



COMMONWEALTH OF PENNSYLVANIA  
DEPARTMENT OF PUBLIC WELFARE  
**BUREAU OF FINANCIAL OPERATIONS**  
**3<sup>rd</sup> Floor Bertolino Building**  
**Harrisburg, Pennsylvania 17105-2675**

**JUN 19 2007**

TELEPHONE NUMBER  
(717) 787-9200  
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JOHN H. BUNGO, CGFM, CFS  
DIRECTOR

Ms. Mary E. Kwiatkowski, Administrator  
Erie County MH/MR Program  
154 West Ninth Street  
Erie, Pennsylvania 16501

Dear Ms. Kwiatkowski:

Enclosed is the final review report of your MH/MR Program recently completed by this office. Your Program's response has been incorporated into the final report and labeled Appendix A.

The final report will be forwarded to the Department's Office of Developmental Programs, formerly the Office of Mental Retardation, to begin the Department's resolution process concerning the report contents. The staff from the Office of Developmental Programs may be in contact with you to follow up on the corrective action actually taken to comply with the report's recommendations.

I would like to express my appreciation for the courtesy and cooperation extended to the DAR staff during the course of the fieldwork.

If you have any questions concerning this matter, please contact Richard E. Wessel, Audit Manager of the Western Field Office, at (412) 565-2187.

Sincerely,

John H. Bungo, CGFM, CFS

Enclosure

cc: Mr. Kevin T. Casey  
Mr. Joseph Church  
Ms. Sandy Schalcosky



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JOHN H. BUNGO, CGFM, CFS  
DIRECTOR

TELEPHONE NUMBER  
(717) 787-9200  
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Mr. Kevin T. Casey  
Deputy Secretary for Developmental Programs  
512 Health and Welfare Building  
Harrisburg, Pennsylvania 17105

Dear Mr. Casey:

In response to a request from the Office of Developmental Programs (ODP), the Bureau of Financial Operations (BFO) conducted a performance audit of the Erie County MH/MR Program to determine if Waiver monies are being used for Medical Assistance (MA) reimbursable services inappropriately. The request addressed concerns with Erie County's billing practices and financial monitoring for MA reimbursable services such as speech, physical, and occupational therapy.

The BFO's mission, accomplished through its audit and review activities, is to assist Department of Public Welfare (DPW) management to administer human service programs of the highest quality at the lowest cost with integrity.

### **Background**

The services in question are speech therapy and physical therapy specifically provided by Erie Homes for Children and Adults, Inc. (EHCA). These therapies are reimbursed by Erie County MH/MR, under the Community Residential Services cost center, using Waiver monies. The services are rendered to EHCA's resident population which has been described as predominantly medically frail. Prior to 1999 when EHCA was an Intermediate Care Facility for the Mentally Retarded (ICF/MR), these therapy costs were bundled into the overall ICF/MR funding.

In 1999, EHCA ICF/MR funding was converted to Waiver. EHCA continued to understand that the therapies were essential and that bundling the costs remained appropriate. In 2004, OMR issued Bulletin 00-04-10 entitled "Service Definitions and Procedure Codes for Healthcare Waiver and Base Services"

### **Background (Continued)**

which indicated that these services require a written denial letter before they can be considered a needed Waiver service. As a result, both EHCA and Erie County MH/MR were told by ODP that EHCA could not longer reflect the cost of these therapies in the Waiver rate without a denial letter from MA. EHCA has been unable to obtain an MA denial letter and has retained the consulting services of a former Department official to help resolve this issue with ODP.

For Fiscal Year (FY) 2005-06, EHCA budgeted \$81,645 for physical therapy and \$56,649 for speech therapy.

### **Objective, Scope and Methodology**

Our audit addressed the following objective:

To determine why the Erie County MH/MR Program does not use Medical Assistance funds for physical, occupational, and speech therapy services and provide any appropriate assistance.

The scope of our audit was limited to those procedures determined necessary to accomplish this objective. In pursuing this objective, we interviewed staff and management of both Erie MH/MR and EHCA. We also reviewed cost reports, budgets, accounting records and reports, and related correspondence.

Government auditing standards require that the BFO obtain an understanding of management controls that are relevant to the audit objective described above. The applicable controls were examined to the extent necessary to provide reasonable assurance of compliance with generally accepted accounting principles. Based on the BFO understanding of the controls, no significant deficiencies came to our attention other than those described in this report.

