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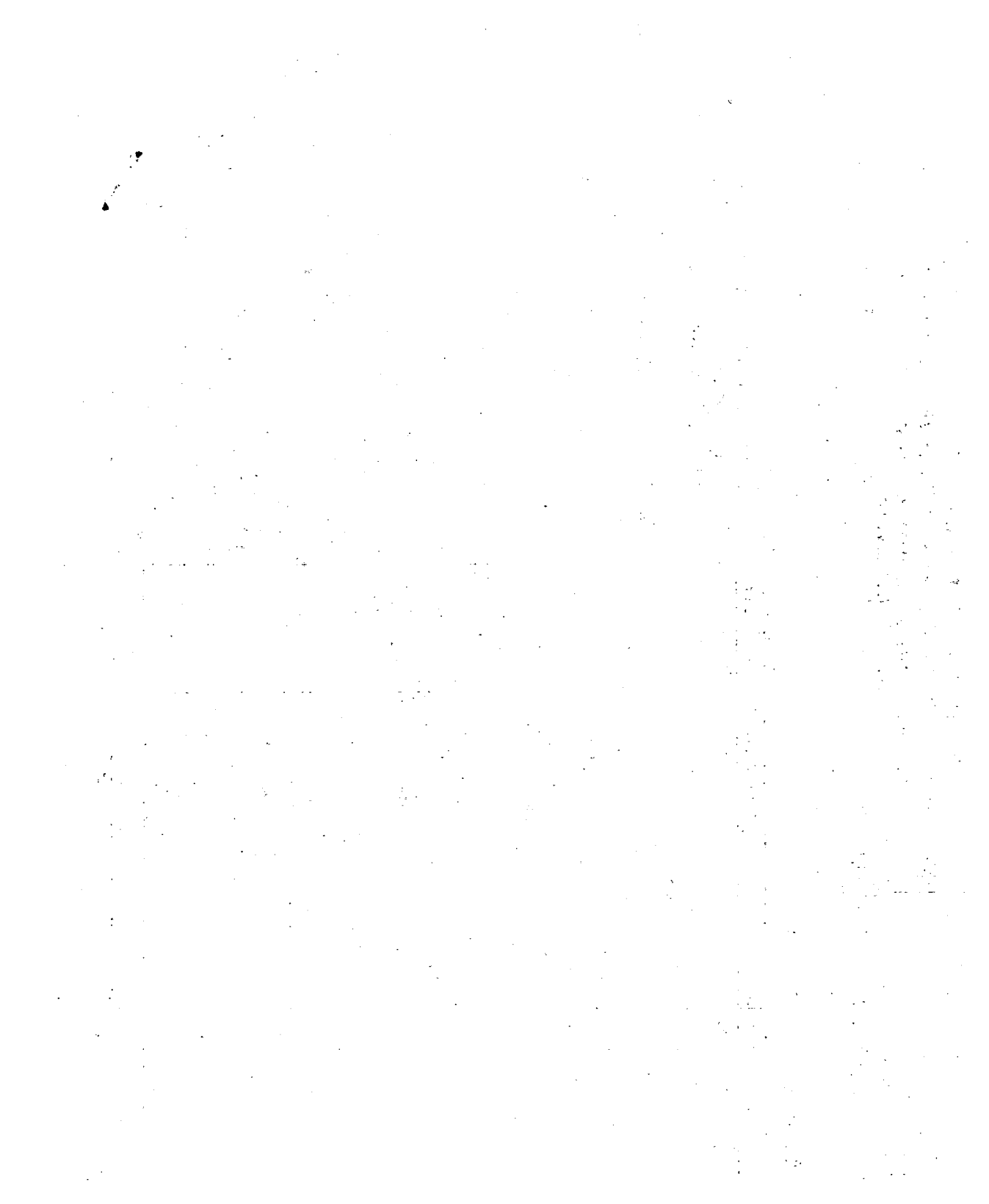
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