

STATE OF WEST VIRGINIA
SPECIAL REPORT
OF
WEST VIRGINIA DEPARTMENT OF
HEALTH AND HUMAN RESOURCES
SPECIAL REPORT ON
OVERTIME AND ADDITIONAL COMPENSATION
FOR THE PERIOD
JULY 1, 2003 - JUNE 30, 2005



OFFICE OF THE LEGISLATIVE AUDITOR
CAPITOL BUILDING
CHARLESTON, WEST VIRGINIA 25305-0610

WEST VIRGINIA DEPARTMENT OF HEALTH AND HUMAN RESOURCES

SPECIAL REPORT ON

OVERTIME AND ADDITIONAL COMPENSATION

FOR THE PERIOD

JULY 1, 2003 - JUNE 30, 2005

WEST VIRGINIA LEGISLATURE
Joint Committee on Government and Finance

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CHARLESTON, WEST VIRGINIA 25305-0610

To the Joint Committee on Government and Finance:

The objectives of this Special Report were to understand and evaluate the Department of Health and Human Resources (DHHR) policies and procedures relating to overtime and additional compensation in order to determine if they were consistent with the directives conveyed in the Federal Fair Labor Standards Act (FLSA), the West Virginia Code and other governing rules and regulations. We also culminated the totals of overtime and additional compensation paid to exempt employees for the two-year period ended June 30, 2005.

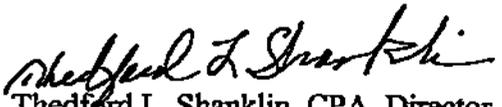
In order to achieve the objectives noted above, we performed the following:

- Obtained and reviewed all the DHHR policies concerning overtime and additional compensation, applicable sections of the FLSA, the West Virginia Code, the DHHR's Legislative Rules and Regulations, as well as other governing rules, regulations, policies, and procedures as they pertain to overtime and additional compensation.
- Obtained and reviewed employee overtime and additional compensation hours worked and paid as recorded on the DHHR's EPICS payroll system files for the period of July 1, 2003 through June 30, 2005;
- Conducted interviews with various DHHR personnel to determine how overtime and additional compensation pay was calculated, how management determined those situations where overtime was warranted, the processes involved in determining those employees offered overtime work, and the internal controls in place monitoring overtime and additional compensation;
- Documented the DHHR overtime and additional compensation procedures and obtained DHHR approval of the documented procedures to ensure accuracy;
- Determined if management reports related to overtime and additional compensation worked were generated and, if so, how the reports were used by management;

- Determined the Division of Personnel (DOP) employee classifications of those employees that received overtime and additional compensation pay and ascertained if the DHHR paid overtime and additional compensation to employees in excess of the DOP's determination of the FLSA overtime requirements; and,
- Conducted tests to determine if overtime and additional compensation calculations conformed with the FLSA, the West Virginia Code, DHHR policies and procedures, and other governing rules and regulations.

Our report covers the period of July 1, 2003 through June 30, 2005. The results of our determination and evaluation are set forth on the following pages of this report.

Respectfully submitted,


Thedford L. Shanklin, CPA, Director
Legislative Post Audit Division

March 27, 2006

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WEST VIRGINIA

DEPARTMENT OF HEALTH AND HUMAN RESOURCES

SPECIAL REPORT ON OVERTIME AND ADDITIONAL COMPENSATION

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WEST VIRGINIA
DEPARTMENT OF HEALTH AND HUMAN RESOURCES
SPECIAL REPORT ON OVERTIME AND ADDITIONAL COMPENSATION
EXIT CONFERENCE

We held an exit conference on July 19, 2006 with the Deputy Secretary for Administration and other representatives of the Department of Health and Human Resources. All findings and recommendations contained in the Special Report on Overtime and Additional Compensation were reviewed and discussed. The Department of Health and Human Resources' responses are included in bold and italics in the Executive Summary and after our findings in the General Remarks section of this report.

