

DEPARTMENT OF DEVELOPMENTAL SERVICES

1600 NINTH STREET, Room 240, MS 2-13
SACRAMENTO, CA 95814
TTY (916) 654-2054 (For the Hearing Impaired)
(916) 654-1897



October 2, 2019

RECEIVED

OCT -8 2019

ADMINISTRATION

Joseph Czarske, Board President
Harbor Developmental Disabilities Foundation, Inc.
21231 Hawthorne Boulevard
Torrance, CA 90503

Dear Mr. Czarske:

The Department of Developmental Services' (DDS) Audit Section has completed the audit of the Harbor Regional Center (HRC). The period of review was from July 1, 2015 through June 30, 2017, with follow-up as needed into prior and subsequent periods. The enclosed report discusses the areas reviewed along with the finding and recommendation. The audit report includes the response submitted by HRC as Appendix A, and DDS' reply on page 20.

If there is a disagreement with the audit findings, a written "Statement of Disputed Issues" may be filed with DDS' Audit Appeals Unit, pursuant to California Code of Regulations, Title 17, Section 50730, Request for Administrative Review (excerpt enclosed). The "Statement of Disputed Issues" must be filed within 30 days of receipt of this audit report to:

Department of Developmental Services
Audit Appeals Unit
ATTN: John Doyle, Chief Deputy Director
1600 Ninth Street, Room 240, MS 2-13
Sacramento, CA 95814

The cooperation of HRC's staff in completing the audit is appreciated. If you have any questions regarding the audit report, please contact Edward Yan, Manager, Audit Section, at (916) 651-8207.

Sincerely,

A handwritten signature in cursive script that reads "Bria WFL".

BRIAN WINFIELD
Chief Deputy Director-Programs

Enclosure

cc: See next page

"Building Partnerships, Supporting Choices"

25

Joseph Czarske, Board President

October 2, 2019

Page two

cc: Patricia Del Monico, Harbor Regional Center
Judy Wada, Harbor Regional Center
Judith A. Enright, Enright & Ochelletree, LLP
Jim Burkhardt, Department of Health Care Services
LeeAnn Christian, Department of Developmental Services
Patti Mericantante, Department of Developmental Services
Ernie Cruz, Department of Developmental Services
Mary Hernandez, Department of Developmental Services
Vicky Lovell, Department of Developmental Services
Rapone Anderson, Department of Developmental Services
Edward Yan, Department of Developmental Services
Luciah Ellen Nzima, Department of Developmental Services
Soi Ly, Department of Developmental Services

California Code of Regulations
Title 17, Division 2
Chapter 1 - General Provisions
Subchapter 7 - Fiscal Audit Appeals
Article 2 - Administrative Review

§50730. Request for Administrative Review.

a) An individual, entity, or organization which disagrees with any portion or aspect of an audit report issued by the Department or regional center may request an administrative review. The appellant's written request shall be submitted to the Department within 30 days after the receipt of the audit report. The request may be amended at any time during the 30-day period.

(b) If the appellant does not submit the written request within the 30-day period, the appeals review officer shall deny such request, and all audit exceptions or findings in the report shall be deemed final unless the appellant establishes good cause for late filing.

(c) The request shall be known as a "Statement of Disputed Issues." It shall be in writing, signed by the appellant or his/her authorized agent, and shall state the address of the appellant and of the agent, if any agent has been designated. An appellant shall specify the name and address of the individual authorized on behalf of the appellant to receive any and all documents, including the final decision of the Director, relating to proceedings conducted pursuant to this subchapter. The Statement of Disputed Issues need not be formal, but it shall be both complete and specific as to each audit exception or finding being protested. In addition, it shall set forth all of the appellant's contentions as to those exceptions or findings, and the estimated dollar amount of each exception or finding being appealed.

(d) If the appeals review officer determines that a Statement of Disputed Issues fails to state the grounds upon which objections to the audit report are based, with sufficient completeness and specificity for full resolution of the issues presented, he/she shall notify the appellant, in writing, that it does not comply with the requirements of this subchapter.

(e) The appellant has 15 days after the date of mailing of such notice within which to file an amended Statement of Disputed Issues. If the appellant does not amend his/her appeal to correct the stated deficiencies within the time permitted, all audit exceptions or findings affected shall be dismissed from the appeal, unless good cause is shown for the noncompliance.