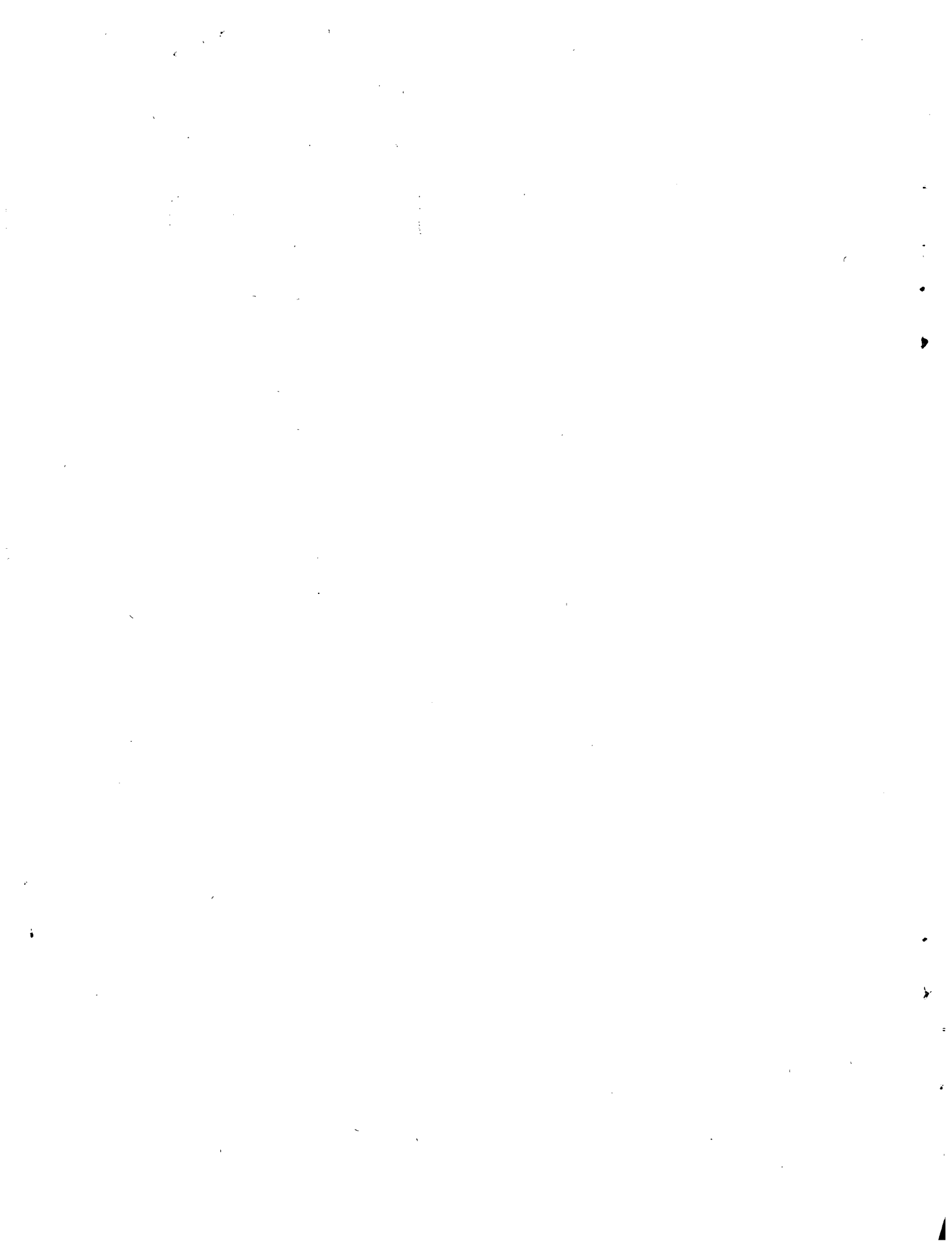
*REPORT OF THE
COMPTROLLER GENERAL
OF THE UNITED STATES*