Our fieldwork, conducted between June 21 and 23, 2006, was performed in accordance with generally accepted government auditing standards. We held a closing conference with Erie MH/MR on June 23, 2006. This report, when presented in its final form, is available for public inspection.

## **Results of Fieldwork**

### **Issue No. 1 - EHCA Therapy Services Appear to be Different From Those Reimbursed by Medical Assistance**

The therapy services EHCA provides for individuals in its care may differ in both nature and purpose from the services that are eligible for Medical Assistance reimbursement.

Western Region ODP staff indicated that providers supporting individuals with medical or physical conditions requiring continual care, monitoring, and evaluation may have therapists to provide direction regarding training and support for the residents' overall benefit. They indicate that in this circumstance, it is appropriate for the providers to include the cost of this general support in the residential service rate. ODP staff further indicated that if individuals require an assessment/evaluation of their condition and therapy is recommended, an MA eligible provider must be utilized and the service charged to MA.

EHCA management has assumed that the Agency's residents require continual physical and speech therapy. It contracts with physical therapists and employs a speech therapist to provide and direct therapy programs for all its residents. Accordingly, the associated costs are reflected in the Agency's Waiver rate for residential care.

EHCA's therapy services emphasize maintaining, rather than improving, the individual's level of functioning. Agency officials indicated that chronic medical conditions require continual semi-skilled care, monitoring, and evaluation. The physical therapy contracts indicate the intention is to:

- Preserve and improve abilities for independent function, range of motion, strength, tolerance, coordination, and activities of daily living; and,
- Prevent, insofar as possible, irreducible or progressive disabilities, through means such as the use of orthodontic and prosthetic appliances, assistive and adoptive devices, positioning, behavior adaptations, and sensory stimulation.

EHCA contracts with four physical therapists to provide treatment training programs. The physical therapists evaluate residents' conditions, determine their needs, and "teach staff to carry out therapy exercise in the facility to ensure continuity of the therapy."

The speech therapist's job description indicates that the incumbent is responsible for evaluating residents for dysphagia (a swallowing disorder), feeding, and speech and

### **Results of Fieldwork (Continued)**

language skills. The speech therapist, "Will provide staff training ... in speech and language, and dysphagia." The job description further indicates, "This will include formal training sessions and on-site training."

Neither the physical therapists, nor the speech therapist, with whom EHCA has had long term relationships are providers enrolled under the MA program. Therefore, the services they provide cannot be reimbursed by MA.

On at least one occasion, EHCA referred a resident with ongoing physical therapy needs to an MA eligible service provider. The response was that the provider's, "... interventions are not able to meet the current ongoing care this patient needs to maintain her health and gross motor states." The provider indicated that while the resident had ongoing needs, no acute need was noted and the patient was not admitted for home health physical therapy.

### **Recommendation**

The BFO recommends that EHCA develop physical and speech therapy plans that accurately describe their therapy program model and submit the plans to ODP for review to determine the appropriateness of Waiver funding of these services. As a part of the review, ODP should determine whether the nature and quantity of the therapy services provided for EHCA residents are, in fact, necessary and appropriate.

### **Issue No. 2 - Erie County Can Increase Its Rate Negotiation Effectiveness**

EHCA charges the Erie County MH/MR Program considerably more for its therapies than they cost. This circumstance strongly suggests that the Erie County MH/MR Program needs to review and revise its rate negotiation process.

In 2005-06, the Agency paid its contracted physical therapists \$33,749.75 through June 22, 2006. It reflected the cost in the budget submitted to the Program for rate development as \$81,645. Similarly, for approximately the same period, it paid the speech therapist over \$32,000 in salary and benefits, but the rate reflects a \$56,649 charge.

During calendar year 2005, the speech therapist resigned and was not on the payroll for approximately five months. Accordingly, the difference between that position's actual and reimbursed cost may be a one-time anomaly that may not recur. The physical therapists, however, were paid very nearly the same amount (\$33,851) during the prior year. A simple review of actual cost of the service by Program staff could have raised concern that the Agency had budgeted an excessive amount for this service.

**Results of Fieldwork (Continued)**

**Recommendation**

The BFO recommends that the Erie County MH/MR Program revise the budget review phase of its rate negotiation process so that rates will more accurately reflect actual costs.

