used by the department in the operation of the programs.

To develop a demographic profile of individuals the programs questioned or investigated, we analyzed "match" and "no match" logs the department maintains that identify whether or not the MEDS-indicated individuals are on public assistance. Because of the limited information included in the no match logs, we were unable to complete a demographic profile of individuals questioned but not investigated by the programs. For those individuals where the investigators indicated a match, we reviewed more than 440 case files investigators prepared. We then identified demographic profiles for people the PED and CARR programs investigated. To compare the profiles we identified to those of people eligible for Medi-Cal benefits, we reviewed the department's demographic data.

To measure the cost-benefit ratio of the programs, we determined the components the department used in its calculations, including a summary of repayments collected and any costs avoided. We compared the cost-benefit ratios of the port of entry programs with those of the other fraud detection programs. In addition, for fiscal years 1995-96 through 1997-98, we calculated the actual personnel costs for investigations branch staff operating the programs. We also identified other costs of the PED program that the department did not include in its calculations. Further, we analyzed data on costs avoided for fiscal years 1995-96 through 1997-98 on the number of active cases where individuals were still using Medi-Cal or other forms of public assistance when the department investigated them. We then calculated the number of active cases subsequently terminated as a result of the programs for the same three-year period. Using the revised costs and benefits we identified for the programs, we recalculated the cost-benefit ratio of both programs for the three-year period.

To analyze the overall effectiveness of the programs at identifying fraud, we assessed the impact of a number of recent changes in the policies and procedures that affect the programs' effectiveness. For the six-month period from July through December 1998, we reviewed the number of individuals referred from the INS to both programs for possible investigation, the number with past or current use of Medi-Cal or other public assistance, and the number of active cases identified by the department. To determine the benefits of the programs for the six-month period, we calculated the rate at which individuals had their Medi-Cal accounts terminated for the active cases in the PED and CARR programs respectively for fiscal years 1995-96 through 1997-98. Using these rates, we calculated the costs avoided and the cost-benefit ratio for the six-month period from July 1998 through December 1998. ■

CHAPTER 1

The Department's Lack of Planning Led to Poorly Administered Port of Entry Programs, Abuses, and Lawsuits

CHAPTER SUMMARY

The Department of Health Services (department) inadequately planned its port of entry fraud detection programs—Port of Entry Detection (PED) and California Airport Residency Review (CARR)—before launching them. It did not fully research essential legal aspects of the programs before it adopted guidelines and protocols. As a result, the department opened itself up to lawsuits charging that the department's operation of the port of entry programs had led to abuses.

Between March 1997 and October 1998, the department sought to discontinue or deny Medi-Cal benefits by changing eligibility procedures without requesting a corresponding change in state regulations. The department also routinely demanded repayment of Medi-Cal benefits without properly determining whether recipients were indeed ineligible. Finally, the department's investigators acted beyond the scope of their employment by trying to influence the federal Immigration and Naturalization Service's (INS) decisions on whether to admit immigrants and visitors at ports of entry.

In response to lawsuits and to federal agency guidance, the department modified its operations of the PED and CARR programs. However, despite improvements to the PED and CARR programs since 1998, we have concerns about some continuing aspects of their operations. For example, PED program investigators share confidential information about beneficiaries of Medi-Cal and other public assistance programs with INS even though the department has not met the requirements for doing so. In addition, port of entry program interviews may produce unreliable information and yet still are used as the basis to terminate a person's Medi-Cal benefits.

BACKGROUND

At California's ports of entry to the United States, INS uses profiles the department developed to refer subjects to PED and CARR fraud investigators. The investigators then search the Medi-Cal Eligibility Data System (MEDS) for evidence of the subject's past or present eligibility for public assistance. If they find such evidence, they interview the subject at the port of entry to elicit information about the subject's receipt of public assistance and create a case file. The investigators also ask the subject to declare a place of residence under penalty of perjury, and ask those still receiving public assistance to terminate their benefits. After the interview, the investigators bring the subject, and information about the subject's eligibility for public assistance, to INS. INS uses this information in determining whether to admit the subject into the United States.

Following the interview, port of entry program investigators forward case files for further investigation to either department field investigators, if the subject receives Medi-Cal benefits, or to county investigators, if the subject receives other types of public assistance. After the investigation, field investigators forward their findings and recommendation to county eligibility workers, who determine whether to discontinue the subject's eligibility for public assistance benefits. When the eligibility worker determines that the subject is ineligible, the county notifies the subject of the determination and of the subject's right to a fair hearing. A Department of Social Services (DSS) administrative law judge presides over the hearing. Appendix B provides a more detailed overview of the port of entry programs procedures.

THE DEPARTMENT'S ADMINISTRATION OF THE PROGRAMS LED TO ABUSES

In lawsuits filed against the department, plaintiffs identified abuses in the department's operation of the PED and CARR programs, as well as in its administration of the State's Medi-Cal program. One of the lawsuits asserted that, between 1997 and 1998, the department improperly changed eligibility procedures to discontinue or deny Medi-Cal benefits to eligible resident aliens. In addition, the department solicited and received repayment of Medi-Cal benefits without complying with state regulations for determining and collecting Medi-Cal overpayments. Furthermore, the department inappropriately

solicited these repayments in exchange for implied improvements in immigration status or in exchange for the release of immigration documents. Finally, the department's investigators attempted to influence INS decisions about whether to admit immigrants and visitors to the United States. We describe these abuses in the following sections.

The Department Improperly Discontinued and Denied Medi-Cal Benefits

The department sent a letter instructing county welfare agencies to discontinue benefits to beneficiaries possessing nonimmigrant documents.

In June 1997, a lawsuit charged that the department had not complied with state regulations in changing the procedures that determine eligibility for Medi-Cal. The plaintiffs in the lawsuit asserted that the department improperly discontinued and denied Medi-Cal benefits to many aliens, such as those investigated by the PED and CARR programs. In February 1997, the department had sent a letter instructing all county welfare directors, administrative officers, and Medi-Cal program specialists to automatically deny or discontinue Medi-Cal benefits to applicants and beneficiaries possessing non-immigrant documents. Nonimmigrant documents, such as border crossing cards, allow individuals short-term visits to the United States. To obtain such documents, individuals must affirm residency outside the country. Most of the individuals the PED and CARR programs investigated possessed nonimmigrant documents.

The department was aware prior to 1997 that individuals may possess nonimmigrant documentation and still be eligible for public assistance, if sufficient additional evidence indicated they were also residents of California. Federal statutes in 1986 extended Medicaid benefits for emergency medical assistance, including labor and delivery, to undocumented and non-immigrant alien residents. These individuals often possess nonimmigrant documentation but reside in California. Thus, the department's change in the eligibility regulations made such individuals automatically ineligible for Medi-Cal benefits in California, in spite of federal law.

In fact, by implementing its new policy, the department essentially modified Medi-Cal regulations that require county eligibility workers to consider all available evidence when determining an individual's eligibility for public assistance. By adopting this policy, the department increased its risk of denying benefits to some eligible California residents. The department also failed to comply with state requirements for

adopting new regulations. To properly adopt a regulation, the department must follow formal procedures, which include seeking public comment and forwarding the proposed regulation to the State's Office of Administrative Law for its review.

