

**GOVERNMENT OF THE DISTRICT OF COLUMBIA
OFFICE OF THE INSPECTOR GENERAL**

**AUDIT OF HOME HEALTH CARE AGENCY
COMPLIANCE WITH LEGAL REQUIREMENTS
FOR PAYING FIXED-HOURLY LABOR RATES
TO PERSONAL CARE ASSISTANTS**



**CHARLES J. WILLOUGHBY
INSPECTOR GENERAL**

GOVERNMENT OF THE DISTRICT OF COLUMBIA
Office of the Inspector General

Inspector General



April 30, 2007

Gregg A. Pane, MD
Director
Department of Health
825 North Capitol Street, N.E., Suite 4400
Washington, D.C. 20002

Dear Dr. Pane:

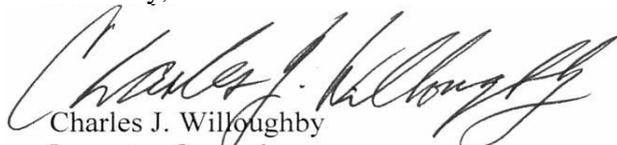
Enclosed is the final report summarizing the results of the Office of the Inspector General's (OIG) *Audit of Home Health Care Agency Compliance with Legal Requirements for Paying Fixed-Hourly Rates to Personal Care Assistants* (OIG No. 06-2-24HC). The audit was conducted at the request of Councilmember David A. Catania because of concerns related to improper wages paid to personal care assistants.

As a result of our audit, we directed five recommendations to the Department of Health (DOH) to take actions required to correct the described deficiencies. We received a response from DOH on April 11, 2007, to a draft of this report. DOH's response addressed all of the recommendations, and we consider the actions taken and/or planned to be responsive with the exception of Recommendation 2. In addition, DOH officials did not provide target completion dates for the five recommendations.

We respectfully ask that the Director, DOH, provide an amended response for Recommendation 2 and target completion dates for the five recommendations within 60 days of the date of this report. The full text of the DOH response is included at Exhibit B.

We appreciate the cooperation and courtesies extended to our staff during the audit. If you have questions, please contact William J. DiVello, Assistant Inspector General for Audits, at (202) 727-2540.

Sincerely,



Charles J. Willoughby
Inspector General

Enclosure
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**AUDIT OF HOME HEALTH CARE AGENCY COMPLIANCE WITH
LEGAL REQUIREMENTS FOR PAYING FIXED-HOURLY RATES TO
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EXECUTIVE DIGEST

OVERVIEW

At the request of Councilmember David A. Catania, the District of Columbia Office of the Inspector General (OIG) has completed an audit of Home Health Care Agency Compliance with Legal Requirements for Paying Fixed-Hourly Rates to Personal Care Assistants (OIG No. 06-2-24HC). The audit was conducted to determine whether the Department of Health's (DOH) Medical Assistance Administration (MAA) ensured that home health care agencies paid labor rates of \$10.50 per hour to personal care assistants in accordance with the Fiscal Year 2006 Budget Support Act of 2005 (Act), D.C. Law 16-33, § 5259, 52 D.C. Reg. 7503 (2005).

Home Health Care Agencies. Home health care agencies are organizations (other than a hospice) that provide, either directly or through a contractual arrangement, a program of health care services to sick or disabled individuals living at home or in a community residence facility. These services include personal care, household support, chore services, rehabilitative therapy, and other supportive services. The MAA Office on Disabilities and Aging (ODA) has management responsibilities and oversight over home health care agencies.

A report prepared by MAA entitled, "Elderly Waiver Master List 2004," generated in August 2006, indicated that 963 District of Columbia (District) Medicaid recipients were receiving services from home health care agencies. Another report prepared by MAA entitled, "Elderly and Physical Disabilities Waiver Program Provider Directory," dated August 2006, showed that MAA used 16 companies to provide home health care services.

According to the information provided in those two reports, during fiscal year 2006, DOH expenditures approximated \$15 million for direct care services. Further, 16 companies employed approximately 2,100 individuals that were affected by the Act.

