



**STATE OF NEW JERSEY
OFFICE OF THE STATE COMPTROLLER**

**DEPARTMENT OF HUMAN SERVICES
DIVISION OF DEVELOPMENTAL DISABILITIES**

**A PERFORMANCE AUDIT OF
OVERSIGHT OF THIRD-PARTY CONTRACTS**

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COMPTROLLER**

**August 11, 2009
PA-05**

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BACKGROUND

The Division of Developmental Disabilities (DDD) was created in 1985 within the Department of Human Services (DHS) to serve New Jersey residents with developmental disabilities. A developmental disability is defined by law as: “a severe, chronic disability of a person which: (1) is attributable to a mental or physical impairment or combination of mental or physical impairments; (2) is manifest before age 22; (3) is likely to continue indefinitely; (4) results in substantial functional limitations in three or more of the following areas of major life activity, that is, self-care, receptive and expressive language, learning, mobility, self-direction and capacity for independent living or economic self-sufficiency; and (5) reflects the need for a combination and sequence of special interdisciplinary or generic care, treatment or other services which are of lifelong or extended duration and are individually planned and coordinated. Developmental disability includes but is not limited to severe disabilities attributable to mental retardation, autism, cerebral palsy, epilepsy, spina bifida and other neurological impairments where the above criteria are met.”

DDD currently serves more than 38,000 developmentally disabled individuals (hereafter referred to as individuals). Approximately 3,000 individuals reside at the seven State-run developmental centers that provide personal and medical care, training, therapy, and supervision. Over 35,000 individuals live in a community setting, 28,000 of whom reside at home with their families. The remaining 7,000 individuals reside in group homes, supervised apartments, supportive living facilities, or with sponsor families, all of which are funded by DDD.

DDD contracts with providers that offer residential and non-residential services for those who are developmentally disabled. Residential programs, which allow individuals to live in a community setting, consist of:

- Group homes that provide on-site, 24-hour staffing and typically house three to five individuals.
- Supervised apartments that enable an individual to live with a roommate and receive 24-hour help from staff who reside in close proximity to the complex.
- Supportive living arrangements that grant an individual the option to live alone or with a roommate, and receive assistance if needed through a 24-hour hotline.
- Sponsor families who allow an individual to live as part of the family of a trained caretaker and receive 24-hour care and assistance from the caretaker.

DDD's non-residential programs consist of:

- Day programs (including adult training programs along with supported employment services) which provide opportunities for individuals to explore personal interests, develop skills, and make a contribution to their communities.
- Case management services that utilize the expertise of a trained case manager to coordinate program services and provide other support to individuals. Case managers prepare periodic reports that indicate whether the needs, desires and potentials of individuals are being met.
- Guardianship services for those individuals who do not have the capacity to make informed decisions.
- Family support services that include in-home and out-of-home respite care as well as cash stipends to pay for such things as home modifications, assistive devices, and recreation.

Most of the services provided by DDD are performed by for-profit and not-for-profit third-party providers or other care-takers (e.g., sponsor families) rather than by DDD employees. DDD awarded approximately \$824 million in contracts to 278 such third-party providers during Fiscal Year (FY) 2008. DDD employs 14 contract administrators who are responsible for monitoring the performance of the providers.

AUDIT OBJECTIVE, SCOPE AND METHODOLOGY

The objective of our audit was to determine the effectiveness of DDD's oversight of the third-party contracts it awards to service providers. Specifically, we evaluated:

1. DDD's monitoring of the providers' fiscal and program operations;
2. the appropriateness and reasonableness of expenditures being claimed by providers and paid for by DDD; and
3. the procedures for contract awards, renewals, and modifications.

This audit was performed in accordance with the State Comptroller's authority set forth in N.J.S.A. 52:15C-1 et seq. We conducted our audit in accordance with generally accepted government auditing standards applicable to performance audits. Those standards require that we plan and perform the audit to obtain sufficient, appropriate evidence to provide a reasonable basis for our findings and conclusions. We believe that the evidence obtained provides a reasonable basis for our findings and conclusions based on our audit objectives.

As part of our audit procedures, we reviewed applicable statutes, administrative code provisions, and DHS and DDD policies and procedures. We also interviewed DDD personnel to obtain an understanding of their job responsibilities and system of internal control.

We also examined the contracts of the ten largest providers, as determined by the dollar amount of their contract (AdvoServ of New Jersey, Inc.; Allies, Inc.; Bancroft NeuroHealth; Community Options Inc.; Easter Seals of New Jersey; Elwyn New Jersey; Essex Arc; Spectrum for Living; The Devereux Foundation; and Woods Services) for compliance with DHS and DDD policy. From these ten providers, we randomly selected and reviewed ten group home facilities and

ten adult training programs. Among other things, this review included verifying the presence of required safety items, concerning which we found no significant exceptions.

Further, we performed detailed expenditure testing at four of the ten providers (Allies, Inc.; Elwyn New Jersey; Essex Arc; and Spectrum for Living). DDD separates providers into four distinct regions within the State of New Jersey: Northern, Upper Central, Lower Central, and Southern. Accordingly, we selected one provider from each of the four regions for review.

We also reviewed case manager reports concerning the individuals residing at 49 group homes that we randomly selected.