Moreover, under the aegis of the PED and CARR programs, the department also improperly discontinued and denied Medi-Cal benefits. For example, the department's investigators asked interviewees at the ports to fill out requests to terminate their Medi-Cal benefits without properly determining that the individuals were indeed ineligible. In addition, the department's investigators sometimes told individuals who indicated a willingness to repay benefits that they had to discontinue their benefits, and their children's benefits, before the department could calculate the amount of their repayment for the benefits received.

Investigators Improperly Solicited Repayment of Medi-Cal Benefits

From 1994 to 1998, port of entry program investigators solicited repayment of Medi-Cal benefits even though in some instances these benefits had been legitimately received. A special review the department's Medi-Cal eligibility branch completed in July 1997 described the practices the department's investigators followed between January and March 1996. According to this description, the department's investigators were not following proper procedures for seeking Medi-Cal repayments from ineligible beneficiaries. The investigators should have sought repayment only after either an administrative finding of overpayment or a fraud conviction.

The department's procedure for collecting an administrative overpayment requires county eligibility workers to first determine a period of ineligibility and then calculate the potential overpayment. A fraud conviction requires additional investigation and prosecution by a county district attorney. However, PED and CARR program investigators bypassed these procedures. Instead, they ordered detail reports showing the amount of claims Medi-Cal paid for services to individuals, summed these amounts, and sent letters that demanded payment for the total amount individuals received from Medi-Cal. These repayment letters also failed to inform recipients of their right to a state hearing, as state regulations require. Furthermore, in some of these instances, the department's investigators sought repayment at the ports of

Investigators sent repayment letters that failed to inform recipients of their right to a state hearing.

entry without properly establishing the recipient's ineligibility and without knowing the actual amount of benefits paid. In one case, a subject repaid \$3,751 to the department after receiving only \$2,428 in benefits.

When we asked the department why its investigators bypassed proper procedures, the chief of its investigations branch replied that the department relied on an individual's written statements regarding nonresidency in determining that an overpayment occurred. He also stated that, at the time it sought such repayments, the department believed that the subjects voluntarily repaid benefits; therefore, it was not necessary to notify them of their rights to a hearing.

In addition to bypassing these procedures, the department also solicited repayment of legitimately received Medi-Cal benefits in exchange for implied improvements in immigration status. Upon reviewing the minutes of 1996 meetings of the PED program, we found repeated discussion of the link between repayment and improvement in immigration status. In addition, investigators typically handed a form letter to most subjects during the interview at the ports suggesting aliens could "clear their names" with the State by repaying the department for past Medi-Cal benefits. In return for the repayment, this letter stated the department would provide a document that might be used to improve the subject's immigration status with INS. Further, the department established a process at its branch field offices that sought repayment from aliens referred from INS and U.S. State Department consular officers. Because these organizations are responsible for the immigration issues, this referral may have implied to the aliens that repayment would affect their immigration status.

Investigators sometimes led subjects to believe that repayment might improve their chances of admission to the United States.

According to a discussion we had with a CARR program investigator, investigators sometimes led subjects to believe that repayment, or an expressed willingness to repay, might improve their chances of admission to the United States. In addition, according to the minutes of meetings and correspondence we reviewed, investigators solicited repayment of Medi-Cal benefits in exchange for the release of passports INS held. Nevertheless, the department characterized repayments made under these circumstances as voluntary.

Furthermore, from the inception of the CARR program through November 1998, some of the department's investigators sent intimidating and inaccurate repayment letters. In these letters,

the investigators made unsubstantiated accusations of criminal violations and deceptive references to imprisonment. For example, one repayment letter a former investigator sent stated that a subject's receipt of Medi-Cal benefits constituted the commission of three felonies. The letter further noted that a conviction for such crimes called for commitment to a state prison. However, the investigator sent the letter before the department had properly determined either the subject's ineligibility or overpayment. On occasion, CARR program investigators also sent erroneous or confusing demands for repayment of Medi-Cal services. We reviewed one such letter, which demanded a repayment of over \$33,000 even though actual Medi-Cal payments totaled just \$3,200. Another letter requested a \$12,000 repayment for Medi-Cal services. It was followed two days later by a second letter requesting repayment of \$8,700 for the same services.

The Department's Investigators Attempted to Influence INS Operations

On several occasions between 1995 and 1998, the PED and CARR investigators acted beyond the scope of their employment by attempting to influence the decisions of INS inspectors at two ports of entry. During one meeting, the investigator then supervising the PED program confronted INS managers about INS inspectors' decisions to admit subjects to the country when the department's interviews had yielded evidence that the subjects had received public assistance. On another occasion, a former CARR investigator sent a letter to an INS port manager at LAX to persuade INS to exclude more CARR program subjects from the country.

In these instances, the department's investigators tried to persuade INS that past receipt of public assistance should be sufficient to allow INS inspectors to exclude individuals on the basis of the "public charge" provision of federal immigration law. INS determines a public charge as someone likely to become dependent on public assistance within five years of his or her admission to the country. The former CARR program investigator further claimed that the INS should afford serious consideration to the department's assessment of who is likely to become a public charge. Not only do such actions exceed the scope of the investigators' authority, they are not supported by immigration law and regulations. Such determinations must take into account many factors other than the past receipt of public benefits.

PED and CARR investigators also interviewed immigrants who were legal resident aliens of the United States. In 7 percent of the 443 cases we reviewed, the department's investigators interviewed legal permanent residents referred to them by INS inspectors even though such persons should not have been the focus of their investigations. This is because lawful permanent residents of California seemingly meet the residency requirement for public assistance; thus, referral of such persons for residency fraud investigation may not have been appropriate. One such interview at LAX in August 1997 resulted in a class action lawsuit against the department and INS.

While not routine, other instances illustrate the department overstepped its authority.

Other instances in which the department overstepped its authority, while not routine, further illustrate the department's tendency to encroach on INS responsibilities. For instance, in one of the lawsuits filed against the department, plaintiffs charged that, during an interview at LAX, a CARR program investigator improperly threatened a subject with deportation. In another instance, PED program investigators at the San Ysidro port of entry allowed a subject's immigration documents to be destroyed by a county eligibility technician during an interview. This occurred without INS approval or supervision.

Intervening in INS decision making or assuming the authority to make decisions about immigration status is well beyond the scope of employment for PED and CARR investigators. INS managers expressed their concern over the department's intrusion on more than one occasion.

When implementing the port of entry programs, the department correctly anticipated that its relationship with INS would require continuous attention, and its 1995 memorandum of agreement with INS called for creation of a working group to meet monthly to review policies and procedures. However, although the department's managers met sporadically with INS, the regular monthly meetings never occurred.

THE DEPARTMENT'S PED AND CARR PROGRAMS WERE NOT WELL PLANNED

The department's chief of the investigations branch has acknowledged that the department should have adopted better guidelines and protocols for operating the PED and CARR programs. Also, the department did not fully research essential operational and legal aspects of these programs before imple-

menting them. As a result, the courts, federal agencies, and the Legislature ultimately intervened to compel the department to change the way it operated these programs to ensure that the applicable state and federal laws were more closely followed.

