More than $36 million in over billings and overpayments were identified by the State, in addition to suspect business relationships. Rather than working to root out fraud, waste, and abuse in the Medicaid system, the Auditor is bending over backwards to fluff up his own campaign and protect his political allies. It is stunning that the State Auditor sees nothing wrong with non-profit CEOs buying personal airplanes with Medicaid funds, but suddenly sees issues with HSD that he never raised during the Richardson Administration, and were actually identified by the current administration.

This is just another sad example of an announced political candidate using his office to make politically motivated statements. The information released by the State Auditor is fraught with misstatements and inaccuracies. HSD received a clean opinion by external auditors and the State Auditor is doing nothing more than making hay out of non-issue findings or old items from years past.

For example, the $60 million the Auditor claims to have identified dates back to the Richardson Administration and is part of the reconciliation issue that this administration is cleaning up. Had the books been reconciled back then, it’s an issue that would have been identified immediately.

Point-by-point Response:

·      HSD used both federal and state funds to pay the costs of the transition.  No federal funds were used throughout the audit process for the cost of the transition, only state funds.

·      Auditors found HSD improperly paid a total of $620,383 to five behavioral health providers from Arizona hired by HSD to replace the 15 suspended providers.  These costs, which HSD paid with federal and state funds, violated HSD’s professional services contracts with these providers.  Reimbursements totaling $412,747 for invoices for services that were received more than 15 days after the end of the fiscal year. The State Auditor alleges that $620k in improper and inappropriate costs was paid to the 5 transitional agencies. But in his own breakdown he shows that over 2/3 of that amount ($412k) were neither improper nor inappropriate, but rather were invoices that had been submitted late. Waiver of late billing at the end of the fiscal year is routinely done by state agencies.

·      Payments totaling $187,896 that include prepayments for estimates or projections rather than reimbursement (advance payments for costs not yet incurred or paid). Most of the $187,896 in payments went towards keeping New Mexicans employed while the transitions were taking place. The funds were paid out to keep paying employees from the audited agencies and keep services in place.

·      Reimbursement totaling $19,740 for purchases of tangible personal property over $10,000 that did not receive HSD’s prior approval. The department reviewed and approved every purchase over $10,000, as stipulated in department’s contracts with the five transition behavioral health agencies.  In some cases, that approval was given verbally through frequent transition meetings and then approved again upon payment. The transitional providers were in daily communication with HSD and purchased items, such as computers, because the former providers took everything with them, in some situations, loading up rental trucks with furniture and even medical records.

·      Auditors found that HSD improperly paid nearly $7,000 to PCG for certain inappropriate costs incurred under HSD’s professional services contract with PCG.  The costs, which HSD paid with federal Medicaid funds, included:

·      Excess per diem reimbursements to PCG employees in the amount of $2,797.  These reimbursements included duplicate per diems reported on the same day and per diem paid in addition to reimbursement for actual travel expenses. Reimbursement of expenses previously billed in the amount of $3,315. These billings were previously identified by HSD and will be taken out of PCGs final payment.

·      Reimbursement of alcoholic beverages totaling $115. Per-diem rates were calculated for PCG and did not include reimbursement for alcohol.

·      Reimbursement to PCG for payment for State of New Mexico employees’ meals in the amount of $713. HSD required state staff to attend the on-site reviews conducted by PCG.  PCG paid for state staff because: (1) shortened time period given the urgency of the on-site visits and inability for state employees to obtain a travel advance pursuant to state policy; and (2) the on-site visits were unannounced and any delay may have resulted in providers given advance notice.

·      For 15 referrals HSD made to the Attorney General’s Medicaid Fraud Control Unit (MFCU) in June 2013, auditors found HSD circumvented established requirements for the investigation and referral of credible allegations of fraud.  HSD’s procedures require HSD’s Program Integrity Unit (PIU) to receive initial reports of allegations, conduct a preliminary investigation of the allegations or forward the allegations to the Department’s Office of Inspector General.  Auditors noted that PIU staff did not perform the preliminary investigation of the allegations associated with HSD’s June 2013 suspension of certain behavioral health providers, yet PIU staff signed the 15 referrals to the MFCU. The State Auditor’s remarks regarding the Department’s “circumvention” of established requirements for investigating allegations of fraud once again show that, despite having received thousands of pages of supporting documents from HSD, he lacks even a rudimentary understanding of the enormous scope of the behavioral health audit. The Program Integrity Unit (PIU), which is comprised of a total of less than half a dozen employees and one certified coder, is experienced in doing investigations of single entities involving potential claims of thousands of dollars. The unit has never performed, nor is it capable of performing, a program integrity audit involving 15 large providers and hundreds of millions of dollars in claims, as was performed by PCG, Inc. By the State Auditor’s reasoning, the State should have forgone its fraud investigation because it was beyond the ability of the PIU to investigate.

