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Report to Rep. John E. Moss, Chairman, House Committee on Interstate and Foreign Commerce: Oversight and Investigations Subcommittee; Rep. Henry A. Waxman; by Elmer B. Staats, Comptroller General.

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Rep. John E. Moss; Rep. Henry A. Waxman.

Authority: National Health Planning and Resources Development Act of 1974.

Allegations were made regarding the following activities of the Health Systems Agency for Los Angeles County, California: election of members to subarea governing bodies; outside legal counsel; hiring of the Executive Director and staff; deviations from the budget; and the Department of Health, Education, and Welfare's (HEW's) monitoring of the agency. The agency did deviate from several election policies and procedures in its bylaws. While the agency made a reasonable effort to inform the public, Los Angeles County residents were generally not aware of the elections. The registration process made it difficult to participate in the election, and the agency did change, on several occasions, the consumer or provider classification of various candidates. No conclusions were reached on the reasonableness of expenditures for legal services since the hours billed could not be independently verified. The agency hired numerous individuals not meeting minimum qualifications, and procedures used in hiring employees were not documented in many cases. Several employees did not perform the duties of the positions for which they were hired. A major revision to the agency's budget was approved by HEW on the basis of incorrect and misleading information. Revisions to the budget were not always approved by the agency's interim governing body, and agency funds were often expended for revised budget items before HEW approval of the changes. HEW was not adequately monitoring the agency, and violations of Federal regulations were identified in the case of a former HEW employee currently employed by the agency. (RRS)



COMPTROLLER GENERAL OF THE UNITED STATES
WASHINGTON, D.C. 20548

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B-164031(3)

FEB 24 1978

The Honorable John E. Moss, Chairman
The Honorable Henry A. Waxman
Subcommittee on Oversight and
Investigations
Committee on Interstate and Foreign
Commerce
House of Representatives

In response to your request of July 28, 1977, we reviewed allegations regarding certain activities of the Health Systems Agency for Los Angeles County, Los Angeles, California. The agency is a nonprofit corporation conditionally designated under the provisions of the National Health Planning and Resources Development Act of 1974.

The act provides that health systems agencies may be conditionally designated for up to 2 years. Applicants for full designation are evaluated by the Department of Health, Education, and Welfare (HEW) on the basis of their ability to perform the functions of health systems agencies as identified by the act.

The Los Angeles County Agency, primarily occupied with complex elections, made little progress in its initial grant year toward performing many of the health planning functions required by the act. The agency spent about \$1.2 million of its approximately \$2 million first year grant on management and organizational costs but did not complete some of the organizational tasks identified in its first year grant. The Health Systems Agency for Los Angeles County is clearly not ready for full designation based on its health planning progress to date. This, however, is true of many other conditionally designated health systems agencies throughout the country. An amendment to the act to extend the period of conditional designation to 36 months has recently been enacted.

The agency divided Los Angeles County into five subareas, and most of the \$1.2 million management and organizational costs were incurred in organizing and conducting elections to establish 30-member governing bodies for each subarea.

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They were to function primarily as a review board for proposed medical facilities within the subarea and would also contribute three members to an overall governing body for the agency.

The subarea governing body elections were the subject of many allegations of improper activities and precipitated two lawsuits against the agency. Ultimately, the elections resulted in the subarea governing bodies being out of compliance with the agency's bylaws and the requirements of the act that consumers serving on agency governing bodies be broadly representative of the populations within the subarea.

While the elections were represented as a democratic process for communitywide participation in the health planning function, only a small portion of the community participated. Furthermore, we believe the process was initiated and its outcome heavily influenced by medical providers.

As agreed, our review focused on allegations relating to (1) the election of members to subarea governing bodies, (2) the agency's outside legal counsel, (3) the hiring of the agency's Executive Director and health planning staff, (4) deviations from the HEW-approved grant budget, and (5) HEW's monitoring of the agency.

Information developed on some allegations was not conclusive because (1) criteria and standards regarding the activities and operations of health systems agencies were not available, (2) certain critical information was not available, and (3) certain other information was turned over to your Subcommittee for separate action. The Subcommittee became involved in the review when it was determined that our audit authority limited us in obtaining certain information and taking statements from knowledgeable persons under oath.

Our findings regarding each of these allegations are summarized below and presented in detail in the enclosure.

ELECTION ALLEGATIONS

The agency has been confronted with numerous allegations pertaining to the election of its five subarea governing bodies. It was alleged that in carrying out the election

the agency (1) violated its own bylaws, (2) did not provide adequate public notice of the elections, (3) established restrictive election registration requirements, and (4) reclassified election winners in consumer and provider categories after the election. Additionally, it was alleged that the agency provided favored treatment to certain candidates.

Our review of the allegations disclosed that (1) the agency did deviate from several election policies and procedures as established in its bylaws and established certain election procedures not provided for in the bylaws, (2) while the agency made a reasonable effort to inform the public, we believe Los Angeles County residents were generally not aware of the elections, (3) the registration process, to some extent, made it difficult to participate in the election and (4) the agency did change, on several occasions, the consumer or provider classification of various winning candidates after the elections and did not verify candidate classification before the elections. Information gathered on alleged favored treatment to certain candidates by the agency has been turned over to your Subcommittee for additional investigation and is not discussed in this report.

Our review of contracts executed by the agency to obtain election expertise and resources disclosed many agency deficiencies in the area of contract management and identified other problems which we believe indicate that, overall, the elections were poorly planned, organized, and managed.

LEGAL COUNSEL ALLEGATIONS

Several allegations were made against the agency's legal counsel, including that he billed the agency excessively for services of questionable need and quality. During an 8-month period in the initial grant year, legal fees charged to the agency by its outside legal counsel amounted to \$81,413. The agency originally budgeted \$45,000 for first year legal services. The budgeted amount, however, was later increased through three separate budget revisions to \$82,950. The agency's present second grant year budget provides \$135,000 for legal services. Legal expenses for nine other large health systems agencies throughout the country averaged about \$16,000 for their first grant year and ranged from about \$3,000 to \$36,000.

We could not reach any conclusions, however, as to the reasonableness of the agency's expenditures for legal services since (1) we could not independently verify the hours billed and (2) in our opinion, an independent peer review would be necessary to determine whether the work performed was necessary, of adequate quality, and commensurate with the hours billed. According to a State bar official, no mechanism for such a review exists.

AGENCY STAFF HIRING

It was alleged that the agency hired unqualified employees. Our review indicated that the agency hired numerous individuals not meeting minimum qualifications based on a comparison of job position descriptions to their resumes. In addition, procedures used in hiring employees were not documented in many cases. Furthermore, several employees did not perform the duties of the positions for which they were hired.

BUDGET MODIFICATIONS

It was alleged that the agency made unauthorized revisions to its grant budget. Our review indicated that (1) a major revision to the agency's budget was approved by HEW on the basis of incorrect and misleading information, (2) the revisions were not always approved by the agency's interim governing body, and (3) agency funds were at times expended for revised budget items before HEW approval of the changes. We also determined that the agency had misrepresented its cash position when requesting cash advances.

HEW GUIDANCE AND MONITORING

It was alleged that certain HEW officials involved in the direct monitoring of the agency engaged in inappropriate activities in their dealings with the agency. We were unable to substantiate any inappropriate activities relating to the allegations.

During our review we did identify violations of Federal regulations by a former HEW employee currently employed by the agency. The violations concern his performing paid consultant services for the agency while still a Federal employee with responsibilities for providing assistance to health

systems agencies. Additionally, we noted that HEW was not adequately monitoring the agency.

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At your request, we did not take the additional time to obtain written agency comments. The matters covered in the report, however, were discussed with HEW officials and Health Systems Agency for Los Angeles County officials and their comments are incorporated where appropriate.

As arranged with your office, unless the report's contents are publicly announced earlier, we plan no further distribution of this report until 30 days from the date of this report. At that time we will send copies to interested parties and make copies available to others upon request.

We are available to discuss any questions you may have regarding the contents of this letter and enclosure.



Comptroller General
of the United States

Enclosure

C o n t e n t s

		<u>Page</u>
CHAPTER		
1	INTRODUCTION	1
	Historical development of the Health Systems Agency for Los Angeles County	2
2	SUBAREA GOVERNING BODY ELECTIONS	4
	Subarea governing body election proce- dures	4
	Election litigation	5
	Alleged violations of agency's bylaws	6
	Agency's governing bodies out of compli- ance with composition requirements of the public law	13
	Alleged inadequate public notice of election	13
	Alleged restrictive registration process for election	15
	Alleged favored campaign assistance	16
	Alleged reclassification of election winners	17
	Other information regarding subarea governing body elections	19
	Seating of permanent governing body	23
3	ALLEGATIONS REGARDING AGENCY'S LEGAL COUNSEL	24
	Background	24
	Alleged misrepresentation as being member of law firm	25
	Alleged excessive billings for services provided	26
	Possible conflict of interest	28
4	AGENCY HIRING PRACTICES	29
	Staff hiring practices	29
	Qualifications of personnel hired	31
	Non-health-planning functions performed by "health planners"	32
5	BUDGET REVISIONS AND CASH MANAGEMENT	33
	Budget revisions	33
	Lack of governing body approval on a budget revision	37
	Funds expended before approval	38
	Inappropriate cash advance requests	38

CHAPTER		<u>Page</u>
6	HEW MONITORING	
	Allegation regarding resort weekend	40
	Allegation regarding attendance at Black Health Leadership conference	40
	Alleged use of agency political ties by HEW regional official	41
	Possible conflict of interest and other improper activities of the agency's associate director	41
	HEW regional office monitoring activities	42
		44

ABBREVIATIONS

GAO	General Accounting Office
HEW	Department of Health, Education, and Welfare

CHAPTER 1

INTRODUCTION

On July 26, 1976, the Health Systems Agency for Los Angeles County, a nonprofit corporation in California, was conditionally designated by the Department of Health, Education, and Welfare (HEW) to be the health systems agency for Los Angeles County under the provisions of the National Health Planning and Resources Development Act of 1974 (Public Law 93-641, approved Jan. 5, 1975). This act established a nationwide network of local health systems agencies and State health planning agencies to address the problems of increasing health care costs and access to quality health care. The Los Angeles County agency is 1 of 14 health systems agencies in California. There are 205 health systems agencies nationwide.

