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September 19, 2014

Robert P. Astorino, County Executive
Members of the County Legislature
Kevin M. Cheverko, Commissioner, Department of Correction
Westchester County
800 Michaelian Building
148 Martine Avenue
White Plains, NY 10601

Report Number: S9-13-26

Dear Executive Astorino, Members of the County Legislature and Commissioner Cheverko:

A top priority of the Office of the State Comptroller is to help county officials manage their resources efficiently and effectively and, by so doing, provide accountability for tax dollars spent to support county operations. The Comptroller oversees the fiscal affairs of local governments statewide, as well as compliance with relevant statutes and observance of good business practices. This fiscal oversight is accomplished, in part, through our audits, which identify opportunities for improving operations and County Legislature governance. Audits also can identify strategies to reduce costs and to strengthen controls intended to safeguard assets.

In accordance with these goals, we conducted an audit of eight counties throughout New York State. The objective of our audit was to determine whether counties are controlling inmate hospital costs and paying appropriate rates for the services provided. We included the County of Westchester (County) in this audit. Within the scope of this audit, we examined the County's process for controlling inmate hospital costs for the period January 1, 2012 through December 31, 2012. Following is a report of our audit of the County. This audit was conducted pursuant to Article V, Section 1 of the State Constitution and the State Comptroller's authority as set forth in Article 3 of the New York State General Municipal Law.

This report of examination letter contains our findings and recommendations specific to the County. We discussed the findings and recommendations with County officials and considered their comments, which appear in Appendix A, in preparing this report. Appendix B includes our comments on issues raised in the County's response. At the completion of our audit of the eight counties, we prepared a global report that summarizes the significant issues we identified at all of the counties audited.

Summary of Findings

The County negotiated a contract beginning in 2010 with a contractor to maintain financial responsibility for all inmate health care services, including ambulatory, inpatient and outpatient care, both on- and off-site. We reviewed payments made to the contractor during our scope period and determined that the County paid the contractor per the terms of the contract. The contractor is also responsible for submitting claims for federal financial participation (FFP) reimbursement. While County officials explained that the contract gives the County indemnification from all legal costs and lawsuits filed by inmates relating to health care, they could not provide us with any documentation to show that there is a cost benefit to contracting these services out rather than providing them in-house.

Background and Methodology

The County has a population of 961,170 and is governed by a 17-member County Legislature. The County's adopted budget totaled \$1.6 billion in 2012. The Department of Correction is responsible for the operation of the County's sole correctional facility (County jail). The County jail processed 17,652 inmates in 2012 and the average daily inmate population was 1,471. The County jail budget was approximately \$128 million in fiscal year 2013.

County jail administrators must provide inmates with satisfactory health care and control medical care costs. Often, inmates are part of a socioeconomically depressed population and are more likely to have poor health histories due to limited access to health care. According to County officials, jail inmates suffer from a number of maladies – dental issues, mental illness, homelessness, substance abuse, violent behavior, human immunodeficiency virus (HIV), sexually transmitted diseases (STDs) and tuberculosis – at rates higher than the rest of the general population, thereby making cost containment difficult. Furthermore, upon incarceration, inmates usually lose their eligibility for private and public health insurance benefits, forcing the County to pay for their health care.

Inmate health care costs can be a heavy burden on a county's financial resources. Hospital costs make up a large percentage of total inmate health care costs. New York State Public Health Law requires counties to pay Medicaid diagnostic related group (DRG) rates to hospitals for inmate inpatient services. Counties also have the opportunity to reduce the local share of inmate hospital costs by submitting Medicaid-eligible inpatient hospital claims to the Federal government for up to 50 percent FFP reimbursement. Accordingly, county social services districts are authorized by law to file claims for retroactive FFP reimbursement for the costs of certain inpatient medical services provided to inmates of correctional facilities. There is no law that sets the amounts counties should pay for outpatient hospital services; however, county officials can negotiate rates with hospitals and providers to lower those costs.

To complete our objective, we interviewed County officials and reviewed policies and procedures. We also reviewed the inpatient/outpatient procurement process, the awarded hospital contracts and negotiated rates and discounts to determine if the County is controlling inmate hospital costs and paying appropriate rates for services provided.

We conducted this performance audit in accordance with generally accepted government auditing standards (GAGAS). More information on such standards and the methodology used in performing this audit are included in Appendix C of this report.

Audit Results

The Commissioner of Correction (Commissioner) is responsible for monitoring inpatient and outpatient inmate hospital costs, as well as seeking reimbursement for expenditures through the FFP program. Good internal controls over inmate inpatient hospital costs include procedures to provide reasonable assurance that the rates billed are accurate. In addition, while there is no law that sets the amounts counties should pay for inmate outpatient services, County officials also have the responsibility to reduce such costs wherever possible.

