

**DEPARTMENT
OF
DEVELOPMENTAL SERVICES
AUDIT
OF
APPLIED BEHAVIOR CONSULTANTS, INC.**

Programs and Services:

Behavior Analyst – PL0367

Behavior Management Assistant – PL0818

Audit Period: July 1, 2010, through June 30, 2012

Audit Branch

Auditors: Michael Masui, Chief of Vendor Audits
Alimou Diallo, Supervisor
Agnieszka Mozdzen, Lead Auditor
Gurpreet Dhillon, Auditor

APPLIED BEHAVIOR CONSULTANTS, INC.

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EXECUTIVE SUMMARY

The Department of Developmental Services (DDS) has audited Applied Behavior Consultants, Inc. (ABC). The audit was performed upon the Behavior Analyst and Behavior Management Assistant programs for the period of July 1, 2010, through June 30, 2012.

The audit disclosed the following issues of non-compliance:

Finding 1: Behavior Analyst – Unsupported Billings and Failure to Bill

The review of ABC's Behavior Analyst, Vendor Number PL0367, revealed that ABC had both unsupported billings, as well as failure to bill to Inland Regional Center (IRC). As a result, ABC had a total of \$193,321 of unsupported billings and a failure to bill of \$1,903.

Finding 2: Behavior Analyst – Incorrect Billing

The review of ABC's Behavior Analyst program, Vendor Number PL0367, revealed that ABC's staff who provided services under Service Code 612 failed to meet the qualifications required by California Code of Regulations (CCR), Title 17, and were not certified by the national Behavior Analyst Certification Board.

ABC's failure to meet CCR, Title 17 requirements, including, but not limited to, minimum staffing qualifications as established by CCR, Title 17, resulted in DDS paying an unqualified staff to perform the same services, at the same rate, as one who is qualified. However, considering that ABC provided 6,450 hours of service, DDS adjusted ABC's rate per hour to reflect a lower rate commensurable with the service delivered. Therefore, the 6,450 hours ABC's staff provided under Service Code 612 was adjusted to the lower rate for the sample period audited, which resulted in the overbilled amount of \$138,603.

Finding 3: Behavior Management Assistant – Unsupported Billings and Failure to Bill

The review of ABC's Behavior Management Assistant, Vendor Number PL0818, revealed that ABC had both unsupported billings, as well as failure to bill to IRC. As a result, ABC had a total of \$3,061 of unsupported billings and a failure to bill of \$50.

Finding 4: Non-compliance with the 15 Percent Administrative Cap

Upon further consideration, DDS will not pursue Finding 4 of this audit.

Finding 5: Applied Behavior Analysis – Improper Use of Electronic Signature

The review of ABC's Applied Behavior Analysis programs revealed that some of the Activity sheets submitted to IRC to support its billings used stored electronic signature of the parents or legal guardian instead of an original signature.

The net total of incorrect and unsupported billings identified in this audit amounts to \$333,032 and is due back to DDS. A detailed discussion of these findings is contained in the Findings and Recommendations section of this audit report.

BACKGROUND

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, contractors, or both. Pursuant to the California Welfare and Institutions (W&I) Code, section 4648.1, DDS has the authority to audit those service providers, contractors, or both that provide services and supports to persons with developmental disabilities.

OBJECTIVE, SCOPE, AND METHODOLOGY

Objective

The audit was conducted to determine whether ABC's Behavior Analyst and Behavior Management Assistant programs were compliant with the W&I Code, CCR, Title 17, and the regional center's contracts with ABC for the period of July 1, 2010, through June 30, 2012.

Scope

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 ABC, nor was this audit intended to express an opinion on the financial statements. The auditors limited the review of ABC's internal controls to gain an understanding of the transaction flow and invoice preparation process as necessary to develop appropriate auditing procedures. The audit scope was limited to planning and performing audit procedures necessary to obtain reasonable assurance that ABC complied with CCR, Title 17. Also, any complaints that DDS' Audit Branch was aware of regarding non-compliance of laws and regulations were reviewed and followed-up during the course of the audit.

ABC was vendorized by multiple regional centers and utilized by seven regional centers during the fiscal year reviewed: Alta California Regional Center (ACRC), IRC, North Los Angeles County Regional Center (NLACRC), Regional Center of the East Bay (RCEB), Regional Center of Orange County (RCOC), San Gabriel/Pomona Regional Center (SG/PRC), and Valley Mountain Regional Center (VMRC). Of the seven regional centers, DDS only audited services provided to IRC consumers.

Analyzing the information received during the pre-audit meeting with the vendor, the internal control questionnaire, and a risk analysis, it was determined that a two-month sample would be sufficient to fulfill the audit objectives. However, ABC was informed that if the initial audit sample period was found to be insufficient to meet the audit objectives, an expansion of the sample period would be warranted.

Applied Behavior Analysis (ABA):

During the audit period, ABC operated six ABA programs. The audit included the review of two of ABC's ABA programs. The initial review of ABC's ABA programs consisted of a two-month (December 2010 and January 2011) sample period selected from the audit period of July 1, 2010, through June 30, 2012. Within the two months, the audit sample demonstrated a large percentage of unsupported billings deriving from the lack of reliable supporting documentation in the form of timesheets or session notes. As a result, the testing sample was expanded to include one fiscal year (July 1, 2010, through June 30, 2011).

The ABA programs audited are listed below:

- Behavior Analyst, Vendor Number PL0367, Service Code 612
- Behavior Management Assistant, Vendor Number PL0818, Service Code 615

Methodology

The following methodology was used by DDS to ensure the audit objectives were met. The methodology was designed to obtain a reasonable assurance that the evidence provided was sufficient and appropriate to support the findings and conclusions in relation to the audit objectives. The procedures performed at IRC and ABC included, but were not limited to, the following:

- Review of IRC's vendor files for contracts, rate letters, program designs, purchase of service authorizations, and correspondence pertinent to the review.
- Interview of IRC's staff for vendor background information and to obtain prior vendor audit reports.
- Interview of ABC's staff and management to gain an understanding of its accounting procedures and processes for IRC's billings.
- Review of ABC's service/attendance records to determine if ABC had sufficient and appropriate evidence to support the direct care services billed to IRC.
- Analysis of ABC's payroll and attendance/service records to determine if ABC provided the level of staffing required.

SB 74- Administration Expenses:

- Interview of ABC's Chief Operations Officer for vendor background information and to gain understanding of accounting procedures and financial reports.
- Interview of ABC's Chief Operations Officer to gain an understanding of its general accounting procedures.

- Review of the Independent Auditor’s Report, general and administrative expenses.
- Review of purchase of service data.

CONCLUSION

Based upon items identified in the Findings and Recommendations section, ABC did not comply with the requirements of CCR, Title 17.

VIEWS OF RESPONSIBLE OFFICIALS

DDS issued a draft audit report on August 12, 2014. The findings in the audit report were discussed at the exit conference with ABC’s Ron Sandell, CFO, Kathy Tucker, COO, and Chad Carlock, ABC’s attorney on August 22, 2014. ABC requested an extension of time until November 14, 2014, to provide its response to the draft audit report. DDS subsequently received ABC’s response to the draft audit report on November 13, 2014. “ABC disagrees with each of the five Findings and Recommendations of the audit and does not believe that it owes any ‘overpayment’ to DDS.”