The department was deficient in exploring the legality of certain aspects of these programs. For example, more than two years into the programs' operation, the department still had not researched the legal basis for its practice of soliciting repayment of Medi-Cal benefits by suggesting that repayment would improve a person's immigration status. The department did not pursue a legal opinion on this practice until February 1998, even though the United States Attorney for the San Diego District expressed concerns about its propriety as early as 1994. San Diego County officials raised similar concerns about the department's investigators' routine disclosure to INS of confidential public assistance information. Nevertheless, the department's attorneys did not research this matter until February 1998, nearly four years after the inception of the PED and CARR programs. We discuss the disclosure of confidential information more fully on page 19 of our report. The department should have explored such legal aspects before it began operation of the port of entry programs in 1994.

The department did not pursue the legality of some of its practices until 1998 even though concerns surfaced as early as 1994.

A special review by the department in 1997 yielded further evidence that these programs were not well planned. The review focused on the confusion between PED investigators and Los Angeles County eligibility staff over handling PED cases. The department contributed to this confusion because its written procedures did not describe how the eligibility workers were to proceed on these cases.

AFTER INTERVIEWEES SUED THE DEPARTMENT, IT MODIFIED THE PED AND CARR PROGRAMS

Beginning in 1998, the department changed its procedures for interviewing and investigating current and former Medi-Cal recipients entering the country, and for determining eligibility and seeking repayment from people it has investigated. The department also recently created the new position of complaint resolution officer to investigate any concerns raised regarding the PED and CARR programs or allegations of abuse by their investigators. Many of these changes are the result of the three lawsuits brought against the department on behalf of those

subjects investigators detained. The federal Health Care Financing Administration (HCFA) and the U.S. State Department also prompted the department to modify the programs.

A 1997 lawsuit objected to the department's demands for repayment of benefits.

As we discussed on page 12, the department's investigators sought repayment from Medi-Cal recipients they detained at ports of entry who appeared to be nonresidents who had thus improperly received benefits. However, in 1997, a lawsuit filed against the department objected to the department's letters demanding repayment of the benefits, as well as its failure to notify the letters' recipients of their right to an appeal.

In response to the lawsuit, the department acknowledged that the collection letters it issued were improper. It agreed to stop issuing such letters in May 1998 and to only seek repayment of Medi-Cal benefits after it determined the benefits were indeed illegally received. In addition, the department agreed to refund the repayments it had received since March 1996 in response to these collection letters. In January 1999, the department sent letters to those affected by this lawsuit. About 1,500 people had already repaid the department. In its letter, the department acknowledged that it had wrongfully accepted these payments and would refund these amounts. Persons due a refund have until September 30, 1999, to make claim. Thus far, about one-third have filed for a refund.

A second lawsuit challenged the department's letter of February 1997 that automatically discontinued or denied benefits to Medi-Cal applicants or beneficiaries who possessed nonimmigrant documents, which we discussed on page 11. The plaintiffs in this lawsuit argued that the department had not followed formal procedures for adopting a regulation, which include the necessary steps of seeking public comment on the new policy.

In response to the California Appellate Court's ruling in October 1998, the department agreed to repeal the letter and notify all those affected Medi-Cal applicants and beneficiaries that they were improperly denied benefits and have a right to reapply. The department issued a new letter in October 1998 directing county welfare directors to disregard instruction in its earlier letter when determining the residency of Medi-Cal applicants or beneficiaries. Currently, the department is working with counties to identify persons who were denied benefits as a result of its 1997 letter.

A resident alien asserted in a lawsuit that the department coerced her into canceling her children's benefits without properly determining their eligibility.

The department's operation of its CARR program has also been challenged. As described on page 15 of this report, the department's investigators detained at airports some resident aliens who had received Medi-Cal benefits. However, one detainee sued the department and INS, asserting that the department coerced her into canceling her children's Medi-Cal benefits without properly determining their eligibility, as well as demanding repayment of the benefits her children had received in the past. She further charged that the department's investigator threatened her with deportation. Even though the department was eventually dismissed as a defendant in this lawsuit, the department modified its operations of the CARR program at LAX. Currently, the department does not have access to INS inspection areas, as it did before the lawsuit. Thus, the department's investigators are no longer present at the airport on a day-to-day basis to interview aliens as they enter the country.

The Federal Government and the California Legislature Expressed Misgivings

Around the same time these lawsuits were being filed, federal government agencies also expressed misgivings about the proper treatment of aliens who have received public assistance, such as those investigated by the PED and CARR programs. In December 1997, HCFA expressed its concerns in a letter to state Medicaid directors. HCFA was particularly concerned about the improper release to INS of information about Medicaid recipients. INS often relied on this information when deciding whether to deny individuals entry into the United States. HCFA instructed departments that they were not authorized to release such Medicaid information to INS, the State Department, or immigration judges unless that information was pertinent to a state's effort to collect an outstanding debt. HCFA also cautioned the department about its authority to collect repayments of benefits except in cases of fraud or overpayment.

The U.S. State Department and INS also took actions at this time. The State Department informed its officers that they were no longer permitted to receive information from state agencies about an individual's past receipt of Medi-Cal benefits. In December 1997, INS also cautioned its officers that they had no authority to seek repayment of past Medi-Cal or other public assistance benefits.

HCFA expressed concerns about the improper release to the INS of Medicaid recipient information.

In response to legislative concerns about the department's port of entry program operations, the Legislature in the fiscal year 1998-99 budget required the department's investigations branch to establish a complaint resolution office. The office investigates any concerns raised by the PED and CARR programs or allegations of mistreatment by investigators in the programs. The department recently hired an investigator to follow up on complaints. The Legislature also required the department to add a toll-free number to accept PED and CARR program complaints and to post this number at ports of entry along with information to advise subjects of their rights. The department has since opened a toll-free line and is currently in the process of preparing posters for the ports of entry.

DESPITE CHANGES, CURRENT PROGRAM OPERATIONS RAISE CONCERNS

Despite recent changes, ongoing operations of the PED and CARR programs continue to raise concerns over further legal vulnerabilities, program design, and oversight. Specifically, we are concerned because the department continues to disclose confidential information concerning public assistance to INS inspectors, despite cautions from HCFA. In addition, we question whether the interviews of subjects by PED investigators produce reliable information. Further, the department's limited oversight of CARR program operations at LAX allowed its investigators to continue improperly requesting repayments after the department agreed in court to stop such requests. The department modified its procedures in December 1998 after we notified it of the improper requests.

The Department's Disclosure of Confidential Information Is Not Warranted

The department shares confidential information about public assistance with INS for individuals suspected of Medi-Cal fraud. However, the department's disclosure of the information has not served its efforts to investigate Medi-Cal fraud because INS is not exchanging information in its possession that would help the department in its investigation. As we discussed on page 18 of this report, in 1997, HCFA cautioned the department about the proper handling of confidential information on Medi-Cal beneficiaries.

According to a November 1998 directive from HCFA, the department is allowed to give to INS the confidential information it collects during an interview at a port of entry if investigators satisfy two conditions. First, the department must establish a reason to suspect that a subject committed residency fraud to obtain Medi-Cal. Second, the department must release the information only to pursue its fraud investigation. If the department does not meet both conditions, it violates confidentiality rules established in federal regulations.

When PED investigators interview individuals at a port of entry, the investigators forward the following information to INS:

- Recipients' names, birth dates, social security numbers, and addresses.
- The names and birth dates of family members receiving benefits on the same case.
- The type of assistance received.