The County contracts out its County jail operations, including inmate medical services billing. The contractor is responsible for verifying the rates billed by various providers for inmate hospital services and monitoring, verifying and paying all inmate medical costs. We reviewed payments made to the contractor for the period January 1, 2012 through December 31, 2012. The County paid twelve monthly installments to the contractor totaling \$14,763,717 in accordance with the terms of the contract. Because the contractor assumes some risk and is not simply acting as an administrator obtaining the money from the County to pay the hospital, the DRG rates do not apply.

While the Commissioner has the option of contracting with a third party for jail operations, including medical billing, it is the Commissioner's responsibility to determine that the cost of contracting out such services is cost beneficial to its taxpayers. County officials did not obtain any detail from the contractor on the medical services provided to the inmates and could not provide a cost-benefit analysis to illustrate that contracting for the medical billing services instead of providing the services in-house was indeed saving the County money.

Recommendations

1. The Commissioner of Correction should continue to consider various options in an effort to control inmate hospital costs.
2. The Commissioner of Correction should prepare cost-benefit analyses to determine if it is more cost effective to contract out jail operations than it is to provide those services in-house.

The County Legislature has the responsibility to initiate corrective action. A written corrective action plan (CAP) that addresses the findings and recommendations in this report should be prepared and forwarded to our office within 90 days, pursuant to Section 35 of the New York State General Municipal Law. For more information on preparing and filing your CAP, please refer to our brochure, *Responding to an OSC Audit Report*, which you received with the draft audit report. We encourage the County Legislature to make this plan available for public review in the Clerk of the Legislature's office.

We thank the officials and staff of the County for the courtesies and cooperation extended to our auditors during this audit.

Sincerely,

Gabriel F. Deyo

APPENDIX A

RESPONSE FROM COUNTY OFFICIALS

The County officials' response to this audit can be found on the following pages.

Please note that the County officials' response letter refers to page and paragraph numbers that appeared in the draft report. The page and paragraph numbers have changed in the formatting of this final letter report.

Robert P. Astorino
County Executive

Department of Correction

Kevin M. Cheverko
Commissioner

June 9, 2014

Mr. Gabe Deyo
Deputy Comptroller
Office of the State Comptroller
Division of Local Government and School Accountability
110 State Street
Albany, New York 12236

Re: Response to Draft Audit Report (Controlling Inmate Hospital Costs)

Dear Mr. Deyo:

The Westchester County Department of Correction ("WCDOC") has reviewed the revised draft of the Division of Local Government and School Accountability's ("LGSA") audit report related to its statewide 'Controlling Inmate Hospital Costs' audit.¹

Regarding the items raised in the first draft of the audit report, WCDOC respectfully refers LGSA's attention to WCDOC's response of October 21, 2013, incorporated by referenced herein. In response to the items that did not appear in the first draft of the audit report, Westchester offers the following information or otherwise requests guidance from the LGSA, as follows:

Revised Draft Page 2, ¶ 1.

The LGSA references litigation-related costs and documentation, specifically stating that while WCDOC "explained that the contract gives the County indemnification from all legal costs and lawsuits filed by inmates relating to health care, they could not provide us with any documentation to show that there is a cost benefit to contracting these services out rather than provide them in-house." Based upon follow-up communication between my staff and the LGSA, it is my understanding that, with regards to this portion of the report, LGSA is seeking information as to costs associated with defending inmate medical claims (rather than an inquiry as to inmate health services in general).

See
Note 1
Page 9

¹ LGSA provided WCDOC with its draft audit report on September 19, 2013; WCDOC submitted its response to the same on October 21, 2013. On May 9, 2013, LGSA provided WCDOC with a differing version of the draft audit report (also dated September 19, 2013) and which forms the basis for this supplemental response.

Initially, and advised by WCDOC during the audit process and subsequent thereto, WCDOC again notes that it has derived a significant and direct cost avoidance in the area of defense and indemnification under its inmate health services agreement, based upon the provider's contractual commitment to defend and indemnify the County from all inmate health care-related claims and liabilities at its sole expense. In support of the same, LGSA is advised that in the five-year period prior to WCDOC's agreement with its existing provider (2005-2009) Westchester County incurred \$2,233,873 in costs associated with defending similar claims (an average of \$446,775 per year). In contrast, in 2012 (the year of inmate health care activities covered by the scope of LGSA's audit), WCDOC's inmate health care provider incurred \$214,957 in defense and indemnification costs under the agreement.² During that same year (2012), WCDOC was absolved from all obligation to pay for the defense of such claims.

Revised Draft Page 3, ¶ 4.

WCDOC notes that this paragraph of the revised draft report dually employs the terms "jail operations" and "medical billing" and then references WCDOC's obligations regarding "such services." Based upon the same, WCDOC requested and received clarification from LGSA as to whether it was offering guidance on inmate health care services in general, or only regarding the more discreet sub-component of inmate medical *billing* services. In response, LGSA has advised that it is, essentially, seeking an analysis of inmate hospitalization (which necessarily includes an analysis of the related sub-category of inmate medical billing).

