New York State Office of the State Comptroller
Thomas P. DiNapoli

Division of State Government Accountability

Compliance With the Reimbursable Cost Manual

State Education Department
Metro Therapy, Inc.

Report 2012-S-164

December 2014

Executive Summary

Purpose

To determine whether the costs reported on the Consolidated Fiscal Reports (CFRs) of Metro Therapy, Inc. (Metro Therapy) were calculated properly, documented adequately, and allowable pursuant to the State Education Department's (SED) Reimbursable Cost Manual (Manual). Our audit covered the three fiscal years ended June 30, 2011.

Background

Metro Therapy is based in Hauppauge, New York and provides Special Education Itinerant Teacher (SEIT) services to children between the ages of three and five years residing in New York City and Nassau and Suffolk counties. During the 2010-11 school year, Metro Therapy taught 284 students through services rendered in the students' homes, schools, or neighborhood community centers. Pursuant to State Education Law, special education providers (including Metro Therapy) are reimbursed through tuition rates established by SED based on financial information reported on the providers' CFRs. For the three fiscal years ended June 30, 2011, Metro Therapy reported about $7.1 million in reimbursable costs on its CFRs.

Key Findings

We identified $833,949 in non-reimbursable costs. Among the costs we recommend for disallowance are:

- $357,063 in excessive allocations of salaries and fringe benefits to the SEIT program;
- $185,512 in compensation paid to five individuals who did not provide services to the SEIT program;
- $116,069 in excessive compensation paid to the Executive Director and the Assistant Executive Director;
- $66,636 in parent company allocation expenses that were not in compliance with the Manual; and
- $62,138 in unrelated or undocumented non-personal service costs.

Key Recommendations

To SED:

- Review the recommended disallowances, adjust Metro Therapy's CFRs, and revise Metro Therapy's tuition reimbursement rates, as appropriate.
- Work with Metro Therapy officials to help ensure their proper reporting of reimbursable costs.

To Metro Therapy:

- Ensure that reimbursable costs reported on the CFRs comply with Manual requirements.

Other Related Audits/Reports of Interest

Bilingual SEIT and Preschool, Inc.: Compliance With the Reimbursable Cost Manual (2011-S-13)
IncludED Educational Services, Inc.: Compliance With the Reimbursable Cost Manual (2010-S-59)

State of New York
Office of the State Comptroller

Division of State Government Accountability

December 29, 2014

Dr. John B. King Jr.
Commissioner
State Education Department
State Education Building - Room 125
89 Washington Avenue
Albany, NY 12234

Mr. Conrad Kupferman
Executive Director
Metro Therapy, Inc
1363 Veterans Memorial Highway
Hauppauge, NY 11783

Dear Dr. King and Mr. Kupferman:

The Office of the State Comptroller is committed to helping State agencies, public authorities, and local government agencies manage government resources efficiently and effectively and, by so doing, providing accountability for tax dollars spent to support government-funded services and operations. The Comptroller oversees the fiscal affairs of State agencies, public authorities, and local government agencies, as well as their compliance with relevant statutes and their observance of good business practices. This fiscal oversight is accomplished, in part, through our audits, which identify opportunities for improving operations. Audits can also identify strategies for reducing costs and strengthening controls that are intended to safeguard assets.

Following is a report of our audit of the State Education Department entitled *Compliance With the Reimbursable Cost Manual: Metro Therapy, Inc.* This audit was performed pursuant 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.

This audit's results and recommendations are resources for you to use in effectively managing your operations and in meeting the expectations of taxpayers. If you have any questions about this draft report, please feel free to contact us.

Respectfully submitted,

Office of the State Comptroller
Division of State Government Accountability

Table of Contents

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This report is also available on our website at: www.osc.state.ny.us

Background

Metro Therapy, Inc. (Metro Therapy) is a proprietary business that is a wholly owned subsidiary of Select Medical Corporation that provides Special Education Itinerant Teaching (SEIT) services to children between the ages of three and five years. Metro Therapy, based in Hauppauge, New York, provides services to children in New York City and Nassau and Suffolk counties. Metro Therapy's staff, which served 284 students during the 2010-11 school year, provides these services in the students' homes, schools, or neighborhood community centers.

The New York City Department of Education (DoE), as well as the other local governments referring students to Metro Therapy, pays for Metro Therapy services using rates established by the New York State Education Department (SED). SED develops these rates using the financial information reported on Metro Therapy's annual Consolidated Fiscal Reports (CFRs) filed with SED. SED, in turn, reimburses DoE and the other local governments for about 59 percent of their payments to Metro Therapy.

To qualify for reimbursement, provider costs must comply with SED's Reimbursable Cost Manual (Manual). The Manual provides specific guidance to providers on cost eligibility and documentation requirements. Reimbursable costs must be reasonable, program-appropriate, and properly documented.

For the three fiscal years ended June 30, 2011, Metro Therapy reported approximately $7.1 million in reimbursable costs for the SEIT program.

Audit Findings and Recommendations

For the three years ending June 30, 2011, we identified $833,949 in reported costs that do not comply with Manual requirements. These ineligible costs include $705,175 in personal service costs and $128,774 in non-personal service costs.

Personal Service Costs

According to the Manual, personal service costs, which include all taxable and non-taxable salaries and fringe benefits paid or accrued to employees on the agency's payroll, must be reported on the CFR as either direct care costs (e.g., teachers' salaries) or non-direct care costs (e.g., administrators' salaries). The time and attendance of individuals whose salaries are charged to the SEIT program must be documented by an official time and attendance record or similar document. The salaries of individuals who do not work solely for the SEIT Program must be allocated based on their actual work effort or other allocation methods that are fair and reasonable, as determined by SED's fiscal representatives. During fiscal years 2008-09 through 2010-11, Metro Therapy reported about $2.9 million in reimbursable personal service costs.

Excessive Allocation of Personal Service Expenses

We identified 26 Metro Therapy employees whose salaries, totaling $555,628, were allocated to the SEIT program based on the personal judgment of the Executive Director, which for many of the employees, was based on the total number of programs they worked in. We determined that this method of allocation was not in compliance with the Manual's requirements. The 26 employees were classified as office workers or program staff on the CFRs; their job duties included record-keeping, billing, correspondence, and general office duties. There were no records documenting the actual amount of time each of these employees devoted to the SEIT program.

To calculate a fair and reasonable allocation for the 26 employees, we used the ratio value method (as prescribed by the Manual), comparing the total expenses of the SEIT program to the total expenses of all Metro Therapy programs. We calculated that $241,756 should have been charged to the SEIT program; however, Metro Therapy charged $555,628 (an over-allocation of $313,872 in salaries). We also found an additional $43,191 in fringe benefits that were excessively allocated to the SEIT program. In total, we recommend that $357,063 ($313,872 + $43,191) be disallowed.