X
Improproprieties In Time And
Attendance Practices
At Medical Facilities

Bureau of Prisons
Public Health Service

Allegations were made regarding impropriety of physicians' compensatory time and an employee's sick leave at the U.S. Penitentiary at Atlanta.

The allegations were substantially correct. GAO extended its review and found improper use of compensatory time at other institutions as well. Problems surround broader issues of Government physicians' pay and work schedules, and GAO recommends several ways to deal with those problems.





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

NCJRS

NOV 6 1980

ACQUISITIONS

B-184661

The Honorable Herman E. Talmadge
United States Senate

Dear Senator Talmadge:

On September 22, 1975, you forwarded a letter to the Chairman, U.S. Civil Service Commission which contained allegations of improprieties in time and attendance practices at the U.S. Penitentiary at Atlanta. In view of our audit responsibilities, the Commission referred the matter to us.

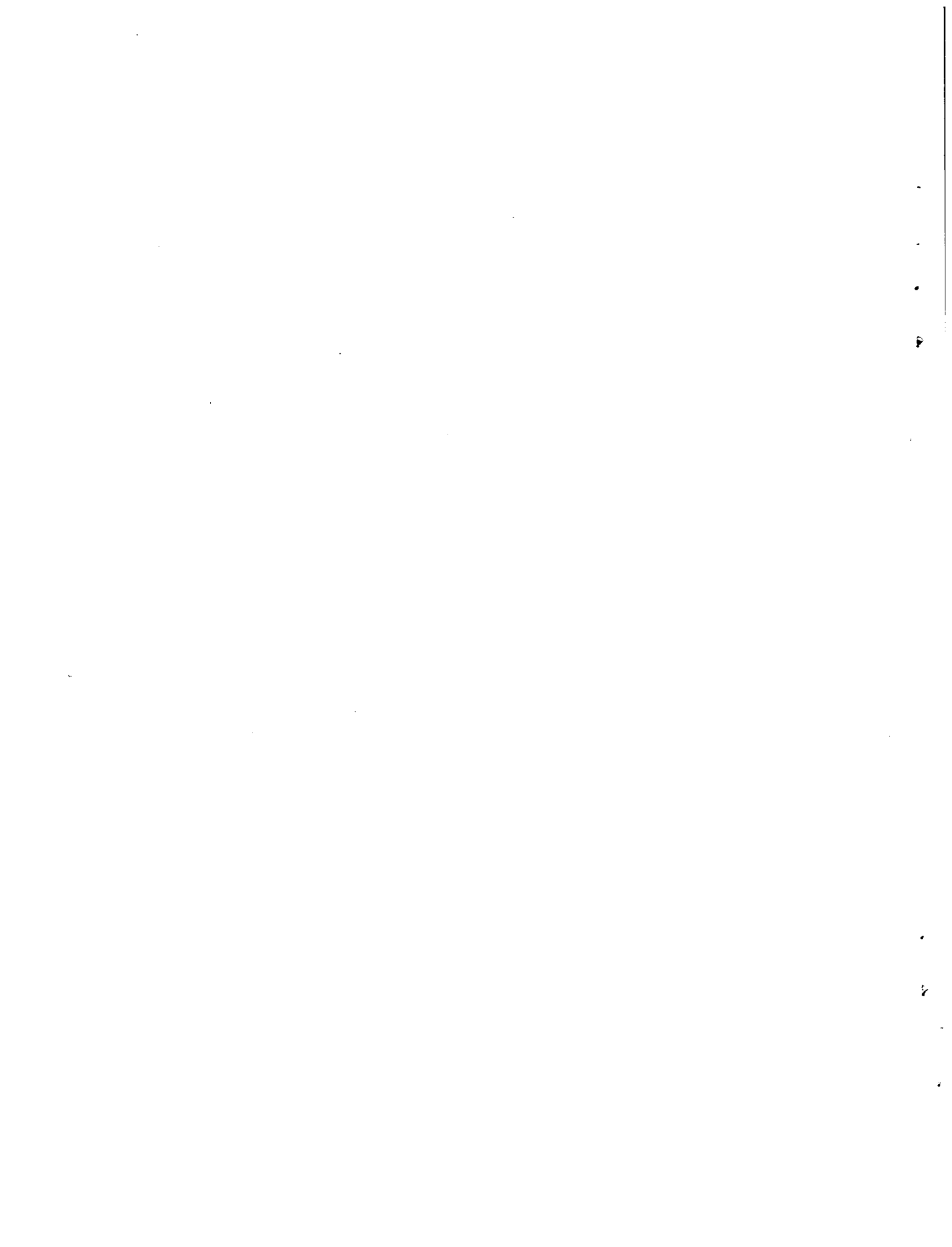
We have completed our review and found that the allegations were substantially correct. Specifically, we found that:

- All three physicians on the penitentiary medical staff earning maximum pay were improperly taking compensatory time off during working hours while being reported on regular duty.
- Two applications by a physician assistant for a total of 79 hours of sick leave were apparently fraudulent since, according to the chief medical officer, the applications contained signatures of a nonexistent physician.

Details concerning these and other findings resulting from our expanded review are explained below.

