



New York State Comptroller
THOMAS P. DiNAPOLI

Amerimed Kids, LLC - Compliance With the Reimbursable Cost Manual

State Education Department

Report 2018-S-17 | June 2019

Spotlight on Education



Audit Highlights

Objective

To determine whether the costs reported by Amerimed Kids, LLC (Amerimed Kids) on its Consolidated Fiscal Reports (CFRs) were reasonable, necessary, directly related to the special education program, and sufficiently documented pursuant to the State Education Department's (SED) Reimbursable Cost Manual (RCM). The audit focused primarily on expenses claimed on Amerimed Kids' CFR for the fiscal year ended June 30, 2015, and included certain expenses claimed on its CFRs for the two fiscal years ended June 30, 2014.

About the Program

Amerimed Kids is a New York City-based for-profit organization authorized by SED to provide Preschool Special Education Itinerant Teacher (SEIT) services to children with disabilities who are between the ages of three and five years. In addition to owning and operating the Amerimed Kids SEIT program, the Assistant Executive Director also owns and operates at least one private business and a Department of Health Early Intervention (EI) program. Amerimed Kids shares office space and certain employees with the private business and the EI program. We repeatedly requested support from Amerimed Kids for the expenses allocated to the SEIT program. These requests were not complied with.

During the 2014-15 school year, Amerimed Kids served approximately 81 students. The New York City Department of Education refers students to Amerimed Kids and pays for its services using rates established by SED. The rates are based on the financial information Amerimed Kids reports to SED on its annual CFRs. For the three fiscal years ended June 30, 2015, Amerimed Kids reported approximately \$3.8 million in reimbursable costs for the SEIT cost-based program.

In a letter dated December 18, 2018, Amerimed Kids informed SED of its intent to close the SEIT program.

Key Findings

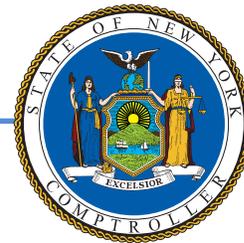
For the three fiscal years ended June 30, 2015, we identified \$975,845 in reported costs that did not comply with the requirements in the RCM, as follows:

- \$797,472 in insufficiently documented personal service costs, including \$479,500 in compensation to the Executive and Assistant Executive Directors, \$237,927 in compensation to ten employees who worked for SED and non-SED programs, \$54,221 in bonuses that were not based on merit, and \$25,824 in incorrectly reported compensation.
- \$116,920 in insufficiently documented rent expenses, including \$8,511 for a location that was not approved by SED.
- \$61,453 in other than personal service expenses for space shared by the SED program and the Assistant Executive Director's other businesses. Amerimed Kids did not provide

the statistical basis for the percentages that were used to calculate the expenses allocated to the programs, as required.

Key Recommendation

- SED should review the exceptions identified by our audit and take appropriate actions to recover the disallowed expenses.



Office of the New York State Comptroller Division of State Government Accountability

June 5, 2019

Ms. MaryEllen Elia
Commissioner
State Education Department
State Education Building - Room 125
89 Washington Avenue
Albany, NY 12234

Ms. Judith Lebovits
Executive Director
Amerimed Kids, LLC
200 West 58th Street
New York, NY 10019

Dear Ms. Elia and Ms. Lebovits:

The Office of the State Comptroller is committed to helping State agencies, public authorities, and local government agencies manage government resources efficiently 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, entitled *Compliance With the Reimbursable Cost Manual*, of our audit of the expenses submitted by Amerimed Kids, LLC to the State Education Department for the purposes of establishing tuition reimbursement rates. The audit was performed pursuant to the State Comptroller's authority as set forth in Article V, Section 1 of the State Constitution; Article II, Section 8 of the State Finance Law; and Section 4410-c of the State Education 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,

Division of State Government Accountability

Contents

Glossary of Terms	5
Background	6
Audit Findings and Recommendation	7
Personal Service Costs.....	7
Other Than Personal Service Costs.....	9
Recommendation.....	12
Audit Scope, Objective, and Methodology	13
Statutory Requirements	14
Authority.....	14
Reporting Requirements.....	14
Exhibit A	15
Notes to Exhibit A	16
Exhibit B	18
Exhibit C	19
Agency Comments - State Education Department	20
Agency Comments - Amerimed Kids, LLC and State Comptroller’s Comments	21
Contributors to Report	35

Glossary of Terms

Abbreviation	Description	Identifier
Amerimed Kids	Amerimed Kids, LLC	<i>Service Provider</i>
CFR	Consolidated Fiscal Report	<i>Key Term</i>
CFR Manual	Consolidated Fiscal Reporting and Claiming Manual	<i>Key Term</i>
DoE	New York City Department of Education	<i>Agency</i>
EI	Early Intervention program	<i>Key Term</i>
OTPS	Other than personal services	<i>Key Term</i>
RCM	Reimbursable Cost Manual	<i>Key Term</i>
SED	State Education Department	<i>Auditee</i>
SEIT	Special Education Itinerant Teacher program	<i>Key Term</i>

Background

Amerimed Kids, LLC (Amerimed Kids) is a New York City-based for-profit organization approved by the State Education Department (SED) to provide Preschool Special Education Itinerant Teacher (SEIT) services to children with disabilities who are between the ages of three and five years. During the 2014-15 school year, Amerimed Kids served approximately 81 students. The administrative offices for Amerimed Kids are located in Brooklyn and Manhattan.

In addition to owning and operating the Amerimed Kids SEIT program, the Assistant Executive Director also owns and operates at least one private business and a Department of Health Early Intervention (EI) program. Amerimed Kids shares office space and certain employees with the private business and the EI program. We repeatedly requested support from Amerimed Kids for the expenses allocated to the SEIT program. These requests were not complied with.

The administrative offices in Brooklyn are used for both the SEIT and EI programs, and the administrative offices in Manhattan are used for the SEIT and EI programs as well as for the private business. In a letter dated December 18, 2018, Amerimed Kids informed SED of its intent to close the SEIT program.

The New York City Department of Education (DoE) refers students to Amerimed Kids based on clinical evaluations and pays for its services using rates established by SED. These rates are based on the financial information Amerimed Kids reports to SED on its annual CFRs. To qualify for reimbursement, Amerimed Kids' expenses must comply with the criteria set forth in SED's Reimbursable Cost Manual (RCM) and the Consolidated Fiscal Reporting and Claiming Manual (CFR Manual), which provide guidance to special education providers on the eligibility of reimbursable costs, the documentation necessary to support these costs, and cost allocation requirements for expenses relating to multiple programs and entities. The State reimburses DoE 59.5 percent of the statutory rate it pays to Amerimed Kids.

Section 4410-c of the Education Law provides that the State Comptroller shall audit the expenses reported to SED by special education service providers for preschool children with disabilities. For the three fiscal years ended June 30, 2015, Amerimed Kids reported approximately \$3.8 million in reimbursable costs for the SEIT cost-based program. This audit focused primarily on expenses claimed on Amerimed Kids' CFR for the fiscal year ended June 30, 2015, and included certain expenses claimed on its CFRs for the two fiscal years ended June 30, 2014.

Audit Findings and Recommendation

According to the RCM, costs will be considered for reimbursement provided they are reasonable, necessary, directly related to the special education program, and sufficiently documented. For the three fiscal years ended June 30, 2015, we identified \$975,845 in reported costs that did not comply with SED's requirements for reimbursement. These ineligible costs included \$797,472 in personal service costs and \$178,373 in other than personal service (OTPS) costs (see Exhibit A at the end of the report).

