Commonwealth of Massachusetts
Office of the State Auditor
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Making government work better

Official Audit Report – July 17, 2013

Advocates, Inc.
Administration of Limited Unit Rate Service Agreements

For the period July 1, 2008 through June 30, 2011

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INTRODUCTION AND SUMMARY OF FINDINGS AND RECOMMENDATIONS

On April 3, 2013, the Office of the State Auditor (OSA) issued an audit report (No. 2013-0234-3C) of the Department of Developmental Services' (DDS's) administration of its Limited Unit Rate Service Agreements (LUSAs). LUSAs are a form of a master contract agreement that can be used by DDS to purchase services from a preapproved contractor on an intermittent, limited-time basis for clients who are not already covered through an existing contract. Our overall audit of DDS's administration of LUSAs included a review of $16.6 million in LUSA funding provided to 15 human-service contractors during fiscal years 2009 through 2011. Those transactions were a subset of the approximately $62.2 million in total DDS LUSA expenditures for the three-fiscal-year period covered by our audit. The primary focus of our overall audit was to examine transactions processed during the accounts-payable period[1] at the end of each fiscal year, which disproportionately involved over half of all LUSA funding. As part of this audit, OSA engaged each of the 15 contractors, including Advocates, Inc. (Advocates), for on-site testing. Advocates received approximately $1,955,361 of the above-stated $62.2 million in total DDS LUSA payments. Approximately $950,546 (48.6%) of the payments to Advocates was processed during the accounts-payable periods for fiscal years 2009 through 2011. The overall audit of DDS was conducted as part of OSA's ongoing efforts to audit human-service contracting activity by state agencies and to promote accountability, transparency, and cost effectiveness in state contracting.

This supplemental report presents the results of our testing specific to Advocates' accounts-payable-period LUSA transactions and should be read in the context of our overall report on DDS's administration of LUSA agreements. That report presents our system-wide audit, which determined that, although LUSA funding is supposed to be used for intermittent unanticipated services to clients as needed, DDS is not properly administering these contracts. Instead DDS Regional and Area Office staff have used LUSA contracts to provide additional year-end funding to some DDS human-service contractors for various purposes, many of which are not consistent with the intended use of these funds and resulted in unnecessary and excessive compensation to contractors. That report also documents other significant administrative problems, including improper retroactive

[1] The Commonwealth's fiscal year is divided into 13 accounting periods: one for each calendar month of the fiscal year ending June 30, and a thirteenth period known as the accounts-payable period. During the accounts-payable period, payments are processed for services provided during the fiscal year but not submitted and approved for payment before the June 30 fiscal year-end date. Accounts-payable-period processing generally continues through the end of August each year.

service authorization; irregularities in pricing, encumbering, and accounting for LUSA funding; and documentation at numerous contractors that was often inaccurate, misleading, missing, or otherwise deficient. DDS's practice of improperly administering and using LUSAs has led to the problems with the administration and use of these funds at various DDS contractors, such as Advocates.

Highlight of Testing Results Specific to Advocates, Inc.

We found problems with all $950,545 of Advocates' accounts-payable-period LUSA transactions, including inadequate documentation to substantiate that LUSA services were properly authorized, inadequate documentation to support LUSA billings, and LUSA contract funding not being used for its intended purposes, as follows:

- For $611,702 out of $920,955 paid to Advocates that was subject to DDS service authorization requirements, DDS and Advocates retroactively processed the authorization, in violation of DDS requirements.
- We found additional documentation problems for $919,245 of the above $920,955 in LUSA payments to Advocates, including $305,320 in payments for which required service authorization documentation was absent. Specifically, we found service documentation deficiencies and missing or inadequate documentation of client service delivery. The lack of adequate documentation violated provisions of the Commonwealth Terms and Conditions for Human and Social Services, and as a result, there was insufficient evidence to show that these LUSA payments had been properly authorized and accounted for; that they were not duplicative or excessive; and that the contractor had actually provided the LUSA services billed.
- DDS improperly made additional LUSA payments totaling $29,590 to Advocates as a matter of administrative convenience for year-end reconciliation payments involving Personal Support Services (PSS) provided through regular contract programs. Those payments should instead have been made through amendments to regular program contracts or through alternative, non-LUSA, mechanisms. For the entire amount of those PSS payments, service delivery documentation by Advocates was also absent.