RESTRICTED USE

This audit report is solely for the information and use of DDS, Department of Health Care Services, ACRC, IRC, NLACRC, RCEB, RCOG, SG/PRC, VMRC and ABC. This restriction is not intended to limit distribution of this audit report, which is a matter of public record.

FINDINGS AND RECOMMENDATIONS

Finding 1: Behavior Analyst – Unsupported Billings and Failure to Bill

The review of ABC’s Behavior Analyst program, Vendor Number PL0367, for the sample period of July 1, 2010, to June 30, 2011, revealed that ABC had unsupported billings, as well as appropriate support for services that it failed to bill to IRC.

Unsupported billings occurred due to a lack of appropriate documentation to support the units of service billed to IRC. The failure to bill occurred when ABC had appropriate documentation, but did not bill IRC.

ABC was not able to provide appropriate supporting documentation for 2,692 hours of services billed. The lack of documentation resulted in unsupported billings to IRC in the amount of \$193,321.

In addition, ABC provided appropriate supporting documentation for 27 hours of service, which was not billed to IRC. This resulted in an unbilled amount of \$1,903.

The net total of the billing discrepancies resulted in \$191,418 of unsupported billings due back to DDS. (See Attachment A)

W&I Code, Section 4648.1(e)(1) states:

“(e) A regional center or the department may recover from the provider funds paid for services when the department or the regional center determines either of the following has occurred:

- (1) The services were not provided in accordance with the regional center’s contract or authorization with the provider, or with applicable state laws or regulations.”

CCR, Title 17, Section 54326(a)(3) and (10) states:

“(a) All vendors shall:

- (3) Maintain records of service 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 . . .”

CCR, Title 17, Section 50604(d) and (e) 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:

ABC must reimburse to DDS \$191,418 for the unsupported billings. In addition, ABC should develop and implement policies and procedures to ensure that proper documentation is maintained to support the amounts billed to regional centers.

ABC’s Response:

“ABC does not believe that a refund is due to DDS because Title 17 does not specify what is and is not acceptable as documentation.”

See Attachment C for the full text of ABC’s response to the draft audit report and Attachment D for DDS’ evaluation of ABC’s response.

Finding 2: Behavior Analyst – Incorrect Billing

The review of ABC’s Behavior Analyst program, Vendor Number PL0367, for the sample months of July 2010 through June 2011, revealed that ABC’s staff who provided services under Service Code 612 failed to meet the qualifications required by CCR, Title 17 and were not certified by the national Behavior Analyst Certification Board.

CCR, Title 17 vendorization requirements ensure that a Behavior Analyst’s reimbursement rate of service is commensurable with the Behavior Analyst’s qualifications; i.e., if those providing service do not meet the required qualifications(s) for such service, they are not reimbursed at the same rate as those who possess the required qualifications.

ABC’s failure to meet CCR, Title 17 requirements, including, but not limited to, the minimum staffing qualifications as established by CCR, Title 17, results in DDS paying an unqualified staff to perform the same services, at the same rate, as one who is qualified. However, considering that ABC provided 6,450 hours of service, DDS adjusted ABC’s rate per hour to reflect a lower rate commensurable with the service delivered. Therefore, the 6,450 hours ABC staff provided under the Service Code 612 were adjusted to the lower rate for the sample period audited, which resulted in the overbilled amount of \$138,603. (See Attachment B)

W&I Code, Section 4648.1(e)(1) states:

- “(e) A regional center or the department may recover from the provider funds paid for services when the department or the regional center determines either of the following has occurred:
 - (1) The services were not provided in accordance with the regional center’s contract or authorization with the provider, or with applicable state laws or regulations.”

CCR, Title 17, Section 54326(a)(12) states:

- “(a) All vendors shall:
 - (12) Agree to accept the rate established, revised or adjusted by the Department as payment in full for all authorized services provided to consumers . . .”

CCR, Title 17, Section 54342(a)(11) states:

- “(a) The following service codes shall be assigned to the following types of services:
 - (11) Behavior Analyst – Service Code 612. Behavior Analyst means an individual who assesses the function of a behavior of a consumer and designs, implements, and evaluates instructional and environmental modifications to produce socially significant improvements in the consumer’s behavior through skill acquisition and the reduction of behavior. Behavior Analysts engage in functional assessments or functional analyses to identify environmental factors of which behavior is a function. A Behavior Analyst shall not practice psychology, as defined in Business and Professions Code section 2903. A regional center shall classify a vendor as a Behavior Analyst if an individual is recognized by the national Behavior Analyst Certification Board as a Board Certified Behavior Analyst.”

Recommendation:

ABC must reimburse to DDS the difference in rates in the amount of \$138,603. In addition, ABC should develop and implement policies and procedures to ensure that only individuals recognized by the national Behavior Analyst Certification Board as a Board Certified Behavior Analyst perform the functions of a Behavior Analyst under Service Code 612.

ABC's Response:

ABC stated that "The Audit finding that lowered the rate of payment for those services to that of the 620 Service Code for Behavior Management Consultant was erroneous and the Audit should be revised to delete the recommended repayment of \$138,603."

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

Finding 3: Behavior Management Assistant – Unsupported Billings and Failure to Bill

The review of ABC's Behavior Management Assistant program, Vendor Number PL0818, for the sample months of December 2010 and January 2011, revealed that ABC had unsupported billings, as well as a failure to bill to IRC.

Unsupported billings occurred due to a lack of appropriate documentation to support the units of service billed to IRC. The failure to bill occurred when ABC had appropriate documentation, but did not bill IRC. The following are the discrepancies identified:

ABC was not able to provide appropriate supporting documentation for 61 hours of services billed. The lack of documentation resulted in unsupported billings to IRC in the amount of \$3,061.

In addition, ABC provided appropriate supporting documentation for one hour of service, which was not billed to IRC. This resulted in a failure to bill amount of \$50.

The net total of the billing discrepancies resulted in \$3,011 of unsupported billings due back to DDS. (See Attachment A)

W&I Code, Section 4648.1(e)(1) states:

"(e) A regional center or the department may recover from the provider funds paid for services when the department or the regional center determines either of the following has occurred:

- (1) The services were not provided in accordance with the regional center's contract or authorization with the provider, or with applicable state laws or regulations."

CCR, Title 17, Section 54326(a)(3) and (10) states:

"(a) All vendors shall:

- (3) Maintain records of service 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 . . .”

CCR, Title 17, Section 50604(d) and (e) 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:

ABC must reimburse to DDS \$3,011 for the unsupported billings. In addition, ABC should develop and implement policies and procedures to ensure that proper documentation is maintained to support the amounts billed to regional centers.

ABC’s Response:

“ABC does not believe that a refund is due to DDS because Title 17 does not specify what is and is not acceptable as documentation.”

See Attachment C for the full text of ABC’s response to the draft report and Attachment D for DDS’ evaluation of ABC’s response.

Finding 4: Non-compliance with the 15 Percent Administrative Cap

Upon further consideration, DDS will not pursue Finding 4 of this audit.

