

April 24, 2024

The Honorable Xavier Becerra
Secretary
U.S. Department of Health and Human Services
200 Independence Avenue S.W. Washington, D.C., 20201

VIA: Electronic Mail

Re: Delays in Statewide Cost Allocation Plan Approval

Dear Secretary Becerra:

On behalf of the National Association of State Auditors, Comptrollers and Treasurers (NASACT), I am writing to bring to your attention to an ongoing issue causing concern and frustration among some state comptroller offices. Specifically, I am referring to issues surrounding the continued delay in approval of Statewide Cost Allocation Plans (SWCAPs). We kindly request that the Department of Health and Human Services (HHS) work with NASACT to find effective avenues to address the ongoing challenges so that the states and federal cost negotiators can embark on a timely approval process.

The U.S. Office of Management and Budget (OMB) requires that each state develop and submit a yearly SWCAP as authorized by federal regulations in the Uniform Guidance (2 CFR Part 200). The Uniform Guidance establishes principles and standards for determining costs for federal awards carried out through grants, cost reimbursement contracts, and other agreements with state and local governments and federally recognized Indian tribal governments. Certain time expectations are also specified in the Uniform Guidance, such as:

- Indirect cost proposals must be developed (and, when required, submitted) within six months prior to the beginning of each of the governmental unit's fiscal years...; and
- Indirect cost rates will be reviewed, negotiated, and approved by the cognizant agency on a timely basis. The cognizant agency for indirect costs will review the proposal within six months of receipt of the proposal and either negotiate/approve the proposal or advise the governmental unit of the additional documentation needed to support/evaluate the proposed plan or the changes required to make the proposal acceptable.

A SWCAP is a narrative description of the procedures that the state agency will use in identifying, measuring, and allocating all state agency costs incurred in support of programs administered or supervised by the state agency. The SWCAP must be submitted to and approved by the Division of Cost Allocation Services at HHS. The SWCAP should be charged to all federal grants and contracts if indirect costs are an allowable cost by the granting or contracting agency. Each year, in accordance with the requirements of the Uniform Guidance, states spend an enormous amount of time and



resources preparing the annual statewide cost allocation plan which is subsequently submitted to the Division of Cost Allocation.

Until the most recent plan submitted for review has been approved, state agencies must rely on outdated information from the last federally approved plan. Unfortunately, the approval for such plans is very delayed with some states currently as many as four years behind.

While we understand that the delays in approval can be attributed in part to the lack of federal staffing resources, there is a resulting backlog of delays in negotiations, potentially leading to extended periods of either overstating or understating cost recoveries. Additionally, there are many other concerns resulting from the delay in SWCAP approvals, with the following only being a sample of issues from states:

- In each SWCAP a state may be forced to make allowability determinations and decisions that have not been reviewed.
 - As each SWCAP is impacted by the prior approved plan if there are determinations HHS does not agree with or other adjustments are necessary, the impact will be compounded as any adjustment for an older year plan may require revision of all subsequent years' plans still awaiting approval, which will require many years of re-work to the SWCAP.
 - Also, this could cause unallowable costs, including states being charged penalties and interest. This would be an unplanned liability, especially if something that is problematic through HHS review was not discovered in time but instead the issue occurred for many years, overall making managing fund balance more complex for states.
- The guidance received from federal negotiators is to use the most recently approved plan year, which has state agencies calculating indirect cost rates using the SWCAPs from as many as 3-4 years ago.
 - As older years of SWCAPs are approved, there is a risk that the federal agencies will not allow state agencies to amend their cost allocation plans for previous years.
 - Alternatively, state agencies have been using the most recently approved SWCAP that contains indirect cost plans for several years, which are far off; this is ultimately going to lead to extraordinarily large adjustments.
- Ultimately, when a federal cost negotiator poses a question or requests documentation, the state agency will have a difficult time being able to access the dated information or the same staff may no longer be at the state agency, due to high staff turnover.
 - We recognize that record retention is a requirement, however due to turnover, systems change, etc., we have seen instances where it is possible that an agency would no longer be able to access explanations that could justify expenditures.
 - Also, subsequent responses from the federal cost negotiators often take an extended amount of time further delaying the negotiation process.



It is important to also note that COVID tremendously increased the amount of federal funds that were provided to the states. With the increased amount of federal funding, there is an increased amount of overhead associated with distributing these COVID funds. If agencies are dependent on the last approved SWCAP to create their agency's indirect cost rate, the increased COVID transactions may not be included in pre-COVID SWCAPs.

For example, the U.S. Department of Education does not allow unapproved SWCAP amounts. Thus, only the most recently approved SWCAP amounts are included in the agency rate approval. If a state has not had an approved SWCAP since FY16 (Fixed Cost for FY18) then the State Education Agency is only approved for their FY17 SWCAP overhead cost.

We urge your assistance in resolving this serious issue. We understand the technical nature of the cost negotiation process and we are sympathetic to staffing issues, but using extremely outdated information is not useful and until plans are approved in a timelier manner, issues will persist, and full costs may not be recovered. In fact, one state has relayed that over a five-year period, \$5 million dollars in unrecovered costs can be directly attributed to a delay in plan approval for just one agency in the state.

We are eager to work with HHS to find a solution to this pressing issue. Please contact our representative in Washington, Cornelia Chebinou, at cchebinou@nasact.org or (202) 989-6801 for questions or additional information.

Sincerely,

Greg Griffin, State Auditor of Georgia
NASACT President, 2023-24

cc: Arif "Mak" Karim, Director, Cost Allocation Services, US Department of Health and Human Services

Diedre Harrison, Deputy Controller, Office of Federal Financial Management, US Office of Management and Budget