# DEPARTMENT

# OF

# DEVELOPMENTAL SERVICES

# AUDIT

# OF

# Behavioral Consultants and Associates (BCA)

**Consultant Program(s):**
**Adaptive Skills – PL0214**
**Behavior Analyst – PL0483**
(Audit Period: July 1, 2004 through June 30, 2006)
and
**Clinical Psychologist – P24475**
**Individual or Family Training – PL0465**
(Audit Period: July 1, 2005 through June 30, 2006)


**Audit Branch**

**Auditors:** Michael Masui, Chief of Vendor Audits
Armando Parra, Supervisor
Rupal Engineer, Lead Auditor
Alimou Diallo, Auditor


**Assignment # 08-VN-2-001**

**BEHAVIORAL CONSULTANTS AND ASSOCIATES**

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# EXECUTIVE SUMMARY

The Department of Developmental Services (DDS) has audited Behavioral Consultants and Associates (BCA). The audit was performed upon the following consultant services: Adaptive Skills and Behavior Analyst for the period of July 1, 2004 through June 30, 2006, and Clinical Psychologist and Individual or Family Training for the period of July 1, 2005 through June 30, 2006.

The last day of fieldwork was December 11, 2007.

The results of the audit disclosed the following issues of noncompliance:

**Adaptive Skills**

**Billing**

1. BCA could not provide supporting documentation for services billed and failed to bill for services provided for Adaptive Skills Discrete Trial Training (DTT) services, which resulted in over and under billings. The net effect of the billing discrepancies is $1,800,863.11 over billed.
2. BCA incorrectly billed for multiple Adaptive Skills Out of Office Call (OOC) service visits per consumer in the same day and failed to bill for service visits provided, which resulted in over and under billings. This resulted in $63,867.70 which was incorrectly billed to the regional center.

**Behavior Analyst**

**Billing**

3. BCA could not provide supporting documentation for services billed and failed to bill for services provided for Behavior Analyst services, which resulted in over and under billings. The net effect of the billing discrepancies is $211,605.00 over billed.

4. **Services Provided by Unauthorized Staff**
   BCA billed for services that should have been solely provided by Dr. Willie G. Brown.

**Clinical Psychologist**

**Billing**

5. BCA could not provide supporting documentation for services billed for Clinical Psychologist services and its OOC services, which resulted in $1,731.85 over billed.

**Individual or Family Training**

**Billing**

6. BCA could not provide supporting documentation for services billed for Individual or Family Training services, which resulted in $800.00 over billed.

The net total of the findings identified by this audit is $2,078,867.66 overpaid to BCA.

A detailed discussion of these findings is contained in the Findings and Recommendations section of this report.

# BACKGROUND

The Department of Developmental Services (DDS) is responsible under the Lanterman Developmental Disabilities Services Act, for ensuring that persons with developmental disabilities receive the services and supports they need to lead more independent, productive, and normal lives. DDS contracts with 21 private, nonprofit regional centers that provide fixed points of contact in the community for serving eligible individuals with developmental disabilities and their families in California. In order for regional centers to fulfill their objectives, they secure services and supports from qualified service providers and/or contractors. Per Welfare and Institutions Code, Section 4648.1, the DDS has the authority to audit those service providers and/or contractors that provide services and supports to the developmentally disabled.

# OBJECTIVE, SCOPE, AND METHODOLOGY

This audit was conducted to determine if BCA's Adaptive Skills, Behavior Analyst, Clinical Psychologist, and Individual or Family Training programs were compliant with the Welfare and Institutions (W&I) Code, California Code of Regulations Title 17 (Title 17), and the regional center's contract(s) with BCA.

The initial review of BCA's four programs consisted of a four-month sample selected from the audit period of July 1, 2005 though June 30, 2006. Of the four programs, the Adaptive Skills and the Behavior Analyst demonstrated a large percentage of unsupported billing. As a result, the audit period was expanded for these two programs to include all billings for the period of July 1, 2004 through June 30, 2006.

The audit was conducted in accordance with the Generally Accepted Government Auditing Standards (GAGAS) issued by the Comptroller General of the United States. The auditors did not review the financial statements of BCA, nor was this audit intended to express an opinion on the financial statements. The auditors limited the review of BCA's internal controls to gaining an understanding of the transaction flow and invoice preparation process as necessary to develop appropriate auditing procedures.

**CONSULTANT SERVICES**

During the audit period, BCA operated four consultant service programs. The audit included the four programs listed below:

- Adaptive Skills, PL0214, Service Code 605
- Behavior Analyst, PL0483, Service Code 612
- Clinical Psychologist, P24475, Service Code 785
- Individual or Family Training, PL0465, Service Code 102

The above BCA programs were vendored by North Los Angeles County Regional Center (NLACRC) and all billings for the audited period were paid by NLACRC.

The procedures performed included, but were not limited to, the following:

- Reviewing NLACRC vendor files for contracts, rate letters, program designs, purchase of service authorizations, and correspondence pertinent to the review.
- Interviewing NLACRC staff for vendor background information and to obtain prior vendor audit reports.
- Interviewing BCA staff and management to gain an understanding of its accounting procedures and processes for regional center billings.
- Reviewing BCA's consumer service/attendance records to determine if BCA had sufficient, competent and relevant evidence to support the direct care service hours/days billed to NLACRC.
- Performing an analysis of BCA's employee payroll and attendance/service records to determine if the total payroll hours were equaled to or more than the total consumer service hours billed.

# CONCLUSION

Based upon the procedures we have performed, BCA complied with the requirements of Title 17 and the regional center payment agreements with the exception of the following findings:

**Adaptive Skills**

**Billing**
BCA could not support some Adaptive Skills DTT service billings, which resulted in a net overpayment of $1,800,863.11.

BCA incorrectly billed for Adaptive Skills OOC service visits, which resulted in a net overpayment of $63,867.70.

