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

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Division of State Government Accountability

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# **Administration of Contingency Contracts**

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## **Office for People With Developmental Disabilities**

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# Executive Summary

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## Purpose

To determine whether New York State Office for People With Developmental Disabilities (OPWDD) contingency contract payments, made during the period April 1, 2007, through September 30, 2010, were supported, appropriate, and in compliance with Community Residence Program guidelines.

## Background

OPWDD's Community Residences Program (CR Program) is designed to provide a home environment setting where individuals with developmental disabilities (residents) can acquire the skills necessary to live as independently as possible. OPWDD uses third-party Service Providers (Providers) to provide day-to-day CR Program services. The CR Program is funded primarily by Medicaid. There is no appeal mechanism for the rates approved for the CR Program. As such, OPWDD established a process for "contingency contracts." In essence, OPWDD will reimburse Providers for any CR Program deficits they incur as a result of deficient Medicaid reimbursements. OPWDD officials developed CR Program guidelines establishing the circumstances under which contingency contracts are appropriate, and time frames Providers should follow when submitting their requests for contingency contract monies. During the period April 1, 2007, to May 10, 2010, OPWDD approved 88 contingency contracts corresponding to \$20.7 million in associated payments.

## Key Findings

- OPWDD officials processed Provider requests for almost \$1 million in contingency contract payments that were submitted significantly beyond allowable time frames.
- Supporting documentation for these requested reimbursements was not available for verification.
- More than \$100,000 in reimbursed expenses incurred during years for which records were available were either unsupported or inappropriate.
- In addition, OPWDD officials do not perform their own verification of Provider CR Program costs.

## Key Recommendations

- Recoup \$16,215 and \$92,573, respectively, from Catholic Charities Neighborhood Services (CCNS) and United Cerebral Palsy of New York City (UCP) for the identified unsupported and inappropriate payments.
- Discontinue contingency contract payments immediately to Providers that submit their requests after the allowable time frames.
- To ensure that deficit expenses are supported and CR Program-appropriate, perform periodic audits of the CFR (Consolidated Fiscal Report) data submitted by Providers.

## Other Related Audits/Reports of Interest

[OASAS Phase Piggy Back \(2009-R-1\)](#)

[OASAS Chemical Dependency Program Payments \(2007-S-60\)](#)

**State of New York  
Office of the State Comptroller  
Division of State Governmental Accountability**

May 31, 2012

Courtney Burke  
Commissioner  
NYS Office for People With Developmental Disabilities  
44 Holland Avenue  
Albany, NY 11229

Dear Ms. Burke:

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 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 OPWDD's *Administration of Contingency Contracts*. The audit was performed pursuant to the State Comptroller's authority under 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 report, please feel free to contact us.

Respectfully submitted,

*Office of the State Comptroller  
Division of State Government Accountability*

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This report is also available on our website at: [www.osc.state.ny.us](http://www.osc.state.ny.us)

## Background

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The mission of the New York State Office for People with Developmental Disabilities (OPWDD) is to help people with developmental disabilities live richer lives. One example of the services provided by OPWDD is the Community Residence Program (CR Program). The CR Program is designed to provide a home environment setting where individuals with developmental disabilities (residents) can acquire the skills necessary to live as independently as possible. OPWDD uses independent third-party Service Providers (Providers) to provide day-to-day CR Program services. There are two types of CR Programs: supervised, where Provider staff is available around the clock to provide services to the CR Program resident(s); and supportive, where Provider staff is on site or available based on the specific support needs of the CR Program resident(s).

CR Programs are funded primarily by Medicaid. The Medicaid reimbursement rates for CR Program residents are established by OPWDD and vary based on geographic location and Program needs. While most Providers in other OPWDD-sponsored programs are allowed to appeal the established reimbursement rates, there is no appeal mechanism for the rates approved for the CR Program if they prove to be insufficient to cover costs. As such, OPWDD has established a process for “contingency contracts.” In essence, OPWDD agrees to reimburse Providers for any CR Program deficits they incur as a result of deficient Medicaid reimbursements. Contingency contracts are also available for Providers that transport CR Program residents to and from day treatment programs.

Providers are required to file an annual Consolidated Fiscal Report (CFR) and certified financial statements with OPWDD to report their CR Program-related revenues and expenses. The CFRs must also be certified by the Provider’s independent auditor and are used by OPWDD to determine whether the Providers’ claims for contingency contract monies are warranted.

OPWDD officials have developed CR Program guidelines to establish the circumstances under which contingency contracts are appropriate, as well as time frames Providers must follow when submitting their requests for contingency contract monies.