Metro Therapy's officials disagreed with the disallowance. After receiving our preliminary report, Metro Therapy officials hired a consultant and recomputed the allocations using an alternative methodology (units of service). This methodology differs from the ratio value method in that it puts an emphasis on the number of services provided rather than the dollar amount of the operating costs for Metro Therapy's programs. As a result, the unit of services methodology allocated more costs to the SEIT program. For example, Metro Therapy's Early Intervention program had over three times the operating costs of the SEIT program. Since both programs use a different scale (e.g., 30-minute sessions vs. 60-minute sessions) to calculate each unit, this resulted in a greater allocation rate to the SEIT program.

Metro Therapy officials advised us that the Executive Director's subsequent review of job descriptions and knowledge of each employee was determined in preparing the units of service allocation methodology. However, the units of service allocation methodology still warrants accurate representation of which programs the employees actually worked in. We determined that the Executive Director did not prepare any documentation to support the programs that each employee worked for during the audit period. Subsequent to our audit, Metro Therapy officials provided us with affidavits for nine current employees noting the programs they worked on. However, we found that in six of the nine instances, the programs to which the employees were subsequently allocated contradicted what was reported in the CFRs.

We also determined that Metro Therapy's units of service methodology was not fair and reasonable because it did not comply with the CFR Manual. The CFR Manual recommends "units of service" for programs associated with the Office of Mental Health and the Office of People with Developmental Disabilities – not the SEIT program. In fact, SED clarified existing policy in the updated CFR Manual to specifically state that units of service is not an acceptable cost allocation method for SEIT purposes.

Non-Program Related Personal Service Expenses

The Manual states that costs will be considered for reimbursement provided such costs are reasonable, necessary, and directly related to the education program and are sufficiently documented. Based on our interviews with Metro Therapy employees and our review of personnel records, we determined that Metro Therapy reported $185,512 in expenses for five employees who did not provide services to the SEIT program. These five employees included two Early Intervention program coordinators, two school age coordinators, and one evaluation specialist. Further, we disallowed another $34,133 in fringe benefits for the employees who worked in a non-SEIT program in Queens. In total, we recommend that $219,645 be disallowed.

Metro Therapy officials partially agreed with us. They acknowledged that the fringe benefits for the employees in the Queens office ($34,133) should not have been allocated to the SEIT program. However, they agreed that only two of the five employees did not provide SEIT services.

Excessive Executive Compensation

The Manual requires that compensation paid to a provider's Executive Director (ED) and an Assistant Executive Director (AED) may not exceed the regional median compensation paid to comparable personnel in public schools for similar work and hours of employment. We determined that Metro Therapy overcharged SED a total of $116,069 in executive compensation for the SEIT program during our audit period as follows:

For the three-year period ended June 30, 2011, Metro Therapy charged SED $146,151 ($43,972, $45,661, and $56,518 for the respective fiscal years) for the ED's allocated compensation. Based on the regional median compensation limits, only $86,086 in salary should have been allocated. Thus, we disallowed the excess allocation of $60,065 ($146,151 - $86,086).

Similarly, Metro Therapy charged SED $123,336 ($41,115, $40,441, and $41,780 for the respective years) for the AED's allocated compensation. Based on the regional median compensation limits, the allocated AED compensation for these three periods should have been $67,332. Thus, we disallowed the excess allocation of $56,004 ($123,336 - $67,332).

Unsupported Reimbursements for Vehicle Expenses

For the three fiscal years ended June 30, 2011, three Metro Therapy officials, including the ED and AED, received monthly mileage reimbursement payments for their personal vehicles totaling $12,398. According to the Manual, for these costs to be reimbursable, the provider must demonstrate a program-related need for the vehicles, and document usage via a "vehicle usage log," which details the vehicle operator; points of destination; dates and times of travel; and the purpose of each trip. Metro Therapy officials did not maintain the required vehicle logs or any other documentation to support the program-related use of these vehicles.

Non-Personal Service Costs

For the three fiscal years ended June 30, 2011, Metro Therapy reported a total of $4.2 million in non-personal service (NPS) costs on its CFRs charged to the SEIT program. We disallowed $128,774 in NPS costs that did not comply with the guidelines in the Manual.

Expenses that Were Unnecessary, Unrelated, and/or Undocumented

The Manual requires expenses to be reasonable, necessary, and directly related to the program for which reimbursement is requested. Expenses of a personal nature, entertainment expenses, and meals are specifically excluded from reimbursement. In addition, staff travel must be documented by logs indicating dates of travel, destination, purpose, mileage, and related costs such as parking.

We sampled 1,405 transactions, totaling $200,629, and identified $62,138 of expenses that did not comply with Manual requirements. We recommend SED recover the $62,138 of ineligible expenses as follows:

- $37,132 for a non-SEIT related program located in Queens. Costs included rent, utilities, and office expenses;
- $14,001 for undocumented expenses related to staff travel for all three fiscal years, which include parking, car rental, and mileage;
- $7,701 for miscellaneous non-SEIT related expenses. For example, for fiscal year 2010-11, Metro Therapy paid $4,765 in legal fees for a consultant to review unemployment claims for non-SEIT related employees;
- $1,917 for staff recruitment services for fiscal year 2008-09 that are already provided by Select Medical, the parent company of Metro Therapy; and
- $1,387 for personal costs associated with the purchase of Long Island Ducks baseball season tickets.

Parent Company Management Fees

The Manual states that charges to programs receiving administrative services, insurance, supplies, technical consultants, etc., from a parent or related organization are reimbursable provided they are based on actual direct and indirect costs, allocated to all programs on a consistent basis and defined as reimbursable in the Manual. Furthermore, the Manual requires that reported costs must be reasonable, necessary, program related, and properly documented to be eligible for reimbursement.

As Metro Therapy's parent company, Select Medical Corporation (Select) incurred corporate headquarters expenses (e.g., legal, accounting, auditing, and human resources) on behalf of its corporate entities, such as Metro Therapy. Select allocated these expenses to Metro Therapy based on Metro Therapy's contribution to Select's consolidated net revenue. During fiscal years 2008-09 through 2010-11, Metro Therapy reported $441,250 in management fees on its CFRs. We identified $66,636 in parent company fees that did not comply with the Manual guidelines, as follows:

- $53,318 in non-allowable bonus payments, long-term incentive compensation payments and stock options that were limited only to corporate administrative staff.
- $11,713 in unreasonable travel expenses for corporate headquarters staff. Among the ineligible costs were expenses for the corporate flight department, including the salaries and fringe benefits of department personnel, gas and oil charges, landing fees, operating costs for the corporate aircraft, and the rental and lease of equipment.
- $1,605 in other non-allowable expenses, such as charitable contributions and lobbying expenses.

Recommendations

To SED:

1. Review the recommended disallowances resulting from our audit and make the appropriate adjustments to Metro Therapy's CFRs. Adjust Metro Therapy's reimbursement rates, as appropriate.

2. Work with Metro Therapy officials to help them comply with Manual provisions.

To Metro Therapy:

3. Ensure that costs reported on the annual CFRs comply with the requirements of the Manual.

Audit Scope and Methodology

We audited the support for, and the propriety of, the expenses reported on Metro Therapy's annual CFRs for the three fiscal years ended June 30, 2011. The objective of our audit was to determine whether the costs reported on Metro Therapy's CFRs were calculated properly, documented adequately, and reimbursable pursuant to the Manual.