SUMMARY OF AUDIT RESULTS

Our audit found that DDD does not adequately oversee the third-party contracts it awards. As a result, taxpayer dollars are not being spent efficiently and providers may not be delivering all services as required by the operative contract.

DDD's system of monitoring is not designed to uncover inappropriate or unreasonable expenditures, or to ensure that services are being delivered as prescribed. For example, DDD's reviews of provider expenditure reports do not include an analysis of specific expenditures for appropriateness and reasonableness, or a review of program service delivery documentation. Our review of a sample of provider expenditures identified approximately \$160,000 in a series of inappropriate and unreasonable expenditures by one provider, including both a Mediterranean and a Caribbean cruise, as well as expenditures related to various conferences at locations such as Nashville, Tennessee, and Lake Buena Vista, Florida.

DDD has not performed contract closeouts in a timely manner, as required by its policy. As of May 2009, DDD was still closing contracts that expired during FYs 2005 through 2008. Consequently, DDD has not recovered funds promptly at the end of each fiscal year. DDD has determined that it may now be entitled to more than \$15 million in overpayments it made to providers.

Our review of a sample of the required reports prepared by case managers to assess whether the needs of individuals are being addressed by the provider found that many were either blank or copied word for word from previous reports. This failure calls into question whether the case managers were actually conducting these required visits.

DDD has relied on a 1976 formal opinion of the New Jersey Attorney General to exempt it from using a competitive process or following other State

procurement laws in selecting service providers of the type discussed in this report. As a result, DDD renews most third-party contracts on an annual basis without a competitive process. We found that DDD does not adequately consider past fiscal or program performance when reviewing provider contracts or when renewing those contracts. Further, costly contract modifications are approved throughout the fiscal year by DDD without an adequate review.

DDD's current contracting method results in it paying for more individuals than are actually receiving services. For the ten adult training programs reviewed, we identified \$1.4 million in such excessive costs.

Based on our research, we conclude that DDD should consider using the Milestone Payment System (MPS) contracting method, a system already used by many other states. Under the MPS system, payments to providers are made only when the providers satisfy predetermined outcomes.

We make nine recommendations to enhance DDD's oversight of third-party contracts.

At the audit exit conference, DHS and DDD officials advised us of steps they were taking to address some of the issues raised in this report. These include:

- Performing contract close-outs in a more timely manner and implementing processes to prevent future backlogs.
- Lowering caseloads for case managers and taking steps to ensure that visits are being performed.
- Documenting contract modification reviews more thoroughly through the use of an automated tracking system.
- Requiring all providers to eliminate vacant day program slots and adjust their budgets accordingly.

AUDIT FINDINGS AND RECOMMENDATIONS

Contract Monitoring

DDD does not adequately monitor the performance of its service providers. As a result, DDD is unable to determine if the providers are using State funds appropriately and are meeting the needs of the individuals they serve.

Fiscal Oversight

Service providers contracting with DDD must adhere to the DHS Contract Reimbursement Manual (CRM). The CRM provides guidelines and instructions to facilitate the payment process. The information in the CRM is supplemented by the DHS Contract Policy and Information Manual (CPIM). The CPIM contains detailed policies, procedures, and information essential to the overall administration of contracts and the satisfaction of contract obligations by the provider agencies.

Our review of the ten largest contracted service providers, which were awarded contracts in excess of \$220 million during FY 2008, found that DDD did not adequately monitor the fiscal and programmatic aspects of these contracts.

We conclude that DDD's system of monitoring is not designed to uncover inappropriate or unreasonable expenditures being claimed by providers. Rather, it is used simply to verify that actual expenses do not exceed the budgeted contract amount. The consequences of this inadequate monitoring are set forth below.

Examination of Provider Expenditures

DDD requires providers to submit quarterly interim expenditure reports which provide summary information for each budget category specified in the contract (e.g., equipment, personnel, supplies, and general and administrative costs).

The CRM does not specify when providers should submit their quarterly reports. We identified three providers that did not submit one of the four quarterly reports at all, and three providers that submitted quarterly reports more than 90 days after the end of the quarter on multiple occasions throughout FY 2008. The non- or late-receipt of these reports does not affect payments to the providers.

DDD contract administrators are required by the CPIM to conduct a desk review of the quarterly expenditure reports that compare the providers' actual expenditures to the budget approved by DDD. There are no specific guidelines describing what a desk review should entail.

Further, the CPIM does not require contract administrators to analyze specific expenditures or to review supporting documentation as part of the desk review or otherwise. In addition, although required by the CPIM, contract administrators do not perform on-site reviews of providers. DDD indicated that it relies on case managers to perform on-site reviews of the providers. However, DDD acknowledged that there is a minimal level of communication between case managers and the contract administrators. Therefore, DDD's review system does not provide the level of scrutiny necessary to identify expenditures that may be either inappropriate or unreasonable.

