



Transmitted Via Email

October 24, 2013

Frank Patone, CPA
Audit Director
Division of State Government Accountability
NYS Office of the State Comptroller
123 William Street (fl 21)
New York, NY 10038

Re: OSC Audit Report No. 2011-S-11

Dear Mr. Patone:

Attached is the Office For People With Developmental Disabilities' comments on the Office of the State Comptroller's Final Audit Report (No. 2011-S-11) entitled: "Association for the Advancement of the Blind and Retarded (AABR) Options For People Through Services Program (OPTS)."

This response is being submitted to you in accordance with Section 170 of the Executive Law.

Sincerely,

Laurie A. Kelley
Acting Commissioner

LAK/mep
Attachment

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We help people with developmental disabilities live richer lives



**Office For People With Developmental Disabilities (OPWDD)
Response to the Office of the State Comptroller's (OSC)
Final Audit Report (2011-S-11) Association for the Advancement of the Blind
and Retarded (AABR): Options For People Through Services Program (OPTS)**

OPWDD considers itself a responsible fiscal steward of State resources. Accordingly, we've carefully reviewed OSC's concerns, and our response to the audit recommendations shows that we substantially agree with them, and that the issues raised have been, and will continue to be, addressed. However, the audit report does not provide the reader of it with complete and accurate information for them to have a clear understanding of OPWDD's monitoring and oversight of the OPTS program. Of most concern is the amount the report states that AABR was over reimbursed - \$1.113 million for a six-month period, implying a yearly over-reimbursement in excess of \$2 million. This amount is grossly overstated and it is used as a basis for other findings in the report. The following provides some brief points to support this, and the full response starting below provides more detail:

- OPWDD found material errors in OSC's calculations.
- OSC's over reimbursement amount is only an estimate, no actual operating results were considered. The actual operating results from the Consolidated Fiscal Report (CFR) certified by AABR's CPA firm for same program and period showed a yearly deficit of \$1,600.
- The CFR was available to OSC and a huge difference raises a red flag, and we think due diligence would warrant some analysis by OSC to enable it to rely on its amount; we are not aware that this was done.
- OPWDD has internal controls in place to review actual operating results when determining reimbursement amounts.

In addition to the above, the report does not mention very relevant information, the existence of the certified CFR that states actual operating results for the same OPTS program and period that is significantly different than OSC's estimated over reimbursement amount. We believe the underlying cause of the discrepancy traces back to OSC never offering or holding a closing conference (or other meetings) with OPWDD to discuss the audit results. This directly contradicts OSC's published audit protocols. The closing conference is very important, and is held so that errors or discrepancies can be discussed and resolved before the formal audit report process. OSC acknowledged in the final report that no closing conference was held.¹ A year after completion of field work, the draft report was issued without any advance notice to OPWDD.

In summary, the above raises significant concerns about the reasonableness of the amount OSC estimates that AABR was over-reimbursed, and a certified report showing actual operating results would be a more accurate figure to use - which reflects a small operating deficit of \$1,600.

RESPONSE TO THE REPORT

OSC's audit of the Association of the Advancement of the Blind and Retarded's (AABR) Options for People Through Services Program (OPTS) began in April of 2011; field work was completed/the final preliminary report was issued in March 2012. OSC did not issue the draft audit report until March 2013, a year later, unannounced to OPWDD. Our response reiterates the positions we communicated in our response to the draft report and provides updates, where applicable. Following are OPWDD's comments on statements in the final report, which is then followed by OPWDD's response to the recommendations.

¹ OSC also commented that audit results were discussed in earlier meetings. However, these were held to provide OSC information, and after them and completion of the onsite work, OSC asked OPWDD for more information/documentation. OPWDD was looking forward to the closing conference to learn the audit results, including what impact the additional information OPWDD provided had on it, so any errors or inaccuracies could be discussed before the formal report process.



GENERAL COMMENTS AND CORRECTIONS REGARDING STATEMENTS IN THE REPORT PERTAINING TO:

- Rate Calculations
- Pursuing Contract Amendments
- Service Verification

RATE CALCULATIONS

OSC Statements per the Final Audit Report:

"We found that OPWDD officials use AABR budgeted, as opposed to actual, expenses when developing rates to reimburse AABR for its OPTS Program. As a result, for the six-month period we reviewed, ended December 31, 2010, we estimate AABR was over reimbursed by \$1.139 million."