WEST VIRGINIA

DEPARTMENT OF HEALTH AND HUMAN RESOURCES

SPECIAL REPORT ON OVERTIME AND ADDITIONAL COMPENSATION

EXECUTIVE SUMMARY

I. Exempt Employees Receiving Overtime and/or Additional Straight-Time Compensation

For the period of July 1, 2003 through June 30, 2005, the DHHR paid 163 exempt employees \$1,228,139.45, in overtime and/or additional straight-time compensation not required by either Federal or State Law. The West Virginia Division of Personnel (DOP) and the agency had listed these 163 employees DOP job classifications as exempt from the Federal Fair Labor Standards Act (FLSA) overtime and/or additional straight-time requirements. Further, the DHHR policy prohibits overtime and additional straight-time compensation be paid to exempt employees as promulgated by Chapter IX of the DHHR Policy Memorandum 2102 (Pilot Policy).

Auditor's Recommendation

We recommend the WVDHHR comply with Chapter 9, Section D, of the DHHR Policy Memorandum 2102 (Pilot Policy).

Agency's Response

We will be amending our current policy regarding "exempt employees not eligible for overtime" with the caveat that under certain circumstances (such as flood assistance/relief), exempt overtime may be authorized at the discretion of the Secretary. (See pages 5-9)

II. Inaccurate Compensation

We tested 263 overtime and/or additional straight-time payments made by DHHR. We found calculation errors of 36.5% or 96 out of 263 instances with the employees hourly straight-time rate, overtime rate, overtime hours, additional straight-time hours, and semi-monthly salary rate. We noted 17 percent or 44 out of 263 instances where the DHHR paid overtime and/or additional straight-time for a different calculated amount of hours for a total overpayment of \$642.52. We also noted one instance where the DHHR paid an employee the wrong bi-monthly salary amount for a total underpayment of \$272.82. In addition, we noted 16 percent or 42 out of 263 instances the DHHR calculated the wrong overtime rate of pay for differences ranging from overpayments of \$5.24 per hour to under payments of \$2.74 per hour. We also noted, three percent or eight out of 263 instances the DHHR calculated the wrong hourly rate of pay for differences ranging from overpayments of

\$1.91 per hour to under payments of \$0.95 per hour. In addition, we noted one instance where the DHHR paid the wrong employee overtime compensation earned by another employee for an overpayment of \$30.45.

Auditor's Recommendation

We recommend the DHHR comply with Section 7 of the Fair Labor Standards Act and calculation of hourly rate as defined in Chapter VIII of the DHHR Policy Memorandum 2102 (Pilot Policy).

Agency's Response

We will comply with the recommendation. (See pages 9-11)

III. Lack of Supporting Documentation and Approvals

Of the 263 payments tested, we found Overtime and Additional Straight-Time Requests and the Individual Attendance Reports were missing for 88 payments tested (33%). In addition, we found 24 instances in which "Overtime and Additional Straight-Time Pay Request" forms lacked management pre-approval signatures, justifications for emergency overtime, or other pertinent data. Without supporting documentation and evidence of management approvals, we were unable to determine if the payments noted above were accurate and authorized.

Auditor's Recommendation

We recommend the DHHR comply with Title 29, Part 516 of the Code of Federal Regulations and internal policy memorandums.

Agency's Response

We will comply with the recommendation. (See pages 11-15)

IV. Submission And Payment of Overtime and/or Additional Straight-Time Not Made In A Timely Manner

Our testing revealed 22 out of 263 instances (8%) totaling \$7,976.80 where the DHHR employees failed to submit overtime and/or additional compensation request forms in the pay period following the period in which the time was earned in noncompliance with DHHR Policy Memorandum 2102, Section IX, Subsection E (1).

Auditor's Recommendation

We recommend the DHHR comply with the DHHR Policy Memorandum 2102, Section IX, Subsection E (1).

Agency's Response

We will comply with the recommendation. (See pages 15 and 16)

V. Shift Differential

We noted 78 percent or 42 out of 54 instances where the DHHR overpaid \$289.48 in shift differential pay to ineligible employees in noncompliance with the Bureau for Behavioral Health and Health Facilities Shift Differential/Holiday Pay Memorandum dated December 10, 2002.

Auditor's Recommendation

We recommend the DHHR comply with the Bureau for Behavioral Health and Health Facilities Shift Differential/Holiday Pay Memorandum.

Agency's Response

We will comply with the recommendation. (See pages 17 and 18)

VI. Overtime and/or Additional Straight-Time Bonus

We also noted 31 percent or 20 out of 64 instances William R. Sharpe, Jr. Hospital included the bonus in the calculation of employees annual salary and paid the wrong amount of overtime and/or additional straight-time compensation pay for total overpayment of \$98.66.