Finding 5: Applied Behavior Analysis – Improper Use of Electronic Signature

The review of ABC’s Applied Behavior Analysis programs revealed that some of the service logs (Activity Sheets) submitted to IRC to support its billings used an electronic signature of the parents or legal guardian instead of an original signature. An electronic signature would be acceptable if the signature was contemporaneous, similar to an electronic credit card signature. However, using a stored signature stamp or electronic signature file as evidence that services were provided by ABC is not in compliance with the current statute and increases the chances of fraud and abuse.

California Civil Code, Section 1633.9(a) and (b) states:

- “(a) An electronic record or electronic signature is attributable to a person if it was the act of the person. The act of the person may be shown in any manner, including a showing of the efficacy of any security procedure applied to determine the person to which the electronic record or electronic signature was attributable.

- (b) The effect of an electronic record or electronic signature attributed to a person under subdivision (a) is determined from the context and surrounding circumstances at the time of its creation, execution, or adoption, including the parties' agreement, if any, and otherwise as provided by law."

Recommendation:

ABC must cease using the electronic copy of the parents' or legal guardians' signature.

ABC's Response:

"ABC has already complied with Recommendation #5."

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

Applied Behavior Consultants, Inc.
Summary of Unsupported Billings and Failure to Bill
Audit Period: July 1, 2010, through June 30, 2012

Attachment A

Finding #	Vendor	Svc Code	Description	Unit Type	Unit Rate	<u>Unsupported Billings</u>		<u>Failed to Bill</u>		<u>Net Due to DDS</u>
						Units	Amount	Units	Amount	Amount*
							A		B	= A + B
<u>Applied Behavior Analysis</u>										
1	PL0367	612	Behavior Analyst IRC							
			Sample Months - July 2010 to June 2011	Hours	\$ 71.81	2,692	\$ 193,321	27	\$ (1,903)	\$ 191,418
FINDING 1 Total: Behavior Analyst						2,692	\$ 193,321	27	\$ (1,903)	\$ 191,418
3	PL0818	615	Behavior Management Assistant IRC							
			Sample Month - December 2010	Hours	\$ 50.17	51	\$ 2,559	-	-	\$ 2,559
			Sample Month - January 2011	Hours	\$ 50.17	10	502	1	\$ (50)	452
FINDING 3: Total - Behavior Management Assistant						61	\$ 3,061	1	\$ (50)	\$ 3,011
FINDING 1&3: Total Unsupported Billings							\$ 196,382	28	(1,953)	\$ 194,429

*Rounded to the nearest dollar

Applied Behavior Consultants, Inc.
Incorrect Billing Service Code
Audit Period: July 1, 2010, through June 30, 2012

Attachment B

Finding #	Vendor	Svc Code	Description	Unit Type	Unit Rate	SC 612 Rate		SC 620 Rate		Net Due to DDS
						Units	Amount	Unit Rate	Amount	Amount*
						A		B		= A + B
<u>Applied Behavior Analysis</u>										
2	PL0367	612	Behavior Analyst IRC							
			Sample Months - July 2010 to June 2011	Hours	\$ 71.81	6,450	\$ 463,149	\$ 50.32	\$(324,546)	\$ 138,603
FINDING 2: Total - Behavior Analyst						6,450	\$ 463,149		\$(324,546)	\$ 138,603
<u>Attachement A & B Findings Total:</u>										
										\$ 191,418
										138,603
										3,011
Grand Totals of Incorrect and Unsupported Billings										\$ 333,032

*Rounded to the nearest dollar

ABC's Response to Draft Report

As part of the audit report process, ABC was afforded the opportunity to respond to the draft audit report and provide a written response to the findings identified. On November 13, 2014, ABC submitted a response to the draft audit report through its Attorney at Law, Chad Carlock, which was received by DDS on November 14, 2014. This was within the granted extension period ABC had requested to provide its response to the draft audit report. The following pages contain ABC's written response.

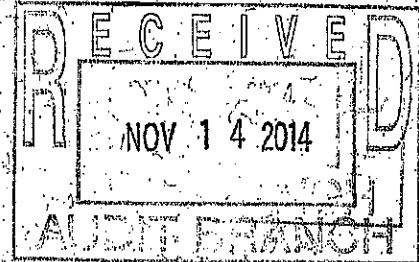
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November 13, 2014

Mike Masui
Chief, Vendor Audit Section
Department of Developmental Services
1600 Ninth Street, Room 230, MS 2-10
Sacramento, CA 95814



Re: *Response to Draft Audit Report*
Applied Behavior Consultants, Inc.

Dear Mr. Masui:

On August 22, 2014, Applied Behavior Consultants, Inc. (hereinafter "ABC") was presented with a draft audit conducted by the Department of Developmental Services ("DDS"). Due to several technical questions identified in the exit interview that required follow-up, ABC requested and you granted an extension of time until November 14, 2014 for ABC to provide its response to the Draft Audit Report ("Audit"). This document is ABC's response to the Audit, and explains our position as to each Finding of the Audit.

In summary, ABC disagrees with each of the five Findings and Recommendations of the Audit, and does not believe that it owes any "overpayment" to DDS. While ABC expressly reserves the right to raise additional arguments and evidence should further appeals be required, this response outlines ABC's position and arguments as to each Finding individually, as follows:

Finding #1: The review of ABC's Behavior Analyst, Vendor Number PD8367, revealed that ABC had both unsupported billings, as well as failure to bill to Inland Regional Center (IRC). As a result, ABC had a total of \$193,321.13 of unsupported billings and a failure to bill of \$1,902.97.

Recommendation #1: ABC must reimburse to DDS the \$191,418.17 for the unsupported billings. In addition, ABC should develop and implement policies and procedures to ensure that proper documentation is maintained to support the amounts billed to IRC.

ABC's Response to Finding and Recommendation #1

ABC does not agree with Finding #1. During the course of the audit, the auditors were provided with what ABC, Inc. reasonably believed at the time of service was adequate documentation that service had been provided. The

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auditors were given timesheets and activity sheets that indicated the start and end time of service, along with the date and type of the service. Naturally, ABC was not given prior knowledge of additional items that would be later claim were needed as proof until the audit was performed. ABC reasonably relied on the direction and guidance of the regional center when billing. In fact, ABC's billing procedures and recordkeeping practices were a direct result of the instruction given by the regional center. The regional center paid for services delivered by ABC, under the same premise understood by ABC that activity sheets were all that the regional center required for payment.

The Draft Audit Report concludes that ABC "was not able to provide appropriate supporting documentation," but the report does not specify what documentation it accepted and what it did not accept, nor does it state what would be considered "appropriate" supporting documentation. This is problematic because there is no standard, in statute or regulation or anywhere else, as to precisely what is required to verify that "the service billings/invoices submitted by the service provider to the regional center for payment are supported by the service provider's consumer attendance and service records." 17 Cal. Code Regs. §50606(b)(2). Thus, service providers (and auditing agencies) have no criteria that can be objectively applied to determine whether or not source documents "support" billings submitted to a regional center. The term "service record" is extremely broad, including any "book or document evidencing the service activities provided by a service provider or regional center." 17 Cal. Code Regs. § 50602(p). Therefore, ABC contends that all documentation submitted to support its billings should have been considered by the audit team.

