New York State Comptroller
THOMAS P. DiNAPOLI

League Treatment Center – Compliance With the Reimbursable Cost Manual

State Education Department

Report 2018-S-56 | **December 2019**

Spotlight on Education

Audit Highlights

Objective

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

About the Program

LTC is a New York City-based not-for-profit organization authorized by SED to provide preschool special education services to children with disabilities who are between the ages of three and five years. During our audit period, LTC operated preschool special education full-day Special Class and full-day Special Class in an Integrated Setting programs. For the purposes of this report, these programs are referred to as the SED preschool cost-based programs. LTC also operated two other SED-approved preschool special education programs: Evaluations and 1:1 Aides. Payments for services provided by these programs are based on fixed fees. In addition, LTC operated several other programs, including an SED-approved school-age special education program as well as programs authorized and funded by the Office of Mental Health and the Office for People With Developmental Disabilities.

During the period July 1, 2013 through June 30, 2015, LTC served an average of 163 students in its cost-based programs. The New York City Department of Education (DOE) refers students to LTC and pays for its services using rates established by SED. The rates are based on the financial information LTC reports to SED on its annual CFRs. SED reimburses the DOE 59.5 percent of the statutory rate it pays to LTC. For the three fiscal years ended June 30, 2015, LTC reported approximately $21.4 million in reimbursable costs for its SED preschool cost-based programs.

Key Findings

For the three fiscal years ended June 30, 2015, we identified $3,759,935 in reported costs that did not comply with the requirements in the RCM and the CFR Manual, including:

- $2,779,515 in compensation for 53 employees whose services were incorrectly allocated to the cost-based programs;
- $324,603 in excessive executive compensation;
- $296,057 in unsupported compensation;
- $239,222 in ineligible consultant costs;
- $102,559 in unsupported other than personal service costs;

- $9,089 in other ineligible other than personal service costs; and
- $8,890 in inequitable pension contributions.

Key Recommendations

To SED:

- Review the recommended disallowances resulting from our audit and make the appropriate adjustments to LTC's CFRs and tuition reimbursement rates, as warranted.
- Work with LTC to strengthen its internal controls to ensure compliance with the RCM and CFR Manual.

To LTC:

- Ensure that all costs reported on future CFRs comply with SED's reimbursement requirements.

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

December 16, 2019

Ms. Shannon Tahoe
Acting Commissioner
State Education Department
State Education Building
89 Washington Avenue
Albany, NY 12234

Mr. Mark Handelman
Chief Executive Officer
League Treatment Center
483 Clermont Avenue
Brooklyn, NY 11238

Dear Ms. Tahoe and Mr. Handelman:

The Office of the State Comptroller is committed to helping State agencies, public authorities, and local government agencies manage their resources efficiently and effectively and by so doing, providing accountability for the 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 costs submitted by League Treatment Center 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

Term	Description	Identifier
CFO	Chief Financial Officer	*Key Term*
CFR	Consolidated Fiscal Report	*Key Term*
CFR Manual	Consolidated Fiscal Reporting and Claiming Manual	*Policy*
DOE	New York City Department of Education	*Agency*
FTE	Full-time equivalent	*Key Term*
LTC	League Treatment Center	*Service Provider*
OMH	Office of Mental Health	*Agency*
OTPS	Other than personal services	*Key Term*
RCM	Reimbursable Cost Manual	*Policy*
Regulations	Regulations of the Commissioner of Education	*Law*
SED	State Education Department	*Auditee*

Background

League Treatment Center (LTC), a New York City-based not-for-profit organization, was established in 1953 and approved by the State Education Department (SED) in 1983 to provide special education services to children with disabilities, including preschool special education students who are between the ages of three and five years. During the three fiscal years ended June 30, 2015, LTC provided full-day Special Class and full-day Special Class in an Integrated Setting programs. For purposes of this report, these programs are collectively referred to as the SED preschool cost-based programs.

LTC also operated two other SED-approved special education preschool programs: Evaluations and 1:1 Aides. However, payments for services under these two programs are based on fixed fees, as opposed to the cost-based rates established through financial information reported on the annual Consolidated Fiscal Reports (CFRs) LTC files with SED. In addition, LTC operated several other programs, including an SED-approved school-age special education program as well as programs authorized and funded by the Office of Mental Health (OMH) and the Office for People With Developmental Disabilities.

The New York City Department of Education (DOE) refers students to LTC based on clinical evaluations and pays for its services using rates established by SED. To qualify for reimbursement, LTC's 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. The State reimburses the DOE 59.5 percent of the statutory rate it pays to LTC.

For the three fiscal years ended June 30, 2015, LTC reported approximately $21.4 million in reimbursable costs for the SED preschool cost-based programs. This audit focused primarily on expenses claimed on LTC's CFR for the year ended June 30, 2015 and certain expenses reported on its CFRs for the two years ended June 30, 2014.