The department discloses this confidential information as part of ongoing investigations of people it interviews at the ports of entry. PED investigators provide the information expecting that INS will in turn supply the department with useful information about a person's residency, income, work history, and immigration status to help in its investigations.

If the department used information from INS to further an investigation, the department would meet at least one of the conditions for disclosing confidential information. However, in the six months since the department began requesting the return of additional information, INS has yet to reciprocate. The department has not contacted INS to determine why. Consequently, it does not appear that the department's disclosure of confidential information has contributed to its investigation of Medi-Cal fraud.

When we recently brought this issue of improper disclosure to the attention of the U.S. Department of Health and Human Services (HHS), HHS raised the question of whether the department is complying with confidentiality regulations. In December 1997, the HHS cautioned the department about the release of confidential public assistance information. In light of this, and because the disclosure of such information has not contributed to the department's investigations of Medi-Cal fraud, the department should no longer disclose the information to INS.

Interviews May Produce Unreliable Information

We are further concerned about whether the interviews PED investigators conduct produce reliable information. We agree with the department's investigators, who have told us that such interviews are a valuable first step in the process of investigating beneficiary fraud. However, we have also discussed this matter with one administrative law judge who presides over hearings to contest terminations of benefits in San Diego and Imperial counties. The judge stated that the information produced from such interviews may not be reliable when taken in conjunction with other evidence available at hearings. Officials of the San Diego County Health and Human Services Agency also expressed similar concerns about the accuracy of the information collected during interviews.

When interviewed about residency, an illegal resident of California may be motivated to give false information to an investigator.

When an illegal resident of California returning from a visit to Mexico is detained at the port of entry and interviewed about residency, the subject faces a dilemma. Having affirmed residency outside the United States to obtain a temporary visa to enter the country, the subject knows that declaring illegal United States residency would put his or her immigration documents and return to California at risk. Under these circumstances, the subject may be motivated to give the department's investigator false information by declaring residency outside the United States. Furthermore, the subject may agree to terminate or repay benefits to improve the possibility of admission to the country. However, subsequent to the interviews, subjects have successfully contested such terminations of benefits by verifying their California residency at hearings. In such cases, the department has not achieved its goal of preventing residency fraud; however, the department has initiated new procedures for conducting full field investigations that it believes will result in more accurate information.

The CARR Program Allowed Improper Activities to Continue Until Recently

Although the department recently modified its operations of the port of entry programs to stop instances of inappropriate activities, we discovered that the department's limited oversight of the CARR program allowed certain abuses to continue. Specifically, we found that investigators continued to send requests for repayments until at least November 1998, six months after the department had signed a legal agreement to stop such requests. After we pointed this out, the department

further modified its procedures for enforcing its policies. Presently, CARR program investigators notify subjects of the State's overpayment of benefits only after the county determines ineligibility. ■

CHAPTER 2

The Department's Investment in the Port of Entry Programs Should Be Redirected to Other Fraud Detection Programs

CHAPTER SUMMARY

After taking into account recent changes in the Port of Entry Detection (PED) and the California Airport Residency Review (CARR) fraud detection programs, and adjusting for errors in the Department of Health Services' (department) calculation of the programs' rates of return, we believe the return on investment for these two programs no longer justifies their continued operation. Fiscal year 1996-97 was the last time the department computed a return on investment for the PED and CARR programs. After adjusting for flaws in the department's calculation, we calculated that at this time the PED and CARR programs had returned \$4.38 and \$5.36, respectively, for every \$1 of costs. These averages are considerably lower than the return from the department's other fraud detection programs. For example, for the same year, the department's Early Fraud Detection program achieved a return on investment of approximately \$10.89 for every \$1 of costs.

Additionally, although the department's costs have remained relatively constant, the benefits these programs produce have dropped significantly as a result of recent changes in the operations. When we calculated the return on investment of the programs as they are currently operated, we found that, during the first six months of fiscal year 1998-99, the PED and CARR programs have returned approximately \$2.31 and 44 cents respectively for every \$1 of costs.

In light of the dramatic reduction in cases following recent changes in the programs' operations, we believe the Medi-Cal program would be better served if the department eliminated the port of entry programs and transferred the programs' funding to other fraud detection programs.

THE DEPARTMENT'S PAST RETURN ON INVESTMENT WAS OVERSTATED

Our review identified several flaws in the department's calculation of its return on investment for the PED and CARR programs, which resulted in the department overstating the benefits of these programs. In fiscal year 1996-97, the last year that the department computed a return on its investment, it reported that the PED program had returned \$6.28 and the CARR program had returned approximately \$5.92 for every \$1 of costs. However, we found the department had made these errors in its calculations:

- It based the costs of the programs on budget estimates rather than actual costs.
- It did not include all costs associated with the PED program.
- It did not take into account whether active cases referred to the counties were ultimately terminated, thereby generating a cost savings to Medi-Cal.

The department's investigation branch uses return on investment as a measure of the effectiveness of its fraud detection programs. The branch computes the return on investment by identifying the costs associated and the benefits or savings from the programs. The costs are the estimated salaries and administrative costs for personnel in each program. The benefits include the repayments the department receives from ineligible Medi-Cal beneficiaries. Benefits also include future costs that the Medi-Cal program avoids by terminating these ineligible persons. Once the department has tallied the number of persons the PED and CARR programs have identified who have active Medi-Cal accounts but who are not residents, it is able to compute the total costs avoided.

The Department Did Not Compute the Costs and Benefits of the Programs Accurately

The department determined the costs of the port of entry programs using budget estimates. Had it used the actual costs of the staff operating the programs, it could have more accurately computed its costs. For fiscal year 1996-97, we calculated that the department understated the costs of the programs by approximately \$130,000. As a result, the department overstated its return on investment for the PED and CARR programs.

The department understated the cost of the programs by \$130,000 because it used estimations rather than the actual personnel costs incurred.

In addition, we found that when the department calculated its costs for the PED program, it overlooked costs for department field investigations, San Diego and Imperial counties eligibility staff, and a contract with private investigators who search for personal real estate and income in Mexico. Table 1 summarizes the costs the department did not include for fiscal years 1995-96 through 1997-98.

TABLE 1

Costs for the Port of Entry Detection Program the Department Did Not Include in Its Calculations

Activity	Fiscal Years			Total
	1995-96	1996-97	1997-98	
Department field investigators	\$ 88,288	\$106,516	\$ 36,084	\$ 230,888
County eligibility staff	300,891	259,320	136,972	697,183
Contract private investigators		59,270	90,992	150,262
Total	\$389,179	\$425,106	\$264,048	\$1,078,333

Further, we identified other program activities for which we were unable to determine the associated costs:

- County investigators who follow up on cases involving other forms of public assistance, such as temporary assistance to needy families (TANF) and food stamps.
- County eligibility staff who determine whether eligibility for Medi-Cal and other public assistance should be terminated.

Finally, the department based its savings for the programs on the number of active Medi-Cal and TANF cases the port of entry program investigators identified. However, it did not take into

What is an active case?

An active case is opened when the investigator finds that an individual who does not appear to reside in California is currently receiving public assistance. The investigator begins an investigation to terminate the assistance and seek reimbursement of benefits received.

account whether county eligibility staff ultimately terminated these cases. If the cases were not terminated, the department did not experience any savings. We calculated that over a three-year period, 56 percent of the PED cases and 48 percent of the CARR cases were eventually terminated. However, in calculating the savings for these programs, the department included the savings it would have experienced if 100 percent of the cases

it had investigated had resulted in the termination of benefits. As a result, the department overstated its benefits of the PED program by over \$1.5 million for fiscal year 1996-97.