Auditor's Recommendation

We recommend that the DHHR comply with Title 29, Part 778.208 of the Code of Federal Regulations Part Interpretive Bulletin On Overtime Compensation and the Memorandum from the Secretary to DHHR employees dated December 30, 2004.

Agency's Response

We will comply with the recommendation. (See pages 18-20)

**WEST VIRGINIA DEPARTMENT OF HEALTH AND HUMAN RESOURCES
SPECIAL REPORT ON OVERTIME AND ADDITIONAL COMPENSATION**

GENERAL REMARKS

Objectives

The objectives of this special report were to understand and evaluate the Department of Health and Human Resources (DHHR) policies and procedures relating to overtime and additional compensation paid to DHHR employees in order to determine if they were consistent with the directives conveyed in the Federal Fair Labor Standards Act (FLSA), the West Virginia Code, and other governing rules and regulations. This special report covers the period July 1, 2003 through June 30, 2005.

**Exempt Employees Receiving Overtime
and/or Additional Straight-Time Compensation**

According to the DHHR's payroll records for the period of July 1, 2003 through June 30, 2005, the DHHR paid 163 exempt employees \$1,228,139.45 in overtime and/or additional straight-time compensation not required by either Federal or State Law as follows:

FISCAL YEARS 2004 AND 2005 COMBINED

<u>Spending Unit</u>	<u>Number of Exempt Employees*</u>	<u>Exempt Amount Paid</u>
DHHR	51	\$ 98,451.62
Human Services	44	193,238.02
Hopemont Hospital	4	1,455.64
Lakin Hospital	2	393.19
John Manchin, Sr. Health Care Center	0	0.00
Pinecrest Hospital	3	480.82
Welch Emergency Hospital	8	198,215.78
William R. Sharpe, Jr. Hospital	19	43,454.45
Mildred Mitchell-Bateman Hospital	<u>32</u>	<u>692,449.93</u>
Total	<u>163</u>	<u>\$1,228,139.45</u>

* - It is possible the same employee could be represented for both fiscal years.

Section 7, "Maximum Hours" of the FLSA requires employers to pay overtime for employees who work in excess of 40 hours per workweek as follows:

". . . SEC. 7.35* (1) Except as otherwise provided in this section, no employer shall employ any of his employees . . . for a workweek longer than forty hours unless such employee receives compensation for his employment in excess of the hours above specified at a rate not less than one and one-half times the regular rate at which he is employed. . . ."

In Section 13 "Exemptions" the FLSA exempts certain types of employees – based on job duties performed – from the provisions in Section 7 as follows:

"SEC 13. . . . The provisions of... (section) 7 shall not apply to... any employee in a bona fide executive, administrative, or professional capacity..." (Emphasis added)

Further, the DHHR policy prohibits overtime and/or additional compensation be paid as promulgated by Chapter IX of the DHHR Policy Memorandum 2102, (Pilot Policy) which states in part,

"... Exempt employees are not eligible for compensation resulting from these over and additional straight-time provisions. Further, it is the intent of this policy to specify the terms and conditions by which overtime and additional straight-time compensation will be paid to eligible employees, and under what conditions overtime and additional straight-time are not payable . . . D. Classification Determination : Positions are classified as exempt or nonexempt based upon the duties of the position, not the incumbent's education or experience. Exempt employees receive a monthly salary as payment in full for all services rendered. Employees with executive, administrative, or professional degrees or titles may be in positions performing nonexempt work. Those positions may be salaried for pay equity purposes, but still be classified as nonexempt, entitling those employees to overtime as well as pay withholding for hours not worked."

The West Virginia Division of Personnel (DOP) and the DHHR had listed these 160 employees' DOP job classifications as exempt from the FLSA overtime requirements. According

to the Assistant Director of the DOP Classification and Compensation Division, the determination of the FLSA exempt/nonexempt guidelines for DOP job classifications were made with the assistance of the local district office of the United States Department of Labor's (DOL) Wage and Hour Division.

