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STATE OF NEW YORK
OFFICE OF THE STATE COMPTROLLER

September 28, 2012

Ms. Courtney Burke
Commissioner
Office for People With Developmental Disabilities
44 Holland Avenue
Albany, NY 12229-0001

Re: Report 2012-F-4

Dear Ms. Burke:

According to the State Comptroller's authority as set forth in Article V, Section 1 of the State Constitution and Article II, Section 8 of the State Finance Law, we followed up on the actions taken by officials of the Office for People With Developmental Disabilities and Central New York Developmental Disabilities Services Office to implement the recommendations contained in our report, *Use of Employees and Employees' Relatives as Vendors* (Report 2007-S-90).

Background, Scope, and Objectives

The New York State Office for People With Developmental Disabilities (Office) is responsible for coordinating services for more than 126,000 New Yorkers with developmental disabilities. It provides services directly and through a network of approximately 700 nonprofit service providing agencies, with about 80 percent of services provided by private nonprofits and 20 percent provided by state-run services.

The Central New York Developmental Disabilities Services Office (Central NY DDSO) provides a wide range of support and services to individuals with developmental disabilities and their families throughout Oneida, Herkimer, Madison, Lewis, Onondaga, Oswego, Cortland, and Cayuga Counties. Central NY DDSO oversees the care that is provided to about 1,450 persons with developmental disabilities. This care is provided in 195 community-based group homes, 161 family care homes, and 19 other program sites. To maintain the group homes Central NY DDSO hires vendors to provide maintenance and repair services. Additionally, Central NY DDSO hires qualified sitters for family care homes when the regular family care providers cannot be at home or need time away from their care giving responsibilities.

As of July 2, 2012, after the completion of our audit work, the Office reorganized merging Central NY DDSO with Broome Developmental Disabilities Services Office (Broome DDSO) to create Broome and Central New York Developmental Disabilities Services Office. Our work was limited to only the Central NY DDSO; no testing was done at Broome DDSO.

Our initial report, issued December 20, 2007, reviewed payments to vendors or individuals for home maintenance and repair services as well as for respite care/sitter services between January 1, 2005 and November 30, 2006. Our objective was to determine whether the Central New York Developmental Disabilities Services Office (Central NY DDSO) was complying with State law when it used employees or employees' relatives as vendors. We found that some of the vendors hired by the Central NY DDSO to provide maintenance and repair services at the group homes were relatives of employees at the DDSO. We examined 113 of these transactions and found that, in most all instances, there was no indication other vendors were given an opportunity to provide the services and no assurance a reasonable price was paid for the services. Also, documentation in our sample of home maintenance transactions often lacked important details making it difficult to determine what kind of maintenance or repair work was supposed to have been done by the relative-vendors. Additionally, we found some of the sitters hired by Central NY DDSO were also full-time Central NY DDSO employees. One of these employees was fraudulently paid on numerous occasions for providing sitter services at the same time that she was being paid to perform her regular duties for the DDSO. The objective of our follow-up was to assess the extent of implementation as of May 7, 2012 of the seven recommendations in our initial report.

Summary Conclusions and Status of Audit Recommendations

We found Office and Central NY DDSO officials have made significant progress in implementing recommendations from our prior report. Five of the seven recommendations have been implemented. One recommendation is no longer applicable and one other has been partially implemented.

Officials made considerable progress ensuring transactions comply with the New York State Procurement Guidelines and the New York State Procurement Bulletin, especially when vendors are related to agency employees. However, we found one instance where a vendor, who is related to several Central NY DDSO employees, was hired and paid over \$12,000 over three years. There was no competition for these services and documentation did not demonstrate reasonableness of price. We recommend Central NY DDSO officials continue to monitor procurements to ensure all purchases from vendors related to Central NY DDSO employees contain all necessary bidding documents and/or justifications for the lack of such documents.

Follow-Up Observations

Recommendation 1

Ensure that procurement transactions comply with the New York State Procurement Guidelines and the New York State Procurement Bulletin, especially when the vendors are related to agency employees. In particular, ensure that the transactions are fully documented and, if quotes or bids are not obtained from multiple vendors, the reason for the lack of competition is thoroughly documented.