For the hours denoted as having no documentation, ABC did in fact perform these service hours and used the accepted method (activity sheets) to report and document the services that was requested by the regional center. Hence, the activity sheet was submitted to the regional center for payment, was accepted by the regional center, and the regional center followed their directive to pay. It is unfair and unsupported for DDS to come in after the fact and determine that documentation accepted by the regional center as sufficient was not adequate.

ABC believes that its timesheets, payroll records and activity sheets should also be considered as supporting the billings. ABC believes that if all available documentation is used in order to determine whether or not the services billed were actually provided (see 17 Cal. Code Regs., § 54326(a)(10)), those documents taken collectively adequately support all billings made to IRC. ABC at this point believes it was misled in fulfilling its contractual agreement with IRC, only to later be told that it somehow failed to comply.

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Furthermore, in an effort to cooperate as a part of this audit, ABC was able to provide many additional items that were requested by the auditors such as clinic-summary notes, consultant recommendation notes, ABC daily logs with notes indicating care, employee sign-in sheets, data sheets, assessment reports, and numerous reports indicating the clients progression within the program. These items were all in addition to what ABC believed to be necessary to support the billings, yet ABC provided these additional materials to the auditors. Therefore, ABC does not believe that a refund is due to DDS because Title 17 does not specify what is and is not acceptable as documentation. Nor did the regional center ever suggest that our methods did not meet the standard, prior to payment or after payment. Further, ABC was instructed by the regional center as to what was required for service and payment, and complied at all times with those instructions.

Finding #1 should be revised to reflect that ABC's documentation adequately supports all billings to the regional center, and the recommendation for repayment should be rescinded.

Finding #2: The review of ABC's Behavior Analyst, Vendor Number P10367, revealed that 20 out of 30 ABC employees were not certified by the national Behavior Analyst Certification Board as required for this service. Services performed by employees that are not certified as a Behavior Analyst should have been billed using service code 620 (Behavior Management Consultant) which does not require certification. Therefore, adjusting the rate per hour to that of the service code 620 resulted in an overpayment to ABC in the amount of \$138,602.76.

Recommendation #2: ABC must reimburse to DDS the difference in rates in the amount of \$138,602.76. In addition, ABC should develop and implement policies and procedures to ensure that only individuals recognized by the national Behavior Analyst Certification Board as a Board Certified Behavior Analyst perform the functions of a Behavior Analyst.

ABC's Response to Finding and Recommendation #2

ABC does not agree with Finding #2. The Audit misinterprets Title 17, Section 54342(a)(11) to require all staff members providing Behavior Analyst services under Service Code 612 to be certified by the national Behavioral Analyst Certification Board. But that is not what the regulation says, or what it requires. The regulation states that: "Behavior Analyst means an individual who assesses the function of a behavior of a consumer and designs, implements, and evaluates instructional and environmental modifications to produce socially

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significant improvements in the consumer's behavior through skill acquisition and the reduction of behavior. Behavior Analysts engage in functional assessments or functional analyses to identify environmental factors of which behavior is a function." All of the 30 ABC employees providing direct services under this Vendor # (PL0367) and Service Code (612) met this definition, and therefore the billing under this service code and at this rate was appropriate and correct.

If read carefully, the regulation distinguishes between a vendor and an individual for purposes of the 612 service code. "A regional center shall classify a vendor as a Behavior Analyst if an individual is recognized by the national Behavior Analyst Certification Board as a Board Certified Behavior Analyst." Vendor and individual are different words, and have different meanings under Title 17. As defined for purposes of section 54342(a)(11), "vendor" means approved "applicant," which in the case of a group practice is a business entity with "more than one individual providing services." (See 17 Cal. Code Regs., §§ 54302(a)(9), (a)(33) & (a)(74).) ABC was (and is) a group practice, as expressly permitted for a 612 Behavior Analyst by Title 17, § 54319(a)(5). In interpreting legislation, it is presumed that the words used were chosen deliberately and have the meanings attributable to them.

All that the regulation requires is that, in order to be vendorized as a 612 group practice, the "vendor" must include "an individual" that is a Board Certified Behavior Analyst. The regulation does not require that each and every individual providing services for a 612 vendor be board certified. Had that been the intent of the regulation, it could easily have said so. As long as the non-certified personnel are providing services within the group practice as "assistants or trained aides" working in collaboration with and under the supervision of an individual with certification, the regulations are satisfied. (See 17 Cal. Code Regs. §§ 54302(a)(9), (a)(33), (a)(74); § 54319(d).)

Under California law, Behavior Analysts are not regulated and are not required to satisfy any licensure, certification, education, or other requirements. See Cal. Health & Safety Code § 1374.74, subd. (a)(4) & (b).) Furthermore, the statutes governing provision of Behavioral Analyst services under the Lanterman Act and the Early Intervention Act also do not impose any license, registration, education or experience requirements upon persons who provide these services. (See Cal. Welf. & Inst. Code § 4686.2; Cal. Gov. Code, 95021.) To the extent that Title 17 can be interpreted to create or require certification where no such requirement otherwise exists, the "requirement" is of questionable legality at best. However, since ABC in any event had at multiple individuals operating within this group practice that were certified, that issue is not critical to this audit.

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In this case, the Audit notes that 10 of the 30 staff reviewed were Board Certified Behavior Analysts. Therefore, ABC certainly had "an individual" who met the certification requirement, and these services were properly billed under the 612 Service Code. The Audit finding that lowered the rate of payment for those services to that of the 620 Service Code for Behavior Management Consultant was erroneous and the Audit should be revised to delete the recommended repayment of \$138,602.76.

Finding #3: The review of ABC's Behavior Management Assistant, Vendor Number PL0818, revealed that ABC had both unsupported billings, as well as failure to bill to WC. As a result, ABC had a total of \$3,060.37 of unsupported billings and a failure to bill of \$50.17.

Recommendation #3: ABC must reimburse to DDS the \$3,010.20 for the unsupported billings. In addition, ABC should develop and implement policies and procedures to ensure that proper documentation is maintained to support the amounts billed to IRC.

ABC's Response to Finding and Recommendation #3

ABC does not agree with Finding #3. As with Finding #1 above, ABC believes that the documentation it provided both originally and later to the auditors as part of this audit adequately supports all billings submitted to IRC for Vendor # PL0818. ABC incorporates by reference all of the arguments stated above regarding what documents should be permitted to "support" billings submitted to the regional center. All services billed were in fact provided (Title 17, § 54326(a)(10)), and ABC submitted the supporting documentation required by the regional center. The regional center accepted that documentation and paid the invoices. DDS should not now second guess that determination and claim that the documentation was inadequate. Furthermore, in re-examining the billings, DDS' conclusion that the billings were unsupported is incorrect.

Finding #3 should be revised to reflect that ABC's documentation adequately supports all billings to the regional center, and the recommendation for repayment should be rescinded.

Finding #4: The review of ABC's General and Administrative Expenses revealed that ABC's administrative expenses for its programs with negotiated rates exceeded the 15 percent cap by \$5,469,396.70. This finding was due in large part to ABC's refusal to provide requested documentation.

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Recommendation #4: ABC must reimburse to DDS the \$5,469,396.70 for the administrative expenses it incurred over the 15 percent limit. ABC should also provide sufficient supporting documentation to justify its compliance with the W&I Code, section 4629.7.