(f) The appellant shall attach to the Statement of Disputed Issues all documents which he/she intends to introduce into evidence in support of stated contentions. An appellant that is unable to locate, prepare, or compile such documents within the appeal period specified in Subsection (a) above, shall include a statement to this effect in the Statement of Disputed Issues. The appellant shall have an additional 30 days after the expiration of the initial 30-day period in which to submit the documents. Documents that are not submitted within this period shall not be accepted into evidence at any stage of the appeal process unless good cause is shown for the failure to present the documents within the prescribed period.



**AUDIT OF THE
HARBOR REGIONAL CENTER
FOR FISCAL YEARS 2015-16 AND 2016-17**

Department of Developmental Services

October 2, 2019

This audit report was prepared by the
California Department of Developmental Services
1600 Ninth Street
Sacramento, CA 95814

Patti Mericantante, Deputy Director, Administration Division
Vicky Lovell, Chief, Research, Audit, and Evaluation Branch
Edward Yan, Manager, Audit Section
Luciah Ellen Nzima, Chief, Regional Center Audit Unit
Soi Ly, Supervisor, Regional Center Audit Unit

Audit Staff: Dong Le, Shoua Vue, Ruth Yang and Diosdado Agustin

For more information, please call: (916) 654-3695.

TABLE OF CONTENTS

	Page
EXECUTIVE SUMMARY	1
BACKGROUND	2
Authority	3
Criteria	3
Audit Period	3
OBJECTIVES, SCOPE, AND METHODOLOGY	4
I. Purchase of Service	5
II. Regional Center Operations.....	5
III. Targeted Case Management and Regional Center Rate Study	6
IV. Service Coordinator Caseload Survey	6
V. Early Intervention Program (Part C Funding)	7
VI. Family Cost Participation Program.....	7
VII. Annual Family Program Fee	8
VIII. Parental Fee Program.....	8
IX. Procurement	9
X. Statewide/Regional Center Median Rates	11
XI. Other Sources of Funding from DDS	12
XII. Follow-up Review on Prior DDS Audit Findings	12
CONCLUSIONS	13
VIEWS OF RESPONSIBLE OFFICIALS.....	14
RESTRICTED USE.....	15
FINDING AND RECOMMENDATION.....	16
EVALUATION OF RESPONSE	20
REGIONAL CENTER'S RESPONSE.....	Appendix A

EXECUTIVE SUMMARY

The Department of Developmental Services (DDS) conducted a fiscal compliance audit of Harbor Regional Center (HRC) to ensure HRC is compliant with the requirements set forth in the Lanterman Developmental Disabilities Services Act and Related Laws/Welfare and Institutions (W&I) Code; the Home and Community-based Services (HCBS) Waiver for the Developmentally Disabled; California Code of Regulations (CCR), Title 17; Federal Office of Management and Budget (OMB) Circulars A-122 and A-133; and the contract with DDS. Overall, the audit indicated that HRC maintains accounting records and supporting documentation for transactions in an organized manner.

The audit period was July 1, 2015, through June 30, 2017, with follow-up, as needed, into prior and subsequent periods. This report identifies an area where HRC's administrative and operational controls could be strengthened, but the finding was not of a nature that would indicate systemic issues or constitute major concerns regarding HRC's operations. A follow-up review was performed to ensure HRC has taken corrective action to resolve the findings identified in the prior DDS audit report.

Finding that needs to be addressed.

Finding 1: Conflict of Interest

A discussion with HRC's Chief Executive Officer (CEO) and Chief Financial Officer (CFO) about the in-kind services that HRC provides to the Del Harbor Foundation (Foundation) revealed that both Officers also hold the position as the CEO and CFO of the Foundation, respectively. In addition, the review of the Foundation's tax returns confirmed the dual roles served by the individuals in both organizations. The decision and policy-making authority by the individuals serving in these dual roles create a conflict of interest. This is not in compliance with W&I Code, Section 4626 and CCR, Title 17, Sections 54520, 54526, 54505, and 54533.

BACKGROUND

DDS is responsible, under the W&I Code, for ensuring that persons with developmental disabilities (DD) receive the services and supports they need to lead more independent, productive, and integrated lives. To ensure that these services and supports are available, DDS contracts with 21 private, nonprofit community agencies/corporations that provide fixed points of contact in the community for serving eligible individuals with DD and their families in California. These fixed points of contact are referred to as regional centers (RCs). The RCs are responsible under State law to help ensure that such persons receive access to the programs and services that are best suited to them throughout their lifetime.