Audit Findings and Recommendations

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 $3,759,935 in reported costs that did not comply with SED's requirements for reimbursement. These ineligible costs included $3,409,065 in personal services costs and $350,870 in other than personal service (OTPS) costs (see Exhibit at the end of this report).

Strong internal controls are critical to the overall health of an organization. These controls help to safeguard assets and ensure reliable financial reporting and compliance with regulatory requirements. We attributed the significant number of disallowances detailed in this report to weaknesses in LTC's internal controls over its compliance with SED's guidelines. Officials advised that LTC had experienced dramatic management changes in the past, including the termination and retirement of certain employees. As a result, certain documents could not be found and the reasons for certain prior actions could not be explained.

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, LTC reported approximately $17.4 million in personal service costs for its SED preschool cost-based programs. We identified $3,409,065 in personal service costs that did not comply with reimbursement guidelines in the RCM and the CFR Manual. SED, pursuant to a desk review, previously disallowed some of these costs.

Insufficiently Documented and/or Incorrectly Allocated Compensation

Salaries of employees who perform tasks for more than one program and/or entity must be allocated among all programs and/or entities for which they work. Entities operating programs must use allocation methods that are fair and reasonable, as determined by the Commissioner of Education's fiscal representatives. Actual hours of service are the preferred statistical basis upon which to allocate salaries and fringe benefits for shared staff who work on multiple programs. Entities must maintain appropriate documentation reflecting the hours used in this allocation. Acceptable documentation may include payroll records or time studies. If hours of service cannot be calculated or a time study cannot be completed, then alternative methods that are equitable and conform to generally accepted accounting principles may be utilized. Costs (salaries and fringe benefits) of all 1:1 aides should be reported in a separate cost center (Program Code 9230) on the provider's financial reports. The CFR Manual also requires expenses, revenues, and full-time equivalent (FTE) enrollment for approved 1:1 teacher aides as well as day care expenses in excess of the integrated program to be reported in separate cost centers (Program Code 9164 for Day Care). Costs will not be reimbursable on field audit without appropriate written documentation of costs.

For the three fiscal years ended June 30, 2015, LTC reported $4,333,381 ($3,218,052 in salaries and $1,115,329 in fringe benefits) in compensation costs for 53 employees. Of this amount, $2,779,515 was insufficiently documented and/or incorrectly allocated, including:

- $1,362,928 in compensation costs for 13 employees who worked for LTC's OMH-approved Children's Day Treatment Program.
- $852,041 in compensation costs for 32 employees for whom LTC could not support that they worked for the preschool cost-based programs. Documentation indicated that they worked for other LTC programs, such as the School-Age, Evaluations, Adult, and 1:1 Aides programs.
- $420,606 in compensation costs for four art and dance therapists who provided services for LTC's Children's Day Treatment Program.
- $143,940 in compensation costs for four shared employees. LTC incorrectly charged these costs to the preschool cost-based programs rather than the Day Care Program.

Excess Executive Compensation

According to the RCM, compensation (i.e., salaries plus fringe benefits) for an entity's staff whose function is that of Executive Director, Assistant Executive Director, or Chief Financial Officer (CFO) will be directly compared with the regional median compensation for comparable administration job titles of public school districts. Reimbursement shall not exceed the median compensation paid to comparable personnel in public schools for similar work and hours of employment in the region in which the entity is located.

For the three fiscal years ended June 30, 2015, compensation costs for the Executive Director, CFO, and Assistant Executive Director exceeded the regional median limit by $1,101,077. Of this amount, $324,603 was allocated to the preschool cost-based programs, including:

- $198,576 in compensation costs for the Executive Director. LTC officials reported $1,375,127 ($579,697 in 2012-13, $574,615 in 2013-14, and $220,815 for six months [0.496 FTE] in 2014-15) in compensation costs for the Executive Director position. The total regional median reimbursement limit for the three years for an Executive Director with comparable employment hours was $701,815. Thus, the total compensation exceeded the regional median limit by $673,312 ($1,375,127 - $701,815). Of the $673,312 in excess compensation, LTC allocated $198,576 to the preschool cost-based programs.
- $125,690 in compensation costs for the CFO. LTC officials reported $907,677 ($425,544 in 2012-13, $403,741 in 2013-14, and $78,392 for two months [0.167 FTE] in 2014-15) in compensation costs for the CFO position. The total regional median reimbursement limit for the three years for a CFO with comparable employment hours was $481,020. Thus, the total compensation exceeded the regional median limit by $426,657 ($907,677 - $481,020). Of the $426,657 in excess compensation, LTC allocated $125,690 to the preschool cost-based programs.
- $337 in compensation costs for the Assistant Executive Director. For 2013-14, LTC officials reported $112,968 in compensation costs for its 0.5 FTE Assistant Executive Director position. The total regional median reimbursement limit for an Assistant Executive Director with comparable employment hours was $111,860. Thus, compensation costs exceeded the regional median limit by $1,108 ($112,968 - $111,860). Of the $1,108 in excess costs, LTC allocated $337 to the cost-based programs.

