

**Erie County Medical Center Corporation
Buffalo, New York**

**Response to the July 3, 2018 Draft Report of the Office of the New York State Comptroller,
Division of State Government Accountability, pertaining to Employee Incentive and Bonus
Payments Report 2018-F-06**

July, 2018

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July 19, 2018

Office of the NYS Comptroller
Division of State Government Accountability
110 State Street
Albany, New York 12236

Re: Draft Report 2018-F-06

Dear Office of NYS Comptroller:

On behalf of the Erie County Medical Center Corporation (ECMCC) I am transmitting the enclosed "Response to the July 3, 2018 Draft Report of the Office of the New York State Comptroller, Division of State Government Accountability, pertaining to Employee Incentive and Bonus Payments Report 2018-F-06" (ECMCC Response).

Should the ECMCC Response raise further questions or create the need for dialogue between the audit team and ourselves, please feel free to contact us so we can resolve any discrepancies. ECMCC appreciates the cooperation and professionalism of the Division of State Government Accountability audit team both during the initial audit as well as the follow up audit that is the subject of the Draft Report.

Sincerely,



Stephen M. Gary, Sr., CPA, CGMA
Chief Financial Officer



EXECUTIVE SUMMARY

In a notice dated March 22, 2018, the Office of the New York State Comptroller (OSC) advised Erie County Medical Center Corporation (ECMCC) that it intended to conduct a follow up audit related to the status of implementation of recommendations from an Employee Incentive and Bonus Payments Audit, Report 2016-S-29, issued January, 2017.

ECMCC is a regional health system and a comparatively large public authority that had nearly 4,800 employees, comprising a total payroll of greater than \$550 Million during the initial three year audit period. The focus of the initial audit was on a group of 209 employees, and particularly, approximately two dozen physicians with employment contracts and the record keeping related to those contracts. There were four recommendations made in the initial audit report and the follow up audit assessed the implementation of those recommendations.

ECMCC appreciates that collaborative approach of, and constructive dialogue with, the OSC team during both the initial and follow up audits. In addition, ECMCC appreciates the recognition from the OSC team that ECMCC takes its responsibility seriously and has taken the necessary steps, in many cases before the initial audit was begun, to improve its practices and procedures.

The OSC team provided a draft follow up report and participated in a conference call to review the audit follow up observations on the four recommendations, offering the ECMCC team an opportunity to provide input with respect to the draft report.

RESPONSE TO FOLLOW UP OBSERVATIONS

The OSC draft report contained observations on the four recommendations from the initial audit report. Follow up observation and recommendation 1 is reprinted below for the reader's benefit and is followed by a summary of the response from ECMCC.

Regarding recommendations 2 through 4, the OSC follow up audit determined that each recommendation had been implemented. ECMCC has made no additional comment in response.

Initial Recommendation 1: Recover the \$76,254 in unwarranted performance and productivity incentives.

Follow up Status: Partially implemented

Agency Action: In March 2017, ECMCC implemented procedures to recover \$50,168 in unwarranted payments through payroll deduction for three of the four doctors we identified in our prior audit, and, as of April 2018, had recovered \$13,920 of the \$50,168. ECMCC officials believe the original documentation provided was sufficient to support the remaining \$26,086 identified as unwarranted and will not attempt recovery. However, based on our review of the documentation and further discussions with ECMCC, we believe ECMCC should pursue recovery of the \$26,086.

ECMCC Response: ECMCC believes that there is proper support for the payments of the \$26,086 identified by the OSC and does not believe it appropriate to recover these funds. Attempted recovery of the \$26,086, in ECMCC's view, risks a lawsuit by the involved physicians because a factual basis for recovery is lacking. In addition to lacking factual merit, a possible lawsuit or lawsuits by employed physicians may cost considerably more than the amount the OSC is seeking to recover and will undoubtedly damage employee relations. The facts, in this instance, demonstrate that:

- \$12,500 (48%) of the \$26,086 involves one payment to one physician for meeting response requirements to on call test pages. The physician's contract maintains a minimum standard of performance (responding to a test page within a certain amount of time, when the involved physician was on call), and ECMCC has provided sufficient competent evidentiary support for the payments. The information provided to OSC illustrates that the involved physician properly responded to all test pages he was assigned to. In interpreting this information, the OSC team erroneously concluded that the involved physician was required to respond to test pages even when the physician was not on call. This was not the contractual standard of performance. Moreover, as explained to the OSC team, ECMCC would not be meeting its responsibility of providing safe patient care by requiring a single physician to be on call 365 days per year, which this finding would seem to imply.
- \$2,000 (8%) is due to what the OSC has called a duplicate payment of an incentive. ECMCC acknowledges that this payment was made to the involved physician, but notes again that it was one part of a dispute resolution with that physician. That dispute was

resolved in writing and included several compensation related claims that had merit. Settling, as the physician and ECMCC did, avoided a lawsuit, the attendant litigation expenses, a likely court-imposed liability, and the loss of good will that ECMCC works hard to maintain with its clinical providers. Moreover, the overall amount of settlement with this physician was far less than the initial claim made against ECMCC. In other words, ECMCC made a responsible business judgment in arriving at a settlement amount and the settlement appropriately documents the payment made.

- \$2,608 (10%) is due to payments for physicians meeting certain criteria measured as “once every two weeks”. The OSC team has taken the position that the measurement is any time greater than a 14 day gap. ECMCC has taken the position, and provided evidence to the OSC team, that the criteria can be met by the physician being measured on the first day of one 2 week period and the last day of the next two week period for providing for a maximum of a 28 day gap. Moreover, on a practical level, a physician would not meet the criteria, using the OSC methodology, for simply taking the vacation time to which they are entitled, which clearly is not the intent of the measure, not safe patient care and not sound management of our physician resources.
- \$8,978 (34%) is due to payments for physicians meeting certain criteria which can be documented in multiple locations in the patient’s electronic medical record. The OSC conclusions are based on a single source of data from a medical records department list and not from multiple locations. ECMCC believes that alternative sources of documentation were provided that indicate that the criteria has been achieved.

REPORTING REQUIREMENTS

ECMCC acknowledges its obligation, pursuant to section 170 of the New York Executive Law, to report to the Governor, the Comptroller, and the leaders of the Legislature and fiscal committees within ninety (90) days concerning the steps taken to implement the recommendations contained in the final report, and where steps have not been taken, the reasons underlying those decisions. We believe that the steps not taken and the reason for not taking such steps have been fully outlined above and are communicated to the aforementioned herewith.