Status - Partially Implemented

Agency Action - Central NY DDSO officials have made significant progress ensuring procurement transactions comply with established guidelines. Between April 1, 2009 and March 31, 2012, we found, for our sample, Central NY DDSO almost completely discontinued using employees or relatives of employees as vendors. However, in one instance we found a relative of Central NY DDSO employees was hired as a seamstress to sew and mend clothing for consumers. In this case, we found the vendor was related to four Central NY DDSO employees; however, none of these employees had authorization to make purchasing decisions. In this case, the vendor was paid over \$12,000 from April 1, 2009 through March 31, 2012. Total payments per year were as follows:

- \$2,829 for Fiscal Year 2009
- \$5,567 for Fiscal Year 2010
- \$3,690 for Fiscal Year 2011

We found the services provided could be anticipated on an annual basis and, per NYS Procurement Bulletin on Discretionary Purchasing Guidelines, Central NY DDSO officials should consider the total annual need of this service when selecting a procurement method for this purchase. In this case, per NYS Discretionary Purchasing Guidelines, for the 2010 year, a quarterly advertisement should have been placed in the Contract Reporter. Also, Central NY DDSO should maintain justification to support the vendor selection and reasonableness of price (i.e. informal quotes, historical costs/price comparisons, cost to other government agencies, etc.). No advertisement was placed in the Contract Reporter and there wasn't support for the vendor selection or reasonableness of price for any year.

Recommendation 2

Monitor procurement transactions to ensure compliance with Executive Order 1 and Central NY DDSO's Ethical Conduct Guidelines. Ensure that employees exclude themselves from any procurement decisions involving their relatives.

Status - Implemented

Agency Action - Central NY DDSO almost completely discontinued using employees or relatives of employees as vendors. Between April 1, 2009 and March 31, 2012, Central NY DDSO hired one vendor who was related to four employees; however, none of these employees had authorization to make purchasing decisions.

Recommendation 3

Obtain an opinion from the Commission on Public Integrity, the successor to the State Ethics Commission, on whether it is necessary to seek competitive bids when hiring employees as sitters in the Family Care Program.

Status - Implemented

Agency Action - In 2008 Central NY DDSO requested an updated opinion (updated from the New York State Ethics Commission's 1994 opinion) from the Commission on Public Integrity. Agency officials stated the Commission on Public Integrity reaffirmed the 1994 opinion that employees could not work as sitters unless the service was competitively let. Central NY DDSO has not paid employees for sitter services since January 2010.

Recommendation 4

Investigate the fraudulent certifications for sitter services and determine whether sitter services were actually provided by a qualified sitter on the occasions claimed.

Status - Implemented

Agency Action - Central New York DDSO officials investigated the instances where fraudulent certifications for sitter services were made and found services were provided by a qualified sitter. The investigation showed services were provided by the sitter's nephew who was a certified sitter. The investigation also showed families of the consumers were aware the sitter services would be provided by the employee's nephew. Officials provided us with documentation to support the sitter was certified and the results of interviews with the family members of affected consumers.

Recommendation 5

To Central NY DDSO

Recover the money paid to the Developmental Aide for sitter services she never provided.

Status - Implemented

Agency Action - Central NY DDSO officials reviewed the sitter service hours worked by the Developmental Aid and determined the State was due \$2,404 for hours paid for but not worked. Central NY DDSO received reimbursement for the hours the Developmental Aide did not provide.

Recommendation 6

To Central NY DDS

If employees continue to be hired as sitters in the Family Care Program, regularly review their timesheets to ensure that their duties as employees are not conflicting with their duties as sitters.

Status - Not Applicable

Agency Action - In response to an opinion received from the former Commission on Public Integrity, Central NY DDSO has discontinued using employees as sitters. This practice

ended in January 2010. However, prior to receiving the ethics opinion, Central NY DDSO officials reviewed time statements for employees hired as sitters to determine if their sitter and employment duties were conflicting with each other. Officials uncovered three instances where employees were being paid both as an employee and as a sitter for the same time. Officials requested and received reimbursement for overlapping time from the employees. We were provided with copies of the review conducted and support for the reimbursement to the State.

Recommendation 7

To Central NY DDSO

Correct the written policy regarding sitter hours to fully and accurately describe the time period covered by the 60-hour limit, and strengthen monitoring practices to ensure compliance with this limit.

Status - Implemented

Agency Action - Central NY DDSO has updated its policy to more clearly describe the time period covered by the 60-hour limit. The policy was recently updated December 2009 and states no more than 60 hours in a four week period may be provided. Additionally, hours cannot exceed 15 hours a week unless special notations are made to the payment form and the hours do not exceed 60 hours for the four week period. A week is defined as occurring from Sunday through Saturday.

Major contributors to the report were Sharon Salembier, Abe Fish, Heather Pratt, Andre Spar, Matt Luther, Amanda Halabuda, and Gayle Clas.

We would appreciate your response to this report within 30 days, indicating any actions planned to address the unresolved issues discussed in this report. We thank the management and staff of Central New York DDSO and the Office for People With Developmental Disabilities for the courtesies and cooperation extended to our auditors during this review.

Very truly yours,



Melissa Little
Audit Manager

cc: V. Sleasman, Director of Internal Audit
T. Lukacs, Division of the Budget