Personal Service Costs

Personal service costs, which include all salaries and fringe benefits paid or accrued to employees on the service provider'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). For the three fiscal years ended June 30, 2015, Amerimed Kids reported approximately \$3.6 million in personal service costs for the SEIT program. We identified \$797,472 in personal service costs that did not comply with the RCM's guidelines for reimbursement.

Insufficiently Documented Personal Service Costs

According to the RCM, costs are considered for reimbursement provided they are reasonable, necessary, directly related to the special education program, and sufficiently documented. Moreover, compensation costs (salaries and fringe benefits) must be based on approved, documented payrolls and supported by employee time records prepared during, not after, the time period for which the employee was paid. Time sheets must be signed by the employee and a supervisor and completed at least monthly. The RCM also requires that compensation costs claimed for certain employees who work in more than one entity be supported by contemporaneous time and effort reports or equivalent documentation of the actual activity of each employee, and must account for the total activity for which each employee is compensated. Budget estimates or other allocation methods determined before the services are performed are not adequate documentation for use in completing annual financial reports.

For the three fiscal years ended June 30, 2015, Amerimed Kids reported \$743,251 (\$725,364 in salaries and \$17,887 in fringe benefits) in compensation costs that were not in compliance with the requirements in the RCM, as follows:

- \$479,500 in salaries (no fringe benefits were reported) for the Executive Director and the Assistant Executive Director. These costs were not supported by time and attendance records or other evidence of work

effort, as required by the RCM. Instead, Amerimed Kids officials provided schedules, purportedly agreed to at the beginning of each fiscal year, to show the days, times, and number of hours these two employees were scheduled to work each week. However, during the course of the audit, Amerimed Kids provided two different sets of schedules for the same two employees, as follows:

- Executive Director – In July 2018, Amerimed Kids provided a one-page document showing the Executive Director’s weekly schedules for each of the three fiscal years of our review. The document was not signed or dated and contained mathematical errors. In September 2018, Amerimed Kids provided a different schedule for each of the three fiscal years. These schedules showed a different start time for one of the days in 2013-14, did not have the mathematical errors that were present on the initial schedule, and contained the Assistant Executive Director’s signature (see Exhibit B).
- Assistant Executive Director – In July 2018, Amerimed Kids provided an email showing a screenshot of an unsigned schedule labeled “Schedule for 12-15.” In February 2019, Amerimed Kids provided weekly schedules for each of the three fiscal years of our review. These schedules showed a different start time for one of the days, hours scheduled for a day that was previously not scheduled, and an additional hour of work during the week, and contained the Executive Director’s signature.

The schedules provided during the course of the audit contained conflicting information and, therefore, we question their validity. Moreover, the schedules were not contemporaneous and were not completed at least monthly, as required by the RCM.

- \$237,927 in compensation (\$222,322 in salaries and \$15,605 in fringe benefits) for ten employees who worked for both the SEIT and EI programs. The compensation for the ten shared employees was not supported by time and attendance records or other evidence of work effort, as required by the RCM. Moreover, Amerimed Kids did not provide documentation to show the total activity each of the ten SEIT employees spent working for the EI program, nor were there any other shared employees who had time studies (or other acceptable allocation methods) we could use to arrive at a fair and reasonable allocation.
- \$25,824 (\$23,542 in salaries and \$2,282 in fringe benefits) in compensation costs reported as teacher salaries on the CFR for the

fiscal year ended June 30, 2015. Amerimed Kids officials did not have any documentation to support these costs and acknowledged that the \$25,824 had been mistakenly reported on the CFR.

Consequently, we recommend that SED disallow \$743,251 (\$725,364 in salary and \$17,887 in fringe benefits) in insufficiently documented personal service costs.

Bonuses

According to the RCM, a merit award (bonus compensation) may be reimbursed if it is based on merit as measured and supported by employee performance evaluations. The RCM further requires the service provider to adopt a written employee performance evaluation policy specifying the criteria and methods used to determine each employee's final evaluation rating and how this rating will directly correlate to the amount of the bonus compensation.

Amerimed Kids reported 3 percent bonuses totaling \$49,745 on its 2012-13 and 2014-15 CFRs for 77 teachers (22 teachers in 2012-13 and 55 teachers in 2014-15). Initially, Amerimed Kids could not provide evaluations to support the bonuses. Thereafter, evaluations that included a final evaluation rating for each employee were provided. Subsequently, Amerimed Kids provided another set of evaluations for 2012-13; however, the final evaluation ratings on these new evaluations were missing. In addition, we found that Amerimed Kids had not established a written employee performance evaluation policy specifying the criteria and methods used to determine each employee's final evaluation rating and how this rating will directly correlate to the amount of bonus compensation. We have no assurance that the bonuses were based on merit because there was no performance evaluation policy, and all employees who received bonuses had similar bonus percentages. In addition, we were provided with duplicate, inconsistent evaluations for review.

Consequently, we recommend that SED disallow the \$54,221 (\$49,745 in bonuses and \$4,476 in related fringe benefits).

Other Than Personal Service Costs

According to the RCM, costs must be reasonable, necessary, directly related to the special education program, and sufficiently documented. For the three fiscal years ended June 30, 2015, Amerimed Kids reported approximately \$270,000 in OTPS expenses for its SEIT program. We identified \$178,373 of these expenses that did not comply with SED's reimbursement requirements.

Rent

According to the RCM, shared space should be allocated based upon square footage and the percentage of time the space is used by the various programs. The RCM further requires that allocation methods, as well as the statistical basis used to calculate allocation percentages, be documented and retained for a minimum of seven years.

Amerimed Kids reported \$116,920 in rent expenses for the three fiscal years of our review. During this period, they did not rent any office space exclusively for the SEIT program. Instead, they entered into less-than-arm's-length collaboration agreements¹ to share office space also used by other businesses (EI and a private business) owned by the Assistant Executive Director, as follows:

- During each of the three years, the Manhattan location(s) were shared with the EI program and the Assistant Executive Director's private business;
- During each of the three years, the Brooklyn location(s) were shared with the EI program (one location was used for the period July 2014 through November 2014 and another for the period December 2014 through June 2015).

The less-than-arm's-length collaboration agreements stipulated the percentage of total rent Amerimed Kids would be allocated; however, Amerimed Kids did not provide documentation to support the statistical basis used to calculate the allocation percentages, as required by the RCM.

For example, the allocation for one of the Manhattan locations, which is primarily the Assistant Executive Director's private business, allocates a specific room integral to the private business to the SEIT program three out of five days (60 percent). Similarly, the SEIT program is allocated 10 percent of the "Waiting Area" (see Exhibit C). However, despite repeated requests, Amerimed Kids did not provide the statistical basis used to calculate these allocation percentages or any financial or programmatic information regarding the other related entities. Absent this information, the allocation percentages, which determine the amount of rent allocated to the SEIT program, are not supported and, therefore, we recommend a disallowance of the entire amount of rent reported on the CFR for the three years of our review.

We shared our findings with SED, which advised that the documentation

¹ The collaboration agreements were between Amerimed Kids (represented by the Assistant Executive Director) and the Assistant Executive Director or a real estate holding company owned by the Assistant Executive Director.

provided by Amerimed Kids did not comply with the requirements in the RCM.