According to the act, the functions of health systems agencies include:

1. Gathering and analyzing data on the health status of residents and the health care delivery system, the effect the system is having on area residents, etc.
2. Preparing a health system plan, which is a detailed statement of goals regarding the health needs and resources of the health service area.
3. Preparing an annual implementation plan, which describes objectives that will achieve the goals of the health systems plan.
4. Reviewing and making recommendations to State agencies regarding the need for proposed new institutional health services.

Each health systems agency has a staff directed by a governing body. The act requires that the majority (not to exceed 60 percent) of governing body membership consist of residents who are consumers but not providers of health care. The remainder of the governing body is to consist of residents who are providers of health care, including physicians, dentists, nurses, and hospital administrators. The consumer members must broadly represent the social, economic, linguistic, and racial characteristics of the populations within the health service area and major

purchasers of health care. Additionally, the act requires the governing bodies either through consumer or provider members to include elected public officials.

HISTORICAL DEVELOPMENT OF THE HEALTH SYSTEMS AGENCY FOR LOS ANGELES COUNTY

Three groups competed to be the health systems agency for Los Angeles County: (1) the previous Comprehensive Health Planning Agency for the county, which functioned under the Comprehensive Health Planning Act of 1966, (2) the County of Los Angeles, under the direction of the Board of Supervisors, and (3) a Steering Committee made up of more than 40 health, labor, community, and local government groups.

Various knowledgeable individuals, however, indicated that the Steering Committee was heavily influenced by the medical industry and was primarily financed through the efforts of the Hospital Council of Southern California. The Council is the largest metropolitan hospital association in the Nation and represents a consortium of large area hospitals.

HEW encouraged a compromise among the three organizations. An agreement was finally reached between the county and the Steering Committee to develop a joint application.

The compromise application was largely developed from the bylaws included in the Steering Committee's original application. The bylaws were drafted by an executive from the Hospital Council of Southern California and reviewed by the Council's law firm. The bylaws detailed the basic organizational structure for the agency, including the establishment of subarea governing bodies by an election process. One of the compromises resulted in the subarea boundaries being drawn to correspond with the five county supervisorial districts.

The makeup of the agency's permanent governing body was negotiated between the parties to include 15 members elected from the 5 subarea advisory councils and 10 selected by the County Board of Supervisors. The remaining five positions were to include two public health providers, one health maintenance organization representative, one Veterans Administration representative, and one League of Cities appointment.

The compromise application was approved by HEW, and the Health Systems Agency for Los Angeles County was

conditionally designated on July 26, 1976. The agency received an initial year grant funding totaling about \$2 million.

An interim governing body was established to organize the agency. The interim governing body consisted of 30 members, 15 appointed by the Los Angeles County Supervisors and 15 by the Steering Committee. The agency's Articles of Incorporation and bylaws were reviewed and adopted by the interim governing body in August and September 1976, respectively.

CHAPTER 2

SUBAREA GOVERNING BODY ELECTIONS

About \$1.2 million of the agency's first year grant of \$2 million was expended to manage and organize the agency. The majority of the \$1.2 million costs were related to the election of members to the five subarea governing bodies.

The election process resulted in (1) unanticipated expenditures of the agency's funds, (2) diversion of agency personnel from health-planning-related activities to organizational tasks, (3) considerable friction between the agency and certain local public officials, and (4) litigation challenging the validity of the election.

The litigation, in turn, caused (1) delays in the establishment of the agency's governing bodies and (2) all subarea governing bodies to be out of compliance with the agency's bylaws and the requirements of Public Law 93-641 that consumers on the governing bodies be broadly representative of the demographic characteristics of the populations within the defined subareas and that providers on the governing bodies include various types of health care professionals.

SUBAREA GOVERNING BODY ELECTION PROCEDURES

The agency's bylaws provided that each of the five subareas was to elect a 30-member governing body. Each governing body was to review proposed health services and provide 3 members to serve on the agency's 30-member governing body.

The agency's interim governing body established a community interest committee that oversaw and administered the subarea governing body elections. In addition, the agency awarded three contracts to consultants to provide expertise and resources for the election process. The agency's legal counsel advised the interim governing body to solicit consulting assistance because of the agency's limited experience in conducting elections.

County residents desiring to register to vote in the subarea governing body elections were required to appear in person at an agency public meeting or at the agency's office in Los Angeles. Only persons registering 30 days before the June 21 election date were eligible to vote.

Of the approximately 3 million eligible persons in Los Angeles County, about 23,500 registered and were eligible to vote in the subarea governing body elections. Of these, 58 percent registered as providers.

Any registered voter was eligible to become a candidate in the elections by declaring this in writing to the agency. A total of 1,439 individuals declared their candidacy--470 for 56 consumer seats, 861 for 44 provider seats, and 108 for 46 elected public official seats. Four seats were to be filled by appointees representing the Veterans Administration and health maintenance organizations. The act requires representation of Veterans Administration health care facilities and health maintenance organizations when they are present in the health service area. Because of the large number of candidates, many ballot cards were necessary. For example, in three of the five subareas, over 300 candidates were listed on six separate ballot cards.

The agency held elections to fill the 146 seats on June 21, 1977. About 9,050 persons, or 39 percent of those registered, voted. Voters were hindered by confusion, complex ballots, lack of adequate voting equipment, and long lines at the various polling places.

Sixty percent of those who voted were registered as providers. Agency bylaws governing the elections permitted voters to vote for both consumer and provider candidates. This was questioned by some agency officials because of the possibility that under such circumstances elected consumers could actually represent provider interests.

Before the election various provider organizations publicly endorsed both consumer and provider candidates. These candidates won in a majority of instances. For example, consumer and provider candidates that were endorsed by a special task force of the Los Angeles County Medical Association and the Hospital Council of Southern California won 40 of the 56 consumer seats and 35 of the 44 provider seats. An additional five provider seats were filled by candidates endorsed by another provider organization.

Eleven of the 30 interim governing body members were candidates in the subarea governing body elections. Of these, seven were successful candidates and three were ultimately nominated by their respective governing bodies and presently sit on the agency's permanent governing body.

ELECTION LITIGATION

Shortly after the election, the wording of the ballot

triggered a dispute over who had won in the category of elected public officials. Up to 10 persons in each subarea were to be elected from this category--5 local officials (mayors, councilmen, etc.) and 5 other officials (State assembly members, State senators, etc.). The dispute started when election results showed that several councilmen from the same city--Los Angeles--placed among the top five finishers in two subarea governing body elections. The agency said that only one representative from any one city could serve on each subarea governing body, although this information did not appear on the ballot. 1/

As a result, the city of Los Angeles, later joined by the cities of Torrance and Burbank, filed suit against the agency alleging that numerous election irregularities took place. The suit requested the court to direct that certain city of Los Angeles councilmen be declared winners or, as an alternative, to set aside the election because of numerous alleged irregularities. The court ultimately directed that the councilmen whom the agency had not considered to be winners but who had placed among the top five be seated on their respective subarea governing bodies. The court, however, did not significantly address the various other alleged election irregularities.

It has been alleged that in carrying out the elections the agency (1) violated its own bylaws, (2) did not provide adequate public notice of the election, (3) established restrictive election registration requirements, and (4) reclassified election winners in consumer and provider categories after the election. Additionally, it was alleged that the agency provided favored treatment to certain candidates. Our findings concerning the alleged irregularities follow.

ALLEGED VIOLATIONS OF AGENCY'S BYLAWS

As a nonprofit corporation, the agency is primarily governed by its own bylaws and pertinent California Corporations Code sections. The election of governing body members is described in detail in the agency's bylaws.

It is generally accepted that corporate bylaws are analogous to contracts between the corporation and its

1/There were 79 incorporated cities in Los Angeles County at the time of the election. The city of Los Angeles was the only city represented in more than one subarea. The city was divided among subareas 2 through 5.

members. Therefore, it is possible to consider bylaw violations as contract violations. Enforcement of contract provisions is a question of law which must ultimately be settled in court. Bylaws must not be contrary to law or public policy and must be reasonable in their practical application. Whether bylaws are illegal or unreasonable and therefore unenforceable is also usually considered a question of law which must be determined in court.

The agency's bylaws were a source of controversy prior to and throughout the agency's first year. There was much discussion about the authority of the agency's interim governing body to amend the bylaws. Article XIII of the bylaws indicates that amendments may be adopted only with majority vote approval of the subarea governing bodies. Since the subarea governing bodies were not fully established, it was the position of the interim governing body that it did not have the authority to enact bylaw amendments, and therefore it avoided taking any formal action to amend the bylaws. The agency deviated from election policies and procedures detailed in its bylaws in a number of instances. Many of these deviations, however, occurred with the knowledge and approval of the interim governing body.

