



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

Division of State Government Accountability

Dual Employment

Office of Mental Health



Report 2011-S-47

December 2013

Executive Summary

Purpose

To determine whether Office of Mental Health (OMH) employees who are dually employed at other State or City agencies are working their required hours at each job. The audit covered the period July 1, 2009 through July 25, 2012.

Background

OMH's mission is to promote the mental health and well-being of all New Yorkers, focusing on providing hope and recovery for adults and children with serious mental illness or emotional disturbances. OMH employs about 15,300 individuals throughout the State, some of whom are also employed by other government agencies. OMH policy requires certain employees to file for approval for outside employment. Such employment may not interfere with the employee's job responsibilities nor represent a conflict of interest.

Key Findings

- Between July 2009 and June 2010, 906 OMH staff members were also employed by another State or New York City agency, 139 of whom we selected for further review based on several risk factors. Follow-up showed 25 of these staff violated time and attendance rules resulting in payroll payments for time potentially not worked.
- Several cases showed a pattern of routine, improper activity such as claiming to be working two places at the same time, not allowing sufficient commute time between the end of one shift and the beginning of the next, and charging sick leave at one job while actually working at another. OMH's failure to enforce time and attendance requirements allowed these individuals to circumvent controls, sometimes with management's knowledge.
- In most cases, due to poor supervision and record-keeping practices at the agencies, it is not possible to determine whether these staff failed to work required time at OMH, another agency or both. We estimate the cost of these abuses of time and attendance procedures could be as high as \$130,000. Since some of these employees held second jobs for many years, it is possible that costs associated with these abuses may be significantly higher.

Key Recommendations

- Work with the other agencies involved in these cases to determine whether the dually employed individuals we identified are continuing to abuse time and attendance procedures. Take appropriate actions as warranted, including recovery of salary payments, adjustment of pension salary and service, and assisting in any further investigation.
- Ensure that other dually employed staff are working the time for which they are being paid.
- Provide pertinent time and attendance training to dually employed staff and their supervisors, and ensure that required policies and procedures are followed.

Other Related Audits/Reports of Interest

[Metropolitan Transportation Authority/Metro-North Railroad: Forensic Audit of Select Payroll and Overtime Practices and Related Transactions \(2010-S-60\)](#)

[Port Authority of New York and New Jersey: Management and Control of Employee Overtime Costs \(2009-S-87\)](#)

**State of New York
Office of the State Comptroller**

Division of State Government Accountability

December 19, 2013

John V. Tauriello
Acting Commissioner
Office of Mental Health
44 Holland Avenue
Albany, NY 12229

Dear Acting Commissioner Tauriello:

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 the Office of Mental Health entitled *Dual Employment*. 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 report, please feel free to contact us.

Respectfully submitted,

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

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Background

The Office of Mental Health (OMH) promotes the mental health and well-being of all New Yorkers, focusing on providing hope and recovery for adults and children with serious mental illness or emotional disturbances. OMH employs about 15,300 individuals throughout the State, some of whom are also employed by other government agencies. These dual employment situations can be advantageous for employees, but also pose additional risks for management ranging from conflicts of interest to opportunities for payroll fraud or abuse.

State Department of Civil Service regulations prohibit employees of a State agency from accepting an additional paid State position without first obtaining approval from the head of their agency or department. In addition, the State's Public Officers' Law addresses other activities (including any outside employment or serving on the board for a not-for-profit corporation) and requires employees to first obtain permission from their State agency and, in certain cases, the Joint Commission on Public Ethics if certain compensation amounts are reached. These limitations are designed to ensure that secondary employment does not create a conflict of interest with the employees' primary duties and responsibilities.

At the operational level, when individuals work for more than one State agency, they receive separate payroll checks generated through the State's central payroll system, which is operated by the Office of the State Comptroller's (OSC) Bureau of State Payroll Services. To receive payroll checks for both State positions, the employees are required to complete a "Dual Employment/ Extra Service Approval Form" describing the work to be performed and, optionally, the work schedule of both positions. Employees must state that the second State position will not interfere with their regular duties and it must be approved by their home agency. Original approved forms must then be filed with OSC before additional salary payments can be processed.