ABC's Response to Finding and Recommendation #4

ABC does not agree with Finding #4. ABC is not required to "justify its compliance with the W&I Code, section 4629.7" – because that section is a requirement imposed on the vendoring regional center, not on the provider. The one and only thing that § 4629.7(a) requires is that regional centers must include a provision in their contracts with providers of negotiated rate programs, specifying "that not more than 15 percent of regional center funds be spent on administrative costs." The Section is contained in Article 1 of Chapter 5 of Division 4.5 of the Welfare & Institutions Code, entitled "Regional Center Contracts." It is not in the portion of the Lanterman Act dealing with providers. At most, therefore, this section requires that a certain term be included in the contracts between a regional center and a vendor. It is the regional center that must demonstrate its compliance with § 4629.7, not any provider.

In the Draft Audit Report, DDS does not provide any evidence that Inland Regional Center complied with its obligation under § 4629.7. In other words, there is no evidence that IRC in fact included the 15% administrative cap in its contracts with ABC. Without any such contractual obligation in place, ABC was not required to and had no contractual obligation to observe the 15% cap.

More broadly, ABC contends that the Audit vastly overstates the reach of Section 4629.7(a) of the Welfare & Institutions Code. ABC contends that DDS lacks the authority to police compliance with § 4629.7, and lacks the authority to compel repayment of any amounts found to be in excess of the 15% administrative cap. ABC challenges Finding and Recommendation #4 in its entirety for the following reasons:

1. DDS lacks the authority to enforce Section 4629.7(a) in any manner, including but not limited to fiscal audits such as this one. There is no provision anywhere in the Statute or in the legislative history leading up to the Statute's enactment that authorizes, or even mentions, any enforcement mechanism or penalty for failure to comply with the 15% administrative cap.
 - a. The only reference to any enforcement authority whatsoever is in "implementation" memoranda issued by DDS itself, months after the legislation was enacted. In those memoranda, DDS states (with

no citation to supporting authority) that: *"Should it be determined that the negotiated rate is comprised of more than 15 percent administrative costs, adjustments must be made to comport with law."* However, DDS' interpretation of the law cannot alter or enlarge the scope of the statute, and it cannot administratively create enforcement authority where none was granted by the applicable statute. The implementation memos also do not explain what "adjustments" should supposedly be made or how those adjustments would "comport with law."

- b. The 15% administrative cap cannot be enforced by DDS under its general audit authority provided by § 4648.1(e)(1), because it is not the case that "services were not provided in accordance with the regional center's contract or authorization with the provider, or with applicable state laws or regulations." This authority extends only to where *services were not provided* as required by law, and does not extend to the internal operation or management of a provider's business, and the way it chose to allocate its available funds.
 - c. The only entity that even arguably has any authority to enforce § 4629.7 is a regional center, who theoretically could pursue failure to comply with the 15% cap as a breach of contract – if that regional center had in fact amended its contracts to contain this requirement. As discussed in item 3(c) below, however, "violation" of the 15% cap does not in any way "harm" a regional center, because the regional center is still receiving the services it purchased at the rate it negotiated, regardless of what a provider's administrative costs happens to be. Therefore, a regional center would not have a viable cause of action for breach of contract, as it could not show damages.
2. The Section cannot be applied retroactively, as DDS attempts to do in this audit, and it makes no sense to apply the administrative cap to only part of a fiscal year. SB 74, the bill containing the 15% administrative cap, was enacted on March 24, 2011. As an urgency bill, it took effect immediately. However, it did not and cannot be applied retroactively, and so cannot be applied to conduct that occurred prior to March 24, 2011. With respect to this issue, the Department looked at calendar year 2011 (since that is ABC's fiscal year and how their financials are organized). But this period included January, February, and March of 2011, when Section 4629.7 was not even in effect. This provision cannot reasonably or fairly be applied to a company's financials for a whole year, when the standard was not even in effect for a portion of that year. (Furthermore, IRC may not have

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actually imposed the contract language until well after March 24 – if ever, as discussed above.) The confusion and errors this retroactive/partial year application created are discussed further in items 6 and 7 below.

3. The Section is unconstitutional as applied to service providers, because it is arbitrary and is not rationally related to the stated purpose of the legislation (which was to save the state money). Therefore, the Statute violates the Due Process clauses of the State and Federal Constitutions.
 - a. With no enforcement authority, as discussed in item 1 above, the administrative cap has no impact on (and is therefore irrelevant to) the stated legislative purpose of saving money. Since the cap is irrelevant to the stated purpose of the legislation, it fails rational basis review and is void and unenforceable.
 - b. The Statute is arbitrary and irrational because it pertains only to administrative costs in negotiated rate programs, and makes no effort to limit costs in other programs, where rates of payment are established by the state or contracted based upon “usual and customary” rates. There was no evidence presented and no showing anywhere in the Legislative history that negotiated rate programs were any more likely to have “excessive” administrative costs versus other, non-negotiated rate programs.
 - c. § 4629.7 is also unconstitutional because it unreasonably interferes with providers’ internal proprietary business operations. If a regional center is getting the services it agreed to purchase at the rate it negotiated and affirmatively agreed to pay, what difference does it make if the provider’s administrative costs are 3% or 13% or 30%? In any of these scenarios, the regional center is receiving the benefit of its bargain and is not being “harmed” by the provider’s administrative costs.
4. Section 4629.7 is arbitrary and capricious because there was (and is) no rationale, analysis, or supporting economic data whatsoever presented to the Legislature that could conceivably support the selection of 15% as an appropriate or viable cap on administrative costs for service providers to persons with developmental disabilities. The 15% figure was simply fabricated out of thin air and enacted, with no substantive discussion or analysis of whether that percentage was practicable, made any sense or would in any way accomplish its stated purpose.

5. Under the circumstances of this case, the nature of ABC's operations (working with multiple regional centers, in multiple programs, some negotiated rate programs, others not, and also non-regional center revenues from school districts, insurance, and private-pay clients) makes it impossible to reasonably determine what "percentage" of ABC's administrative costs should be properly allocated to IRC's negotiated rate programs. This is why there was considerable conflict during the course of the audit as to what financial information should and should not be provided by ABC and considered by DDS in conducting this audit. While DDS wanted ABC to provide GAAP financials, for July 1-June 30 fiscal years, identifying and allocating specifically the administrative costs attributable to funds received from IRC negotiated rate programs, the fact of the matter is that ABC simply did not and does not keep its records in such a fashion. Nor is it required to. In addition, in many cases it is simply not feasible to determine and track when a particular staff member or administrator's time should be allocated to a negotiated rate regional center program versus some other program, as they are often working in support of multiple programs concurrently. When ABC provided its records as they were actually kept, for the company as a whole, those figures were misused and misallocated by DDS, resulting in a vastly overstated conclusion as to ABC's actual administrative costs.
6. DDS's calculations are wrong. Although the final page of the Audit contains a notation that its computations were based on 9 months (ostensibly to account for the fact that AB 74 was enacted in March), the calculations only reduced one factor – the excess administrative expenses – by 25%. If the Audit were to fully account for the partial year applicability of § 4629.7, then at the very least all of the revenue and expenses figures should have been reduced by this amount. But even that does not necessarily correct for the problem, because it presumes that income and expenses are uniformly and evenly distributed throughout the year, an assumption that is not supported by the realities of funding for services.
7. There is no explanation in the Audit of how the auditors applied § 4629.7's definitions of administrative costs to the financials provided by ABC. It is readily apparent that the Audit did not properly allocate ABC's actual administrative costs. Specifically, the Audit allocated \$8,579,445.81 in expenses to negotiated program revenue of \$8,692,579.13. In other words, the audit found that of the approximately \$8.7 million in revenue, \$8.6 million was "administrative cost." This is an administrative cost of 98%, a clearly ludicrous result. For the audit results to be correct, ABC would have had to somehow miraculously been able to provide all of the services

for a direct staff cost of approximately \$80,000.00 across its entire agency. The Audit's allocation is unsupported, erroneous, and must be disregarded.

