



**Office of
Mental Health**

ANDREW M. CUOMO
Governor

ANN MARIE T. SULLIVAN, M.D.
Commissioner

MARTHA SCHAEFER
Executive Deputy Commissioner

March 28, 2017

Frank Patone, CPA
Audit Director
Office of the State Comptroller
Division of State Government Accountability
59 Maiden Lane – 21st Floor
New York, NY 10038

Dear Mr. Patone:

The Office of Mental Health has reviewed the Office of the State Comptroller's (OSC's) final audit report entitled, "Administration of the Contract with the Postgraduate Center for Mental Health" (2015-S-88). Our response to the recommendations contained in OSC's report are enclosed.

The Office of Mental Health appreciates OSC's efforts to recommend improvements in our operations.

Sincerely yours,

Ann Marie T. Sullivan, M.D.
Commissioner

**OFFICE OF MENTAL HEALTH
RESPONSE TO OFFICE OF THE STATE
COMPTROLLER FINAL REPORT 2015-S-88
ADMINISTRATION OF THE CONTRACT WITH
THE POSTGRADUATE CENTER FOR
MENTAL HEALTH**

The Office of Mental Health (OMH) takes issue with several of the findings and recommendations in the Office of the State Comptroller's (OSC) final report (2015-S-88) entitled "Administration of the Contract with the Postgraduate Center for Mental Health." The purpose of this audit was to determine whether OMH is effectively administering its supported housing contract with the Postgraduate Center for Mental Health (PCMH). OSC determined that PCMH clients were program eligible and that the sampled client case files contained required documentation.

The OMH supported housing program contracts (either directly or indirectly through county governments) with not-for-profit agencies to provide rental assistance and supportive services for individuals with serious mental illness to retain housing in the community. The not-for-profit entities locate privately-owned apartments for supported housing and provide rental stipends, advocacy with landlords, and coordination and linkage to community supports to assist in maintaining independent housing. OMH's oversight role is to provide guidance to providers, ensure that providers are implementing program guidelines, and review and reconcile claimed expenses.

OSC exceeded its statutory authority when conducting the audit (pursuant to Article 5, Section 1 of the New York State Constitution) by going beyond evaluating contract compliance and making clinical determinations about the appropriateness of OMH's clinical assessments. Not only does this improperly exceed OSC's constitutional authority, a cursory review of OSC's findings demonstrates that OSC does not have the necessary expertise to make such findings. Accordingly, OMH soundly rejects OSC's decision to analyze issues beyond its constitutional authority and outside of OSC's expertise, and takes issue with the facts upon which OSC purportedly bases its clinical conclusions.

I. OMH Overall Comments

As previously stated, OSC's audit is flawed because it goes beyond the OSC's authority as set forth in in NYS Constitution Article 5, Section 1. OSC is only authorized to "(1) to audit all vouchers before payment and all official accounts; (2) to audit the accrual and collection of all revenues and receipts; and (3) to prescribe such methods of accounting as are necessary for the performance of the foregoing duties". In other words, OSC is only authorized to audit whether OMH properly ensured that contracted services were provided and that only appropriate and supported expenses were reimbursed.

Instead, OSC went beyond its constitutional authority to evaluate the quality and accuracy of clinical assessments made by trained health care professionals. However, OSC has no clinical expertise, should not be second-guessing trained medical experts and should certainly not be making any findings based on those assessments. Specifically, OSC representatives made one-off visits to individual apartments, and based on those visits, OSC made its own unqualified programmatic assessments. As will be discussed more fully, the result is that OSC made inaccurate conclusions and premised its recommendations on such inaccurate conclusions.

II. OMH Comments to OSC Audit Statements

- **OSC's Clinical Opinion of OMH Housing Clients:** OSC found that sampled clients were program eligible and referred to the program through proper channels. Specifically, OSC states (page 7, fourth paragraph), "since neither the contract nor existing Program Guidelines instruct providers on what to do in cases where the client's mental health condition can contribute to a recurring, unsafe living environment, OMH should develop procedures for providers to follow to ensure that clients are in the most suitable environment."

OMH Comments: There are two fundamental problems with OSC's assessment. First, this assessment of the clinical appropriateness of housing placement goes beyond OSC's powers under Article 5, Section 1, of the New York State Constitution, which grants OSC powers of audit of state expenditures. OSC inappropriately expanded the scope of the audit to question the appropriateness of program placement for certain clients. OSC not only lacks the clinical expertise to make this assessment, but, in this case, it also lacked basic facts.

Second, the premise on which OSC bases its statement violates Olmstead. Under Olmstead, clients are entitled to the most integrated setting that is consistent with their needs and abilities to function self-sufficiently. Olmstead does not permit the State to begin with a presumption that an individual is inappropriate for a community setting, but OSC has done just that by identifying instances of landlords' improper apartment maintenance, attributing such poor maintenance to the client, and concluding on that alone that the client is thus unable to function in an integrated setting. The attribution is wrong, and the conclusion would be equally wrong even if the attribution were correct. With respect to the landlords' responsibilities, housing providers regularly engage with landlords to take necessary steps to ensure proper apartment maintenance. In cases where agreements are not resolved to a tenant's or housing provider's satisfaction, individuals have been relocated. And with respect to OSC's assessments of clients' abilities, OSC is wrong to suggest that clients are a danger to themselves or others based on this information alone.