We examined the supporting documentation for expenditures paid by DDD to four providers who were awarded contracts in excess of \$83 million during FY 2008. We found questionable expenditures at one provider. Pursuant to the CRM, the "cost of amusement, diversion, social activities, ceremonials, and costs related thereto, such as meals, lodging, rentals, transportation, and gratuities, are unallowable." However, there is an exception for costs related to improving "employee morale." At this provider, we tested 250 transactions totaling \$305,444. We determined 45 transactions, totaling \$35,605, were either inappropriate or unreasonable as follows:

- Purchases with insufficient supporting documentation (\$13,383, including a non-itemized receipt at the Cuba Libre Restaurant and Rum Bar in the Tropicana Casino & Resort in Atlantic City for \$2,690).
- Dining expenses in Spain after returning from a Mediterranean cruise (\$3,681).
- Hotel room charges for employees attending conferences in close proximity to the employees' residences (Philadelphia - \$1,174; Atlantic City - \$8,170).
- Installation of a GPS navigation unit in the Chief Executive Officer's company car (\$1,999).
- Payment of the Chief Executive Officer's car insurance deductible without requiring a police report or other proof that an accident had actually occurred (\$500).
- Attendance by employees and management at conferences that are unrelated to programs administered by DDD. These included: "How to Stay Union Free" conducted in Nashville, TN, and "Essential Skills of Dynamic Public Speaking" conducted in Cherry Hill, NJ (\$3,336, which does not include transportation costs).
- Attendance at a three-day conference in Lake Buena Vista, Florida at which employees arrived two days early (three-day cost \$2,017; additional two-day cost \$1,345).

In addition, no supporting documentation was provided for another 33 of the 250 transactions totaling \$10,540.

We also found that this provider used DDD funds in the amount of \$111,851 for two cruises. Specifically, the provider organized a Mediterranean cruise for 25 employees (including management) and 23 individuals, and a Caribbean cruise for 31 employees (including management) and 33 individuals during FYs 2007

and 2008, respectively. Contrary to the provider's policy, it used DDD funds to pay for the cost of the cruises for its employees. In addition, DDD funds paid, in whole or in part, for 24 individuals. The remaining individuals paid for themselves.

Further, while reviewing credit card bills for selected transactions related to this provider, we identified the purchase of six tickets for provider management, totaling \$746, for Cirque Du Soleil at Madison Square Garden in December 2007. Neither the provider nor DDD could tell us if any disabled individuals attended this event.

We note that the Chief Executive Officer of this provider previously was employed by DDD for over 12 years, including 6 months as the Director of DDD.

At the exit conference, regarding the cruises, DDD indicated that the provider has "approximately \$1.3 million in non-DDD funds which could have been the source of payment" for these cruises. DDD's payment process does not require the provider to submit an itemized listing of expenditures. However, we provided DDD with excerpts from our audit work papers which included spreadsheets prepared by the provider showing that the \$111,851 was, in fact, charged to DDD.

DDD acknowledged that "this is a difficult issue that must accommodate the rights of individuals with disabilities while ensuring fiscal responsibility." We recognize this as well. We believe DDD should work with providers and the disabled population they serve to identify activities that strike the appropriate balance between the rights of disabled individuals and the fiscal responsibility that DDD should be trying to achieve. To the extent that funds are made available by exercising greater fiscal responsibility regarding recreational activities, those funds then become available to provide additional direct care services to the disabled population.

General and Administrative Costs

The CRM does not limit the amount of a provider's contract that can be used for general and administrative costs. In addition, DDD does not perform a detailed review of such expenditures. Consequently, DDD is unable to detect if providers are improperly using DDD funds characterized as general and administrative costs. Although the general and administrative costs of the contracts we reviewed averaged 10 percent, we identified one provider with general and administrative costs that represented over 20 percent of the total value of the contract. Excessive general and administrative costs reduce the amount of funding available for direct services that assist the developmentally disabled.

Asset Records

The CPIM requires that providers maintain asset records of all equipment purchased with DDD funds. Annually, DDD requests copies of such records, which should include: the date the equipment was acquired, the acquired quantity, a brief description of the asset, acquisition cost, vendor information, and condition and disposal information. However, there is no procedure in place at DDD to ensure that asset records are actually submitted. In fact, our review of eight of the ten providers (two were fee-for-service providers and therefore were not required to maintain asset records) indicated that none submitted asset records to DDD in FY 2008. When we requested such records directly from the providers, the information received did not contain the required level of detail. Since there is no verifiable physical record documenting the purchase, use and disposition of equipment, DDD is unable to conduct a physical inventory of a provider's assets as required by the CPIM, thus increasing the risk that funds may be misappropriated.

Contract Closeouts

The CPIM requires DDD to perform a closeout of the provider's contract upon receipt of a final report of expenditures. The final report of expenditures is to be submitted to DDD within 120 days of the contract's annual expiration or termination. Based on the final report of expenditures and data from other reports (e.g., audit reports), a financial settlement is made between DDD and the provider.

DDD has not performed the contract closeouts as prescribed by the CPIM. During FY 2009, DDD was still closing contracts that expired during FYs 2005 through 2008. As of May 2009, DDD has determined that it may be entitled to receive over \$15 million in settlements from providers that have been overpaid as a result of DDD not reconciling actual costs to budgeted costs until several years after the contract expiration date. If the contract closeouts had been performed in a timely manner, DDD could have recovered funds promptly at the end of each fiscal year. The likelihood of collecting such overpayments decreases with the passage of time.

At the exit conference, DDD advised that it had initiated an intensive effort to reduce the closeout backlog. As a result, it plans to be current with all closeout activities for the FY 2009 closeout period.