8. The Audit implies that the huge Finding relating to administrative costs was ABC's fault, because the Finding "was due in large part to ABC's refusal to provide appropriate documentation to support its allocation of expenses." However, this statement is inaccurate and misleading. ABC did provide DDS with its financials for 2011 (the year in question) as they were kept by ABC at the time: using cash basis accounting for the company as a whole. ABC did not track and allocate costs separately for each program or for each regional center, and during the year in question was under no obligation to do so.
 - a. In fact, ABC explicitly asked DDS whether it would be required to break down its financials by regional center and program, and was assured in writing by Rita Walker of DDS that it was not required to do so. See Exhibit 1. Ms. Walker's email advised ABC, in relevant part, that: "The audit you now have conducted of your entire business operation meets the TBL requirement..." Furthermore, the email specifically advised ABC that "an audit only covering the portion of your organization's business attributable to regional center business would not be compliant with the statutory requirement." Therefore, in reasonable reliance on this statement from DDS, ABC provided its financials and its audit as they were kept. The only thing that ABC "refused" to do was to undertake the Herculean task of constructing an entirely new set of financial records from the source documentation that already existed. Unfortunately, the (mis)use of these statements by DDS resulted in the errors and misallocations discussed above.
 - b. Even more unfortunately, DDS now disavows Ms. Walker's advice and refuses to recognize or apply the information that was given to ABC in response to a direct request.
 - c. In the spirit of cooperation and in an attempt to address DDS' concerns during the conduct of the audit, ABC (at considerable additional time and expense) constructed a Trial Balance for the year 2011 by converting the cash-basis records to GAAP methodology and provided this information to DDS. It would have been even more time-consuming and expensive to convert the 500+ page General Ledger for 2011 to GAAP as well, and so ABC did not undertake that exercise. Because the two different methodologies

view and allocate financials differently; the cash-basis records (understandably) do not precisely correspond with the GAAP reconstruction.

- d. Since 2011, ABC now maintains (at its great inconvenience and expense) two parallel sets of financials: Cash basis financials that it uses for internal management, tax, and other purposes; and GAAP financials that are provided to regional centers and DDS. ABC contends that this requirement, like the requirement that providers regularly submit fiscal reviews and/or audits to their vendoring regional centers, is unnecessarily burdensome and imposes unreimbursed administrative expenses on providers (and ironically increases the providers' administrative costs, which the State supposedly wants to reduce).
9. IRC received and reviewed ABC's audited financial statements for the calendar years 2012 and 2013. IRC accepted the financials ABC supplied and sent a letter on June 19, 2014 stating that said IRC "found no issues that appeared to have an impact on regional center services." See Exhibit 2. Since the regional centers are (arguably) the only ones who may have any authority at all to "enforce" the 15% administrative cap, and since IRC accepted ABC's financials, even IRC cannot now claim that ABC was out of compliance. DDS certainly does not have the authority to manufacture an alleged violation if IRC itself did not find anything wrong.

Finding #5: The review of ABC's Applied Behavior Analysis programs revealed that some of the Activity sheets submitted to IRC to support its billings used an electronic signature of the parents or legal guardian instead of an original signature.

Recommendation #5: ABC must cease using the electronic copy of the parents' or legal guardians' signature and use a contemporaneous signature.

ABC's Response to Finding and Recommendation #5

ABC has already complied with Recommendation #5. During the time period covered by the audit, IRC's directives did not specify or require that electronic signatures were unacceptable and could not be used. However, since the initiation of this audit, ABC has changed its practices and protocols to require the use of contemporaneous signatures and no longer uses electronic copies. Since ABC has already complied with the recommendation, this fact should be noted in the Final Audit Report, with no need for any further action on this

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Finding since the issue has already been addressed. There is no financial component relating to this finding and no demand for repayment by DDS.

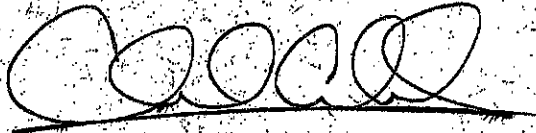
CONCLUSION

In summary, ABC believes that the conclusions of the Audit are incorrect and without supporting authority in the Lanterman Act or Title 17. ABC contends that the audit's construction of the applicable law and the methods used to analyze ABC's data were arbitrary, capricious, and without support in the record relied upon by DDS.

ABC disputes the amount allegedly owed in its entirety, and requests that DDS revise and correct its findings in the forthcoming Final Audit Report.

Sincerely Yours,

LAW OFFICES OF CHAD CARLOCK



By Chad Carlock, Esq.

Enclosures

cc: Client
Edward Yan, DDS
Alimou Diallo, DDS

EXHIBIT 1

From: Rita.Walker@dds.ca.gov
To: JMorrow223@aol.com
CC: RRollens@aol.com
Sent: 9/9/2011 5:20:13 P.M. Pacific Daylight Time
Subj: RE: TBL

Dear Dr. Morrow:

Thank you for your thoughtful email. The TBL requires affected providers, such as yourself, to submit an audit of your organization; an audit only covering the portion of your organization's business attributable to regional center business would not be compliant with the statutory requirement. The audit you now have conducted of your entire business operation meets the TBL requirement, assuming that your regional center work/claims/revenue could be tested as part of the overall audit protocol. We do understand that that means that the RC portion of your business may or may not be tested in a given audit.

With regard to your "timing" question, you will need to submit an audit to the regional centers with which you are vendored that covers the time period following the effective date of TBL ie March 24, 2011. The Department will shortly be sending out additional clarifying information on implementation of the audit requirements in TBL and will post the letter on its website.

I hope that this email has answered your questions.

Thank you

Rita Walker

EXHIBIT 2



INLAND REGIONAL CENTER

...valuing independence, inclusion and empowerment

P. O. Box 19037, San Bernardino, CA 92423

Telephone: (909) 890-3000

Fax: (909) 890-3001

June 19, 2014

Ron Sandell, Chief Financial Officer
Applied Behavior Consultants, Inc.
4540 Harlin Drive
Sacramento, CA 95826

Dear Mr. Sandell:

We are in receipt of your audited financial statements for the years ended December 31, 2013 and 2012 pursuant to the Welfare and Institution Code, Section 4652.5. Thank you for your recent submission.

As required by Section 4652.5(c), Inland Regional Center has reviewed the audit report, financial statements, and accompanying notes to the financial statements. Our examination found no issues that appeared to have an impact on regional center services.

Should you have any questions regarding our review, please do not hesitate to call me at (909) 890-3094.