The Department's Actual Return on Investment Was Significantly Lower Than It Stated

Using the actual costs of the branch staff operating the programs, the additional costs associated with the PED program, and the actual number of cases terminated, we recalculated the return on investment for the PED and CARR programs for fiscal years 1995-96 through 1997-98. We also calculated the return on investment for the programs from July 1998 through December 1998 based on information available at the time of this audit. Table 2 summarizes the port of entry programs' costs, benefits, and return on investments for fiscal years 1995-96 through 1997-98, and for the first six months of fiscal year 1998-99. In determining the programs' benefits, we have also included any savings realized when other forms of public assistance were terminated.

THE RETURN ON INVESTMENT OF THE PORT OF ENTRY PROGRAMS HAS DECLINED SHARPLY IN RECENT MONTHS

As a result of changes to the PED and CARR programs, the cases processed and the return on investment for the port of entry programs have declined. Because the department is no longer allowed to accept voluntary repayments from persons investigators believe may have improperly received Medi-Cal benefits, as we discussed in Chapter 1, the department's return is reduced. In addition, changes in the federal Immigration and Naturalization Service's (INS) policy at the ports of entry from Mexico and at the Los Angeles International (LAX) airport have caused a significant decrease in the number of PED and CARR referrals, thus affecting the programs' return on investment.

Referrals for the PED program declined 52 percent in the 12 months following the change in procedures.

The PED program has experienced a decline in the number of referrals and active cases investigated since INS changed its referral process at the ports of entry from Mexico in December 1997. For the 18 months prior, the PED program averaged 13,421 referrals a month. For the 12 months following, the average referrals decreased to 6,423 per month,

a 52 percent decline. The number of active cases investigated also dropped 42 percent, from a monthly average of 130 cases to 76 cases.

TABLE 2

Port of Entry Costs, Benefits, and Return on Investment

	Fiscal Years			
	1995-96	1996-97	1997-98	1998-99*
Port of Entry Detection				
Costs				
Department investigators, county eligibility staff, and contract private investigators	\$1,093,096	\$1,234,067	\$990,289	\$430,468
Total Costs	\$1,093,096	\$1,234,067	\$990,289	\$430,468
Benefits				
Repayments [†]	\$ 530,320	\$ 855,389	\$ 459,288	\$ 16,410
Cost Avoidance [‡]	6,524,810	4,543,738	4,316,200	978,672
Total Benefits	\$7,055,130	\$5,399,127	\$4,775,488	\$995,082
Return on Investment for Every \$1 of Cost	\$6.45	\$4.38	\$4.82	\$2.31
California Airport Residency Review				
Costs				
Department investigators	\$ 164,659	\$ 242,066	\$ 216,406	\$97,843
Total Costs	\$ 164,659	\$ 242,066	\$ 216,406	\$97,843
Benefits				
Repayments [†]	\$ 181,835	\$ 792,072	\$ 983,528	\$ 2,312
Cost avoidance [‡]	1,061,886	505,638	760,980	40,912
Total Benefits	\$1,243,721	\$1,297,710	\$1,744,508	\$43,224
Return on Investment for Every \$1 of Cost	\$7.55	\$5.36	\$8.06	\$0.44

* Our review covered only the first six months of fiscal year 1998-99.

† The department agreed to refund repayments to individuals who paid since March 1996 in response to collection letters.

‡ We calculated cost avoidance by applying a per-case cost, determined by the department, to each active case terminated.

The CARR program experienced a similar decline. Referrals and active cases initially increased—until INS at LAX changed its procedures in April 1998. Because one of the lawsuits against the CARR program also named INS as a defendant, INS limited the department’s access to individuals entering the country and no longer allows CARR investigators to question subjects at LAX. In the 22 months prior to this change, investigators received an average of 234 referrals a month and investigated an average of 33 active cases. However, from May 1998 to December 1998, the average monthly referrals declined to 89 cases and an average of only 5 active cases a month were investigated.

Table 3 identifies the change in the average number of referrals and active cases for the PED and CARR programs.

TABLE 3

Average Number of Referrals and Active Cases Before and After Changes

	Monthly Average Prior to Changes	Monthly Average After Changes	Difference in Monthly Average	Percentage Decline
Referrals				
Port of Entry Detection	13,421	6,423	6,998	(52%)
California Airport Residency Review	234	89	145	(62%)
Active Cases That Warrant Further Investigation				
Port of Entry Detection	130	76	54	(42%)
California Airport Residency Review	33	5	28	(85%)

This decrease in referrals and active cases has effected a steep decline in the PED and CARR programs’ return on investment. For example, as illustrated in Table 2 on page 27, in fiscal year 1997-98, the CARR program had total benefits of \$1,744,508. However, during the first six months of fiscal year 1998-99, the program’s total benefits were only \$43,224. The rate of return for the PED program diminished to only \$2.31 for every \$1 of costs

for the first six months of fiscal year 1998-99, while the CARR program actually experienced a negative return on investment during the same period.

THE DEPARTMENT'S OTHER FRAUD DETECTION PROGRAMS ARE MORE COST EFFECTIVE

Because the department's two port of entry programs are now returning only \$2.31 and 44 cents, respectively, for every \$1 of costs, these programs do not compare favorably to the department's other fraud detection programs. Table 4 summarizes the return of investment for the department's fraud detection programs in fiscal year 1996-97.

TABLE 4

**Return on Investment For Fraud Detection Programs in
Fiscal Year 1996-97**

Program	Return on Investment For Every \$1 of Cost
Early Fraud Detection Program	\$10.89
Drug Utilization Enforcement	\$3.12
Income Eligibility Verification System	\$1.90
Overall	\$7.70

Source: Department of Health Services Audit and Investigation Division Fiscal Year 1996-97 Annual Report.

The Early Fraud Detection program investigates applicants who county eligibility staff believe have falsified or omitted information to obtain benefits. The Income Eligibility Verification System program enables investigators to identify individuals who failed to report assets or income that would make them ineligible. The Drug Utilization Enforcement program identifies beneficiaries who illegally obtain controlled substances from Medi-Cal providers for personal use or sale to others. According to a department investigation section chief, the department has a backlog of over 20,000 cases in these programs because the programs have only a limited number of investigators.

The department anticipates a \$9.90 return on its investment for a new fraud detection program.

In addition, the department has piloted a new fraud detection program—Prevention and Detection at Acute Care Hospitals. This program identifies ineligible individuals before they receive costly hospital services. Previous investigations have shown that some California hospitals have recruited patients from outside the State who need costly services, such as organ transplants, chemotherapy, and bone marrow transplants, and then charged these services to Medi-Cal. The department estimates that each case denied results in a \$5,000 savings to the Medi-Cal program. If it hires an additional 12 investigators, the department anticipates an annual cost avoidance of \$12 million and a return on investment of approximately \$9.90 for every \$1 of cost.