CONCLUSIONS

MAA did not take the necessary actions to ensure that the home health care agencies paid personal care assistants a minimum of \$10.50 per hour as mandated by the Act, which became effective November 1, 2005. We found that only one of five home health care agencies included in our test promptly paid the required \$10.50 per hour wage rate to personal care assistants. As a result, personal care assistants at four of five home health care agencies were underpaid by \$94,887. Further, payroll records of 947 personal care assistants indicated that 410 were classified as independent contractors and paid the same \$10.50 rate as agency employees. However, as independent contractors, these personal care assistants did not receive the employers' share of Social Security taxes and Medicare, resulting in a savings to the provider of 7.65 percent of \$10.50 per hour. Despite this savings, providers are reimbursed by the District in the same hourly amount (\$16.30), irrespective of whether the work is performed by employees or contractors.

EXECUTIVE DIGEST

SUMMARY OF RECOMMENDATIONS

We directed five recommendations to the Director, Department of Health that focused on developing formal procedures for overseeing home health care agencies, paying personal care worker wage underpayments, correcting independent contractor compensation and utilizing its legal authority to enforce and ensure compliance with the Act.

A summary of the potential benefits resulting from the audit is shown at Exhibit A.

MANAGEMENT RESPONSE AND OIG COMMENTS

DOH provided a written response to our draft report on April 11, 2007, and we consider the actions taken and/or planned to be responsive to each of the recommendations with the exception of Recommendation 2. For Recommendation 2, DOH indicated that it would (1) permit home health care agencies the option of paying Federal Insurance Contributions Act (FICA) taxes for self-employed individuals or (2) pay self-employed individuals higher rates to cover the FICA taxes. However, such an option is not feasible since the Internal Revenue Service does not have provisions for allowing a third party to pay FICA taxes for self-employed individuals. We respectfully ask that the Director, DOH, provide an amended response to Recommendation 2 within 60 days of the date of this report. In addition, we request that DOH provide target completion dates for all five recommendations.

INTRODUCTION

BACKGROUND

The District of Columbia Office of the Inspector General (OIG) has completed an audit of Home Health Care Agency Compliance with Legal Requirements for Paying Fixed-Hourly Rates to Personal Care Assistants. The audit was conducted at the request of Councilmember David A. Catania to determine whether the Department of Health Medical Assistance Administration (MAA) ensured that the home health care agencies paid home health care staff labor rates in accordance with the Fiscal Year 2006 Budget Support Act of 2005 (Act), D.C. Law 16-33, § 5259, 52 D.C. Reg. 7503 (2005).

The mission of DOH is “to promote and protect the health, safety and quality of life of residents, visitors and those doing business in the District of Columbia.”¹ DOH’s responsibilities include “identifying health risks; educating the public; preventing and controlling diseases, injuries and exposure to environmental hazards; promoting effective community collaborations; and optimizing equitable access to community resources.”²

Medical Assistance Administration. DOH oversees MAA, the state agency responsible for administering Title XIX of the Social Security Act, the Medical Charities program, the District’s Medicaid Program, and other health care financing initiatives of the District of Columbia (District). MAA also develops eligibility, service coverage, service delivery, and reimbursement policies for the District’s health care financing program that ensures improved access and efficient delivery.³

Office of Disabilities and Aging. The MAA Office of Disabilities and Aging (ODA) offers consultation services to Medicaid service providers on non-institutional and institutional long term care. The goal of ODA is to appropriately fund and monitor long term care and home and community based services to assist Medicaid enrollees, which include individuals with physical disabilities and the aged.⁴ ODA works to provide guidance to enrollees on care options so services are accessible in the least restrictive settings. ODA management and oversight responsibilities include home health care agencies.

Home Health Care Agencies. Home health care agencies provide a program of health care services to sick or disabled individuals living at home or in a community residence facility. Services provided include: personal care, household support and chore services, rehabilitative therapy, or other supportive services.