DDS is also responsible for providing assurance to the Department of Health and Human Services, Centers for Medicare and Medicaid Services (CMS), that services billed under California's HCBS Waiver program are provided and that criteria set forth for receiving funds have been met. As part of DDS' program for providing this assurance, the Audit Section conducts fiscal compliance audits of each RC no less than every two years, and completes follow-up reviews in alternate years. Also, DDS requires RCs to contract with independent Certified Public Accountants (CPAs) to conduct an annual financial statement audit. The DDS audit is designed to wrap around the independent CPA's audit to ensure comprehensive financial accountability.

In addition to the fiscal compliance audit, each RC will also be monitored by the DDS Federal Programs Operations Section to assess overall programmatic compliance with HCBS Waiver requirements. The HCBS Waiver compliance monitoring review has its own criteria and processes. These audits and program reviews are an essential part of an overall DDS monitoring system that provides information on RCs' fiscal, administrative, and program operations.

DDS and Harbor Developmental Disabilities Foundation, Inc. entered into State Contract HD149007, effective July 1, 2014, through June 30, 2021. This contract specifies that Harbor Developmental Disabilities Foundation, Inc. will operate an agency known as the HRC to provide services to individuals with DD and their families in the Bellflower, Harbor, Long Beach and Torrance areas. The contract is funded by state and federal funds that are dependent upon HRC performing certain tasks, providing services to eligible consumers, and submitting billings to DDS.

This audit was conducted at HRC from April 30, 2018, through June 1, 2018, by the Audit Section of DDS.

AUTHORITY

The audit was conducted under the authority of the W&I Code, Section 4780.5 and Article IV, Section 3 of the State Contract between DDS and HRC.

CRITERIA

The following criteria were used for this audit:

- W&I Code,
- "Approved Application for the HCBS Waiver for the Developmentally Disabled,"
- CCR, Title 17,
- OMB Circulars A-122 and A-133, and
- The State Contract between DDS and HRC, effective July 1, 2014.

AUDIT PERIOD

The audit period was July 1, 2015, through June 30, 2017, with follow-up, as needed, into prior and subsequent periods.

OBJECTIVES, SCOPE, AND METHODOLOGY

This audit was conducted as part of the overall DDS monitoring system that provides information on RCs' fiscal, administrative, and program operations. The objectives of this audit were:

- To determine compliance with the W&I Code,
- To determine compliance with the provisions of the HCBS Waiver Program for the Developmentally Disabled,
- To determine compliance with CCR, Title 17 regulations,
- To determine compliance with OMB Circulars A-122 and A-133, and
- To determine that costs claimed were in compliance with the provisions of the State Contract between DDS and HRC.

The audit was conducted in accordance with the Generally Accepted Government Auditing Standards issued by the Comptroller General of the United States. However, the procedures do not constitute an audit of HRC's financial statements. DDS limited the scope to planning and performing audit procedures necessary to obtain reasonable assurance that HRC was in compliance with the objectives identified above. Accordingly, DDS examined transactions on a test basis to determine whether HRC was in compliance with the W&I Code; the HCBS Waiver for the Developmentally Disabled; CCR, Title 17; OMB Circulars A-122 and A-133; and the State Contract between DDS and HRC.

DDS' review of HRC's internal control structure was conducted to gain an understanding of the transaction flow and the policies and procedures, as necessary, to develop appropriate auditing procedures.

DDS reviewed the annual audit reports that were conducted by an independent CPA firm for Fiscal Years (FYs) 2015-16 and 2016-17, issued on January 17, 2017 and January 16, 2018, respectively. It was noted that no management letter was issued for HRC. This review was performed to determine the impact, if any, upon the DDS audit and, as necessary, develop appropriate audit procedures.