"For example, based on budgeted figures, AABR reported \$2.5 million for transportation costs during 2010. Documented transportation costs for this period totaled \$1.8 million, \$700,000 less than budgeted."

It is important to note that OPWDD does not disagree with the audit report's recommendation that current costs would present a better basis for establishing rates, and we understand OSC's audit approach to demonstrate this. In fact, a process is being put in place to use more current costs, as explained later in the response. However, as described and supported below, OPWDD believes that the amounts stated as being over-reimbursed or over-budgeted are grossly overstated.

Starting with the transportation example:

The stated costs for transportation of \$1.8 million are not accurate. Per OSC's preliminary report the \$1.8 million amount was derived strictly from 2010 billings AABR paid to a company to transport individuals to and from the program; other significant transportation costs are omitted. Once the individuals are at the program, part of the program activity can include taking an individual or individuals on an outing, for example, to a mall; hence the need for a van, driver, etc. These types of outings are appropriate (and hence the related costs are appropriate) as such outings may be generally or specifically described as part of the individuals ISP/Hab plan, etc. and both the transportation time and the service provision time (e.g., spending time at a mall) are appropriate services of the program and can be used for billing purposes, with the staffing and related costs appropriate as a service expense. It's undisputed that such costs incurred during the day are perfectly appropriate and reimbursable and that these costs are significant (drivers, gas, vehicles, insurance, maintenance, etc). OSC commented in the final report that *"Neither OPWDD nor AABR could substantiate the \$2.258 million in transportation costs reported on AABR's CFR"*.

However, OSC did not raise what we think is a serious issue (an agency unable to support a significant amount of expenses) in any of the previous preliminary/draft reports or discussions with OPWDD. We are not sure if AABR was asked to support all transportation costs or just the two and from program costs. Also, it does not make sense that none of the \$700,000 in other travel costs per the CFR was able to be supported, no drivers, vehicles, etc. The preliminary report also states that OSC's transportation costs were derived just from billings from a contractor hired to transfer individuals to and from the program. As a final point, OPWDD wouldn't have the documentation as AABR is a separate corporation with its own records, as was explained to the auditors.

We believe that the \$1.8 million in transportation costs in the report is significantly understated and the CFR reported transportation amount of \$2,258,141 is the more accurate number to use; if used, the transportation costs should have reflected a small surplus of \$54,000 not a surplus of \$700,000.



Regarding the estimated over reimbursement amount

Again, OPWDD does not argue with the report's recommendation that current costs would present a better basis for establishing rates, and we understand OSC's efforts to show this by developing its own rate sheets using more current costs where possible, and comparing that to the OPWDD developed rate sheets. However, a critical element in this is that OSC's rate sheet has to be accurate/include all appropriate costs, which we don't think happened. The underlying cause for the inaccurate rate sheets traces back to OSC never offering or holding a closing conference (or other meetings) with OPWDD to discuss the audit results before the draft report was issued, so any errors or discrepancies could be resolved, which is the usual audit process and part of OSC's protocols. Below provides more information to support our contention that the stated over reimbursement in the final report is grossly overstated.

1. Errors- omissions of legitimate costs. As stated in the transportation section, we believe OSC made an error by only using transportation costs taking individuals to and from the program. Also, after reviewing the draft report, we pointed out to OSC that they made an error by not including program administrative fringe benefit costs in its calculations, and also, that certain amounts stated in the draft audit report were in error because they did not take into consideration the utilization factor. OSC did not make any changes from the draft report to the final report related to the significant transportation costs omitted; a minimal change to the final audit report was made, reducing the state over reimbursement amount from \$1.271 million to \$1.139 million.

As OPWDD was not able to go through and analyze all of the audit report's calculations, we are unable to tell what other appropriate costs were not asked for, not included by OSC in its calculations

2. OSC's over reimbursement amount is only an estimate, based on prior year information. Actual operating results from the CFR certified by AABR's CPA firm and attested to by AABR's Executive Management for this program, and for the same period, showed the program incurred a small deficit of \$1,600 - the difference between the actual operating results and OSC's estimate is about \$2 million (\$1.139 million for a 6-month period which insinuates a yearly loss of about \$2 million). Of concern: This CFR was available to OSC and this very relevant information was not mentioned in the final audit report. Also, a huge difference should raise a red flag, and OPWDD believes that due diligence would warrant some type of an analysis by OSC, for it to be able to rely on its results e.g., discussing it with OPWDD staff to ensure the reasonableness of its calculations. We are not aware of any due diligence being done.