Recommendations of the State Auditor

OSA's overall audit report on DDS's administration of LUSA contracts recommended that responsible oversight agencies, including the state's Operational Services Division and the Office of the State Comptroller, review the issues detailed in the report and take whatever actions they deem appropriate to address those issues, including strengthening their oversight over these DDS transactions. The payments to Advocates are covered by that recommendation. In accordance with the recommendations of the overall report and the testing results specific to Advocates, Advocates should implement appropriate control measures to ensure that all LUSA services are performed, documented, billed, and accounted for in compliance with applicable requirements.

OVERVIEW OF AGENCY

Advocates, Inc. (Advocates), whose administrative offices are located at One Clarks Hill, Suite 305, Framingham, Massachusetts, was incorporated on June 6, 1975 as a nonprofit human-services organization. Advocates operates more than 100 sites with approximately 1,000 employees in eastern and central Massachusetts.

According to Advocates' Web site, it "partner[s] with people with disabilities, elders, and those with other challenges to overcome personal obstacles and societal barriers so that they can obtain and keep homes, engage in work and other meaningful activities, and sustain satisfying relationships." Its program services span a wide spectrum of service types, including a variety of residential, day, vocational, and other support services provided to the Department of Developmental Services' (DDS's) clients.

Advocates is one of DDS's nonprofit contractors primarily serving eastern and central Massachusetts. Advocates annually receives over $16.3 million in contract payments from DDS. Revenues and support from other state agencies and public and private sources raise total revenues for Advocates and its affiliated entities to approximately $58.7 million per year. DDS's Limited Unit Rate Service Agreement (LUSA) contract payments to Advocates, including the accounts-payable-period transactions covered by our testing for fiscal years 2009 through 2011, were as follows:

Fiscal Year 2009 through 2011 LUSA Funding

Fiscal Year	Total LUSA Payments for Fiscal Year	LUSA Payments Processed During Accounts-Payable Period	Accounts-Payable-Period Percent of Annual Total
2009	$ 710,073	$ 395,849	55.7%
2010	662,890	313,687	47.3%
2011	582,398	241,010	41.4%
	$1,955,361	$ 950,546[2]	48.6%

[2] The single-dollar variance between the consolidated LUSA funding total appearing here and the sum of amounts in the report that are specific to particular audit findings is attributable to category rounding adjustments.

SCOPE, OBJECTIVES, AND METHODOLOGY

In accordance with Chapter 11, Section 12, of the Massachusetts General Laws, the Office of the State Auditor (OSA) conducted an audit of the Department of Developmental Services' (DDS's) administration of Limited Unit Rate Service Agreement (LUSA) contracts for the period July 1, 2008 through June 30, 2011 (No. 2012-0234-3C). The scope of that audit included an assessment of the process and related internal controls DDS has established over its administration of LUSA contracts and the use of LUSA funding at 15 selected DDS contractors, together accounting for approximately $16.6 million (26.7%) of the $62.2 million in LUSA payments for the three-fiscal-year period covered by our audit. Based on our analysis of data contained in the Massachusetts Management Accounting and Reporting System, we determined that during our audit period, 12% of all LUSA payments, which are supposed to be provided on an as-needed basis, had been processed during the last month of the fiscal year and that an additional 51% of all LUSA payments had been processed during the Commonwealth's accounts-payable period.[3] This expenditure pattern for LUSA services was in marked contrast to the pattern for DDS's non-LUSA contractor payments, for which fewer than 4% were processed during the accounts-payable period and fewer than 5% were processed during the last month of the fiscal year. Based on this analysis and the results of prior audits that identified issues with LUSA transactions, we concluded that LUSA payments processed late in the year, particularly during the accounts-payable period, might pose disproportionately high risks of improper use or other irregularities. Advocates, Inc. (Advocates) was one of the 15 contractors selected for on-site testing as part of the overall DDS audit. Advocates accounted for approximately $1,955,361 in LUSA payments for the three-fiscal-year period. Approximately $950,546 of Advocates' LUSA payments was processed during the Commonwealth's accounts-payable periods.

The procedures completed at Advocates were performed as part of the overall DDS audit, which was conducted in accordance with generally accepted government auditing standards. Our overall objectives for the DDS audit were to:

- Obtain information required to assess the system of internal controls DDS has established over its administration of LUSA contract funding.

[3] The Commonwealth's accounts-payable period is typically from July 1 through August 31 after the end of each fiscal year but can be extended through September 15.

- Determine whether LUSA funding is being used as intended and in compliance with applicable laws, regulations, policies, and procedures by conducting audit testing of a judgmental sample of DDS human-service contractors that received significant LUSA funding.

Our audit testing at DDS and selected contractors, such as Advocates, produced evidence that certain data involving the classification of DDS LUSA expenditures did not reliably represent the actual agreement between DDS and contractors regarding the true purpose and use of the state funding. We provide a complete description of our data reliability and methodology in our overall DDS audit report, No. 2012-0234-3C.

