



State of New Mexico
OFFICE OF THE STATE AUDITOR

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Hand-Delivered

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

Re: State Auditor Update – Fiscal Year 2013 Financial Audit of the New Mexico Human Services Department

Dear Madame Chair Thomson and Vice-Chairman Shendo:

As New Mexico's State Auditor, it is my duty under state law to provide New Mexico's citizens with an independent opinion of all government agencies' financial affairs in a greater effort to increase transparency, promote accountability, and eliminate financial fraud, waste and abuse. Accordingly, the purpose of this letter is to provide your Behavioral Health Subcommittee a detailed update on the Office of the State Auditor's (OSA) work related to certain concerns regarding the New Mexico Human Services Department's (HSD) June 24, 2013 Medicaid payment holds placed on 15 behavioral health service providers. On February 27, 2014, my office officially released HSD's fiscal year 2013 financial audit report and referred the audit findings to various state and federal agencies. As explained below, I believe the results of the Department's audit demonstrate the need for greater state and federal oversight of HSD's critical functions that impact access to care for New Mexico's most vulnerable populations.

Pursuant to the New Mexico Audit Act, specifically Section 12-6-3(A) NMSA 1978, "the financial affairs of every agency shall be thoroughly examined and audited each year by the state auditor . . . or independent auditors approved by the state auditor." As part of HSD's annual financial audit process, staff auditors from the OSA worked closely with CliftonLarsenAllen (CLA), the independent audit firm selected by HSD and approved by the OSA, to ensure HSD's use of federal Medicaid monies and the Department's compliance with federal regulations was adequately audited. Due to HSD's significant expenditure of federal funds (\$2.6 billion in federal Medicaid funds in fiscal year 2013), my independent auditors are required by federal law to test and report whether HSD has adequate

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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 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.

Additionally, my office issued formal and confidential referrals to CLA which directed the auditor to include specific items in its normal test work for the fiscal year 2013 financial audit. As part of this referral process, my auditors reviewed the July 15, 2013 and July 24, 2013 letters from your Subcommittee and certain individual Subcommittee members, respectively. My staff thoroughly assessed and evaluated the issues raised in the letters to determine what action, if any, could be included in the auditor's test work regarding the financial affairs and transactions of HSD. The OSA worked closely with CLA regarding the referred areas, which included certain risks related to HSD's procurement and contract compliance, HSD's oversight and expenditure of Medicaid funds, and the Department's compliance with its own internal policies and procedures for investigating, verifying and referring credible allegations of fraud.

In this context it was necessary for my auditors and CLA to review and analyze the report issued by Public Consulting Group, Inc. (PCG), which formed the basis for HSD's June 2013 fraud referrals to the New Mexico Attorney General and associated suspension of 15 behavioral health service providers for "credible allegations of fraud." In February 2013, HSD entered into a professional services contract with PCG to analyze payments made to 15 behavioral health service providers during portions or all of fiscal years 2011, 2012 and 2013. Based on the PCG report, in which PCG applied an extrapolation methodology to the actual errors it identified, HSD alleged that "\$36 million in definitive overpayments have been identified" related to the 15 behavioral health service providers that were the subject of PCG's review. Upon learning of the report's results and in accordance with generally accepted auditing standards, the State Auditor and CLA determined in early July 2013 that the PCG report was critical to the thorough examination of HSD's financial affairs for fiscal year 2013. Among other issues, the PCG report was essential to assessing the impact questioned payments by providers have on HSD and the State, including contingent liabilities associated with potential over-payments and New Mexico's potential liabilities to the federal government.

Unfortunately, the audit process was made significantly more time-consuming and challenging by HSD, whose actions and lack of transparency contributed to difficulties in the completion of HSD's audit. Due to HSD Secretary Sidonie Squier's refusals to provide the PCG report to OSA and CLA auditors, I was forced to seek legal action to obtain the report from HSD on July 16, 2013. Pursuant to Section 12-6-11(B) 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 the attendance of witnesses and the production of books and records." A First Judicial District Court judge subsequently

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ordered HSD to provide the OSA with the same PCG report that formed the basis of HSD's fraud referrals to law enforcement agencies and the June 24, 2013 suspension of Medicaid payments to 15 behavioral health service providers. It ultimately took an Order from New Mexico's First Judicial District Court on July 25, 2013 to compel HSD to provide the PCG report to my office and CLA. However, in October 2013 my staff discovered that HSD had turned over a PCG report to my office that differed from the original PCG report which HSD referred to law enforcement agencies in June 2013. Furthermore, HSD never notified the OSA that the original PCG report had been altered. The alteration consisted of the removal of language from the original PCG report which stated, "PCG's Case File Audit did not uncover what it would consider to be credible allegations of fraud, nor significant concerns related to consumer safety." My staff made this discovery purely by chance in October 2013 after reviewing a publicly released but partially redacted copy of the PCG audit report which HSD referred to the Attorney General's Medicaid Fraud Control Unit (MFCU) on June 21, 2013.