Further, although the department stated that the PED and CARR programs have deterred nonresidents from fraudulently receiving public assistance, the department was unable to quantify this benefit. We too were unable to quantify the deterrent factor for the programs. Therefore, simply from a return on investment standpoint, the department's investment in the PED and CARR programs would produce a more favorable return if it were redirected to other fraud detection programs the department operates with more promising returns. ■

CHAPTER 3

Conclusion and Recommendations

CONCLUSION

The Department of Health Services' (department) operation of its Port of Entry Detection (PED) and California Airport Residency Review (CARR) programs is no longer justified. The department modified the procedures used in these port of entry fraud detection programs after lawsuits were filed against it charging that its operation of the programs had led to abuses and after federal agencies expressed their concerns about the way the department was administering the programs. Nevertheless, we have concerns about some aspects of current PED and CARR program operations. For example, investigators continue to disclose confidential information about Medi-Cal and other public assistance beneficiaries to federal Immigration and Naturalization Service (INS) officials although this disclosure is not warranted. In addition, interviews held at the ports of entry may produce unreliable information that is then used by the department to terminate Medi-Cal benefits.

Furthermore, the department's modifications to the port of entry programs have reduced the State's return on its investment from its earlier levels. We calculated that, for the first six months of fiscal year 1998-99, the PED program returned \$2.31 for every \$1 of costs and the CARR program returned 44 cents for every \$1 of costs. In contrast, we found that the department's other fraud detection programs return as much as \$11 for every \$1 of costs. As a result, the PED and CARR programs do not produce as high a return on investment as some of the department's other fraud detection programs.

RECOMMENDATIONS

Because of the port of entry programs' administrative problems and low return on the State's investment, the department should discontinue its operation of the programs. The department should then redirect its investment in the two programs to other, more cost-effective fraud detection programs.

In addition, until the department can discontinue its operation of the port of entry programs, it should stop the disclosure of confidential public assistance benefits information to INS unless it gains assurance that its disclosure meets federal regulations for such disclosures.

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

Respectfully submitted,



KURT R. SJOBERG
State Auditor

Date: April 5, 1999

Staff: Steve Hendrickson, Audit Principal
Russ Hayden, CGFM
Corey Bock
Matthew Liu

APPENDIX A

A Profile of Individuals Investigated by the Port of Entry Programs

Our review of more than 440 case files identified a general profile of individuals investigated by the port of entry programs:

- Women accounted for 430 (97 percent) of the investigations.
- Approximately 86 percent of those investigated were between ages 21 and 40, with average ages ranging from 29 to 35 years old for the Port of Entry Detection (PED) and California Airport Residency Review (CARR) programs.
- Nonimmigrants or undocumented aliens living in California and eligible only for pregnancy and emergency services accounted for at least 80 percent of the cases investigated.
- Nearly 400 (89 percent) of the cases involved families with children. In 72 percent of the cases, the children were eligible to receive a variety of public assistance benefits, including Medi-Cal, temporary assistance to needy families, and food stamps.

In addition, our review identified differences between people investigated by the PED or CARR programs:

- Approximately 98 percent of the individuals investigated by the PED program were from Mexico, whereas the people investigated by the CARR program represented a variety of countries. Approximately 40 percent of the individuals investigated at Los Angeles International (LAX) airport came from Mexico, El Salvador, Guatemala, and Honduras. Another 17 percent were from Asian countries—the Philippines, Korea, and China. The same Asian countries represented 51 percent of the individuals investigated at San Francisco International (SFO) airport while people from Mexico accounted for 19 percent of the SFO investigations. The remainder of the individuals investigated by the CARR program were either of unknown nationality or came from countries for which the program had relatively small investigation rates.

- Approximately 60 percent of the individuals investigated by the PED program possessed nonimmigrant documents that allowed them to visit the United States for only short periods of time. In contrast, 48 percent of the people investigated by the CARR program at SFO and 25 percent of those investigated at LAX carried similar documentation. In addition, individuals investigated by the CARR program included more aliens residing in the United States and more foreign students.
- Los Angeles and San Diego counties respectively provided benefits for 41 percent and 26 percent of the people investigated by the PED program. Approximately 70 percent of the people investigated by the CARR program at LAX received benefits from Los Angeles County, while 68 percent of the people investigated at SFO received benefits in the surrounding Alameda, Santa Clara, San Francisco, San Mateo, and Contra Costa counties. Only 8 percent of those identified by CARR investigators at SFO received their benefits in Los Angeles County.

The profiles of people investigated by the PED and CARR programs contrasted sharply with the general profile of people eligible for Medi-Cal benefits. For example, just under 20 percent of people eligible for Medi-Cal in July 1998 were between the ages of 21 and 40, yet this age group represented over 80 percent of the individuals investigated by both programs. In addition, women accounted for 59 percent of the people eligible for Medi-Cal benefits but comprised over 97 percent of the PED and CARR program investigations. Finally, in 1997, nonimmigrants and undocumented aliens living in California represented just 7 percent of the eligible Medi-Cal population. However, they accounted for at least 80 percent of the investigations for the programs.

APPENDIX B

A Procedural Overview of the Port of Entry Programs

Current program operations of the Department of Health Services' (department) port of entry programs—Port of Entry Detection (PED) and California Airport Residency Review (CARR)—are separated into two main functions:

- **Intake** refers, identifies, and interviews persons suspected of residency fraud.
- **Processing** investigates those subjects and relays investigation results to county eligibility staff.

Intake occurs at ports of entry with the cooperation of the federal Immigration and Naturalization Service (INS). Processing occurs at various locations, including the department's investigations branch field offices and county welfare offices. The figure on page 37 charts the flow of the port of entry programs' operations through intake and processing.

INTAKE

INS inspectors meet subjects at California's ports of entry to the United States. Using profiles the department developed to identify Medi-Cal residency fraud suspects, INS inspectors refer subjects to PED and CARR program investigators at selected ports of entry. When INS inspectors refer subjects, they also hand over their immigration documents. Using information from these documents, the program investigators search the department's automated Medi-Cal Eligibility Data System (MEDS) for evidence that subjects have past or present eligibility for public assistance. If investigators find no such evidence in MEDS ("no match"), they return the documents and no longer detain the subjects. However, if investigators find evidence of public assistance eligibility in MEDS ("match"), subjects are interviewed and questioned further.

During the interview, the port of entry program investigators create a case file and perform these procedures:

- Inform subjects that they are under investigation for residency fraud.
- Search subjects' belongings after subjects give permission.
- Attempt to verify subjects' identity.
- Ask subjects to declare a country of residence under penalty of perjury.
- Ask subjects to describe the circumstances of their receipt of public assistance benefits under penalty of perjury.
- Ask those still using public assistance to request that their benefits be terminated.

After the interview, the investigators return subjects to the INS, along with information about their eligibility for public assistance. INS inspectors take this information into account in determining whether to admit subjects into the United States.