See
Note 1
Page 9

Initially, it bears repeating that WCDOC's inmate care provider bears responsibility for the costs associated with inmate hospitalization (and thereby has primary responsibility for functions related to billing and related review). Of critical note and in light of the recent expansion of inmate-patient Medicaid eligibility, WCDOC's provider has agreed to *expand* the scope of this contractual obligation. In fact, since WCDOC's October response to LGSA, it has begun the process of exercising a one-year renewal of its inmate health services agreement. As part of the same, the provider has agreed to set aside all original inpatient hospitalization 'cost-sharing' arrangements and will now assume the cost of *all* such services provided to inmates. In connection with the same, the provider will attempt to recoup any sums incurred for such services at any offsite hospital (*including* Westchester Medical Center, which has agreed to cooperate with such efforts pursuant to an agreement made with the provider in early 2014).

Based upon the foregoing information (much of which was provided in WCDOC's October response), WCDOC takes significant issue with LGSA's statement that the County "did not obtain any detail" as to whether its inmate health services agreement saves money. In fact, during the on-site audit, WCDOC provided LGSA with voluminous materials responsive to this area of its inquiry, including at least two (2) file boxes of detailed hospital billing statements. To the extent that LGSA wishes to review additional billing data (such as what may be in the possession of WCDOC's provider) or requires additional copies of the material previously provided, WCDOC can arrange for the same.

See
Note 2
Page 9

² Of note, this figure does not reflect all costs incurred by the provider, included internal claims management, in-house salaries (general counsel and risk management) and claims that may not have matured.

'New' Recommendation 2.

Not present in the first draft of LGSA's report is the new recommendation that WCDOC "should prepare cost-benefit analyses to determine if it is more cost effective to contract our jail operations than it is to provide those services in-house." Initially, WCDOC notes that inmate health services have not been provided 'in-house' since 1997, when the Westchester Medical Center (our provider at the time) ceased functioning as a department of County government and became a public benefit corporation. Since then, WCDOC has engaged other for-profit service providers (including WMC's Correctional Health Services subdivision) to provide such services. In doing so, WCDOC has avoided the costs traditionally associated with in-house inmate health care, including subcontracted specialty services, equipment and employee salaries (including retirement and fringe). To the extent that LGSA wishes to obtain a more detailed analysis of this arrangement, WCDOC requests a clarification of the operational areas that LGSA wishes to have reviewed.

See
Note 3
Page 9

Revised Draft Page, 3 (final paragraph)

Of final note, both versions of the LGSA's drafts reflect that the County Legislature has the responsibility to initiate corrective action. WCDOC notes that as a criminal justice agency it falls under the authority of the executive branch of County government.

See
Note 4
Page 9

See
Note 5
Page 9

Respectfully submitted,

Kevin M. Cheverko
Commissioner of Correction

KMC/

APPENDIX B

OSC COMMENTS ON THE COUNTY'S RESPONSE

Note 1

In accordance with the objective with our audit, our goal was to determine if the County is controlling inmate hospital costs and paying appropriate rates for the services provided. Because the County contracts out not only for its inmate medical billing services, but also for its Jail operations in total, we requested information and made inquiries accordingly. In keeping with our objective and considering that the various contracted services and associated costs were not broken down by service area (i.e., inmate medical services), we requested justification and cost-benefit analyses for the contract as a whole.

Note 2

Our request for such information was to determine if the County receives an adequate amount of information from the contractor to determine if the contract is cost-beneficial to the County and its residents. County officials did not receive or review medical bills incurred and paid for by the contractor. Deputy Commissioners from the Departments of Correction and Finance informed us at the start of our audit that all inmate medical records are stored in Nashville, Tennessee.

Note 3

As the objective of our audit focuses on whether counties are controlling inmate hospital costs and are paying Medicaid DRG rates to hospitals for inmate inpatient services, the County should be able to demonstrate that contracting out for inmate inpatient hospital services billing is more cost effective than making direct payments to hospitals for inmate inpatient services and ensuring that Medicaid DRG Rates are charged as appropriate.

Note 4

County officials did not provide us with cost-benefit analyses for its contracted jail operations despite our requests.

Note 5

General Municipal Law states that the governing body may provide a written statement of the corrective action taken or proposed to be taken with respect to each finding or recommendation in an audit report. The governing body of the County is the County Legislature. However, other officials with jurisdiction over the area under audit may initiate corrective action as well.

APPENDIX C

AUDIT METHODOLOGY AND STANDARDS

We reviewed the County's policies and procedures for controlling inmate hospital costs and paying appropriate rates for services provided. As part of this process, we reviewed the applicable hospital contracts and negotiated discounts and rates, and the inpatient/outpatient procurement process. We interviewed officials from the County as well as the Correction Department. We also reviewed the contract and other documentation related to the objective for the audit scope period.

We conducted this performance audit in accordance with GAGAS. Those standards require that we plan and perform the audit to obtain sufficient, appropriate evidence to provide a reasonable basis for our findings and conclusions based on our audit objective. We believe that the evidence obtained provides a reasonable basis for our findings and conclusions based on our audit objective.