Additionally, the RCM requires SED approval for a move to a new location for the cost of that space to be reimbursed. Amerimed Kids relocated its Brooklyn office during the 2014-15 fiscal year but did not obtain SED's approval. Amerimed Kids reported \$8,511 in rent expenses for this unapproved location.

We recommend that SED disallow \$116,920 in rent expenses that did not meet the requirements of the RCM, including \$8,511 in rent expenses for the unapproved Brooklyn location.

Allocation of Miscellaneous Expenses

According to the RCM, expenditures that cannot be charged directly to a specific program must be allocated, using fair and reasonable allocation methods, across all programs and/or entities that benefited from the expenditure. The allocation methods, as well as the statistical basis used to calculate allocation percentages, must be documented and retained for a minimum of seven years.

An annual expense sharing agreement was used to allocate the costs of utilities, office supplies, computer software, repairs and maintenance, and insurance between the SEIT and EI programs. According to Amerimed Kids' representatives, the allocations are based on "historical data and the review of costs and expenses of our current size companies." However, we were never provided with the historical data. Amerimed Kids allocated the following costs to the SEIT program for the three years ended June 30, 2015:

- \$21,102 in utility expenses for its four locations;
- \$13,952 in office supply expenses, including \$4,812 in expenses that were insufficiently supported;
- \$10,996 in computer software expenses;
- \$8,600 in repairs and maintenance expenses for the unapproved Brooklyn location; and
- \$6,803 in insurance expenses.

Amerimed Kids representatives did not provide the statistical basis (methodology) used to calculate the percentage of the expenses allocated to the SEIT program, stating that the terms and conditions of the agreements were beyond the scope of our audit review. Consequently, we recommend that SED disallow \$61,453 in allocated expenses for the three fiscal

years ended June 30, 2015 because these expenses were insufficiently documented (the statistical basis used to calculate the allocation percentage was not provided) and/or unallowable (unapproved location).

Recommendation

1. SED should review the exceptions identified by our audit and take appropriate actions to recover the disallowed expenses.

Audit Scope, Objective, and Methodology

The objective of our audit was to determine whether the costs reported by Amerimed Kids on its CFRs were reasonable, necessary, directly related to the SEIT program, and sufficiently documented, pursuant to SED guidelines. The audit focused primarily on expenses claimed on Amerimed Kids' CFR for the fiscal year ended June 30, 2015, and included certain expenses claimed on its CFRs for the two fiscal years ended June 30, 2014. In a letter dated December 18, 2018, Amerimed Kids informed SED of its intent to close the SEIT program.

To accomplish our objective, we reviewed the RCM, the CFR Manual, Amerimed Kids' CFRs, and relevant financial and program records for the audited period. In addition, we evaluated the internal controls over the costs claimed on, and the schedules prepared in support of, the CFRs submitted to SED. We also interviewed Amerimed Kids officials, staff, and its independent auditor to obtain an understanding of Amerimed Kids' financial and business practices. In addition, we selected a judgmental sample of reported costs to determine whether they were supported, program related, and reimbursable. Specifically, we reviewed costs that were considered high risk and reimbursable in limited circumstances, based on prior audit report findings, such as salaries and fringe benefit expenses, rent expenses, and OTPS expenses. Our samples were based on the relative materiality of the various categories of costs reported and their associated levels of risk. Our samples were not designed to be projected to the entire population of reported costs.

Statutory Requirements

Authority

The audit was performed pursuant to the State Comptroller's authority as set forth in Article V, Section 1 of the State Constitution; Article II, Section 8 of the State Finance Law; and Section 4410-c of the Education Law.

We conducted our performance 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 objective. We believe that the evidence obtained during our audit 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 management functions do not affect our ability to conduct independent audits of program performance.

Reporting Requirements

We provided draft copies of this report to SED and Amerimed Kids officials for their review and formal comment. Their comments were considered in preparing this final report and are included at the end of it. In their response, SED officials agreed with our recommendation and indicated that they will take steps to address it. In Amerimed Kids' response, officials agreed with one of our proposed disallowances, but disagreed with the remaining. Our responses to certain Amerimed Kids comments are embedded within its response.

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 recommendation contained herein, and if the recommendation was not implemented, the reasons why.

Exhibit A

Amerimed Kids Summary of Submitted and Disallowed Program Costs for the 2012-13, 2013-14, and 2014-15 Fiscal Years

Program Costs	Amount Claimed on CFR	Amount Disallowed	Amount Remaining	Notes to Exhibit
Personal Services				
Direct Care	\$3,086,093	\$317,972	\$2,768,121	A-C, G
Agency Administration	479,500	479,500	0	
Total Personal Services	\$3,565,593	\$797,472	\$2,768,121	
Other Than Personal Services				
Direct Care	\$153,963	\$125,907	\$28,056	A, D-F, H, I
Agency Administration	114,636	52,466	62,170	
Total Other Than Personal Services	\$268,599	\$178,373	\$90,226	
Total Program Costs	\$3,834,192	\$975,845	\$2,858,347	

Notes to Exhibit A

The following Notes refer to specific sections of SED's 2014-15 RCM (unless otherwise stated) and the CFR 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 Amerimed Kids officials during the course of our audit.

- A. RCM Section II - Costs will be considered for reimbursement provided such costs are reasonable, necessary, directly related to the special education program, and sufficiently documented.
- B. RCM Section II.13.A(4)d - For non-direct staff under the 500 and 600 position title code series per Appendix R of the CFR Manual, owners or related parties who work in more than one entity (including organizations that have a less-than-arm's length relationship with the approved program), the FTE in total across entities cannot exceed 1.0. The allocation of compensation must be supported by time and effort reports or equivalent documentation which meets the following standards:
 - They must reflect contemporaneous time records of the actual activity of each employee.
 - They must account for the total activity for which employee is compensated.
 - They must be prepared at least monthly and coincide with one or more pay periods.
 - They must be signed or electronically approved and dated by the employee and employee's direct supervisor. Executive Directors of for-profit and not-for-profit entities should have their time records signed or electronically approved by the Agency's Controller, Compliance Officer, or staff employed in a similar capacity (in the event that the Executive Director also serves as the Agency's Controller than a separate independent individual within the agency's management structure may serve this function). Budget estimates or other allocation methods determined before the services are performed are not adequate documentation for use in completing annual financial reports but may be used for interim accounting purposes.

Compensation beyond 1.0 FTE for non-direct care staff, owners or related parties will not be considered reimbursable in the calculation of tuition rates.

- C. RCM Section II.13.A(10) - A merit award (or bonus compensation) shall mean a nonrecurring and non-accumulating (i.e., not included in base salary of subsequent years) lump sum payment in excess of regularly scheduled salary which is not directly related to hours worked. A merit award may be reimbursed if it is based on merit as measured and supported by employee performance evaluations.

In order to demonstrate that a merit award is based on merit and measured and supported by employee performance evaluations, the provider's governing entity must

adopt a written employee performance evaluation policy and form that contains sufficient details as to the criteria and methods used to determine each employee's final evaluation rating. The written employee performance evaluation policy must also describe how the final evaluation rating will directly correlate to any amount of a merit award should funds be available for such an award.