We identified deviations from the following provisions of the agency's bylaws:

- Any provider practicing within a subarea advisory council area may become a member of that council.
- Persons desiring to be a candidate for the subarea governing bodies must so declare in writing to the agency's governing body no later than 15 days from publication of notice of the election.
- Ballots are to be mailed to all registered voters of each subarea. This ballot is to be used in voting at the elections.
- The subarea criteria committee will be responsible for:
 - Placing subarea governing body nominees into categories based upon the demographic profile defined in section 1512(b)(3)(C) of Public Law 93-641.
 - Placing nominees on a ballot directly reflecting the categories described in section 1512(b)(3)(C) of Public Law 93-641.

--Establishing criteria so that one-third of the membership of the subarea council governing body (depending upon availability) shall be publicly elected officials or their representatives who are members of the subarea council. If more than one-third (10) publicly elected officials or their representatives are available for election, the criteria committee will represent all names to the membership during the election and indicate that the membership should vote for 10. Those 10 receiving the most votes shall be considered elected.

--Assuring that candidates are accurately described in terms of section 1512(b)(3)(C).

--The subarea governing bodies shall contain a consumer provider ratio of 16 consumers and 14 providers.

--The agency's interim governing body will not serve longer than 1 year.

These matters are discussed in greater detail on the following pages. In addition to the above bylaw deviations, the agency established certain election procedures not provided for in the bylaws. Some of these procedures are discussed later in this chapter.

Provider membership in subarea advisory councils

The agency's bylaws state that providers may register in the subarea where they work. In a December 13, 1976, letter, however, HEW informed the agency that providers may only participate in the activities of the subarea where they reside.

This ruling was challenged by the Hospital Council of Southern California in a letter to HEW dated February 23, 1977. HEW maintained its position in its reply to the Hospital Council of Southern California in May 1977.

The agency complied with the HEW ruling but, for reasons discussed above, did not amend its bylaws to correspond with the HEW ruling.

Fifteen-day limit for declaration of candidacy

Agency bylaws stipulate that candidates, to be members of subarea governing bodies, were to declare their candidacy within 15 days of the publication of notice of the election. Formal notice of the elections was made on April 12, 1977. The notice required declarations of candidacy to be made before May 16, 1977, or 33 days from the notice of the election.

It was the agency staff's opinion that the 15-day limit was in conflict with the California State Election Code, which allows up to 30 days for a person to declare candidacy. Therefore, an agency administrative decision was made to more closely adhere to the California State Election Code instead of agency bylaws. The bylaws, however, were never amended to reflect the administrative decision.

Although the agency's legal counsel felt the agency's bylaws and the California Corporations Code governed the conduct of the election, legal counsel also felt the California State Elections Code should be followed where applicable.

Use of sample ballots

The agency's bylaws state that the ballot mailed to registered voters in the subarea was the ballot voters were expected to use in the election. One of the agency's election consultants, however, recommended that a sample ballot be mailed instead of the actual ballot to provide better election security. The agency's legal counsel rendered an oral opinion stating in effect that the bylaws' use of the words "expected to use in voting" is not a mandatory statement.

The use of a sample ballot was approved by the interim governing body on April 6, 1977.

Problems relating to classification
and verification of candidates

As discussed on page 1, the subarea governing bodies are required to be composed of consumer members meeting demographic characteristics which are broadly representative of the population within the subarea and provider members meeting certain occupational classifications. The framers of the agency's bylaws apparently recognized that governing bodies selected solely on the basis of a democratic election would be unlikely to meet the composition requirements specified in the act.

Accordingly, the agency's bylaws provided for the establishment of subarea criteria committees. The bylaw framers apparently intended that the criteria committees, among other things, would determine the makeup of the governing bodies needed to meet the composition requirements of the act and establish procedures to assure that persons possessing the desired characteristics were selected.

The framers intended that the committees would divide available governing body seats into various categories representing desired demographics and occupational characteristics and assure that only persons possessing the characteristics specified for a particular seat would be candidates for that seat. Additionally, the agency's interim governing body, apparently recognizing that procedures specified in the bylaws for the criteria committees might not be sufficient to assure that subarea governing bodies met the composition requirements of the act, established an election procedure not specified in the bylaws. Under this procedure, winning candidates in the "public-elected official" category would not be seated on the governing body but would serve on a "special committee," which would in turn appoint persons to their seats. The appointed persons would be selected, as necessary, to obtain whatever demographic or occupational characteristic were needed but not otherwise obtained in the election process.

But in February 1977, the agency received an opinion from its legal counsel stating that candidates placed on the ballot on the basis of race, creed, etc., would cause the elections to be discriminatory and therefore in violation of State and Federal laws. Consequently, the agency felt this particular function of the criteria committees could no longer be performed.

In March 1977, the agency determined that the yet to be established criteria committees would perform their functions as outlined in the bylaws except for the demographic categorization of candidates on the ballot. The committees were still to assure proper consumer, provider, and public official classifications for candidates in the election. However, as the election grew near, the agency realized it had severely underestimated the number of candidates. About 750 candidates were originally projected; over 1,400 actually declared candidacy.

According to an interim governing body member, because of the doubling of the estimated number of candidates, the criteria committees could not have verified the status of all candidates without severely jeopardizing the ability of the agency to conduct the election on June 21 as planned. Consequently, a decision was made not to verify the status of the candidates but to have the criteria committees verify the consumer and provider status of winning candidates after the election. According to one interim governing body member, it was much less time consuming to verify 150 unofficial winners versus over 1,400 official candidates. (See allegation regarding reclassification of winning candidates after the election on p. 17.) Hence, the five subarea criteria committees did not perform many of the functions specified for them in the bylaws.

The agency bylaws require that one-third of the membership of the subarea governing bodies be elected public officials or their representatives and that those 10 receiving the most votes shall be considered elected. The agency, however, established a modified election procedure for the elected public officials category. Under this modified procedure, public official candidates were categorized with one category, mayor/city council member, being limited to the highest vote getter in each city.

The agency contends this process was incorporated to insure different levels of governmental authority and broad representation of the various cities located in subareas. But ballot instructions for the mayor/city council member category merely read "vote for five" and after the election several council members from Los Angeles were apparently surprised when they found they had placed in the top five but would not be seated because they were not the top vote getter from their respective cities.

These unclear ballot instructions for public officials triggered a dispute over who had won in that category. After

the elections, the executive director stated that only 2 of the 50 officials would technically meet all of the demographic characteristics necessary to fully balance the subarea governing bodies. The statement provided emphasis to the move by certain public officials to litigate the election because of discrepancies in the wording of ballot instructions for public official candidates. Subsequently, the lawsuit argued that this appointment requirement was contrary to the intent of the act and was in violation of the agency's bylaws on the conduct of the election.

Bylaw deviations resulting
from the court's decision

On July 25, 1977, the California Superior Court issued a temporary restraining order forbidding the agency's five elected subarea governing bodies from conducting business. This order was continued in early August 1977.

At the final hearing on August 24, 1977, the judge ruled that the appointment process was not adequately publicized to public officials prior to the election and concluded that this procedure was in violation of the agency's bylaws. As a result, he ordered the eight members of the three city councils involved in the suit to be seated on the subarea governing bodies.

Because of this decision, the agency no longer required public officials who had won seats in the election to appoint replacements, and the following additional deviations from the agency's bylaws have occurred.

1. The agency's bylaws require each subarea governing body to have a membership consisting of 16 consumers and 14 providers. As a result of the court's decision, the membership of each of the councils deviates from the bylaws. To conform with the court order on the seating of local public officials and to avoid disenfranchising any other elected individuals, the agency seated more than 30 individuals in 3 of the 5 subareas. Additionally, the 16 consumer/14 provider ratio was not met in any subarea.
2. According to the bylaws, the interim governing body was to serve a term not to exceed 1 year; however, it functioned from August 1976, when it was established, until December 21, 1977, when the permanent governing body was installed. In August 1977, the agency's legal counsel rendered

an opinion which stated that it appeared appropriate for the interim governing body to continue to act until their successors are elected or appointed.

AGENCY'S GOVERNING BODIES OUT
OF COMPLIANCE WITH COMPOSITION
REQUIREMENTS OF THE PUBLIC LAW

Because the agency could no longer require public officials to appoint replacements as planned, elected consumers, in many instances, do not reflect the demographic makeup of the subarea populations they represent.

Two of the most glaring deficiencies relate to the educational and economic status of the consumers on the subarea governing bodies. For example, consumers on the five subarea governing bodies with educational levels of 12 years or less make up between 6 and 29 percent of the membership, while demographic data for the five subareas show that 69 to 78 percent of the population falls in this category. The percentage of consumers having incomes in excess of \$25,000 on the five subarea governing bodies range between 18 and 50 percent. In contrast, demographic data for the five subareas shows that no more than about 12 percent of the population of any subarea falls in this category. In addition, all consumers on one subarea governing body are white, while demographic data for the subarea shows 20 percent minorities should be represented. Additionally, elected providers in each subarea do not always reflect the variety of health care occupations required by the act.

The agency's designation agreement with HEW requires the agency to insure that its governing bodies be in conformance with the law and regulations at all times. We believe the present demographic composition of the agency's five subarea governing bodies are not in compliance with the law or the agency's bylaws.

Both HEW and the agency's legal counsel have expressed concern that an out-of-compliance organizational structure could provide opportunities for legal challenges by unsuccessful applicants for new health services.

ALLEGED INADEQUATE PUBLIC
NOTICE OF ELECTION

The lawsuit alleged that the public was not well informed as to the significance of the agency or the procedures established for registration and participation in the subarea governing body elections.