To accomplish our objectives, we reviewed the SED Manual, Metro Therapy's CFRs, and relevant financial records for the audit period. We also interviewed Metro Therapy officials, staff, and independent auditors to obtain an understanding of their financial and business practices. In addition, we assessed a sample of reported costs to determine whether they were supported, SEIT-appropriate, and reimbursable. Our review of Metro Therapy's internal controls focused on payroll and the procurement of non-personal services.

We conducted our audit in accordance with generally accepted government auditing standards. These standards require that we plan and perform the audit to obtain sufficient, appropriate evidence to provide a reasonable basis for our findings and conclusions based on our audit objectives. We believe that the evidence obtained during our audit provides a reasonable basis for our findings and conclusions based on our audit objectives.

In addition to being the State Auditor, the Comptroller performs certain other constitutionally and statutorily mandated duties as the chief fiscal officer of New York State. These include operating the State's accounting system; preparing the State's financial statements; and approving State contracts, refunds, and other payments. In addition, the Comptroller appoints members to certain boards, commissions, and public authorities, some of whom have minority voting rights. These duties may be considered management functions for purposes of evaluating organizational independence under generally accepted government auditing standards. In our opinion, these management functions do not affect our ability to conduct independent audits of program performance.

Authority

The audit was performed pursuant 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.

Reporting Requirements

A draft copy of this report was provided to SED and Metro Therapy officials for their review and comment. Their comments were considered in preparing this final report and are attached to the end of the report.

In their response to our draft report, SED officials agreed with our recommendations and indicated that they would take certain actions to address them. Metro Therapy officials, however, disagreed with most of our report's findings. In addition, Metro Therapy included certain documentation with its response. We did not append that documentation to the report, but have retained it on file at the Office of the State Comptroller. Also, our rejoinders to certain Metro Therapy comments are included in the report's State Comptroller's Comments.

Within 90 days of the final release of this report, as required by Section 170 of the Executive Law, the Commissioner of Education shall report to the Governor, the State Comptroller, and the leaders of the Legislature and fiscal committees, advising what steps were taken to implement the recommendations contained herein, and if the recommendations were not implemented, the reasons why.

Contributors to This Report

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Vision

A team of accountability experts respected for providing information that decision makers value.

Mission

To improve government operations by conducting independent audits, reviews and evaluations of New York State and New York City taxpayer financed programs.

Exhibit

Metro Therapy, Inc.
Schedule of Submitted, Disallowed, and Allowed Program Costs
For Fiscal Years 2008-09, 2009-10, and 2010-11

Program Costs	Amount Per CFR	Amount Disallowed	Amount Allowed	Notes to Exhibit
Personal Services				
Direct Care	$2,576,296	$571,838	$2,004,458	A,F
Agency Administration	$320,903	$133,337	$187,566	A,C,E
Total Personal Services	$2,897,199	$705,175	$2,192,024	
Non-Personal Services				
Direct Care	$3,594,285	$50,540	$3,543,745	A,E
Agency Administration	$640,386	$78,234	$562,152	A,B,D,E
Total Non-Personal Services	$4,234,671	$128,774	$4,105,897	
Total Program Costs	**$7,131,870**	**$833,949**	**$6,297,921**	

Notes to Exhibit

The following Notes refer to the specific sections of SED's Reimbursable Cost Manual used to develop our recommended disallowances. We summarized the applicable sections to explain the basis for each disallowance. We provided the details supporting our recommended disallowances to SED and Metro Therapy officials during the course of our audit.

A. Section II - Costs must be reasonable, necessary, program related and sufficiently documented.
B. Section II.10 - Charges to programs receiving administrative services, insurance, supplies, technical consultants, etc., from a parent or related organization are reimbursable provided they are based on actual direct and indirect costs, allocated to all programs on a consistent basis and defined as reimbursable in the Regulations of the Commissioner of Education, the CFR Manual, or this Manual.
C. Section II.14.A.4 - The Manual states that compensation (salaries and fringe benefits) for Executive Directors should be directly compared to the regional median compensation for comparable administration job titles.
D. Section II.21.B - All personal expenses, such as personal travel expenses, laundry charges, beverage charges, gift certificates to staff and vendors, etc., are not reimbursable unless otherwise specified in the Manual.
E. Section III.1.J.2 - Vehicle use must be documented with individual vehicle logs that include at a minimum: the date and time of travel, to and from destinations, mileage between each destination, purpose of travel, and name of traveler.
F. Section III.1.M.2 - Entities operating programs must use allocation methods that are fair and reasonable, as determined by the Commissioner's fiscal representatives.

Agency Comments - SED

THE STATE EDUCATION DEPARTMENT / THE UNIVERSITY OF THE STATE OF NEW YORK / ALBANY, NY 12234

DEPUTY COMMISSIONER
Office of Performance Improvement and Management Services
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November 17, 2014

Mr. Frank Patone
Audit Director
Office of the State Comptroller
Division of State Government Accountability
110 State Street – 11th Floor
Albany, NY 12236

Dear Mr. Patone:

The following is the New York State Education Department's (Department) response to the draft audit report, (2012-S-164) of the State Education Department: Metro Therapy, Inc.

In addition to the actions that will be taken in response to the specific recommendations described below, the Department will closely examine the circumstances that led to the findings described in the audit report. This examination will include an assessment of the programmatic oversight and fiscal management employed at Metro Therapy, Inc., and will be a factor in the consideration of the continued approval of this provider and the corrective action or enforcement actions that may be warranted.

Recommendation 1: Review the recommended disallowances resulting from our audit and make the appropriate adjustments to Metro Therapy's CFRs. Adjust Metro Therapy's reimbursement rates, as appropriate.

We agree with this recommendation. The Department will review the recommended disallowances as noted in the report and make adjustments to the reported costs to recover any overpayments, as appropriate, by recalculating tuition rates.

Recommendation 2: Work with Metro Therapy officials to help them comply with Manual provisions.

We agree with this recommendation. The Department will continue to provide technical assistance, whenever requested, and will strongly recommend Metro Therapy, Inc. officials take advantage of our availability to help them better understand the standards for reimbursement, as presented in the Regulation and the Reimbursable Cost Manual (RCM). Furthermore, Consolidated Fiscal Report (CFR) training is available both in person, at six locations offered across the State, and online on the Department's webpage. The Department recommends that all individuals signing the CFR certification statements, namely Executive Directors and Certified

Public Accountants, complete this training. At the direction of the Board of Regents, the Department intends to require that this training be mandatory and will require individuals to verify that they have completed the training.

If you have any questions regarding this response, please contact Suzanne Bolling, Director of Special Education Fiscal Services at (518) 474-3227.

Sincerely,

S. Cates-Williams

Sharon Cates-Williams

c: James P. DeLorenzo
Suzanne Bolling
Maria Guzman

Agency Comments - Metro Therapy, Inc.