IMPROPER USE OF COMPENSATORY TIME
FOUND AT OTHER INSTITUTIONS

In view of our findings at the Atlanta penitentiary, we expanded our inquiry to include the Federal Correctional Institution, Lexington, Kentucky, and the U.S. Public Health Service hospitals at Baltimore and New Orleans. At these institutions, we also found instances in which physicians who were earning maximum or near maximum pay were improperly taking compensatory time off.



The practice, we were told, was initiated by the Bureau of Prisons based on discussions at a Bureau-sponsored health services workshop held in March 1973. The Bureau medical director, in our meeting with him in June 1976, stated that at the March 1973 meeting it was agreed that physicians could be given time off for major periods of overtime worked and that this compensatory time would not be recorded in the time and attendance records since overtime worked would usually exceed compensatory time taken. He stated that the intent was to limit time off to less than a full workday and to have the physicians use the compensatory time before the end of the next pay period after the overtime was worked, and in no case would total time worked be less than 80 hours per pay period.

Based on our discussions with Bureau of Prisons and Public Health Service officials, the improper practice of authorizing the use of compensatory time apparently stems from the fact that salaries for physicians in General Schedule positions were limited to \$36,000 a year, effective January 1971; to \$37,800 a year, effective October 1975; and recently to \$39,600, effective October 1976. As provided in 5 U.S.C. 5547, an employee of the Government may be paid premium pay only to the extent that the payment does not cause his aggregate rate of pay for any pay period, or annually, to exceed the maximum rate for a GS-15. Since the physicians employed by the Bureau of Prisons and the Public Health Service who were earning maximum pay could not legally earn additional pay for overtime, night, holiday, or Sunday work (5 U.S.C. 5547), it appears that compensatory time off during regular working hours was authorized because overtime pay could not be authorized.

According to Bureau of Prisons officials, the underlying purpose of this practice was to make:

--it possible for employed physicians to provide the necessary emergency, mandatory, and routine medical services to the inmate population and not work considerably in excess of a 40-hour week and

--Federal employment more attractive to physicians being recruited or already working for the Government.

Notwithstanding these objectives, we believe that an employee cannot be authorized compensatory leave as a result of overtime worked if the limitation on aggregate compensation prevents him from being paid for such work (26 Comp. Gen. 750 (1947) and 37 id. 362 (1957)).



FACTORS WARRANTING CONSIDERATION

Physicians in the Government are employed under a number of different pay systems. In the Veterans Administration alone, physicians are employed under two different pay systems.