Independent Audits

Pursuant to the Single Audit Act of 1984 and in compliance with the U.S. Office of Management and Budget Circular A-133 Compliance Supplement and the New Jersey State Grants Compliance Supplement, providers must submit an independent audit of their financial statements and federal and state grant expenditures in accordance with Generally Accepted Government Auditing Standards to DDD within 120 days after the fiscal year-end. We found that 3 of the 10 providers we reviewed did not submit final audit reports within 120 days after their fiscal year-end, and another 4 did not submit them at all.

In addition, providers are required to submit a corrective action plan to DDD addressing each of the audit recommendations in the current year's audit report. There was no evidence indicating that DDD received corrective action plans from the providers. DDD's administration acknowledged it needs to improve its monitoring and oversight of the implementation of providers' corrective action plans.

Program Oversight

Providers are required by their contracts with DDD to provide certain services to the individuals under their supervision. However, as detailed below, DDD's system of monitoring does not confirm that those services are being delivered as prescribed.

Oversight By Case Managers

Program case managers, most of whom are DDD employees, monitor individuals who are receiving residential services and are engaged in an appropriate day program or otherwise employed. Depending on the living arrangements, case managers are required to conduct either monthly or quarterly face-to-face visits with the individuals. Case managers ensure that each individual has an Individual Habilitation Plan (IHP) updated annually. Case managers also complete an Alternate Living Arrangement (ALA) report and give a copy to the provider at the conclusion of each visit with the individuals. Case managers are responsible for noting in the ALA report any concerns expressed by the individual, provider agency, sponsor family, or other interested party, and their impression of the individual as he or she interacts in the home environment.

DDD policy requires that case managers, in their role as advocates, ensure that the needs, desires and potentials of the individuals are addressed. Therefore, it is critical that case managers maintain complete and accurate reports. We found that case managers either did not adequately complete the ALA report as

described below or did not sign off on supplementary forms (e.g., medical administration records) at nine of the ten group homes we visited.

We reviewed 1,269 ALA reports of the individuals residing at 49 group homes that were randomly selected. We found that the narrative components of 495 of the 1,269 were either incomplete or simply copied and carried forward from quarter to quarter. For instance, one case manager stated on four consecutive quarterly reports during FYs 2007/2008 that the client: “is happy spring is here, she very much enjoys spending time outside”. Similarly, in another instance, on four consecutive quarterly reports during FYs 2007/2008, a case manager referring to the client stated that: “she went home with her brother for the day for Thanksgiving, and then will be going home for Christmas”. Such ALA reports appear to be of little value in assessing the needs of the client and call into question whether the case managers were actually conducting the visits.

At the exit conference, DDD indicated that: “Many DDD case managers are responsible for caseloads as high as 500 individuals; national standards are one case manager to 50 or fewer cases. DDD is taking many steps to reduce the caseload, to improve training for case managers and supervisors, to provide appropriate IT support and to increase case management documentation requirements.”

Oversight of Adult Training Programs

Adult training programs provide opportunities for individuals to explore personal interests and develop skills that may allow them to make a contribution in their community. The providers are required by DDD to maintain specific information regarding each individual’s progress toward objectives established in their IHP. These objectives indicate the level of service an individual requires to complete a task. Depending on the level of the developmental disability, objectives may include the ability to tie shoes or brush teeth independently. Documentation of the progress made toward fully achieving the IHP objectives should be recorded in the individual’s file. According to DDD’s

Standards for Adult Day Programs, the file should also contain a daily entry detailing the level of assistance needed by the individual and the initials of the employee who performed the review. Our review of 371 individuals' files indicated that:

- 134 files did not contain documentation concerning the level of assistance needed by the individual,
- 39 files did not indicate whether progress toward attaining IHP objectives was being achieved, and
- 35 files did not contain IHP objectives.

We also found that seven adult training programs of the ten selected for review (one closed prior to our field visit) are not complying with DDD's requirement to maintain specific documentation for all current employees. This documentation should include: signed job applications; receipts for fingerprinting conducted at the time of hire; signed and dated job descriptions; New Jersey Pre-Service Training Certificates which require the completion of three orientation courses; First-Aid certification; CPR certification; as well as any renewal certificates. Our review of 142 personnel files indicated that:

- 11 files did not contain the pre-service training certificates,
- 11 files did not contain a current CPR certificate,
- 10 files did not contain a current First-Aid certificate, and
- 7 files did not contain a job description.

DDD recently has begun to review providers to ensure that all adult training program requirements are being satisfied.

Recommendations

1. Establish procedures to ensure that provider operations are effectively monitored for compliance with the CRM and CPIM. At a minimum, such procedures should include:
 - Reviewing provider expenditures to determine if they are supported by adequate documentation, and are reasonable, appropriate, and related to program operations.
 - Reviewing provider reports to ensure they are complete and submitted in accordance with policy.
 - Ensuring compliance with Single Audit requirements, and verifying that all necessary corrective action has been taken in response to audit recommendations.
 - Closing out provider contracts in a timely manner.
 - Ensuring visits of individuals are being properly conducted and documented through supervisory review of case manager notes.
2. Investigate the propriety of and, to the extent possible, pursue recovery of the \$158,742 in undocumented and inappropriate costs cited in this report.
3. In conjunction with the providers and the disabled community served by DDD, identify activities that meet the goal of accommodating the rights of disabled individuals while ensuring fiscal responsibility.
4. Review the providers' adult training programs to ensure that IHP requirements and employee requirements are being satisfied.