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†(ALSO ADMITTED IN DC)

November 21, 2014

BY EMAIL (FPatone@osc.state.ny.us)
AND FEDERAL EXPRESS

Frank Patone, Audit Director
State of New York Office of the State Comptroller
123 William Street, 21st Floor
New York, NY 10038

Re: MetroTherapy, Inc.
Your Draft Audit Report # 2012-S-164

Dear Mr. Patone:

This letter is in response to your draft audit report with respect to your audit of Metro Therapy, Inc. ("Metro Therapy"). We note at the outset that Metro Therapy previously had advised you of the reasons it disagrees with most of your proposed disallowances in its responses to your preliminary reports, dated August 21, 2013 and its response, dated December 9, 2013, to your office's requests for further information made at the exit conference.

At the outset, we wish to raise several preliminary points regarding your draft report. First, Metro Therapy does not agree that your office has authority to conduct the audit at issue under the New York State Constitution, as interpreted by the New York Court of Appeals in *Blue Cross & Blue Shield of Cent. N.Y. v McCall*, 89 N.Y.2d 160 (1996), *New York Charter Schools v. DiNapoli*, 13 N.Y.3d 120 (2009) and *Handler v. DiNapoli*, 23 N.Y.3d 239 (2014). Metro Therapy's cooperation with your audit, its prior responses to your preliminary reports and this response do not waive any of its rights to challenge your office's authority to conduct this audit or any decision to act upon it, and Metro Therapy expressly reserves all rights to do so. * Comment 1

Second, Metro Therapy objects to your listing of Reports 2011-S-13 and 2010-S-59 as "Other Related Audits/Report of Interest" in the Executive Summary of your report. Those two reports involved highly publicized findings of fraud by your office. Your draft report has not made any findings of fraud or other wrongdoing on Metro Therapy's part. Your proposed * Comment 2

*See State Comptroller's Comments, page 28

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ATTORNEYS-AT-LAW

disallowances all result from differences in interpretation as to what the Reimbursable Cost Manual ("RCM") promulgated by the New York State Education Department ("SED") requires. There is nothing "related" or similar between your draft findings with respect to Metro Therapy and your findings in those two reports. Accordingly, your references to those two other reports as "Other Related Audits/Reports of Interest" should be deleted from your report, as they create a false and prejudicial impression that similar findings have been made with respect to Metro Therapy for a reader who reads only the Executive Summary, but not the full report. There are many other reports you could have referred to which, unlike those two reports, are similar to this one, as they involve disagreements over what the RCM requires, not fraud by the audited provider.

* Comment 2

Third, we object to your description of the audit in the first sentence of the second paragraph of your draft letter transmitting the report to Dr. King and Mr. Kupferman as "our audit of the State Education Department." The audit was not an audit of the State Education Department; it was an audit of Metro Therapy. That is clear from the title of the report: "Compliance With the Reimbursable Cost Manual: Metro Therapy, Inc." It also is clear from the stated objectives of the audit "to determine whether the costs reported on Metro Therapy's CFR's were calculated properly, documented adequately and reimbursable pursuant to the Manual." It also is clear from the substance of the draft report itself, which makes clear in the "Audit Scope and Methodology" that Metro Therapy's "financial and business practices", not SED's, were examined and which throughout the draft report evaluates only Metro Therapy's practices, not SED's. Accordingly, the description in the letter should be changed to: "our audit of Metro Therapy, Inc."

* Comment 3

Fourth, your report is both legally and factually inaccurate. As will be discussed below, in several areas throughout your report you make conclusory statements about what the governing SED Manuals purportedly require or preclude without any citation to any specific provision. In fact, in several of those cases, there is no provision that supports your conclusion. As also will be discussed below, in several instances Metro Therapy disputed factual assertions in your prior preliminary reports and provided specific evidence to support Metro Therapy's contrary factual assertions. For the most part, you have ignored Metro Therapy's assertions and evidence. You simply restate your prior allegations as purported "fact", without addressing Metro Therapy's positions and evidence at all. In fact, there is no factual foundation for your positions.

* Comment 4

Fifth, we object to your characterizations throughout your report of certain costs as being "excessive" or "undocumented". Those terms are not accurate and create a misleading impression.

* Comment 5

As your recommendations, if they were incorporated into a final report and accepted by SED for rate-setting purposes, would have a significant fiscal impact on Metro Therapy's

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ATTORNEYS-AT-LAW

program, it is important for us, on behalf of Metro Therapy, to clearly state Metro Therapy's positions and cite accurately the applicable Manual provisions and facts that support them.

We now will address the specific cost disallowances proposed in your draft report.

"Excessive" Allocation of Personal Service Expenses

Your largest disallowance of $ 357,063, relating to the allocation to the SEIT program of salary and fringe benefits of 26 employees who worked in multiple Metro Therapy programs, is based upon your unsupported conclusion that Metro Therapy's methodologies were not fair or reasonable or in accordance with SED's governing manuals. With all due respect, your conclusion is incorrect.

At the outset, there are several key legal conclusions you state in summary fashion, without any citation to the governing SED Manuals, that are either incorrect, or are correct but do not support your positions.

First, you state that: "The time and attendance of individuals whose salaries are charged to the SEIT Program must be documented by an official time and attendance record or similar document." This is not entirely accurate. The RCM does require maintenance of an office time or attendance record or similar document for staff to validate payroll, but it does not require a separate official time or attendance record specifically for the time the employee worked for the SEIT program. You have not cited any such provision in your draft report, and there is none. Section III (General Requirements), Part I (Record Keeping), Sub-Part B (Time Distribution) of the RCM states that payroll records based on actual time or time studies are acceptable documentation. However, the RCM also expressly recognizes that if hours of service cannot be calculated or a time study cannot be completed, "alternate methods that are equitable and conform to generally accepted accounting principles may be utilized." For these alternative allocation methods, the RCM does not specify payroll records or any other "official" records or any other particular kind of records, as required documentation for the allocation of expenses among multiple programs, and the CFR Manual does utilize units of service as an example.

* Comment 6

Your draft report goes on to say that: "The salaries of individuals who do not work solely for the SEIT Program must be allocated based on their actual work effort or other allocation methods that are fair and reasonable, as determined by SED's fiscal representative." Metro Therapy agrees with this statement, but it does not support your conclusions in any way. The RCM standard is that the allocation methodology must be "equitable," which we would equate with "fair and reasonable," and in accordance with generally accepted accounting principles ("GAAP"). As we explained in our response to your preliminary report, both Metro Therapy's original methodology and the alternative methodology presented in Metro Therapy's response to your preliminary reports meet this standard; they are equitable and they conform to GAAP.

* Comments 6, 7

SHEBITZ BERMAN COHEN & DELFORTE, P.C.
ATTORNEYS-AT-LAW

Frank Patone
November 21, 2014
Page 4 of 12

Metro Therapy's original allocation methodology was based upon job descriptions and the current Executive Director's (previously serving as the Assistant Executive Director) professional estimation, based upon his intimate knowledge of the programs and what these employees did. The allocation of employees' time based upon the knowledge and professional estimation of the Executive Director is equitable and was opined on by Metro Therapy's independent auditors to conform to GAAP. Metro Therapy received an unqualified opinion that its financial statements and CFR report were subjected to generally accepted auditing standards (GAAS) and were prepared in accordance with GAAP each year. Throughout the process of the independent audits, walkthroughs were performed to allow the auditors to gain a clear understanding of the employees' functions, job descriptions and contracts were reviewed, and payroll records and licensing requirements were tested. In addition, year over year comparison reviews were completed and analytical procedures were applied to determine the reasonableness of the allocation.