Subsequent to the completion of our fieldwork, an exit conference was held on September 7, 2006, to discuss the contents of this report with County officials. The County's response to this report is included as Appendix A.

As noted in the Erie County MH/MR Program's response, the ODP has issued policy that the County Program is required to comply with the "Administrative Entity Operating Agreement." Further guidance from ODP states, "... there cannot be any changes, deletions, or additions to the standard MA/Provider agreement." While we understand that our initial report recommendation may contradict ODP policy, we would suggest that ODP consider enhancing the standard contract and the rate setting process that was dictated to allow the counties to ask for more information as they see fit when reviewing rates as well as at year end to obtain the most comprehensive information possible. Further, the Erie County MH/MR Program's response indicates that ODP expects to develop standard provider monitoring guidelines. We endorse the concept of developing standard provider monitoring guidelines as well as the proposal for the overall monitoring of providers' profits through the retained earnings limitation. We are available to assist as needed in developing standard guidelines.

In accordance with our established procedures, please provide a response within 60 days to the Audit Resolution Section concerning action taken to ensure report recommendations are implemented.

If you have any questions concerning this audit, please contact Richard Polek of the Audit Resolution Section at (717) 787-8890.

Sincerely,



John H. Bungo, CGFM, CFE

cc: Ms. Mary Kwiatkowski  
Mr. Joseph Church  
Ms. Sandy Schalcosky

**APPENDIX A**

**AUDITEE'S RESPONSE**



# Erie County Department of Human Services

Mark A. Di Vecchio  
County Executive  
Charles R. Barber, Esq.  
Director of the Department  
of Human Services

154 West Ninth Street • Erie, Pennsylvania 16501-1303  
Telephone: 814-451-6600 / 814-451-6800 • TTY: 814-451-6858 • Fax: 814-451-6868

James L. Mack  
Director  
Office of Child Care  
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Gary R. Lucht  
Director  
Office of Children & Youth

Richard A. Sens  
Director  
Office of Drug & Alcohol Abuse

Mary E. Kwiatkowski  
Director  
Office of Mental Health/  
Mental Retardation

October 24, 2006

Mr. Richard Wessel  
Audit Manager  
701 State Office Building  
Pittsburgh, PA 15222

Dear Mr. Wessel:

I have reviewed the Division of Audit and Review report concerning Erie Homes for Children and Adults reimbursement for therapy services. Based upon our exit interview on September 7, 2006, I believe BFO representatives agreed with the following actions.

*Issue No. 1 - EHCA Therapy Services Appear to be Different From Those Reimbursed by Medical Assistance.* Initially, BFO recommends "EHCA develop physical and speech therapy plans that accurately describe their therapy program model and submit the plans to OMR for review to determine the appropriateness for Waiver funding of these services."

The result of fieldwork implies the County program is appropriately using waiver funds to pay for therapy expense at EHCA. Our use of waiver funds for therapies is based upon our procedure, "Services Requiring Third Party Insurance Review Prior to Consideration For Waiver Payment," which was provided during the review and enclosed with this correspondence. To arrive at a common understanding of when waiver funds can be used for therapies in a residential program, Ms. Sandy Schalcosky, Program Manager, Western Region OMR, participated in the exit interview via phone conference. I understand Western Region OMR currently accepts the Erie County MHMR stated procedure and this is acceptable to BFO, as well. This will remain in effect or amended as specified by the terms of the Administrative Entity Operating Agreement, Pages 1 and 2.

*Issue No. 2 - Erie County Can Increase Its Rate Negotiation Effectiveness.* BFO recommends that the Erie County MH/MR Program revise the budget review phase of its rate negotiation process so that rates will more accurately reflect actual costs.

Since eighty-seven per cent (87%) of the County program mental retardation budget consists of 2176 Consolidated and Person/Family Directed Support Waivers funds, the County program is required by the Office of Mental Retardation to comply with the "Administrative Entity Operating Agreement." Section 7.2 Administrative Entity Contracts with Providers states, "The Administrative Entity must use the *standardized Medicaid provider contract* developed by the Department when contracting with qualified waiver providers. . . ." Likewise, providers are required to comply with the standard MA/provider agreement. A letter dated May 26, 2006 from DPW Deputy Secretary, Mr. Kevin Casey, instructs County programs ". . . there cannot be any changes, deletions, or additions to the standard MA/Provider



*agreement.*" Additionally, OMR requires County programs and providers to use OMR developed rate setting spreadsheets.