Concerns about potential conflicts of interest also apply to State employees who seek employment at other public employers, including public authorities, the City of New York and other municipalities. However, since these entities are not part of the central State payroll system, the same operational controls are not in place to ensure conflicts are avoided. In fact, the State's central systems provide no assurance that these dually employed individuals have even informed their primary employer about their other job, let alone received their required approval. As a result, it is even more critical that each State agency establish its own policies and procedures governing dual employment situations, and that supervisors diligently monitor and enforce appropriate time and attendance requirements.

OMH policy dictates that outside employment by any employees must not adversely affect their ability or capacity to perform their duties or functions. In addition, OMH requires all higher-level employees (i.e., positions allocated to Grade 23 and above) to obtain approval for outside employment. State time and attendance policies also require agencies like OMH to maintain adequate and accurate records of employee attendance. Unless specifically exempted, State employees must maintain a detailed record of actual hours worked, which should indicate the times the employees arrived, took lunch or breaks, and departed. Certain exempted employees are not required to maintain detailed arrival and departure times, but they must still maintain a record of daily presence and absences sufficient to serve as a basis for salary payments.

Audit Findings and Recommendations

Because of weaknesses in OMH policies and practices, direct managers and supervisors may not always know when staff members are involved in dual employment situations. Even when these arrangements are known, our review shows supervisors do not always take necessary steps to verify work schedules and attendance, or otherwise ensure that employees do not engage in payroll abuse.

We identified 906 OMH staff members who were also employed by another State or New York City public agency during the one-year period from July 2009 through June 2010. Of these, we further identified 139 people who posed a particularly high risk for payroll abuse based on factors such as significant earnings from more than one employer during the same pay periods. Our review of time and attendance records submitted by these 139 staff identified 25 individuals (18 percent) who engaged in abusive payroll activity that resulted in payments for time that may not have been worked. In many cases, the records showed a pattern of routine, improper activity such as claiming to be working at two places at the same time, not allowing sufficient commute time between the end of one shift and the beginning of the next, and/or charging sick leave hours at one employer while working the same hours for another. Specific examples of these situations are detailed in subsequent sections of this report.

Supervisors are responsible for monitoring their employees and ensuring that they accurately report their time and attendance in accordance with both civil service and OMH requirements. Employees and supervisors both must certify that the time records correctly report time worked, leave accruals used and overtime to be paid. Certifications on these time records hold employees and supervisors responsible for any misrepresentations. We determined that failure to enforce time and attendance requirements resulted in an increased risk that dually employed individuals are being paid for time they do not work. We found these individuals were able to circumvent controls due to management's lack of supervision or, in some cases, with management's knowledge.

For each of the 25 individuals whom we identified as abusing their dual employment situation, we communicated specific results to OMH officials, as well as to officials at the other State or City agencies where they also worked. We also discussed certain cases with the employees' OMH supervisors, some of whom told us they were not even aware that their employees had other job commitments. Others could not offer specific explanations for the inconsistencies and patterns that we observed, even though they had approved many of the time records in question. Even so, almost every supervisor we interviewed expressed confidence that their employees had not been paid for more hours than actually worked at their agency.

Except for cases involving sick leave abuse, it is unclear whether these staff failed to put in their required time at OMH, another agency or the combination of both. Collectively though, our review showed that the failure of supervisors at OMH or the other agencies to enforce time and attendance rules resulted in an increased risk that employees were paid for more time than they actually worked. We estimate the cost of these abuses of time and attendance procedures to

State and/or City taxpayers could be as high as \$130,000 for just these 25 employees over a two- to three-year period for which time records were available depending on location. Since many of the people we reviewed have held second jobs for many years, it is likely that the cost of their abuse is significantly higher. In addition, the effect of these abuses can continue to cost taxpayers for years to come, since the employees' inflated salaries can increase the cost of future pension benefits.

Overlapping Schedules and Time Entries

One of the most basic risks posed by dual employment situations is the possibility that a person claiming to be in two places at the same time may be paid for the same hours by both employers. Our analysis identified 23 OMH employees who engaged in this practice. Our analysis of their time records submitted to each employer identified a total of 422 occasions from July 1, 2009 through July 25, 2012, when they claimed to have worked for both employers simultaneously. These claims amounted to almost 628 hours of work that was not performed.