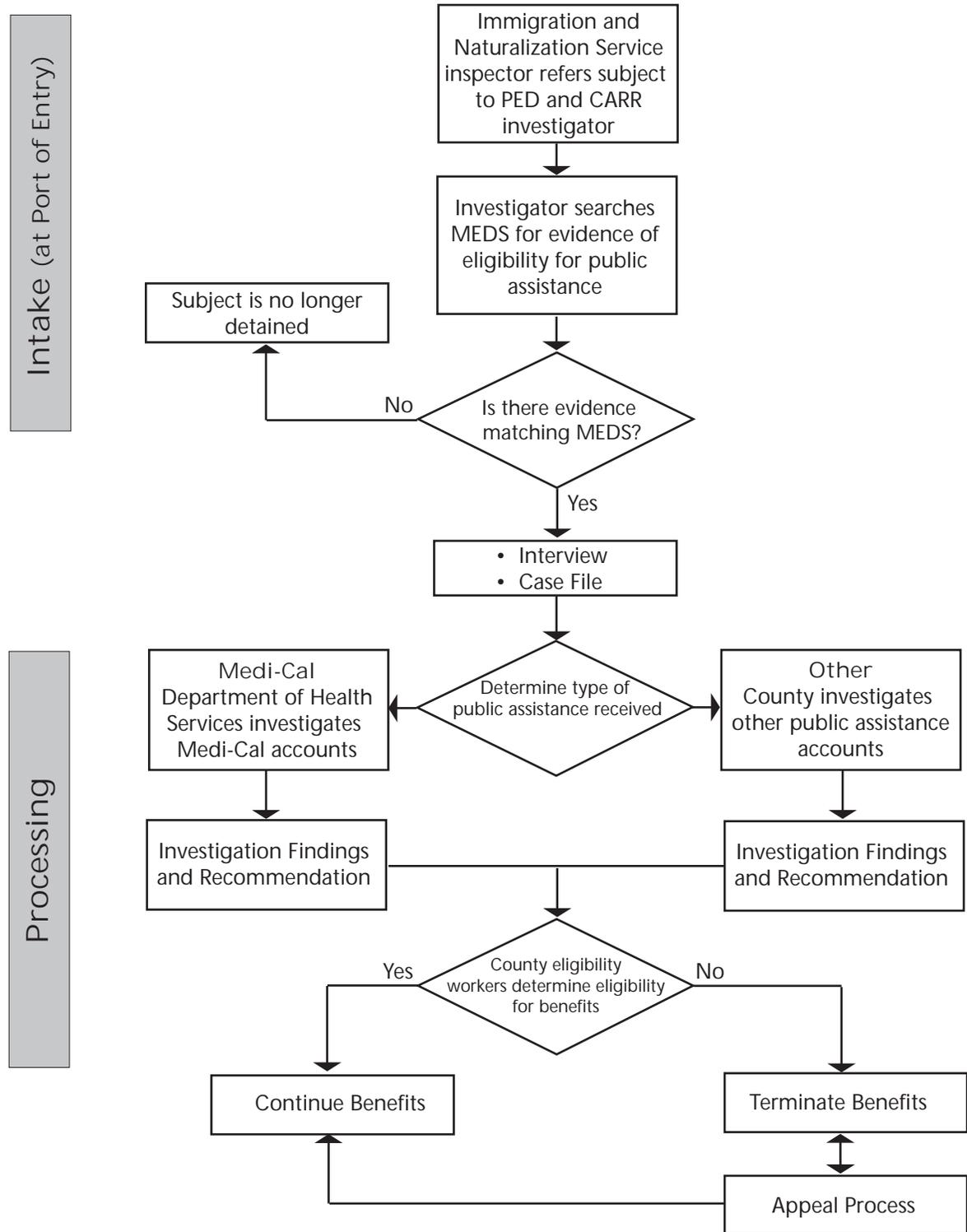
PROCESSING

Port of entry program investigators forward cases involving the receipt of Medi-Cal benefits to department field investigators in the county where the subject established eligibility. For cases involving receipt of other forms of public assistance benefits, such as temporary assistance to needy families or food stamps, investigators forward the case files to investigators in the appropriate county. After an investigation, field investigators add their findings and recommendation to the case file and pass it on to the county welfare department eligibility worker responsible for the case.

Using the information in the case file and any other available information, county eligibility staff determine whether to continue or discontinue the subject's eligibility for public assistance benefits. If the eligibility worker determines the subject is ineligible for the benefits, the county notifies the subject of the determination and the subject's right to a fair hearing. A Department of Social Services administrative law judge presides over the hearing.

FIGURE

Flow of Port of Entry Programs' Operations



Agency's response provided as text only:

Health and Human Services Agency
1600 Ninth Street, Room 460
Sacramento, CA 95814

March 30, 1999

Kurt R. Sjoberg
State Auditor
Bureau of State Audits
555 Capitol Mall, Suite 300
Sacramento, California 95814

Dear Mr. Sjoberg:

We have completed our review of the draft report entitled "Department of Health Services: Use of Its Port of Entry Fraud Detection Program Is No Longer Justified".

We are in agreement with your basic conclusion that the cost-effectiveness of both the Port of Entry (PED) and California Airport Residency Review (CARR) Programs has declined and that the staff and resources associated with them should be redirected to other anti-fraud areas. Accordingly, effective April 1, 1999, we will be closing all PED/CARR operations.

While you point out several other beneficiary fraud areas that should be considered for the redirection of PED/CARR staffing, we will also be looking into a redirection that involves an increased effort to combat provider fraud. In addition, we continue to feel that residency fraud is still an issue and will be considering several options your staff have suggested to address this type of fraud that would not involve direct contact with the Immigration and Naturalization Services on specific beneficiaries.

Finally, we have attached comments about parts of the draft report, which we feel, should be taken into account in developing the final version. If you have any questions, please have your staff contact Walter Barnes, Deputy Director, Audits and Investigations in the Department of Health Services at 445-2912.

Sincerely,

(Signed by:)

Grantland Johnson
Secretary

Attachment

COMMENTS ON DRAFT REPORT

INTRODUCTION, p. 2: The report indicates that "...the department [Department of Health Services]...allowed INS inspectors access to its automated Medi-Cal Eligibility Data System (MEDS) to determine whether individuals entering at the ports were validly receiving public assistance."

* ① Response: This is incorrect. Investigators at the Port of Entry and at the Airports used MEDS to determine whether a person referred to them was receiving, or had received, Medi-Cal or TANF (previously AFDC) during a period of non-residency. However, INS inspectors were not allowed access to the MEDS terminals.

CHAPTER 1, p.1: The report claims that "...failure to fully research essential legal aspects of the programs ... opened...(the department)...to lawsuits charging that the department's operations of the port of entry programs led to abuses. Cases discussed, but not cited, are Latino Coalition for a Healthy California v. Belshe, Rocio R., et al v. Belshe, et al and Torres v. INS.

② Response: As will be discussed below only the latter two cases relate to PED/CARR. In addition, the Department was dismissed from the Torres case.

CHAPTER 1, p. 1: The report indicates that "[b]etween March 1997 and October 1998, the department sought to discontinue or deny Medi-Cal Benefits by changing eligibility procedures without requesting a corresponding change in state regulations.

② Response: The report implies that this issue and PED/CARR are linked which is incorrect. The issue involves Latino Coalition for a Healthy California v. Belshe. This case focused on the issuance of All County Welfare Directors Letter (ACWD) 97-06. The Department of Health Services's (DHS) Medi-Cal Eligibility Branch issued ACWD Letter 97-06 for the purpose of clarifying residency eligibility rules implemented by the counties. The lawsuit did not allege or cite as unlawful, the activities of the DHS Investigations Branch which operated PED/CARR. Indeed, a named defendant in the lawsuit was the branch chief for the Medi-Cal Eligibility Branch. Furthermore, the report ignores the fact that the Department did win at the superior court level before an appellate decision overturned the trial court decision. Consequently it was not until the appellate decision was rendered that the Department's change in the residency eligibility rules became invalid.