Undocumented Compensation Costs

The RCM states that costs will be considered for reimbursement provided they are reasonable, necessary, directly related to the special education program, and sufficiently documented. It also states that costs will not be reimbursable on field audit without appropriate written documentation of such costs. Moreover, compensation costs must be based on approved, documented payrolls that are supported by employee time records prepared during, not after, the time period for which the employee was paid.

LTC officials could not provide documentation to support $296,057 in compensation costs charged to the preschool cost-based programs for the three fiscal years ended June 30, 2015, including:

- $139,996 in compensation costs reported under the teacher assistant and substitute teacher categories for 2012-13 and 2013-14. LTC officials could not provide any documentation to support these costs.
- $130,607 in compensation costs reported under the administrative employees category. For 2014-15, LTC officials reported $447,630 in such costs, which were not supported by payroll records or any other documentation. Of this amount, $130,607 was allocated to the preschool cost-based programs.
- $15,457 in compensation costs reported for the former CFO. For 2014-15, LTC officials reported $131,367 in such costs, of which $52,975 was not supported. Of this amount, $15,457 was allocated to the preschool cost-based programs.
- $9,997 in fringe benefits. For 2014-15, LTC officials reported $34,033 in such costs, of which $9,997 was allocated to the preschool cost-based programs. However, officials could not provide documentation to support the $9,997 in expenses.

Excess Pension Contributions

According to the RCM, compensation for personal services includes all salaries and fringe benefits. Fringe benefits, including pensions, life insurance, and tax-sheltered annuities for individual employees or officers/directors, must be proportionately similar to those received by other classes or groups of employees.

We identified $8,890 in excess pension contributions. For the three fiscal years ended June 30, 2015, LTC reported $101,994 in pension contributions for 12 employees. The contributions were not proportionally similar, as they ranged from a high of $16,115 (or 43 percent of salary) to a low of $929 (or 8 percent). LTC should have reported $85,674 rather than $101,994 – a difference of $16,320. Of this amount, $8,890 was allocated to the cost-based programs.

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, LTC reported approximately $4 million in OTPS expenses for its SED preschool cost-based programs. We determined that $350,870 of this amount did not comply with SED's guidelines for reimbursement.

Consultant Costs

According to the RCM, documentation for consultant costs should include the consultant's résumé and a written contract that includes the nature of the services to be provided, charge per day, and service dates. All payments must be supported by itemized invoices that indicate the specific services actually provided and, for each service, the date(s), number of hours worked, fee per hour, and total amount charged. Moreover, when direct care services are provided, the documentation must indicate the names of students served, the actual dates of service, and the number of hours of service to each child on each date. The RCM also states that costs of legal, accounting, or consulting services related to the reorganization of the auditee, including mergers and acquisitions, unless mandated by SED, are not reimbursable. In addition, travel expenses of non-employees of the entity (e.g., consultants, independent contractors) are not reimbursable. Agency administration costs shall be allocated to all programs operated by the entity.

For the three fiscal years ended June 30, 2015, we identified $365,655 in consultant costs that did not comply with the RCM requirements, including:

- $152,645 in costs for which LTC did not provide contracts. Moreover, the contractors' invoices did not contain the details required by the RCM.
- $132,039 paid to contractors who provided services to LTC's Evaluations and Children's Day Treatment Programs. We saw no evidence that services were provided directly to the preschool cost-based programs.
- $42,726 for therapy services. The hours billed by the contractor were greater than the hours of service provided.
- $24,334 in other insufficiently documented costs.
- $13,113 in agency administration costs that should not have been charged to the preschool cost-based programs.
- $798 in ineligible expenses, including $555 in travel, lodging, and food costs for a consultant and $243 in reorganization expenses.

Of these ineligible expenses, we recommend that SED disallow the $239,222 that was allocated to the preschool cost-based programs.

Undocumented and/or Inadequately Documented OTPS Costs

Section 200.9(d) of the Regulations of the Commissioner of Education (Regulations) requires entities operating approved programs to retain all pertinent accounting, allocation, and enrollment/attendance records supporting reported data directly or indirectly related to the establishment of tuition rates for seven years following the end of each reporting year. In addition, the RCM states that costs will not be reimbursable without appropriate written documentation. All purchases must be supported with canceled checks and invoices listing the items purchased, dates of purchase, and dates of payment.