Sincerely,

Norma A. Jones
Program Auditor II

NAJ/IRC/6-19-14

Cc: Vendorization

THE DEPARTMENT OF DEVELOPMENTAL SERVICES' EVALUATION OF ABC'S RESPONSE

DDS evaluated ABC's written response to the draft audit report and determined that ABC disagreed with Findings 1, 2, 3, 4, and 5. Below is a summary of the vendor's response as well as DDS' evaluation of the vendor's response.

Finding 1: Behavior Analyst - Unsupported Billings and Failure to Bill

ABC states:

“During the course of the audit, the auditors were provided with what ABC, Inc. reasonably believed at the time of the service was adequate documentation that service had been provided. The auditors were given timesheets and activity sheets that indicated the start and end time of service, along with the type of service. Naturally, ABC was not given prior knowledge of additional items that would be later claim as proof until the audit was performed...”

DDS disagrees with ABC's statement. The documents ABC provided to the auditors were entitled “Activity Sheets”, “Time Log”, “Clinic Summary”, “Daily Log”, and “Consultation Notes”. The Activity Sheets showed the total hours of service that were billed to IRC and included the “Time In”, the “Time Out”, the “Day”, and the “Type” of service provided.

However, using the Activity Sheets for billing purposes allows ABC to bill the regional centers for service hours, but does not validate that services were performed as claimed by ABC. It was observed that hours on the Activity Sheets appeared to be pre-scheduled sessions that were to be performed at a later date by ABC staff. Furthermore, the Activity Sheets were computer generated with no adjustments made for session cancellations, delayed sessions or sessions that were cut short.

With these deficiencies, the auditors found the Activity Sheets to be unreliable. Auditors rely on the use of contemporaneous documents to track the delivery of service. Since typewritten entries can be easily falsified and were found to not be the contemporaneous documents used to track delivery of service, the auditors obtained and reviewed additional collaborating evidence to support the Activity Sheets and Time Logs. The corroborating documents provided were data sheets, lesson checklists, and ABC Narrative Behavior Records, as additional collaborating evidence of staff hours worked.

The Activity Sheets are not sufficient evidence that an intervention session occurred. Therefore, the auditors conducted a review of the handwritten direct service hours reflected in the additional documents. The sample test revealed that the typewritten entries on the Activity Sheets did not reconcile with the information in the additional documentation submitted by ABC. In addition, the auditors noted that the parent's signature on the Activity Sheets were not original, but were copied and pasted signatures. This raised additional questions as to the validity of the typewritten data. Furthermore, interviews conducted with ABC staff indicated that 25 percent of the billed hours on the Activity Sheets were not direct care hours, but instead were non-billable administrative hours.

As a result of the substantive tests and the interviews with ABC staff, the auditors concluded that the Activity Sheets, as an accurate representation of direct care hours, were not reliable. Consequently, the auditors relied on the handwritten documents as the source documentation to support ABC's billings.

ABC states:

“ABC reasonably relied on the direction and guidance of the regional center when billing. In fact, ABC’s billing procedures and recordkeeping practices were a direct result of the instruction given by the regional center. The regional center paid for services delivered by ABC, under the same premise understood by ABC that activity sheets were all that the regional center required for payment”.

It is unknown what, if any, direction or guidance the regional center may or may not have provided to ABC regarding its billing. However, if the collaborating documents were found to support the Activity Sheets, the auditors would have accepted it as sufficient supporting documentation. Unfortunately, this was not the case. It is ABC's responsibility to support its billings in sufficient detail to verify the services were provided.

ABC states:

“The report does not specify what documentation it accepted and what it did not accept, nor does it state what would be considered “appropriate” supporting documentation. This is problematic because there is no standard, in statute or regulation or anywhere else, as to precisely what is required to verify that “the service billings/invoices submitted by the service provider to the regional center for payment are supported by the service provider’s consumer attendance and service records.”

The answer to ABC's question, “what is required to verify that the service billings/invoices submitted by the service provider to the regional center for payment are supported by the service provider's consumer attendance and service records” can be found in CCR, Title 17, Section 50602(q), which describes “source documents” as follows:

“(q) ‘Source Documentation’ means the medium upon which evidence of a transaction is initially recorded. Examples of source documents include, but are not limited to, purchase requisitions, purchase orders, purchase of service authorizations, staffing schedules, employee hourly time reports, invoices, and attendance documents for regional center consumers and all other persons provided services. Source documents are used to prepare records and reports.”

ABC states:

“Thus service providers (and auditing agencies) have no criteria that can be objectively applied to determine whether or not source documents “support” billings to a regional center.”

DDS disagrees with ABC's statement. In addition to CCR, Title 17, Section 50602, vendors can review Sections 54326(a) (3) (10) and 50604(d) and (e).

ABC states:

“The term ‘service record’ is extremely broad, including any ‘book or document evidencing the service activities provided by a service provider or regional center.’” 17 Cal. Code Regs. Section 50602(p). Therefore, ABC contends that all documentation submitted to support its billings should have been considered by the audit team.”

During the course of the audit, DDS requested all documentation that ABC deemed supported its billed services. ABC submitted documents such as: Activity Sheets, Time Logs, Clinic Summaries, Daily Logs, data sheets, Consultation Notes and other documents mentioned above and the auditors considered all of the documents submitted by ABC in determining whether ABC’s billings were properly supported.

ABC states:

“ABC at this point believes it was misled in fulfilling its contractual agreement with IRC, only to later be told that it somehow failed to comply.”

ABC has the obligation to fully comply with the CCR, Title 17 regulations, the California Welfare and Institutions Code, and State and Federal laws.

ABC states:

“. . . ABC does not believe that a refund is due to DDS because Title 17 does not specify what is and is not acceptable as documentation.”

DDS disagrees with ABC’s statement above. The audit findings are entirely consistent with CCR, Title 17, §50604, requiring vendors to provide sufficient documentation to verify its services. The purpose of the record keeping requirement is to verify the accuracy and correctness of bills presented by ABC to IRC for payment.

Finding 2: Behavior Analyst – Incorrect Billing**ABC states:**

“The Audit misinterprets Title 17, Section 54342(a) (11) to require all staff members providing Behavior analyst services under Service Code 612 to be certified by the national Behavioral Analyst Certification Board. But that is not what the regulation says, or what it requires. The regulation states that: “Behavior Analyst means an individual who assesses the function of a behavior of a consumer and designs, implements, and evaluates instructional and environmental modifications to produce socially significant improvements in the consumer’s behavior through skill acquisition and the reduction of behavior. Behavior Analysts engage in functional analyses to identify environmental factors of which behavior is a function.” All of the 30 ABC employees providing direct services under this Vendor # (PL0367) and Service Code (612) met this definition...”

ABC omitted a key portion of the CCR, Title 17, Section 54342(a) (11). The portion missing states, “A Behavior Analyst shall not practice psychology, as defined in Business and Professions Code section 2903. **A regional center shall classify a vendor as a Behavior Analyst if an individual is recognized by the national Behavior Analyst Certification Board as a Board Certified Behavior Analyst.**” (Bolded for emphasis.)

It simply states the requirements for a Behavior Analyst, under Service Code 612. For all of the 30 ABC employees to meet this definition, all had to have been Board Certified Behavior Analyst.