This troubling development led to additional legal action by my office to obtain the original, unaltered PCG report and to independently resolve inconsistent explanations proffered by HSD and PCG regarding the alteration. I once again engaged the Court on November 18, 2013 and requested it to compel HSD's production of the correct, accurate and unaltered version of the PCG report that formed the basis for HSD's fraud referral to the MFCU. I also requested the Court issue a second subpoena for certain documents in order to sort out the inconsistencies caused by HSD's lack of transparency. On January 18, 2014, the Court issued an Order requiring Secretary Squier to "immediately produce, to the extent she has not already done so, '[a]ny and all 'audit report(s)' whether considered draft, final, or revised [sms], generated by Public Consulting Group, Inc., under contract PSC 13-630-8000-0026 with the New Mexico Human Services Department' pursuant to the State Auditor's subpoena issued by this Court's Clerk on July 16, 2013 and in accordance with this Court's Order of July 25, 2013." HSD provided my office certain documents and several versions of the PCG report in response to the subpoena. HSD also stated that it directed PCG to remove the passage because only the Department may make a determination regarding what constitutes "credible allegations of fraud." Although OSA and CLA auditors ultimately received sufficient documentation to complete the 2013 financial audit process, I continue to be troubled by HSD's alteration of a state record referred to law enforcement authorities, its noncompliance with a court order, and its general lack of transparency related to the PCG report.

HSD's fiscal year 2013 financial audit report, publicly released by my office on February 27, 2014, contains a number of concerning findings which found poor oversight and mismanagement of federal funds by HSD. You may access the full fiscal year 2013 HSD financial audit report on the OSA's website, www.osanm.org, if you wish to more closely examine the referenced audit findings.. The audit findings include:

- 1) In Finding 2013-002 (financial and federal findings), auditors identified material weaknesses regarding HSD's oversight in the contract management process related to a potential \$36 million in overpayments to Medicaid providers. As a recipient of

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federal Medicaid funds, the Department has a responsibility under federal requirements for the proper use and oversight of those funds. The finding states that HSD “has contractual agreements in place with another third party [OptumHealth], and the agreements include but are not limited to the monitoring of payments made to behavioral health service providers.” According to CLA, HSD’s “internal controls over compliance were not designed effectively to timely detect overpayments to providers” given the potential \$36 million in potential overpayments took place over a three-year period. As also stated by CLA, the “significance of the dollar amount involved and the qualitative nature of the issues identified by the third party audit indicate a lack of oversight in the contract management process.”

- 2) In Finding 2013-006 (federal finding), auditors identified a significant deficiency regarding HSD’s procedures for investigating allegations of fraud. Auditors noted that HSD circumvented its own established process for receiving, evaluating, concluding or referring allegations of fraud to the Attorney General’s MFCU for all 15 behavioral health service providers suspended by HSD in June 2013. HSD’s procedures require HSD’s Program Integrity Unit (PIU) to receive initial reports of allegations, conduct a preliminary investigation of the allegations or forward the allegations to the Department’s Office of the Inspector General. As explained by CLA in the finding, PIU staff did not perform the initial investigations and CLA did not receive any supporting documentation from HSD to indicate that PIU was involved in the investigative process for these 15 providers, other than documents that show PIU staff signed off on the referrals to the MFCU in these 15 instances. PIU’s exclusion from the initial investigations of allegations pertaining to these 15 behavioral health service providers deviates from what is required under HSD’s written procedures. As stated in the finding, “[t]hese procedures state that initial complaints are to be reported to the [PIU], after which a preliminary intake form is to be completed and logged onto the tracking database. PIU staff are then required to conduct a preliminary investigation, or the case is forwarded to the Office of Inspector General (OIG). If the OIG does not have sufficient information to close a case, then a referral is made to the [MFCU].”
- 3) As detailed in Finding 2013-008 (federal finding), auditors found nearly \$7,000 in questioned costs that HSD improperly paid PCG under HSD’s professional service contract with PCG. Those costs, which were paid with federal Medicaid funds, included:
 - a) Excess per diem reimbursements to PCG employees in the amount of \$2,797. These reimbursements included duplicate per diems reported on the same day and per diem paid in addition to reimbursement for actual travel expenses;
 - b) Reimbursement of alcoholic beverages totaling \$115;
 - c) Reimbursement of expenses previously billed in the amount of \$3,315; and
 - d) Reimbursement to PCG for payment for State of New Mexico employees’ meals in the amount of \$713.