Supportive Housing tenants are effectively screened during the referral process for appropriateness. Following the initial placement and development of a housing support plan, Supportive Housing providers are in regular communication with the client and the service providers that comprise the housing support plan. OMH already has processes in place to address a change in a client's clinical need. For example, the Supportive Housing Guidelines indicate that OMH expects access to Supported Housing units to be provided in collaboration with the referral process wherever possible. The referral process includes a clinical and functional assessment to determine the type of housing and level of services that would be appropriate for placement. As a result, if a Supportive Housing provider becomes aware of changes in mental health conditions, communication with the tenant and his/her service providers should occur to determine whether additional supports are necessary or appropriate to assist in maintaining the tenant in supportive housing or if a higher level of service or intervention is necessary.

III. OMH Responses to OSC Recommendations

- **OSC Recommendation No. 1 – Poor Apartment Maintenance by Landlords**

Require PCMH case managers to take prompt action where apartment conditions pose potential health and/or safety hazards to clients.

OMH Response

This recommendation is unnecessary because PCMH is already required to take action in such cases. The Supportive Housing Guidelines indicate that providers are to assist “in resolving apartment and building maintenance issues”; advocate to “ensure that the tenant’s rights are guaranteed by the lease and under applicable law and that the recipient receives treatment equivalent to other tenants”; and in extreme circumstances, that providers “should have a process for handling resident emergencies after hours.”

The NYC Field Office conducted a follow-up visit on February 15, 2017, to the specific units visited by OSC to ensure that the issues identified have been addressed. The NYC Field Office met on February 23, 2017, with PCMH to review their findings and PCMH has submitted updates indicating that the maintenance issues have been addressed. These include smoke/carbon monoxide detectors, window repair, and bed bug treatment.

- **OSC Recommendation No. 2 – Assumption that Clients Are Incapable of Living Self-Sufficiently**

Issue formal guidance to providers that addresses the actions to be taken when clients exhibit significant problems living on their own and pose a potential danger to themselves and/or others.

OMH Response

The Supportive Housing Guidelines already require providers to advocate for mental health treatment for persons living on their own and especially for persons who pose a danger to themselves or others. More generally, these guidelines state that “Providers [should] work closely with the local governmental unit, county or SPOA entity, Health Home Entity and other community service providers to advocate for recipients to receive the services they require while residing in Supported Housing.” However, OMH is currently in the process of revising the Supportive Housing Guidelines and will specifically review areas surrounding this recommendation.

- **OSC Recommendation No. 3 – Fiscal Controls over Contract Expenditures**

Ensure that only program-eligible and properly supported expenses are reimbursed to PCMH.

OMH Response

This recommendation is unnecessary. The CFR Manual provides guidance on allowable and non-allowable program costs. OMH, in conjunction with its NYS agency partners, are reviewing the manual to determine whether additional clarifying guidance is needed for certain items of disallowance. Based on this review, recommendations may be submitted for approval and published in future CFR Manuals.

- **OSC Recommendation No. 4 – PCMH Reported Expenditures**

Recover \$697,938 in inappropriate and unsupported expenses charged to the contract and other OMH contracts cited in the report.

OMH Response

OMH will review expenses identified by OSC as inappropriate or unsupported and recover overpayments where appropriate.

- **OSC Recommendation No. 5 – Corrective Action Plans**

Follow up on OMH program staff requests for corrective action plans from providers and

determined whether corrective actions were actually taken in these cases, as well as any other apartments where similar conditions exist.

OMH Response

OMH disagrees with this recommendation because it is already being accomplished on an ongoing basis. OMH already conducts visits, issues findings, requires corrective action, and oversees approximately 20,000 Supportive Housing beds. Supportive Housing providers such as PCMH similarly conduct visits, advocate to landlords on behalf of clients, and work with tenants to maintain housing and promote recovery.

As stated above, the NYC Field Office conducted a follow-up visit on February 15, 2017, to the specific units visited by OSC to ensure that the issues identified have been addressed. The NYC Field Office met on February 23, 2017, with PCMH to review their findings and PCMH has submitted updates indicating that the maintenance issues have been addressed.

- **OSC Recommendation No. 6 – CFR Desk Reviews**

Expand desk reviews of provider CFR's to include review, on a sample basis, of supporting documentation to ensure that claimed program expenses are reasonable, necessary, and appropriate.

OMH Response

As part of our internal controls, OMH routinely requests supporting documentation through the desk review process. Desk reviews may include, but are not limited to:

- extensive communications between OMH analysts and providers;
- requests for additional documentation and clarification; and
- further analysis.

- **OSC Recommendation No. 7 – OMH Internal Controls over Contract Closeouts**

Develop formal time frames for CFR closeouts and recoupments to help ensure that surplus advances are accounted for and recovered in a timely manner.

OMH Response

OMH disagrees with this recommendation because, as previously discussed, OMH already has in place internal control procedures that indicate that all closeouts should be completed within two years from the end of the contract fiscal period. OMH has completed all closeouts for PCMH through the 2013-14 contract year and has recovered all overpayments.

- **OSC Recommendation No. 8 – Executive Compensation**

Formally request, obtain, and review the consultant study of executive compensation performed for PCMH. Review and revise the amounts of executive compensation costs eligible for reimbursement, as warranted, if the study did not provide an adequate basis for the amounts of executive compensation claimed by PCMH.

OMH Response

OMH has received requested documentation for review and will take appropriate action based on EO38 Guidelines.

- **OSC Recommendation No. 9 – Contingency Funds**

Review the various sources of OMH guidance pertaining to contingency funds and ensure they are consistent. Follow up with PCMH officials to ensure PCMH has a clear and accurate recordkeeping system for the use of contingency funds.

OMH Response

OMH has reviewed and revised the Supportive Housing Guidelines which specifically

address and clarify contingency funds. An updated version of these guidelines are currently under review. Additionally, changes to the Supportive Housing Guidelines will be compared with the Spending Plan Guidelines to ensure consistency.