A report prepared by MAA entitled “Elderly Waiver Master List 2004,” generated in August 2006, indicated that 963 District Medicaid recipients were receiving services from home

¹ [Http://dc.gov/mayor/index.shtm](http://dc.gov/mayor/index.shtm).

² *Id.*

³ [Http://doh.dc.gov/doh/cwp/view,a,3,q,573226,dohNav_GID,1807.asp](http://doh.dc.gov/doh/cwp/view,a,3,q,573226,dohNav_GID,1807.asp).

⁴ [Http://doh.dc.gov/doh/cwp/view,9,1371,q602220.asp.1807.asp](http://doh.dc.gov/doh/cwp/view,9,1371,q602220.asp.1807.asp).

INTRODUCTION

health care agencies. Another report prepared by MAA, “Elderly and Physical Disabilities Waiver Program Provider Directory,” dated August 2006, showed that MAA used 16 agencies to provide home health care services. According to the information in the report, during fiscal year 2006, DOH expended approximately \$15 million in expenditures for those 16 companies. The 16 companies employed approximately 2,100 individuals who were affected by the Act.

OBJECTIVE, SCOPE, AND METHODOLOGY

The objective of the audit was to determine whether MAA ensured that the home health care agencies paid personal care assistants labor rates of \$10.50 per hour in accordance with the Act.

To accomplish our objective, we obtained and reviewed all applicable criteria concerning home health care agencies. We conducted interviews with responsible MAA officials to obtain a general understanding of the policies and procedures used to monitor and provide oversight to home health care agencies. Also, we visited five home health care agencies to review employee payroll records that covered the period January 17, 2006, through April 30, 2006.

We relied on computer-processed data from the District’s Medicaid Management Information System to obtain summary information on the amounts paid to home health care agencies during fiscal year 2006. Although we did not perform a formal reliability assessment of the computer-related data, we traced or verified selected data to supporting documents and records and noted agreement.

We also relied on computer-processed data from the home health care agencies to obtain detailed information on wages paid to personal care assistants. Although we did not perform a formal reliability assessment of the computer-related data, we traced or verified selected data to supporting documents and records and found computer-related data to be accurate.

Our audit primarily covered the period January 2006 through January 2007. The audit was conducted in accordance with generally accepted government auditing standards and included such tests as we considered necessary under the circumstances.

FINDING AND RECOMMENDATIONS

FINDING: COMPLIANCE WITH HOURLY WAGE RATE REQUIREMENTS FOR PERSONAL CARE ASSISTANTS
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SYNOPSIS

MAA did not take the necessary actions to ensure that the home health care agencies paid personal care assistants a minimum of \$10.50 per hour as mandated by law that became effective November 1, 2005. We found that only one of five home health care agencies included in our test promptly paid the required \$10.50 per hour wage rate to personal care assistants. As a result, personal care assistants at four of five home health care agencies were underpaid by \$94,887. Further, payroll records of 947 personal care assistants indicated that 410 were classified as independent contractors and paid the same \$10.50 rate as agency employees. However, as independent contractors, these personal care assistants did not receive the employers' share of Social Security taxes and Medicare, resulting in a savings to the provider of 7.65 percent of \$10.50 per hour. Despite this savings, providers are reimbursed by the District the same hourly amount (\$16.30), irrespective of whether the work is performed by employees or contractors.

These conditions occurred because MAA's in-house procedures covering home health care agencies did not include procedures to verify that personal care assistants were paid correctly.

DISCUSSION

MAA is responsible for monitoring the services provided to the District's Medicaid recipients. Among Medicaid services, the District provides in-home personal care for the elderly and disabled. The District contracts with a number of home health care agencies who provide personnel to perform these services. Medicaid-financed home health care is governed by the DCMR. Compensation issues with home health workers were addressed in the Fiscal Year 2006 Budget Support Act of 2005.