Contracting Process

DDD does not adequately consider a provider's fiscal and program performance when renewing contracts and approving contract modifications. Existing contracts are not structured to pay providers based on pre-defined outcomes. Therefore, DDD's contracting process does not serve the best interests of the State.

Contract Renewals

DHS has relied on a 1976 formal opinion of the New Jersey Attorney General as exempting it from State bidding laws in cases of services supplied to clients by third-party providers. Moreover, the State Legislature has not enacted any laws specifically governing DHS's procurement of such third-party services. As a result, DDD has adopted the view that it need not use a competitive process for renewals of existing third-party contracts.

Even if not legally required, DDD has the option of using a competitive process for renewal or expansion of the contract once a contract has been awarded to a third-party provider. In practice, however, DDD renews most third-party contracts (both residential and non-residential) on an annual basis without competitive processes. DDD stated that a competitive bid process would be expensive, time consuming, and in the case of residential providers specifically, would be potentially disruptive to the individuals receiving residential services. DDD also asserts that no other state uses a competitive process for renewing such residential provider contracts.

In 2008, DDD reported to the Procurement Division of the Office of the State Comptroller (OSC), the non-competitive renewal of 95 contracts over \$2 million, which included 23 contracts over \$10 million. The CPIM specifies that a contract must be renewed unless a provider is notified in writing 60 days prior to the annual renewal date.

In August 2008, as part of OSC's statutory authority to review contracts over \$2 million, we requested original procurement documents for four of the largest DDD renewal contracts. DDD was unable to provide the requested information (e.g., original solicitations, recommendations for award) for any of the four contracts. For three of the contracts, DDD estimated that the original procurements predated 2002. The lack of original contracting data and documentation impedes determination of whether the original contract was properly awarded.

We found that DDD does not adequately consider performance criteria before renewing a contract. This is a result of DDD's inability to develop procedures to collect, compile, and maintain the related data in a central repository, in part due to a lack of information technology resources. Further, DDD explained that it has not defined minimum thresholds for each of the specific tasks it is attempting to measure.

DDD's contract renewal process also does not include a thorough analysis of past financial performance. As discussed previously, DDD does not perform a detailed review of providers' actual expenditures. However, DDD advised us that it is now holding meetings to discuss and review financial issues relating to certain providers.

In short, if a provider is not identified as having had any significant problems in its delivery of service within the fiscal year, the contract is routinely renewed without DDD undertaking any deliberative process that considers fiscal and program performance. Therefore, the renewal process is not designed to best serve the fiscal interests of taxpayers.

As part of our review, we inquired as to the performance basis for renewal of DDD's third-party contracts. DDD indicated that it has begun to measure the providers' level of service against objective performance criteria. The performance criteria utilized by DDD are related to physical inspections, fire/safety checklists, program attendance, staffing reports, audit reports and

reports from DDD's Office of Program Integrity and Accountability (OPIA). OPIA uses a risk management system that provides an assessment based on numerous factors including: incident reporting and management, the investigation of abuse or neglect allegations, the number of repeat victims, license inspection, program review and financial audits.

Contract Modifications

By submitting appropriate documentation justifying a specific need, providers may request that DDD modify their existing contracts. In practice, however, modifications made to existing contracts that increase the budgeted amount of a provider's contract are approved by DDD without anyone performing a thorough review of the provider's need for the modification.

Contract modifications are requested for reasons such as purchasing new vehicles, hiring additional staff, expanding one or more programs, or repairing, renovating or expanding property. Of the ten providers we reviewed, DDD approved modifications increasing the budgeted amount of existing contracts by over \$21 million during FY 2008. DDD has not established a means to adequately evaluate the merits of the modifications. For example, because DDD does not obtain asset records, modifications for purchasing new vehicles are approved without DDD knowing the number of vehicles the provider has or how they are being used. In another instance, a provider requested five modifications which increased the total value of its contract in excess of \$1 million. However, this same provider returned over \$775,000 to DDD at the end of the year. If DDD had performed a thorough fiscal examination of this provider's expenditures, it should have concluded that not all of the additional funds requested were necessary. DDD was unable to provide an explanation as to why it did not perform an examination before approving the contract modifications.

In July 2008, DDD implemented an electronic budget request, approval and tracking system. While this system is a valuable tool to document contract

modifications, it does not provide assurance that the cost of the modification is supported by its need.

Contract Methodologies

Currently, DDD funds its programs through either a general service contract or fee-for-service (FFS) contract.

General Service Contracts

General service contracts establish a fixed cost for all services provided to a specific number of individuals during the term of the contract. Accordingly, DDD has 174 contracts that are paid out in monthly installments equal to 1/12th of the annual contract ceiling during the fiscal year regardless of the number of service hours provided or the number of individuals actually served. This form of contracting does not appear to be in the best interest of the State. For example, our review of 10 adult training programs that were contracted to provide services to 405 individuals indicated an average daily attendance of only 323 individuals during FY 2008. Based on an average unit cost, this difference represents an additional cost to the State of approximately \$1.4 million. DDD explained that many of the providers do not have the capacity to provide services for the number of individuals specified by contract. As a result, DDD indicated that it was actively negotiating with providers to reduce the number of contracted units to reflect actual attendance.