During the period April 1, 2007, to May 10, 2010, OPWDD approved 88 contingency contracts corresponding to \$20.7 million in associated payments.

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## Audit Findings and Recommendations

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We found that OPWDD officials accepted and processed Provider requests for almost \$1 million dollars in contingency contract payments that were submitted significantly beyond allowable time frames. In these cases, supporting documentation for requested reimbursements was not available for verification. In addition, OPWDD officials do not perform their own verification of Provider CR Program costs. We found several expense items reported on Provider CFRs that are either unsupported or unrelated to CR Program purposes.

### Program Management

As the contingency contract-awarding agency, OPWDD has the responsibility to ensure that Provider requests for contingency contract monies are submitted within the stipulated time frame, and that the deficit expenditures reported by Providers are supported and CR Program-appropriate.

According to CR Program guidelines, requests for contingency contract monies must be submitted to OPWDD no later than one year after the end of the year for which the monies are requested. Thus, if a Provider were requesting contingency contract monies for the CR Program year ended June 30, 2007, the associated request for a contingency contract was to be submitted to OPWDD no later than June 30, 2008.

According to our analysis of contingency contract payments to our two sampled Providers (named below) during the audit period, five of the requests for contract payments were submitted by the Provider after the allowable time frames. The related payments totaled \$910,851. In some cases, these payment requests were submitted up to six years after the CR Program year for which funds were requested. As such, many of the records that should support the Provider's reported deficits were discarded and not available for audit – even though the actual contingency contract payments were made within the past three to four years. There is no assurance that these payments should have been made.

Instead of performing periodic detailed audits of Providers to determine the integrity of their reported CR Program deficits, OPWDD performs cursory desk reviews of CFRs and relies on the Providers' certifications of those documents. However, our discussions with the independent auditor engaged by one of the sampled Providers found that the auditors do not examine Provider CFRs by program. Instead, they do an across-the-board review of the Provider's expenses – no matter what the source of funding. They do not perform a detailed review of expenses reported for individual programs or an assessment of contract compliance unless specifically engaged to do so. Thus, OPWDD does not actually receive independent verification of the support and propriety of the CR Program deficits reported by Providers.

Providers may request contingency contract monies for increased personal service costs they incurred to meet the needs of their CR Program residents. For example, a resident may need to be tended by someone with specialized skills, or more staff might be needed to provide the

proper care level to residents. We found that when such requests are made, OPWDD does not require Providers to show proof from medical professionals that CR Program clients need a higher level of care. Instead, OPWDD is satisfied with the explanations provided by the non-medical administrative staff at the Providers.

### **Catholic Charities Neighborhood Services, Inc. (CCNS)**

Each Provider is responsible for maintaining documentation to support the services it provides and the propriety of its CR Program expenses. CCNS received four contingency contract payments for the four fiscal years ended June 30, 2008, totaling \$7.2 million. We selected a sample of 10 personal service expenses totaling \$1.3 million, and 86 non-personal service expense items totaling \$207,580, to determine whether each was supported and CR Program-appropriate. We found that all of the sampled personal service items were adequately documented and CR Program-appropriate, but 14 of the non-personal service items we sampled, totaling \$16,215, were neither supported nor justified. The items included resident travel, household supplies, and medical supplies.

CCNS maintains a general ledger category for each of its Residence facilities, which are further segregated by program. For CFR purposes, CCNS allocates indirect non-personal service expenses not specific to any particular program, such as household supplies, based on the number of beds in each program. During the four-year scope period, CCNS reported \$1,341,199 in indirect expenses. To support its allocations, CCNS prepares an annual “bridge document” demonstrating how the allocations are made. However, CCNS did not provide us with the bridge document for the fiscal year ended June 30, 2005. As such, we cannot determine whether the entire \$193,342 in indirect expenses charged to the CR Program for this period are appropriate.

### **United Cerebral Palsy of New York City (UCP)**

UCP was paid \$2.27 million relating to ten requests for contingency contract payments submitted for approval during the period April 1, 2007, to September 30, 2010. These requests related to Program years 1997 through 2008. Five of these requests (totaling \$910,851) had been submitted between 11 months and 4.9 years after the respective Program years had ended.