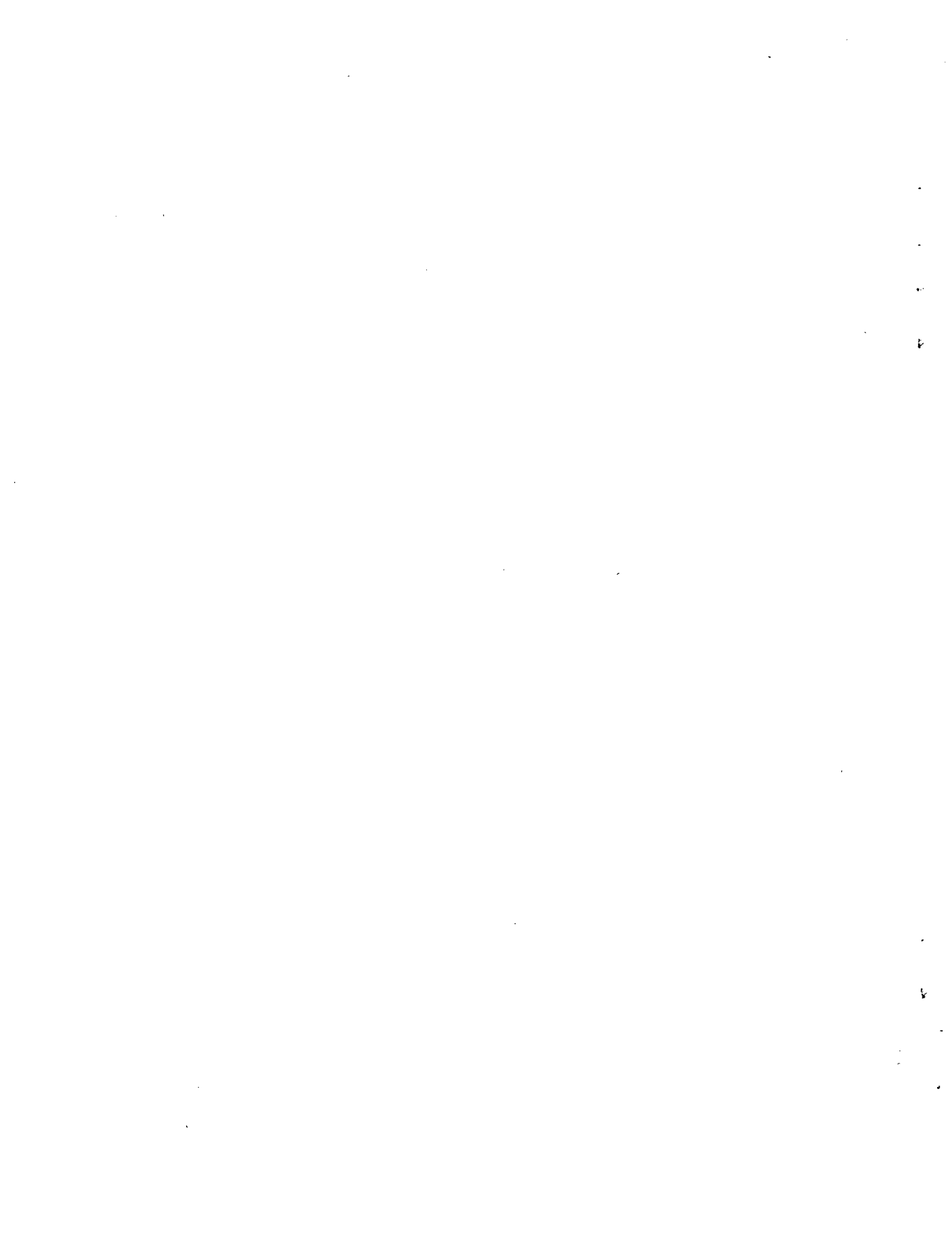
Under 38 U.S.C. 4108, physicians employed by the Veterans Administration's Department of Medicine and Surgery are not paid for overtime but, after performing "arduous duty," are entitled to and receive administrative authorized absences--compensatory time. Also, although the over 8,500 physicians employed by the Department of Medicine and Surgery are subject to the pay limitation under 38 U.S.C. 4107, they can receive special pay allowances and bonuses up to \$13,500 in addition to their basic salary. Physicians employed in the Veterans Administration's Department of Veterans Benefits and in the Board of Veterans Appeals, however, are not entitled to these special pay allowances and bonuses or compensatory time.

Therefore, not only are there inconsistencies among Federal agencies but even within one agency--the Veterans Administration.

In comparing incomes between the Federal and nonfederal sectors, a recent GAO study pointed out that, generally, private physicians who have completed their residency earn more than their Federal counterparts. This study was made pursuant to the Veterans Administration Physician and Dentist Pay Comparability Act of 1975 (Public Law 94-123, Oct. 22, 1975). The act provided for special pay for certain Veterans Administration physicians and dentists and required GAO to:

- Review the problems facing all Federal agencies in recruiting and retaining physicians and dentists.
- Evaluate agencies' programs and practices for recruitment and retention.
- Compare the remuneration of physicians and dentists between Federal and nonfederal sectors.
- Identify alternatives which might solve recruitment and retention problems.

The results of this study, which we believe will be of interest to you, are included in the report to the Congress, "Recruiting and Retaining Federal Physicians and Dentists: Problems, Progress, and Actions Needed for the Future" (HRD-76-162, Aug. 30, 1976). We are sending you a copy of this report.



Recognizing both the difficulty of retaining physicians in the Government because of lower incomes and inconsistencies within the Federal pay system and the desire to provide adequate medical coverage, the motivation of the Bureau of Prisons officials is understandable. However, we concluded that the Bureau of Prisons and the Public Health Service are prohibited from authorizing compensatory leave for overtime, night, holiday, or Sunday work of physicians earning maximum pay.

