

**DEPARTMENT  
OF  
DEVELOPMENTAL SERVICES'  
AUDIT  
OF  
ADULT PROGRAM SERVICES, LLC**

**Programs and Services:**

Behavior Management Program – HM0982

Supplemental Day Services Program Support – PM1906

Audit Period: January 1, 2022, through December 31, 2022

**Audit Section**

**Auditors:** Hung Bang, Chief of Vendor Audit Unit  
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**ADULT PROGRAM SERVICES, LLC**  
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## EXECUTIVE SUMMARY

The Department of Developmental Services (DDS) has audited Adult Program Service, LLC (APS). The audit was performed upon the Supplemental Day Services Program Support (SDSPS) and Behavior Management Program (BMP) for the period of January 1, 2022, through December 31, 2022.

The audit disclosed the following issues of non-compliance:

**Finding 1: Supplemental Day Services Program Support and Behavior Management Program – Unsupported Staffing Ratio**

The review of APS' SDSPS and BMP programs, Vendor Numbers PM1906 and HM0982, revealed that APS did not meet its required direct care staffing hours. This resulted in a shortage of the required direct care staffing of 2,913 hours and overpayments of \$55,874 for services billed to Regional Center of Orange County (RCOC).

**Finding 2: Non-Compliance with State and Federal Tax Laws and Regulations**

The review of APS' employee personnel and payroll records indicates that APS may not have complied with State and Federal tax laws and regulations. APS classified 14 of its employees as independent contractors and failed to report wages to the appropriate taxing agencies.

The total of the findings identified in this audit amounts to \$55,874, which is due back to DDS. A detailed discussion of these findings is contained in the Findings and Recommendations section of this 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 and/or contractors. Pursuant to the Welfare and Institutions (W&I) Code, Section 4648.1, DDS has the authority to audit those service providers and/or contractors that provide services and supports to persons with developmental disabilities.

## **OBJECTIVE, SCOPE AND METHODOLOGY**

### **Objective**

The audit was conducted to determine whether APS' programs were compliant with the W&I Code, California Code of Regulations (CCR), Title 17, State laws and regulations and the regional center's contracts with APS for the period of January 1, 2022, through, December 31, 2022.

### **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 APS, nor was this audit intended to express an opinion on the financial statements. The auditors limited the review of APS' 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 APS complied with W&I Code and CCR, Title 17. Any complaints that DDS' Audit Section was aware of regarding non-compliance with laws and regulations were also reviewed and addressed during the course of the audit.

The audit scope was determined by reviewing the programs provided to RCOC that utilized APS' services during the audit period. APS provided four different types of services, of which DDS audited two. Services chosen by DDS were based on the amount of purchase of service (POS) expenditures invoiced by APS. By analyzing the information received from the vendor, an internal control questionnaire and a risk analysis, it was determined that a two-month sample period would be sufficient to fulfill the audit objectives.

## **Supplemental Day Services Program Support**

During the audit period, APS operated one SDSPS program. The audit included the review of APS' SDSPS program, Vendor Number PM1906, SC 110 and testing was done for the sampled months of May 2022 and June 2022.

## **Behavior Management Program**

During the audit period, APS operated one BMP program. The audit included the review of APS' BMP program, Vendor Numbers HM0982, SC 515 and testing was done for the sampled months of May 2022 and June 2022.

## **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 included, but were not limited to, the following:

- Reviewed vendor files for contracts, rate letters, program designs, POS authorizations and correspondence pertinent to the review.
- Interviewed regional center staff for vendor background information and to obtain insight into the vendor's operations.
- Interviewed vendor staff and management to gain an understanding of the vendor's accounting procedures and processes for regional center billing.
- Obtained and reviewed the vendor's internal control questionnaire.
- Reviewed vendor service/attendance records to determine if the vendor had sufficient and appropriate evidence to support the direct care services billed to the regional center.
- Analyzed the vendor's payroll and attendance/service records to determine if the appropriate level of staffing was provided.

## **CONCLUSION**

Based upon the audit procedures performed, DDS has determined that except for the items identified in the Findings and Recommendations section, APS was in compliance with applicable audit criteria.

## **VIEWS OF RESPONSIBLE OFFICIALS**

DDS issued a draft audit report on July 11, 2024. The findings in the report were discussed at an exit conference, via Zoom, with APS on July 12, 2024. Subsequent to the exit conference, on August 14, 2024, APS sent an email stating that APS disagreed with finding 1 but agreed with finding 2. APS also provided additional documentation to support its billings to RCOC.