We asked UCP officials for documents to support the reported CFR expenses for these CR Program years so we could independently assess the support and propriety for the requested contingency funds. On July 20, 2010, UCP officials informed us that all records for the fiscal years ended June 30, 2004, and earlier, were no longer available. When we asked UCP officials why the records for these payments were not available, we were told that they follow Medicaid record-retention rules allowing the recipient of Medicaid funds to discard such records six years after the service for which payment is requested occurs. Thus, if a CR Program resident received a Medicaid-paid service on June 30, 2004, UCP could discard the support for that specific payment anytime after June 30, 2010. However, UCP officials are not in compliance with the record-retention requirements for their State contingency contracts, which are not Medicaid-funded, and which require the providers to maintain documentation of the services provided as well as related



financial activities, for six years after the end of the calendar year for which contract (OPWDD) payments were made.

Since the contingency contracts in these cases were all paid within 3.5 years prior to our field work, all supporting records should have been maintained. Under UCP's misguided application of the Medicaid record-retention policy, it is virtually impossible to assess the support and propriety of the associated CFRs on which \$1.2 million was paid.

According to a time line provided by UCP, all of its contingency contract requests relating to the above payments were submitted on May 28, 2005, indicating that all except the contract for fiscal year 2004 were submitted late. Thus the submissions were not in compliance with OPWDD's guidelines and OPWDD should not have paid the corresponding \$910,851.

For the four CR Program years ended June 30, 2008, where records were available, we found an additional \$95,629 in OPWDD personal service and non-personal service contingency contract payments that could not be documented as CR Program-appropriate.

## **Recommendations**

1. Recoup \$16,215 and \$95,629 from CCNS and UCP, respectively, for the identified unsupported payments.
2. Discontinue contingency contract payments immediately to Providers that have submitted requests after the allowable time frames.
3. Ensure that deficit expenses are supported and CR Program-appropriate by performing periodic audits of the CFR data submitted by Providers.

## **Audit Scope and Methodology**

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The objective of our audit was to determine whether contingency contract payments were supported, appropriate, and in compliance with CR Program guidelines. Our audit covered contingency contract payments issued during the period April 1, 2007, through September 2010.

Our audit focused on the contingency contract payments to the Catholic Charities Neighborhood Services, Inc. (CCNS), and the United Cerebral Palsy of New York City (UCP), the major recipients of contingency contract monies.

To achieve our objective, we interviewed relevant OPWDD and Provider representatives, and selected a sample of personal service and non-personal service expense items used by these Providers as justification for the contingency contract payments. We traced each sampled expense to available supporting documentation, attempted to verify the services reportedly provided and locate the items reportedly purchased, and assessed their Program propriety. We also consulted OSC's Division of Legal Services and Bureau of Contracts staff for their interpretation of contingency contract terms.



We conducted our performance audit in accordance with generally accepted government auditing standards. Those standards require that we plan and perform the audit to obtain sufficient, appropriate evidence to provide a reasonable basis for our findings and conclusions based on our audit objectives. We believe that the evidence obtained during the 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 functions do not affect our ability to perform independent audits.

## Authority

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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.

## Reporting Requirements

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We provided a draft copy of this report to OPWDD officials for their review and comment. We considered their comments in preparing this final report and have included them in their entirety at the end of the report.

OPWDD officials generally agree with Recommendations 1 and 3. However, they question the one-year timeframe for Providers to submit their requests as cited in our report (see Agency Response).

Within 90 days of the final release of this report, as required by Section 170 of the Executive Law, the Commissioner of the Office for People with Developmental Disabilities 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 where recommendations were not implemented, the reasons why.

## Contributors to the Report

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## Division of State Government Accountability

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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.

# Agency Response



Andrew M. Cuomo, Governor  
Courtney Burke, Commissioner

## Executive Office

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May 7, 2012

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

Mr. Frank Patone:

The Office For People With Developmental Disabilities (OPWDD) has reviewed the Office of the State Comptroller's draft report (Report No: 2010-S-28) regarding OPWDD's Administration of Contingency Contracts.

Our responses to the findings contained in the report are attached for your consideration. Again, I want to thank you and your team for their professionalism. Please remain assured that OPWDD is committed to addressing and resolving all of the issues identified in your audit.

If you have any questions or concerns, please do not hesitate to contact me directly at 518-474-4376 or [Mary.E.Peck@opwdd.ny.gov](mailto:Mary.E.Peck@opwdd.ny.gov).