Fee-for-Service Contracts

FFS contracts are structured to provide payments to providers based on the frequency and duration of each specific service provided (e.g., treatment services billed at \$30 per hour, per client). Therefore, the payment is dependent upon the number of individuals served and the negotiated cost of the services provided to them. DDD has 106 contracts using the FFS payment system. DDD indicated that it intends to issue contracts to all future providers requiring payment using the FFS method.

Milestone Payment System

Our research indicates that the two above-mentioned payment methods have traditionally been the primary payment structures for DDD and human services agencies in general. However, under these methods, providers are generally paid regardless of the outcomes of their efforts. To increase provider accountability and performance, we suggest that DDD consider the merits of using the Milestone Payment System (MPS). This innovative contracting method has the potential to reduce government spending, enhance service delivery, and increase the choices and satisfaction of those receiving services. At least 15 other states, including Massachusetts, Texas, and New York are using MPS for similar human services programs.

The MPS model uses an incentivized payment structure based on outcomes. A key feature of the MPS is that the payment structure creates a consensus on desired outcomes among all stakeholders: the department, the providers, and those receiving services as well as their family or care-takers. Once the outcomes are agreed to by the stakeholders, payments are made to the provider when the users of the services pass pre-defined checkpoints or milestones on the way to a desired outcome. Accordingly, MPS creates appropriate financial incentives by incrementally paying providers as defined outcomes are satisfied. Therefore, the cost of the contract would be determined by the number of desired outcomes met by the provider.

Recommendations

5. Implement a system to competitively procure the services of third-party providers for contracts other than residential services. Limit the number of times a contract can be renewed without competition. Evaluate the feasibility of competitively bidding contracts for residential services.
6. Maintain relevant award documentation for each contract.

7. Implement a contract-award evaluation process that considers the fiscal and programmatic performance of current providers. To facilitate this process, DDD must collect and maintain data related to the performance standards it has begun to establish.
8. Obtain and review the documentation necessary to support proposed contract modifications.
9. Evaluate the payment methods under DDD's current contracts and consider the merits of the MPS form of contracting.

REPORTING REQUIREMENTS

We provided a draft copy of this report to DHS officials for their review and comment. Their comments were considered in preparing this report, and are attached as Appendix A.

DHS's response acknowledged that the audit identified areas that are ripe for reform and, as a result, DHS has initiated a number of important changes. DHS acknowledged the expenses we identified in the audit were troubling, particularly the two cruise vacations. DHS will strengthen its policies and practices to ensure that such inappropriate expenditures are not permitted in the future. DHS cited other initiatives it has taken to ensure public funds are utilized efficiently and effectively, and to improve case management. DHS acknowledged that there is still work to be done. Accordingly, it cited additional steps it will take to address our audit recommendations.

The Office of the State Comptroller is required by statute to monitor the implementation of our recommendations. To meet this requirement, DHS shall report periodically to this Office advising what steps have been taken to implement the recommendations contained herein, and if not implemented, the reasons therefore.



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**Re: Department of Human Services' Division of Developmental Disabilities
Performance Audit of Oversight of Third-Party Contracts**

Dear Mr. Boxer:

Thank you for the opportunity to review the Performance Audit regarding the Division of Developmental Disabilities' (DDD) oversight of Third-Party Contracts. The audit identified areas within DDD that are ripe for reform. The Department carefully reviewed the audit and has already initiated a number of important changes.

In the developmental disability community, there remain many unmet and extraordinary needs – evidenced most particularly by the historically long waiting list for residential placements and in-home supports. Within available resources, our provider community, comprised of nearly 300 residential, community service and other day program providers, serves the most challenging individuals everyday – and in every way – to maximize their fullest potential and life experiences. It is a community of committed and caring organizations and individuals, whose mission is to serve the most vulnerable among us.

It is therefore regrettable that a provider exercised poor judgment in permitting two vacations for clients and their staff. The other questionable items identified in this subject audit, if indeed made with public funds, were similarly troubling in an environment of austerity where the State's fiscal resources have contracted to historically low levels. The Division likewise bears the responsibility to clarify and strengthen all policies and practices that invoke the expenditure of public funds to ensure that any inappropriate, unallowable or imprudent expenditures are not permitted, and we are revising specific contracting procedures to achieve greater transparency and accountability.

Over the past two and a half years, the Division has implemented a number of significant reforms to achieve the shared goal of ensuring that public funds are utilized most efficiently and effectively. Included among those efforts were the expedited close-outs of previous years' contracts – returning approximately \$10.5 million to Treasury by July 2009 and establishing payment plans for an additional \$4.2 million, eliminating in excess of 300 day program vacancies, and initially reducing case management caseloads by approximately 20 percent through an intra-departmental collaboration.

Additionally, DDD actively monitors providers noted to be in financial stress or whose performance raises concerns, including follow up on providers' corrective action plans. Contracts have been approved conditionally until corrective action was implemented, and indeed, contracts have been terminated when appropriate. It is critical to note that the termination of a contract for residential services impacts individuals with disabilities in extraordinary ways, when they are ultimately required to change their living situations. As such, termination is not a measure that can or should be invoked readily, and certainly not unless other remedial efforts to reasonably habilitate a provider's performance have failed.

