DEPARTMENT OF DEVELOPMENTAL SERVICES
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February 15, 2019

SENT VIA CERTIFIED MAIL – RETURN RECEIPT REQUESTED

Judith A. Enright
Enright & Ocheltree, LLP
13400 Riverside Drive, Suite 207
Sherman Oaks, CA 91423

Dear Ms. Enright:

LETTER OF FINDINGS

I have reviewed the following documents related to the audit of Harbor Regional Center (HRC) conducted by the Department of Developmental Services (DDS) and the request for administrative review by HRC:

- The final audit report prepared by DDS dated April 17, 2018;
- The Statement of Disputed Issues (SODI) and applicable exhibits, submitted by Enright & Ocheltree, LLP, on behalf of HRC, dated July 3, 2018; and
- DDS's response to the SODI, dated January 16, 2019.

Audit Period: July 1, 2013 – June 30, 2015 (with follow-up as needed into prior and subsequent periods)
Regional Center: Harbor Regional Center

DDS conducted a fiscal compliance audit of HRC to ensure HRC is compliant with the requirements set forth in:

- the Lanterman Developmental Disabilities Services Act and related laws;
- the California Welfare and Institutions (W&I) Code;
- the Home and Community-Based Services (HCBS) Waiver;
- the California Code of Regulations (CCR), Title 17;
- Federal Office of Management and Budget (OMB) Circulars A-122 and A-133; and
- the State contract between DDS and HRC.

The audit contained six (6) Findings and various sub-findings. Finding number 2 has been deleted, and Finding number 6 has been addressed and corrected.
HRC is disputing Findings 1, 3 and 5. The following represents only the disputed Findings.

FINDINGS

Finding 1A: Unsupported Credit Card Expenditure

The review of operational expenditures revealed HRC continues to not comply with its credit card procedures. The review noted 73 credit card transactions that had insufficient documentation to support the items purchased. This resulted in 58 transactions with insufficient documentation to detail the items purchased totaling $3,535.84 and 15 credit card transactions missing receipts totaling $569.19. This issue was also identified in the prior audit. This is not in compliance with HRC's Procedures for Credit Cards, Section III, Cardholder Responsibilities.

Audit Recommendation

HRC must enforce its credit card procedures and reimburse to DDS a total of $4,105.03 for the unsupported expenditures.

SODI:

HRC contends that the audits never mentioned at the time of the audit in 2015 that they had discovered unsupported credit card expenditures by HRC cardholders. HRC contends that they first learned of the finding in the Draft Audit Report and Exit Interview which took place after HRC's books had been closed.
HRC also contends that DDS ignored the language in HRC's credit card policy which grants HRC's CFO and/or the Executive Director the final word on whether a cardholder's charges are valid and supported by the billing statement and receipt. HRC states that, "by giving the CFO and/or the Executive Director such discretion, and allowing cardholders to explain changes which may not be clear on their face, it is evident that this policy was not intended to be a "zero tolerance" policy." A copy of the the policy statement was provided in Exhibit "F". Exhibit "U" was provided by HRC, and substantiates that each was an allowable expenditure, supported by sufficient documentation. It is HRC's contention that Finding 1A should be deleted and HRC should not be
required to pay back $4,105.03.

DDS Audit Response to SODI

DDS, as stated in the audit report, does not question the validity of the expenditures, however the finding addresses HRC's lack of compliance with its own credit card policies.

Administrative Review

Following review of Exhibits "F" and "U", it is determined that HRC has provided sufficient documentation to modify Finding 1A. As noted in the Final Audit Report, HRC was not in compliance with it's credit card procedures in that 15 credit card transactions were missing receipts for a total of $569.19. However, transaction receipts were provided for the $3535.84 noted in the audit with insufficient documentation. The policy states that an itemized transaction receipt is to be provided, but does not specify what is required. HRC has submitted more specific documentation for both the $3535.84 and the $569.19 to substantiate the appropriateness of the expenditure. Therefore, the requirement to pay back $4,105.03 is not upheld.

Finding 1B: Unallowable Expenditure
The review of operational expenditures revealed employees made unallowable purchases using the credit card. The employees used the credit card to purchase personal items totaling $1,107.34. This is not in compliance with HRC's Procedures for Credit Cards, Rationale and Section V, Card Use Appropriateness. HRC has provided documentation indicating the employees reimbursed the regional center for the personal expenses.

Audit Recommendation
HRC must enforce its credit card policy to ensure employees do not use the credit card for personal use.

SODI
HRC states that the cardholders did not intentionally use the credit card for personal use. HRC also provided evidence to DDS that these cardholders immediately reimbursed HRC for the expenditures upon their discovery of them. Each mistaken use was corrected long before the audit was even conducted, and all monies were reimbursed to HRC. HRC states that it's credit card policy was not intended to be a "zero tolerance" policy. However, the credit card policy has been revised to reflect this, and to address the "unintentional" use of a credit card for personal use. HRC states that there is no evidence that HRC does not enforce its credit card policy and that there were no allegation that HRC violated any statutes, regulations or contractual provisions, Finding 1B cannot be substantiated and should be deleted.