The DOP's Assistant Director told us the DOL's Wage and Hour Division added the standard caveat that FLSA exempt/non-exempt designations for DOP job classifications were only guidelines; FLSA coverage of a position must be determined based on duties performed by an employee. Our analysis of employee duties, as denoted on DHHR employee job descriptions and DHHR employee performance evaluations for our test sample, were entirely consistent with the FLSA exempt/nonexempt status guidelines determined by the DOP and the DOL.

Some of these FLSA exempt employees were paid overtime at one and one-half times their regular hourly rate, while other exempt employees received additional compensation at their regular hourly rate (straight-time). Of the 160 classified exempt employees noted above, we selected 20 individuals and determined that all 20 employees received overtime and/or additional straight-time compensation totaling \$23,965.65.

The DHHR's Human Resources Director stated there are instances where exempt employees are being paid overtime (i.e. - Disaster Relief workers for the Katrina Disaster); these workers expect to receive overtime based on past practices. The Director also stated in situations where the Governor declares a state of emergency or there is a flood, exempt employees are often paid overtime in cases where exempt employees are performing nonexempt types of jobs. If an exempt employee performs nonexempt duties for greater than 50 percent of the time worked, they qualify for overtime pay.

The Human Resources Director of Welch Community Hospital stated that if an Obstetrician has a patient in labor and is required to stay at the hospital to care for this patient, this is considered overtime and the employee is paid at one and one-half times the hourly pay rate. If a doctor leaves the hospital and is called back to care for a patient, that time is considered "on-call" and these additional hours are paid at a straight-time rate. The Chief Financial Officer of Welch Community Hospital stated that there are times when employees will be required to work overtime due to special projects or jobs that need to be done at a time when there are few people in the hospital.

William R. Sharpe, Jr. Hospital's Human Resources Director stated that in order to meet nurse to patient levels required by law, it is necessary for some exempt nursing staff to remain on duty or be called in under special circumstances. The Director also stated the only circumstance where an exempt employee would be eligible to receive overtime is during instances where a Nurse IV, which is more of an administrative position, is performing duties as a direct care nurse, a nonexempt position.

The Mildred Mitchell-Bateman Hospital's Human Resource Director stated that one physician is required to be on-call at the facility 24 hours a day. In order to meet this requirement it is necessary for physicians to work in excess of 40 hours in a workweek. Physicians are paid at their straight-time hourly rate for any hours worked over 40 hours. In addition, the Human Resource Director also stated that in order to meet the nurse to patient levels required by law, it is necessary for some exempt nursing staff to remain on duty or be called in under special circumstances. The Director also stated, if a unit manager (Nurse IV) is unable to find someone to work, they will be paid overtime for performing duties outside of their own job classification.

Of the employees selected for testing, we saw no documentation supporting overtime payments made to exempt employees for performing non-exempt duties.

We recommend the DHHR comply with Chapter 9, Section D, of the DHHR's Policy Memorandum 2102, (Pilot Policy).

Agency's Response

We will be amending our current policy regarding "exempt employees not eligible for overtime" with the caveat that under certain circumstances (such as flood assistance/relief), exempt overtime may be authorized at the discretion of the Secretary.

Inaccurate Compensation

During our report period, the DHHR's payroll records paid 5,012 exempt and nonexempt employees \$7,917,274.65 in overtime and/or additional straight-time compensation as follows:

PROCESS YEARS 2004 AND 2005 COMBINED

<u>Spending Unit</u>	<u>Employees Paid Overtime and/or Additional Compensation</u>	<u>Overtime and/or Additional Compensation Paid</u>
DHHR	275	\$ 460,733.91
Human Services	1,840	2,724,870.27
Hopemont Hospital	225	81,758.41
Lakin Hospital	268	272,576.43
John Manchin, Sr. Health Care Center	92	72,582.87
Pinecrest Hospital	428	632,649.98
Welch Emergency Hospital	483	731,142.21
William R. Sharpe, Jr. Hospital	702	788,582.55
Mildred Mitchell-Bateman Hospital	<u>699</u>	<u>2,152,378.02</u>
TOTAL	<u>5,012</u>	<u>\$7,917,274.65</u>

As noted previously, Section 7 of the FLSA requires overtime to be paid to non-exempt employees at a rate of not less than one and one-half times the employee's regular hourly rate. In addition, Chapter VIII "Definitions" of the DHHR Policy Memorandum 2102, (Pilot Policy) computes overtime and/or additional straight-time compensation as follows.