- D. RCM Section II.17.A(3) - A move to a new location must be approved by SED's program staff prior to the move.
- E. RCM Section II.41.B(4) - The share of rental expense allocated to programs funded pursuant to Article 81 and/or Article 89 is based on documented and reasonable criteria, such as square footage utilization, when more than one program is operated in a rented facility.
- F. RCM Section II.48.A(3) - Allocation of property costs to SEIT should be based on square footage. Administrative or shared space should be allocated based upon the square footage and percentage of time used by the various programs. Using Ratio Value alone, Units of Service or similar methodology to allocate property costs is not an appropriate allocation methodology for SEIT.
- G. RCM Section III.1.A - Compensation costs must be based on approved, documented payrolls. Payroll must be supported by employee time records prepared during, not after, the time period for which the employee was paid. Employee time sheets must be signed by the employee and a supervisor, and must be completed at least monthly.
- H. RCM Section III.1.M(1) - Any expenditures that cannot be charged directly to a specific program must be allocated across all programs and/or entities benefited by the expenditure.
- I. RCM 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. Such allocation methods, as well as the statistical basis used to calculate allocation percentages, must be documented and retained for each fiscal year for review upon audit for a minimum of seven (7) years. Allocation percentages should be reviewed on an annual basis and adjusted, as necessary.

Exhibit B

Time Schedules Submitted for Executive Director

July 2018 Submission

Schedule		FY 12-13	
Weekday	StartWork	EndWork	TotalHours
Monday	9:00 AM	5:00 PM	8:00
Tuesday	10:00 AM	3:00 PM	8:00
Wednesday	10:00 AM	4:00 PM	5:00
Thursday	9:00 AM	5:00 PM	6:00
Friday	9:00 AM	5:00 PM	8:00

September 2018 Submission

Schedule		FY 12-13	
Weekday	StartWork	EndWork	TotalHours
Monday	9:00 AM	5:00 PM	8:00
Tuesday	10:00 AM	3:00 PM	5:00
Wednesday	10:00 AM	4:00 PM	6:00
Thursday	9:00 AM	5:00 PM	8:00
Friday	9:00 AM	5:00 PM	8:00

Schedule		FY 13-14	
Weekday	StartWork	EndWork	TotalHours
Monday	9:00 AM	4:00 PM	7:00
Tuesday	10:00 AM	5:00 PM	7:00
Wednesday	9:00 AM	4:00 PM	7:00
Thursday	9:00 AM	5:00 PM	7:00
Friday	10:00 AM	5:00 PM	7:00

Schedule		FY 13-14	
Weekday	StartWork	EndWork	TotalHours
Monday	9:00 AM	4:00 PM	7:00
Tuesday	10:00 AM	5:00 PM	7:00
Wednesday	10:00 AM	4:00 PM	6:00
Thursday	9:00 AM	5:00 PM	8:00
Friday	10:00 AM	5:00 PM	7:00

Schedule		FY 14-15	
Weekday	StartWork	EndWork	TotalHours
Monday	9:00 AM	4:00 PM	7:00
Tuesday	10:00 AM	4:00 PM	7:00
Wednesday	9:00 AM	4:00 PM	6:00
Thursday	9:00 AM	5:00 PM	7:00
Friday	10:00 AM	5:00 PM	8:00

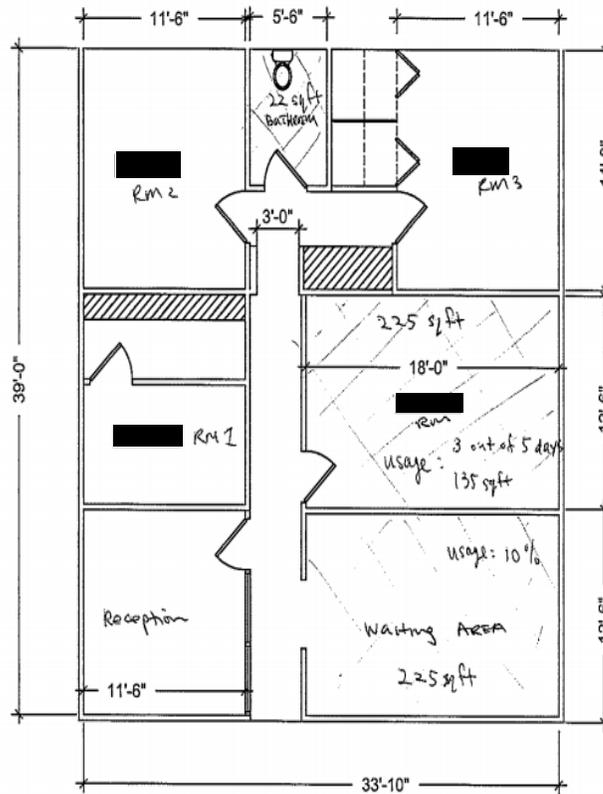
Schedule		FY 14-15	
Weekday	StartWork	EndWork	TotalHours
Monday	9:00 AM	4:00 PM	7:00
Tuesday	10:00 AM	4:00 PM	6:00
Wednesday	9:00 AM	4:00 PM	7:00
Thursday	9:00 AM	5:00 PM	8:00
Friday	10:00 AM	5:00 PM	7:00

Names/signatures have been redacted.

Exhibit C

Floor Plan for One of the Manhattan Locations

MIDTOWN FRONT OFFICE



Total Sqft = 1,326 sqft

Usage: ^{Approx.} 13%

For Kids 172 sqft

SCALE: $\frac{1}{8}'' = 1'-0''$

Agency Comments - State Education Department



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

DEPUTY COMMISSIONER
Office of Performance Improvement and Management Services
O: 518.473.4706
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May 21, 2019

Mr. Kenrick Sifontes
Audit Director
Division of State Government Accountability
NYS Office of the State Comptroller
59 Maiden Lane, 21st Floor
New York, NY 10038

Dear Mr. Sifontes:

The following is the New York State Education Department's (SED) response to the draft audit report, 2018-S-17, Compliance with the Reimbursable Cost Manual – Amerimed Kids, LLC (Amerimed Kids).

Recommendation 1:

"SED should review the exceptions identified by our audit and take appropriate actions to recover the disallowed expenses."

We agree with this recommendation. SED 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.

If you have any questions regarding this response, please contact James Kampf, Supervising Accountant, at (518) 474-3227.

Sincerely,

A handwritten signature in black ink that reads "Sharon Cates-Williams".

Sharon Cates-Williams



Pamela A. Madeiros, Esq.
(518) 689-1412
madeirosp@gtlaw.com

May 15, 2019

VIA ELECTRONIC MAIL

Kenrick Sifontes
Audit Manager
Office of the State Comptroller
59 Maiden Lane, 21st Floor
New York, New York 10038

**Re: State Education Department
Compliance with the Reimbursable Cost Manual
Amerimed Kids, LLC
Draft Report 2018-S-17**

Dear Mr. Sifontes:

We have reviewed the above-referenced Draft Report related to expenses reported by Amerimed Kids, LLC on its Consolidated Fiscal Reports (CFRs) for the three fiscal years ending June 30, 2015, specifically, as relates to findings identified by the Auditors as not complying with NYSED's Reimbursable Cost Manual (Manual). We appreciate the opportunity to correct potential errors of fact and to provide additional information and documentation which we believe must be considered in formulating the final audit conclusions. We respectfully request reasoned consideration of the arguments presented in this Response and the requests for adjustment in findings and presentation.