* Comment 7

In addition, each year Metro Therapy's CFR was examined by SED's Rate Setting Unit, which never raised any concerns or made any disallowances relating to Metro Therapy's salary allocations for these employees or any other staff who worked in multiple programs. Thus, the Rate Setting Unit, which is SED's "fiscal representative" for these matters, expressed no concerns about Metro Therapy's allocation methodology and by implication determined that its allocation methodology was fair and reasonable.

* Comment 8

In addition, as you note, in response to your preliminary reports Metro Therapy developed a more detailed and precise alternative allocation methodology. It did so because it recognized that whether or not your office was correct, your office was not satisfied with allocations based upon the Executive Director's estimation of what percentage of time employees had spent working in the different programs. It presented this methodology in its response to your preliminary reports and provided you its workpapers and other supporting documentation underlying the methodology thereafter.

This alternative methodology developed 17 different allocation classifications, grouping all employees who worked in the same combination of programs in the same allocation classification. Employees were classified into the 17 allocation categories based upon job descriptions and management's knowledge of in which programs each employee worked if the job description was not self-evident. After your office expressed concern about the determination of which employees belonged in which classification, Metro Therapy also obtained affidavits from the 12 of the 26 employees you had re-classified to CFR-3 who still worked at Metro Therapy stating in which programs they worked. Metro Therapy applied this methodology to all of its employees who worked in multiple programs, not just the 26 your office proposed to re-classify, as for consistency it was necessary to apply the same methodology to all employees working in multiple programs. Metro Therapy then determined allocation percentages among the programs for each of the 17 categories, based upon units of services. The net result of this was

* Comment 9

presented in Metro Therapy's response to your preliminary reports and actually resulted in an overall allocation of expenses more favorable to Metro Therapy than the allocations in its CFR.

This alternative allocation methodology, like Metro Therapy's original allocation methodology, is based upon the statement in the RCM that "if hours of service or units of service cannot be calculated or a time study cannot be completed, then alternative methods that are equitable and conform to generally acceptable accounting principles may be utilized." This methodology is both reasonable and equitable and conforms to GAAP. In fact, it was developed in part in response to your office's own statement in your June 3, 2013 preliminary report that "if an allocation based on hours is not possible then an alternative methodology based on a time study *or units of service* will be accepted." (Emphasis added.) Moreover, it is both accurate and well documented, as job descriptions and affidavits support the employee classifications and the units of service of each program are fully documented.

* Comment 10

You further state that "to calculate a fair and reasonable allocation for the 26 employees, we used the ratio value method (as prescribed by the Manual.)" This statement is incorrect because there is nothing in the RCM or the CFR Claiming and Reporting Manual that prescribes or even allows use of the ratio value method for employees who work for multiple programs rather than in overall agency administration. To allocate program administrative costs that are directly attributable to a specific program or site (for example, personal services and fringe benefits of Billing Personnel, Program Director, Program Coordinator, etc.) to agency administration and use ratio value is neither accurate nor proper. The RCM expressly states in Section III, Part I, Sub-part M that "salaries of employees who perform tasks for multiple programs must be allocated across to all programs and/or entities benefitted by the expenditure." Ratio value does not do that because it allocates across all programs, not just those in which the employee worked. It is not accurate or fair or reasonable to allocate salaries of individuals whose work does not benefit all programs across all programs, via ratio value. Using ratio value distorts the costs of each program, because it allocates costs to programs in which the employee does not work. In contrast, Metro Therapy's alternative methodology properly, and more accurately, allocates their salaries and benefits only to the programs in which they worked, as the RCM expressly requires. Your allocation of these costs to CFR-3 also directly contradicts the mandates of the CFR Manual, Appendix I that "**agency administration costs <u>do</u> <u>not</u> include program/site specific costs or program administration costs**" (emphasis in original) and that "**all attempts should be made to directly charge an expense** to the appropriate cost center" (emphasis in original).

* Comment 11

Your draft report states several purported reasons why your office does not accept Metro Therapy's alternative allocation methodology as fair and reasonable. Your reasons all are incorrect. First, your draft report states that: "We also determined that Metro Therapy's units of service methodology was not fair and reasonable because it did not comply with the CFR Manual. The CFR Manual recommends "units of service" for programs associated with the

SHEBITZ BERMAN COHEN & DELFORTE, P.C.
ATTORNEYS-AT-LAW

Office of Mental Health and the Office of People with Developmental Disabilities – not the SEIT program." Your unsupported conclusion is incorrect. The CFR Manual for the audited years did not indicate in any way that allocation by units of service was not appropriate for SEIT programs. As stated above, the only RCM requirements are that the methodology be equitable and conform to generally accepted accounting principles. Metro Therapy's methodology does that. As explained above, it is your re-classification of these employees to CFR-3 that ignores the requirements of the CFR Manual, Appendix I.

* Comment 12

More specifically, the CFR Manual, Appendix J for the audited years gave three examples for staff shared by multiple programs, one of which is a shared workshop allocation (units of service). While the units of service example was a sheltered workshop program shared by OMH and OPWDD, and Appendix J stated that units of service "must" be used for such programs, nothing in Appendix J stated, or even remotely suggested, that that is the only context in which an allocation based upon units of service could be used. Metro Therapy's CFR consultant, who is highly respected and advises dozens of programs based in the New York City metropolitan area, and its counsel interpreted the Manual to allow a methodology based on units of service in this context. Indeed, so did your office in your preliminary report, dated June 3, 2013, quoted above, which expressly describes "units of service" as an acceptable methodology. Your office now is reversing its own interpretation of the RCM and CFR Manual that was in place during the three audited years.

* Comment 13

The version of the CFR Manual that your draft report says "clarified" this point changed the CFR Manual rules. That provision was not published until May 2013 and was applicable commencing with the 2012-13 year, not to prior years. As you are well aware, changes in the CFR Manual cannot be applied retroactively to prior years. Again, there is no reason why anybody would read the 2008-09, 2009-10 and 2010-11 Manuals as precluding the units of service methodology, just as your office did not in your own prior preliminary report.

* Comment 13

Your draft further states that: "This methodology differs from the ratio value method in that it puts an emphasis on the number of services provided rather than the dollar amount of operating costs for Metro Therapy's programs. As a result, the unit of service methodology allocated more costs to the SEIT Program...Since both programs use a different scale (e.g., 30 minute sessions vs. 60 minute sessions) to calculate each unit, this resulted in a greater allocation rate to the SEIT program." This statement, and the inference that it caused the allocation to SEIT to be overstated because SEIT units purportedly were shorter than units from other programs, is untrue. Your draft report assumes incorrectly that all early intervention service units are 60 minutes. That is not true, as your statement appears not to recognize units such as service coordination units that are much shorter. The minimum time for a unit reflected in the billing system is 5 minutes. Therefore these units would not be all 60 minutes. Your draft report extracts the maximum time for a billable visit in early intervention and states that all early intervention units are of that duration, which is simply untrue.