"... O. Regular Hourly Rate of Pay For the Purpose of Overtime Compensation: An employee's yearly gross wage (base salary plus Increment pay) divided by 2080 hours, or proportionate hours for which employed, i.e. and FTE of .50 divided by 1040. . . ."

We tested 263 overtime and/or additional straight-time payments made by DHHR. We found calculation errors of 36.5% or 96 out of 263 instances with the employees hourly straight-time rate, overtime rate, overtime hours, additional straight-time hours, and/or semi-monthly salary rate. The results of our testing follows:

NUMBER OF INSTANCES

<u>Spending Unit</u>	<u>Overtime & Additional Pay Payments Tested</u>	<u>Incorrect Number of Hours</u>	<u>Incorrect Overtime Rate</u>	<u>Incorrect Hourly Rate</u>	<u>Other Types of Incorrect Instances</u>	<u>Total Incorrect Instances</u>	<u>Error Rate Percentage</u>
SHARPE	64	7	16	2	2	27	42.19%
MMBH	63	18	14	4	0	36	57.14%
WELCH	64	10	10	1	0	21	32.81%
DHHR	<u>72</u>	<u>2</u>	<u>2</u>	<u>1</u>	<u>0</u>	<u>12</u>	<u>16.67%</u>
TOTALS	<u>263</u>	<u>44</u>	<u>42</u>	<u>8</u>	<u>2</u>	<u>96</u>	<u>36.50%</u>

As shown in the table above, the DHHR paid overtime and/or additional straight-time for a different calculated amount of hours in 44 out of 263 instances (17%) resulting in a total overpayment of \$642.52. We also noted one instance where the DHHR paid an employee the wrong semi-monthly

salary amount for a total underpayment of \$272.82. In addition, we noted 16 percent or 42 out of 263 instances the DHHR calculated the wrong overtime and/or additional straight-time rate of pay for differences ranging from overpayments of \$5.24 per hour to under payments of \$2.74 per hour. We also noted, three percent or eight out of 263 instances the DHHR calculated the wrong hourly rate of pay for differences ranging from overpayments of \$1.91 per hour to under payments of \$0.95 per hour. In addition, we noted one instance where the DHHR paid the wrong employee overtime compensation earned by another employee for an overpayment of \$30.45.

We were told the DHHR does not perform a reconciliation between hours paid and hours worked and requested for employees who receive overtime and/or additional straight-time compensation; a reconciliation may identify discrepancies between hours paid/worked. We believe the DHHR should strengthen internal controls over overtime and/or additional straight-time compensation payments.

We recommend the DHHR comply with Section 7 of the FSLA and calculation of hourly rate as defined in Chapter VIII of the DHHR Policy Memorandum 2102, (Pilot Policy).

Agency's Response

Based upon the various report findings, particularly the apparent high errors regarding overtime calculations in our facilities, I have directed my central office finance and personnel officials as well as key staff from the Bureau for Behavioral Health and Health Facilities to investigate these findings and to initiate additional on-site training on the issues as reported.

Lack of Supporting Documentation and Approvals

Of the 263 payments tested, we found Overtime and Additional Straight Time Requests Forms and the Individual Attendance Reports were missing for 88 payments tested (33%).

In addition, we found 24 instances in which "Overtime and Additional Straight Time Pay Request" forms lacked management pre-approvals signatures, justifications for emergency overtime, or other pertinent data.

Title 29, Part 516 of the Code of Federal Regulations, "Records To Be Kept By Employers" requires certain records be maintained for non-exempt employees as follows:

"...Every employer shall maintain and preserve payroll or other records containing the following information...(7) Hours worked each workday and total hours worked each workweek... Each employer shall preserve for at least 3 years.... (a) *Payroll records*...."