California State laws and HEW regulations both require that reasonable public notice of agency meetings be made including, to the extent possible, publication directly to persons who are medically underserved and are in other ways denied equal access to good medical care. In addition, the agency's bylaws provide that two publicly advertised community education meetings must be held in each subarea before the election.

The agency's efforts to inform the public regarding its purpose, the registration process, and the election included (1) paid newspaper advertisements, (2) public service radio announcements, (3) informational handouts, (4) direct mail, and (5) educational meetings.

Between February 24 and May 31, 1977, before the election, the agency placed 50 paid newspaper advertisements. These advertisements addressed various agency meetings and election information, such as the election registration deadline. The advertisements were placed in various community newspapers having circulations ranging from 3,000 to over 1 million.

The agency provided 42 radio stations with various public service announcements regarding agency meetings. No records are readily available showing how many stations actually broadcast the announcements.

The agency hired a group of field representatives to distribute handouts, put up posters, and address group meetings in order to inform the public about the agency. The handouts contained information regarding health planning and the agency, and listed various meeting dates and times and locations where registration would take place. According to an agency official, about 300,000 handouts were distributed at PTA meetings, labor unions, storefronts, libraries, schools, and hospitals.

Special interest groups were informed by direct mail, usually to the organization's leader, asking that the organization's membership be informed. Materials were printed in foreign languages and Braille.

At public meetings to register and educate the community, agency representatives explained the functions of the agency as well as the purpose of the subarea governing body elections.

The agency's cost for providing public notice amounted to \$181,741. The cost can be broken down into the following categories:

Postage	\$ 48,596
Printing and reproduction	75,225
Advertising cost	46,170
Meeting expenses	<u>11,750</u>
Total	<u>\$181,741</u>

Despite the agency's efforts to inform the public, some individuals expressed the feeling that the public was not informed of the agency's purpose or the subarea governing body elections. For example, in a letter to the agency, a League of Women Voters local chapter president stated that the public did not receive adequate information about the law, the public's role in implementation, and method of participation. Some members of the League of Women Voters who staffed the agency's polling facilities during the election felt that the public lacked this knowledge.

ALLEGED RESTRICTIVE REGISTRATION PROCESS FOR ELECTION

The agency's bylaws provide for annual voting registration for the subarea governing body elections by mail or in such manner as determined by the agency's governing body. The California State Election Code similarly allows voting registration by mail.

On September 29, 1976, the interim governing body decided against mail-in registration and voted for in-person registration. This could be done by attending any of the following types of agency meetings:

- A community education meeting.
- A general membership meeting of subarea registrants.
- An interim governing body meeting.

Two community education, one interim governing body, and at least three general membership meetings were held in each subarea from January until May 21, 1977, the last day on which to register for voter eligibility in the June 21 election. Persons could also register at the agency's headquarters in Los Angeles.

Most of the meetings were held in different locations throughout the subareas. Several heavily populated areas in Los Angeles County, however, did not have any meetings in their areas. Also, in subarea #1, which covers over 650 square miles, all membership meetings were held in one location, La Puente, California. An agency official told us that suitable buildings for large registration meetings were difficult to find in subarea #1 and in strategic locations throughout the county.

We were unable to determine the number of persons registering at the various meetings and at the agency's headquarters because registration documentation did not identify place of registration.

Questions were raised by various interest groups about the appropriateness of requiring in-person registration. In February and March 1977 representatives of handicapped organizations attempted to increase the accessibility for handicapped persons to the agency's activities and the election process by presenting various motions to the agency's community interest committee and interim governing body.

The agency's legal counsel in a March 31 written opinion indicated that the agency was not adhering to its bylaws regarding registration and that it might be prudent to allow registration by mail. The counsel's opinion was that this was important because of Federal laws mandating that the handicapped may not be excluded by virtue of their physical limitations from participation in a federally funded program.

On April 6, 1977, a motion was brought before the interim governing body to allow registration by mail. There was no mention of the agency's legal counsel opinion before the vote not to carry the motion. Thus, the agency continued its policy of in-person registration.

On April 12, 1977, the Blind, Aged, Disabled, and Deaf Action Coalition alleged in a lawsuit that the in-person registration policy was in violation of the agency's bylaws and was in fact unlawfully restrictive. Although the court did not uphold the Coalition's lawsuit, the city of Los Angeles cited the restrictive registration process in its lawsuit against the agency after the June 21st election.

ALLEGED FAVORED CAMPAIGN ASSISTANCE

The city of Los Angeles lawsuit alleged that the agency rendered significant campaign assistance to some candidates

and that this was a violation of the agency's duty to conduct an "evenhanded and fair election." A declaration by one of the suit's petitioners charged that the agency staff helped prepare literature for a particular candidate just before the elections and that certain candidates were provided with free computerized voter address labels.

It was alleged that favored treatment was given to a candidate who was a State assembly member. According to the lawsuit, just days before the June 21st election, agency staff provided the candidate with modified mailing labels and helped to mail a letter from the candidate along with literature on breast cancer to all female registered voters of subarea #2.

The city suit alleged that both the helping of the mailing and the fact that the mailer went out to all female registrants in subarea #2, even though many of these recipients lived outside of the assembly district represented by the candidate, suggested a campaign purpose to the mailer.

Our efforts to pursue these and other allegations that the agency did not conduct procedurally fair elections were met with significant resistance. Our audit authority limited us in obtaining certain information and taking statements from knowledgeable persons under oath.

Information we could develop on the allegations has been provided to the Subcommittee on Oversight and Investigations, House Committee on Interstate and Foreign Commerce.

ALLEGED RECLASSIFICATION OF ELECTION WINNERS

The act requires that a majority (not to exceed 60 percent) of health systems agency governing bodies consist of consumers of health care who are not also providers of health care. The remainder of the governing body is to consist of providers of health care. These requirements also apply to subarea-governing bodies. The agency's five subarea criteria committees were responsible for assuring that candidates for the election were properly classified as consumers or providers.

As mentioned previously, the accuracy of all 1,439 subarea governing body candidates were not verified before the election because there was not sufficient time. The agency's staff, however, while editing candidate statements to be presented on election ballots, noticed that about 22 of the 1,439 candidates had obviously incorrectly

classified themselves. These classifications were corrected before the election. After the election, the community interest committee did verify the classification of the candidates who at that time were unofficially certified as election winners and changed the classification of four of these individuals.

The lawsuit alleged that the agency did not investigate and confirm the status (consumer or provider) of candidates for subarea governing body seats. In addition, the suit alleged, the agency discovered after the election that some candidates had appeared on the ballot with the incorrect designation. As a result, the agency changed the designation of these candidates with no notice to the affected candidates or the voters. A declaration by one of the candidates, Ms. Miriam West, provided support for the allegations.

Ms. West appeared on the June 21 ballot as a consumer and received the highest number of votes of any candidate in subarea #3. At a July 6 public meeting of the interim governing body, she learned that she had been reclassified as a provider. Ms. West protested to the interim governing body because she knew that the agency's executive director and other agency officials were aware that she was a member of the Board of Directors of the Los Angeles Free Clinic before the election.

Ms. West had classified herself as a consumer based on information in the agency's registration form. She now believes that she may be an indirect provider (based on criteria outlined in P.L. 93-641) because of her activities with the Los Angeles Free Clinic. The agency did not include complete criteria for indirect providers on the registration form.

Because of the agency's prior knowledge regarding her membership on the Los Angeles Free Clinic's Board of Directors, she believed it was unfair for her to be reclassified without being consulted. Initially the interim governing body voted to reject her protest and changed Ms. West's classification to provider. However, on September 7, 1977, Ms. West's classification was changed back along with three other candidates, whose classifications were also changed after the elections, to their original classification. An agency official told us the candidates' classifications were changed back to avoid additional lawsuits and to provide HEW an opportunity to assist the agency in correcting the problem.

According to an agency official, HEW declined to render a decision on the status of the three candidates. As a result of opinions rendered by the agency's legal counsel, the classification status of three of the four candidates (including Ms. West) was again brought to the attention of the interim governing body on November 7, 1977.

Despite the legal counsel's recommendation to change the classification of each of the three candidates, the interim governing body voted to change the classification of only one candidate, and consequently only one winner was ultimately changed from her original election category.

OTHER INFORMATION REGARDING SUBAREA GOVERNING BODY ELECTIONS

During our audit of the election process, certain other information relating to the subarea governing body elections came to our attention that was not specifically related to any of the allegations. We believe, however, that it is important and should be provided.

Agency use of election consultants

The agency obtained the services of three consultants to assist it in the election process. The agency expended about \$74,000 for these services.

One consultant, John O'Connor, was hired at a cost of \$6,000 to prepare for the subarea council formulation. Another consultant, Cerrell Associates, Inc., was awarded a \$10,000 contract to advise the agency on election procedures and applicable laws relating to the election. The other consultant, Diamond International Corporation, received a \$57,953 contract to provide necessary election equipment and supplies and to complete the final vote count for the election.

Our review of the circumstances surrounding the award of the Cerrell Associates and Diamond International contracts showed weak contract management by the agency. Agency by-laws state that the governing body authorizes all contracts to be executed by its president or by other designee of the governing body. The Cerrell contract, however, was executed by the agency's executive director without formal authorization by the interim governing body. In addition, the the agency's workplan required the executive director to establish formal procedures for contractual services by December 1, 1976. Written procedures for contractual services were not developed and approved until July 1977, 7 months after the date required by the workplan.

Contract with Cerrell
Associates, Inc.