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- 4) In Finding 2013-010 (other matter), auditors found HSD improperly paid a total of \$620,383 to five behavioral health service providers from Arizona hired by HSD to replace the 15 suspended providers. These costs, which HSD paid with federal and state funds, violated HSD's professional services contracts with these providers.

These costs included:

- a) Reimbursements totaling \$412,747 for invoices for services that were received more than 15 days after the end of the fiscal year;
- b) Payments totaling \$187,896 that include prepayments for estimates or projections rather than reimbursement; and
- c) Reimbursement totaling \$19,740 for purchases of tangible personal property over \$10,000 that did not receive HSD's prior approval.

On the same day my office released the 2013 financial audit, I formally referred the audit report to the New Mexico Attorney General in an effort to assist his office's ongoing criminal investigations related to HSD's Medicaid payment suspensions. I also formally referred the audit report to CMS and the Office of Audit Services within the Office of the Inspector General of the U.S. Department of Health and Human Services (OIG). With regard to these federal agencies, I advised them that their expertise may be helpful in assisting HSD improve its compliance with federal requirements for the oversight of federal Medicaid funds. I noted that additional independent assessments and quality control reviews by their agencies would support and strengthen HSD's corrective actions to address audit findings and carry out its responsibilities. In my view, these efforts are critical to help New Mexico promote efficiencies and reduce the risk of fraud, waste and abuse related to these vital Medicaid funds.

Shortly following these referrals and at CMS's request, my staff briefed certain CMS staff on the financial audit results and our related concerns regarding the facts surrounding HSD's payment suspensions and the improper use of federal funds. However, despite the audit findings and deficiencies related to HSD's expenditure of federal funds, in early March 2014 CMS informed my office that it had made the determination to "not review HSD's determinations related to credible allegations of fraud in this matter." In explaining its decision, CMS stated that it "gives great weight to the fact that the MFCU accepted the cases and is still processing the investigation." Conversely, in early April 2014, my office received correspondence from OIG acknowledging that my referral letter "highlighted areas of joint concern" and that OIG looks forward to working with my office "to address them in a strategic and productive manner." My staff has provided a briefing to OIG staff, along with certain documentation to assist in their assessment. I am hopeful that OIG may determine further review of behavioral health services in New Mexico is needed.

Moving forward, it is crucial that state and federal oversight agencies establish direct and ongoing communication with the goal of applying greater oversight and developing a coordinated response to behavioral health issues in New Mexico. At-risk populations in New Mexico suffer the direct impacts of deficiencies in the behavioral health system, and HSD must implement adequate corrective action to protect vital federal funds

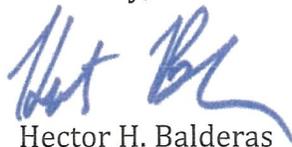
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intended for these vulnerable New Mexicans. The serious nature of HSD's audit findings demonstrate the need for greater accountability that ensures program integrity, proper expenditure of state and federal dollars, and continued access to care. HSD's inadequate detection of overpayments, failure to follow established procedures for the investigation and referral of fraud allegations, and improper payments of federal funds to private contractors increase fraud risks and jeopardize the significant federal funding New Mexico receives for Medicaid services. Consequently, access to behavioral health services in New Mexico can be disrupted or compromised. Meaningful oversight is necessary to abate these crises. To help facilitate these additional oversight efforts, I recently wrote to New Mexico's congressional delegation and updated them on my involvement as State Auditor in reviewing and auditing HSD's financial affairs. I would recommend that your Subcommittee also formally communicate with members of the delegation.

During HSD's fiscal year 2014 financial audit process, my staff and HSD's independent auditor will assess whether the Department has resolved the federal audit findings reported in HSD's fiscal year 2013 report and communicate accordingly with state and federal oversight agencies. Our office will remain engaged with HSD and monitor whether HSD has corrected its failure to adhere to established procedures for the receipt, evaluation, investigation and referral of credible allegations of fraud. This includes following all written requirements for the conduct of investigations prior to making referrals of credible allegations of fraud to the MFCU. Furthermore, as evidenced by HSD's fiscal year 2013 financial audit, the Department created additional fraud risks by violating state contracts and approving advance payments to private contractors for services not rendered. The Department must honor its oversight responsibility and hold itself to the same high standard of accountability that it demands from organizations that receive federal funds. To this end, the fiscal year 2014 financial audit is a key tool in the ongoing assessment of HSD's compliance with contracts, federal laws and rules. I will continue to keep you and the appropriate federal agencies apprised of any updates regarding the OSA's audit and oversight work related to behavioral health services and accountability for federal funds.

I appreciate your Subcommittee's great interest and concern over these important issues. Please do not hesitate to contact me should you have any questions about this update.

Sincerely,



Hector H. Balderas
New Mexico State Auditor

cc: Behavioral Health Subcommittee Members