One employee, a nurse working at OMH's South Beach Mapleton outpatient facility who is also a firefighter with the New York City Fire Department (FDNY), accounted for 30 of the instances we identified, totaling over 95 hours of questionable work. The employee told us that when his FDNY duties conflicted with his OMH schedule, his supervisors allowed him to make up the OMH time on another day, but never required him to record the actual times he worked. The employee and his supervisors all said that as long as the time sheet that was submitted totaled the same as his scheduled hours, they paid no attention to the hours recorded on any given day.

We discussed this matter with South Beach management and determined they had misinterpreted certain labor agreement provisions and inappropriately believed their employees were not required to report the actual hours they worked. Immediately following our visit, South Beach management revised their policy on schedule changes. They now report that employees are no longer allowed to informally make up scheduled hours on another day, but must either charge leave time or have pay deducted.

Another employee, a Psychiatric Nurse also working as a Public Health Nurse for the New York City Department of Health and Mental Hygiene (DOHMH), accounted for 70 of the instances we identified, totaling 36.5 hours of questionable work. Our review of time records found 67 days when the employee reported working for OMH until 8:00 a.m., but also reported starting work for DOHMH a half hour earlier, at 7:30 a.m. On three other occasions, he reported starting work for DOHMH at 7:00 a.m. We referred this matter to OMH and DOHMH officials for follow-up and appropriate action.

Adjoining Work Schedules

Adjoining work schedules involve situations where an employee works two jobs, one of which ends precisely at the same time that the second begins. The problem with these situations is that they frequently do not account for the time it takes to travel between jobs. Our analysis of time

records identified 10 OMH employees who had 479 instances of adjoining work schedules.

More than half of these instances (252) were attributable to one OMH Nurse Administrator, who was also employed as a Supervisor of Nurses by the New York City Department of Education (NYC DOE). Records show this person has been employed by both agencies for nearly 15 years and routinely submitted time records that report working from 11:30 p.m. to 8:00 a.m. for OMH and then 8:00 a.m. to 4:00 p.m. for NYC DOE. We interviewed this employee, who, in a signed statement, told us he often leaves his night duty station at OMH's New York Psychiatric Institute at least 15 minutes before his shift ends at 8:00 a.m. He indicated that it was an accepted practice within OMH to leave as soon as he was relieved. He reported that it takes him about 10 to 15 minutes to drive from Manhattan to his other job on Fordham Road in the Bronx. As a result, we estimate OMH paid this employee for at least 63 hours not worked between July 2, 2009 and August 4, 2011.

We found similar problems in the case of another OMH staff member employed by DOHMH for over 14 years. We identified 154 instances between September 8, 2009 and June 28, 2011, where this employee routinely submitted time records reporting he had worked as a Psychiatric Nurse at OMH's Manhattan Psychiatric Center from 11:30 p.m. to 8:00 a.m. and then as a Public Health Nurse at P.S. 205 (Fiorello LaGuardia School) in the Bronx from 8:00 a.m. to 4:00 p.m. We estimate this employee was paid for as much as 205 hours not worked over this 22-month period we examined.

We also identified two individuals whose time records showed their work schedules, although not directly adjoining, did not allow enough time for normal travel between their different jobs. These two staff collectively had 52 instances of insufficient travel time totaling as much as 42 hours not worked.

Sick Leave Abuse

Dually employed individuals may use sick leave accruals to cover illnesses or other medically oriented situations like doctor appointments, but may not use accruals at one job and report for work at the other for the same periods of time. Our analysis identified five OMH employees who abused their sick leave in this manner, four of whom also engaged in one or more of the types of improper activities already discussed. Four of these employees charged a total of 156 hours of sick leave at OMH on 23 occasions when they reported working at their second job during the same hours. For example, one of these individuals charged eight hours of sick leave on each of 11 occasions to cover an 8:00 a.m. to 4:00 p.m. shift at OMH, but reported to work for the New York State Department of Corrections and Community Supervision for shifts running anywhere from 11:15 a.m. to 9:45 p.m. on these same days. We found the fifth employee charged 14 hours of sick leave on two occasions at his other job with the New York City Administration for Children's Services (ACS), although he reported working for OMH during the same hours. We shared this information with ACS officials for appropriate follow-up.