Sincerely,

Mary E. Peck  
Director, Office of Internal Control

Attachment

cc: Commissioner Burke  
J. Moran  
M. Patterson  
J. Nellegar  
V. Sleasman

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)  
Draft Audit Report (No: 2010-S-28)  
OPWDD's Administration of Contingency Contracts.**

**General Comments:**

In recent years, as appropriate, OPWDD has encouraged the movement of individuals from CRs into Individualized Residential Alternatives (IRA). IRAs are certified homes for between one and 14 individuals that provide room and board and residential habilitation geared to individualized services. IRAs are similar in nature to a CR, but the funding methodology differs. In order to streamline the rate setting process, including the appeals component of that process, OPWDD has changed the funding structure for CRs. Effective for the period beginning January 1, 2010, contingency fund requests were no longer accepted for CRs; however, appeals may now be submitted through the appeal process for IRAs, inclusive of CRs.

**Response to the Recommendations:**

**Recommendation #1:** *Recoup \$16,215 and \$95,629 from CCNS and UCP, respectively, for the identified unsupported payments.*

OPWDD Response: OPWDD will work with OSC and the Providers (CCNS and UCP) to recoup the final identified unsupported payments found by OSC resulting from this audit.

**Recommendation #2:** *Discontinue contingency contract payments immediately to Providers that have submitted requests after the allowable time frames.*

OPWDD Response: OPWDD does not believe that it has ever made contingency fund contract payments to providers that have not submitted contingency fund requests within allowable timeframes, and contingency contracts pending approval from OSC for payment, are also within allowable timeframes.

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Comment  
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OPWDD did not institute time limitations related to the submission of contingency fund requests until October 21, 2009. On September 21, 2009, OPWDD placed a notice in the "Contract Reporter" that stipulated that "effective October 21, 2009, OMRDD (the agency's name on October 21, 2009) will standardize its policies relating to all voluntary providers' requests for additional reimbursement as recovery for operating deficits... consistent with policies for appeals in other OMRDD programs, providers shall submit contingency requests within twelve months of the close of the rate/fee period for which additional reimbursement is being requested".

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**Internal** OPWDD contingency fund guidelines had indicated that requests for contingency contract funding had to be submitted to OPWDD no later than one year after the end of the fiscal year in question. However, this guideline was never officially disseminated to the voluntary providers and OPWDD decided to not follow this guideline, but rather, to accept contingency fund requests without the imposition of a submission deadline. Therefore, OPWDD policy was to accept all contingency fund

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\* See State Comptroller's Comments, page 13.



requests, regardless of submittal date, until the implementation of the submission date requirement outlined in the September 21, 2009 "Contract Reporter".

**Recommendation #3:** *Ensure that deficit expenses are supported and CR Program-appropriate by performing periodic audits of the CFR data submitted by Providers.*

OPWDD Response: Effective January 1, 2012 OPWDD's Division of Audit services, has instituted reviews of those CFRs which served as a determining element in OPWDD's decision to grant additional provider funding.

OPWDD though is able to place a great deal of reliance on the Consolidated Fiscal Report (CFR) information. This reliance is primarily based on the following two reasons:

- a) A certification statement is signed by the Agency's Chief Executive Officer in which he/she certifies to the best of his/her knowledge that the information in the report has been completed in its entirety and in accordance with the CFR instructions, and attests to the fact that there are records and allocation worksheets that support the information.
- b) The accountant's report is signed by the agency's Certified Public Accountant (CPA), and the accountant's report includes the following:
  1. The CPA firm has examined the CFR's detailed schedules' (some of the schedules include the program specific expenses, including the CR program) conformity with the applicable instructions relating to the preparation of those schedules contained within the CFR's Reporting and Claiming Manual.
  2. The examination was conducted in accordance with attestation standards established by the American Institute of Certified Public Accountants and, accordingly, included examining, on a test basis, evidence supporting the above referenced CFR schedules' conformity with the applicable instructions and performing such other procedures as was considered necessary in the circumstances including following the procedures contained in Appendix AA of the CFR's Reporting and Claiming Manual.

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\* See State Comptroller's Comments, page 13.

## State Comptroller's Comments

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1. OPWDD officials claim that they did not institute the one-year submission time frame until October 21, 2009, one month after OPWDD placed a notice in the "contract reporter" notifying volunteer providers of this requirement. However, we note that the actual policy, including the one-year submission time frame, has been on file with the Office of the State Comptroller's Bureau of Contracts, which is responsible for approving contingency contract payments, since 2005.
2. Although OPWDD officials agree to implement this recommendation, they continue to assert that they can place great reliance on the attestations of the volunteer agencies and their CPAs. We caution OPWDD officials that based on our experience, and as documented in this report, such attestations are not full proof and should be complemented, as agreed, by OPWDD's own focused review.