



STATE OF NEW YORK
OFFICE OF THE STATE INSPECTOR GENERAL
Final Report
March 25, 2013

EXECUTIVE SUMMARY

In May 2011, the Inspector General received allegations that Office of Medicaid Inspector General (OMIG) employee Bobbie Barbour, a Clerk 1 in the Investigations Unit, was routinely submitting fraudulent time records and bragging to coworkers that she was able to do so because her supervisor, Medical Assistant Specialist 2 Kenneth Kuk, did not pay attention to her attendance or submitted time records.

Upon conducting an investigation of these allegations, the Inspector General determined that Barbour engaged in substantial time abuse over a six-month period, resulting in her improper receipt of \$1,025.00 in salary for 67.5 hours she did not work. The Inspector General further determined that Kuk's position required him to be frequently out of the office and, as such, he relied on other employees to account for the whereabouts of Barbour and other employees. The Inspector General found Kuk to be a negligent supervisor who did not require his employees to follow OMIG policy when requesting time off and instead assumed their integrity and honesty in submitting their time records. Furthermore, Kuk did not assign an employee to supervise in his stead and employed no system to account for his subordinates' whereabouts. In turn, he approved Barbour's time records without verifying their accuracy.

As a result of the Inspector General's findings, on May 22, 2012, Barbour was arrested by the Inspector General and the New York State Police and charged with one count of grand larceny in the fourth degree and six counts of offering a false instrument for filing in the first degree. On February 1, 2013, Barbour pleaded guilty to one count of petit larceny and paid restitution in the amount of \$1,025.00. As a condition of her plea and sentence, Barbour resigned from her OMIG employment and agreed not to seek further state employment.

In response to the Inspector General's findings and recommendations delineated in this report, OMIG has modified existing policies and created new policies to strengthen the leave and requests submission and approval process as well as the enforcement of supervisory responsibilities pertaining to such requests. In addition, OMIG has developed training programs and scheduled their presentation.

INTRODUCTION AND BACKGROUND

The Office of Medicaid Inspector General was established in 2006 by statute as an independent entity of the Department of Health to improve and preserve the integrity of the Medicaid program. OMIG is mandated to prevent, detect and investigate fraud, abuse and corruption within all state agencies that are responsible for services funded by Medicaid. These agencies include the Department of Health, Office of Mental Health, Office for People with Developmental Disabilities, Office of Alcoholism and Substance Abuse Services, Office of Temporary and Disability Assistance, Office of Children and Family Services, Commission on Quality of Care and Advocacy for Peoples with Disabilities, and the Department of Education.

OMIG's time and attendance policy, in conformance with state policy, requires employees to work 37.5 hours per week, 7.5 hour days with a half hour lunch break. State employees submit bi-weekly time records to their supervisors for approval and attest to their accuracy. Bobbie Barbour, a Clerk 1 in the Investigations Unit, during the period examined in this investigation, was scheduled to work a 7:30 a.m. – 3:30 p.m. daily shift totaling 37.5 hours per week. Her duties as a Clerk 1 included data entry, filing, scanning documents and answering telephones.

THE INSPECTOR GENERAL'S INVESTIGATION FINDS ILLEGAL CONDUCT BY BOBBIE BARBOUR AND DEFICIENCIES IN OMIG'S OVERSIGHT AND ACCOUNTABILITY

The Inspector General Determined that OMIG Employee Bobbie Barbour Engaged In Significant Time and Attendance Abuse

Upon investigation into the allegation of Barbour's time and attendance abuse, the Inspector General reviewed Barbour's submitted time records and numerous e-mails, and interviewed Barbour as well as several of her supervisors and co-workers. The investigation revealed many instances in which Barbour indicated to co-workers that she would be absent or leaving early from work, but she did not account for those instances on her time records.¹

The first discovered incident of time and attendance abuse occurred on February 17, 2011, on which Barbour falsely reported that she worked from 7:30 a.m. – 3:30 p.m. with a half hour lunch break for a total of 7.5 hours. At 7:16 a.m. on February 16, a former Assistant Medicaid Inspector General e-mailed Barbour regarding an issue, but received no response. At 10:13 a.m. on February 17, Kuk responded to the Assistant Medicaid Inspector General, "Bobbi [sic] out today." Kuk, nevertheless, approved Barbour's submitted time record for that period with the incorrect entry. Kuk testified to the Inspector General, consistent with his February 17, 2011 e-mail, that Barbour was in fact absent from work on that day. When confronted with Kuk's e-mail and questioned by the Inspector General about whether she worked on February 17, Barbour conceded, "If that says I was out, then, I was out."