For the three fiscal years ended June 30, 2015, we identified $241,175 in OTPS costs that did not comply with RCM requirements, including:

- $236,139 in undocumented costs charged to the CFRs; and
- $5,036 in inadequately documented credit card expenses.

Of these ineligible expenses, we recommend that SED disallow the $102,559 that was allocated to the preschool cost-based programs.

Other Ineligible OTPS Expenses

According to the RCM, gifts of any kind as well as the costs of food provided to any staff, including lunchroom monitors, are not reimbursable. In addition, costs for food, beverages, entertainment, and other related costs for meetings, including board meetings, are not reimbursable. For conferences, the RCM requires programs, upon audit, to provide brochures, agendas, or other literature to verify attendance and to document the purpose of the conference or meeting. Costs incurred for entertainment of officers or employees or for activities not related to the program, as well as any related items such as meals, lodging, transportation, and gratuities, are not reimbursable. Personal expenses are not reimbursable unless specified otherwise in the RCM. Political and charitable contributions and donations made by the program are not reimbursable.

For the fiscal year ended June 30, 2015, we identified $12,155 in ineligible expenses, including:

- $6,296 in restaurant and food expenses for staff and parents.
- $3,257 in conference expenses at Walt Disney World Resort. LTC officials were unable to provide documentation, such as brochures, a conference agenda, or other literature to verify attendance at the conference.

- $1,452 in gifts and personal items.
- $1,150 in expenses that were listed as “charity” on a credit card statement.

Of these ineligible expenses, we recommend that SED disallow the $9,089 that was allocated to the preschool cost-based programs.

Recommendations

To SED:

1. Review the recommended disallowances resulting from our audit and make the appropriate adjustments to LTC’s CFRs and tuition reimbursement rates, as warranted.
2. Work with LTC to strengthen its internal controls to ensure compliance with the RCM and CFR Manual.

To LTC:

3. Ensure that all costs reported on future CFRs comply with SED’s reimbursement requirements.

Audit Scope, Objective, and Methodology

The objective of our audit was to determine whether the costs reported by LTC on its CFRs were reasonable, necessary, directly related to the special education programs, and sufficiently documented pursuant to SED guidelines. The audit focused primarily on expenses claimed on LTC's CFRs 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.

To accomplish our objective, we reviewed the RCM, the CFR Manual, the Regulations, LTC's 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 LTC officials, staff, and independent auditors to obtain an understanding of LTC's 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 we considered high risk and reimbursable in limited circumstances based on prior audit report findings, such as salaries, fringe benefits, and consultant costs. Our samples were based on the relative materiality of the various categories of costs reported and their associated level 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 State 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 the matters contained in this report to SED and LTC officials for their review and formal comment. Their comments were considered in preparing this final audit report.

In their response, SED officials agreed with our recommendations and indicated they will take steps to address them. In their response, LTC officials agreed with most of our disallowances, citing changes in LTC management as the primary cause of the proposed disallowances. They disagreed with a few proposed disallowances. Our responses to certain LTC comments are embedded within its response. LTC officials also included a lengthy set of attachments with their response. Those attachments are not included in this report. However, they have been retained on file at the Office of the State Comptroller.

Within 180 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 recommendations contained herein, and if the recommendations were not implemented, the reasons why.

Exhibit

League Treatment Center
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	$16,133,372	$2,934,599	$13,198,773	A-C, M-O, R, S, U, V
Agency Administration	1,313,040	474,466*	838,574	
Total Personal Services	**$17,446,412**	**$3,409,065**	**$14,037,347**	
Other Than Personal Services				
Direct Care	$3,406,675	$240,946	$3,165,729	A, D-M, P, Q, T
Agency Administration	550,198	109,924	440,274	
Total Other Than Personal Services	**$3,956,873**	**$350,870**	**$3,606,003**	
Total Program Costs	**$21,403,285**	**$3,759,935***	**$17,643,350**	

*SED, pursuant to a desk review, previously disallowed some of these costs.

Notes to Exhibit

The following Notes refer to specific sections of SED's RCM 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 LTC 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.(a) - Compensation (i.e., salaries plus fringe benefits) for an entity's staff whose function is that of Executive Director, Assistant Executive Director, or Chief Financial Officer will be directly compared to the regional median compensation for comparable administration job titles of public school districts. Reimbursement of employee compensation for these job titles shall not exceed the median compensation paid to comparable personnel in public schools for similar work and hours of employment in the region in which the entity is located.

C. RCM Section II.13.B.2.(c) - Pensions, life insurance, and tax-sheltered annuities for individual employees or officers/directors must be proportionately similar to those received by other classes or groups of employees.