## **RESTRICTED USE**

This report is solely for the information and use of DDS, Department of Health Care Services, RCOC and APS. This restriction is not intended to limit distribution of this report, which is a matter of public record.

## FINDINGS AND RECOMMENDATIONS

### **Finding 1: Supplemental Day Services Program Support and Behavior Management Program – Unsupported Staffing Ratio**

The review of APS' SDSPS program, Vendor Number PM1906, and BMP, Vendor Number HM0982, for the sampled months of May 2022 and June 2022, revealed that APS had overpayments of services billed to RCOC. Overpayments occurred due to APS not meeting the approved staff-to-consumer ratios of 1:1 and 1:3 for the units of service billed to RCOC. DDS reviewed the direct care service hours documented on the Consumer Attendance Sheets, Consumer Daily Activity Records, employees' timesheets, and APS' payroll records and noted that APS provided a total of 7,277 hours during the sampled months. DDS allocated 4,791 provided hours to the SDSPS and 2,486 provided hours to BMP based on the required hours for the SDSPS and BMP. DDS then compared the allocated hours to the required hours for the two programs.

For the SDSPS, Vendor Number PM1906, DDS found that the actual direct care service hours were 1,917 hours less than the required hours to meet the approved staff-to-consumer ratio of 1:1 for the hours billed to RCOC. The total unsupported direct care staffing hours of 1,917 multiplied by the hourly rate of \$19.81 amounts to \$37,976, which is due back to DDS. (See Attachment A)

For the BMP, Vendor Number HM0982, DDS found that the actual direct care service hours were 996 hours less than the required hours to meet the approved staff-to-consumer ratio of 1:3 for the hours billed to RCOC. The total unsupported direct care staffing hours of 996 multiplied by the average hourly wage rate of \$17.97 amounts to \$17,898, which is due back to DDS. (See Attachment A)

The unsupported amount for the two programs totaled \$55,874.

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 that 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) (13) states:

“(a) All vendors shall:

(13) Comply with all applicable staffing ratio requirements.”

CCR, Title 17, Section 56756 (a) (f) (i) (1) and (2) states:

“(a) A staffing ratio shall be approved for each adult day program by the Department pursuant to this section. This ratio shall be based on the program design, the curriculum as vendored, the characteristics and needs of the consumers to be served, and the number of consumers enrolled.

(f) Behavior management programs shall provide a direct care staff -to-consumer ratio of 1:3.

(i) The vendor shall maintain the approved staffing ratio during its direct service hours. The vendor shall not be required to schedule the ratio with each subgroup of consumers at all times, but shall maintain both:

(1) The ratio of staff on duty to consumers in attendance during all service hours which shall be determined by a numerical comparison of the number of individuals on duty as direct care staff with the number of consumers in attendance. If the numerical comparison results in a fraction, more than one-half of a staff person shall be rounded up to the next whole number. Less than one-half of a staff person shall be rounded up to the next one-half of a whole number. One-half of a staff person shall not be rounded.

(2) Sufficient supervision for each subgroup to protect the health and safety of the consumers.”

**Recommendation:**

APS must reimburse to DDS \$55,874 for the overpayment of services and for the unsupported direct care staffing hours. In addition, APS should ensure that the approved staff to consumer ratio is met.

**Vendor’s Response:**

APS stated in the response dated August 14, 2024, that it disagreed with the finding.

See Attachment B for the full text of APS’ response to the draft audit report and Attachment C for DDS’ evaluation of APS’ response.



## **Finding 2: Non-Compliance with State and Federal Tax Laws and Regulations**

The review of APS' employee payroll records for the sampled months of May 2022 and June 2022 indicates that APS failed to comply with State and Federal tax laws and regulations. DDS identified an issue of non-compliance in which APS classified 14 employees as independent contractors and paid their wages by checks and bank transfers without payroll tax deductions.

### Staff Classification

APS misclassified 14 of its employees as independent contractors. Based on APS' program design, payroll records, service records, and the services performed by the 14 workers, it appears likely that they should have been classified as employees.

The review of source documents suggested that the staff and APS had an employer-employee relationship. APS controlled and directed how services were to be performed by the 14 workers. The 14 workers did not control or direct the means and methods for accomplishing the services provided.