¹ These finding were supported by the fact that while Barbour used e-mail frequently while at work, no e-mails were sent from her state e-mail account on the days she falsely claimed to be at work.

The next incident occurred on March 4, 2011, on which Barbour falsely reported that she worked from 7:30 a.m. – 3:30 p.m. with a half hour lunch break for a total of 7.5 hours, though she had actually attended small claims court in Watervliet that morning. The Watervliet court confirmed that court was in session from 8:16 a.m. until 8:43 a.m. that morning and that Barbour was present. Furthermore, Barbour noted the court date on her OMIG desk calendar and testified to the Inspector General that she attended court on that day. When the Inspector General questioned Barbour as to whether she accounted for the court date on her time record, she responded, “If you guys say I didn’t, then I didn’t.”

The most egregious incident occurred when Barbour took a vacation in April 2011 to Cancun, Mexico. According to Barbour’s testimony, travel itinerary, and OMIG desk calendar, the vacation commenced on April 22, 2011 and concluded on April 28, 2011. An April 8, 2011 e-mail from a friend of Barbour’s inquired of Barbour whether they would be taking a bus trip together on April 22, to which Barbour replied “I will be on a plane that day.” In addition, Barbour’s bank statements for that time period revealed that she charged a food purchase at a restaurant in Atlanta, Georgia on April 22, consistent with her flight itinerary from Albany to Mexico through Atlanta. The bank statements further indicated multiple charges on April 28 at a restaurant in Benito Juarez, Mexico, at a restaurant in Atlanta, Georgia, and at the Albany County Airport, again reflecting Barbour’s return itinerary. According to Barbour’s original time records, which were approved by Kuk, she worked from 7:30 a.m. – 3:30 p.m. with a half hour lunch break on both April 22 and 28. According to Kuk’s office calendar, he was out of the office on both of those days.

The next incident of time and attendance abuse occurred during the week of July 11-15, 2011, during which Barbour was allegedly ill. The Inspector General’s investigation revealed that Barbour did not report to work on July 11 or July 13, and left three hours early from work on July 12, one hour early on July 14, and three-and-half hours early on July 15. Barbour’s submitted time record indicates, however, that she worked from 7:30 a.m. – 3:30 p.m. with a half hour lunch every day that week for a total of 37.5 hours. Barbour sent and received several e-mails to and from co-workers and friends during the week of July 11-15 discussing her illness. The e-mails indicate that Barbour took off days of work during the week and expressly state that she left early on the aforementioned days of the week. When questioned by the Inspector General, Barbour admitted being ill that week and only sporadically reporting to work. Regarding the e-mails to her co-workers discussing her illness, days off, and early departures from work, Barbour admitted, “If I said I was, then I probably was.” Kuk approved these inaccurate time records as well.

The final incident of abuse occurred on July 26 and 27, 2011, during which Barbour visited a casino with a friend. Despite not reporting to work on either day, Barbour recorded that she worked from 7:30 a.m. – 3:30 p.m. on both July 26 and 27. The casino confirmed that Barbour was gaming on both July 26 and 27. According to Barbour’s OMIG desk calendar, she visited the casino on July 26. Furthermore, the Inspector General identified several e-mails between Barbour and her traveling companion discussing when they would go to the casino and agreeing to attend on July 27. Finally, Kuk recorded on his calendar Barbour’s absence on both July 26 and 27. Yet again, despite his notes to the contrary, Kuk approved Barbour’s incorrect time record.