The following DHHR policies pertain to record retention for hours worked and overtime and/or additional straight-time approvals:

The DHHR Policy Memorandum 2102 - Hours of Work/Overtime (Pilot Policy)

Section 9F (1) states:

"1. Maintenance of Certain Records Is Required:

Employment, under the FLSA and WV Labor Law, is broadly defined to include all hours that an employee is "suffered" or "permitted" to work for the employer. Therefore, accurate time sheets must be kept for each employee to be in compliance with wage and hour laws. Also, in accordance with the Fair Labor Standards Act, WV Labor Law and Division of Personnel policy, the Department must keep and preserve, for a period of no less than 3 years, the following information for each employee:

- a. full name, address, and social security number;
- b. sex, and date of birth if under 18;
- c. occupation or job classification;
- d. time of day and day of week on which the employee's workweek begins;
- e. regular hourly rate of pay for any workweek in which overtime compensation is due (the basis for the regular rate, and any exclusion thereof, must be explained.);
- f. hours worked each workday and each workweek, with the employee and supervisor signatures;

- g. total daily or weekly straight-time earnings or wages due for hours worked during the workday or workweek;
- h. total overtime pay for overtime hours;
- i. total wages paid each pay period;
- k. date of payment and the pay period covered by payment; and,
- l. all written documents that affect employees wages and salaries in the form of certificates, agreements, plans, and notices, as well as, all wage rates in the form of tables or schedules used in computing straight-time earnings, wages and salary, or overtime pay.

Please note: Other federal or State regulations may require that some of the above information be kept for longer than 3 years.

The above information must be kept for exempt and nonexempt employees. To facilitate record keeping, individual attendance and leave forms, summary attendance and leave forms, and request for overtime and additional straight-time form have been developed and are attached to this policy as Appendix C."

Bureau for Behavioral Health and Health Facilities Memorandum from the Acting Commissioner for the Bureau for Behavioral Health and Health Facilities dated January 13, 2005, regarding Prior Approval for Overtime and/or Additional Straight-Time Required states in part:

"...Approved and worked overtime should be recorded on the monthly Individual Attendance Report (OPS-2A), and the Overtime and Additional Straight-Time Pay Request (OPS-2B). The following documents need to be sent to Frances Bishop in order to process overtime payments: 1) a supervisor's signed copy of the Individual Attendance Report (OPS-2A) for the entire week overtime was earned; 2) a supervisor's signed Overtime and Additional Straight-Time Pay Request OPS-2B; and 3) an approved BHHF - Overtime Request Form..."

The DHHR Policy Memorandum 2102 (Pilot Policy), Section IX, Subsection (A) states:

"When circumstances require an employee to work in excess of 40 hours in a workweek, overtime and additional straight-time must be authorized by an individual(s) designated by the Commissioner/ Deputy Secretary/ to approve overtime and additional straight-time."

The DHHR Policy Memorandum 2102 (Pilot Policy), Section IX, Subsection (F)2 states in part:

"...The immediate supervisor of the employee is directly responsible for being aware of and verifying the employees time..."

The DHHR was unable to provide the Overtime and Additional Straight Time Pay Request forms as required by policy for 70 out of 263 payment tested; management preapprovals of scheduled overtime or justification for emergency overtime are recorded on these forms. Total overtime and/or additional straight-time payments associated with the missing forms totaled \$20,971.75. Of the 193 Overtime and/or Additional Straight-Time Pay Request forms received, required approval signatures or other pertinent information was missing for 24 forms that supported \$11,125.83 of the payments tested. Further, the DHHR was unable to provide the Individual Attendance Report which serves as the employees time sheet required by policy for overtime and/or additional straight-time of four percent or 11 out of 263 instances of overtime and/or additional straight-time payments totaling \$3,539.19. Finally, we noted three percent or 7 out of 263 instances where the DHHR was unable to provide any type of supporting documentation for overtime and/or additional straight-time compensation paid in the amount of \$1,297.36. When calculating the error percentage of the applicable forms not completed, we omitted the number of instances that we were not provided the form in determining our error rate calculation.

If an employee has worked overtime or has earned additional straight-time compensation during a pay period, they are responsible for completing an Overtime and/or Additional Straight Time Pay Request Form. The employee submits an Overtime and/or Additional Straight-Time Request Form weekly to his/her supervisor who authorized the overtime for signature authority. In addition, the supervisor completes the justification section on the Overtime and/or Additional Straight-Time Request Form to verify its accuracy. This documentation provides the support for preapprovals for scheduled overtime and/or justification for emergency overtime

Without supporting documentation and evidence of management approvals, we are unable to determine if the payments noted above were accurate and authorized. We believe the DHHR should strengthen internal controls over record retention and payment authorizations.