**Behavior Analyst**

**Billing**
BCA could not support some Behavior Analyst services billed. This resulted in a net overpayment of $211,605.00.

**Services Provided by Unauthorized Staff**
Behavior Analyst services were provided by BCA staff when the regional center contract agreement required Willie G. Brown to provide the service.

**Clinical Psychologist**

**Billing**
BCA could not support some Clinical Psychologist services and its Out of Office Call component for services billed. This resulted in a total overpayment of $1,731.85.

**Individual or Family Training**

**Billing**
BCA could not support some Individual or Family Training services billed. This resulted in a total overpayment of $800.00.

The net total of the findings listed above is $2,078,867.66 overpaid to BCA for the fiscal years covered in this audit. A detailed description of the findings is contained in the Findings and Recommendations section of this report.

# VIEWS OF RESPONSIBLE OFFICIALS

The Department of Developmental Services issued the draft report on April 3, 2008. In the response dated June 16, 2008 and subsequent letter dated July 18, 2008, Kenneth W. Drake, Esq., of the law office of Rushfeldt, Shelley and Drake LLP, responded to the draft audit report on behalf of Dr. Brown/Behavioral Consultants and Associates. Mr. Drake indicated disagreement with Finding 1, Unsupported Billings and Failure to Bill–Adaptive Skills DTT; Finding 2, Incorrect Billing for Services and Failure to Bill–Adaptive Skills OOC; and Finding 3, Unsupported and Failure to Bill–Behavior Analyst. For Findings 4, 5, and 6, Mr. Drake does not take any exception without conceding fault.

# RESTRICTED USE

This report is solely for the information and use of the Department of Developmental Services, Department of Health Care Services, North Los Angeles County Regional Center, and Behavioral Consultants and Associates; it is not intended and should not be used by anyone other than those specified parties. This restriction is not intended to limit distribution of this report, which is a matter of public record.

ARTHUR J. LEE, CPA
Manager
Audit Branch

# FINDINGS AND RECOMMENDATIONS

**FINDING 1: Unsupported Billings and Failure to Bill – Adaptive Skills DTT**

It was found that BCA both over and under billed NLACRC for Adaptive Skills DTT services provided. All service months within the audit period of July 1, 2004 though June 30, 2006 were examined and the discrepancies identified are:

- BCA could not provide supporting documentation for 36,172.01 units of the Adaptive Skills DTT services. The lack of supporting documentation resulted in service over billed to NLACRC in the amount of $1,840, 070.15.
- BCA provided 770.73 units of the Adaptive Skills DTT services which were not billed to NLACRC. The services were properly authorized by NLACRC and provided to consumers. This resulted in a credit of $39,207.04 for the units under billed.

Over billings occurred as a result of source documentation not supporting units of service paid. Under billings occurred as a result of BCA failing to bill for units of service authorized and provided. The combined findings identified above resulted in a net total of $1,800,863.11 overpaid to BCA (See Attachment A.)

Title 17, Section 50604 states:

(d) "All service providers shall maintain complete service records to support all billing/invoicing for each regional center consumer in the program."

(e) "All service providers' records shall be supported by source documentation."

Title 17, Section 54326(a) states:

"All vendors shall:

(3) Maintain records of services provided to consumers in sufficient detail to verify delivery of the units of service billed.

(10) Bill only for services which are actually provided to consumers and which have been authorized by the referring regional center."

**RECOMMENDATION:**
BCA should reimburse DDS the $1,800,863.11 overpayment for the Adaptive Skills DTT services. In addition, BCA should develop and implement policies and procedures to ensure that supporting documentation is maintained for all billing invoices and billing invoices submitted to NLACRC are only for actual services provided.

**AUDITEE'S RESPONSE:**
BCA disagrees with this finding. BCA has expressed two exceptions regarding the calculation of this finding. In the first exception, BCA states that Dr. Brown's personal services were not included as supporting documentation used in the calculation of the Adaptive Skills DTT billing. BCA believes Dr. Brown's services can be reasonably supported by his calendar and other secondary sources including relevant patient records. In support of this argument, BCA provided a one-page summary of Dr. Brown's calendar as well as the actual calendar notes.

In the second exception, BCA states that it believes that it should be allowed to bill for services when the client was not at home or the parent and/or guardian refused service. BCA "takes exception to this refusal to allow billing for such documented time expended in a good faith effort to provide DTT services to a client." BCA also believes the contractual documents covering Adaptive Skills DTT services for the audit period have no clear language that would reasonably put BCA on notice of this limitation.

See Attachment B for the full text of BCA response to the draft audit report and Attachment C for DDS's evaluation of BCA's response.

**FINDING 2: Incorrect Billing for Services and Failure to Bill - Adaptive Skills OOC**

It was found that BCA both over and under billed NLACRC for Adaptive Skills Out of Office Call (OOC) services provided. All service months within the audit period of July 1, 2004 though June 30, 2006 were examined and the discrepancies identified are:

- BCA incorrectly billed for 6,988 units of the Adaptive Skills OOC service visits. The incorrect billing occurred as a result of BCA billing for multiple OOC service visits per consumer in the same day when the payment agreement allows for only one OOC visit billing per consumer per day at a given location. This resulted in OOC service visits being over billed to NLACRC for $66,316.12.
- BCA provided 258 units of the Adaptive Skills OOC service visits which were not billed to the regional center. The services were properly authorized by NLACRC and provided to consumers. This resulted in a credit of $2,448.42 for the units under billed.

Over billings occurred as a result of incorrect billing for services. Under billings occurred as a result of BCA failing to bill for units of service authorized and provided. The combined findings identified above resulted in a net total of $63,867.70 overpaid to BCA. (See Attachment A.)