Background

It is clear from the preliminary findings set out in the Report, as well as the general comportment of the audit team during the field review, that the operational model of Amerimed Kids is unlike that of its colleague special education providers (SEIT). The Amerimed Kids operational model is specifically designed to be as cost-effective and administratively efficient as possible, and to minimize administrative expenses while directing the largest portion of earned revenue to the provision of special education services through direct care special education teachers. Thus, while other colleague SEIT providers may have viewed RCM and CFR guidelines of acceptable structural and organizational costs as the foundation of design for their operations and administrative "organization chart" - Executive Director (1 FTE); Assistant Executive Director (1 FTE); CFO (1 FTE); Accountant (1 FTE); etc. -- Amerimed Kids, LLC was designed

“from the bottom up”, identifying minimal title positions believed necessary to assure effective operations at the minimal level of time commitment.

The founder of Amerimed Kids, a pediatrician by profession with decades of experience in managing the effective operations of his own medical practice, designed the administrative structure of Amerimed to be stream-lined and minimal.

The administrative structure was designed to engage staff at designated titled positions for a set number of hours -- the number of hours of which was pre-determined based on management analysis of efficient office operations. Thus, while the RCM and CFR may have contemplated and “authorized” for reimbursement a full FTE each for the administrative positions of executive director, assistant executive director, accountant, chief fiscal officer, program director, and similar titles, Amerimed reported less than a full FTE – compensated at less than a full FTE – all administrative and management staff.

State Comptroller’s Comment 1 - Amerimed Kids’ response is misleading. The RCM does not authorize reimbursement of a full FTE for each of the positions listed (executive director, assistant executive director, chief fiscal officer, program director, etc.). The level of staffing is contingent upon the size of the organization’s operations.

To reflect this “minimalist” approach to incurring administrative costs, Amerimed engaged a number of title position staff on a “project” basis which, much like a title position job description, identified the specific tasks and activities in which the individual was expected to engage and towards what goal or objective. This “project based” approach coupled with Amerimed’s unorthodox overall minimalist approach to administrative staffing, we believe, may have presented challenges to the audit team’s standard review protocol.

State Comptroller’s Comment 2 - Amerimed Kids’ “unorthodox overall minimalist approach to administrative staffing” did not present challenges to the audit team. The audit team concluded that Amerimed Kids did not comply with certain requirements of the RCM, as outlined in this report.

However, while concedingly unorthodox, Amerimed Kids’ operations and internal workings had demonstrable integrity.

Simply stated – this approach was highly effective. It assured sound operations, effective office management, timely invoicing, responsive interactions with direct staff, reliable payroll operations and all other indicators of sound business practices demanded by the RCM. The “deliverables” of these administrative operations are themselves reflected in the sustained reliability of the organization itself: bills were paid, payroll was met, records were kept and all at a cost much less than “allowed” by the RCM or CFR and dramatically less than costs incurred by colleague SEIT provider programs.

State Comptroller’s Comment 3 - Amerimed Kids’ response, stating that it provided services at a cost “dramatically less than costs incurred by colleague SEIT provider programs,” is

incorrect. Amerimed Kids' reimbursement rate exceeded the regional average reimbursement rate for other SEIT-only providers in New York City during all three years of our review. In addition, Amerimed Kids reported expenses that exceeded its own reimbursement rate in all three years.

To suggest that a program the size of Amerimed Kids could have operated without the minimal administrative staff engaged by Amerimed Kids simply defies logic and reason.

While Amerimed Kids acknowledged that its record documentation and retention protocols may not exactly align with the guidelines of the RCM, we believe strongly that our internal policies and procedures assured that costs and expenses reported on the CFR for reimbursement were "reasonable, necessary and directly related to the education program" as required by the RCM, and as importantly that such costs had "adequate substantiating documentation" as also prescribed by the RCM. We believe strongly that the documentation shared during the field audit and both prior and subsequent to the exit conference, adequately supports the reported costs in ways other than those necessarily set in the RCM, yet nonetheless effectively.

State Comptroller's Comment 4 - As Amerimed Kids acknowledges, its documentation did not always align with the guidelines of the RCM. In order for entities to be reimbursed, they need to follow all the requirements of the RCM, not just certain ones or in "ways other than those necessarily set in the RCM."

About the Program

Point of clarification, the entity, "Amerimed Kids", does not operate an Early Intervention Program. We request that representation be corrected.

State Comptroller's Comment 5 - We have revised our report to reflect that the Assistant Executive Director owns and operates the EI program.

In addition, while we appreciate the need to present the audited program within the proper context to support certain audit findings, we do not believe the level of descriptive detail reflected in the Draft narrative is either necessary or relevant as relates to other entities or approved programs, use of faculty space and allocation of staff.

It is inaccurate, if not prejudicial, to suggest that "entities typically operate SED and EI programs under one entity".

State Comptroller's Comment 6 - We removed this statement from our report.

Point of fact, the number of organizations which operate such programs under single or multiple corporate structures is not immediately discernable since, as the Report acknowledges, entities which operate EI programs exclusively are not required to file cost reporting documents such as the CFR. There are limited opportunities, then, to identify entities which operate EI programs exclusively.

Moreover, record keeping and other operational protocols employed by such entities need not comply with the rigors of the Reimbursable Cost Manual, nor the CFR Manual. We object, then, to the suggestions that operating an EI program under a separate entity reflects some nefarious objective or malintent. It does, however, require recognition of such entity's "separateness" unrelated to any other related entity.

The scope of the audit extended only to assessment of compliance with the mandates of the RCM, as aptly noted in the Report Objective. That scope did not extend to the EI program any more than the scope of previous audits have extended to OPWDD, OMH or other programs operated by larger organizations in addition to their SED programs operations.

State Comptroller's Comment 7 - We agree. We did not audit the EI program.

Cost allocations must be supported by a discernable allocation methodology - - which methodology is defensible in its own right and does not require the review of all costs incurred to confirm its integrity. Amerimed provided substantial documentation in support of its reported costs in all instances as related to the SED program. The legitimate scope of the Auditors' review ended at that line of demarcation – ended with the SED program. To request information about the operations or finances of any other entity exceeds the scope of the SED audit and to suggest that failure to provide such often privileged documentation is suspicious or relevant to the SED audit it simply prejudicial.

Accordingly, we respectfully request the Draft Report be revised to delete references to any other entity or operation as identified above throughout the Draft Report, including the sections entitled "About the Program", "Key Findings", and "Background".

Personal Service Costs

Documentation

Executive Director / Assistant Executive Director Salaries

While Amerimed Kids recognizes its record keeping procedures relating to salary costs may not align exactly with those of the RCM, the Auditors' finding that the **totality** of reported executive salary costs should be disallowed is unreasonable and without basis. Clearly, the agency was administered by executive management personnel -- the thing speaks for itself. As noted previously, policies were clearly effectively executed, executive management decisions were clearly made, communications were clearly conducted, checks were clearly signed, management clearly operated.

In all other instances of which we were aware, based upon review of published OSC Final Reports, initial audit team challenges to certain executive management salary costs have been ultimately tempered to focus on the extent of the time reported for certain titled positions and the identification of a more "appropriate title/position" than that reported on the CFR. Accordingly, OSC did not suggest that a certain CFO did not perform any tasks incident to the audited agency's fiscal operations, but rather that since the Executive Director claimed to be responsive for the identical fiscal

and accounting management activities, than the tasks, time and allowable compensation of the CFO were determined more appropriately categorized as Head Accountant, rather than CFO.¹

As importantly, we are unaware of any instance in any OSC Reports governing the preschool special education sector where an Executive Director salary has been disallowed in its entirety, absent criminal conduct.

