



STATE OF WASHINGTON

November 20, 2018

The Honorable Pat McCarthy
Washington State Auditor
P.O. Box 40021
Olympia, WA 98504-0021

Dear Auditor McCarthy:

Thank you for the opportunity to review and respond to the State Auditor's Office (SAO) performance audit report, "Aligning Healthcare Professional Fees with Licensing Costs."

We agree the Department of Health could develop a more consistent fee-setting model by developing better-defined processes and including them in our policies. We also recognize that we can take more aggressive action on fee increases and decreases. However, we are confident in our approach to setting fees based on projected revenues and expenditures. While this may give the appearance that fees are set too low or too high for the majority of professions, as SAO notes, there are other factors that may impact a fund balance, such as unexpected disciplinary costs or keeping reserves high in expectation of fiscal impacts that might not materialize. We will look for opportunities to enhance transparency on fund balances and fee-setting processes in the future.

We appreciate that SAO acknowledges the majority of direct costs charged to professions are appropriate. We believe that all costs charged are appropriate, with the exception of the medical marijuana database charges that the Washington State Legislature mandated be paid from the Health Professions Account. The appropriate account for the medical marijuana database is the Dedicated Marijuana Account.

We appreciate that SAO recognizes the Department of Health appropriately charges the majority of indirect costs to the professions. However, we would suggest that we appropriately charge all indirect costs to the professions. DOH certainly respects that SAO has the authority and responsibility to make an independent assessment of DOH's practices with respect to professional licensing fees, and needs to interpret the laws that DOH administers to make this assessment. However, we do not agree with SAO's interpretation of the department's fee authority or its conclusion that the department charges the professions for some indirect costs that do not benefit them. The department is concerned that SAO reached this conclusion by adopting a concept that narrowly interprets "benefit" to professions as only those activities related specifically to licensing and disciplining health care professions without reference to statutory authority to support such a narrow interpretation. Instead of applying this narrow interpretation of "benefit," SAO should have used the department's broad statutory authority to regulate the professions and recover the costs of doing so from the professions.

The Secretary of Health has extensive express and implied authority and obligations with respect to the regulation of health professions. This includes the ultimate authority and responsibility to interpret, implement and administer the laws governing the regulation and administration of health professional licensing programs. This applies also to laws pertaining to fees. Each professional licensing program is to bear all its own costs, and the secretary is directed by law (RCW 43.70.250(2)) to set fees "at sufficient level to defray the costs of administering that program." If a particular activity falls under the secretary's

duties or powers to regulate the health professions, then its cost must be recovered from the professions. The department is in the best position to assess whether each program engages in work related to the regulation and administration of professional licensing programs. Given the department's expertise, SAO should have accorded greater weight to the department's reasonable position on indirect costs.

SAO's narrow definition of "benefit" to professions led it to conclude that activities and services provided by the state health officer, Foundational Public Health Services, Health Systems Transformation and Innovation, and Grant Management Services do not benefit professions. We disagree. The department believes that the four indirect costs at issue fall in the framework of the secretary's authority to interpret, implement and administer the laws governing the regulation and administration of health professional licensing programs. These programs are available to each profession and provide important services, data and support to providers and their practices as explained below:

The Office of the State Health Officer (OSHO) is the agency's senior adviser on medical and public health issues and provides input to regulatory policies during our policymaking process (e.g., opioid prescribing rule-making process, agency policy development, etc.). OSHO's work includes subjects relevant to the boards and commissions funded by the Health Professions Account. Epidemiologists in this unit review data analyses in legislative reports generated by commissions and work with regulators on communicable disease outbreak and infection issues impacting health care providers. Health care providers have a role in protecting public health and rely on OSHO for policies and guidance on public health issues, such as epidemics, and up-to-date data. OSHO guidance informs DOH investigations of provider complaints and determinations on what disciplinary actions are necessary. OSHO provides information and policy input to the secretary, department staff, and the boards and commissions as they develop standards of practice, rules, legislation and other policies to regulate and benefit health professionals. This role represents a key component in regulating health professions. OSHO's work has touched many professions and may do so at any time, which is why an indirect model of payment is warranted.

Foundational Public Health Services (in the Office of the Secretary) provides health care professionals with health data and coordination activities to assist in providers' work with patients. These activities help ensure health care professionals have the information and support necessary to understand the boundaries of their credentials to ensure they abide by standards of care for the protection of public health. Information and support from these services set the foundation to protect public health and is used to quantify if disciplinary action is necessary when investigating complaints of health care professionals.

Health Systems Transformation and Innovation connects professions and commissions to ensure both have the most up-to-date data and information for health care professionals to protect public health. These services also help ensure adequate levels of health care staffing to protect the public. For example, it works with commissions to increase the number of nurses in areas where there are shortages to ensure adequate standards of care for patients.