The contract between NLACRC and Willie Brown (owner of BCA) states:

> "The provider agrees to accept the following rate(s) of payment for the service above which is provided to any regional center consumer…." "$9.49 out of office call, payable only for visits to the first consumer at any given location (on the same day)…"

Title 17, Section 54326(a) states:

"All vendors shall:

(10) Bill only for services which are actually provided to consumers and which have been authorized by the referring regional center."

**RECOMMENDATION:**
BCA should reimburse DDS for the $63,867.70 overpayment for the OOC service visits. In addition, BCA should develop and implement policies and procedures to ensure that only one OOC service visit charge is billed for a consumer as required by the contract with NLACRC.

**AUDITEE'S RESPONSE:**
BCA disagrees with this finding. BCA believes that, "When a BCA employee traveled to a patient's residence or other location to provide services, but the patient was absent or otherwise refused services, the OOC charge should be allowed."

See Attachment B for the full text of BCA response to the draft audit report and Attachment C for DDS's evaluation of BCA's response.

**FINDING 3: Unsupported Billings and Failure to Bill – Behavior Analyst**

From the testing of documentation that supports the Behavior Analyst services billed by BCA, it was found that BCA both over and under billed NLACRC for services provided. The discrepancies identified are:

- BCA could not provide supporting documentation for 4,236.88 units of Behavior Analyst services. The lack of documentation resulted in services over billed to NLACRC for $317,766.00.
- BCA provided 1,415.48 units of Behavior Analyst services which were not billed to NLACRC. The services were properly authorized by NLACRC and provided to consumers. This resulted in a credit of $106,161.00 for the units under billed.

Over billings occurred as a result of source documentation not supporting units of service paid. Under billings occurred as a result of BCA failing to bill for units of service authorized and provided. The combined findings identified above resulted in a net total of $211,605.00 overpaid to BCA (See Attachment A.)

Title 17, Section 50604 states:

(d) "All service providers shall maintain complete service records to support all billing/invoicing for each regional center consumer in the program."

(e) "All service providers' records shall be supported by source documentation."

Title 17, Section 54326(a) states:

"All vendors shall:

(3) Maintain records of services provided to consumers in sufficient detail to verify delivery of the units of service billed.

(10) Bill only for services which are actually provided to consumers and which have been authorized by the referring regional center."

**RECOMMENDATION:**
BCA should reimburse DDS for the $211,605.00 over payment for the Behavior Analyst services. In addition, BCA should develop and implement policies and procedures to ensure that supporting documentation is maintained for all billing invoices and ensure that billing invoices submitted to NLACRC are only for actual services provided.

**AUDITEE'S RESPONSE:**
BCA disagrees with this finding. BCA believes Dr. Brown's personal services can be reasonably confirmed through recourse to secondary sources, including both Dr. Brown's calendar as well as the relevant patient records. In support of this argument, BCA provided a one-page summary of Dr. Brown's calendar as well as the actual calendar notes.

See Attachment B for the full text of BCA response to the draft audit report and Attachment C for DDS's evaluation of BCA's response.

**FINDING 4: Services Provided by Unauthorized Staff**

From the testing of documentation that supports the Behavior Analyst services billed by BCA for the sample period, BCA failed to comply with their contracts with NLACRC which require that all services be provided by Willie Brown. Source documentation indicates that services were provided by BCA staff other than Willie Brown.

In addition, BCA is vendorized under service code 612, which only allows for services to be provided by a specific individual. The BCA Program Design Service Description for the Behavior Analyst services, Section VIII for Staff to Consumer ratio states:

"One to one – Services will be provided by Willie G. Brown, Ph.D., BCBA."

The cover sheet for the services description dated May 13, 2003 states in part that:

"Persons vendored as 'Individuals' for a service may not hire other persons to perform the service for them. If you do not intend to perform all vendored work yourself, you must get vendored as a 'Group,' 'Agency or 'Company.'"

Title 17, Section 54342 (11) states:

"Behavior Analyst-Service Code 612 Behavior Analyst means an individual who assesses the function of a behavior of a consumer…."

**RECOMMENDATION:**
BCA should implement policies and procedures to ensure that the Behavior Analyst services are only provided by Willie Brown, as indicated in the program design description, and only the services provided by Willie Brown are billed to NLACRC.

If BCA desires to provide the Behavior Analyst services by staff other than Willie Brown, BCA should contact NLACRC for assistance in obtaining the proper service code vendorization that authorizes services provided within a group practice and to amend the program design to allow for BCA staff to provide the services.

**AUDITEE'S RESPONSE:**
BCA states, "Without conceding fault, because no amount is at issue in this finding, BCA does not take any exception to this finding."

See Attachment B for the full text of BCA response to the draft audit report and Attachment C for DDS's evaluation of BCA's response.

**FINDING 5: Unsupported Billing – Clinical Psychologist**

From the testing of documentation that supports the Clinical Psychologist services and the Out of Office Call component billed by BCA for the sample period, it was found that BCA over billed NLACRC for services provided. Based on the evaluation of the response to the draft report, an adjustment of five units of service was made to Finding 5. The unsupported billings identified are:

- BCA could not provide supporting documentation for 30.5 units of Clinical Psychologist services. The lack of documentation resulted in service over billed to NLACRC for $1,551.54.
- BCA could not provide supporting documentation for 19 units of the Out of Office Call component of the Clinical Psychologist service. The lack of documentation resulted in services over billed to NLACRC for $180.31.

Over billings occurred as a result of source documentation not supporting units of service paid. The combined unsupported billings identified above resulted in a total overpayment to BCA for $1,731.85 (See Attachment A.)

Title 17, Section 50604 states:

(d) "All service providers shall maintain complete service records to support all billing/invoicing for each regional center consumer in the program."

(e) "All service providers' records shall be supported by source documentation."