We selected Advocates for on-site testing, focusing on accounts-payable-period transactions; conducted interviews with management and staff; reviewed prior audit reports where available; and reviewed applicable laws and regulations. We also obtained and reviewed policies and procedures, accounting records, and supporting source documents and performed tests of these records and transactions, where necessary. We performed testing on all identified accounts-payable-period LUSA transactions, so our findings do not involve the use of projections based on samples. At the conclusion of field work, we met with Advocates managers to discuss testing results pertaining to Advocates. We also solicited Advocates information and input regarding DDS system-wide LUSA issues for use in the overall LUSA audit project.

TESTING RESULTS

1. QUESTIONABLE USE OF $950,545 IN LUSA FUNDS

Our testing identified a number of problems with the granting, receipt, and use of Limited Unit Rate Service Agreement (LUSA) funds that the Department of Developmental Services (DDS) provided to Advocates, Inc. (Advocates). These included DDS and Advocates retroactively processing service authorization approval for $611,702 in LUSA transactions, contrary to DDS requirements; Advocates maintaining insufficient authorization, invoicing, and service delivery documentation for $919,245 in transactions; and DDS improperly using $29,590 of LUSA funding to pay Advocates for transactions that should instead have been processed through other payment mechanisms. In many instances, the same transaction was associated with multiple problems. The unduplicated amount of questioned funding is $950,545.

LUSA contractual agreements are designed to be relatively flexible in order to address client service needs. DDS's Purchase of Service Manual states that LUSA contracts are "for purchasing intermittent, as-needed services for developmentally disabled individuals needing limited time placements." The LUSA's purpose is to provide a contract that can be accessed at any time during its multiyear term to pay for unexpected services for clients authorized by DDS where, because of special circumstances, services have not been included within the scope of an existing state-funded program contract. DDS has established separate categories for LUSA agreements (residential, day, work, and support service), and LUSA services may only be provided within the scope of the categories for which a contractor has been approved.

DDS requires that in order to obtain funding to pay for LUSA services, DDS managers and contractors such as Advocates complete an Authorization for Services process before services begin. The process uses an Authorization for Services Form (ASF) signed by a DDS manager, typically an Area Director, to establish the specific type of service, service date ranges, appropriation source, and amount of LUSA funding that will reimburse the contractor for services provided to the client.[4]

[4] Certain exceptions to this authorization requirement involve DDS's use of LUSA funds for transactions that should instead have been processed through other payment mechanisms as described in Section c. of this finding. DDS has not uniformly required use of ASF forms for those transactions.

In addition to obtaining ASF approval, contractors must maintain service delivery and related documentation as required by Section 7 of the Commonwealth Terms and Conditions for Human and Social Services, which specifies that:

> *The Contractor shall maintain records, books, files and other data as required by 808 CMR 1.00 and as specified in a Contract and in such detail as shall properly substantiate claims for payment under a Contract, for a minimum retention period of seven (7) years beginning on the first day after the final payment under a Contract, or such longer period as is necessary for the resolution of any litigation, claim, negotiation, audit or other inquiry involving a Contract.*

It is essential that, in addition to authorization, invoice, and accompanying summary service delivery reports, contractors maintain documentation sufficient to verify that invoiced services were actually delivered and to establish that the services rendered were not within the scope of activity already covered and reimbursed by regular, non-LUSA, program contracts. Documentation of compliance with the activity and reimbursement restriction is of particular concern, since DDS's regular non-LUSA contracts have typically been established using payment rates that have been increased by as much as 17.6% to ensure that contractors are appropriately reimbursed for full program costs where programs are underutilized for legitimate reasons such as unanticipated vacancies or client hospitalizations. As explained by applicable Operational Services Division (OSD) policy:[5]

> *The inclusion of a utilization factor in unit rate contracts may result in a situation where a specific contractor is serving consumers at a higher utilization level than negotiated or anticipated and thus reaches the maximum obligation of the contract (or "bills out") before the end of the contract period. In this case, the contractor is required to provide services up to the total capacity purchased by the contract . . . for the remainder of the contract period with no additional funding. The application of a utilization factor does not result in the contractor delivering "free" services; rather, in these cases, a contractor has merely been fully reimbursed for the costs associated with the program in a shorter period of time than the full contract duration . . . .*

As a result, if a LUSA agreement is erroneously used to pay for services that have already been effectively reimbursed through a regular contract, the contractor may improperly receive excessive or duplicative reimbursement of program costs.