In all of the above instances, Barbour cited human error as the reason for her false reporting, at one point challenging the Inspector General investigators, "you're not human? You don't make mistakes or errors?" She also noted that she formerly completed her time records at the end of each two-week pay period rather than doing so every day, which, she surmised, may have caused many of the "mistakes." Barbour related during her testimony that she had ceased that practice. In light of the nature of the persistent evidence of her improper conduct, the Inspector General found Barbour's testimony on this point to lack any credibility. Moreover, Barbour admitted culpability when pleading guilty to a charge of larceny.

The Inspector General Determined that Kuk's Negligent Supervision Enabled Barbour's Significant and Ongoing Time and Attendance Abuse

Kuk oversaw six employees, including Barbour. He supervised Barbour for approximately one year. According to both Barbour and Kuk, employees are supposed to submit requests for time off through OMIG's electronic time records system. However, Kuk explained that, contrary to OMIG policy, he does not require his employees to submit electronic requests for time off. Rather, he allows his employees to call him or send him an e-mail with their request, or advise another co-worker in the unit if they will be taking time off. Kuk related that, at times, he notes on his office calendar whether an employee was present on a particular day.

Kuk, as part of his duties, was assigned to work outside of the office approximately two days a week and testified that he relied upon the honesty and integrity of his staff to properly complete their time records. Kuk did not assign an employee to supervise in his stead and employed no system to account for his subordinates' whereabouts. Notably, many of the instances that Barbour failed to charge time off for her absences occurred on days when Kuk was not present in the office. As a result of Kuk's lax supervision, Barbour was able to falsify her time records by not appropriately charging sick and leave time. Kuk approved Barbour's time records even though, as part of his supervisory responsibilities, he had to certify their accuracy. Specifically, each time Kuk approved one of Barbour's time records, he accepted the following acknowledgment: "I certify that this record of attendance is correct, and to the best of my knowledge, the employee identified above is due payment for the services performed." In so doing without confirming the accuracy of Barbour's time records, Kuk was derelict in his supervisory duties.

Kuk related to the Inspector General one instance in July or August 2011 when he attempted to bring some documentation to Barbour but was informed she had left early for the day. The next day, Barbour called in to report that she would be absent that day. Kuk noted both dates on his calendar and spoke with Barbour after seeing that she did not charge the time on her submitted time record. Kuk testified that Barbour assured him that the incorrect reporting was just a mistake, an assertion he accepted. She later corrected her time record. Kuk explained to the Inspector General that he considered this incident a verbal counseling, but did not document it in her personnel file. When queried by the Inspector General about this counseling by Kuk, Barbour initially claimed not to recall it, but later admitted to the incident.

The Inspector General Determined that Barbour Attempted to Alter Some of Her Time Records Upon Discovery of this Investigation

Approximately six months after Barbour falsely reported that she had been present at work when she was traveling to and from Mexico, Barbour learned of the Inspector General's investigation and contacted OMIG Human Resources and requested to amend her previously submitted and approved time records from April to reflect her absences on April 22 and April 28. Kuk testified that typically a request to change a time record would be presented to him, Barbour's supervisor, and would not be sent directly to the Human Resources Department. The OMIG Human Resources employee, unaware of the Inspector General's investigation at the time, did not question Barbour's reasoning for changing her time records because Barbour was charging more time off rather than less. However, upon learning the following day of the Inspector General's investigation into Barbour's time and attendance, the OMIG Human Resources employee told Kuk not to approve the amended time records, and Kuk complied with that directive. Kuk, however, testified that he was unaware of her absences on those dates.

The Inspector General Determined that OMIG Employee Nicole Carroll Improperly Accessed Bobbie Barbour's Time Records

During the course of the investigation, the Inspector General questioned Nicole Carroll, a past co-worker of Barbour's, regarding Barbour's time and attendance. Carroll currently works in OMIG's Travel Unit, but both she and Barbour had previously worked together in OMIG's Collections Unit. During the interview, Carroll supplied the Inspector General with a list of dates she had noted Barbour was absent from work or had left early for the day but had not accounted for the absences on her time records. When questioned as to her knowledge of Barbour's inaccurate time records, Carroll asserted that her position in the Travel Unit allowed her to access other OMIG employees' time records, including Barbour's. Barbour's OMIG position, however, does not require travel. When questioned further regarding her access to Barbour's time records, Carroll admitted that she did not have a legitimate work-related reason to access Barbour's time records; that she had accessed the time records repeatedly; and that she realized it was wrong of her to do so.