* Comment 14

SHEBITZ BERMAN COHEN & DELFORTE, P.C.
ATTORNEYS-AT-LAW

Metro Therapy has responded previously to time for your concern about weighting of units and explained that it calculated the average length of time for units for all programs and found that the average was close to the 30 minutes, so that no weighting was necessary. Metro Therapy offered to provide your office extensive zip files containing the base data from which these numbers were derived. The files are very voluminous and contain over 300,000 line items for each year. The units for each program were determined from units reported in Metro Therapy's Metwin billing system. The Metwin billing system is the support for the billing and corresponding units generated by each agency program. The files were also made available during your field work and sample data from those files were extracted. Metro Therapy has determined that the majority of the units for each respective program were actually 30 minutes and that the average duration of units for each year was close to 30 minutes as follows:

Year 08-09 Duration: 3,686,046 Minutes/101,491 Units = Average 36.32 Minutes;
Year 09-10 Duration: 3,238,597 Minutes/92,002 Units = Average 35.20 Minutes;
Year 10-11 Duration: 2,817,404 Minutes/77,630 Units = Average 36.29 Minutes.

The difference between these averages and the 30-minute SEIT units is not material. Accordingly, it is appropriate to treat the units equally for allocation purposes as Metro Therapy did, and no alternative weighting of the units was required.

In addition to the zip files containing the base units data, Metro Therapy also has summary sheets listing each unit billing entry considered in calculating these averages. These sheets are voluminous (hundreds of pages for each year) but can be put on a flash drive or zip drive if you wish to review them.

Your draft report further states that: "Subsequent to our audit, Metro Therapy officials provided us with affidavits for nine current employees noting the programs they worked on. However, we found that in six of the nine instances, the programs to which the employees were subsequently allocated contradicted what was reported in the CFRs." Your statements are both inaccurate and irrelevant.

Metro Therapy provided you 12 affidavits, not nine. Of the six that "contradicted what was reported in the CFR's", one (L.K.) was irrelevant because in the alternative methodology Metro Therapy classified her to CFR-3, as you did. The other five affidavits did contain minor errors, as the employees apparently did not review them as carefully as they perhaps should have before signing them and did not detect the errors. However, they have reviewed them carefully now, and we are submitting to you herewith affidavits from all five employees correcting the errors. The corrected affidavits are consistent with the alternative methodology allocations. We also note that one of these five employees (P.C.) no longer works for Metro Therapy.

* Comment 15

* Comment 15

* Comment 15

* Comment 16

* Comment 17

SHEBITZ BERMAN COHEN & DELFORTE, P.C.
ATTORNEYS-AT-LAW

Frank Patone
November 21, 2014
Page 8 of 12

We also note that the affidavits are not necessary documentation in any event. The job descriptions used in determining which programs employees worked in were sufficient documentation. Moreover, the errors in the affidavits mostly omitted programs in which the employees worked. If those affidavits were correct, the correct allocation to SEIT would have been greater than the allocations made by Metro Therapy, which would have been more favorable to Metro Therapy. Therefore, it should be obvious that the omissions were inadvertent errors.

* Comment 18

Finally, before leaving this subject, we object to the wording "excessive" allocations in the title of this section of your draft report, as it implies a deliberate overstatement. Even if the positions in your draft report were correct, which for the above-stated reasons they are not, the differences between your position and Metro Therapy's allocations would not reflect "excessive" allocations on Metro Therapy's part. They would reflect a difference of opinion as to what allocation methodologies are acceptable under SED's governing Manuals.

* Comment 19

Non-Program Related Personal Service Expenses

In this section your draft report asserts that five employees with a total expense of $185,512 did not provide services to the SEIT program. Metro Therapy previously responded to your preliminary report and agreed that two of the employees did not work in the SEIT program in the years 2009-10 and 2010-11. Allocating part of their salaries to SEIT was an oversight. We note, however, that the $27,681 for fringe benefits for these employees disallowed in your preliminary report now has changed to $34,133 in your draft report. We do not understand the basis for that change.

* Comment 20

Metro Therapy vehemently disputes your findings regarding the other three employees. In this regard, Metro Therapy provided you written explanations of what these employees did for the SEIT program and documentation reflecting their work for the SEIT program. Metro Therapy also provided you affidavits from all three employees stating what programs they worked in (SEIT and Related Services for two of them and SEIT, Related Services and Preschool Evaluations for the other). You have not addressed any of that evidence at all in your draft report. You have ignored it altogether.

* Comment 21

Your draft report states that your conclusion is based on your "interviews" with these employees and your "review of personnel records." As we explained in Metro Therapy's response to your preliminary report, these employees advised management that you asked them what percentage of their time they spent on SEIT work and they said they did not know. That is a very different thing from saying they did not work on the SEIT program at all, which is how you are misconstruing their responses. You provide no explanation as to why you maintain your position despite this and despite the affidavits and other documentation showing that your misinterpretation of what they said is untrue. You also do not identify what "personnel records"

* Comment 21

SHEBITZ BERMAN COHEN & DELFORTE, P.C.
ATTORNEYS-AT-LAW

you looked at or what you would have expected to find in those records regarding SEIT work but did not, or why you disregard the documentation of SEIT work for these employees that Metro Therapy provided you in December 2013. With all due respect, your conclusion is completely factually unsupported and unfounded.

* Comment 21

Excessive Executive Compensation

In this section your draft report states that the RCM requires that compensation paid to a provider's Executive Director and an Assistant Executive Director may not exceed the regional median compensation paid to comparable personnel in public schools for similar work and hours of employment.

We are in agreement that the RCM states the above. However, as you well know, no adjustment is necessary because the SED's Rate Setting Unit adjusts the reimbursement rates (for cost based programs only) by the excess of reimbursable salaries (up to the median level promulgated each year) each year when it determines providers' tuition rates. Therefore this adjustment already is reflected in Metro Therapy's tuition rates, and there is no reason for you to mention this at all in your report.

* Comment 22

If you do not omit this section altogether in your final report, as you should given that SED already made the adjustment and Metro Therapy followed all CFR reporting rules, we also object to your terminology stating that the executive compensation was "excessive." The SED methodology does not limit the amount that an agency can pay an executive holding the above positions. There is no cap on compensation paid, only a maximum that will be reimbursed in a cost based program (SEIT). Executive compensation is an amount that is decided upon by each agency's governing board. There is nothing unusual or inappropriate about an agency's paying its executives more than the reimbursement limits. The CFR Manual requires the provider to report the full compensation paid, as Metro Therapy did, as SED makes the required adjustment, as it did in this case.

* Comment 22

Similarly, we also object to your report's misleading terminology stating that Metro Therapy "charged" SEIT each respective year for the Executive Director and Assistant Executive Director's compensation, suggesting that Metro Therapy made a discretionary decision as to how much to allocate to the SEIT program. This is inaccurate. These positions are charged to Agency Administration (per job function) and must be allocated per the methodology via ratio value. Metro Therapy had no latitude in "charging" the programs.