·      Auditors found that the Department’s internal controls over compliance with the proper use of Medicaid funds were not designed effectively to timely detect potential overpayments to behavioral health providers.  The Department’s inability to timely detect overpayments resulted in significant potential questioned costs over a three-year period.  Auditors found that the questioned costs, identified by the PCG audit report to be approximately $36 million, indicate HSD’s poor management of contractual agreements which are in place to monitor payments made to behavioral health providers. The State Auditor’s complete lack of understanding of healthcare program integrity audits is again shown by his statement that the Department failed to timely identify overpayments.  Everyday new advances in technology are made to help detect healthcare fraud, waste and abuse.  Indeed, some estimate that 15-30% of healthcare claims submitted for payment fall into the category of fraud, waste or abuse.  With hundreds of thousands of claims submitted on a daily basis, it is virtually impossible to identify each and every claim without automated assistance.  For example, Optum Health New Mexico, Inc. instituted new automated tools in 2012 that identified aberrant billing patterns in the 15 audited behavioral health providers.  This resulted in HSD’s review of the suspicious activity and retaining PCG to conduct clinical and claims reviews.  These clinical and claims reviews were not automated; they were in-depth analysis of clinical charts and credentials and matched to billing/payments done by these provider agencies.

·      Auditors identified $60,212,204 in federal funds which HSD failed to collect in order to reimburse the State of New Mexico for Medicaid expenses.  For many years HSD failed to make timely requests for federal reimbursement for payments made to Medicaid recipients, and the Department also incurred expenditures in excess of approved award amounts for Medicaid funds.  Over time these failures led to an amount of $60,212,204 the Department is now unable to collect from the federal government, which has contributed to a negative fund balance for the State’s Medicaid Fund.  The fund is currently short $72 million. The $60 million the Auditor claims to have identified dates back to the Richardson Administration and is part of the reconciliation issue that this administration is cleaning up. Had the books been reconciled back then, it’s an issue that would have been identified immediately. (The actual audit says HSD identified this as well, not the contract auditor. The issue was identified by the Martinez Administration.)

·      In his referrals, Auditor Balderas also voiced his concerns over HSD’s lack of transparency related to the PCG audit report.  Auditor Balderas subpoenaed the PCG report in July 2013 after HSD Secretary Sidonie Squier refused to provide a copy of the report to the State Auditor and CLA.  In October 2013, Auditor Balderas discovered that the PCG audit report that HSD referred to the Attorney General in June 2013 had been altered before HSD provided the report to the State Auditor and CLA.  Specifically, the PCG audit report HSD provided to the State Auditor in July 2013 removed the language, “PCG’s Case File Audit did not uncover what it would consider to be credible allegations of fraud, nor significant concerns related to consumer safety.”  HSD failed to inform CLA and the State Auditor of the alteration, and the State Auditor once again engaged the court in November 2013 for a second subpoena to sort out the inconsistencies caused by HSD’s withholding of information material to completion of the audit.  The First Judicial District Court subsequently issued an Order directing Secretary Squier to “immediately produce, to the extent she has not already done so, ‘[a]ny and all ‘audit report(s)’ . . . generated by Public Consulting Group, Inc.’” Prior to the “second subpoena” issued in November 2013, HSD provided a written response to the Office of the State Auditor and explained what had occurred regarding the PCG report.  The OSA sought a hearing before Judge Singleton who noted that OSA had received all PCG draft and final reports and that HSD had provided the information to the OSA.  Therefore, the OSA wasted judicial and state resources in garnering a headline. Balderas continues to complain regarding HSD’s “lack of transparency,” but his allegations that the Department acted improperly were flatly rejected by the First Judicial District Court.