We recommend the DHHR comply with Title 29, Part 516 of the Code of Federal Regulations and internal policy memorandums.

Agency's Response

Based upon the various report findings, particularly the apparent high errors regarding overtime calculations in our facilities, I have directed my central office finance and personnel officials as well as key staff from the Bureau for Behavioral Health and Health Facilities to investigate these findings and to initiate additional on-site training on the issues as reported.

**Submission And Payment of Overtime and/or
Additional Straight-Time Not Made In A Timely Manner**

Our testing revealed 22 out of 263 instances (8%) totaling \$7,976.80 where DHHR employees failed to submit overtime and additional compensation request forms in the pay period following the period in which the time was earned in noncompliance with DHHR Policy Memorandum 2102 (Pilot Policy), Section IX, Subsection E (1) which states:

"1. Overtime Calculated On A Workweek:
Overtime is calculated and paid on a workweek basis. There is no requirement that overtime compensation be paid weekly; however, submission for payment should not be delayed beyond the pay period following the period in which the overtime occurred."

As stated in the previous finding, if an employee has worked overtime or earned additional straight-time during a pay period, they are responsible for completing an Overtime and/or Additional Straight Time Pay Request Form. The employee submits an Overtime and/or Additional

Straight-Time Request Form weekly to his/her supervisor who authorized the overtime for signature authority. In addition, the supervisor completes the justification section on the Overtime and/or Additional Straight-Time Request Form to verify its accuracy. This documentation provides the support for preapprovals for scheduled overtime and/or justification for emergency overtime.

We noted six percent or four out of 64 instances where Welch Community Hospital employees failed to submit overtime the pay period following the period in which the overtime occurred in the amount of \$509.19. We also noted 25 percent or 18 out of 72 instances where DHHR Central Office employees failed to pay overtime in the pay period following the period in which the overtime occurred for working in excess of 40 hours in a workweek in the amount of \$7,467.61.

The DHHR's Central Office Payroll Supervisor stated all employees do not submit the Overtime and/or Additional Straight-Time Pay Request forms timely, therefore, the payments are not processed until the employee submits the request. By failing to keep up-to date documentation of the overtime employees worked, employees could earn the overtime and never get paid.

We recommend the DHHR comply with the DHHR Policy Memorandum 2102 (Pilot Policy), Section IX, Subsection E (1).

Agency's Response

Based upon the various report findings, particularly the apparent high errors regarding overtime calculations in our facilities, I have directed my central office finance and personnel officials as well as key staff from the Bureau for Behavioral Health and Health Facilities to investigate these findings and to initiate additional on-site training on the issues as reported

Shift Differential

During our report period, we noted 78 percent or 42 out of 54 instances where the DHHR paid \$289.48 in shift differential pay to ineligible employees in noncompliance with the Bureau for Behavioral Health and Health Facilities Policy on Shift Differential/Holiday Pay dated December 10, 2002. Section I, Subsection C which states:

“Non-exempt staff who work 12 hour shifts will receive shift differential for eight hours provided they work one full shift during the hours of 3:00 PM to 11 PM or 11:00 PM to 7:00 AM.”

Our understanding of the preceding policy is that non-exempt employees receive a shift differential pay increase (\$1.00 per hour worked) whenever an employee works one full eight-hour shift. The two shifts that qualify for the differential pay are 3:00 p.m. to 11:00 p.m. and 11:00 p.m. to 7:00 a.m. Employees are not eligible for the hourly shift differential pay increase unless they work the entire eight-hour shift. If the employee works over 40 hours per workweek, he/she will receive any overtime hours earned attributable to these shifts at the shift differential hourly rate.

We were told by the Human Resources Directors of the three hospitals that employees are paid for actual hours worked even if they do not complete a full shift. They also stated if an employee is required to work overtime during a shift that qualifies for differential pay, the employee will receive the shift differential hourly rate even though the entire eight hours were not worked. We believe this method of calculating shift differential pay is in noncompliance with the preceding policy. Further, the Assistant Director of Planning and Development stated an employee should clock in at the beginning of a shift and clock out at the end. If the employee's time sheet shows they worked seven and one-half hours, they are not eligible for shift differential for that shift because they did not work the full eight hours.