D. RCM Section II.14.B - Costs of legal, accounting, or consulting services and related costs incurred in connection with reorganization of the agency, including mergers and acquisitions, unless mandated by SED, are not reimbursable.

E. RCM Section II.16 - Political and charitable contributions and donations made by the program are not reimbursable.

F. RCM Section II.20.A - Costs incurred for entertainment of officers or employees or for activities not related to the program, or any related items such as meals, lodging rentals, transportation, and gratuities, are not reimbursable.

G. RCM Section II.20.B - All personal expenses are not reimbursable unless specified otherwise in the RCM.

H. RCM Section II.22.C - Costs of food provided to any staff, including lunchroom monitors, are not reimbursable.

I. RCM Section II.24 - Gifts of any kind are not reimbursable.

J. RCM Section II.30 - Programs shall be required upon audit to provide brochures, agendas, or other literature that verify attendance and document the purpose of the conference or meeting.

K. RCM Section II.30.C - Costs for food, beverages, entertainment, and other related costs for meetings, including board meetings, are not reimbursable.

L. RCM Section II.59.F - Travel expenses of spouses, family members, or any non-employee (e.g., consultants, independent contractors) are not reimbursable unless the spouse or family member is an employee of the entity and a legitimate business purpose exists for them to travel.

M. RCM Section III.1 - Section 200.9 (d) of the Regulations requires entities operating approved programs to retain all pertinent accounting, allocation, and enrollment/attendance records supporting reported data directly or indirectly related to the establishment of tuition rates for seven years following the end of each reporting year. Costs will not be reimbursable on field audit without appropriate written documentation.

N. RCM Section III.1.A - Compensation costs must be based on approved, documented payrolls. Payrolls must be supported by employee time records prepared during, not after, the time period for which the employee was paid.

O. RCM Section III.1.B - Actual hours of service are the preferred statistical basis upon which to allocate salaries and fringe benefits for shared staff who work on multiple programs. Entities must maintain appropriate documentation reflecting the hours used in this allocation. Acceptable documentation may include payroll records or time studies. If hours of service cannot be calculated or a time study cannot be completed, alternative methods that are equitable and conform to generally accepted accounting principles may be utilized.

P. RCM Section III.1.C.2 - Adequate documentation for consultants includes, but is not limited to, the consultant's résumé, a written contract that includes the nature of the services to be provided, charge per day, and service dates. All payments must be supported by itemized invoices that indicate the specific services actually provided and, for each service, the date(s), number of hours provided, fee per hour, and the total amount charged. In addition, when direct care services are provided, the documentation must indicate the names of students served, actual dates of service, and number of hours of service to each child on each date.

Q. RCM Section III.1.D - All purchases must be supported with invoices listing items purchased, and indicating dates of purchase and payment, as well as canceled checks.

R. RCM Section III.1.M.1.(i) - Salaries of employees who perform tasks for more than one program must be allocated among all programs for which they work.

S. 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.

T. RCM Section III.1.M.3 - Agency administration costs shall be allocated to all programs operated by the entity.

U. RCM Section IV.2.F - All 1:1 aide costs (salaries, fringe benefits of the aide, and allocated direct and indirect costs) should be reported in one separate cost center on the provider's financial reports.

V. CFR Manual Section 8.0 - Day care expenses in excess of the integrated program should be reported in a separate column (Program Code 9164); expenses and revenues and FTE enrollment for approved 1:1 teacher aides must be reported as a separate column (Program Code 9230).

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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November 14, 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-56, League Treatment Center (LTC) - Compliance With the Reimbursable Cost Manual.

Recommendation 1:

"Review the recommended disallowances resulting from our audit and make the appropriate adjustments to LTC's CFRs and tuition reimbursement rates, as warranted."

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.

Recommendation 2:

"Work with LTC to strengthen its internal controls to ensure compliance with the RCM and CFR Manual."

We agree with this recommendation. SED will continue to provide technical assistance whenever requested and will strongly recommend the LTC officials avail themselves of our assistance to help them better understand the rules for cost reporting and criteria for cost reimbursement as presented in the CFR, Regulation and the Reimbursable Cost Manual (RCM). Furthermore, SED will alert LTC of online CFR training that is available on SED's webpage. SED recommends that all individuals signing the CFR certification statements, namely the Executive Director and Certified Public Accountant, complete this training. This training is a requirement for preschool special education providers upon approval and reapproval.

If you have any questions regarding this response, please contact Brian Zawistowski, Assistant Director of the Rate Setting Unit, at (518) 474-3227.

