



October 12, 2010

Frank Patone, CPA  
Audit Director  
Office of the State Comptroller  
Division of State Government Accountability  
123 William Street, 21st Floor  
New York, NY 10038

Dear Mr. Patone:

The Office of Mental Health has reviewed the final audit report entitled, Office of Mental Health, Contracts for Personal and Miscellaneous Services (2009-S-42). Our comments to the findings and recommendations contained in the report are enclosed.

The Office of Mental Health appreciates the Office of the State Comptroller's efforts to recommend improvements to the OMH Consolidated Business Office. Many thanks for your continued help and cooperation.

The response is submitted in accordance with Section 170 of the Executive Law.

Sincerely yours,

Michael F. Hogan, Ph.D.  
Commissioner

Enclosure

cc: Governor – David A. Paterson  
Comptroller – Thomas P. DiNapoli  
Lieutenant Governor – Richard Ravitch  
Senate Majority Leader – John L. Sampson  
Senate Minority Leader – Dean G. Skelos  
Assembly Speaker – Sheldon Silver  
Assembly Majority Leader – Ronald Canestrari  
Assembly Minority Leader – Brian M. Kolb  
Chair, Senate Finance Committee – Carl Kruger  
Ranking Minority Member of Senate Finance Committee – John A. DeFrancisco  
Chair, Assembly Ways and Means Committee – Herman D. Farrell, Jr.  
Ranking Minority Member, Assembly Ways and Means Committee – Jim Hayes  
Acting Chair, Senate Mental Health & Developmental Disabilities Committee – Shirley L. Huntley  
Chair, Assembly Mental Health Committee – Felix Ortiz  
Chair, Assembly Committee on Oversight, Analysis & Investigation – Michele R. Titus  
Director, Division of the Budget – Robert L. Megna



**OFFICE OF MENTAL HEALTH  
RESPONSE TO THE OFFICE OF THE STATE COMPTROLLER  
FINAL AUDIT REPORT 2009-S-42  
CONTRACTS FOR PERSONAL AND MISCELLANEOUS SERVICES**

OMH officials have reviewed the findings and recommendations in the Office of the State Comptroller's (OSC) final report entitled, Office of Mental Health: Contracts for Personal and Miscellaneous Services. OMH recognizes that the audit results are intended as a resource to assist us in improving our operations and will take action to implement OSC's recommendations. However, we also have some concerns about assertions made in the report.

**OMH STATE OPERATIONS SPENDING**

This audit asserts that by not reassessing all of its contracts, OMH may be missing opportunities to further reduce costs and save state funds. Further it states that more than \$22 million in contract savings could be achieved if it reduced the remaining value of its contracts by 10 percent. We respectfully disagree. Due to their health and safety aspects, these contracts cannot simply be reduced by 10 percent. Moreover, as described below, OMH has taken, and will continue to pursue, opportunities to limit or reduce contract expenditures.

OMH has a good track record of spending within appropriation amounts and meeting cash targets established by DOB. Since the beginning of the fiscal crisis more than two years ago, OMH has taken its share of spending and workforce reductions. As the final audit report indicates, OMH has met all cut targets set by the Division of Budget (DOB) and Governor's Office. This includes the FY 2008-09 10.35 percent savings reductions and FY 2009-10 Deficit Reduction Plan. Furthermore, OMH met its Personal Services savings targets as part of the FY 2009-10 Voluntary Severance Plan. OMH is also participating in the 2010-11 Early Retirement Incentive. The Agency fully expects its authorized staffing levels to be reduced as a result of the incentive and will not be allowed to backfill most positions. This will place added pressure on remaining State staff and contractors.

Simply stated, OMH has fewer resources today than two years ago to meet the needs of the clients it serves. A comparison of actual annual salaried positions from March 31, 2008 to March 31, 2010 demonstrates that OMH has lost 904 (or 5.3 percent) full-time equivalent positions – from 17,026 to 16,122. Furthermore, actual non-personal services disbursements (from the Mental Hygiene Program Fund and Patient Income Account) have been reduced over that same period by \$11.5 million (or 3.9 percent) – from \$294.8 million to \$283.3 million – in spite of inflationary trends. A significant part of non-personal services spending supports items including but not limited to: patient medications, utilities, patient food, patient medical and clinical services such as outside hospital care, and asset maintenance. Due to the State's continuing fiscal crisis, OMH fully anticipates future deficit reduction activities. Although

difficult choices will need to be made, OMH will continue to make them by prioritizing expenses of all types including personal services and non-personal services funding.