The audit procedures performed included the following:

I. Purchase of Service

DDS selected a sample of Purchase of Service (POS) claims billed to DDS. The sample included consumer services and vendor rates. The sample also included consumers who were eligible for the HCBS Waiver Program. For POS claims, the following procedures were performed:

- DDS tested the sample items to determine if the payments made to service providers were properly claimed and could be supported by appropriate documentation.
- DDS selected a sample of invoices for service providers with daily and hourly rates, standard monthly rates, and mileage rates to determine if supporting attendance documentation was maintained by HRC. The rates charged for the services provided to individual consumers were reviewed to ensure compliance with the provision of the W&I Code; the HCBS Waiver for the Developmentally Disabled; CCR, Title 17, OMB Circulars A-122 and A-133; and the State Contract between DDS and HRC.
- DDS selected a sample of individual Consumer Trust Accounts to determine if there were any unusual activities and whether any account balances exceeded \$2,000, as prohibited by the Social Security Administration. In addition, DDS determined if any retroactive Social Security benefit payments received exceeded the \$2,000 resource limit for longer than nine months. DDS also reviewed these accounts to ensure that the interest earnings were distributed quarterly, personal and incidental funds were paid before the 10th of each month, and proper documentation for expenditures was maintained.
- DDS selected a sample of Uniform Fiscal Systems (UFS) reconciliations to determine if any accounts were out of balance or if there were any outstanding items that were not reconciled.
- DDS analyzed all of HRC's bank accounts to determine whether DDS had signatory authority, as required by the State Contract with DDS.
- DDS selected a sample of bank reconciliations for Operations (OPS) accounts and Consumer Trust bank accounts to determine if the reconciliations were properly completed on a monthly basis.

II. Regional Center Operations

DDS selected a sample of OPS claims billed to DDS to determine compliance with the State Contract. The sample included various expenditures claimed for

administration that were reviewed to ensure HRC's accounting staff properly input data, transactions were recorded on a timely basis, and expenditures charged to various operating areas were valid and reasonable. The following procedures were performed:

- A sample of the personnel files, timesheets, payroll ledgers, and other support documents were selected to determine if there were any overpayments or errors in the payroll or the payroll deductions.
- A sample of OPS expenses, including, but not limited to, purchases of office supplies, consultant contracts, insurance expenses, and lease agreements were tested to determine compliance with CCR, Title 17, and the State Contract.
- A sample of equipment was selected and physically inspected to determine compliance with requirements of the State Contract.
- DDS reviewed HRC's policies and procedures for compliance with the DDS Conflict of Interest regulations, and DDS selected a sample of personnel files to determine if the policies and procedures were followed.

III. Targeted Case Management (TCM) and Regional Center Rate Study

The TCM Rate Study determines the DDS rate of reimbursement from the federal government. The following procedures were performed upon the study:

- Reviewed applicable TCM records and HRC's Rate Study. DDS examined the month of April 2016 and 2017 and traced the reported information to source documents.
- Reviewed HRC's TCM Time Study. DDS selected a sample of payroll timesheets for this review and compared timesheets to the Case Management Time Study Forms (DS 1916) to ensure that the forms were properly completed and supported.

IV. Service Coordinator Caseload Survey

Under the W&I Code, Section 4640.6(e), RCs are required to provide service coordinator caseload data to DDS. The following average service coordinator-to-consumer ratios apply per W&I Code Section 4640.6(c)(1)(2)(3)(A)(B)(C):

“(c) Contracts between the department and regional centers shall require regional centers to have service coordinator-to-consumer ratios, as follows:

- (1) An average service coordinator-to-consumer ratio of 1 to 62 for all consumers who have not moved from the developmental centers to

the community since April 14, 1993. In no case shall a service coordinator for these consumers have an assigned caseload in excess of 79 consumers for more than 60 days.

- (2) An average service coordinator-to-consumer ratio of 1 to 45 for all consumers who have moved from a developmental center to the community since April 14, 1993. In no case shall a service coordinator for these consumers have an assigned caseload in excess of 59 consumers for more than 60 days.
- (3) Commencing January 1, 2004, the following coordinator-to-consumer ratios shall apply:
 - (A) All consumers three years of age and younger and for consumers enrolled in the Home and Community-based Services Waiver program for persons with developmental disabilities, an average service coordinator-to-consumer ratio of 1 to 62.
 - (B) All consumers who have moved from a developmental center to the community since April 14, 1993, and have lived continuously in the community for at least 12 months, an average service coordinator-to-consumer ratio of 1 to 62.
 - (C) All consumers who have not moved from the developmental centers to the community since April 14, 1993, and who are not described in subparagraph (A), an average service coordinator-to-consumer ratio of 1 to 66."