**RECOMMENDATION:**
BCA should reimburse DDS for the $1,731.85 over payment for the Clinical Psychologist services. In addition, BCA should develop and implement policies and procedures to ensure that supporting documentation is maintained for all billing invoices and ensure that billing invoices submitted to NLACRC are only for actual services provided.

**AUDITEE'S RESPONSE:**
BCA states, "Without conceding fault, because the amount at issue in this finding is minimal ($1,805.88), BCA does not take any exception to this finding."

See Attachment B for the full text of BCA response to the draft audit report and Attachment C for DDS's evaluation of BCA's response.

**FINDING 6: Unsupported Billing – Individual or Family Training**

From the testing of documentation that supports the Individual of Family Training services billed by BCA for the sample period, it was found that BCA over billed NLACRC for services provided. BCA could not provide supporting documentation for 32 units of Individual or Family Training services. The lack of documentation resulted in service over billed to NLACRC for $800.00.

Over billings occurred as a result of source documentation not supporting units of service paid. The unsupported billings identified above resulted in a total of $800.00 overpaid to BCA. (See Attachment A)

Title 17, Section 50604 states:

(d) "All service providers shall maintain complete service records to support all billing/invoicing for each regional center consumer in the program."

(e) "All service providers' records shall be supported by source documentation."

**RECOMMENDATION:**
BCA should reimburse DDS for the $800.00 over payment for the Individual or Family Training services. In addition, BCA should develop and implement policies and procedures to ensure that supporting documentation is maintained for all billing invoices and ensure that billing invoices submitted to NLACRC are only for actual services provided.

**AUDITEE'S RESPONSE:**
BCA states, "Without conceding fault, because the amount at issue in this finding is minimal $800.00; BCA does not take any exception to this finding.

See Attachment B for the full text of BCA response to the draft audit report and Attachment C for DDS's evaluation of BCA's response.

**Attachment A**

**Behavioral Consultants and Associates (BCA) - Dr. Willie Brown, Ph.D.**
**Summary of Over and Under Billings**
**July 1, 2004 through June 30, 2006**

| | | | | | | Unsupported Billings[1] | | | Failed to Bill[2] | | Incorrect Billing[3] | | NET TOTAL |
|---|---|---|---|---|---|---|---|---|---|---|---|---|---|
| *Finding #* | *Vendor* | *Svc Code* | *Description* | *Unit Type* | *Unit Rate* | *Units* | *Amount* | | *Units* | *Amount* | *Units* | *Amount* | *Amount* |
| **1** | **Adaptive Skills** | | | | | | | | | | | | |
| | PL0214 | 605 | Discrete Trial Training (DTT) | Hour | $ 50.87 | 36,172.01 | $ | * | (770.73) | (39,207.04) | - | - | 1,800,863.11 |
| | | | *Total Adaptive Skills (DTT)* | | | | $ 1,840,070.15 | | | $ (39,207.04) | - | $ - | **$ 1,800,863.11** |
| **2** | **Adaptive Skills** | | | | | | | | | | | | |
| | PL0214 | 605 | Out of Office Call (OOC) | Day | $ 9.49 | - | - | | (258.00) | (2,448.42) | 6,988.00 | | 63,867.70 |
| | | | *Total Adaptive Skills OOC* | | | 1,840,070.15 | $ - | | | $ (2,448.42) | | $66,316.12 | **$ 63,867.70** |
| **3** | **Behavior Analyst** | | | | | | | | | | | | |
| | PL0483 | 612 | *Consultant Program* | Hour | $ 75.00 | 4,236.88 | $ 317,766.00 | * | (1,415.48) | $ (106,161.00) | 66,316.12 | - | 211,605.00 |
| | | | *Total Behavior Analyst* | | | | $ 317,766.00 | | | $ (106,161.00) | - | $ - | **$ 211,605.00** |
| **5** | **Clinical Psychologist** | | | | | | | | | | | | |
| | P24475 | 785 | *Clinical Services* | Hour | $ 50.87 | 30.50 | $ 1,551.54 | * | - | $ - | - | - | 1,551.54 |
| | | | Out of Office Call | Day | $ 9.49 | 19.00 | 180.31 | | - | $ - | - | - | 180.31 |
| | | | *Total Clinical Psychologist* | | | | $ 1,731.85 | | - | $ - | - | $ - | **$ 1,731.85** |
| **6** | **Individual or Family Training** | | | | | | | | | | | | |
| | PL0465 | 102 | *Consultant Program* | Hour | $ 25.00 | 32.00 | 800.00 | | - | $ - | - | - | 800.00 |
| | | | *Total Individual or Family Training* | | | | $ 800.00 | | - | $ - | - | $ - | **$ 800.00** |

**TOTAL OVER (UNDER) BILLINGS: $ 2,078,867.66**

[1]These payments were authorized by the RC, were paid to the vendor but were not provided by the vendor.
[2]These payments were authorized by the RC, were provided by the vendor but the vendor failed to bill.
[3]These payments were authorized by RC, were provided by the vendor but incorrectly billed.
* Adjustment to the Draft Audit Report per Dr. Brown's Personal Calendar service hours

| | | |
|---|---|---|
| Finding | 1 | ($1,850,714.69 - $10,644.54) |
| Finding | 3 | ($321,253.50 - $3,487.50) |
| Finding | 5 | ($1,805.89 - $254.35) |

## Behavioral Consultants and Associates (BCA) Response to the Draft Report

In responding to the draft report BCA provided two responses dated June 16, 2008 and July 18, 2008. Certain documents provided by BCA as attachments are not included in this report due to the detailed and confidential nature of the information.