DDS Audit Response to SODI
DDS does not concur with deleting this finding as the review noted 15 transactions totaling $1,107.34 for personal use on HRC's credit card. DDS does acknowledge that HRC took corrective action.

Administrative Review
HRC has not submitted substantive arguments, nor documentation that would result in deletion of this finding. Although the funds have been reimbursed, the credit card was, in fact, used for personal purchases during the audit period.

HRC's policy has been revised, and the recommendation to enforce the policies in place is appropriate. The finding and recommendation are upheld.

Finding 1C: Credit Card Issued to Vendor
The review of operational expenditures revealed that HRC issued a credit card to an employee of Mentor exclusively for making purchases for the Family Resource Center (FRC) from July 2009 through May 2015. Issuing the credit card to a vendor could have exposed HRC to unnecessary financial liabilities. This is not in compliance with HRC's Procedures for Credit Cards, Section I, General Guidelines. HRC has since cancelled the credit card.

Audit Recommendation
HRC must follow its credit card procedures to ensure only HRC staff are issued company credit cards

SODI
HRC states that the credit card was "inadvertently" issued to a non-HRC employee, who works on-site at HRC's Family Resource Center. HRC also states that the sole purpose of the credit card was to make purchases for the HRC Family Resource Center. The credit card has been cancelled.

DDS Audit Response to SODI
DDS does not concur with deleting this finding as this non-HRC employee (an employee of Mentor) had the credit card for over five years. During this period of time, HRC could have been exposed to unnecessary financial liabilities.

Administrative Review
HRC has not submitted substantive arguments, nor documentation that would

result in deletion of this finding. The credit card was clearly issued to a non-employee, and this individual had the ability to make purchase for a period of over five years. This is clearly inconsistent with HRC's policy and provided a potential financial risk for HRC. This finding and recommendation are upheld.

Finding 3: Purchase of Service Expenses Not Tied To Consumer UCI Numbers
The review of 126 Purchase of Service (POS) vendor files revealed that HRC reimbursed a vendor, Mentor, Vendor #PH0272, Service Code 102, Individual or Family training, at a flat monthly rate of $10,320.42 for services provided to consumers under a contract UCI number. HRC reimbursed $247,690.08 in POS funds from July 2013 through June 2015 for services provided under an HCBS Waiver-billable service code; however, HRC did not tie the POS expenses to individual consumers in UFS. HRC provided a sample of IFSPs indicating that services were requested for the consumers, however the POS expenses were still not tied to authorizations and consumer UCI numbers to ensure services could be billed to the HCBS Waiver. DDS cites CCR, Title 17, Section 50604(d)(1) and Section 50612(a) as a basis for the finding.

Audit Recommendation
HRC must reimburse DDS for unsupported billings totaling $247,690.08 that could not be tied to consumers' IPPs, authorizations, and consumers' UCI numbers. HRC must ensure all POS payments are accurately accounted for and services can be billed to the HCBS Waiver.

SODI
HRC states that Finding 3 cannot be substantiated and should be deleted based on the following:

1. HRC has a long history of contract purchase of service expenditures with Mentor dating back to at least 2002.

- HRC notes that it had not been advised by DDS, or pointed to any law that required the regional center to allocate the expenditures to particular consumers.
- HRC also provided numerous references to documents (provided in Exhibits) that state contract expenditures that cannot be tied to specific consumers.
- HRC also states that it has not been provided with specific instruction on the technical aspects of allocating contract POS to individual consumers in UFS.

- HRC states that had they been informed of the need to allocate the expenditures, and had they been informed of the procedure prior to the closing of their books, they would have complied.
- HRC also states that HRC is treated unequally in that prior audits by DDS did not require repayment for similar findings, but only required reclassification of the expenditures to ensure allocation to the waiver. However, HRC was not given this option, and 'demanded' that HRC reimburse DDS for the contract expenditures.

2. The legal authority cited by DDS does not support the finding
- HRC notes that the two sections of Title 17 of the California Code of Regulations on which DDS relied are located within the "Service Provider Accountability" subchapter and are therefore applicable to the vendor and not the regional center.

3. HRC has provided substantial documentation tying the services provided by Mentor to specific consumers names and UCI numbers.
- HRC initially provided a sample of five to ten consumer records for one month to support the expenditures.
- HRC has subsequently provided, in Exhibit "R", documentation that substantiates, within consumer IPP's, the majority of services provided by Mentor to the consumers and/or their family members.
- HRC also notes that the contract with Mentor is part of the training and outreach provided by HRC in accordance with Welfare and Institutions Code 4648, subdivision (c), among other provisions, and that anyone can attend these events, with or without a referral.
- HRC also notes that the bulk of the consumers utilizing the Mentor services were not on the Medicaid Waiver.