DDS also reviewed the Service Coordinator Caseload Survey methodology used in calculating the caseload ratios to determine reasonableness and that supporting documentation is maintained to support the survey and the ratios as required by W&I Code, Section 4640.6(e).

V. Early Intervention Program (EIP; Part C Funding)

For the EIP, there are several sections contained in the Early Start Plan. However, only the Part C section was applicable for this review.

VI. Family Cost Participation Program (FCPP)

The FCPP was created for the purpose of assessing consumer costs to parents based on income level and dependents. The family cost participation assessments are only applied to respite, day care, and camping services that are included in the child's Individual Program Plan (IPP)/Individualized Family Services Plan (IFSP). To determine whether HRC was in compliance with CCR, Title 17, and the W&I Code, Section 4783, DDS performed the following procedures during the audit review:

- Reviewed the list of consumers who received respite, day care, and camping services, for ages 0 through 17 years who live with their parents and are not Medi-Cal eligible, to determine their contribution for the FCPP.
- Reviewed the parents' income documentation to verify their level of participation based on the FCPP Schedule.
- Reviewed copies of the notification letters to verify that the parents were notified of their assessed cost participation within 10 working days of receipt of the parents' income documentation.
- Reviewed vendor payments to verify that HRC was paying for only its assessed share of cost.

VII. Annual Family Program Fee (AFPF)

The AFPF was created for the purpose of assessing an annual fee of up to \$200 based on the income level of families with children between the ages of 0 through 17 years receiving qualifying services through the RC. The AFPF fee shall not be assessed or collected if the child receives only respite, day care, or camping services from the RC and a cost for participation was assessed to the parents under FCPP. To determine whether HRC was in compliance with the W&I Code, Section 4785, DDS requested a list of AFPF assessments and verified the following:

- The adjusted gross family income is at or above 400 percent of the federal poverty level based upon family size.
- The child has a DD or is eligible for services under the California Early Intervention Services Act.
- The child is less than 18 years of age and lives with his or her parent.
- The child or family receives services beyond eligibility determination, needs assessment, and service coordination.
- The child does not receive services through the Medi-Cal program.
- Documentation was maintained by the RC to support reduced assessments.

VIII. Parental Fee Program (PFP)

The PFP was created for the purpose of prescribing financial responsibility to parents of children under the age of 18 years who are receiving 24-hour, out-of-home care services through an RC or who are residents of a state hospital or on leave from a state hospital. Parents shall be required to pay a fee depending

upon their ability to pay, but not to exceed (1) the cost of caring for a child without DD at home, as determined by the Director of DDS, or (2) the cost of services provided, whichever is less. To determine whether HRC is in compliance with the W&I Code, Section 4782, DDS requested a list of PFP assessments and verified the following:

- Identified all children with DD who are receiving the following services:
 - (a) All 24-hour, out-of-home community care received through an RC for children under the age of 18 years;
 - (b) 24-hour care for such minor children in state hospitals. Provided, however, that no ability to pay determination shall be made for services required by state or federal law, or both, to be provided to children without charge to their parents.
- Provided DDS with a listing of new placements, terminated cases, and client deaths for those clients. Such listings shall be provided not later than the 20th day of the month following the month of such occurrence.
- Informed parents of children who will be receiving services that DDS is required to determine parents' ability to pay and to assess, bill, and collect parental fees.
- Provided parents a package containing an informational letter, a Family Financial Statement (FFS), and a return envelope within 10 working days after placement of a minor child.
- Provided DDS a copy of each informational letter given or sent to parents, indicating the addressee and the date given or mailed.

IX. Procurement

The Request for Proposal (RFP) process was implemented to ensure RCs outline the vendor selection process when using the RFP process to address consumer service needs. As of January 1, 2011, DDS requires RCs to document their contracting practices, as well as how particular vendors are selected to provide consumer services. By implementing a procurement process, RCs will ensure that the most cost-effective service providers, amongst comparable service providers, are selected, as required by the Lanterman Act and the State Contract, as amended. To determine whether HRC implemented the required RFP process, DDS performed the following procedures during the audit review:

- Reviewed HRC's contracting process to ensure the existence of a Board-approved procurement policy and to verify that the RFP process ensures competitive bidding, as required by Article II of the State Contract, as amended.
- Reviewed the RFP contracting policy to determine whether the protocols in place included applicable dollar thresholds and comply with Article II of the State Contract, as amended.
- Reviewed the RFP notification process to verify that it is open to the public and clearly communicated to all vendors. All submitted proposals are evaluated by a team of individuals to determine whether proposals are properly documented, recorded, and authorized by appropriate officials at HRC. The process was reviewed to ensure that the vendor selection process is transparent and impartial and avoids the appearance of favoritism. Additionally, DDS verified that supporting documentation is retained for the selection process and, in instances where a vendor with a higher bid is selected, written documentation is retained as justification for such a selection.

DDS performed the following procedures to determine compliance with Article II of the State Contract for contracts in place as of January 1, 2011:

- Selected a sample of Operations, Community Placement Plan (CPP), and negotiated POS contracts subject to competitive bidding to ensure HRC notified the vendor community and the public of contracting opportunities available.
- Reviewed the contracts to ensure that HRC has adequate and detailed documentation for the selection and evaluation process of vendor proposals and written justification for final vendor selection decisions and that those contracts were properly signed and executed by both parties to the contract.

In addition, DDS performed the following procedures:

- To determine compliance with the W&I Code, Section 4625.5 for contracts in place as of March 24, 2011: Reviewed to ensure HRC has a written policy requiring the Board to review and approve any of its contracts of two hundred fifty thousand dollars (\$250,000) or more before entering into a contract with the vendor.
- Reviewed HRC Board-approved Operations, Start-Up, and POS vendor contracts of \$250,000 or more, to ensure the inclusion of a provision for fair and equitable recoupment of funds for vendors that cease to provide services to consumers; verified that the funds provided were specifically

used to establish new or additional services to consumers, the usage of funds is of direct benefit to consumers, and the contracts are supported with sufficiently detailed and measurable performance expectations and results.

The process above was conducted in order to assess HRC's current RFP process and Board approval for contracts of \$250,000 or more, as well as to determine whether the process in place satisfies the W&I Code and HRC's State Contract requirements, as amended.

X. Statewide/Regional Center Median Rates

The Statewide and RC Median Rates were implemented on July 1, 2008, and amended on December 15, 2011, to ensure that RCs are not negotiating rates higher than the set median rates for services. Despite the median rate requirement, rate increases could be obtained from DDS under health and safety exemptions where RCs demonstrate the exemption is necessary for the health and safety of the consumers.

To determine whether HRC was in compliance with the Lanterman Act, DDS performed the following procedures during the audit review:

- Reviewed sample vendor files to determine whether HRC is using appropriately vendorized service providers and correct service codes, and that HRC is paying authorized contract rates and complying with the median rate requirements of W&I Code, Section 4691.9.
- Reviewed vendor contracts to ensure that HRC is reimbursing vendors using authorized contract median rates and verified that rates paid represented the lower of the statewide or RC median rate set after June 30, 2008. Additionally, DDS verified that providers vendorized before June 30, 2008, did not receive any unauthorized rate increases, except in situations where required by regulation, or health and safety exemptions were granted by DDS.
- Reviewed vendor contracts to ensure that HRC did not negotiate rates with new service providers for services which are higher than the RC's median rate for the same service code and unit of service, or the statewide median rate for the same service code and unit of service, whichever is lower. DDS also ensured that units of service designations conformed with existing RC designations or, if none exists, ensured that units of service conformed to a designation used to calculate the statewide median rate for the same service code.

XI. Other Sources of Funding from DDS

RCs may receive other sources of funding from DDS. DDS performed sample tests on identified sources of funds from DDS to ensure HRC's accounting staff were inputting data properly, and that transactions were properly recorded and claimed. In addition, tests were performed to determine if the expenditures were reasonable and supported by documentation. The sources of funding from DDS identified in this audit are:

- CPP;
- Part C – Early Start Program; and
- Family Resource Center.

XII. Follow-up Review on Prior DDS Audit Findings

As an essential part of the overall DDS monitoring system, a follow-up review of the prior DDS audit findings was conducted. DDS identified prior audit findings that were reported to HRC and reviewed supporting documentation to determine the degree of completeness of HRC's implementation of corrective actions.