To implement the BFO recommendation, additional budget information not specified in the OMR agreements or rate setting spreadsheets, will be required from each contracted provider so actual expense can be compared to budget projections by line item. This was discussed during our September 7, 2006, exit conference call with Ms. Sandy Schalcosky, Program Manager, Western Region OMR. All acknowledged it was not clear whether additional monitoring requirements, including those recommended by BFO, were permissible under the Administrative Entity Operating Agreement or MA/Provider Agreement. The consensus during this conversation was the Erie County MH/MR Office would implement additional fiscal monitoring requirements as specified by the Office of Mental Retardation.

As a follow-up, I am enclosing an OMR document titled, "*OMR Academy FAQs*", Topic: *AE (Administrative Entity) Provider Contract, Revised: 9/29/06*. Page 1, Row 1 of this document states:

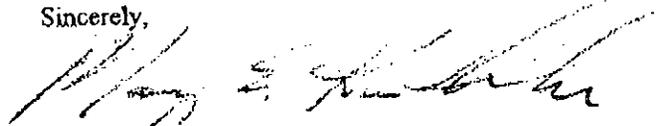
Question: Does the AE have a monitoring obligation with regard to the AE/Provider Contract? It lists the State as having the monitoring role in the handout.

Answer: "Yes – the Operating Agreement requires AE's to sign and monitor all contracts with waiver providers. *Standard monitoring guidelines have not yet been developed, although OMR plans to develop standard provider monitoring guidelines or processes.*

This dialogue demonstrates providers question whether it is the State office, rather than the Administrative Entity (usually the County program and not always), responsibility to monitor. OMR's response states Administrative Entities do have a responsibility to monitor contracts, and OMR plans to develop standard guidelines. I believe this precludes Administrative Entities from establishing separate guidelines. Therefore, I propose the Erie County Office implement the State office guidelines as they are issued.

It is good to have closure to these concerns.

Sincerely,



Mary E. Kwiatkowski  
MH/MR Administrator

Enclosures: Services Require Third Party Insurance Review Prior To Consideration for Waiver Payment  
Kevin T. Casey letter dated May 26, 2006

## **Services Requiring Third Party Insurance Review Prior To Consideration For Waiver Payment**

### **Individuals Needing Physical or Behavioral Health Therapies**

Individuals requesting waiver funding must submit a written request, using the Request for Waiver Payment of Therapies Form, to the county Mental Retardation Coordinator for the specified therapy. The support coordinator or provider are available to assist in assembling documents. The **request MUST include:**

- copy of private insurance or MA denial, from the provider, dated within the past 30 days,
- written prescription from a physician stating the medical need and intended outcome of the therapy,
- written request specifying the type of therapy, therapist name, unit cost, and outcome.

The county office will respond to the consumer and copy the support coordinator within 3 business days from the date the request is received.

**Approvals** are limited to the specified request. The maximum units are limited to those prescribed by the therapist. A copy of this plan must be maintained in the consumer record located at the MR BSU.

The support coordinator or supervisor is responsible for timely critical revisions to the vendor section of the ISP.

**Denials** will include information regarding the fair hearing and appeal process.

**Payment** Vendors are to submit invoices to the county office. MR Program Specialists will verify invoices against the ISP. Only those services rendered within the date range, maximum units, rate, and consumer will be authorized for payment.

### **Administrative Management of Therapies for Persons Requiring Continual Semi-Skilled Care**

Waiver-funded providers are responsible for assuring the health and safety of consumers. There are circumstances whereby providers support individuals in the community who require nursing home-like care. Characteristically, individuals have chronic medical conditions that require continual semi-skilled care, monitoring, and evaluation within a residential or sheltered facility. In this instance providers can have nurses, physical, occupational, and speech therapists provide administrative management of the therapy. When this occurs the ISP outcomes are stated within the direct service the person receives.

Providers must request approval from the county program office to incorporate such positions into their services during annual rate negotiations. Expense for services may be included in either the personnel or purchase personnel lines. This request must specify staff roles. County monitoring will specifically evaluate the need for continued use of *follow-up* services for chronic conditions.