* Comment 23

"Unsupported" Reimbursements for Vehicle Expenses

While we are not objecting to the disallowance, we are objecting to the statement in your draft report that Metro Therapy officials did not maintain any other documentation to support the

SHEBITZ BERMAN COHEN & DELFORTE, P.C.
ATTORNEYS-AT-LAW

Frank Patone
November 21, 2014
Page 10 of 12

program-related use of these vehicles. Metro Therapy has documentation and approvals to support expenditures, but did not document each specific usage and program destination to support the invoices as referenced and required in the RCM manual. This was not a lack of "any documentation" as you state. We also note that this is another instance where the amount of your disallowance has increased from the preliminary report: from $11,061 to $12,398. We are not aware of the basis for this change.

*
Comment
24

Non-Personal Service Expenses

Expenses that Were Unnecessary, Unrelated, and/or Undocumented

Metro Therapy agrees with the statement that the Manual requires expenses to be reasonable, necessary and directly related to the program for which reimbursement is requested. We will comment on each item below which your draft report references:

- Non-SEIT related program expenses located in Queens. As indicated earlier, the SEIT program did not begin billing in that office until a subsequent year. This was an oversight in allocation of expenses and has been corrected. However, we note that in your prior preliminary report, the amount of these expenses was stated as $27,681. Metro Therapy does not understand how you now determined that they are $37,132.

*
Comment
20

- Undocumented expenses related to staff travel. These expenses were not "undocumented" and we object to your use of that term. As with the vehicle expenses discussed above, Metro Therapy has documentation and approvals to support these expenditures, but it admittedly did not document each specific usage and program destination to support the invoices. Thus, while these expenses may not have been supported by all documentation required by the RCM, they were not "undocumented." Also, in your prior preliminary report the amount of your disallowance was $9,421. Metro Therapy does not understand how you now determined it to be $14,001.

*
Comment
25

- Staff Recruitment Expenses: Metro Therapy disagrees with this disallowance. As we indicated in Metro Therapy's prior response to your preliminary report, these expenses were local, not home office expenses provided by Metro Therapy's parent company, and Metro Therapy found no duplication of these expenses and services provided by its parent. You have provided no explanation or documentation of why you believe that these expenses duplicated its parent's services, despite Metro Therapy's direct request for the same in its response to your preliminary report.

*
Comment
26

SHEBITZ BERMAN COHEN & DELFORTE, P.C.
ATTORNEYS-AT-LAW

- Personal costs associated with purchase of Long Island Ducks baseball season tickets. Metro Therapy does not dispute your disallowance, but we note that this cost was used for programmatic purposes for the children.

Parent Company Fees

Metro Therapy does not agree with your proposed disallowances as stated below:

- Non-allowable bonus payments. Metro Therapy does not agree with your determination that $53,318 (an average per year over the three audited years of $17,773) of bonus payments, long-term incentive compensation and stock options were not allowable because they purportedly were limited to administrative staff. We agree that the RCM states in the years covered by the audit that bonus compensation restricted to only administrative staff is not reimbursable. However, your finding that Select Medical Corporation's bonuses were restricted to administrative staff is incorrect. In the documentation provided by your office to Metro Therapy, you grouped the employees as "administrative" without explanation, although we assume it is because they were employed by Select Medical. The amounts identified as non-allowable bonus payments were not limited only to administrative staff, rather, they did in fact include payments to clinicians. By way of example, seven of Select Medical's Clinical Compliance and Audit Department employees who received bonuses are clinicians performing tasks which, if they were reported in the CFR, would be classified under a clinical code, not an administrative code. An organizational chart of Select Medical's Medical Compliance and Audit Services Department, with these seven employees circled, is submitted herewith. Job descriptions for these employees also can be provided if you wish to review them.

  We also note that you are considering Select Medical's bonuses in isolation from Metro Therapy, the audited company. Metro Therapy's own bonuses included non-administrative personnel, so that even if Select Medical's bonuses were restricted to administrative staff (which they were not), the Select Medical bonuses would be allowable because you are considering them as Metro Therapy bonuses, and Metro Therapy's bonuses did include non-administrative staff.

* Comment 27

* Comment 28

- "Unreasonable" Travel and purportedly unnecessary "Entertainment" related costs for corporate headquarters. Metro Therapy disagrees with your disallowances of $11,713 (over a three-year period an average of $3,904 per year) as "unnecessary" travel/entertainment related expenses for corporate headquarters staff. We disagree with your proposed disallowance and object to the terminology "unreasonable" and "entertainment." The costs were not for entertainment and were not unreasonable. The costs were incurred for cost efficient business purposes. Select Medical is a leader in the

SHEBITZ BERMAN COHEN & DELFORTE, P.C.
ATTORNEYS-AT-LAW

Frank Patone
November 21, 2014
Page 12 of 12

health care industry. In addition to providing medical rehabilitation services on a contract basis at schools, nursing homes, assisted living, and other facilities, Select Medical operates 113 long-term acute care hospitals and 16 acute medical rehabilitation hospitals in 28 states. Select Medical also operates approximately 1,023 outpatient rehabilitation clinics in 23 states and the District of Columbia. As such, Select Medical maintains a Flight Department which is utilized for travel related to any of its operating entities, of which Metro Therapy is one, in the course of business. Use of the Flight Department is not limited only to corporate staff. Utilization of the corporate Flight Department is controlled and approved based upon cost efficiencies when numerous individuals are required to be in a certain area at the same or similar time, need for immediate travel to a Select Medical owned or managed site, etc. Passengers may include any persons employed by Select Medical or any of its operating entities. These costs were not incurred for entertainment; they were for business travel, and they were not unreasonable or unnecessary. Select Medical does this because it is the most cost-effective way to manage necessary business travel for its personnel.

*
Comment
29

We have not analyzed or addressed your additional proposed disallowances of $1,605 (an average of $535 per audited year) of "other non-allowable expenses" that was presented for the first time in your draft report, as the amounts are immaterial and it would not be cost-effective to do so.

Conclusion

Metro Therapy thanks you for your consideration of its prior comments on your preliminary report and thanks you in advance for your anticipated careful consideration of this response. We are confident that you will modify your draft report to take account of this response.