The contract with Cerrell Associates, Inc., was not approved by the interim governing body until after services had been provided and partial payment had been made for those services. Though the contract was not signed until April 22, 1977, Cerrell received payments totaling about \$2,500 on March 30, 1977. According to the agency's legal counsel and a Cerrell representative, the company provided services from March 3 to April 22 on an implied basis while the contract was being finalized.

Cerrell provided the agency mostly oral, undocumented consulting services. The only documents that were provided by Cerrell were (1) a preliminary election outline and (2) a list of instructions and checklist for agency staff and League of Women Voter participants for use on election day.

During the period of the contract, the agency's legal counsel provided numerous opinions on election codes and laws. In fact, over half of the legal counsel's opinions provided to the agency related to this subject. Because of the lack of documentation regarding services provided by Cerrell, it is not possible to evaluate them or compare information provided with that provided by the agency's legal counsel.

Contract with Diamond
International Corporation

In April 1977, the agency realized it did not have the resources necessary to provide election supply services. On May 4, 1977, the interim governing body approved a \$26,000 contract to be awarded to Diamond International Corporation to provide election equipment and supplies. This proposed contract with Diamond was never executed (dated and signed). On June 7, 1977, the agency executed a contract with Diamond for \$57,953.

Regarding the agency's contract with Diamond, it has been alleged that (1) there was no competitive bidding and (2) work performed did not justify the significant increase in contract cost.

The agency solicited bids from three firms based on an estimated 750 candidates in the elections. Only two of the firms responded. Diamond's bid (\$26,000) was slightly over that of the second firm's bid (\$25,630).

According to the agency's election coordinator and a Cerrell representative, it was decided to contract with Diamond because of "added services and efficiency of operations." The agency, however, could not explain or provide any documentation as to how this determination was made.

Diamond was supposed to:

- Design and print the official ballot, sample ballot, candidate booklet, and candidate statement.
- Mail the sample ballot and candidate booklet to all registered members, including the 50 word or less statement from each candidate in the candidate booklet.
- Design a system for ballot counting and candidate tabulation readouts.
- Provide all required equipment necessary for voting and tabulation.
- Provide for a central tabulation point and persons to staff the operation.
- Certify the election results.

The original \$26,000 contract, though never finalized, provided that in the event that more than 750 candidates are involved in the election, the contract price would be set at a mutually agreeable figure. According to the election coordinator, the agency's legal counsel was reviewing and finalizing the \$26,000 contract when the agency realized that the 750-candidate estimate was too low.

About May 6, 1977, the agency revised the estimated number of candidates to 1,400 and began renegotiating with Diamond on this basis. Because of restrictive time frames and a cost overrun provision in the initial proposal, the agency did not reopen competitive bidding based on the revised estimate. About May 20, a second proposal was submitted by Diamond. This proposal, however, did not stipulate a firm cost figure.

According to a Diamond official, the problem centered around the 50-word statement that each candidate was allowed to prepare for the ballot giving their background and position on health care. The agency was to provide all candidate statements to Diamond by May 16, the last day when declarations of candidacy could be submitted to the agency.

However, the agency sent Diamond declarations up to June 6. Of the 1,439 official candidates, 1,382 submitted statements. According to the agency's executive director, delays in providing Diamond with the statements were primarily caused by the need to correct deficiencies in the statements prepared by the candidates. He added that Diamond threatened to terminate the contract because of the delays.

During a meeting on June 1, 1977, the interim governing body approved a motion that the Diamond contract be increased to \$56,000. On June 7, 1977, the agency's executive director signed the Diamond contract for \$57,953 although according to a Diamond official, they had been providing contract services since May. According to agency staff and an interim governing body member, the executive director did not have sufficient time to obtain interim governing body approval for the additional costs.

Estimated costs for both the \$26,000 proposal and the final \$57,953 contract were broken down by Diamond into three general categories. A comparison of the proposal with the contract shows that:

1. Costs relating to the official ballot increased from \$7,630 to \$16,366.
2. The costs relating to the sample ballot increased from about \$14,400 to \$34,109.
3. Equipment rental costs increased from \$3,970 to \$6,560.

The \$57,953 contract also included a \$918 charge for correcting previous agency errors in projecting the number of candidate statements on May 27 and June 1. According to the Diamond regional manager, the above cost increases would not have been as great if the agency had provided timely data. He also stated that the delay in receiving complete election information from the agency caused Diamond staff to work overtime to meet election time frames. The overtime, together with additional equipment and supplies, were the major reasons for the increase in contract prices over the original contract.

Diamond subsequently billed the agency for a total of \$63,407. The amount billed over the contract amount was still in dispute between Diamond and the agency as of December 31, 1977.

SEATING OF PERMANENT GOVERNING BODY

After the June elections, subarea governing body members drew, through a lottery process, terms divided equally 1/ and ranging from 1 to 3 years. As presently planned, elections will be held next year and each subsequent year to replace one-third of the members, starting with those that drew one-year terms.

Each of the five subarea governing bodies elected 3 members (2 consumers and 1 provider) to serve on the agency's 30-member permanent governing body. As provided in the agency's bylaws, 10 permanent governing body members were appointed by the Los Angeles County Board of Supervisors, 1 was appointed by the League of Cities, 1 represented health maintenance organizations, and 2 were public health providers. The health maintenance organization and public health provider representatives were selected through separate lottery processes. The agency's permanent governing body was officially seated on December 21, 1977.

According to agency officials, the new permanent governing body will have the power to amend the bylaws, and the subarea governing body election process may be discontinued and some type of appointment process used in its place.

1/In instances where the subarea governing bodies had more than 30 members, the number of members serving 1-year terms was increased.

CHAPTER 3

ALLEGATIONS REGARDING AGENCY'S

LEGAL COUNSEL

Several of the allegations related to the agency's legal counsel. The specific allegations were that he

- misrepresented himself as a member of a law firm when he is an independent lawyer sharing an office with several other lawyers,
- billed the agency excessively for services of questionable need and suspect quality, and
- has a conflict of interest because of major interests in hospital equipment.

BACKGROUND

In September 1976, prompted by a recommendation by the agency's administrative committee, the interim governing body decided to obtain outside legal counsel.

Twelve applicants responded to the agency's advertisements for legal services. Each of the respondents was provided a copy of a grid showing the categories the agency was using in evaluating them. Respondents were asked to provide information on (1) affirmative action, (2) health-related experience, (3) peer reputation, (4) potential conflict of interest, (5) staff capacity to perform services required by the agency, and (6) legal fees.

The agency's executive director narrowed the number of candidates to five. The actual grid scores supporting the executive director's choice of candidates, however, were not available to us.

Each of the five finalists was interviewed by the interim governing body's administrative committee. The committee recommended that the law firm of Kataoka, Moret, Corral, Moreno, and Camacho be hired. The interim governing body approved the recommendation on January 5, 1977.

The contract between the law firm and the agency was officially signed on January 23, 1977, by Mr. Camacho and the agency's executive director. Agency records indicate, however, the firm actually started billing for work on January 11.

The contract stated the law firm was to provide services for a basic retainer fee of \$70 an hour, which included:

- Providing an attorney to attend agency committee and governing body meetings and to advise committees and the governing body on anticipated matters and matters coming before committees and the governing body.
- Meeting with and advising staff personnel, governing body or other individuals before committee and governing body meetings, and also providing appropriate legal research.
- Reviewing, analyzing, and advising the governing body of provisions of the U.S. Government Code, State of California Government Code, Administrative Code, and any related statutory and regulatory materials.
- Providing or helping to provide legal services relating to regulations of HEW and the California Department of Health.
- Representing the governing body and the agency in any litigation.

Between January 11 and August 11, 1977, the firm provided the agency with legal services regarding administration of the agency, the subarea governing body elections, and litigation. For these services the firm billed the agency \$81,413. The terms of the contract were for 1 year and were continuous from year to year unless canceled by either party upon 60 days written notice.

The agency's budget initially provided \$45,000 for legal expenses for the first grant year. The changes in amounts allocated for legal services in various budget revisions submitted to HEW for approval follow:

- June 9, 1977--\$48,000.
- July 7, 1977--\$64,750.
- August 9, 1977--\$82,950.

ALLEGED MISREPRESENTATION AS
BEING MEMBER OF LAW FIRM

As previously mentioned, staff capacity to perform services required by the agency was one criterion used to evaluate candidates for the agency's legal counsel position.

According to Mr. Camacho, his relation to the firm is that of an "ostensible partnership," and the attorneys represent varied legal expertise in health law, administrative law, corporate law, and general litigation. The varied legal expertise is a resource available to any of the firm's attorneys for use in providing clients necessary legal services. According to Mr. Camacho, all members of the firm share equal legal responsibility and liability; however, no formal documented agreement to this effect has been signed.

The contract with the agency is signed by Mr. Camacho representing the law firm. The firm bills the agency as Kataoka, Moret, Corral, Moreno, and Camacho, and the agency pays for services by making checks payable to the firm. According to Mr. Camacho, the firm has a centralized record-keeping system for staff payroll. Although each attorney has individual clients, they may provide legal assistance for a number of different clients of the firm. According to Mr. Camacho, centralized records are kept on the amount of time a professional staff member spends on services rendered for various clients. The attorneys are then paid based on hours of services rendered.

ALLEGED EXCESSIVE BILLINGS FOR SERVICES PROVIDED

The law firm provided legal services totaling \$92,755 from January 11, 1977, through August 11, 1977. The agency received \$7,567 of in-kind contributions in the form of services during the months of January and February and at the end of the agency's grant year. In addition, the firm apparently inadvertently omitted \$3,775 from its May 1977 billing. Therefore, the firm billed the agency a total of \$81,413 between January and August 1977. The monthly billings are shown below.