Attachment B

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RECEIVED
JUN 17 2008
DDS VENDOR AUDITS

June 16, 2008

**VIA FACSIMILE TO (916) 654-1517 AND OVERNIGHT MAIL**

Arthur J. Lee, CPA, Manager
Department of Developmental Services
Audit Branch
1600 9th Street, Room230, MS 2-10
Sacramento, CA 95814

**Re: Provider(s): Willie G. Brown, Ph.D. / Behavioral Consultants and Associates**
**Review Period: July 1, 2004 - June 30, 2006**
**Exit Conference: April 9, 2008**

Dear Mr. Lee:

This law firm represents the above-referenced provider(s) Willie G. Brown, Ph.D. / Behavioral Consultants and Associates (hereafter, "BCA") with respect to the audit performed by the Department of Developmental Services (hereafter, the "DDS"). This letter constitutes a formal response to the draft audit report provided by the DDS in connection with this matter.

First, I would like to express appreciation on my own behalf and on behalf of BCA for the professionalism and courtesy demonstrated to date by the DDS auditing team involved in this matter. Based on my own experience at the exit conference and in telephone communications, and what I have heard of the audit team's dealings with BCA, I believe the DDS audit team has in good faith sought to fairly and reasonably perform their audit functions with minimal intrusiveness into BCA's on-going practice.

Without seeking to disparage the audit team or most of the data compiled in the draft audit report, I do raise exceptions on behalf of BCA in response to the draft audit report. These exceptions are addressed in the same order as the findings in the draft audit report.

...

...

LAW OFFICES
RUSHFELDT, SHELLEY & DRAKE LLP



**Finding 1: Unsupported Billings and Failure to Bill - Adaptive Skills DTT.**

**First Exception to Finding 1: Unattributed Services Provided by Dr. Brown.**

Dr. Brown personally performed services under this contract during the audit period which were not attributed in calculating the unsupported services because Dr. Brown failed to complete individual time sheets for himself which reflect such services. This issue was raised with the audit team, who declined to credit Dr. Brown for such services based on the lack of individual time sheets reflecting such services.

On review, we believe these services can be reasonably confirmed through recourse to secondary sources including both Dr. Brown's calendar as well as the relevant patient records. Attached hereto is a copy of Dr. Brown's calendar covering the two year audit period. Also attached is a one-page summary of the data extracted from that calendar, which reflects the hours provided and the applicable vendor code. As reflected in the calendar and the summary thereof, Dr. Brown provided 231.50 hours of Adaptive Skills / DTT services during the audit period that were not attributed and that, at $50.87 per hour, total an offset of $11,776.40.

Please note that Dr. Brown's calendar is only one source of verification for these services. The provision of services as reflected in that calendar can be further verified by review of the underlying patient records themselves.

**Second Exception to Finding 1: Disallowed billing for client cancellations.**

At the exit conference, the DDS audit team clarified that they did not allow billing for time which BCA had documented that a provider had traveled to a client's home to provide DTT services, but was unable to provide such services because the client was not home or the parent or guardian simply refused. We take exception to this refusal to allow billing for such documented time expended in a good faith effort to provide DTT services to a client.

We acknowledge that since the audit period began, it has been clarified with BCA that BCA should not bill for such time and should instead consider such time as overhead for which it must seek compensation through the negotiation of a reasonable rate for those services for which it is allowed to bill. On a going-forward basis, BCA has agreed to abide by these terms.

In our review of the contractual documents covering Adaptive Skills / DTT services for the audit period itself, we have found no clear language which would reasonably put BCA on notice of this limitation. Absent such language, BCA arguably is not precluded from billing for these cancellations.

To be clear, BCA's files ***do*** reflect that a Title 17 disclosure was signed as early as 2000; however, that disclosure in BCA's files is attached to the contract for Behavior Analyst services, not Adaptive Skills / DTT services. BCA's files also ***do*** reflect that that same Title 17 disclosure from 2000 was attached to a renewal of the Adaptive Skills / DTT services contract; however, that renewal was from August of 2006, after the audit period. What we have failed to locate is any Title 17 disclosure attached to or incorporated in the Adaptive Skills / DTT Services contract which covered the audit period itself.

Initially, I recognize that Dr. Brown's files may be incomplete and the same disclosure may have been attached to, and incorporated into, the relevant contracts covering the audit period. If the DDS or the NLACRC has documentation to support such disclosures, I am happy to review them and may be willing to withdraw this exception based thereon.

I also recognize a potential argument that any Title 17 disclosure attached to any vendor contract put BCA on sufficient notice to bind it to the regulatory limits of Title 17 as to all vendor contracts. Though I recognize that argument, I also recognize that this is an issue on which reasonable minds could differ.

In addition, that Title 17 disclosure and the Title 17 regulations themselves contain potentially relevant ambiguities. The limitation that vendors only charge only for services provided may be vague. Arguably, it was a "service" for BCA to send an employee to the client's home at the appointed time who was ready, willing and able to provide DTT services. Considering that the relevant contracts permit a separate "OOC" fee for making house calls, they implicitly recognize such house calls as a discrete "service" to the client.

Further, the limitation that vendors not charge for client "absences" is technically inapplicable in situations where the client was not absent, but refused (or had a parent or guardian refuse) to allow the provision of DTT services for other reasons. At least some of the cancelled appointments at issue fall into the latter category. There is even a potential argument (which I have not fully researched and which I note, but do not yet advance) that where DTT services were to be provided

at a client's residence, they constituted "residential" services which involve different regulations concerning billing for client absences, pursuant to which such charges may have been permissible.

For the foregoing reasons, I must take exception on BCA's behalf to this finding to the extent it fails to credit as supported services those occasions when BCA sent a provider to a client's home and was then prevented from providing in-home services by the client's absence or other reason beyond BCA's control. I do not have an exact figure for this exception; rather, it is my hope that the DDS audit team's underlying data is organized in a manner that permits the DDS to readily access or compute this figure. Alternatively, if necessary, I can arrange for a review of the relevant time sheets to compute the figure, and then provide it to you in the future.