The subsections below describe the Advocates-related issues identified as part of testing procedures performed.

[5] OSD Procurement Policies and Procedures, "How to Draft a Request for Response" (issued November 1, 2005, revised August 13, 2007).

a. Retroactive Authorization of LUSA Services Totaling $611,702

Despite the above-described ASF processing requirement established by DDS, of $920,955 in accounts-payable-period LUSA payments to Advocates that were subject to service authorization requirements, $611,702 had been paid for services that DDS and Advocates had retroactively authorized, in violation of the requirements. Retroactive authorizations had been processed in each year of the testing period as follows:

Retroactive Authorization Amounts

	Fiscal Year 2009	Fiscal Year 2010	Fiscal Year 2011	Total
Retroactive Authorization	$198,936	$223,705	$189,061	$611,702

As described in the next section, these amounts exclude payments totaling $305,320 for which documentation available at Advocates was not sufficient to determine whether authorization had been properly processed in a timely manner.

b. Inadequate Documentation Related to $919,245 in LUSA Service Authorizations and Payments

We found additional documentation problems for $919,245 of the above $920,955 in accounts-payable-period LUSA payments to Advocates. These problems included ASF documentation deficiencies and missing or inadequate documentation of client service delivery. The lack of adequate documentation violated the previously quoted provisions of the Commonwealth Terms and Conditions for Human and Social Services, and as a result, there was insufficient evidence to show that these LUSA payments had been properly authorized and accounted for; that they were not duplicative or excessive; and that the contractor had actually provided the LUSA services billed.

Documentation inadequacies were identified for each year of the testing period, as follows:

Service Authorization and Documentation Deficiencies

	Fiscal Year 2009	Fiscal Year 2010	Fiscal Year 2011	Total
Major Documentation Deficiencies	$379,881	$301,884	$237,480	$919,245

ASF documentation was missing for $305,320 in payments. Even when ASF documentation was present, it was not always possible to determine when, or even whether, the service authorization process had been completed for individual clients. For example, an ASF might be present but might not identify individual clients to be served or the type of service to be provided.

Required documentation of actual service delivery was also absent or so ambiguous as to be questionable. Examples of the type of documentation that should be maintained include contemporaneously prepared daily program attendance sheets signed by employees present at the program site and time/service documentation records for one-on-one services to individual clients. However, Advocates typically retained only copies of invoices and Service Delivery Reports, which are monthly calendars listing individual clients and the days or hours for which they were being billed. Those documents are prepared by administrative support personnel who themselves lack the personal knowledge necessary to attest to the accuracy of the billing submissions, and the billing documents are therefore insufficient for compliance-assurance purposes. Advocates did not provide us with contemporaneously prepared service delivery documentation necessary to verify the accuracy of its invoices and service delivery reports. Advocates' documentation was characterized by missing daily program attendance sheets and missing employee- and client-specific documentation of billings for one-on-one supplemental staffing service time and activity. Documentation both in Advocates' year-end financial report filings with OSD[6] and in Advocates' records was not sufficient to adequately correlate to service delivery information, DDS LUSA payments, and service delivery costs to the organization's operational programs as needed to ensure that payments were outside the scope of regular DDS contracts and did not result in excessive or duplicative reimbursement. Because these deficiencies were so extensive, it was not possible to perform the analysis and testing required to reasonably estimate the extent to which the compensation DDS provided to Advocates was excessive.

However, analysis of fiscal year 2011 information for Advocates indicated that LUSA funding had been used to pay for services in at least six of Advocates' programs, five of which were also separately funded through regular non-LUSA DDS contracts. The five programs with regular

[6] Uniform Financial Statements and Independent Auditor's Reports, also known as UFRs.

DDS contracts had all generated excess revenue over expense ranging from 3.1% to 34.7%, and there was no evidence that LUSA funding had been used to expand program capacity. Instead, it appeared that the LUSA funding had been unnecessary and duplicative, resulting in higher operational surpluses than would otherwise have been generated. For the sixth program, LUSA funding appeared to have been improperly used for non-intermittent full-year services for a standalone program serving a single DDS client for the full fiscal year. $3,111 of the program's $160,790 total LUSA payments had been processed during that year's accounts-payable period. That program generated $40,522 excess revenue over expense, resulting in a 29.1% operational surplus for the program, which suggests that, in addition to being an improper use of LUSA funds, the LUSA payments for these non-intermittent services were unreasonably excessive. Any excessive compensation paid for these programs would be an overlapping subset of the presented totals associated with documentation deficiencies.