POTENTIAL ALTERNATIVES TO AVOID FUTURE
PROBLEMS AND TO DISPOSE OF CURRENT CASES

To avoid the problems of having physicians work in excess of authorized time, Government agencies have the following alternatives:

- Statutory (5 U.S.C. 6101(a) (1970)) and regulatory (5 C.F.R. 610.101 et seq.) provisions give the heads of executive agencies the authority to designate a 7-day administrative workweek. Further, the agency head is given discretion to deviate when possible from the preferred pattern of (1) a basic workweek of Monday through Friday and (2) 2 consecutive days off when it is determined that the agency's mission would be seriously handicapped or that the costs would be substantially increased. Thus, the heads of agencies who employ physicians and other medical personnel whose skills are needed on all 7 days of the administrative workweek have the authority to schedule the basic workweek of such personnel to eliminate the need for compensatory time.
- The head of the agency could also place physicians on a "first 40 hours" tour of duty. The number of physicians needed on a particular Saturday or Sunday would be scheduled to begin their workweek on those days. Physicians not needed on Saturday or Sunday would be scheduled to begin their workweek on Monday or later. Then, scheduling for the remainder of the workweek would be made for each physician until each has completed his or her 40-hour basic workweek.
- A final alternative would be for the agencies involved, through the Office of Management and Budget or the Civil Service Commission, to request legislation permitting the authorization of compensatory time for physicians in the Federal service irrespective of the limitation on premium pay imposed by 5 U.S.C. 5547.



In addition to the recommendation in our previous report to the Congress (HRD-76-162, Aug. 30, 1976) that the Congress direct the Director of the Office of Management and Budget to develop a uniform compensation plan for all Federal physicians and dentists, we believe that the Office of Management and Budget should also consider establishing a uniform compensatory leave system.

Regarding what remedial action should be taken in those cases where compensatory time has been taken improperly, there appear to be three alternatives.

1. The Government may recover from the employee the salary paid for the compensatory time improperly taken.
2. An employee's annual leave balance may, with the employee's consent, be reduced by the amount of compensatory time improperly taken.
3. Collection of the salary paid for compensatory leave improperly taken may, where appropriate, be waived in accordance with 5 U.S.C. 5584 and 4 C.F.R. 91.5. Under the above statute and regulation, an agency may consider waiving the improper granting of compensatory time where there is no indication of fraud, misrepresentation, fault, or lack of good faith on the part of the employee.

CONCLUSIONS

Our review at the U.S. Penitentiary at Atlanta confirmed the allegations that there were improprieties in the use of leave, recording and using unofficial compensatory time, and maintenance of official time records. Further, based on (1) our reviews at the Federal Correctional Institution, Lexington, Kentucky, and at the U.S. Public Health Service hospitals at Baltimore and New Orleans and (2) discussions with Bureau of Prisons and Public Health Service officials at the Washington headquarters offices of these agencies, we believe that the improper practice of employees earning maximum pay and taking compensatory time off was and may still be prevalent at many Bureau institutions and Public Health Service hospitals.

Although we understand the motive--to provide adequate compensation to retain Federal physicians and to provide adequate medical coverage--the fact remains that the practice is improper. We believe, therefore, that action should be



taken to prevent recurrence of this practice in the future and to dispose of cases in which compensatory time has been improperly granted and used in the past by following 1 of 3 alternatives shown above.

We believe there is a need to review employment and compensation practices in the Government as they pertain to physicians, including the use of compensatory time, to eliminate inconsistencies and to identify ways to improve the administration of physician employment and compensation practices.

RECOMMENDATIONS

We recommend that the Attorney General direct the Bureau of Prisons and that the Secretary of Health, Education, and Welfare direct the Assistant Secretary for Health to:

- Take the necessary action to stop the improper use of compensatory time in Bureau institutions and Public Health Service hospitals.
- Direct that employees responsible for the maintenance, review, and certification of official time and attendance records be provided explicit instructions on preparation and approval of the records to help preclude the improper use of compensatory time in the future.
- Request Bureau institution officials and Public Health Service hospital directors to (1) report to the Bureau and the Assistant Secretary for Health all cases in which compensatory time was improperly used by physicians and other Federal employees during fiscal years 1973 through 1976 and (2) take appropriate action as warranted by the facts obtained.
- Review the work schedules of physicians to see if they can be revised to better meet their agencies' needs.

ALLEGED FRAUDULENT APPLICATIONS FOR SICK LEAVE

As alleged, we found that an Atlanta penitentiary hospital employee with a poor attendance record submitted two applications for 79 hours sick leave during the period December 9-21, 1974. On January 16, 1975, the hospital administrative officer approved the two applications. One week later he notified the chief medical officer that the applications may have been fraudulent. The chief medical officer verified that the name shown on the application as the



attending physician was fictitious. Action was delayed, he said, because they were having numerous problems with the employee. The employee resigned on June 19, 1975.

