



State of New Mexico
OFFICE OF THE STATE AUDITOR

Hector H. Balderas
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November 5, 2013

Hand-Delivered and Via U.S. Mail

State Senator Benny Shendo, Jr., Chair
State Representative Phillip M. Archuleta, Vice-Chair
Behavioral Health Subcommittee
c/o New Mexico Legislative Council Service
411 State Capitol
Santa Fe, NM 87501

**Re: July 15, 2013 Subcommittee Request to Conduct Inquiries or Audits
Regarding the Financial Affairs and Transactions of the Human Services
Department**

Dear Chairman Shendo and Vice-Chairman Archuleta:

Thank you for your July 15, 2013 letter in which you requested my office "conduct such inquiries or audits" as I deem necessary regarding the financial affairs and transactions of the Human Services Department (HSD), its Behavioral Health Services Division and the Interagency Behavioral Health Purchasing Collaborative. You requested these inquiries or audits be made by the Office of the State Auditor (OSA) to answer specific questions in connection with the Medicaid payment holds placed by HSD on 15 behavioral health providers following the issuance of an audit performed by Public Consulting Group, Inc. (PCG). Specifically, your request detailed 21 questions that covered a range of issues related to the June 24, 2013 payment suspensions. This letter is provided in response to your request.

Before I address my office's handling of the questions outlined in your letter, I should briefly review the State Auditor's jurisdiction and involvement in this matter. The Audit Act (Sections 12-6-1 through 12-6-14 NMSA 1978) and the Audit Rule (2.2.2 NMAC) require HSD to submit its fiscal year 2013 annual financial audit to my office by December 16, 2013. As part of this process, staff auditors from my office are currently working closely with the independent auditor that is conducting HSD's annual financial audit. Due to HSD's significant expenditure of federal funds, my independent auditors are required by federal law to test and report whether HSD has adequate procedures in place to identify fraud and safeguard federal funds. For example, federal guidelines require that HSD have methods or criteria for identifying suspected fraud cases, methods for investigating those

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cases, and procedures for referring suspected fraud cases to law enforcement officials. Auditors, consequently, are required to test whether HSD has established and implemented procedures to safeguard against unnecessary utilization of care and services, identify and investigate suspected fraud cases, and refer those cases with sufficient evidence of suspected fraud to law enforcement officials. It is within this jurisdictional context that it was necessary for my auditors to review and analyze the PCG audit report. It was also necessary to review the report in order to assess the risks to public funds and the potential impact on the HSD's financial affairs.

On July 16, 2013, following HSD Secretary Sidonie Squier's denial of my request to provide a copy of the PCG report to my office and HSD's independent auditor, I obtained a court-issued subpoena for the PCG audit report. Pursuant to Section 12-16-11 NMSA 1978, "[w]hen necessary for an audit or examination, the state auditor may apply to the district court of Santa Fe County for issuance of a subpoena to compel . . . production of books and records." Secretary Squier subsequently failed to comply with the subpoena's deadline of July 22, 2013. Shortly thereafter, the New Mexico Attorney General sought to intervene in the matter to ensure the PCG audit report, which formed the basis of the Attorney General's criminal investigation, was not subject to public release.

Ultimately, my office reached an agreement with Attorney General King and Secretary Squier for HSD to produce the PCG audit report(s) subject to the State Auditor's subpoena, so that HSD's fiscal year 2013 financial audit could be completed. To this end, the parties submitted a "Stipulated Order Regarding Subpoena," which was signed by the court on July 25, 2013. The Stipulated Order required HSD to produce for my office any and all audit reports conducted by PCG for HSD, and required HSD to "cooperate fully with the State Auditor . . . in the conduct of HSD's FY13 audit, including providing access to supporting data and documentation that formed the basis for the PCG Report and its conclusions."

Since my office's receipt of the PCG audit report from HSD, my staff auditors and HSD's independent auditor have requested and received additional documents and information from HSD which are necessary to conduct the fiscal year 2013 financial and single audit. One area of compliance auditors are currently reviewing relates to HSD's verification and referral of "credible allegations of fraud." Under federal regulations, it is the responsibility of HSD to review all allegations, facts and evidence carefully and act judiciously on a case-by-case basis in order for allegations to be considered credible. Specifically, my staff auditors and the independent auditor are reviewing whether HSD properly verified and referred credible allegations of fraud related to each of the 15 providers that were suspended on June 24, 2013.

As the audit test work progresses, my staff auditors have been in contact with the Centers for Medicare and Medicaid Services (CMS) regarding guidance the federal agency can provide on the proper verification of credible allegations of fraud. Further, we have communicated with PCG in order to discuss in more detail the process PCG used to plan

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and conduct the audit, including PCG's analysis and extrapolation methodology as they relate to HSD's verification process.

My office has also issued HSD's independent auditor a formal and confidential referral which directs the auditor to include certain items in its normal test work for the fiscal year 2013 financial audit. The referral highlights certain risks related to HSD's oversight and expenditure of Medicaid funds, and requires test work pertaining to HSD's compliance with its own internal policies and procedures for investigating, verifying and referring credible allegations of fraud. Moreover, the referral notifies the independent auditor that the OSA has received complaints and allegations relating to the provider audits, including the procurement process followed by HSD. Therefore, the test work for the financial audit will encompass a range of areas, including specified procurement and contract compliance.

As part of this fiscal year 2013 financial audit process, my staff thoroughly assessed and evaluated each question in your July 15, 2013 letter to determine what action, if any, could be included in the auditor's test work. Because the fiscal year 2013 financial audit process has not yet concluded and an official report is yet to be released, I am precluded from providing you detailed answers to the questions you posed, disclosing specifics about certain audit procedures that relate to the questions, or discussing specific results or findings of the audit. Premature disclosure of certain audit information, such as specific auditing procedures or objectives, may compromise the integrity and reliability of the audit process. Nonetheless, I can inform you that a number of the questions you posed in your letter were appropriate, in some form, for inclusion in the auditor's normal test work and my office confidentially referred those items, such as HSD's compliance with procurement laws and regulations, to the independent auditor.

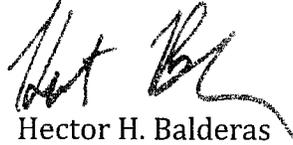
Finally, we noted that there are certain questions outlined in your letter that appear to fall outside of the State Auditor's jurisdiction or may require an engagement separate from HSD's financial audit. However, I am reluctant to recommend or designate a course of action for those items while the financial audit is still ongoing. It is not uncommon that during an audit certain information may come to an auditor's attention that could modify or expand the audit procedures being performed. Therefore, it is most appropriate that I provide a more comprehensive and detailed response to each one of your questions once the financial audit is complete and the results are publicly available. It is my expectation that HSD's financial audit report will be submitted to the OSA no later than December 16, 2013, barring any unforeseen circumstances.

I appreciate the Committee's great interest and concern over these important issues. Thank you for your patience while my office actively works with HSD's independent auditor to complete the audit in a thorough and timely manner. Once the audit report is publicly available, I will immediately transmit a copy to the Behavioral Health Subcommittee and provide a status update to your July 15, 2013 letter.

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Please do not hesitate to contact me should you have any questions about this correspondence.

Sincerely,

A handwritten signature in black ink, appearing to read "Hector H. Balderas". The signature is stylized and cursive.

Hector H. Balderas
New Mexico State Auditor

cc: Behavioral Health Subcommittee Members