Sincerely,

Sharon Cates-Williams

Sharon Cates-Williams
Deputy Commissioner

c: Phyllis Morris
Christopher Suriano
Suzanne Bolling
Traci Coleman
Brian Zawistowski
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November 12, 2019

VIA ELECTRONIC MAIL
Kenrick Sifontes, Audit Director
Office of the State Comptroller
Division of State Government Accountability
59 Maiden Lane, 21st Floor
New York, New York 10038

Re: State Education Department
Compliance with the Reimbursable Cost Manual
League Treatment Center
Report 2018-S-56

Dear Mr. Sifontes:

We have reviewed the above-referenced Draft Report on costs reported by League Treatment Center (LTC) on its Consolidated Fiscal Reports (CFR's) for the fiscal year ending June 30, 2015 and certain expenses claimed on its CFR's for the two fiscal years ending June 30, 2014 and the auditors' determinations whether such costs were reasonable, necessary, directly related to the special education program, and sufficiently documented pursuant to State Education Department's (SED's) Reimbursable Cost Manual (RCM) and the Consolidated Fiscal Reporting and claiming manual (CFR Manual). We provide the following comments and challenges to select findings presented in the Draft Report.

General Comments

As acknowledged in the auditors' Report Preface, and as shared with the audit team, LTC has experienced dramatic changes in its management, including individuals responsible for reporting costs and expenses on the CFR and maintaining substantial documentation in support of those reported costs and expenses. Current fiscal management staff who had assumed their duties after the years under audit, including a newly appointed CFO, had attempted throughout the audit process to obtain the documentation necessary to support identified expenses. Unfortunately, LTC was unable to reconstruct the reasoning behind certain costs as reported or to provide supporting detail.

With the appointment of new management, however, LTC has rededicated itself to strengthening past weaknesses in its internal controls, policies, procedures and protocols and to full compliance with the requirements of the RCM and CFR Manual. Specific attention had been

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given to cost allocations which had been refined commencing with the 2016-17 reporting (outside the years under review by the audit team). Refinements to cost allocations relating to the Children's Day Treatment Program had also been made, as reflected on the 2016-17 CFR. We are confident, however, that through its engagement with the new management, and more specifically, the newly appointed CFO, the audit team could recognize the culture of change and improvement which pervades the agency's daily operations and dedicated mission.

We must also note that any errors in the allocation of costs related to the operation of the Children's Day Treatment Program had been addressed during the SED rate calculation and reconciliation process with the acknowledgement of OMH funding as "offsetting revenue", thus maintaining a "check" on the integrity of the SED program rates.

Personal Service Costs

LTC appreciates the auditors' acknowledgment that SED had previously disallowed certain of the costs identified in the Report on desk review through the reimbursement rate calculation process.

Insufficiently Documented and/or Incorrectly Allocated Compensation

As indicated above, without the availability of file documentation for the audit years, LTC is unable to challenge many of the auditors' proposed disallowances of certain personal service costs and expenses while confident that the costs were appropriately incurred for personal services rendered.

However, we do challenge the auditors' proposed disallowance of approximately $220,245 in 1:1 aide compensation charged to the preschool cost-based program. As shared with the auditors, LTC agrees that individuals who are engaged as 1:1 aides are funded separately from the cost-based preschool special education programs, when such individuals perform child specific 1:1 aide services. However, as recognized by the OSC in a number of recent audits, and as supported by NYSED, in the event that a child for whom the 1:1 aide is assigned is absent, there is inherent value and efficiency in "re-deploying" such an individual to "fill in" other gaps in personnel and classroom staffing absences or needs. Accordingly, LTC provided the auditors with documentation correlating student absences with just such "re-deployment" sufficient to challenge the proposed disallowance.

State Comptroller's Comment - The disallowance remains. We agree that it is valuable and efficient to redeploy a 1:1 aide when the child, for whom the aide is assigned, is absent. However, because fixed-fee 1:1 aides are funded separately and reported under their own unique cost center, the LTC should not claim additional costs when a 1:1 aide is redeployed to the preschool cost-based programs.

LTC does not, however, challenge the auditors' proposed disallowances of $420,606 in compensation expenses associated with 4 art and dance therapists who provided services through LTC's Children's Day Treatment Program, the cost of which had been erroneously reported and allocated to the preschool cost-based program.

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LTC does not challenge the proposed disallowance of $852,041 associated with certain reporting classification errors.

Nor does LTC challenge the auditors' proposed disallowance of $143,940 in compensation for 4 employees who provided services to multiple programs, the cost of which had been erroneously allocated exclusively to the preschool cost-based program.

LTC appreciates the auditors' thoughtful consideration of additional documentation in support of our challenge to the proposed initial disallowance of more than $2 million associated with compensation costs for 13 employees who provided services to the Children's Day Treatment Program. We believe it important to provide context by reiterating the basis for our original request, which ultimately resulted in OSC's final disallowance being reduced to $1,362,928 in the October Draft Report. As we stated in our correspondence dated September 3, 2019:

"However, LTC objects strongly to the auditors' recommended disallowance of in excess of $2 million in personal service costs and expenses associated with 13 employees which are alleged to have been improperly charged to the preschool cost-based program.