**Finding 2: Incorrect Billing for Services and Failure to Bill – Adaptive Skill OOC.**

**Exception to Finding 2: Disallowed billing for client cancellations.**

The second exception to finding 1, above, is incorporated herein. When a BCA employee traveled to a patient's residence or other location to provide services, but the patient was absent or otherwise refused services, the OOC charge should be allowed. This charge is specifically to compensate for the *service* of traveling to the patient. Whether or not further services are allowed at the location, this services has necessarily been provided whenever the travel is performed.

I do not have an exact figure for this exception; rather, it is my hope that the DDS audit team's underlying data is organized in a manner that permits the DDS to readily access or compute this figure. Alternatively, if necessary, I can arrange for a review of the relevant time sheets to compute the figure, and then provide it to you in the future.

**Finding 3: Unsupported Billings and Failure to Bill – Behavior Analyst.**

**First Exception to Finding 3: Unattributed Services Provided by Dr. Brown.**

Dr. Brown personally performed assessments and other services under this contract during the audit period which were not attributed in calculating the unsupported services because Dr. Brown failed to complete individual time sheets for himself which reflect such services. This issue was raised with the audit team, who declined to credit Dr. Brown for such services based on the lack of individual time sheets reflecting such services.

On review, we believe these services can be reasonably confirmed through recourse to secondary sources including both Dr. Brown's calendar as well as the relevant patient records. Attached hereto is a copy of Dr. Brown's calendar covering the two year audit period. Also attached is a one-page summary of the data extracted from that calendar, which reflects the hours provided and the applicable vendor code. As reflected in the calendar and the summary thereof, Dr. Brown provided 97 hours of Behavior Analyst services during the audit period that, at $75 per hour, total an offset of $7,275.00.

Please note that Dr. Brown's calendar is only one source of verification for these services. The provision of services as reflected in that calendar can be further verified by review of the underlying patient records themselves.

**Second Exception to Finding 3: Disallowed billing for client cancellations.**

The second exception to finding 1, above, is incorporated herein. The same issues and arguments apply where a patient is absent or otherwise refuses services at the appointed time, after the therapist has traveled to the patient's residence.

Again, I do not have an exact figure for this exception; rather, it is my hope that the DDS audit team's underlying data is organized in a manner that permits the DDS to readily access or compute this figure. Alternatively, if necessary, I can arrange for a review of the relevant time sheets to compute the figure, and then provide it to you in the future.

**Finding 4: Services Provided by Unauthorized Staff.**

Without conceding fault, because no amount is at issue in this finding, BCA does not take any exception to this finding.

**Finding 5: Unsupported Billing – Clinical Psychologist.**

Without conceding fault, because the amount at issue in this finding is minimal ($1,805.88), BCA does not take any exception to this finding.

...

...

**Finding 6: Unsupported Billing – Individual or Family Therapy.**

Without conceding fault, because the amount at issue in this finding is minimal ($800), BCA does not take any exception to this finding.

**CONCLUSION**

In conclusion, I would like to clarify that despite the fact that exceptions are taken herein, BCA does generally concede that its billing practices during the audit period were substantially flawed, particularly with respect to the Adaptive Skills / DTT services contract. For the record, BCA acknowledges such errors and looks forward to addressing repayment terms at the earliest opportunity.

Without attempting to minimize or excuse its billing errors, BCA would like it noted that the financial impact of its billing errors amounted to such a high figure primarily because of the overwhelming and unprecedented increase in referrals for Adaptive Skills / DTT services which BCA attempted to manage. That increase resulted in Dr. Brown, a psychologist with no financial training, attempting to manage up to 60 employees at once. Being so out of his depth, Dr. Brown was seemingly faced with a choice of cutting corners or closing down, with the result that he chose to cut those corners in those areas (including billing) that did not impact quality of patient care.

Nevertheless, even before the audit began, BCA had invested in the development of computer software to automate its billing so that no corners would be cut in the future, and to generally avoid any human or discretionary error in the billing process. Hundreds of thousands of dollars were spent on that software, which is now in operation at BCA. Further, BCA has further clarified and streamlined its operations and relevant documents (e.g., time sheets) to address all auditor concerns raised to date. Thus, BCA is situated to continue providing substantial and vital services to autistic youth for which there remains staggering demand in Los Angeles County.

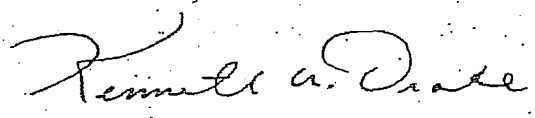
These facts are not presented to excuse past errors or avoid repayment obligations, and are not raised as an exception to the audit. However, there are important equitable issues and matters of public interest that should be recognized. The bottom line is, despite past mistakes, now that BCA has corrected its administrative and billing practices, it is in all parties' best interest – particularly the interest of autistic children in the community served by BCA, wherein the demand for services

greatly exceeds the supply—that this audit and any future audits proceed and be resolved in a manner that does not disrupt BCA's ability to continue providing these vital services to the local community.

I am at your disposal to discuss any issue you may want to raise related to this matter.

Very truly yours,

RUSHFELDT, SHELLEY & DRAKE LLP



Kenneth W. Drake

KWD:KRM

Encls. (Calendar and summary)

Attachment B

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July 18, 2008

**VIA U.S. MAIL**

Arthur J. Lee, CPA, Manager
Department of Developmental Services
Audit Branch
1600 9th Street, Room230, MS 2-10
Sacramento, CA 95814

**Re: Provider(s): Willie G. Brown, Ph.D. / Behavioral Consultants and Associates**
**Review Period: July 1, 2004 - June 30, 2006**
**Exit Conference: April 9, 2008**

Dear Mr. Lee:

This law firm represents the above-referenced provider(s) Willie G. Brown, Ph.D. / Behavioral Consultants and Associates (hereafter, "BCA") with respect to the audit performed by the Department of Developmental Services (hereafter, the "DDS"). This letter constitutes a supplement to our prior, formal response to the draft audit report provided by the DDS in connection with this matter.