### Under-reporting of payroll taxes

APS did not report 14 of its employees' wages that were paid by checks and bank transfers to the appropriate taxing agencies. In addition, payroll taxes were not withheld from these wages, which is a violation of tax laws and regulations. APS is required to deduct and withhold a determined tax amount from wages of its employees and file a withholding report. By classifying employees as independent contractors and under-reporting payroll taxes, APS did not accurately report its tax liability.

Code of Federal Regulations (CFR), Title 26, Section 31.3121(d)-1 states:

“(c) Common law employees.

- (1) Every individual is an employee if under the usual common law rules the relationship between him and the person for whom he performs services is the legal relationship of employer and employee.
- (2) Generally, such relationship exists when the person for whom services are performed has the right to control and direct the individual who performs the services, not only as to the result to be accomplished by the work but also as to the details and means by which that result is accomplished. That is, an employee is subject to the will and control of the employer not only as to what shall be done but how it shall be done. In this connection, it is not necessary that the employer actually direct or control the manner in which the

services are performed; it is sufficient if he has the right to do so.... In general, if an individual is subject to the control or direction of another merely as to the result to be accomplished by the work and not as to the means and methods for accomplishing the result, he is an independent contractor. An individual performing services as an independent contractor is not as to such services an employee under the usual common law rules.”

CFR, Title 20, Section 404.1007 (b) states:

- (b) Factors that show employee status. Some aspects of a job arrangement that may show you are an employee as follows:
  - (1) The person you work for may fire you.
  - (3) You receive training from the person you work for or are required to follow that person’s instructions.
  - (4) You must do the work yourself.
  - (6) The person you work for sets your hours of work, requires you to work full-time, or restricts you from doing work for others.
  - (8) You are paid by the hour, week or month.”

Internal Revenue Code, Section 3402 (a) states:

“Requirement of withholding

- (1) In General

Except as otherwise provided in this section, every employer making payment of wages shall deduct and withhold upon such wages a tax determined in accordance with tables or computational procedures prescribed by the Secretary. Any tables or procedures under this paragraph shall –

- (A) apply with respect to the amount of wages paid during such periods as the Secretary may prescribe, and
- (B) be in such form and provide for such amounts to be deducted and withheld, as the Secretary determines to be most appropriate to carry out the purposes of this chapter and to reflect the provisions of chapter 1 applicable to such periods.”

Unemployment Insurance Code (UIC), Section 13020 (a)(1) states:

“(a)(1) Every employer who pays wages to a resident employee for services performed either within or without this state, or to a nonresident employee for services performed in this state, shall deduct and withhold from those wages, except as provided in subdivision (c) and Sections 13025 and 13026, for each payroll period, a tax computed in that manner as to produce, so far as practicable, with due regard to the credits for personal exemptions allowable under Section 17054 of the Revenue and Taxation Code, a sum which is substantially equivalent to the amount of tax reasonably estimated to be due under Part 10 (commencing with Section 17001) of Division 2 of the Revenue and Taxation Code resulting from the inclusion in the gross income of the employee of the wages which were subject to withholding. The method of determining the amount to be withheld shall be prescribed by the Franchise Tax Board pursuant to Section 18663 of the Revenue and Taxation Code.”

UIC, Section 13021zz (a) states:

“(a) Every employer required to withhold any tax under Section 13020 shall for each calendar quarter, whether or not wages or payments are paid in the quarter, file a withholding report, a quarterly return, as described in subdivision (a) of Section 1088, and a report of wages in a form prescribed by the department, and pay over the taxes so required to be withheld.”

**Recommendation:**

APS should follow and abide by all applicable State and Federal tax laws and regulations with respect to payroll tax withholdings and with the classification of its direct care staff as employees and not as independent contractors.

**Vendor’s Response:**

APS stated in the response dated August 14, 2024, that it agreed with the finding.

See Attachment B for the full text of APS’ response to the draft audit report and Attachment C for DDS’ evaluation of APS’ response.

# **ATTACHMENT A**

## **ADULT PROGRAM SERVICES, LLC**

**To request a copy of the attachment for this audit report, please contact the DDS Audit Section at (916) 654-3695.**

## **ATTACHMENT B – VENDOR’S RESPONSE**

**ADULT PROGRAM SERVICES, LLC**

**To request a copy of the vendor’s response to the audit finding, please contact the DDS Audit Section at (916) 654-3695.**

## **ATTACHMENT C – DDS' EVALUATION OF APS'S RESPONSE**

**To request a copy of DDS' Evaluation of APS's response to the audit finding, please contact the DDS Audit Section at (916) 654-3695.**