The Mayor signed the Fiscal Year 2006 Budget Support Act of 2005 in July 2005. Included in this legislation was the requirement that, effective November 1, 2005, home health care agencies pay a wage of at least \$10.50 per hour to personal care assistants. MAA, however, did not apply this requirement until January 2006, when the reimbursement rate for personal care services was raised to \$16.30 per hour claimed.

The new reimbursement rate was established in the DCMR to provide sufficient funds for home health care agencies to increase the minimum wage of personal care assistants to \$10.50 per hour. Our audit, however, disclosed that MAA did not take the necessary actions to ensure that these workers were paid in accordance with the Act.

FINDING AND RECOMMENDATIONS

Title V of the Act, Subtitle N, Section 5259(a) states, in part, “\$6 million shall be allocated for payment of a living wage to home health care workers and personal care assistants who service the Medicaid program in the District at a minimum of \$10.50 per hour.” Further, Section 5259(b) states: “By November 1, 2005, any home health care agency or personal care service provider that fails to meet this minimum wage requirement shall be ineligible to receive funds under the Medicaid program in the District.”

To pay for the wage increase cited above, DOH increased the amount of the reimbursement for home health care provided by the health care agencies. Title 29 DCMR § 5009.1 states: “Each Provider shall be reimbursed sixteen dollars and thirty cents (\$16.30) per hour for services rendered by a personal care aide.”

In June of 2006, the D.C. Council enacted the Way to Work Amendment Act of 2006, D.C. Law 16-118, codified at D.C. Code §§ 2-220-.01 – 2-220.11 (Repl. 2006), making the living wage concept permanent. For covered contracts and agreements entered into after June 8, 2006, the living wage was established at \$11.75 per hour. Each year thereafter, the District Department of Employment Services (DOES) was made responsible for adjusting the rate in accordance with the law. Home health care agencies are covered by D.C. Law 16-118.

Compliance with District Law. Home health care agencies were lax in complying with the change in compensation for personal care assistants. The agencies were aware of the pending change because home health care agencies:

- attended a meeting on December 8, 2004, sponsored by MAA officials, at which an increased reimbursement rate was discussed to allow for a \$10.50 wage⁵ for the personal care assistants;
- were notified by MAA by letter dated January 4, 2006, that the reimbursement rate for home health services would rise to \$16.30, effective on January 17, 2006, in order to allow for a home health care worker wage of \$10.50 per hour; and
- were receiving the higher reimbursement rate beginning in February of 2006.

According to MAA, subsequent to the December 8, 2004, meeting, MAA issued a Memorandum of Agreement (MOA) to home health care agencies detailing the requirements of the new rate. MAA requested that each agency sign and return the MOA documenting their understanding and agreement to increase the wage of personal care assistants. None of the agencies returned the MOAs, and MAA did not have a copy in their files.

Site Visits. We visited 5 of the 16 home health care agencies. The 5 agencies received

⁵ The previous reimbursement rate to home health care agencies was \$13.50 per hour; home health care workers were paid between \$8 and \$10 per hour.

FINDING AND RECOMMENDATIONS

69 percent (\$10.3 million) of the total home health care reimbursements paid (\$15 million) by MAA in fiscal year 2006. Our objective was to determine whether home health care agencies were paying personal care assistants a wage of \$10.50 per hour as required by the Act. We found that only one of the agencies visited promptly complied with the wage rate requirements. Specifically, we noted the following:

- Four agencies took up to 2 months to adjust home health care workers' salaries to provide the \$10.50 wage. Also, three of these agencies treated all or a portion of the personal care assistants as independent contractors and paid those workers \$10.50 for each hour worked.
- Remittance of underpayments to personal care assistants for the first 2 months totaled \$236,760. Further, four of the agencies did not begin to pay the \$10.50 rate until MAA queried the agencies in August of 2006. As of November 2006, \$94,887 remained unpaid. Table 1 provides for a breakdown of the unpaid wages.