CONCLUSIONS

Based upon the audit procedures performed, DDS has determined that except for the item identified in the Finding and Recommendation section, HRC was in compliance with applicable sections of the W&I Code; the HCBS Waiver for the Developmentally Disabled; CCR, Title 17; OMB Circulars A-122 and A-133; and the State Contract between DDS and HRC for the audit period, July 1, 2015, through June 30, 2017.

The costs claimed during the audit period were for program purposes and adequately supported.

From the review of the seven prior audit findings, it has been determined that HRC has taken appropriate corrective action to resolve the findings.

VIEWS OF RESPONSIBLE OFFICIALS

DDS issued a draft audit report on May 21, 2019. The finding in the draft audit report was discussed at a formal exit conference with HRC on May 22, 2019. The views of the responsible officials are included in this audit report.

RESTRICTED USE

This audit report is solely for the information and use of DDS, Department of Health Care Services, CMS, and HRC. This restriction does not limit distribution of this audit report, which is a matter of public record.

FINDING AND RECOMMENDATION

Finding that needs to be addressed.

Finding 1: Conflict of Interest

A discussion with HRC's CEO and CFO about the in-kind services HRC provides to the Foundation revealed that both Officers also serve as the CEO and CFO of the Foundation, respectively. The review of the Foundation's tax returns confirmed the dual roles the two individuals hold under both organizations. However, neither individual filed a Conflict of Interest Reporting Statement to disclose the positions they hold with the Foundation.

The CEO and CFO are tasked with managing the day-to-day operations of both HRC and the Foundation. Both individuals stated that their dual roles enabled HRC to renegotiate the terms of its lease agreement with the Foundation, which will result in a cost savings of over \$20 million through the life of the new lease. Although the new lease arrangement will be beneficial to DDS and DDS did not identify any improper conduct by HRC's CEO and CFO in overseeing the Foundation, a conflict of interest exists as long as the dual roles and decision and policy-making authority continue. This could result in negative consequences, if individuals who assume these roles in the future do not have HRC's best interest in mind.

W&I Code, Section 4626 states in part:

- (a) The department shall give a very high priority to ensuring that regional center board members and employees act in the course of their duties solely in the best interest of the regional center consumers and their families without regard to the interests of any other organization with which they are associated or persons to whom they are related. Board members, employees, and others acting on the regional center's behalf, as defined in regulations issued by the department, shall be free from conflicts of interest that could adversely influence their judgment, objectivity, or loyalty to the regional center, its consumers, or its mission...
- (c) The department shall ensure that no regional center employee or board member has a conflict of interest with an entity that receives regional center funding, including, but not limited to, a nonprofit housing organization and an organization qualified under Section

501(c)(3) of the Internal Revenue Code, that actively functions in a supporting relationship to the regional center.

CCR, Title 17, Section 54520 states in part:

"Positions Creating Conflicts of Interest for Regional Center Governing Board Members and Executive Directors.

(a) A conflict of interest exists when a regional center governing board member, executive director, or a family member of such person is any of the following for a business entity, entity, or provider as defined in section 54505 of these regulations, except to the extent such position is permitted by Welfare and Institutions Code sections 4622 and 4626.

- (1) a governing board member;
- (2) a board committee member;
- (3) a director;
- (4) an officer;
- (10) an employee;
- (13) a person who holds any position of management; or
- (14) a person who has decision or policy making authority. ...

(d) These conflict of interest provisions are in addition to those conflicts identified in Welfare and Institutions Code sections 4622 and 4626."

CCR, Title 17, Section 54526 states in part:

"Positions Creating Conflicts of Interests for Employees, Contractors, Agents and Consultants.

(a) A conflict of interest exists when a regional center employee with decision or policy making authority, or contractor, agent or consultant with authority to act on behalf of the regional center, or family member of such person, is any of the following for a business entity, entity, or provider as defined in these regulations:

- (1) a governing board member;
- (2) a board committee member;
- (3) a director;
- (4) an officer; ...
- (9) an employee;
- (10) an agent; ...
- (13) holds any position of management;
- (14) has decision or policy making authority."