CHAPTER 1, p. 4: The report states that "[t]he department was aware prior to 1997 that individuals may process non-immigrant documentation and still be eligible for public assistance, if sufficient additional evidence indicated they were also residents of California."

③ Response: These comments also refer to the Latino case which, as noted above, was not related to PED/CARR. However, it should be noted that DHS relied in part on an August 1, 1995 letter (copy attached) from Steven McAdoo, Acting Director of the Medicaid Bureau in the Health Care Financing Administration (HCFA) to develop the ACWD at issue. In that letter, Mr. McAdoo stated that "...a current border crossing card can be considered prima facie evidence that the holder is not a resident of California or any other state".

CHAPTER 1, p. 6: The report indicates that "[t]he department also solicited repayment of legitimately received Medi-Cal benefits in exchange for implied improvements in immigration status."

Response: This part of the report seems to mix elements of PED/CARR and the Public Charge Lookout System (PCLS). Under PCLS, several states (including California) worked with the State Department and INS staff to identify persons who were applying for visas and who had previously received Medicaid benefits. Although HCFA was well aware of PCLS and the participation in it by states, it wasn't until 12/17/97 that it issued a letter to all states requiring them to cease their participation in it. California did so.

*California State Auditor's comments on this response begin on page R-5

The Rocio R. et al v. Belshe et al lawsuit focused on the issuance of demand letters for both PED/CARR and PCLS. The Department has acknowledged that the letters used were improper and their use was discontinued well before the settlement of this case. The Department entered into settlement without admission as to any allegation that its Investigators routinely demanded repayment of Medi-Cal benefits. To apply plaintiff's allegations as facts is both unfair and inaccurate. Rocio R. never went to trial and consequently plaintiff's allegations as well as the department's defenses remain unproven. The parties elected for their own reasons to enter into the settlement and end the lawsuit.

4

CHAPTER 1, p. 9: The report cites inappropriate actions to influence INS by DHS Investigators assigned to CARR.

Response: We believe that most of these actions were committed by a single individual who was removed from CARR in October 1996 and shortly left the Department.

CHAPTER 1, p.9: The report indicates that PED/CARR investigators inappropriately interviewed legal resident aliens of the United States which violated immigration regulations that prohibit evaluating the admissibility of resident aliens who have been out of the country for less than 180 days.

Response: The interviews were not for the purpose of determining inadmissibility. That is an INS responsibility. The persons were referred to PED/CARR investigators because there was a suspicion that the person did not, in fact, reside anywhere in the United States but was receiving medical and/or welfare benefits in California. In another part of the report, it is correctly pointed out that persons with nonimmigrant documents could be residing in California. By the same token, persons with legal resident documents have been found to be residing in another country which makes them ineligible for benefits in the United States.

5

CHAPTER 1, p. 12: The report cites HCFA/State Department misgivings about the operation of "...the programs".

Response: The only HCFA notification we are aware of is a December 17, 1997 letter from Sally K. Richardson, Director for the Center for Medicaid and State Operations in HCFA (copy attached) which related to the participation by several states, including California, in PCLS. At the same time the State Department issued a letter to All Diplomatic and Consular Posts ending its participation in PCLS too (copy attached). This is the only document we have from the State Department.

1

CHAPTER 1, p. 13: The report cited information on the status of the Rocio R. settlement, which should be updated.

Response: The period during which person may apply for a refund has been extended to 9/30/99. In addition, nearly one-third of the class have responded to date.

6

CHAPTER 1, p. 13: The report goes into detail about the Latino case and again tries to connect it to PED/CARR.

Response: As noted above, this case does not involve PED/CARR.

2

CHAPTER 1, p. 15: The December 17, 1997 letter from Sally K. Richardson is again cited as an indication that HCFA had misgivings about PED/CARR.

Response: As noted above, this letter applies to PCLS, not PED/CARR.

1

CHAPTER 1, p. 18: The report indicates that the staff of the Department of Health and Human Services (DHHS), of which HCFA is a part, "...expressed its concern about whether the department is [currently] complying with confidentiality regulations".

Response: Follow up discussions with one of the persons contacted indicated that the material she had received from the State Auditor's Office "raised a question to be looked into" but that she did not mean to imply that she agreed that DHS was out of compliance with confidentiality regulations.

①

CHAPTER 1, p.18: The report cites an administrative law judge and some San Diego officials who have noted the interview conducted by investigators at the ports of entry on the border or airports with persons referred to PED/CARR may provide unreliable information.

Response: We would acknowledge that the interview might provide unreliable information. As the report notes, the Department changed its procedures to include a field investigation to verify information collected during the interview. It is at that point that a final recommendation is made and referred to the county welfare departments, which if they agree, will issue the appropriate notices of action. Finally, it is important to note that any termination of benefits and requests for repayments provide due process protections in the form of hearing and appeal rights.

CHAPTER 2, p. 4: The report indicates that the costs of PED/CARR were understated because "...(!)legal staff who defended the department in lawsuits..." were not taken into account.

Response: In the first place, at least one of the lawsuits - Latino – was not related to PED/CARR. In any case, we feel it is inappropriate to include the cost associated with legal representation of any program when determining its cost effectiveness. Legal representation is a necessary component to the general administration of any program. Also, in the case of Torres legal representation was needed to have the Department dismissed from a case to which it never should have been a party. (Please Note: We raise this issue to correct what we feel is an inaccuracy in the computation of cost-effectiveness. We do not believe that it changes the basic conclusion made in this report that the cost-effectiveness of PED/CARR has substantially declined from what it once was.)

①

COMMENTS

California State Auditor's Comments on the Response From the Health and Human Services Agency

To provide clarity and perspective, we are commenting on the Health and Human Services Agency's (agency) response to our audit report. The numbers correspond to the numbers we have placed in the response.

- ① Text changed.
- ② The agency is correct in stating that the Latino Coalition lawsuit does not strictly focus on the Port of Entry Detection (PED) and California Airport Residency Review (CARR) programs. As discussed on page 11 of our report, we point out that this lawsuit focused on the Department of Health Services' (department) improper discontinuance and denial of Medi-Cal benefits to many aliens, such as those investigated by the PED and CARR programs.
- ③ In spite of the August 1996 letter from Health Care Financing Administration (HCFA), the department knew prior to 1997, and even acknowledged in earlier all-county welfare director letters, that individuals may possess nonimmigrant documents and still be eligible for public assistance.
- ④ We did not rely on the assertions made in the Rocio R. lawsuit to reach the conclusion that the department had improperly solicited repayment of Medi-Cal benefits. Rather, as stated on pages 12 and 13, we reached this conclusion after discussions with the department's investigators, the review of minutes of 1996 meetings of the PED program, and the review of the department's own 1997 special study of the PED program. In addition, the form letter the department's investigators handed to most subjects during the interview, suggested that aliens could "clear their names" by repaying the department for past Medi-Cal benefits received.
- ⑤ We omitted the sentence about the department's investigations evaluating the admissibility of resident aliens, since this is an Immigration and Naturalization Service responsibility.
- ⑥ We updated the information in the report.

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