State Comptroller's Comment - As LTC indicated on page 3, paragraph 3 of this response to the draft report, we accepted its documentation and the disallowance was reduced to $1,362,928.

As shared with the auditors during the field review, the Education Law provides for the contemporaneous and complementary provision of both educational and mental health services through acknowledgement of the Office of Mental Health Children's Day Treatment Program (Regulations of the Commissioner of Education, Part 200, 200.14). Day treatment programs are specifically defined to mean nonresidential programs, certified by the Office of Mental Health, designed for the purpose of providing a comprehensive array of services for mentally ill students with disabilities through *integrated* (emphasis added) mental health and special education programs. (200.14 (a) (1)). (See: Attachment #2)

State Comptroller's Comment - We acknowledge the lengthy set of attachments that LTC officials included with their response. Those attachments are not included in this report but are on file at the Office of the State Comptroller.

This integrated programming model is also reflected in correlating Mental Hygiene regulations which direct day treatment programs serving children to "provide treatment designed to stabilize children's adjustment to education settings, to prepare children for return to educational settings, and to transition children to educational settings" (Mental Hygiene, section 587.11 (a)).

The Mental Hygiene regulations also specifically identify the services to be provided through the Day Treatment Program. (Section 587.11 (d)) which would create a rich therapeutic environment or "milieu".

The uniqueness of the Special Education/Children's Day Treatment Model which emphasizes full integration of special education and mental health services does present certain challenges in cost-reporting, concedingly. However, the proposed recommendation of total cost disallowance ignores the clearly obvious fact that some measure of the identified charges were, in fact, appropriate preschool cost-based program costs which complemented the Day Treatment program costs.

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State Comptroller's Comment - As stated in a previous Comptroller's Comment, the recommended disallowance was reduced from $2.1 million to $1,362,928 in both the draft and final audit reports.

Acknowledging the lack of sufficiently supportive documentation maintained by prior LTC management and staff, we would request that the auditors consider apportioning the shared program staff/costs and expenses between the cost-based special education program and the Day Treatment Program consistent with the list of specific mental health services provided by Mental Hygiene regulation section 587.11 (d); more specifically, costs associated with health referrals, medication therapy, verbal therapy, crisis intervention services, case management, social training, task and skill training and socialization, as reflected in each student's IEP and Day Treatment Plan would be apportioned to the Day Treatment cost center. All other service costs would, accordingly, be apportioned to the special education program. More specifically, we request that the auditors recognize staffing levels of 1 FTE for each of the following clinical services: Behavioral Support, Psychology and Social Work. (See: Attachment#3)

State Comptroller's Comment - We acknowledge the lengthy set of attachments that LTC officials included with their response. Those attachments are not included in this report but are on file at the Office of the State Comptroller.

The legitimacy of each cost is supported by the requisite session and progress notes which we continue to compile for your review, together with documentation of support from the SED regional advisor who recognizes the need for access to mental health services and support beyond the services identified in the IEP - - the rich therapeutic "milieu" references above. Accordingly, we request restoration of $721,337 in associated costs proposed to be disallowed.

State Comptroller's Comment - As stated in an earlier Comptroller's Comment, the $721,337 was not included as a disallowance in the draft and final audit reports. Consequently, the recommended disallowance is $1,362,928 ($2.1 million - $721,337), as stated.

We believe this approach is both reasonable and appropriate, in contrast to the proposed disallowance.

Moreover, NYSED has long recognized the appropriateness of these costs both pragmatically and fiscally. As the attached traj sheet reflects, SED rate setting protocols accepted the costs of these services, as reported, and offset the reported expenses with revenue generated through the Day Treatment program. Under this offsetting revenue methodology, SED recognized the appropriateness of the costs, then offset those costs with Day Treatment reimbursement in full recognition of the inherent difficulty in fully disaggregating the cost of the mental health services provided to students. This approach appropriately contained the costs otherwise reimbursed through the SED cost-based programs, blunting the impact to the State and municipalities. As stated above, this approach served the State well for the past several years - - since the inception of the Children's Day Treatment/SED programs. We believe it would be wholly inappropriate to disregard out of hand this long-standing SED sanctioned protocol and penalize LTC for its adherence to SED procedures."

Excess Executive Compensation

As stated above, current fiscal management staff, including the newly appointed CFO, attempted at great length to retrieve file documentation in support of the salary expenses identified by the audit team but were unable to obtain documentation sufficient to challenge the auditors' finding that certain management salary expenses may have exceeded the regional median limit for certain title/positions as specified by NYSED.