CCR, Title 17, Section 54505(d) states in part:

“(d) “Decision or Policy-Making Authority” means the authority an individual possesses whenever the individual:

- (1) exercises discretion or judgment, without significant intervening substantive review, in making, advising, or recommending a decision or in making a final decision; or
- (2) may compel a decision or may prevent a decision either by reason of an exclusive power to initiate the decision or by reason of a veto which may or may not be overridden; or
- (3) makes substantive recommendations which are, and over an extended period of time have been, regularly approved without significant amendment or modification by another person or entity or provider; or
- (4) votes on matters, obligates or commits his or her entity to any course of action, or enters into, modifies, amends, or renews any contractual agreement on behalf of his or her entity, or has authority to obligate resources; or
- (5) votes to approve, appoint or ratify, or approves, appoints, ratifies, assigns, elects, selects, designates, names, creates, confirms, contracts or hires any director, trustee, member of the board, member of a board committee, officer, agent, employee, contractor, or consultant for his or her entity or any other business entity or provider.

Decision or policy-making authority does not include actions of individuals which are solely ministerial, secretarial, or clerical.”

CCR, Title 17, Section 54533 states in part:

“Present or Potential Conflict of Interest Identified, Proposed Conflict Resolution Plan Content, Timelines for Submission of Proposed Conflict Resolution Plan.

- (a) When a present or potential conflict of interest is identified for a regional center board member, executive director, employee, contractor, agent or consultant, the present or potential conflict shall be either eliminated or mitigated and managed through a Conflict Resolution Plan, or the individual shall resign his or her position with the regional center or regional center governing board. ...

- (d) When a present or potential conflict of interest has been independently identified by the Department for a regional center employee, contractor, agent or consultant, the Department shall notify the regional center executive director, in writing, of the present or potential conflict. The regional center executive director shall submit a copy of the completed Conflict of Interest Reporting Statement and a proposed Conflict Resolution Plan for eliminating or mitigating and managing the present or potential conflict to the Department within 30 calendar days of receipt of the Department's notification.
- (e) When a present or potential conflict of interest has been independently identified by the Department for a regional center governing board member or regional center executive director, the Department shall notify the regional center governing board, in writing, of the present or potential conflict. The regional center governing board shall submit a copy of the completed Conflict of Interest Reporting Statement and a proposed Conflict Resolution Plan for eliminating or mitigating and managing the present or potential conflict to the Department, to the area board in the respective area, and to the State Council within 30 calendar days of receipt of the Department's notification. ...
- (g) The proposed Conflict Resolution Plan shall be a written, detailed plan to eliminate, or mitigate and manage, the present or potential conflict of interest, along with any necessary supporting documents."

Recommendation:

HRC must submit a Conflict Resolution Plan to DDS to eliminate, or mitigate and manage, the present and potential conflict of interest for the CEO and CFO pursuant to CCR, Title 17, Section 54533.

EVALUATION OF RESPONSE

As part of the audit report process, HRC was provided with a draft audit report and requested to provide a response to the finding. HRC's response dated June 21, 2019, is provided as Appendix A.

DDS' Audit Section has evaluated HRC's response and will confirm the appropriate corrective action has been taken during the next scheduled audit.

Finding 1: Conflict of Interest

HRC stated that it did not want to address the conflict of interest issue regarding the dual executive roles held by both the Executive Director and CFO at HRC and DHF in the audit report. Instead, HRC will respond to the conflict of interest issue by letter to appropriate individuals at DDS and request the removal of the finding from the audit report.

HRC argued that DDS was outside of its purview for a "fiscal compliance audit" when it reported the conflict of interest issue in the draft report. Further, HRC states that DDS was aware during prior audits of the executive positions held by HRC's Executive Director and CFO at DHF but did not suggest they file a Conflict of Interest Reporting Statement disclosing the conflicts.

DDS maintains that the review of the director's and management's conflict of interest statements is required, pursuant to W&I Code, Section 4626(c). In an effort to promote transparency, it is necessary to disclose this finding in the audit report because the decisions made by these individuals have a direct fiscal impact on the regional center. Furthermore, regardless of whether or not DDS was aware of the dual roles held by HRC's Executive Director and CFO, the responsibility ultimately lies with the individuals to disclose this information on Question 3 of the Conflict of Interest Reporting Statement, which the Executive Director and CFO failed to do, on an annual basis. Therefore, DDS reaffirms its finding and recommendation and requests that HRC submit a Conflict Resolution Plan to DDS to eliminate, or mitigate and manage, the present and potential conflict of interest for the CEO and CFO, pursuant to CCR, Title 17, Section 54533.