Alimou Diallo from the DDS contacted us and requested clarification with respect to the documentation that accompanied our prior response. Specifically, he requested a more detailed summary of the services reflected in that portion of Dr. Brown's calendar produced with our prior response. Enclosed please find a 39 page summary which provides the name of each consumer seen by Dr. Brown, the date each consumer was seen, and the amount of time each consumer was seen on each date, as extrapolated from Dr. Brown's calendar pages previously produced to you. An electronic copy of the enclosed summary was emailed to Mr. Diallo and Mike Masui, also at the DDS, on July 18, 2008.

Please note that in preparing this more detailed summary, we determined that the amount of services provided by Dr. Brown as reflected in his calendar, but not credited by the auditors, was greater than what we stated in our prior response. Our prior response requested a credit of $11,695.38 for 231.50 hours provided under the Adaptive Skills / DTT contract (PLO214); however, the new, more detailed summary reflects – and we now request – credit of $12,564.89 for 247 hours provided under this

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KENNETH W. DRAKE & ASSOCIATES

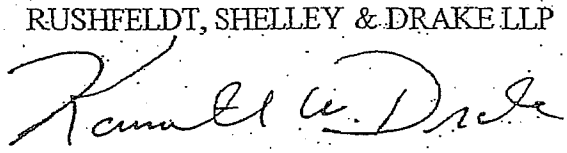


contract. Similarly, our prior response requested a credit of $4,875 for 65 hours provided under the Behavior Analyst contract (PLO483); however, the new, more detailed summary reflects – and we now request – credit of $4,987.50 for 66.5 hours provided under this contract.

In all other respects, we continue to maintain the positions reflected in our prior, formal response. I am at your disposal to discuss any issue you may want to raise related to this matter.

Very truly yours,

RUSHFELDT, SHELLEY & DRAKE LLP



Kenneth W. Drake

KWD:KRM

Encl. (Calendar summary)

## THE DEPARTMENT OF DEVELOPMENTAL SERVICES' (DDS) EVALUATION OF BCA's RESPONSE

As part of the audit report process BCA was afforded the opportunity to respond to the draft audit report and provide a written response to each finding.

In responding to the draft report, BCA provided an initial response dated June 16, 2008. After review of this initial response, DDS requested further clarification of the details provided. As a result, BCA provided a second response dated July 18, 2008. This second response provided detailed summaries that revised the BCA responses to Findings 1 and 3. See Attachment B for copies of the BCA responses.

Upon receipt of BCA's written responses to the draft audit report, DDS evaluated the written response and determined that BCA disagrees with Findings 1, 2, and 3. Without conceding fault, BCA did not take exception to Finding 4, 5, and 6.

The initial BCA response dated June 16, 2008 indicates that BCA has invested in the development of computer software to automate its billings to generally avoid any human or discretionary error in the billing process. The response also indicates that BCA has taken steps to address the issues identified in the draft report.

**Finding 1:** Unsupported Billing and Failure to Bill – Adaptive Skills DTT

BCA had two exceptions to this finding. The first exception was the disallowed service hours provided by Dr. Brown himself. BCA states, "Dr. Brown personally performed services under this contract during the audit period which was not attributed in calculating the unsupported services because Dr. Brown failed to complete individual time sheets for himself which reflect such services." In the initial response dated June 16, 2008, BCA indicated that Dr. Brown's calendar, as well as patient records, can reasonably confirm that Dr. Brown provided 231.50 hours of Adaptive Skills/DTT services at a rate of $50.87 per hour. Consequently, a total offset of $11,776.40 should be made.

In the second response dated July 18, 2008, BCA provided a revised summary that referenced the dates and time of service provided by Dr. Brown from his calendar. BCA stated it identified additional time that was not included in the initial response. The revised summary identified 247 hours or $12,564.89 that should be offset against the unsupported direct care hours in this finding.

In the response from BCA, it was determined that although Dr. Brown's calendar did not in all cases contain sufficient, appropriate evidence to support the units of services provided, such as the information required to be filled out by his employees, Dr. Brown's personal calendar did identify days the consumer was suppose to have been seen, name of the consumer, duration of appointment and service provided. Upon review and evaluation of the documentation submitted with the response, DDS has accepted a portion of Dr. Brown's calendar as supporting documentation for direct care services provided.

## THE DEPARTMENT OF DEVELOPMENTAL SERVICES' (DDS) EVALUATION OF BCA's RESPONSE

Based upon our evaluation of Dr. Brown's calendar and the revised summary submitted with the response, it was determined that a out of the total 247 hours requested by BCA, a total of 39.75 hours are not allowable charges. These hours are not allowable because of the following reasons:

- 10.5 hours on the summary were outside the period under audit.
- 4 hours on the summary had no documentation to support the entries.
- 19.5 hours were not supported by the calendar.
- 5.75 hours were either duplicate entries, on a conference call, or exceeded the number of hours recorded on Dr. Brown's calendar.

The remaining 207.25 hours identified in the BCA response are supported by Dr. Brown's calendar. There were 2 hours listed on the calendar but were not claimed by BCA response and it was added to the 207.25 above. The result of these additional 209.25 hours (207.25+2) from the BCA response results in a reduction of $10,644.54 to the amount of unsupported billings for Finding 1. This reduction is reflected in the final audit report. (See attachments A and D.)

BCA also stated that "patient records" could reasonably confirm that Dr. Brown provided service to the consumers. However, BCA did not provide any patient records to support this statement in the response. Due to the absence of supporting documentation, no adjustment is made with regard to patient records.

The second exception to this finding is that BCA believes it should be allowed to bill when BCA was unable to provide services when the client was not home or the parent or guardian simply refused to allow BCA to provide the service.