OMH is concerned with OSC's assertion that standing personal and miscellaneous services contracts can be simply cut by 10 percent to generate a savings of \$22 million. This statement is without regard to an assessment of the criticality of such services. These contracts are managed by OMH's decentralized network of 27 hospitals and research institutes, along with various central office program divisions. Although all are considered service contracts they have varied purposes including, but not limited to, the provision of medical services to patients involving psychiatry and nursing; maintenance of facility infrastructure (such as boilers, elevators and fire alarms); patient support services; and information technology services. To suggest that OMH reduce the remaining value of these contracts by 10 percent in light of significant reductions already effectuated does not recognize the efforts already undertaken within the agency.

### **CONTRACT ASSESSMENT PROCESS**

As of June 1, 2010, OMH managed 475 personal and miscellaneous services contracts with an aggregate life value of \$741 million. These contracts are intended to support the health and safety needs of patients and to assist OMH in meeting its core mission of promoting the mental health of all New Yorkers with a particular focus on facilitating hope and recovery of adults with serious mental illnesses and children with serious emotional disturbances. Many of these contracts are also essential in ensuring that OMH meets minimum national accreditation standards set by the Joint Commission and the Centers for Medicare and Medicaid Services. This accreditation is necessary for maintaining about \$1.2 billion in annual patient revenue streams to the State.

When a contract is established at a certain value (which includes an annual budget), the amount is based on what OMH believes it needs at the time. However, for many contracts, the full value is not spent. In the audit, OSC asserts that *"As of November 30, 2009, OMH had expended about \$386 million against the \$607 million total value of existing Service Contracts; leaving \$221 million left to be spent."* OSC states that if just 10 percent were reduced from the unspent portion of these contracts, \$22 million could be saved. However, what OSC does not point out is that the full value of many contracts is not spent. OMH considers this underspending when developing annual budgets as well as responding to requests for budget reductions.

In fact, of the 50 contracts sampled by OSC, 23 contracts had expired as of December 31, 2009. Of those 23 contracts, eight expended at 80 percent or less of their full funding authorization. Six of the eight expended at less than 50 percent of full value. Those 23 expired contracts had a life value of \$19.255 million. However, actual expenditures against them totaled \$15.082 million, or only 78 percent of life value.

As OSC points out in its final audit report, OMH asserts that reviews to determine whether or not such contracts are needed or can be reduced is a multi-layered process. It includes the contract manager and Central Office program coordinators and leaders who assess the programmatic need of such a contract. Also involved are fiscal managers who assess whether funding exists to support such a contract. This is an iterative process with no central repository for all the justification supporting the need of a contract.

An example of OMH's continuing assessment of the utilization of contracts includes our participation in information technology in-sourcing initiatives. OMH is actively assessing information technology contracts that can be converted to functions performed by less costly State employees as part of the initiative set forth in Chapter 500 of the Laws of 2009. Moreover, the FY 2010-11 Executive Recommendation includes a proposal to maximize 13 consultant contract items by converting them into 19 State positions at no additional cost to the State. Several requests to fill positions established under this budget initiative have been approved and recruitment is underway.

It is the intent of OMH to maximize the use of its available workforce, but sometimes service contracts are necessary to accomplish a goal or meet a critical need. Contractual services fall into two basic categories: 1) services that require a specialized expertise or unique skill set that cannot be handled by Agency staff; and 2) services that under optimal circumstances would most likely be handled by Agency staff, but for budget and local considerations. The vast majority of services are provided by Agency staff.