Recommendations

1. Work with the other agencies involved in these cases to determine whether the dually employed individuals we identified are continuing to abuse time and attendance procedures. Take appropriate actions, as warranted, including but not limited to:
 - recovering inappropriate salary payments;
 - identifying inappropriate salary and service and contacting the appropriate New York City retirement system and/or the New York State and Local Retirement System to submit salary and service adjustments for the appropriate time periods; and
 - assisting in any further investigation.
2. Ensure that other dually employed staff are working the time for which they are being paid.
3. Provide pertinent time and attendance training to dually employed staff and their supervisors, and ensure required policies and procedures are followed.

Audit Scope and Methodology

The objective of our audit was to determine whether OMH employees who have dual employment at other State or City agencies are working their required hours at each employer. Our audit period was July 1, 2009 through July 25, 2012.

To accomplish our objective, we reviewed OMH policies and procedures, along with relevant regulations and employee labor agreements. We also interviewed OMH employees and their supervisors and other State and City agency officials, and made site visits and observations. We used computer-based audit techniques to match the State and New York City payroll records for the 12-month period July 2009 through June 2010. This analysis identified 906 OMH employees who also worked for other State or City agencies. We considered 139 of these employees to be high risk based on several factors, including employment at one or more other agencies during the same pay period with combined income of \$50,000 or more, at least \$5,000 or \$10,000 of which was from another State or City agency, respectively. For each of these 139 employees, we performed detailed tests and analyses of payroll, overtime and salary payments. We also reviewed payroll records, time sheets and other supporting documentation. Further, we expanded our testing to include the period July 1, 2010 through July 25, 2012 for certain individuals when warranted. Our tests were designed to uncover conflicts in the work schedules and time records submitted for each employee. For reporting purposes, we limited our findings to cases where the value of lost time exceeded \$500.

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 we obtained provides a reasonable basis for our findings and conclusions based on our audit objective.

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 conduct independent audits of program performance.

Authority

The audit was performed according to the State Comptroller's authority as set forth in Article V, Section 1 of the State Constitution and Article II, Section 8 of the State Finance Law.

Reporting Requirements

A draft copy of this report was provided to OMH officials for their review and comment. Their comments were considered when preparing this final report and are attached in their entirety at the end of this report.

Within 90 days after final release of this report, as required by Section 170 of the Executive Law, the Commissioner of the Office of Mental Health 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 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.

Agency Comments



State of New York
Andrew Cuomo
Governor

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October 11, 2013

John Buyce, CPA
Audit Director
Office of the State Comptroller
Division of State Government Accountability
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Albany, NY 12236-0001

Dear Mr. Buyce:

The Office of Mental Health has reviewed the Office of the State Comptroller's (OSC's) draft audit report entitled, "Dual Employment, Office of Mental Health" (2011-S-47). OMH agrees with the report's three recommendations and has already taken steps to implement them.

We appreciate OSC's efforts to make recommendations which enhance our operations.

Sincerely yours,

Martha Schaefer Hayes
Executive Deputy Commissioner



**OFFICE OF MENTAL HEALTH
RESPONSE TO OFFICE OF THE STATE COMPTROLLER
DRAFT REPORT 2011-S-47
DUAL EMPLOYMENT**

Overall OMH Comments

The Office of Mental Health (OMH) has reviewed the findings and recommendations in OSC's draft report, entitled Dual Employment, Office of Mental Health. OMH agrees with OSC's three recommendations and, as noted later in this response, has taken steps to implement them. We appreciate the effort of OSC's audit staff on this review, and we take seriously the issues reported. OMH is making systemic changes to strengthen controls over dual employment and is carefully reviewing each case reported.

Over the past several years, we have found OSC's reports to be written fairly. They were balanced in content and tone, and were generally free of inflammatory language, in accordance with Government Auditing Standards. However, this draft report is not written in that manner, and we request that the report be edited for its final version.

For example, the Executive Summary states that several staff were "working two places at the same time", were "not allowing sufficient commute time", or "were charging sick leave at one job while actually working at another". However, the Executive Summary does not provide the reader with context by indicating, for example, the number of individuals in each category, or the average number of hours involved for each person per shift. It also does not state that in most of the cases the potential issues involved a part of a shift... sometimes a relatively small part, and not the entire shift.

* Comment 1

This draft also differs from prior OSC reports in its use of modifiers. Words including improper, failure, poor, and inappropriate have been inserted multiple times throughout the report. A form of the word "abuse" was added to the report 16 times. We believe OSC management should revise the final report so that it presents the facts without inflammatory language, as has been done in OSC's previous audit reports.