Table 1. Initial Date of Compliance, Reimbursement, and Payments Outstanding as of November 2006

<u>Home Health Care Agency</u>	<u>Initial Month of Compliance⁶</u>	<u>Initial Month of Retroactive Payments</u>	<u>Payments Outstanding</u>
A	March 2006	August 2006	\$20,134
B	March 2006	August 2006	9,206
C	March 2006	None	54,307
D	January 2006	None	448
E	February 2006	October 2006	<u>10,792</u>
Total			<u>\$94,887</u>

Independent Contractor Payments. One objective of the Act was to raise the hourly wage rate of the home health workers to \$10.50 per hour. MAA held a meeting with the home health care agencies on December 8, 2004, to discuss the increased wage. The parties discussed the need to raise the home health care agency reimbursement rate to fund the planned pay raise. An agreement was reached to raise the reimbursement rate needed to fund a \$10.50 wage to \$16.30 per unit of service. This new reimbursement rate would fund the

⁶ MAA began to apply the \$10.50 per hour wage increase on January 17, 2006.

FINDING AND RECOMMENDATIONS

\$10.50 hourly wage rate and employer responsibilities such as Social Security taxes, Medicare, and other agency expenses.⁷

During our site visits, we noted that 410 of 947 personal care assistants were treated as independent contractors by their agencies. As stated above, these independent contractors were reimbursed at \$10.50 per hour. As an independent contractor, however, individuals are required to pay all of the Social Security and Medicare taxes, which are normally shared between employers and employees when an individual is treated as an employee.⁸ Table 2 provides for the breakdown of independent contractors by agency.

<u>Home Health Care Agency</u>	<u>Total Number of Home Health Care Workers</u>	<u>Number Classified as Employees</u>	<u>Number Classified as Independent Contractors</u>
A	148	0	148
B	183	71	112
C	231	231	0
D	235	235	0
E	<u>150</u>	<u>0</u>	<u>150</u>
Totals	947	537	410

We noted that the law does not address payments to independent contractors working as personal care assistants for home health care agencies. If the agencies elected to engage personal care assistants as independent contractors at \$10.50 for each hour worked, the payment to them would be the same \$10.50 per hour paid to home health care agency employees, but the provider would not contribute half of the Social Security and Medicare taxes.

Our discussions with the home health care agency personnel disclosed that prospective health care workers are engaged as independent contractors for a variety of reasons including:

- An option provided to the workers by the agency.

⁷ Generally, the employer is required to withhold Social Security and Medicare taxes from employees' earnings and pay a matching amount to the Internal Revenue Service. The employee rates for Social Security and Medicare are 6.2 and 1.45 percent, respectively.

⁸ A person working as an independent contractor is subject to self-employment tax (SE tax). The rate for SE tax is 15.3 percent, which consists of Social Security (12.4 percent) and Medicare (2.9 percent) taxes.

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- The agency operates more like a temporary employment agency and does not provide direct supervision; instead, it just matches workers with Medicaid recipients.
- Personal care assistants have the flexibility to decide whether to accept or reject a case.

While independent contractors do not receive the Social Security and Medicare tax benefits, home health care agencies still receive a reimbursement rate of \$16.30 per hour. We believe subsequent agreements between MAA and home health care agencies should require the agencies to adjust the rate of reimbursement to providers to the extent that such taxes are not paid, i.e., 7.65 percent of \$10.50 (\$.80) would be deducted from the reimbursement rate of \$16.30. Thus, providers would be reimbursed for the hourly value of independent contractors of \$15.50 rather than \$16.30.

Monitoring Home Health Care Agencies. MAA oversees home health care agencies by performing annual site visits and completing its in-house developed checklist entitled “Elderly and Physical Disabilities Waiver Provider On-Site Monitoring Report.” We reviewed the checklist and found that only 2 of the 58 review steps were financially related, and none required the review of worker compensation. Further, MAA officials told us that staff had not been assigned to specifically monitor the agencies to ensure compliance with the Act.