This document was prepared following consultation with Kelly Svalbonas, Office of Mental Retardation and Paul Kuegler, Western Region Office of Mental Retardation. (April, 2006)

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DEPARTMENT OF PUBLIC WELFARE  
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FAX: (717) 787-6583

KEVIN T. CASEY  
Deputy Secretary for Mental Retardation

MAY 26 2006

Dear County MH/MR Administrator:

As you are aware, the Office of Mental Retardation (OMR) has been working with the Centers for Medicare and Medicaid Services (CMS) to develop and finalize a State/Provider Agreement that satisfies the federal requirements at 42 CFR 434.107. Effective April 26, 2006, CMS approved an OMR Medical Assistance Provider Agreement. The final OMR Medical Assistance Provider Agreement applies to both the Consolidated and Person/Family Directed Support Waivers and can be accessed on the Home and Community Services Information System (HCSIS) homepage at <http://hcsis.state.pa.us> within two weeks of the date of this letter.

OMR has distributed a letter to providers registered in HCSIS, informing them of the finalization of the OMR Medical Assistance Provider Agreement, and the required next steps. Enclosed you will find this letter, as well as the list of provider agencies to which the letter was mailed. Please review the list of provider agencies, and verify that every Waiver provider agency that you intend to contract with during FY 2006/2007 is included. If any Waiver provider agency is missing, please ensure that the provider agency is provided with instructions for accessing the OMR Medical Assistance Provider Agreement, as well as the timeline for submission of a signed Agreement.

Please note that there cannot be any changes, deletions, or additions to the standard MA/provider agreement. There will be no addendums written, verbal or informal agreements related to the standard MA/Provider agreement. The standard agreement is the primary agreement between the State and a provider related to eligible waiver services and supersedes all other contracts and agreements between the State and the providers related to waiver eligible services.

Every Waiver provider must present a signed OMR Medical Assistance Provider Agreement to OMR by June 30, 2006, in order to continue to provide Waiver services effective July 1, 2006. If a Waiver contract is currently signed by a provider and the County Program/Administrative Entity, the contract will remain in effect until the provider signs the new OMR Medical Assistance Provider Agreement, or until July 31, 2006. The OMR Medical Assistance Provider Agreement supersedes the county requirement to collect provider agreements included in MR Bulletin 6000-90-04.

Every Vendor/Fiscal Intermediary Service Organization (ISO) must also present a signed OMR Medical Assistance Provider Agreement to OMR by June 30, 2006. The Vendor/Fiscal ISO will then hold an agreement with the employees of Waiver

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MAY 26 2006

participants and/or their family members. Each Waiver provider agency and/or Vendor/Fiscal ISO should submit only 1 (one) OMR Medical Assistance Provider Agreement for that legal entity, with the original signature of the provider agency's/ISO's Chief Executive Officer/Director, regardless of the number of services provided or their locations.

OMR is asking that each County MH/MR Program take responsibility for ensuring that every Waiver provider agency that operates in your County/Joinder receives the instructions and requirements related to the OMR Medical Assistance Provider Agreement, and submits a signed Agreement to OMR through the HCSIS Helpdesk. OMR is also asking Counties to ensure that any new Waiver provider is informed of the requirement to hold an OMR Medical Assistance Provider Agreement, and of the process to execute the Agreement.

OMR will distribute the list of providers who have signed the Agreement through the OMR-COUNTY-FISCAL LISTSERV every Monday. If you are already signed up for the LISTSERV, you will automatically receive the updated list of providers when it is posted. If you are not already signed up for the LISTSERV, you will need to do so in order to receive the list each week.

To sign up for the LISTSERV, go to <http://listserv.dpw.state.pa.us>, scroll to the bottom of the page and click on the [unlisted archive form] hyperlink. On the Access Unlisted Archive website, type "OMR-COUNTY-FISCAL" in the space provided and click [Join or leave the list (or change settings)] hyperlink. Follow the instructions provided to subscribe to the LISTSERV. Subscribers will automatically receive an e-mail with the updated list of providers who have signed the OMR Medical Assistance Provider Agreement when it is distributed. The LISTSERV also archives all messages that have been previously sent out. You can search the archives by clicking on the link for the appropriate time period, or you can search for all archived messages and files by clicking on the [search the archives] hyperlink.

Please direct any questions regarding the OMR Medical Assistance Provider Agreement to the appropriate Regional Office of Mental Retardation.

Sincerely,

  
Kevin T. Casey

Enclosures