<u>Month</u>	<u>Amount</u>	<u>Contribution</u>	<u>Net cost</u>
January-	\$ 4,606	\$1,000	\$ 3,606
February	4,666	983	3,683
March	12,159	0	12,159
April	17,652	0	17,652
May	9,934	0	9,934
June	13,592	0	13,592
July-			
August	<u>26,371</u>	<u>5,584</u>	<u>20,787</u>
Total	<u>\$88,980</u>	<u>\$7,567</u>	<u>\$81,413</u>

The actual billings submitted to the agency were general and until July did not include charges by services provided. Before a July HEW request for more detailed explanations of legal costs, billings were not specific as to amount and percentage of time for the services rendered.

Upon a request from the Chairman of the Subcommittee on Oversight and Investigations, House Committee on Interstate and Foreign Commerce, Mr. Camacho provided us more detailed information on the billings. However, Mr. Camacho denied our requests to independently verify the additional information through a review of the firm's financial and timekeeping records.

According to the additional billing information, legal services during the agency's first grant year required 1,394 hours of staff time. The services included

- giving opinions and advice on agency administration (639 hours and \$39,708),
- providing guidance on the development and implementation of the election process (371 hours and \$25,915), and
- handling litigation regarding handicapped organizations and the election (370 hours and \$25,715).

The agency received 42 written legal opinions, of which 26 related to the subarea governing body elections. Of the 26 election opinions, 22 were related to agency bylaws. However, the opinions included 11 responses to issue areas previously answered by Mr. Camacho. The repeated responses represent about 26 percent of the total written legal opinions during the first grant year. According to Mr. Camacho, some legal questions raised by the agency required the same type of legal responses. He said he did not bill the agency more than once for the same or similar legal opinions.

We obtained data on the legal expense of 9 of the 10 largest health system agencies other than the Health Systems Agency for Los Angeles County (which ranks second nationally in terms of grant award). The legal expenses for these nine agencies averaged about \$16,000 in their first grant year, ranging from Seattle's \$2,919 for just outside service to New York City's \$35,930 for a combination of staff and outside counsel. The nature of the legal services provided to these agencies was not determined.

We could not reach any conclusions as to the reasonableness of the agency's expenditure for legal services since (1) we could not independently verify the hours billed by the legal counsel and (2) in our opinion, an independent peer review would be necessary to determine whether the work performed was necessary, of adequate quality, and commensurate with the hours billed. According to a State Bar official, no mechanism for such a review exists.

POSSIBLE CONFLICT OF INTEREST

It has been alleged that Mr. Camacho has major interests in hospital equipment and should be considered a health care provider and that a conflict of interest exists because Mr. Camacho represents an agency that is supposed to regulate providers.

One of the criteria used in selection of legal counsel was whether applicants represented a significant number of health provider clients. We were denied access to the firm's financial records; therefore, we could not independently determine the number of health provider clients the firm represents.

We were unable to document that Mr. Camacho has major interests in hospital equipment. Mr. Camacho's wife owns a linear accelerator at the Radiation Oncology Center of Tarzana, California. Mr. Camacho advised us that he has not signed a 9-year lease for the accelerator, as alleged, but because California is a community property State, he does have an interest in the equipment. It should be noted that since the linear accelerator is not owned by a hospital, it is not subject to review by the agency.

CHAPTER 4

AGENCY HIRING PRACTICES

Allegations were made that the agency hired persons who were not qualified for their positions.

According to the National Health Planning and Resources Development Act of 1974, the staffs of health systems agencies are to have expertise in (1) administration, (2) gathering and analysis of data, (3) health planning, and (4) development and use of health resources. Each agency is required to develop its own system for hiring, promoting, and discharging employees. In addition, HEW has provided health systems agencies with guidelines on staffing and performance standards on personnel administration. The agency's Notice of Grant Award states that:

"The [agency] shall demonstrate an open and reasonable recruitment process for all unfilled positions based on specified minimum personnel qualifications which are consonant with a clearly defined position description."

Our review of the agency's personnel practices showed that (1) the procedures used in hiring staff were not documented in many cases, (2) some staff hired did not meet the minimum required qualifications listed in job position descriptions, and (3) some staff were not performing duties consistent with their position descriptions.

STAFF HIRING PRACTICES

The agency's interim governing body formally adopted a personnel manual on February 16, 1977. Before that time, the manual was used as a working draft. The personnel manual includes procedures to be followed in advertising, recruiting, screening, and selecting employees. Ultimate authority on personnel matters, including hiring, is delegated to the agency's executive director. The procedures outlined in the manual provide no specific requirement for documenting the procedures used in selecting employees and there are no specific requirements or procedures for assuring that those hired are selected from among the highest qualified.

Because of the general lack of documentation, it was not possible to determine, in many instances, whether personnel manual procedures were followed. The documentation

that was available often was not complete. No documentation of procedures used in hiring most of the health planning and development staff employed during the first grant year was available in the agency's personnel files. For example, screening score sheets were missing for 14 of 26 senior health planners and health planners hired as well as for 3 final candidates for the agency's executive director position. In addition, we could not find documentation of the procedures followed in selecting an associate director.

Documentation regarding the selection of the agency's executive director was particularly lacking. For example, though each of the 60 applicants for this position was to be screened and evaluated by a personnel committee of the interim governing body, agency files include this documentation for only 18 of the applicants. The other 42 were not screened by the personnel committee but were informally evaluated by 2 temporary staff members. Actual scoring sheets for 5 of the 18 candidates, including the 3 finalists, were missing from agency files.

The hiring of the agency's associate director was not only not documented but also raises other questions regarding the agency's personnel practices. This position was advertised on March 1, 1977. Forty-eight persons are listed on an applicants' log as having submitted applications, but none of them was hired.

The person selected by the agency's executive director was previously employed by HEW's San Francisco Regional Office as the Regional Health Planning Program Consultant for Technical Assistance and Planning Technology. This person's application was submitted on February 6, 1977, 3 weeks before the position was advertised.

The executive director said that in addition to 1 of the 48 persons on the applicants' log, he interviewed several other individuals for the position who had erroneously not been placed on the log. The executive director said that he did not have written documentation of the interviews other than notes on his calendar. We found no evidence that any of the applicants were evaluated. The executive director told us that he wanted someone who would fit a certain role and believed that the former HEW employee was that person. The former HEW employee terminated his employment with HEW on April 16, 1977, and since has been an employee of the agency.

The agency entered into a paid consulting contract with this individual for the period March 1 to 31, 1977. Entering into such a contract with a Federal employee was clearly a failure by the agency to comply with the HEW Public Health Services Grant Policy Statement, which says that payments from a grant to Federal employees for consultant fees are not allowable. The executive director and the associate director said that they had not been aware of this requirement. (See chapter 6 for further discussion of the hiring of the associate director.)

QUALIFICATIONS OF PERSONNEL HIRED

We compared applicant resumes with job position descriptions and determined that (1) the agency's current executive director did not have the necessary minimal education or experience the position description required and (2) 14 of the 26 senior health planners and health planners hired between November 1976 and April 1977 did not meet education or experience requirements or both. Seven of these employees were hired at the highest step or pay level available.

Our comparison of the qualifications contained in the executive director position description with the resume of the individual selected for this position showed that:

- Though the qualifications included a requirement for a postgraduate degree in public health, hospital administration, planning, or a closely related field, the applicant selected had achieved a B.A. degree in Business Administration and had completed 1-year of premedical studies.
- Though the position required 3 years experience at the associate or executive director level in a health organization, the applicant selected had only 9 months experience as associate regional director in the Los Angeles County Department of Health Service. Additional county experience included (1) 9 months as a senior and principal health services program analyst, (2) 15 months as a health services program analyst, and (3) 3 years as a data processing senior programmer analyst.

The executive director told us that he felt his duties and special assignments while with Los Angeles County fulfilled the executive director position experience requirement.

We were unable to find score sheets or interview notes for the applicant selected. According to members of the interim governing body that we interviewed, the applicant selected was the most dynamic and had the most knowledge of the background and objectives of health systems agencies of those persons interviewed.

One of the senior health planners and four of the health planners we identified as not meeting minimum requirements knew the executive director before their employment with the agency. The executive director stated that his contact with all five individuals before their employment by the agency gave him some opportunity to evaluate their skills and capabilities and assess their potential role in the development of the agency.

NON-HEALTH-PLANNING FUNCTIONS PERFORMED BY "HEALTH PLANNERS"

An analysis of timesheets submitted by persons hired as senior health planners or as health planners showed that only 68 percent of the hours charged were charged to planning-related activities. Five health planners charged only two percent or less of their time to health-planning functions. Of these, one person functioned as a special assistant to the executive director, another functioned as a graphic artist, and the three others charged their time to the community relations area.

The executive director told us that there was a need for a graphic artist and someone to assist in the subarea governing body elections. Because there were no such positions, he hired the individuals into health planner positions. The agency's second year grant application included provisions for the needed positions, and the two employees were transferred into them in November 1977.

CHAPTER 5

BUDGET REVISIONS AND CASH MANAGEMENT

It was alleged that the agency had not followed appropriate procedures in obtaining approval for changes in its budget. We found that:

- Major revisions to the agency's budget were approved by HEW on the basis of incorrect and misleading information submitted by the agency concerning how the need for the changes occurred. These revisions significantly reduced the agency's ability to accomplish its health-planning objectives outlined in the first grant year work program.
- Agency budget revisions were not always approved by the agency's governing body as required by the agency's administrative policies.
- Grant funds were at times expended for the revised budget items before HEW approval of the changes.