We are, then, deeply troubled at the Auditors' proposal to disallow the entirety of both the Executive and Assistant Executive Directors' reported salaries as if to suggest that neither of these positions, nor the personnel performing the functions of these positions, were either critical, essential or necessary. Such a suggestion casts doubt, then, on the need for either of these titled positions in any preschool special education program.

State Comptroller's Comment 8 - Amerimed Kids did not provide sufficient documentation to support its Executive Director and Assistant Executive Director salaries. The schedules provided during the course of the audit contained conflicting information, causing us to question their validity. In addition, the schedules were not contemporaneous and were not completed at least monthly, as required by the RCM.

Point in fact, Amerimed Kids did provide the Auditors significant documentation and materials relevant to both the Executive and Assistant Executive Director positions. As previously explained, a work schedule was developed for each management position. As the attached schedules reflect (See: Attachment "Executive Director"), the scheduled hours changed between 2012-13, 2013-14 and 2014-15, reflecting changes in the operational needs of the program and demands on the executive staff. While Amerimed Kids recognizes that the provided schedule may not, in and by itself, demonstrate performance of executive tasks as contemplated by the RCM, such a schedule together with illustrations of activities in which the personnel were engaged (work product), as well as a "sample" weekly calendar, give testament to the fact that these individuals dedicated specific amounts of time to specific, as well as general, executive tasks to the benefit of the SEIT program (See: Attachment "Assistant Executive Director").

The attached materials adequately document the meaningful engagement of both the Executive and Assistant Executive Director in the operation of the SEIT Program. As previously shared with the Auditors, the copies of documents initially reviewed by the audit team were not the copies maintained for record keeping purposes and thus did not reflect the supervisor signature attesting to the accuracy of the weekly work schedules as the now provided documents can attest. As explained in great depth at the exit conference, the documents initially shared with the Auditors were draft templates of proposed work schedules which were then reviewed by management staff and modified to create actual time recording documents. Thus, as acknowledged by the Auditors, the initial document contained errors which were corrected in the preparation of the final record template which was then used to contemporaneous record time spent, as required by the RCM. The Auditors mistakenly and unfairly

¹ See OSC Audit "East River Child Development Center (2016-S-3)"

question the validity of the work schedules despite the fact that reasonable explanations have been offered.

We also challenge the Auditors' suggestion that the provided work schedules of the Amerimed Kids Executive Staff are somehow inadequate. To clarify, the Amerimed Kids Executive Staff work schedules provided to the Auditors reflected only the time committed to the SEIT program, thusly reflecting less than a 40-hour work week. In the case of the Assistant Executive Director, importantly, the dramatically few number of hours to be committed to the SEIT program's administration by the Assistant Executive Director properly reflects his allocation of time during the week activities other than related to the SEIT program. Point in fact, the Executive Director did not perform any services on behalf of the EI program, as the Auditors suggest.

State Comptroller's Comment 9 - This statement was not included in our draft report.

We note again that Amerimed Kids' management staff was minimal by design in an effort to promote the most cost-effective operations as possible. Thus, it was determined that the Assistant Executive Director position did not require a full-time commitment, but rather that the sound business practices, supervision and general assistant executive director responsibilities as identified by the CRF Manual, could be effectively performed by the Assistant Executive Director at a dramatically reduced FTE at great savings to the program, and accordingly, to the City and State as payors under the SEIT system.

State Comptroller's Comment 10 - Amerimed Kids' response is disingenuous. The "sound business practices" it refers to did not lead to great savings to the program, City, or State. In fact, as explained in State Comptroller's Comment 3, Amerimed Kids was reimbursed at an average rate above other providers in New York City.

Office Staff / Salaries

In the first instance, the association of the disallowance with "ten employees who worked for both the SEIT and EI programs" is simply a mischaracterization.

State Comptroller's Comment 11 - The "ten employees who worked for both the SEIT and EI programs" include ten unique employees over the three-year period. We acknowledge not all ten employees were reported in each of the three years.

As substantiated by information provided the Auditors, no more than 2 or 3 employees reported time in the SED program in any individual year - - less than a full time equivalent in each case - - and each such employee submitted time records which were reviewed and approved by supervisory and management staff.

Amerimed Kids more specifically challenges the Auditors' determination that reported costs of \$237,927 related to certain office workers lacked supporting documentation. As shared previously with the Auditors, and as attached again here, each position title was supported by a letter of engagement and job description which reflected expectations as to tasks to be performed. (See:

Kenrick Sifontes
May 15, 2019
7 | Page

Attachments “Outreach Coordinator”, “Outreach/SEIT Supervisor”, “SEIT Administrator/HR”, “SEIT Administrator”, “Bookkeeper”, “Case Coordinator”, “Biller” and “ABA Supervisor”. Additional examples of work product (emails, calendar entries, data entries, executed documents with signatures attesting to review, etc.) are herein provided attesting to the performance of tasks to the exclusive benefit of the SEIT program.

State Comptroller’s Comment 12 - The compensation costs for the ten shared employees were not supported by time and attendance records or other evidence of work product, as required by the RCM. In addition, because these are shared employees, the RCM requires accounting for the total activity for which each employee is compensated. Amerimed Kids did not provide support for the total activity of these employees.

Consistent with the categorization of tasks to be performed by personnel as “project based” described previously, based on decades of managing his own medical practice, the Assistant Executive Director determined, for example, the required tasks of a “biller” for an agency the size and complexity of Amerimed Kids was 18.5 hours a week; and that of a competent bookkeeper, 29 hours a week.

State Comptroller’s Comment 13 - The RCM does not provide for an assistant executive director to determine the amount of time it takes to complete a task. The RCM requires that compensation costs be supported by contemporaneous time records prepared during, not after, the time period for which the employee was paid.

Each of these titled positions’ salaries was commensurate with the “less than 1 FTE” time commitment made -- the services provided -- even as the RCM and CFR would allow for full time positions for each position title. Importantly, title positions were engaged only as necessary, such that “biller” responsibilities were performed by other staff when the agency was first approved for operations since even a “part-time” biller position seemed to management to be unnecessary.

This “project based” approach to service performance is more consistent with the dynamics of a standard vendor contract wherein the expectations of the parties are set out in specific detail. The arrangement of reimbursement for services provided continues only so long as the benefit of the services are fully realized by the contracting party.

State Comptroller’s Comment 14 - Amerimed Kids reported these costs as personal service costs. If the services were more consistent with the “dynamics of a standard vendor contract,” then Amerimed Kids should have entered into contracts for the services and reported the expenses as contracted services.

Similarly, the Amerimed staff whose costs are proposed to be disallowed here, performed specific tasks as provided in their job title descriptions, had their physical presence confirmed and verified by supervisors and executive management staff, and provided specific work products and “deliverables” as reflected in the materials attached.

It is inconceivable that the Auditors would recommend disallowance of the totality of expenses

Kenrick Sifontes
May 15, 2019
8 | Page

associated with these individuals, as if to suggest that the singularly legitimate personal service expenses were those of the teachers, only. While we appreciate the Auditors' preference for certain documentation in support of certain expenses, that preference cannot ignore the existence of equally reliable substantiation of time spent on task as herein provided.