4. A repayment would limit HRC's ability to provide services

DDS Audit Response to SODI

DDS agrees that the report was issued after the audited fiscal year was closed, but disagrees that HRC was not instructed on the technical aspects of allocating contract expenditures to individuals. DDS issued a letter to all Regional Centers on September 13, 2006, instructing them in the process for capturing Waiver dollars. In addition, the letter explained that the Budget Act of 2006, provided funding for each regional center to provide funding to impacted contracted services providers associated with capturing and reporting Federal Financial Participation. In addition, regional centers were given operational dollars to help fund the associated workload impact. DDS disagrees that the finding should be deleted. As the POS expenses are still not tied to consumer authorizations, and cannot be allocated, as appropriate, to the HCBS Waiver, DDS contends that HRC must reimburse DDS for unsupported billings totaling $247,690.08.

Administrative Review

A review of the Mentor contracts and the documentation supporting the services provided by Mentor during the audit period confirms that Mentor fulfilled the contract obligations for which they were reimbursed. HRC has submitted substantial documentation, including consumer IPP's that reference the services provided by Mentor. Although the documentation does not substantiate all attendees, the majority are substantiated. Therefore, the provision of services to HRC consumers and/or their families support the expenditures, although not allocated to specific consumers. HRC did not allocate the expenditures to specific consumers, nor did HRC capture HCBS Waiver dollars for the applicable consumers. At the time HRC was notified of this finding, and the final audit report issued, HRC had closed its books for the fiscal years 2013-2014 and 2014-2015. HRC submitted substantial arguments and documentation that would result in a modification of the finding. HRC did, in fact, identify specific consumers receiving services and substantiated that the services had been provided and that the expenditures were applicable to those consumers. Therefore, as the billings have been supported, although not allocated to the specific consumers, the recommendation is modified to delete the requirement that HRC reimburse DDS $247,690.08. The recommendation that HRC must ensure all POS payments are accurately accounted for and services can be billed to the HCBS Waiver, is upheld.

Finding 5: Notification of Whistleblower Policy Not Conducted Annually

A review of the consumer files and discussion with HRC staff revealed consumers, families, and the vendor community are not notified annually of the Whistleblower policy. HRC does not have a process in place to document its annual notifications of the Whistleblower policy for the consumers, families and the vendor community. This is not in compliance with the State Contract, Article 1, Sections 18(b)(6) and ©.

Audit Recommendation

HRC must develop a process to ensure that consumers, families, and the vendor community are notified annually about the Whistleblower policy.

SODI
In the response to the Draft Audit Report, HRC stated that they believed that proper notification of their Whistleblower Policy was given both to clients and service providers using the HRC E News. HRC also agreed to revise the method of annual notification of the Whistleblower Policy for clients, families and the service provider community. The SODI states that DDS failed to consider HRC's response to the Draft Audit Report. In the final audit report, DDS did not address HRC's use of HRC E News to notify its clients, families and the vendor community of the Whistleblower Policies. HRC's "E News" bulletin is a newsletter that goes to everyone who is in HRC's email database, and contains a link to the Whistleblower Policy. HRC has revised its method of annual notification. In addition to the E News link, HRC has included on the participant sign-in sheets for IPP/IFSP meetings, which are conducted at least annually, line items stating (after delivery of the policy) that the policy has been received. The vendors are notified annually through the eBilling system by way of a link to the Whistleblower Policy.
HRC states that Finding 5 should therefore be deleted.

Audit Response to SODI
DDS states that In the response to the Draft Audit Report, HRC agreed with the finding and stated that going forward it would revise its notification process. As the revised process was not in place during the audit report, DDS did not guarantee the finding would be deleted from the report. DDS does not concur that this finding should be deleted from the report.

Administrative Review
HRC has not submitted substantive arguments, nor documentation that would result in deletion of this finding. Although HRC's method of notification during the audit period was not acknowledged within the Final Audit Report, the method of notification does not appear to meet the requirements of the State Contract as it is unknown if all consumers, families and vendors are included within the database, and there is no way to substantiate that those on the database accessed the information. Therefore, this finding and recommendation will not be deleted.
The finding and recommendation are upheld.

Administrative Review Summary of Findings
Finding Overpayment
1A - Modify Delete overpayment -0-
1B - Upheld No related overpayment n/a
1C- Upheld No related overpayment n/a
3 - Modify Delete overpayment -0-
5 - Upheld No related overpayment n/a

Pursuant to the California Code of Regulations, Title 17, Section 50750, this Letter of Findings shall be final unless either party files a request for a formal hearing within 30 days of the receipt of the Letter of Findings.

Requests for a formal hearing may be mailed to:

Department of Developmental Services
Office of Legal Affairs
Attention: Hiren Patel, Chief Counsel
P.O. Box 944202
Sacramento, CA 94244-2020

Respectfully,

Margaret Lamb
Margaret Lamb
Appeals Review Officer

cc: Patricia Del Monico, Executive Director
Harbor Regional Center

Hiren Patel, Chief Counsel
Department of Developmental Services