Very truly yours,

Frederick J. Berman

Frederick J. Berman

FJB:jp

State Comptroller's Comments

1. The State Comptroller's legal authority to audit the State Education Department and its authorized special education providers is expressly cited on page 9 of our report. Further, this legal authority has been affirmed by the State Supreme Court.
2. Our report neither asserts nor implies that the findings derived through our audit of Metro Therapy were the same as the findings detailed in the Other Related Audits/Reports of Interest (or vice-versa).
3. Our audit was limited to the CFR submitted by Metro Therapy to the State Education Department, pursuant to the Department's tuition reimbursement rate setting process. Further, we did not audit Metro Therapy's general purpose financial statements.
4. We maintain that our report is both factually and legally correct. As prescribed by the Reimbursable Cost Manual, the regulatory references for our findings are detailed in the report's Notes to Exhibit. Further, we did not ignore any evidence or information provided by Metro Therapy. As such, we maintain that the evidence obtained during the audit provides a reasonable basis for our findings and conclusions.
5. The Manual sets forth the documentation requirements for all CFR reported costs. Based on our reviews of the available documentation, certain claimed costs were either undocumented or excessive.
6. For the disallowed payroll costs in question, Metro Therapy had neither sufficient records of actual time worked by employees (for example, time and attendance sheets) nor time studies to support the costs claimed. Further, Metro Therapy did not provide sufficient evidence of alternative allocation methods that were equitable and conformed to generally accepted accounting principles.
7. The Executive Director's "professional estimation" does not constitute a fair and reasonable salary allocation method consistent with the provisions of the Manual. Moreover, as detailed in our report, we used the ratio value method (as prescribed by the Manual) to properly allocate the personal service costs in question and determine any amounts that should be disallowed. Further, the independent auditor's opinion does not change the fact that Metro Therapy did not properly allocate certain personal service costs to the audited programs.
8. SED generally does not require providers to submit documentation of their allocation methodologies or their actual allocation calculations when they submit their CFRs. Thus, SED fiscal representatives do not routinely critique the providers' allocation methodologies and calculations. As such, it should come as no surprise that SED fiscal representatives "expressed no concerns" about Metro Therapy's allocations.
9. The use of the units of service methodology to allocate costs is problematic when the durations of services (session time lengths) vary among programs. For example, certain programs use 30-minute sessions (or units of service) while other programs use 60-minute sessions (or units). Thus, units of service was not the prescribed methodology for allocating direct care salaries among multiple special education programs. SED fiscal representatives advised Metro Therapy's CFR consultant of this. Further, as detailed in the report, the statements in the employee affidavits were not adequately supported by documentation. In addition, the affidavits were not contemporaneous with the audit period, as they were

prepared pursuant to our audit fieldwork (and nearly two years after the period ended). Consequently, we place limited reliance on such documents.

10. The statement Metro Therapy references from the preliminary audit finding was not correct. More importantly, because such findings are "preliminary" in nature, they are subject to revision and correction, as warranted. Thus, we made the requisite corrections to our draft and final reports. Further, as noted previously, the units of service method is not the prescribed method for allocating salaries to SEIT programs. Again, SED fiscal representatives advised Metro Therapy of this.
11. We used the ratio value method to allocate the compensation of the individuals in question because Metro Therapy was unable to document the amounts of time the employees' worked for the various programs to which they were assigned. As previously noted, the ratio value method is the method prescribed by the Manual under such circumstances, as existed at Metro Therapy.
12. As previously noted, units of service was not the prescribed method for allocating the salaries of direct care staff to the SEIT program. Metro Therapy ostensibly acknowledges this in its response, noting that the Manual did not indicate that the units of service method was not appropriate (as opposed to an affirmative statement that units of service was acceptable). Moreover, Metro Therapy's assertion that the Manual only requires methodologies to be equitable and consistent with GAAP is misleading. As previously noted, the Manual also prescribes the ratio value method to allocate costs under the circumstances that existed at Metro Therapy. We reiterate that SED informed Metro Therapy's consultant that the units of service methodology was not an acceptable cost allocation methodology for SEIT.
13. We believe the determination in question was not contemporaneous with the audit period and, moreover, was in error. Also, please see comments nos. 10 and 11.
14. We noted that 30-minute sessions (or units of service) and 60-minute sessions were commonly provided through Metro Therapy's various programs. We cited these as examples of the differences in session durations that compromise the reliability of the units of service method to allocate costs among programs. Also, contrary to Metro Therapy's assertion, we did not assume that all early intervention service units were 60 minutes long. Moreover, we acknowledge that service unit durations can vary significantly for particular services, as Metro Therapy also recognizes in its response. This explains why the unit of service methodology is not appropriate for allocating the personal service costs in question for the SEIT program.
15. The information in question was not provided to us during the audit, and as such, we are not able to attest to its reliability. Further, even if the data is reliable, we do not agree that the differences in average session durations are not material. In fact, the overall average unit durations (ranging from 35.2 minutes to 36.32 minutes) cited by Metro Therapy during the audit period are materially different (by about 20 percent) from the standard 30 minutes for SEIT sessions. This degree of variation further explains why Metro Therapy was advised that the unit of service methodology was not appropriate for allocating the personal service costs in question.
16. Our statements regarding the six individuals cited by Metro Therapy are accurate and adequately supported.
17. We reference affidavits for nine current employees (instead of 12) because the three

other employees in question did not provide services to the SEIT program. Moreover, as previously noted, Metro Therapy could not provide adequate documentary support for pertinent statements made in the affidavits. Our references to the affidavits are relevant with respect to their existence and deficiency as supporting documentation for claimed personal service costs.

18. In and of themselves, job descriptions do not provide sufficient (if any) evidence of the amounts of time an employee, who works for multiple programs, actually works on each individual program.
19. We use the term “excessive” to mean more than the proper amount. It does not indicate explicitly or implicitly whether or not any discrepancy was deliberate.
20. Pursuant to Metro Therapy’s response, we have provided Metro Therapy officials with detailed information pertaining to the $34,133 recommended personal service disallowance, the $37,132 non-personal service disallowance, and the $14,001 travel-related disallowance.
21. Based on the employees’ titles, information we obtained from interviewing them, and the availability and/or absence of required supporting documentation, we concluded that the employees did not provide any SEIT-related services.
22. We acknowledge SED’s annual review of executive salary payments as part of its annual desk review of provider CFRs. As part of their routine follow up on our audit recommendations, SED officials reconcile our recommended disallowances to their previous disallowances, if any, and follow up as appropriate.
23. The report’s terminology is correct, and it details the portion of excessive executive salaries charged to the SEIT program.
24. Metro Therapy did not provide the required documentation to support charges for vehicle use. Also, pursuant to their response, we have provided Metro Therapy officials with detailed information pertaining to the disallowance.
25. The travel expenses in question, as related to the SEIT program audited, were undocumented. Also, see Comment no. 20 regarding the travel-related disallowance of $14,001.
26. We maintain that the amount in question is ineligible for reimbursement and have revised the report’s wording to clarify the basis for disallowance.
27. The employees cited by Metro Therapy were assigned to the central office to perform clinical compliance reviews, irrespective of their job titles. Further, Metro Therapy provided no evidence that these employees provided direct care services to children. As such, we maintain that the employees performed ostensibly administrative functions, and therefore, the bonuses in question were ineligible for reimbursement.
28. Metro Therapy conflates the bonus programs of two separate and distinct entities in support of the assertion that certain bonuses were not limited to administrative personnel. However, the fact remains that the programs in question were separate, and the bonuses paid to Select Medical employees were not eligible for reimbursement. Also, see comment no. 27.
29. The terms “travel and entertainment” relate to the expense category used by Select Medical for the charges in question. Based on the available documentation, these charges were unnecessary and unreasonable as they pertain to Metro Therapy’s SEIT program. Also, we deleted the term “entertainment” from the final report.