State Comptroller's Comment 15 - Amerimed Kids officials are mistaken. It is not the auditors' "preference" for certain documentation; it is the RCM that requires specific documentation.

NYSED's own rate calculation protocols acknowledge a minimum FTE for each position title listed in the CFR Manual based upon the Department's general understanding of SEIT operations. It is only when reported costs and expenses appear misaligned with NYSED's standard FTE expectations that the Department challenges such costs and expenses. While Amerimed acknowledges that its record keeper protocols could well have been more aligned with the standard protocols set out in the RCM, the RCM itself allows for consideration of alternative demonstrations of substantiation as herein provided. We believe strongly that disallowance of the entirety of the salaries of these vital personnel approaches absurdity and compels acknowledgement of a measure of these costs and expenses as would otherwise be anticipated by NYSED as necessary for general operation of a SEIT program of Amerimed's size and complexity.

We respectfully request restoration of these salaries to that extent.

State Comptroller's Comment 16 - Without adequate support, the disallowances remain.

Teacher Salaries

Amerimed Kids does not challenge the Auditors' finding that \$25,824 in teacher salaries had been mistakenly reported on the CFR.

Teacher Bonuses

Amerimed Kids does, however, challenge the Auditors' assertion that \$54,221 in teacher bonus expenses should be disallowed for want of a written employee performance evaluation policy. Point in fact, Amerimed provided the Auditors with copies of the requisite performance evaluation form, duly executed and properly acknowledged by the supervisor. Clearly, a performance evaluation policy existed as demonstrated by the existence and use of the form itself. While the performance evaluation tool may be of value in providing feedback for a teacher's self-improvement, the utility of the tool for purposes of the RCM is to substantiate the award of bonuses. That requirement has been met where, as here, a performance evaluation tool was used, and where there was a clear defacto correlating between the bonus award and the evaluation tool. Only individuals performing "satisfactorily" or above were awarded a bonus. (See: Attachment "Teacher Bonuses").

State Comptroller's Comment 17 - The RCM requires a written performance evaluation policy, which Amerimed Kids did not provide. While officials state one must have "existed," there is no evidence of one. In addition, we were provided with conflicting performance evaluations during

the course of the audit.

Accordingly, we respectfully request that the totality of the disallowance relating to a teacher bonuses be restored.

Other Than Personal Service Costs

Rent

We renew our request that references to other entities be removed from the narrative, especially as relates to the utilization of facility space. In addition, we believe strongly that the Auditors have misapplied basic principles reflected in the RCM in their analysis of certain facility costs reported on the CFR. More specifically, as reflected in the NYSED program approval letter dated August 21, 2006, reviewed by the Auditors, NYSED approved multiple locations as “central administration for SEIS” - - sites which had been clearly identified on the program approval application. The “nature” of the occupancy of each site - - whether tenancy or sub-tenancy - - was not material to NYSED’s review or approval. The terms, conditions or nature of the occupancy were relevant only in the limited instance of “owner-occupancy” which is not present in any of the location primary direct lease arrangements.

The relationship between the parties is not less than arm’s length, as the Report states. Rental payments are made directly to the landlord who dictates the expense of the rent. In each instance, the Landlord is an “arm’s length” entity. In each instance, Amerimed Kids maintains a “sub-lease” beneath the Tenant. It is the terms of these “sub-lease” arrangements which have the same force and effect in the determination of the appropriateness of the rental expenses as a direct lease - - the amount of the sub-lease rental payments as agreed to by both parties are subject to no higher scrutiny than any rental payment between Tenant and Landlord. (See: Attachment Sublease)

State Comptroller’s Comment 18 - The “sub-lease” Amerimed Kids refers to is the same document as the collaboration agreement we refer to in our report. These collaboration agreements, or sub-leases, are less than arm’s length, as they are between Amerimed Kids (represented by the Assistant Executive Director) and the Assistant Executive Director or a real estate holding company owned by the Assistant Executive Director. The same individual signed on behalf of both entities.

We believe the Auditors erred in “piercing” the sublease agreement in order to assess the propriety of the sublease rental payments. Simply stated, that level of review far exceeds the level of inquiry had the occupancy been through a direct lease with the Landlord. We believe the Auditors’ approach is baseless and unsupported by either general accounting principles, OSC’s own audit protocols, or the Reimbursable Cost Manual. The RCM extends no such privilege as the one seemingly claimed by the Auditors to “pierce” the sublease agreement to determine its appropriateness, any more that the RCM encourages assessment of the propriety of any standard Landlord-Tenant agreement, absent a less-than-arm’s length situation.

State Comptroller’s Comment 19 - According to the RCM, final costs are determined upon

field audit and will be considered for reimbursement provided that such costs are reasonable, necessary, and directly related to the education program. Costs must also have adequate substantiating documentation. As discussed in our report, Amerimed Kids did not provide documentation to support the statistical basis used to calculate the allocation percentages per the less-than-arm's-length collaboration agreements.

Neither NYSED rate setting protocols nor the RCM contemplate nor authorize the assessment of the propriety of rental/facility costs as suggested by the Auditors. In fact, the rate setting methodology itself provides parameters of "allowable" costs to restrict disparate facility costs and to "screen" out such increases.

It is, therefore, wholly inappropriate for the Auditors to challenge the terms/conditions of the sublease agreement and to demand substantiation.

State Comptroller's Comment 20 - We did not "demand substantiation." The RCM states that "costs must have adequate substantiating documentation." When sufficient documentation is not provided, we recommend that SED disallow the expense.

As noted previously, Auditors reviewed the "Reimbursement of Rental Expenses (Sublease)" agreement for each of the leaseholds for each of the audited years. That the terms or conditions of any such agreement should be revised in subsequent years is, likewise, beyond the scope of the Auditors' review and analysis. The terms were revised, however, to reflect increased SEIT operations and the need for additional space and support. For example, units of service in 2014-15 (32,280) were nearly double the 2012-13 units of SEIT services (17,720). Increases in utilization of facility space and related costs, then, is clearly reasonable.

State Comptroller's Comment 21 - Our report does not question the revised terms or conditions of the collaboration (sub-lease) agreements. In addition, according to the 2014-15 CFR, Amerimed Kids provided 34,573 units of service.

We respectfully request restoration of the full \$116,920 in rent expenses at four locations proposed to be disallowed, especially where, as here, the Auditors have confirmed square footage occupancy.

State Comptroller's Comment 22 - The disallowance, which pertains to shared space, remains. While Amerimed Kids provided us with floor plans containing measurements showing the areas allocated to the SEIT program, it did not provide documentation to support the statistical basis used to calculate the allocation percentages, as required by the RCM.

The Auditors are also fully aware of the extent of the utilization of the space as each location contains all of the standard indicators of a vibrant administrative operation including furniture, office supplies, equipment, personal file cabinets, as well as student record cabinets. The disallowance of the entirety of facility related costs is, then, baseless, without authority and itself unreasonable.

Amerimed Kids acknowledges that the current NYSED program approval letter has not yet been

revised to reflect the relocation of Coney Island Avenue administrative offices. However, as the attached documentation reflects, both NYSED and NYCDOE were well aware and acknowledged the relocation of administrative operations to the 12th Street location. The attached CMR screenshot clearly recognizes the 12th Street location, as does the attached Waiver Certificate issued by NYSED on July 1, 2016. (See: Attached 12th Street location) Accordingly, expenses associated with the administrative operations at the 12th Street location, recognized and acknowledged, should be restored in their entirety.