Accordingly, we are unable to challenge the proposed disallowance of $198,576 associated with the Executive Director position for 2012-13, 2013-14 and 2014-15; disallowance of $125,690 associated with the CFO position for 2012-13, 2013-14 and portions of 2014-15; and the proposed disallowance of $337 associated with the AED position for fiscal year 2013-14; for a total of $324,603.

As acknowledged by the auditors, however, NYSED had disallowed the full extent of the excessive compensation for each of the identified title/position for each of the audit years on desk review during the reimbursement rate process as reflected by the attached TRATE sheets (See: Attachment)

State Comptroller's Comment - We acknowledge the lengthy set of attachments that LTC officials included with their response. Those attachments are not included in this report but are on file at the Office of the State Comptroller.

Undocumented Compensation Costs

While constrained by the availability of documentation on file, the new management team has attempted to reconstruct the process by which certain costs and expenses were allocated and reported.

More specifically:

- While LTC can not provide supporting documentation sufficient to challenge the auditors' proposed disallowance of $15,457 in compensation costs reported on behalf of the former CFO, LTC believes that the compensation in question was associated with "paid leave" to which the former CFO was entitled;
- Similarly, LTC is unable to retrieve documentation sufficiently supportive of $139,996 in compensation costs reported on behalf of a teacher assistant and substitute teacher; nor $130,607 in compensation costs reported on behalf of administrative employees; nor $9,997 in fringe benefits for 2014-15.

Excess Pension Contributions

As shared with the audit team, LTC is unable to retrieve from its files the documentation necessary to challenge the auditors' finding that certain pension expenses in the amount of $8,890 were not proportionally similar to that of other employees as asserted in the Draft Report. We can only assume that the Pension Plan Administrator would have assured the appropriateness of the Plan as implemented.

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Other Than Personal Service Costs

Consultant Costs As stated previously, LTC has attempted to retrieve documentation in support of certain costs and expenses from its records under prior management and has met with only limited success. Accordingly, we are unable to challenge the following proposed disallowances:

- Accounting consultant contract costs for which no contract was retrieved, service and invoices for which lacked detail, ($141,475) although we reassert our position that audit service industry billing standards did provide information and detail sufficient to determine the nature of the services to be provided pursuant to the contract even where additional detail of specific activities was not set out, together with consultant costs for which a detailed invoice was also irretrievable ($11,169);
- $798 in travel, lodging and food costs for a consultant which should have been included in the fee for services; together with $243 in costs associated with reorganization of the agency, which although necessary and reasonable, should have been reported as non-reimbursable;
- $24,334 in consultant costs which, while necessary and reasonable, lacked sufficient documentation support;
- $13,113 in agency administrative costs which the auditors assert should not have been charged exclusively to the preschool cost-based program; and
- $131,822 in expenses associated with contract dance and art therapists which should have been allocated to the Children's Day Treatment cost center, together with $217 associated with evaluation services. We note that the amount of $131,822 was included in the sum total of offsetting revenue which SED considered when developing the SED program rates during the rate development/reconciliation process.

We do, however, challenge the auditors' proposed disallowance of $42,726 associated with therapeutic services based upon the flawed premise that "the hours billed by the contractor were greater than the hours of service provided". LTC had provided session notes and RS attendance sheets in support of the cost incurred, reflective of the strength of LTC's internal protocols designed to assure delivery of services, as invoiced. Accordingly, we believe that the documentation offered the audit team substantiates the costs.

State Comptroller's Comment - The documentation offered by LTC was insufficient to support the $42,726.

In sum, we do not challenge a significant portion of the proposed $239,222, except that portion of the proposed $42,726 referenced above which was allocated to the preschool cost based programs.

Undocumented and/or Inadequately Documented OTPS Costs

We are again unable to challenge the proposed disallowance of $102,559 associated with administrative OTPS preschool program proportionate share of reported $236,139 as a result of deficiencies in prior year record keeping, together with the similar proportionate share of $5,036 in inadequately documented credit card expenses.

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Other Ineligible OTPS Expenses

For reasons cited above, LTC's current fiscal management team is unable to retrieve documentation in support of the following expenses and, accordingly, do not challenge the auditors' findings relating thereto and the proportionate amount allocated to the preschool special education program ($9,089):

- A portion of $6,296 in restaurant and food expenses for staff appreciation events, staff conferences and meeting and events with parents
- A portion of $1,452 in staff appreciation gifts
- A portion of $3,257 in conference expenses including travel and lodging at Walt Disney resort which hosted the conference attended by the former Executive Director
- A portion of $1,150 in expenses identified as "charity" on an agency credit card.

* * * * * * * * * * *

We appreciate the opportunity to provide comment on the auditors' preliminary findings.

Very truly yours,

GREENBERG TRAURIG, LLP

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