- 1) Expert Services - OMH contracts out for certain functions that facility staff simply aren't trained or licensed to handle. To carry out such duties requires an expertise that is not consistent with the core mission of the Agency, but vital to the safe day-to-day operation of the hospitals. Examples of such services include asset maintenance agreements to support the safe operation of hospital infrastructure (e.g., elevators, generators, fire alarms, and HVAC); pest control which requires a special certification in order to render services in hospital settings; refuse and hazardous waste removal; etc.
- 2) Agency Services - Under optimal circumstances, OMH would employ a full complement of staff necessary to support core operations. However, as a result of a myriad of budget decisions over the years and local conditions, there are necessary choices OMH hospitals and Central Office must make to ensure that the work gets done. Trade-offs between hiring staff into State positions versus seeking service contracts with external entities occur routinely. As a result, there are several filters to determine whether it makes the most sense to utilize a State employee or enter into a contractual agreement. Considerations include:
  - Can a State employee be recruited? Many State positions such as psychiatrists and nurses are hard-to-recruit due to competition with the private sector.

- Is the position only needed on a part-time or on a sporadic basis? It is not efficient for certain positions to be filled by State employees since a full-time presence is not always needed.
- Is it less costly to contract?
- Is the contract necessary to cover for State staff leave (e.g., maternity, medical, etc.)?
- Is there sufficient authorized fill capacity to hire a State employee?
- Where is the location of the service needed? Many OMH community programs are not co-located with their host facility. As a result, contracts for certain support services are more efficient than having a State staff person travel from the host facility.
- Is an employee needed for a project or on a permanent basis? Occasionally, a need for services is project-driven requiring only a temporary commitment.

OMH appreciates OSC's review of its operations and contracting processes. As a result of the current fiscal climate, OMH expects the Executive Branch to implement future deficit reduction plans and will continue to assess all spending to ensure the delivery of most critical services while meeting its financial targets. We must, however, reiterate that OSC's assertion, that \$22 million in savings is available by simply reducing service contracts 10 percent, is not realistic due to the health and safety aspects of many of our contract arrangements.

OMH understands that OSC is *"...not suggesting that OMH should universally reduce the value of each and every contract by 10 percent..."* However, OMH has concerns with OSC's follow up statement, *"The fact that OMH cites a group of contracts from our sample which expired in 2009 with an average of only 78 percent expended, shows that a 10 percent reduction is achievable and may actually be conservative."* When a contract is developed, certain budgetary assumptions are made. Decisions are made throughout the life of a contract whether to fully rely on it, or minimize its utilization. These decisions are based on the need for the contract to help ensure health and safety or the Agency's core mission within existing fiscal limitations. While the above referenced contracts spent at 78 percent of their total average value, others may spend out at less than or more than that. The 10 percent value asserted by OSC is purely arbitrary. OMH believes it takes sufficient measures to ensure contracts are utilized appropriately and efficiently within authorized funding levels.

## **OMH'S RESPONSE TO OSC'S RECOMMENDATIONS**

### **OSC Recommendation 1:**

Executive management should communicate to appropriate staff the requirement to support Service Contracts with written justifications of the need for the service, the appropriate level of service, and the need to contract out.

**OMH Response:**

Beginning with the 2010-11 Spending Plan process, OMH's State Budget & Financial Management Services Group is using a standardized form that facilities and central office divisions must complete when requesting to enter into a new, renewed or re-bid contract valued at more than \$15,000. The form asks several questions related to the contract. Some questions include an overview of the contract's intent; for renewals, if the scope of work is changing; justification of cost; if there were other more cost-effective alternatives to the contract; and if estimated annual contractual personal services spending is more than \$1 million then Executive Order 6 applies. This form will bring key elements of consideration into one document.

**OSC Recommendation 2:**

Instruct managers to periodically reassess all Service Contracts to identify opportunities to suspend, eliminate, reduce or bring them in-house, and to document their determinations.

**OMH Response:**

As part of the annual spending plan process for facilities and program divisions, OMH State Budget Services will disseminate explicit instructions to staff that they should be reviewing service contracts for opportunities to suspend, eliminate, reduce or bring functions in-house, and to document their determinations. This process will begin with the 2011-12 spending plans for facilities and program divisions.