To provide the reader with better perspective and balance, we also suggest that the final version mention in the Executive Summary there were no reportable findings for over 97 percent of the dually employed individuals at OMH. (As noted within the body of the report, the auditors identified 906 OMH staff with dual employment, screened all of them and identified 139 potentially "high risk" individuals, and found 25 individuals with potential issues.)

To enhance OMH's ability to monitor all employees on dual employment, OMH has requested that OSC provide a current payroll data set of staff who also work at other state or NYC agencies. It was also discussed that OSC provide that information to other state agencies to assist in their monitoring efforts.

Several months ago, OMH recommended that OSC modify their Dual Employment/Extra Service Approval Form to include more information (e.g., work addresses, work schedules) and with stronger employee and supervisor attestations. With more information, the Approval Form would be a better management tool for OSC and state agencies to monitor the work time of employees with dual employment. Until the OSC Approval Form is enhanced, we plan to require that OMH's Outside Employment Approval form also be completed during the dual employment approval process to supplement OSC's form.

Finally, in July 2013, OMH sent a directive regarding attendance and leave rules to all facilities, for their distribution to supervisors and staff. The notice reminds all employees, including those working in dual employment, extra service and outside employment of their responsibility to work their assigned schedules and to accurately record their time. It emphasizes the responsibility of supervisors to ensure that their subordinates work their scheduled hours or charge appropriate leave accruals.

OMH's Responses to OSC's Recommendations

OSC Recommendation No. 1

Work with the other agencies involved in these cases to determine whether the dually employed individuals we identified are continuing to abuse time and attendance procedures. Take appropriate actions, as warranted, including but not limited to:

- recovering inappropriate salary payments;
- identifying inappropriate salary and service and contacting the appropriate New York City retirement system and/or the New York State and Local Retirement System to submit salary and service adjustments for the appropriate time periods; and
- assisting in any further investigation.

OMH Response

OMH has been working with other State agencies to determine whether the dually employed individuals OSC identified have been following time and attendance procedures. OMH is also not limiting its work to just those employed at other agencies, but is also reviewing any of the employees identified by OSC that work solely at OMH facilities. Where issues are identified, appropriate action will be taken. Additionally OMH Human Resources staff are meeting with the employees cited by OSC, along with their supervisors, to review the situations identified and reinforce time and attendance rules.

OSC Recommendation No. 2

Ensure the other dually employed staff is working the time for which they are being paid.

OMH Response

OMH will also continue working to ensure that the other dually employed staff are working the time for which they are paid.

OSC Recommendation No. 3

Provide pertinent time and attendance training to dually employed staff and their supervisors, and assure required policies and procedures are followed.

OMH Response

The OMH Center for Human Resources Management (CHRM) has been implementing an electronic time and attendance system at OMH facilities. As part of the implementation, CHRM conducts training and refresher sessions for supervisory staff. This process involves reinforcement and implementation of Attendance and Leave procedures, including rules pertaining to dual employment.

State Comptroller's Comment

1. In responding to our draft report, OMH officials agreed with our recommendations and described specific actions already taken to investigate the cases identified in this report and improve controls over time and attendance. They also offered suggestions for how OMH could work with the Comptroller and other agencies in a cooperative effort to implement the improvements we recommend. At the same time, OMH officials take issue with our characterization of the situations we observed as abusive. In fact, their comments seek to minimize the impact of these problems, in part stating that most of “the potential issues involved a part of a shift... sometimes a relatively small part, and not the entire shift.”

However, as the examples discussed in this report demonstrate, these small shortages can quickly compound into hundreds of thousands of dollars worth of lost time in just a few short years. Further, the cases we cite are based on the official time records prepared and submitted by these employees, and reviewed and attested to by their supervisors. As the principal employer that initially authorized many of these dual employment relationships, it is incumbent upon OMH and its supervisory staff to ensure that these records are accurate and that these arrangements do not interfere with the staff members' primary duties. It is also important to note that falsifying such records is, in and of itself, an abuse of the systems. Absent additional information to demonstrate that employees actually worked during different times, we must conclude that staff manipulated or otherwise abused the systems, resulting in payments for time that records indicate was not worked.