c. Inappropriate Use of LUSA Funds Totaling $29,590 to Pay for Personal Support Services and Inadequate Delivery Documentation for These Services

During our testing period, DDS used LUSA funding to pay Advocates $29,590 for transactions that should have been processed through non-LUSA contracts; this resulted in a variety of procurement, service utilization, and accounting problems. Specifically, we found that DDS used $29,590 in LUSA funding to make year-end reconciliation payments to Advocates for Personal Support Services (PSS) provided through regular residential contract programs. PSS covers preauthorized staffing hours needed to provide MassHealth- (Medicaid-) eligible DDS clients with instrumental activities of daily living (IADL) assistance that has been contracted for through regular DDS human-service-program contracts. Because authorized service levels are routinely underutilized, only approximately 88% of the authorized PSS reimbursement is incorporated into each contractor's regular program contract. As a matter of administrative processing convenience, DDS has used LUSA payments for the purpose of making supplemental year-end reconciliation payments to contractors for any amounts determined to be owed where actual utilization is claimed to exceed 88%. Those payments were made through LUSAs even though the terms of LUSA agreements do not provide for the reconciliation process. DDS policies governing the use of LUSAs and DDS policy and contract language instead provides for the use of amendments to regular DDS contracts to address such situations. DDS should have processed the payments to Advocates through other, non-LUSA, means such as year-end amendments to Advocates' regular non-LUSA contracts. The table below breaks out the above-mentioned transactions with Advocates by fiscal year.

Inappropriate LUSA PSS Transactions

	Fiscal Year 2009	Fiscal Year 2010	Fiscal Year 2011	Total
Personal Support Services	$15,967	$10,093	$3,530	$29,590

In addition to the inappropriate DDS use of LUSA payment mechanisms, other issues, which were the responsibility of Advocates, existed for all of these transactions, including major service delivery documentation deficiencies in violation of the previously quoted contracting terms and conditions. Service-specific detailed timesheets are needed to document that PSS, provided on a supplemental one-on-one employee-to-client basis, have actually been delivered. However, the required documentation was absent for these transactions.

Recommendations

OSA's overall audit report on DDS's administration of LUSA contracts recommended that responsible oversight agencies, including OSD and the Office of the State Comptroller, review the issues detailed in the report and take whatever actions they deem appropriate to address those issues, including strengthening their oversight over these DDS transactions. The payments to Advocates are covered by that recommendation. In accordance with the recommendations of the overall report and the testing results specific to Advocates, Advocates should implement appropriate control measures to ensure that all LUSA services are performed, documented, billed, and accounted for in compliance with applicable requirements.

Advocates' Response

In response to the issues raised in this report, Advocates provided the following comments:

> *As a provider of services and supports to individuals with disabilities, we are entrusted with the health and security of these individuals. In that role our primary concern is acting promptly to address any needs that may arise. Often action must be taken before the source of reimbursement, if any, for extraordinary situations is clear. DDS is often unable to say, at the time a need arises, how much funding, if any, will be available. We assume the risk that we may only be reimbursed much later, or not at all, for the cost of additional services we must provide. We always put the welfare of the clients we support first.*

In each and every instance where we submitted billing through LUSA's, the amounts billed were for additional services provided to clients we supported, outside the scope of any other contract we may have had to support those clients. The billings reimbursed us for additional expenses not otherwise reimbursed by the Department of Developmental Services. None of the payments we received were duplicative.

We now understand that LUSA's were not the preferred vehicle for reimbursing many of the costs for which they were used, and that the mechanics of their use is more complicated and time sensitive than we previously believed. At the time it was the funding solution offered to us, and we followed the process asked of us. We provided all requested documents at the time we submitted the bills. We have modified our practices and procedures to fully comply with the more stringent rules going forward, and we appreciate the additional guidance.

Regarding your comments . . . about the nature of documentation supporting the delivery of services, there are a variety of ways Advocates maintains contemporaneous documentation, and we understand and appreciate its importance. Program shift notes, attendance sheets, and other clinical records all support the delivery of services. Even the service delivery reports, which are prepared by administrative support staff, are compiled from information submitted to our Fiscal office by staff in the program sites who deliver the services. We again affirm that all services for which we billed were delivered by us as reflected in the bills.

With respect to the assertion that LUSA payments we received were unreasonably excessive . . . we respectfully disagree. The surpluses Advocates shows on individual programs in our UFR cannot be looked at in a vacuum to come to such a conclusion. The governing OSD regulations consider the overall surplus of all EOHHS funded programs when applying the 5% maximum annual surplus standard. In all years that were part of this audit our surplus was less than the 5% OSD allows.