Grant Management Services provides many services, including ensuring timely contract payments, which includes contracts through the commissions. This work is critical to ensuring other services mentioned above can function fluidly to provide timely data and information in the pursuit of protecting public health. Other services that are provided by the Grant Management Office are available to the professions at any time the need may arise. Failing to make these services available would require the agency to acquire additional services when the need arises, delaying the response time. This would not be an effective way to manage the needs for professions and could potentially hinder our ability to protect public health.

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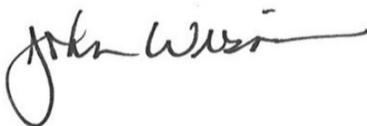
While we recognize that the costs of these services benefit many programs in our agency, we believe we are proportionately charging the services provided to health care professions through the application of our indirect cost rate method. The intent of the federal indirect cost rate method, per 2 CFR 200.56, is to allow a mechanism to allocate costs when the costs are “not readily assignable to the cost objectives specifically benefitted, without effort disproportionate to the results achieved.”

We appreciate that SAO recognizes in its final report that federal guidance requires all costs to be applied consistently, as referenced in 2 CFR 200.403, which prevents us from exempting the professions from certain indirect costs. We disagree with SAO’s conclusion that we should exempt the professions from certain indirect costs during the development of cost methodologies — namely the cost for services of the state health officer, Foundational Public Health Services, Health Systems Transformation and Innovation, and Grant Management Services.

The cost of itemizing services such as these would likely be far more expensive than using the indirect cost rate. In reviewing costs for grants management and revenue services, for example, the analysis determined the cost to support the health professions would have been higher than the application of the indirect rate even before applying the additional administrative burden to track costs to this detailed level. We take careful consideration when developing our indirect cost rate methodology to ensure costs are proportionately applied throughout the agency in a consistent manner. Our plan is then carefully reviewed by the U.S. Department of Health and Human Services (HHS), the federal agency responsible for reviewing, negotiating and approving our indirect plan before we begin using it.

In summary, thank you for the opportunity to review and respond to the performance audit report. It has helped us think about how we can develop better processes to review fees more consistently and provide additional transparency throughout the process. We remain concerned about the narrow interpretation of “benefit” to professions. We believe SAO should instead apply the department’s broad statutory authority to regulate the professions and recover the costs of doing so from the professions. We do not believe that SAO’s conclusion about costs that benefit professions recognizes or takes this authority into account, and therefore, does not adequately represent costs that are applied to professions.

Sincerely,



John Wiesman
Secretary
Department of Health



David Schumacher
Director
Office of Financial Management

cc: David Postman, Chief of Staff, Office of the Governor
Kelly Wicker, Deputy Chief of Staff, Office of the Governor
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Pat Lashway, Deputy Director, Office of Financial Management
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Scott Frank, Director of Performance Audit, Office of the Washington State Auditor

OFFICIAL STATE CABINET AGENCY RESPONSE TO PERFORMANCE AUDIT ON ALIGNING HEALTHCARE PROFESSIONAL FEES WITH LICENSING COSTS – NOVEMBER 20, 2018

This management response to the State Auditor’s Office (SAO) performance audit report received on October 29, 2018, is provided by the Office of Financial Management and Department of Health (DOH).

SAO PERFORMANCE AUDIT OBJECTIVES:

The SAO sought to answer these questions:

1. Has the Department of Health set licensing fees for healthcare professions to reflect the costs of licensing those professions?
 2. Are the licensing and disciplinary costs charged to healthcare professions consistent with state law?
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SAO Recommendations 1-3 to DOH: To address the issues with professions’ fees being significantly higher or lower than needed to cover costs and provide reasonable reserves as described, we recommend DOH:

- Review and adjust fees for each profession with sufficient frequency to ensure they fully cover costs that provide sufficient but not excessive reserves, and that they do so for that profession only.
- Publish the financial status of every profession.
- Establish a consistent fee-setting process that fully conforms to statutory requirements and incorporates leading practices.

STATE RESPONSE: DOH reviews fees annually. We also track each profession’s licensing fee, account balance and projected balance over six years. We will seek ways to provide greater transparency to this process. For example, we have scheduled regular meetings with associations representing health care providers where we are sharing fee and account information. We are reviewing our process for how we share budget information with DOH program managers so this information is more consistently shared at board and commission meetings, where members, the public and providers will also have an opportunity to hear this information. We are developing one-page fact sheets for each profession that show the account balance and cost drivers and will share these with providers and associations. We agree that we could develop a better-defined process, especially with respect to having a timeline for taking action when we see fees are not sufficient to support a program. This will be an addition to our cost recovery policy.