Finally, the audit found incomplete or substandard reports by case managers and we recognize that this requires ongoing action. In 2008, DDD initiated a comprehensive review of the entire case management system, including a plan to structurally reduce caseloads and to formalize case managers' training. Our highest priority is the safety and well being of our clients and the progress reports of case managers are vital to this charge.

We acknowledge that there is still work to be done, and we offer the following responses to the specific recommendations outlined in the subject audit:

Recommendation:

1. "Establish procedures to ensure that provider operations are effectively monitored for compliance with the CRM and CPIM. At a minimum, such procedures should include:

- **Reviewing provider expenditures to determine if they are supported by adequate documentation, and are reasonable, appropriate, and related to program operations.**
- **Reviewing provider reports to ensure that they are complete and submitted in accordance with policy."**

DDD RESPONSE:

The Division (DDD) will ensure that its contracted providers adhere to the Contract Reimbursement Manual (CRM) and the Contract Policy and Information Manual (CPIM)

in order that reimbursed provider expenditures are reasonable, related to client care, and are appropriate expenditures of public funds. Additionally, the Department of Human Services (DHS) will revise the CRM and the CPIM, as necessary, to clarify and reinforce appropriate provider expenditures. Senior leadership changes were recently made at the Division regarding contract management – to standardize and improve accountability and oversight of all contracting procedures, including enhanced training to contract administrators. A specific contract analysis function will be formed within the contract management group to ensure the timely receipt, review and analysis of providers' expense reports.

Recommendation:

“Ensuring compliance with Single Audit requirements, and verifying that all necessary corrective action has been taken in response to audit recommendations.”

DDD RESPONSE:

The Division will continue its efforts to enforce the timely receipt of single audits and to monitor the corrective actions plans of the providers.

Since 2007, DDD has monitored provider agencies that are in financial distress, has reviewed the fiscal or program performance of any agency that has raised concerns, and has regularly reviewed providers' corrective action plans. Additionally, DDD and DHS's Office of Program Integrity and Accountability meet quarterly to perform similar programmatic and fiscal reviews. DDD has taken adverse action against agencies' contracts, including conditional or short term renewal of a contract pending an agency's improved performance, and has terminated contracts, when appropriate. Provider performance is indeed a critical factor considered during a contract's renewal, although – unlike other types of contracts – a “bright line” test of performance does not necessarily supercede an individual's choice of service provider.

Recommendation:

“Closing out provider contracts in a timely manner.”

DDD RESPONSE:

In February 2008, DDD began to aggressively address the backlog in contract closeouts. DDD identified and returned by July 2009 \$10.5 million to Treasury and has entered into \$4.2 million in payment plans for a total of \$14.7 million. DDD anticipates no more systemic delays in contract close out activities in the future. This effort has permitted DDD to more closely analyze the spending practices of provider agencies as

well as identify efficiencies. The Division is now current with contract closeouts and has eliminated any backlog.

Recommendation:

“Ensuring visits of individuals are being properly conducted and documented through supervisory review of case manager notes.”

DDD RESPONSE:

DDD has several efforts now underway to address case management visits and the documentation of these visits. In December 2008, the entire case management program was reviewed comprehensively, including a rotation of clients' files among case managers and supervisory personnel. DDD is formalizing a training program for case managers and working to identify the appropriate case tracking technology system to support the case management reporting requirements.

Structurally, the Division initiated in 2007 a comprehensive plan to responsibly reduce its case managers' caseloads by transferring individual cases, which primarily require Information and Referral Services, to the Division of Disability Services (DDS) within DHS. (We note that caseloads in DDD can range from 1:90 to 1:500 – ratios that well exceed the national average – hence the structural change was imperative.) In July 2009, DDD reassigned 1,234 individuals from DDD case managers to the DDS' Office of Information and Assistance Services. Over the next year, a total of almost 20,000 individuals will be similarly reassigned. DDS' nationally certified information and referral specialists will serve as their primary contact for service-related questions. Most of the transferring individuals are under the age of 22, attending school, living at home and primarily need information regarding services outside of DDD – e.g., insurance, benefits, education, and related services in their communities. The majority of the transferring individuals receive some DDD services and these services will continue.

Individuals being transferred will receive access to information in a timely manner. DDD case managers, now with smaller caseloads, can focus on individuals with more intensive needs. If and when individuals develop the need for specialized case management services, DDS will refer them back to DDD. DDD and DDS have been preparing this collaboration for more than two years, building operations to share electronically information about individuals.

In July 2009, two case management systems review meetings were held and three workgroups will begin in August 2009 to address case manager protocol, supervisor practices and task evaluation. These groups will develop proper documentation requirements including: standardized training curriculum, case manager task evaluation and Individual Habilitation Plans. Also included are best practices for supervisors,

standard procedures for site visits and increasing the effective use of IT processes to enhance reporting.

Recommendation:

- 2. “Investigate the propriety of and, to the extent possible, pursue recovery of the \$158,742 in undocumented and inappropriate costs cited in this report.”**

RESPONSE:

The Division has initiated a thorough review of the expenditures cited in the audit and will take action to recover any unallowable or inappropriate costs.