MAA did conduct four annual site visits during the period of February 2006 through July 2006. Of the four agencies where MAA conducted site visits, one was a home health care agency that our review found to be in noncompliance with the Act. MAA’s site visit to this agency did not disclose any wage rate discrepancies. If MAA’s site visit checklist had included steps to review worker compensation, MAA might have discovered the \$10.50 wage issue at this agency.

RECOMMENDATIONS

We recommended that the Director, Department of Health:

1. Formalize the site visit checklist with written policies to provide guidance for ODA personnel to conduct reviews of home health care agencies, and include steps to ensure health care workers are paid in accordance with the applicable living wage.
2. Require that subsequent agreements between MAA and home health care agencies adjust the payment to providers using independent contractors to compensate for the 7.65 percent for Social Security and Medicare taxes contributed to the \$10.50 wage of employees.

FINDING AND RECOMMENDATIONS

3. In conjunction with applicable agencies, ensure agencies pay outstanding underpayments to personal care assistants.
4. Initiate appropriate action to detect errors and oversee corrections related to the \$10.50 wage issue at home health care agencies not visited during this audit.
5. Determine if the eligibility of home health care agencies receiving Medicaid funds should be revoked if personal care assistants are underpaid.

DOH RESPONSE (RECOMMENDATION 1)

DOH concurred with the recommendation and stated that a checklist developed by MAA for home health agency site visits would be the official tool to determine compliance with Medicaid rules. DOH officials also stated that MAA officials will submit related policies and procedures to the Senior Deputy Director for approval.

OIG COMMENT

DOH's corrective actions are responsive and meet the intent of the recommendation, but officials did not provide a target completion date for planned actions.

DOH RESPONSE (RECOMMENDATION 2)

DOH concurred with the recommendation. In its response, DOH indicated that home health care agencies would be given additional written directives to offer a choice to independent contractors. DOH planned to require home health care agencies to allow independent contractors the option of accepting the higher pay and paying their own Social Security and Medicare taxes directly to the Social Security Administration or allowing the home health care agencies to pay the taxes for them. In addition, MAA will require home health care agencies to submit the names of personal care aides who elect to work as independent contractors so that MAA can randomly monitor for compliance.

OIG COMMENT

The DOH response does not satisfy the recommendation for two reasons. First, Social Security and Medicare taxes are considered payroll taxes collected under the authority of the Federal Insurance Contributions Act (FICA). FICA is the tax provision of the Social Security Act, as it appears in the Internal Revenue Code. As a result, taxes are paid to the Internal Revenue Service, not to the Social Security Administration.

Second, the Internal Revenue Service does not have provisions to allow a third party to pay self-employment taxes for the self-employed, which generally includes independent contractors. Self-employment tax is a Social Security and Medicare tax. It is similar to the

FINDING AND RECOMMENDATIONS

Social Security and Medicare taxes withheld from the pay of most employees. Personal care aides have the option of becoming employees or independent contractors. The home health care agency is responsible for paying Social Security and Medicare taxes for employees. Once a personal care aide chooses to be an independent contractor, the employee is responsible for payment of taxes.

DOH RESPONSE (RECOMMENDATION 3)

DOH concurred with the recommendation. The DOH response states that the directive to be issued in compliance with Recommendation 2 will explain to home health care agencies that audits of payments to personal care assistants will be conducted for Calendar Year 2006. Any agency that has not paid the required dollar amount to employees will be required to submit to MAA a plan for making immediate payment. DOH also stated that MAA will revoke home health care agency privileges to admit new Medicaid participants if not in compliance with paying the higher rate within 3 months of the audit and/or directive. Further, MAA will terminate home health care agencies' participation in the Home and Community-Based Services Program if a final review results in a determination of non-compliance.

OIG COMMENT

DOH's corrective actions are responsive and meet the intent of the recommendation, but officials did not provide a target completion date for planned actions.

DOH RESPONSE (RECOMMENDATION 4)

DOH concurred with the recommendation and stated that MAA will conduct a random sample of personnel records not audited by the OIG for Calendar Year 2006.

OIG COMMENT

DOH's corrective actions are responsive and meet the intent of the recommendation, but officials did not provide a target completion date for planned actions.