Given the above, there are sufficient concerns about the reasonableness of the amount OSC estimates that AABR was over-reimbursed, and a certified report showing actual operating results would be a more accurate figure to use - which reflects a small operating deficit of \$1,600.

Also, not addressing and not even mentioning in the final audit report the existence of a certified fiscal report with actual operating results significantly different than OSC's estimated operating results, does not provide a reader of the report critical and very relevant information to have a complete understanding of the audit.

PURSUING CONTRACT AMENDMENTS

While OPWDD has no issue with the concerns raised by OSC in respect to using budgeted costs for reimbursement (i.e. as opposed to actual cost information), we disagree with OSC's suggestion to start to amend reimbursement language in all OPTS contracts as a practical matter and in consideration of the following:

- a. OPWDD is phasing out the OPTS contracts as aggressively as possible. As of May 1, 2013, 130 contracts have been canceled and four more are scheduled to be canceled by the end July 2013. The remaining



147 contracts are under review for phase-out decision and are being handled in a fiscally responsible manner so as not to jeopardize services to individuals who have developmental disabilities. They will be phased out as soon as possible, and OPWDD has worked with DOB on a fiscal plan that eliminates OPTS contracts by FY 2017-18.

- b. OSC's results address one agency. OPWDD will have 147 OPTS contracts at the end July 2013 and conclusions regarding the adequacy of using budgeted costs for reimbursement are therefore, not projectable (i.e. budgeted costs in other organizations may be lower than actual costs); and, more importantly:
- c. OPWDD is currently in discussion with CMS regarding reimbursement methodology for the federal waiver program, which would also affect OPTS contracts. Using budgeted costs is a concern of CMS going into the negotiations, so once a revised funding methodology is agreed to and implemented while OPWDD still has OPTS contracts, OPWDD would then look to amend existing OPTS contracts to incorporate the revised funding methodology as appropriate.

Our conversion to a new federal waiver is commonly known and was included in response to one of OSC's preliminary reports. OPWDD's reform agenda includes financial platform restructuring. This restructuring has progressed to the point that OPWDD will begin converting its program funding as soon as October of 2013. When a funding methodology is agreed to and implemented, OPWDD would be required to amend existing OPTS contracts to incorporate the revised funding methodology as appropriate.

In summary, we believe OSC's calculation of actual costs at AABR failed to consider some cost elements (and we are unable to tell how many other appropriate costs were not included or were not available to OSC), and their suggestion that we start to amend existing contracts to be premature - an inefficient and unwarranted exercise given OPWDD's aggressive phase out of the OPTS contracts and the emergence of a new funding mechanism.

SERVICE VERIFICATION

In the draft audit report the following statements were included:

- *"OPWDD staff has not verified any of the Program services claimed by AABR."*
- *"... OPWDD staff does not audit, or otherwise review, the supporting documentation for the claimed services. Payment is made to AABR on the honor system."*

These statements are inaccurate. OPWDD not only described the oversight processes in place to the auditors, but also provided the auditors evidence that these oversight practices occurred (e.g., copies of the results of reviews). Nevertheless, we appreciate that the statements were removed from the final audit report, and OPWDD will review our oversight process in light of the ongoing changes (e.g., elimination of the OPTS contracts) to see where improvements can be made.

RESPONSE TO THE RECOMMENDATIONS

Recommendation #1:

For future claim reimbursements, use actual provider expenses, rather than budgeted, to calculate reimbursement rates. Revise future contracts accordingly.



OPWDD Response

OPWDD is currently in discussions with the Centers for Medicare & Medicaid Services (CMS) regarding reimbursement methodology for Home and Community Based Waiver Services. Depending on the outcome of the discussions with CMS, once the revised funding methodology is agreed to and implemented while OPWDD still has OPTS contracts, OPWDD would look to amend existing OPTS contracts to incorporate the revised funding methodology if at least 6 months remain to the OPTS contract term, and a contract cancellation date has not been mutually agreed to.

Recommendation #2:

On a sample basis, periodically verify claimed services reported by Program service providers such as AABR

OPWDD Response

OPWDD is committed to the provision of quality services in safe environments and is committed to fiscal responsibility and accountability - which we think is evidenced by OPWDD's oversight as described in our response. However, OPWDD takes all audit recommendation seriously and will review the current oversight of OPTS claims to see where it can be improved, including sampling claimed services OPTS providers report through the web application.