No evidence is provided by BCA to support their assertion that BCA can bill for the services not provided to the consumers. As stated in Finding 1, Title 17, Section 54326 (a) (10) clearly states that all vendors shall "Bill only for services which are actually provided to consumers and which have been authorized by the referring regional center." BCA has provided no evidence to indicate that showing up for an appointment but not serving a consumer can be defined as a "service" to the consumer. In addition, BCA has not provided any evidence to indicate that NLACRC authorized BCA to bill for services when BCA staff show up for a consumer appointment but no services are provided to the consumer. Since BCA has not provided any evidence to support this position, no adjustments are made to the final audit report for this second exception to Finding 1.

**Finding 2:** Incorrect Billing for Services and Failure to Bill – Adaptive Skills OOC

BCA disagrees with this finding. Regarding the OOC charges, BCA states, "When a BCA employee traveled to a patient's residence or other location to provide services, but the patient was absent or otherwise refused services, the OOC charges should be allowed."

## THE DEPARTMENT OF DEVELOPMENTAL SERVICES' (DDS) EVALUATION OF BCA's RESPONSE

In responding to Finding 2, BCA fails to recognize the condition cited for this finding. The condition for this finding is not stating that BCA billed for services when a consumer was absent or otherwise refused services. Finding 2 states in part, "The incorrect billing occurred as a result of BCA billing for multiple OOC visits per consumer in the same day when the payment agreement allows for only one OOC visit billing per consumer per day at a given location." BCA also does not address the provisions of the BCA contract with NLACRC, which states that this charge for an out of office call is "payable only for visits to the first consumer at a given location (on the same day)."

Since BCA has not addressed the condition for this finding and has not addressed the provisions of its contractual agreement with NLACRC for billing OOC, no adjustments are made to this finding.

**Finding 3:** Unsupported Billings and Failure to Bill – Behavior Analyst

BCA has two exceptions to this finding. The first exception was the disallowed service hours provided by Dr. Brown himself. BCA states, "Dr. Brown personally performed services under this contract during the audit period which was not attributed in calculating the unsupported services because Dr. Brown failed to complete individual time sheets for himself which reflect such services." BCA believes Dr. Brown's personal services can be reasonably confirmed through recourse to secondary sources, including both Dr. Brown's calendar as well as the relevant patient records. In support of this argument, BCA provided a one-page summary of Dr. Brown's calendar as well as the actual calendar notes.

In the initial response, BCA states that Dr. Brown provided 97 hours of behavior analyst services during the audit period and requested a total offset of $7,275.00. However, after DDS asked for clarification of the details contained in the response, the second response from BCA dated July 18, 2008 revised the requested offset to 66.5 hours for $4,987.50.

Based upon our evaluation of Dr. Brown's calendar and the revised summary submitted with the response, it was determined that out of the total 66.5 hours requested by BCA, a total of 20 hours are not allowable charges. For the hours that are not allowable, 19 hours were outside the period under audit and one hour exceeded the number of hours recorded on Dr. Brown's calendar. The remaining 46.5 hours identified in the BCA response are supported by Dr. Brown's calendar. The result of these additional 46.5 hours from the BCA response results in a reduction of $3,487.50 to the amount of unsupported billings for Finding 3. This reduction is reflected in the final audit report. (See attachments A and D.)

BCA also stated that "patient records" could reasonably confirm that Dr. Brown provided service to the consumers. However, BCA did not provide any patient records to support

this statement in the response. Due to the absence of supporting documentation, no adjustment is made with regard to patient records.

The second exception to Finding 3 was that BCA believes it should be allowed to bill when BCA was unable to provide services when the client was not home or the parent or guardian simply refused to allow BCA to provide the service.

No evidence is provided by BCA to support their assertion that BCA can bill for the services not provided to the consumers. Title 17, Section 54326 (a) (10) clearly states all vendors shall "Bill only for services which are actually provided to consumers and which have been authorized by the referring regional center." BCA has provided no evidence to indicate that showing up for an appointment but not serving a consumer can be defined as a "service" to the consumer. In addition, BCA has not provided any evidence to indicate that NLACRC authorized BCA to bill for services when BCA staff show up for a consumer appointment but no services are provided to the consumer. Since BCA has not provided any evidence to support this position, no adjustments are made to the final audit report for this second exception to Finding 3.

**Finding 4:** Services Provided by Unauthorized Staff

BCA stated that "Without conceding fault, because no amount is at issue in this finding, BCA does not take any exception to this finding."

In absence of an exception to this finding, it is assumed that BCA is in agreement with the finding.

**Finding 5:** Unsupported Billing – Clinical Psychologist

BCA stated that "Without conceding fault, because the amount at issue in this finding is minimal ($1,805.88), BCA does not take any exception to this finding."

Based on the evaluation of the calendar submitted with BCA responses, we determined that Dr. Brown's personal calendar supported 5 hours of service which was disallowed in the draft report. As a result, an adjustment of $254.34 has been made to Finding 5 in the final report. (See Attachments A and D.)

**Finding 6:** Unsupported Billing – Individual or Family Therapy

BCA stated that "Without conceding fault, because the amount at issue in this finding is minimal ($800), BCA does not take any exception to this finding."

In absence of an exception to this finding, it is assumed that BCA is in agreement with the finding.

**Behavioral Consultants and Associates (BCA)**
**Evaluation Summary of Response to Audit Report**
**FIiscal Year 2004-05/2005-06**

| Finding Number | Vendor Number | Additional Hours Allowed | Rate | Adjustments Made Based Upon Response to the Draft Report |
|---|---|---|---|---|
| 1 | PL0214 | 209.25 | $ 50.87 | $ 10,644.54 |
| 3 | PL0483 | 46.50 | $ 75.00 | $ 3,487.50 |
| 5 | P24475 | 5.00 | $ 50.87 | $ 254.35 |
| | | | **Total Adjustments** | **$ 14,386.39** |