DOH RESPONSE (RECOMMENDATION 5)

DOH concurred with the recommendation. In its response, DOH stated that MAA will inform all home health care agencies immediately if the District law changes in reference to wage increases and will require that agencies take timely and complete action to comply with any revisions to the Law. The DOH response also indicates that MAA will require home health care agencies to obtain signed documents from employee and independent contractors regarding wage rates and time and attendance accountability. Further, DOH states that

FINDING AND RECOMMENDATIONS

random audits of home health care agency personnel files will be conducted annually to assess that required documentation is maintained.

OIG COMMENT

DOH's corrective actions are responsive and meet the intent of the recommendation, but officials did not provide a target completion date for planned actions.

**EXHIBIT A: SUMMARY OF POTENTIAL BENEFITS
RESULTING FROM AUDIT**

Recommendation	Description of Benefit	Amount and Type of Monetary Benefit	Agency Reported Estimated Completion Date	Status ⁹
1	Internal Control and Compliance. Formalizes the site visit checklist with written policies to provide guidance for ODA personnel to conduct reviews of home health care agencies, and include steps to ensure personal care are paid in accordance with the Act.	Non-Monetary	TBD	Open
2	Compliance. Will ensure pay parity between home health care agency employees and independent contractors serving as personal care assistants.	Non-Monetary	TBD	Open
3	Compliance. Ensures home health care agencies will pay outstanding underpayments to personal care assistants.	Non-Monetary	TBD	Open
4	Compliance. Initiates appropriate action to detect errors and oversee corrections related to the \$10.50 wage issue at home health care agencies not visited during this audit.	Non-Monetary	TBD	Open
5	Compliance. Ensure compliance with District law.	Non-Monetary	TBD	Open

⁹This column provides the status of a recommendation as of the report date. For final reports, “**Open**” means management and the OIG are in agreement on the action to be taken, but action is not complete. “**Closed**” means management has advised that the action necessary to correct the condition is complete. If a completion date was not provided, the date of management’s response is used. “**Unresolved**” means that management has neither agreed to take the recommended action nor proposed satisfactory alternative actions to correct the condition.

EXHIBIT B: DOH'S RESPONSE TO DRAFT REPORT

GOVERNMENT OF THE DISTRICT OF COLUMBIA
Department of Health



Office of the Director

April 11, 2007

Mr. Charles Willoughby, Esq.
Inspector General
Office of the Inspector General
717 14th Street, NW
Washington, D.C. 20005

Dear Mr. Willoughby:

This letter is written in response to your letter of March 30, 2007 concerning an Office of the Inspector General (OIG) Audit of Home Health Care Agency Compliance with Legal Requirements for paying Fixed-Hourly Labor Rates to Personal Care Assistants - OIG No. 06-2-24HC.

Specifically, I am responding to the audit focus on Home Health Care Fixed Labor Rates for Personal Care Assistants or as they are referred to in the Office on Disabilities and Aging (ODA) as Personal Care Aides. We have reviewed the report in detail and accept your findings.

As requested, we have also responded to some of the findings and conclusions and would ask that you consider the following response to your Audit report which provides more details. In addition, we will begin work to integrate your recommendations into future work with the Home Health Agencies.

The following corrective actions have already been taken:

1. **RECOMMENDATION: Internal control and Compliance. Formalize the site visit checklist with written policies to provide guidance for MAA Office on Disabilities and Aging (ODA) personnel to conduct reviews of home health care agencies, and include steps to ensure health care workers (personal care aides) are paid in accordance with the Applicable living wage.**

STATUS: Recommendation Accepted.

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The Medical Assistance Administration (MAA) has developed a checklist for Home Health Agency site visits which will be the official tool used to determine an agency's compliance with the Medicaid rules, as outlined. MAA Senior Deputy Director will have to approve the use of the checklist and related policies and procedures associated with the checklist. The policies and procedural guidelines will be formally submitted to MAA Senior Deputy Director to be reviewed and approved. A signed copy of the document will be available after the Senior Deputy Director's approval.