Recommendation:

- 3. “In conjunction with the providers and the disabled community served by DDD, identify activities that meet the goal of accommodating the rights of disabled individuals and ensuring fiscal responsibility.”**

DDD RESPONSE:

The Division's primary responsibilities are to provide services to individuals with developmental disabilities to ensure their protection and care. On a regular and ongoing basis, providers and clients are involved in policy decisions and are kept informed with newsletters, provider meetings and family forums. DDD's vacation policy will be clarified and strengthened, as necessary.

DDD will continue to work in conjunction with provider agencies, families and people with developmental disabilities to identify activities that meet the goal of accommodating the rights of those with developmental disabilities, while ensuring fiscal restraint and responsibility. This is a priority for all of us who work in partnership to provide quality, cost-effective services for people with developmental disabilities. Note that for the vast majority of individuals in the DD system, services span every aspect of their lives for a lifetime of care – including employment, personal care, leisure activities and community experiences.

Recommendation:

- 4. “Review the providers’ adult training programs to ensure that IHP (Individual Habilitation Plan) requirements and employee requirements are being satisfied.”**

DDD RESPONSE

DDD Adult Training and Supported Employment Coordinators hold quarterly meetings with day program provider agencies to discuss program requirements and utilization of the Individual Habilitation Plan to meet the needs of an individual participating in their program.

In July 2007, two new manuals (Standards for Adult Day Programs and Standards for Supported Employment) were developed and posted on the DHS website. In the fall of 2007, four regional trainings were provided to all providers of day services and supported employment on these standards.

Between March 2008 and June 2009, DDD reviewed 93 day program and supported employment program sites. DDD compiled and is analyzing the data from these reviews to establish whether these sites are meeting program standards.

Recommendation:

- 5. “Implement a system to competitively procure the services of third-party providers for contracts other than residential services. Limit the number of times a contract can be renewed without competition. Evaluate the feasibility of competitively bidding contracts for residential services.”**

DDD RESPONSE

In 2006, 2007 and 2009, DDD issued Requests for Qualifications (RFQ) for providers to allow individuals to select a qualified service provider of choice, using an individual budget created from an assessment of each individual’s needs. This is a national model and one that is also used by Medicaid. Competition among providers exists when individuals choose among a host of qualified providers.

DDD is unaware of any state that competitively bids for residential services, and is cognizant of the trauma and disruption that would ensue if individual choice among residential providers were restricted. Many providers offer specialized training, particular to suit certain disabilities. DDD strives to balance the competing policies of individual choice and fiscal responsibility and will continue to examine related, national best practices.

Recommendation:

- 6. “Maintain relevant award documentation for each contract.”**

DDD RESPONSE

The Report of the State Comptroller found inadequacies in the historical records involving certain providers approved prior to 2002; DDD’s files did contain, however, the

current information on these providers. Beginning with the initial request for qualifications issued in 2006, DDD now maintains complete files concerning the qualification process and standards.

Recommendation:

7. **“Implement a contract award evaluation process that considers the fiscal and programmatic performance of current providers. To facilitate this process, DDD must collect and maintain data related to the performance standard it has begun to establish.”**

DDD RESPONSE:

Prior to any contract renewal, and throughout the life cycle of a contract, DDD reviews the licensing status of all of the programs operated by the agency, the services offered in each program and any information related to the provider agency from the DHS’ Office of Program Integrity and Accountability.

Additionally, both program and fiscal information concerning problematic providers is reviewed during regularly scheduled provider review meetings. DDD has conditionally renewed and/or terminated contracts, as appropriate, and has also frozen provider payments, pending corrective, remedial action.

DDD is creating an internal web-based information system that will include program and fiscal information regarding its contracts, and will provide a web-based contract training program for the DDD contract administrators and the provider agencies.

Additionally, a quarterly performance review “dashboard” comparing each DDD contracted provider agency will be posted online later this month with information including providers’ licensing status, number of substantiated incidents and other performance standards allowing contract administrators, families of individuals with developmental disabilities and to the providers themselves to monitor provider performance.

DDD is also reviewing all contract policies for any necessary revisions and immediately will revise its policies governing provider attendance at conferences.

Recommendation:

8. **“Obtain and review the documentation necessary to support contract modifications.”**

DDD RESPONSE

In September 2007, DDD initiated an electronic budget request, approval and tracking system to document any requested contract changes. Contract modifications are now subject to review by case managers, regional administrators, program coordinators, contract administrators and fiscal staff prior to final approval. These reviews are recorded in the electronic tracking system.

Upon approval of a contract modification, the funds are encumbered and the agency is then notified that it can proceed. Prior to the implementation of this tracking system, approvals were subject to a paper review process.

Recommendation:

9. **“Evaluate the payment methods under DDD’s current contracts and consider the merits of the MPS form of contracting.”**

DDD RESPONSE

DDD will explore the merits of the MPS form, as well as other contracting and payment mechanisms utilized in the developmental disabilities field, as appropriate.

DDD is transitioning its 3rd party contracting from a cost-reimbursement methodology to a fee-for-service system to ensure that providers are compensated only for those services actually rendered.

Sincerely,

A handwritten signature in black ink, appearing to read "Jennifer Velez". The signature is fluid and cursive, with a large loop at the end.

Jennifer Velez
Commissioner

JV:jc