ABC states:

“If read carefully, the regulation distinguishes between a vendor and an individual for purposes of the 612 service code. ‘A regional center shall classify a vendor as a Behavior Analyst if an individual is recognized by the national Behavior Analyst Certification Board as a Board Certified Behavior Analyst.’ Vendor and individual are different words, and have different meanings under Title 17.”

DDS disagrees with ABC’s interpretation of the regulation. CCR, Title 17 vendorization requirements ensure that a Behavior Analyst’s reimbursement rate of service is commensurate with the Behavior Analyst’s qualifications; i.e., if those providing service do not meet the required qualification(s) for such service, they are not reimbursed at the same rate as those who possess the required qualifications. A Behavior Analyst vendor must have individuals that are Board Certified Behavior Analysts.

ABC states:

“All that the regulation requires is that, in order to be vendorized as a 612 group practice, the “vendor” must include “an individual” that is a Board Certified Behavior Analyst. The regulation does not require that each and every individual providing services for a 612 vendor be board certified.”

DDS disagrees with ABC’s statement and CCR, Title 17, Section 54319(f)(2) states:

“(f) Any group practice which is incorporated shall:

- (2) Possess the appropriate license, certificate, and/or registration for all persons providing services as a group practice, if applicable . . .”

ABC was not providing a group practice, thus all persons providing services must be certified.

ABC states:

“Under California law, Behavior Analyst are not regulated and are not required to satisfy any licensure, certification, education, or other requirements. See Cal. Health & Safety Code section 1374.74 subd. (a)(4) & (b).”

DDS disagrees with ABC’s statement. Regulations are clear that certification is necessary.

California Health & Safety Code, section 1374.73. (c)(1) and (3)(A) states:

“(c) For the purposes of this section, the following definitions shall apply:

- (1) “Behavioral health treatment” means professional services and treatment programs, including applied behavior analysis and evidence-based behavior intervention programs, that develop or restore, to the maximum extent practicable, the functioning of an individual with pervasive developmental disorder or autism and that meet all the following criteria:
- (3) “Qualified autism service provider” means either of the following:
 - (A) A person, entity, or group that is certified by a national entity, such as the Behavior Analyst Certification Board, that is accredited by the National Commission for Certifying Agencies, and who designs, supervises, or provides treatment for pervasive developmental disorder or autism, provided the services are within the experience and competence of the person, entity, or group that is nationally certified.”

In addition, California Health & Safety Code, section 1374.74, subdivision (a)(4) and (b) is not relevant to RC funded services. This statute applies to private insurance.

ABC states:

“Furthermore, the statues governing provision of Behavioral Analyst services under the Lanterman Act and the Early Intervention Act also do not impose any license, registration, education or experience requirements upon person who provide these services. (See Cal. Wel. & Inst. Code subdivision 4682.2;”

DDS disagrees with ABC’s statement. Regulations are clear that certification is necessary.

W&I Code, Section 4686.2(b)(1) and (d)(3) states that:

“(b) Effective July 1, 2009, notwithstanding any other provision of law or regulation to the contrary, regional centers shall:

- (1) Only purchase ABA services or intensive behavioral intervention services that reflect evidence-based practices, promote positive social behaviors, and ameliorate behaviors that interfere with learning and social interactions.

(d) For purposes of this section the following definitions shall apply:

- (3) “Evidence-based practice” means a decision making process that integrates the best available scientifically rigorous research, clinical expertise, and individual’s characteristics...”

“Clinical expertise” implies that an individual or a vendor who provides ABA services must meet the educational and experience requirements.

ABC states:

“The Audit finding that lowered the rate of payment for those services to that of the 620 Service Code for Behavior Management Consultant was erroneous and the Audit should be revised to delete the recommended repayment of \$138,602.76.”

ABC did not provide regional center consumers with the direct services of a certified Behavior Analyst during the audit period. Therefore ABC cannot be reimbursed at the same rate as those properly qualified under CCR, Title 17. ABC billed the regional centers \$71.81 an hour for their services, and was paid for those services at the rate applicable to a Board Certified Behavior Analyst.

CCR, Title 17 vendorization requirements ensure that a Behavior Analyst’s reimbursement rate of service is commensurable with the Behavior Analyst’s qualifications; i.e., if those providing service do not meet the required qualification(s) for such service, they are not reimbursed at the same rate as those who possess the required qualifications. ABC’s failure to meet CCR, Title 17 requirements, including, but not limited to, the minimum staffing qualifications as established by CCR, Title 17, results in DDS paying an unqualified staff to perform the same services, at the same rate, as one who is qualified.

However, considering that ABC provided 6,450 hours of service, DDS adjusted ABC’s rate per hour to reflect a lower rate which was commensurable with the service provided. Therefore, the 6,450 hours ABC’s staff provided under Service Code 612 was adjusted to the lower rate for the sample period audited, which resulted in the amount of \$138,603.

Finding 3: Behavior Management Assistant – Unsupported Billings and Failure to Bill

ABC states:

“As with Finding # 1 above, ABC believes that the documentation it provided both originally and later to the auditors as part of this audit adequately supports all billings submitted to IRC for Vendor # PL0818.” and “ABC submitted the supporting documentation required by the regional center. The regional center accepted that documentation and paid the invoices. DDS should not now second guess that determination and claim that the documentation was inadequate. Furthermore, in re-examining the billings, DDS’ conclusions that the billings were unsupported is incorrect.”

ABC's explanation that since the regional center accepted the documentation for payment, it should be acceptable for DDS is not persuasive. That the regional center accepts documents, such as ABC's "Activity Sheets," as support for payment, is irrelevant to the audit process. ABC is required to comply with the statutes and regulations applicable to billing procedures, which is the standard applied during an audit.

As a result, as in DDS statements in Finding 1, "the activity sheets do not show the accurate number of direct care hours of services provided to the consumers of IRC. The auditors have used all of ABC's submitted documents such as ABC daily logs, employee sign-in sheets, data sheets, and assessment reports to verify the hours as recorded in the activity sheets; however, the total audited hours still came short of the number of hours billed by ABC to IRC."

Finding 4: Non-compliance with the 15 Percent Administrative Cap

Upon further consideration DDS will not pursue Finding 4 of this audit.

Finding 5: Applied Behavior Analysis – Improper Use of Electronic Signature

ABC States:

"ABC has already complied with Recommendation #5. During the time period covered by the audit, IRC's directives did not specify or require that electronic signatures were unacceptable and could not be used. However, since the initiation of this audit, ABC has changed its practices and protocols to require the use of contemporaneous signatures and no longer uses electronic copies."

DDS' Conclusion

DDS has reviewed ABC's response to the draft audit report and find that no new information or source documentation was provided to refute the audit findings 1, 2, and 3.

DDS expected to receive additional source documentation to fulfill the criteria set forth in CCR, Title 17, for each consumer served during the audit period. It is the responsibility of ABC to maintain records of service provided to consumers in sufficient detail to verify delivery of units of services billed. Additionally, ABC did not provide regional center consumers with the direct services of a certified Behavior Analyst during the audit period. Therefore, DDS finds no reason to revise Findings 1, 2, and 3 and the related audit recommendations. DDS is requesting reimbursement of \$333,032 for the unsupported/incorrect billings.