We noted 77 percent or 10 out of 13 instances where Welch Community Hospital paid employees shift differential pay when they were not eligible for a total of \$80.26. We also noted 84 percent or 25 out of 31 instances of William R. Sharpe, Jr. Hospital paid employees shift differential pay when they were not eligible for a total of \$166.35. In addition, we noted 60 percent or six out of 10 instances where Mildred Mitchell-Bateman Hospital paid employees shift differential pay when they were not eligible for a total of \$42.87.

We recommend the DHHR comply with the Bureau for Behavioral Health and Health Facilities Shift Differential/Holiday Pay Memorandum.

Agency's Response

Based upon the various report findings, particularly the apparent high errors regarding overtime calculations in our facilities, I have directed my central office finance and personnel officials as well as key staff from the Bureau for Behavioral Health and Health Facilities to investigate these findings and to initiate additional on-site training on the issues as reported

Overtime and/or Additional Straight-Time Bonus

During the period of our special report, we noted 31 percent or 20 out of 64 instances where William R. Sharpe, Jr. Hospital included the bonus in the calculation of the employees annual salary and paid the wrong amount of overtime and/or additional straight-time compensation pay for a total overpayment of \$98.66.

Title 29, Part 778.208 of the Code of Federal Regulations Part Interpretive Bulletin On Overtime Compensation states in part:

"Gifts, Christmas and Special Occasion Bonuses: If a bonus paid at Christmas or on other special occasions is a gift, it may be excluded

from the regular rate even though it is paid with regularity so that the employees are led to expect it. It may be excluded even though the amounts paid to different employees or groups of employees vary with the amount of the salary or regular hourly rate. For example, a Christmas bonus of two weeks salary to all employees and an equal additional amount for each 5 years of service with the firm would be excluded from the regular rate of pay..."

Memorandum from the Secretary to DHHR employees dated December 30, 2004 states

in part:

"...This check will be a stand-alone payment and not a permanent increase to your annual salary. It will be subject to the regular deductions for retirement, FICA (Social Security), Medicare, state taxes and federal taxes..."

At the end of calendar year 2004, Governor Wise approved a one-time non-base building payment to DHHR employees. Employees hired prior to July 1, 2004 received a \$1,000.00 payment, and employees hired on or after July 1, 2004 received a \$500.00 payment. Part-time employees received the one-time payment on a pro-rated basis. This amount was not a permanent increase to the employees annual salary, therefore, it should have been excluded from the employees annual salary when calculating overtime and/or additional straight-time. However, it was subject to the regular deductions for retirement, FICA (Social Security), Medicare, state taxes, and federal taxes. Based on discussions with the Human Resources Director of William R. Sharpe, Jr. Hospital, it appears the Director was unaware the bonus was to be omitted in the calculation of overtime and/or additional straight-time compensation.

We recommend that the DHHR comply with Title 29, Part 778.208 of the Code of Federal Regulations Part Interpretive Bulletin On Overtime Compensation and the Memorandum from the Secretary to DHHR employees dated December 30, 2004.

Agency's Response

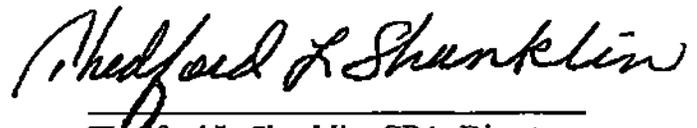
Based upon the various report findings, particularly the apparent high errors regarding overtime calculations in our facilities, I have directed my central office finance and personnel officials as well as key staff from the Bureau for Behavioral Health and Health Facilities to investigate these findings and to initiate additional on-site training on the issues as reported

STATE OF WEST VIRGINIA

OFFICE OF THE LEGISLATIVE AUDITOR, TO WIT:

I, Theodford L. Shanklin, CPA, Director of the Legislative Post Audit Division, do hereby certify that the Special Report appended hereto was made under my direction and supervision, under the provisions of the West Virginia Code, Chapter 4, Article 2, as amended, and that the same is a true and correct copy of said Special Report.

Given under my hand this 7th day of August 2006.



Theodford L. Shanklin, CPA, Director
Legislative Post Audit Division

Copy forwarded to the Secretary of the Department of Administration to be filed as a public record. Copies forwarded to the West Virginia Department of Health and Human Resources; Governor; Attorney General; State Auditor; and, Director of Finance Division, Department of Administration.