Action Steps and Time Frame

- Develop a schedule to ensure every profession’s fees are reviewed at regular intervals. *By July 1, 2019*
 - Include the defined scheduled review of fees in agency policies. *By July 1, 2019*
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SAO Recommendations 4-6 to DOH: To address issues with costs being charged to professions that do not benefit them, we recommend the Department of Health:

- Require by policy that licensing programs not be charged for costs that do not benefit them. The policy should also require the Department to work with profession boards, commissions and program managers in making these determinations.

- Fund any charges found not to benefit the professions' licensing functions using revenue from allowable sources, to ensure compliance with state law that licensing fees pay only to support the licensing programs.
- Develop and implement a plan to decrease the surplus for the University of Washington's medical library, known as HealWA. After decreasing the surplus, ensure the fee reflects current contract costs.

STATE RESPONSE: We disagree that costs currently charged to professions do not benefit them. We believe that SAO's standard for determining what may be included in fees is too narrow by focusing only on whether the program's activities are unrelated to licensing or disciplining health care professions. This standard does not account for activities that provide professions with up-to-date health data, necessary information, standards of care and guidance to assist professions in their ability to protect public health.

These activities are critical and provide the following services to help protect public health:

- Policies and guidance on public health issues, such as epidemics and up-to-date data that informs investigations of provider complaints and determinations of any disciplinary actions that may be necessary;
- Input for the development of standards of practice, rules, legislation and other policies to regulate and benefit health professionals;
- Health-related data and coordination activities to assist providers in their work;
- Connection of professions and commissions to ensure both have the most up-to-date data and information for health care professionals;
- Timely contract payments, including those through the commissions; and
- Readily available services for needs that may arise at any time to prevent delays in responding and resolving issues.

The Secretary of Health has extensive express and implied authority and obligations with respect to the general regulation of health professions and is statutorily provided flexibility in exercising that authority to ensure public health is protected. If a particular activity falls under the secretary's duties or powers to regulate health professions, then its corresponding costs must be recovered from the professions. DOH believes that the costs identified in the indirect cost rate methodology fall under this framework and that SAO should review these programs through this broader lens.

We disagree with SAO's conclusion that we should exempt the professions from certain indirect costs, namely the cost for services of the State Health Officer, Foundational Public Health Services, Health Systems Transformation and Innovation, and Grant Management Services. The cost of itemizing services such as these would likely be far more expensive than the indirect cost itself. In reviewing costs for grants management and revenue services as an example, the analysis determined the cost to support the health professions would have been higher than the application of the indirect rate even before applying the additional administrative burden to track costs to this detailed level. We take careful consideration when developing our indirect cost rate methodology to ensure costs are proportionately applied throughout the agency in a consistent manner. Our plan is then carefully reviewed by the U.S. Department of Health and Human Services (HHS), the federal agency responsible for reviewing, negotiating and approving our indirect plan before we begin using it.

Finally, we acknowledge we have maintained excess funds in the Heal-WA account. This is based on input from the University of Washington indicating it expects costs to increase. We will coordinate with the University of Washington to identify additional funding needs for the Heal-WA program and take steps to ensure a plan is in place to address the excess fund balance in the account.

Action Steps and Time Frame

- Coordinate with the University of Washington to identify specific funding needs for the Heal-WA program. *By Feb. 28, 2019*
 - Develop a plan to address the fee reserves in the Heal-WA account if additional needs are not identified. *By Feb. 28, 2019*
 - If additional needs are identified, DOH with coordinate with University of Washington to submit a decision package for the 2020 legislative session. *By Sept. 2019*
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SAO Recommendations to the Legislature 7-8: To address the issues with professions' reserves being used to pay for other professions' costs, we recommend the Legislature consider:

- Appropriating at the profession level instead of the account level to prevent one profession from spending another's reserves.
- Finding alternative funding for professions that do not fully cover costs, but would see a critical loss of needed healthcare professionals if fees were increased.

STATE RESPONSE: Preventing one profession from spending from the Health Profession Account's fund balance would create significant fee volatility, meaning an individual profession's fee could increase or decrease significantly from year to year. This is because each individual profession would need to generate enough revenue to recover its costs in a biennium rather than DOH's current policy of six years, which allows the department to dampen the impact of revenue and expenditure anomalies and not subject each profession to unpredictable fees. Moreover, this proposal also increases the risk of an individual profession running a cash deficit. Any significant one-time change in expenditures (e.g., unanticipated number of complaints and investigations) or revenues (e.g., a decline in the number of licensees) would need to be recovered in the biennium. Because the process to raise a fee takes approximately one year to implement and then additional time to generate revenue, any significant change in actual expenditures in the first six months of a biennium could not feasibly be addressed until the subsequent biennium, resulting in a cash deficit for the profession.

Action Steps and Time Frame

- N/A
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