State Comptroller's Comment 23 - The RCM requires SED approval for a move to a new location for the cost of that space to be reimbursed. As Amerimed Kids acknowledges in its response, it has not yet received SED approval for the location it moved to in December 2014.

We would also note that Amerimed did not utilize all of the sites reflected on its approval letter, in the interest of containing costs and operating as efficiently as possible. As importantly, only costs associated with space utilized were reported on the CFR again, as testament to the stream-lined design of the operations.

State Comptroller's Comment 24 - We would expect that providers would not report costs related to space that is not utilized. In addition, while Amerimed Kids states that it is "containing costs" and "operating as efficiently as possible," as outlined in State Comptroller's Comment 3, Amerimed Kids was reimbursed at an average rate above other providers in New York City.

Utilities

We believe the Auditors have misapplied the principles set forth in the RCM in their determination that the \$21,102 in reported utility expenses failed to comply with the requirements of the RCM. Point in fact, as the Auditors are aware, the "Reimbursement of Rental Expenses Agreement" was executed between the Tenant and the Sub-Tenant (Amerimed Kids, LLC) for each location for each year of occupancy. It is that "Reimbursement of Rental Expenses Agreement" exclusively which governs the reported costs and expenses. The Auditors have no authority to, again, "pierce" an existing agreement between interested parties to assess the "reasonableness" of the expenses. The terms and conditions of that Agreement are beyond the scope of the Audit review, much like the "reasonableness" of agreed upon rental payments are beyond the reach of the RCM, with exception. Thus, there is no expectation of a "fair and reasonable allocation methodology" or statistical basis used to calculate the allocation percentages as the Auditors would suggest.

State Comptroller's Comment 25 - There is, in fact, an expectation of a "fair and reasonable allocation methodology" as well as a statistical basis to calculate allocation percentages, as outlined in the RCM, Section III.1.M(2).

A determination of relative use and square footage was made by the interested parties which cannot be challenged in the absence of a showing of lack of occupancy entirely. (See: Attachment Expense Sharing Agreement)

State Comptroller's Comment 26 - The "interested parties" Amerimed Kids refers to in its response are the same person – the Assistant Executive Director – as discussed in State

Comptroller's Comment 18.

The sublease agreement is not a “triple-net” lease, nor does it contemplate associated utilities, taxes, repairs and maintenance or insurance costs. The Sub-lease contemplates occupancy of the space alone. The Reimbursement of Rental Expenses Agreement identifies the expenses to be paid.

Agreements for the payment of facility related expenses are often separate and distinct from leasing arrangement and often reflect presumptions on usage, availability and other conditions in quantifying the expenses. Such was the case here. The Auditors lack the authority to assess the propriety of the expenses to the same extent and under the same legal principles which prevent the Auditors from challenging the propriety of a “triple net lease”.

State Comptroller's Comment 27 - According to the RCM, final costs are determined upon field audit and will be considered for reimbursement provided that such costs are reasonable, necessary, and directly related to the education program. Costs must also have adequate substantiating documentation. As discussed in our report, Amerimed Kids did not provide documentation to support the statistical basis used to calculate the allocation percentages for the utilities expenses.

We, therefore, respectfully request restoration of the proposed disallowance inconsistent with the terms of the Expense Agreement which governs.

Office Supplies

We challenge the Auditors' proposed disallowance of \$13,952 in “unsupported” office supply expenses and attach substantiation of \$2,079.76 in postage services, and \$7,060.28 in general office supplies. In addition, we acknowledge that \$5,461 in costs were associated with accrual expenses (FUTA, NYSI and Medicare taxes paid on wages that were accrued at 6/30/15), which should have been reported as payroll expenses rather than office supplies. (See: Attachment Office Supplies)

State Comptroller's Comment 28 - Our report did not state that \$13,952 in office supply expenses were unsupported. It stated that Amerimed Kids allocated \$13,952 to the SEIT program without sufficient documentation. While Amerimed Kids did provide support during the course of the audit as well as in its response to the draft report, for \$9,140.04 in office supplies and postage expenses (\$2,079.76 and \$7,060.28, respectively) that were shared with the EI program, it did not provide documentation to support the statistical basis used to calculate the allocation percentages for these expenses. Included in the \$13,952 was \$4,812 in expenses that were insufficiently supported, which Amerimed Kids' response indicates were \$5,461 in accrued payroll taxes. Amerimed Kids did not provide support identifying the employees whose payroll taxes were accrued or any evidence that the amounts were ultimately paid.

Computer Software

We challenge the Auditors' proposed disallowance of \$10,996 in computer software costs which the Auditors assert did not have adequate support for the allocation percentage. As Amerimed

Kids shared with the Auditors, the computer software system had been purchased by another entity. Amerimed Kids, LLC had no comparable system and could well have incurred the purchase costs of such a system. However, in keeping with the management's guiding principles of cost-effectiveness, Amerimed Kids determined that "sharing" an existing system was decidedly more cost effective than the purchase of a new system exclusive to Amerimed Kids. The allocation, then 50/50, appeared reasonable.

State Comptroller's Comment 29 - As discussed in our report, Amerimed Kids did not provide documentation to support the statistical basis used to calculate the allocation percentages for the computer software expenses.

We do acknowledge, however, that the Expense Agreement should govern the determination of expenses as between the two parties. We respectfully request, then, restoration of the proposed disallowance commensurate with the 40% shared expenses ratio.

Repairs and Maintenance

For all the reasons set out above, we believe the Auditors have ignored the importance and relevance of the Expense Agreement which clearly contemplated minor repair and maintenance expenses as subject to a 60/40 assumption of expenses as between the parties of interest. We acknowledge, however, that reported expenses of 42% of total expenses should have been reported in an amount equal to the 40% directed by the Agreement. Accordingly, we request restoration of the disallowance to the extent of 40% of total expenses.

State Comptroller's Comment 30 - As discussed in our report, Amerimed Kids did not provide documentation to support the statistical basis used to calculate the allocation percentages for the repairs and maintenance expenses.

For all the reasons set out above relating to the acknowledgment and recognition of the 12th Street location by both NYSED record and NYCDOE, we request restoration of the proposed disallowance associated with that administrative location.

See State Comptroller's Comment 23

Insurance

For all the reasons set out above, insurance costs were expenses clearly contemplated by the executed Expense Agreement whose terms and conditions can not be challenged.

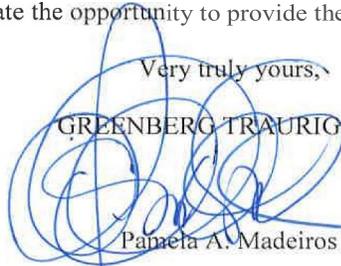
State Comptroller's Comment 31 - As discussed in our report, Amerimed Kids did not provide documentation to support the statistical basis used to calculate the allocation percentages for the insurance expenses. Further, it is troubling that Amerimed Kids feels the terms and conditions of its Expense Agreements "cannot be challenged." The RCM clearly states that costs must have adequate substantiating documentation.

Kenrick Sifontes
May 15, 2019
14 | Page

We appreciate the opportunity to provide these facts and comments

Very truly yours,

GREENBERG TRAURIG, LLP



Pamela A. Madeiros

PAM/erb
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