In evaluating the agency's budget revisions, we also noted that the agency had misrepresented its cash position to HEW when requesting cash advances.

BUDGET REVISIONS

Each health systems agency is required by the grant award conditions to submit to HEW for approval a budget, work program, and personnel table and staffing pattern within 30 days of the grant award. Changes to the above must also be approved by HEW. Additionally, the agency's administrative policies require changes to the budget to be approved by the agency's governing body before submission to HEW.

HEW anticipated that some health systems agencies would have difficulties expending all grant funds as planned during the first year because of unavoidable delays in staffing or other unanticipated problems. Rather than have the agencies lose those funds, HEW encouraged early identification of surpluses so they could be reallocated through budget revisions subject to HEW's approval.

During its initial grant year, the agency submitted to HEW revisions to its budget in November of 1976 and in February, June, July, and August of 1977. Revisions to its work program were also submitted with the November and February budget revisions. All of the budget changes reflected reallocations among budget categories and did not involve additional funding requests.

The agency, in addition to identifying unavoidable surpluses, purposely created additional surpluses primarily by implementing a freeze on hiring for health-planning positions. The agency later submitted revisions which were approved by HEW that reallocated the surpluses to other budget categories. However, approval was based on inadequate and misleading information presented by the agency in the request for approval.

The budget revision submitted by the agency dated June 9, 1977 (the first revision approved by HEW), contained the following statement regarding an anticipated salary surplus which was to be reallocated.

"The salary budget is based upon actual salary expenditures through April 1977, plus an assessment of anticipated salary costs to be incurred during May, June, July, and part of August. This revised salary amount represents a reduction of \$263,854 from our previous budget. The reduction is primarily attributable to salary step differential (\$19,281) and delays in hiring due to extensive recruitment procedures which required extensive advertising and screening of applicants." (Emphasis added.)

However, the agency memorandum, dated March 3, 1977, from the agency's director of finance and operations to the executive director states in part:

"At our staff meeting this morning you requested that we re-forecast current year expenditures based upon the existing level of staffing as well as forecast expenditure requirements for project year 77-78 based upon the existing staffing levels. Currently, we have either employed or commitments made to 64 people * * * Since we have budgeted \$1,180,625 for the current salary and fringe benefit program, a freeze of staffing at the current level of commitment would generate a surplus of \$404,754 * * * If our grant next year remains at the current year

level, i.e. \$1,972,345 we would have only \$418,493 for operating expenses other than salaries and fringe benefits. Since our current year budget allocates nearly \$800,000 for operating costs beyond salaries, we would have to restrict utilization of consultant services, travel, printing, advertising and meeting expenses to live within the budget allocation. * * * I urge that you impose a freeze on all hiring until next year's funding picture is clarified. * * * If it appears that next year's grant will not be increased, we should be allowed to utilize the current year's surplus as an add-on to our 77-78 grant award." (Emphasis added.)

The freeze was apparently implemented sometime shortly after the date of the memorandum since no additional professional staff persons were hired after April 1977. Other agency documentation indicates that the agency had identified an additional 12 persons considered acceptable for health-planning positions, but did not hire them because of the freeze.

By the end of the first grant year, only 26 of 39 senior health planner and health planner positions had been filled. The decision not to fill the remaining positions, along with the unavoidable hiring delays, resulted in about \$360,000 originally budgeted for planning position salaries and employee benefits being reallocated to other budget categories.

The reallocations of grant funds primarily increased the budget categories of (1) equipment and (2) other. The budget changes are shown in the following schedules.

Equipment

November 1976 budget	\$ <u>28,070</u>
July 1977 budget:	
Five cars and one van	\$ 27,600
Office equipment	98,505
Printing equipment	66,400
Photo copy equipment	67,500
Data processing equipment	50,000
Other equipment	<u>23,445</u>
Total	<u>\$333,450</u>

Other

November 1976 budget	\$ <u>255,845</u>
July 1976 budget:	
Advertising	\$ 62,150
Printing/reproduction	98,000
Rent	63,000
Office supplies and expenses	55,734
Postage	23,800
Meeting expenses	25,200
Telephone	37,800
Other	<u>30,800</u>
Total	<u>\$396,484</u>

The agency's HEW program officer indicated that he was aware that the agency had placed a freeze on hiring but had not been aware that the freeze mainly affected health-planning positions. He indicated that he had difficulties obtaining timely staffing information from the agency during the first year.

Revisions to the agency's work program

As a result of not hiring all staff, the agency significantly reduced its ability to accomplish health planning objectives outlined in the first grant year work program. Also, as discussed in chapter 4, much of the time of some health planners was spent on non-health-planning activities.

The agency submitted revised work programs to HEW in November 1976 and February 1977 along with its budget revisions. No work program revisions were submitted, however, with the remaining budget revisions that reallocated funds originally budgeted for health-planning positions.

The chart below compares health planner staff-days planned by general category in the agency's work program (revised as of November 1976) with actual staff-days spent (determined by a review of employee timecard summaries).

<u>Work category</u>	<u>Staff-days budgeted per work program</u>	<u>Actual staff-days spent</u>	<u>Difference</u>
Plan development	2,741	1,147	1,594
Plan implementation	3,610	1,995	1,615
Data analysis	<u>624</u>	<u>304</u>	<u>320</u>
Total	<u>6,975</u>	<u>3,446</u>	<u>3,529</u>

The agency expended about 49 percent of staff-days budgeted in its work program for health-planning-related activities. As discussed in chapter 4, the individuals working in health-planning positions charged only about 67 percent of their time to health-planning-related activities. As a result, the agency's health-planning staff used only 33 percent of the staff-days planned for their health-planning activities.

LACK OF GOVERNING BODY
APPROVAL ON A BUDGET REVISION

A budget revision was submitted by the agency's executive director to HEW for approval before the agency's governing body approved the revision as required by the agency's administrative policies. These policies state that equipment and services not included in the current approved budget must be approved by the agency's governing body before it is forwarded to HEW for approval.

Our review of agency governing body minutes indicates that for the revision dated August 9, 1977, no approval was granted. The August 9 budget revision consisted solely of increasing the amount budgeted for legal fees by \$18,200. The revision was submitted by the executive director to HEW without obtaining the recommendation of the finance committee and the approval of the governing board as required by the agency's administrative policies. Our review of applicable finance committee and governing body minutes indicates that members of those bodies had directed that the additional legal fees were to be treated as in-kind contributions in accordance with an offer made by the legal counsel.

FUNDS EXPENDED BEFORE APPROVAL

Agency funds were expended for revised budget items before HEW approval. The particular items were the agency's five cars and its van. The budget revision that included these items was dated June 9, 1977.

An HEW grants management branch letter to the agency dated June 9, 1977, states, in part:

"* * * I would also like to call your attention to Grants Administration Chapter PHS: 1-510, which requires prior written approval for use of grants funds, including rebudgeting. The Agency may not assume approval has already been granted without documentation initiated by this office. * * *"

Written approval was not provided to the agency until July 8, 1977. Agency officials told us they had acted based on oral approval from an HEW regional official.

The agency signed purchase orders for the automobiles dated June 22, 1977, and the van dated June 14, 1977. Further, checks for payment for the automobiles and the van were dated June 29, 1977.

INAPPROPRIATE CASH ADVANCE REQUESTS

HEW's Federal Assistance Financing System provides grantees with cash support. This fully automated system relies on individual grantees to accurately estimate their monthly cash needs. Requests for funds are normally processed without review until the grantee exceeds the total grant amount. HEW regional grants management staff do not routinely monitor grantees to ensure that proper procedures are followed.

The primary objective of the system is to facilitate cash availability to recipients to meet the Federal share of program requirements while controlling the flow of cash withdrawals from the U.S. Treasury so as to minimize the impact of cash flow on the public debt level and related financing costs.

Recipients' monthly requests for cash should be made for the total of cash disbursement needs for the month for all programs financed under the system. Cash should not be requested or withdrawn to cover unliquidated obligations which will result in disbursements in future months unless required by law.

Excess cash should not be refunded unless specifically requested. Rather, it should be used to support future program needs and considered in future cash requests.

The agency complied with these guidelines for the first 8 months of the grant year, but for the May request, the agency reported a zero cash balance on hand on its monthly cash request even though substantial balances were actually on-hand. Our review of tape recordings of agency finance committee meetings indicated that agency officials were aware that substantial cash balances were on-hand and that the reports to HEW misrepresented the agency's actual cash position.

Agency officials said they requested excess cash in order to establish a cash reserve for unanticipated expenses and to cover possible delays in receiving grant funds. The agency further said they had experienced minor delays in receiving its cash advances and in June a more serious delay resulted in the agency not being able to meet its accounts payable in a timely manner. The agency officials feared that a future delay would leave them unable to meet their biweekly payroll.

The following chart shows a monthly comparison of the agency's cash available with cash disbursements.

	<u>Cash available</u>	<u>Cash disbursed</u>	<u>Excess</u>
September	\$ 30,000	\$ 10,422	\$ 19,578
October	19,642	17,463	2,179
November	60,203	18,816	41,387
December	60,529	31,952	28,577
January	171,600	91,322	80,278
February	167,556	99,819	67,737
March	226,039	151,258	74,781
April	240,917	207,316	33,601
May	296,117	238,441	57,676
June	488,200	353,580	134,620
July	692,751	308,324	384,427
August 1-11	449,245	131,261	317,984

The chart shows a significant increase in excess funds between May and July.