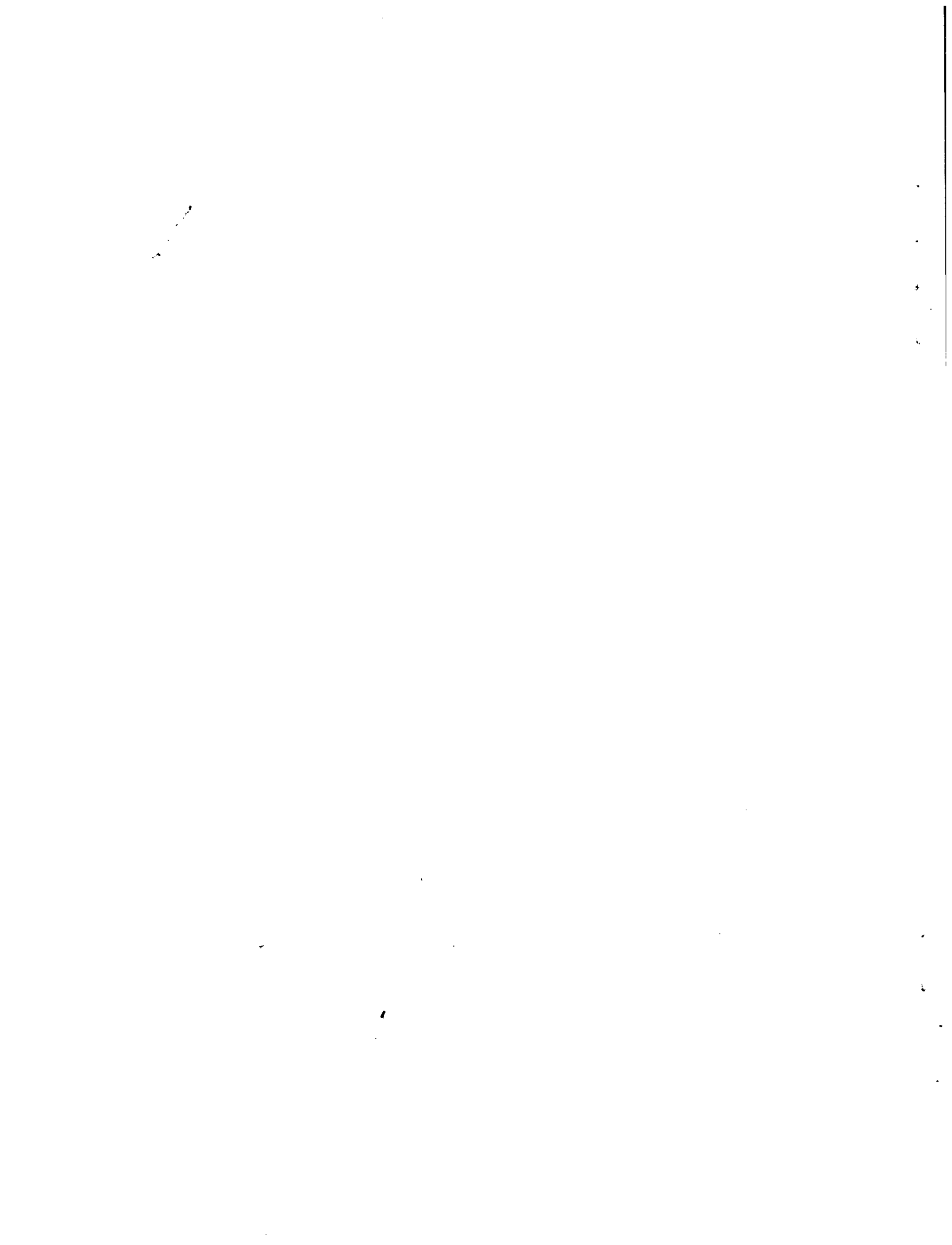
After we discussed the matter with the Bureau regional director and the warden, they referred this case to the Federal Bureau of Investigation which, in February 1976, reported to the warden that the U.S. Attorney declined to prosecute the employee and recommended the case be handled administratively by the Bureau.

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As agreed with your office, we are sending copies of this report to the House and Senate Committees on Appropriations and Government Operations, the Attorney General, the Secretary of Health, Education, and Welfare, the Director of the Office of Management and Budget, and other appropriate officials.

Sincerely yours,
Thomas P. Steats

Comptroller General
of the United States



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