FINDINGS AND RECOMMENDATIONS

The Inspector General determined that Office of Medicaid Inspector General (OMIG) employee Bobbie Barbour engaged in substantial time abuse over a six-month period, resulting in her improper receipt of \$1,025.00 in salary for 67.5 hours she did not work. On February 1, 2013, Barbour pleaded guilty to one count of petit larceny and paid restitution in the amount of \$1,025.00. As a condition of her plea and sentence, Barbour resigned from her OMIG employment and agreed not to seek further state employment.

The Inspector General also found that OMIG employee Kenneth Kuk's negligent supervision of Barbour enabled her to submit fraudulent time records throughout the period examined in this investigation. Had Kuk required his subordinates to submit electronic request forms for time off, as required by OMIG policy, Barbour's fraudulent activities could have been uncovered earlier or eliminated altogether. The Inspector General further determined that OMIG employee Nicole Carroll improperly accessed Barbour's time records. Carroll resigned from her

OMIG employment, and therefore, cannot be disciplined. The Inspector General referred Kuk's actions to OMIG for appropriate disciplinary action, and OMIG counseled Kuk regarding his negligent supervision.

The Inspector General recommended that OMIG institute several remedial measures in order to prevent this type of fraudulent activity from occurring in the future:

1. OMIG should create procedures to ensure vigilant enforcement of its policy requiring employees to submit requests for time off via OMIG's electronic time records system.
2. OMIG should amend its policy to require supervisors to verify that employees have worked the hours represented on their time records.
3. OMIG should document and track employee requests for time off. Specifically, supervisors should be required to maintain records of all employee absences and hours off and reconcile those records against the employees' submitted time records prior to approving them and certifying their accuracy.
4. OMIG should create policy to address the issue of supervisors whose positions require them to be out of the office, and alternate supervisory plans should be developed and disseminated to all subordinates.
5. OMIG should disseminate its policy to all employees and require employees to acknowledge that they have received and read the policy.
6. OMIG should train supervisors on how to ensure that employees are following the policy.
7. OMIG should create and disseminate a records access policy to all employees, require acknowledgement of receipt, and provide training on this policy.
8. OMIG should conduct a review of employee computer access and restrict use.

The Inspector General will provide training to OMIG employees and recommended that OMIG seek ethics training from the Joint Commission on Public Ethics.

RESPONSE BY THE OFFICE OF THE MEDICAID INSPECTOR GENERAL

On March 5, 2013, Medicaid Inspector General James C. Cox responded to this report. Medicaid Inspector General Cox related that upon his arrival at OMIG in July 2011, it became apparent that a comprehensive review of agency operations was necessary. This agency-wide review concluded that internal controls, agency consistency and training needed to be strengthened. In response, OMIG created a Bureau of Quality Assurance to establish policies

and procedures to improve the quality of agency operations; an Office of Risk Management to review adherence to existing policies and procedures; and a Bureau of Staff Training and Development to improve employee knowledge and skills. A training plan has already been compiled and is being implemented. Time and Attendance training for supervisors will be completed within the next six months.

As to the Inspector General's specific recommendations, Medicaid Inspector General Cox responded that OMIG has created a new policy and revised existing policies and procedures to strengthen the OMIG leave request submission and approval process as well as the enforcement of supervisory responsibilities pertaining to the review, approval, reconciliation and maintenance of such requests. OMIG also updated its "Acceptable Use Policy for IT Resources" to specify that access to Agency systems, data and information for non-work related business is an unacceptable use of state resources.

Medicaid Inspector General Cox also stated that mandatory training, which includes these policy changes and related topics, will be provided by June 1, 2013. In addition, OMIG is seeking ethics training from the Joint Commission on Public Ethics. Finally, OMIG has sought training from the Inspector General of all OMIG managers on the Inspector General's "Uniform Guidelines Code of Conduct."