Since we brought this matter to the attention of agency officials, the agency has apparently decided not to submit cash requests until its excess cash is expended.

CHAPTER 6

HEW MONITORING

Several allegations were made regarding inappropriate activities of HEW regional office staff assigned to assist and monitor the agency. Specifically, it was alleged that:

- An HEW program officer received a weekend at a resort at agency expense.
- An HEW program officer inappropriately participated in a Black Health Leadership conference with the agency's executive director.
- An HEW regional official provided a resume to the agency's executive director to assist the regional official in obtaining a higher position.

We could not substantiate any inappropriate activities relating to the above allegations. In the course of our review of these allegations, however, we did identify a possible conflict of interest and other questionable activities involving a former HEW regional official presently employed as the agency's associate director.

In addition we noted a general lack of HEW regional office monitoring of health systems agencies as well as staffing and morale problems.

ALLEGATION REGARDING RESORT WEEKEND

The HEW program officer responsible for monitoring the activities of the agency did attend an agency-sponsored training session and participated as a speaker and monitor. The session, held at Ben Brown's Resort Hotel in Laguna Beach, was for interim governing body members and agency staff.

According to available documentation the HEW program officer reimbursed the agency his Government per diem allowance of \$35 per day to cover his expenses for the 2 days he attended the conference. We were unable to determine if this amount was sufficient to cover the program officer's actual expense. The training session was an approved agency function and was included in its training budget. It is not unusual for Federal program officials to attend training sessions such as the one held by the agency.

ALLEGATION REGARDING ATTENDANCE AT
BLACK HEALTH LEADERSHIP CONFERENCE

The HEW program officer attended a Black Health Leadership conference with the agency's executive director and another agency staff member. The program officer advised us that he visited the agency on July 15, 1977, to discuss allegations regarding the subarea governing body elections. To continue the discussion he had to accompany the agency's executive director to the meeting, which was held in Santa Barbara.

Because he was unable to obtain a flight from Santa Barbara to San Francisco that night, the HEW program officer attended the meeting with the executive director. He was introduced to the attendees as an HEW representative and answered questions regarding the health-planning program.

The program officer remained overnight in a dormitory facility and returned to San Francisco the next day. He did not pay for the lodging since there was available space in the dormitory where other meeting attendees also stayed.

ALLEGED USE OF AGENCY POLITICAL
TIES BY HEW REGIONAL OFFICIAL

It was alleged that an HEW regional official provided a resume to the agency's executive director, who could use his political influence to assist the regional official in obtaining a higher position.

We were advised by the HEW official involved that the agency's executive director had requested a copy of her resume to give to a friend. The executive director said that the resume was for possible consideration for a voluntary national advisory group in health that was not specified. The HEW official stated she did not request or authorize any other use of her resume.

The agency's executive director told us he requested the resume for two purposes: (1) for consideration of this person for the agency's associate director position and (2) to provide her resume, among others (for persons knowledgeable in the health field), to a member of President Carter's transition team for possible Presidential appointments.

POSSIBLE CONFLICT OF INTEREST
AND OTHER IMPROPER ACTIVITIES
OF THE AGENCY'S ASSOCIATE DIRECTOR

The agency's current associate director was formerly employed in HEW's San Francisco Regional Office as a regional program consultant for technical assistance and planning technology. While still an HEW employee, he contracted with the agency to provide technical assistance. The contract called for a maximum of 8 days of service in the period March 1 to 31, 1977, at \$200 per day.

It appears that the services provided by the associate director under the consulting contract were quite similar to those that could be provided as part of his responsibilities as an HEW employee. It also appears that the associate director did not comply with Federal regulations by entering into the contract without prior approval of his superiors in HEW.

As an HEW regional program consultant in the San Francisco Regional Office's Health Planning Branch, the individual's official position description included the following duties:

- Identifying and evaluating the technical assistance requirements of program grantees.
- Providing direct consultation and technical assistance on health plan development, health planning, use of health data, and project reviews.

The consulting contract which the associate director entered into with the agency called for him to:

"* * * perform services on a continuing basis as herein agreed upon which services include but not limited to data collection and analysis, program planning and analysis, drafting reports and studies of research findings, consultation with other health planning bodies, and assistance to and guidance of Health Systems Agency staff in the formulation and implementation of Agency's goals and objectives."

The associate director submitted a bill to the agency dated March 31, 1977, in the amount of \$1,600 "for expert consultation and advice rendered in accordance with contract * * *." The agency issued a check for payment dated June 20, 1977, payable to the associate director.

HEW time records show that the associate director was charging full-time to HEW and was not on leave status during the contract period except for March 24, 1977. The associate director stated that the work was performed outside of normal HEW working hours. In addition he said that the services provided in the consulting contract was a guide for the agency's health systems plan. He said that such services could have been provided within the scope of his position at HEW, but not to the level of detail actually provided under the contract.

The Code of Federal Regulations (45 CFR 73.735-402) requires HEW employees to obtain advance administrative approval before entering into outside professional or consultant work. HEW regional officials said they had no knowledge of the consulting contract and had not been requested to approve it.

The Code (45 CFR 73.735-305) states in part that an employee shall avoid any action, whether or not specifically prohibited by this part, which might result in, or create the appearance of

- using public office for private gain,
- losing complete independence or impartiality, or
- affecting adversely the confidence of the public in the integrity of the Government.

We believe that the associate director's entering into the consulting contract constitutes a possible conflict of interest. When this matter was brought to the attention of HEW officials, they agreed that the contract was improper but stated that no actions against the associate director are probable because he is no longer a Federal employee.

The associate director applied for his position on February 6, 1977, 3 weeks before it was formally advertised by the agency. On March 24, 1977, he was offered and accepted the position at a salary of \$33,000, about \$8,000 more than his HEW salary.

The associate director terminated his HEW employment on April 16, 1977. An HEW administrative error, however, resulted in the associate director being paid by HEW through April 23, 1977. 1/ The associate director also received

1/When we brought this matter to the attention of an HEW regional administrative officer, she said she would initiate action to correct the error.

salary for 2 days work from the agency during its biweekly period ending April 8, 1977, in addition to his full HEW salary. The associate director said that he was not expecting payment for the 2 days of service. He said that he thought he had taken annual leave from HEW and was at the agency on March 24 and April 5, 1977. The HEW records are not conclusive on the leave status of the associate director on these dates.

HEW REGIONAL OFFICE MONITORING ACTIVITIES

HEW regional offices have responsibility for implementing the provisions of the National Health Planning and Resource Development Act of 1974.

HEW's San Francisco Regional Office monitors the activities of health systems agencies at various levels in the organization, including:

- The assigned program officer, who is responsible for the technical and programmatic day-to-day aspects of the grant.
- The assigned grants management officer, who is responsible for the business management and fiscal aspects of the grant.
- The regional program consultants, who are responsible for providing technical assistance as needed on (1) agency development, (2) planning technology, (3) regulatory activities, and (4) planning data and resource development.
- The objective review committee, which is responsible for conducting a document review of a new or continuing grantee application before yearly funding.

The HEW program officer assigned to monitor the Health Systems Agency for Los Angeles County visited the agency 10 times during the first grant year. Several of these visits related to the allegations on the subarea governing body elections. Agency difficulties and delays in health systems plan development did not appear in trip reports prepared by the program officer until late July 1977, 2 weeks before the end of the first grant year. This subject, we believe, should have been addressed on each visit and the progress the agency was making documented in the site visit reports. The re-allocation of fund resources as described in chapter 4,

which were coapproved by the HEW program officer, should have led to obvious questions regarding the agency's relatively low level of health-planning activity.

HEW officials said that the Los Angeles agency's program officer also had several other agencies to monitor and assist and could only provide a limited amount of time to each. At the same time Los Angeles agency was experiencing election difficulties, one of the project officer's other agencies was having serious organizational difficulties which further limited the effort that could be provided to them.

The HEW regional grants management staff provided the agency with limited monitoring during the first grant year. For example, although HEW grants management required the agency to submit a revised budget and work program for approval as a condition of the agency's supplemental notice of grant award, HEW did not provide the agency with written approval. The agency submitted a budget and work plan revision for HEW approval in February 1977. HEW did not approve this revision, causing the agency to incorporate that revision with other changes in a revision the agency submitted in June 1977. The agency did not provide HEW with a revised work program, and the HEW grants staff did not request it to be supplied even though this revision resulted in a total of \$939,540 of cumulative transfers among budget categories. No documentation was available in the official grant files to show that either the source of the rebudgeted funds or the impact rebudgeting would have on the work program was analyzed. File documentation does indicate that HEW grants staff questioned many of the proposed new expenditures and required the agency to provide additional justification before granting approval.

The agency's final first grant year budget revision was approved after the close of the agency's grant year by HEW grants staff without the justification and documentation required by HEW grants requirements.

The HEW grants management staff made no visits to the agency during the first grant year. Four different persons were assigned to monitor the agency during the first grant year, three of which had limited training and experience in grants management procedures. No reviews were made by the grants management staff of the agency's managerial or financial capabilities during the first grant year. Many of the functions normally assigned to grants management staff were either not performed or were assumed by the project officer.

According to HEW regional officials, the grants management office is understaffed, which has resulted in heavy workloads, poor morale, and staff retention problems.

These officials said that they have had limited resources to monitor and manage health systems agency grants. In addition, the functions to be performed by the program staff and the grants management staff had not been clearly understood by all staff. They said that this is a relatively new program and they still are learning and adjusting to solve their problems. At the completion of our review the HEW San Francisco Regional Office was undergoing a reorganization that may assist in dealing with these problems.