- 2. RECOMMENDATION: Compliance. Will ensure pay parity between home health care agency employees and independent contractors serving as personal care assistants.**

STATUS: Recommendation Accepted.

All agencies will be given additional written directives from MAA to supplement the previous MAA directive which indicated that compliance was and is a condition of Medicaid participation. The directive will require agencies to either directly pay the additional 80 cents per hour to the Social Security Administration for Social Security Tax and Medicare benefit or add it to the payment of each independent contractor in addition to the \$10.50 per hour that must be paid to all employees. MAA will require that each agency allow Independent Contractors the option to choose whether the contractor wants to accept the higher pay and then pay their own Social Security and Medicare Benefits or the contractor chooses for the Agency to pay for their Social Security and/or Medicare benefits.

Agencies will be required to submit the names of all of the personal care aides who elect to be independent contractors to MAA. MAA will randomly monitor for compliance.

All new agencies will be required to meet all of the aforementioned conditions of Medicaid participation and agree with MAA on the plan to compensate the Independent Contractor with the 7.65 percent for Social Security Medicare tax by paying directly to the contractor or to Social Security.

- 3. RECOMMENDATION: Ensure agencies will pay outstanding underpayments to personal care assistants.**

STATUS: Recommendation Accepted.

The aforementioned directive will also explain that an audit of home health agencies payments to the personal care assistants will be conducted for the calendar year

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January 2006 to January 2007. Any agency that has not paid the required dollar amount to the employee will be required to submit to MAA/ODA a plan that will outline immediate payment to the employee.

Agencies found not to be in compliance with the payment within three months of the audit and/or directive to pay outstanding underpayments will have privileges to admit new Medicaid participants revoked.

Final review and determination of non-compliance will result in agencies termination of participation in the Home and Community-Based Services Program (HCBS). All Medicaid HCBS participants affiliated with the terminated agency will be transferred to other Medicaid agencies.

4. **RECOMMENDATION: Initiates appropriate action to detect errors and oversee corrections related to the \$10.50 wage issue at home health agencies not visited during this audit.**

STATUS: Recommendation Accepted.

MAA will conduct a random sample of personnel records of all of the Medicaid Home Health agencies that were not audited by the OIG. MAA will request bookkeeping records for the calendar year January 2006 through January 2007.

5. **RECOMMENDATION: Ensure compliance with District Law.**

STATUS: Recommendation accepted.

All home health agencies will be informed immediately of the District Law changes as it references wage increases by MAA/ODA. Timely and complete action to comply with all changes will be required of each agency.

At any given time of wage increase Agencies will be asked to provide information sheets to personal care aide employees, which will reflect percent of wage increase as well as the dollar rate for both the agency and the employee.

- Personal Care aides will be required to sign receipt of the information sheets. A copy of the signed information sheet will become a component of the permanent employee file.

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MAA will ask each agency to comply with the following Medicaid protocols:

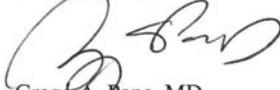
- Information sheet on the required wage rate for independent contractor and the Social Security Medicare tax benefit.[signed]
- Information sheet on the required wage rate for employee [signed]
- Time and attendance accountability
- Request for the book keeping records of a sample employee population.
 1. Elements to be reviewed will be that of dollar amounts paid for daily and weekly work of the personal care aides

Random audits of home health agency personnel files will be conducted annually to assess that the agencies have copies of the aforementioned documents and/or can attest to document compliance.

In summary, the Department of Health and MAA accept the OIG report on Home Health Aides and have adopted all of the recommendations offered.

Thank you for your time and efforts on behalf of District residents and we pledge our support in addressing all OIG areas of expressed concern.

Sincerely,



Gregg A. Pane, MD
Director

cc: Robert T. Maruca, Senior Deputy Director, MAA
Robert L. Cosby, Chief, Office on Disabilities and Aging, MAA