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

Official Audit Report – July 17, 2013

Fidelity House 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. 2012-0234-3C) on 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 Fidelity House Inc. (Fidelity), for on-site testing. Fidelity received approximately $880,595 of the above-stated $62.2 million in total DDS LUSA payments. Approximately $601,067 (68.3%) of the payments to Fidelity 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 Fidelity's 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.

Highlight of Testing Results Specific to Fidelity House, Inc.

We found problems with all $601,067 of Fidelity's 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:

- Fidelity did not maintain adequate documentation to substantiate that $201,469 of the LUSA payments it received during our testing period were properly authorized as required by DDS procedures. Documentation was also not sufficient to verify that payments were not duplicative or excessive and that the contractor had actually provided the LUSA services billed.

- Contrary to DDS contract requirements and state capital item purchasing policy restrictions, DDS and Fidelity improperly used $381,924 in LUSA funding during our testing period to purchase capital and other non-service items such as furniture and equipment rather than for LUSA-related services.

- DDS improperly made additional LUSA payments totaling $17,674 to Fidelity 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 $9,294 of the PSS, service delivery documentation by Fidelity was also inadequate.

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 Fidelity are covered by that recommendation. In accordance with the recommendations of the overall report and the testing results specific to Fidelity, Fidelity 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

Fidelity House, Inc. (Fidelity), whose administrative offices are located at One Parker Street, Lawrence, Massachusetts, was organized on May 14, 1971 as a private, nonprofit human-services organization providing services to individuals with developmental disabilities, and their families, in the Merrimack Valley. According to its publications, Fidelity annually provides residential and support services to over 600 individuals, with a mission to "assist people with developmental disabilities to participate with friends, families and neighbors in the life of their community and achieve the richest and fullest life possible." Fidelity's services include home- and community-based children and family services, case management and support services, residential services, recreational services, and specialized medical services to the Latino community.

Fidelity annually receives over $9.9 million in contract payments from DDS. Revenues and support from other state agencies and public and private sources raise total revenues for Fidelity and its affiliated entities to approximately $11.1 million per year. DDS's Limited Unit Rate Service Agreement (LUSA) contract payments to Fidelity, 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	$ 176,485	$ 62,833	35.6%
2010	606,995	441,119	72.7%
2011	97,115	97,115	100.0%
	$ 880,595	$ 601,067	68.3%

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.[2] 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. Fidelity House, Inc. (Fidelity) was one of the 15 contractors selected for on-site testing as part of the overall DDS audit. Fidelity accounted for approximately $880,595 in LUSA payments for the three-fiscal-year period. Approximately $601,067 of Fidelity's LUSA payments was processed during the Commonwealth's accounts-payable periods.

The procedures completed at Fidelity 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.

[2] 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 produced evidence that certain data involving the classification of DDS LUSA expenditures did not reliably represent the actual underlying 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 Fidelity 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 Fidelity managers to discuss testing results pertaining to Fidelity. We also solicited Fidelity information and input regarding DDS system-wide LUSA issues for use in the overall LUSA audit project.

TESTING RESULTS

1. QUESTIONABLE USE OF $601,067 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 Fidelity House, Inc. (Fidelity). These included inadequate documentation to substantiate that $201,469 of LUSA services were properly authorized; inadequate documentation to substantiate this same $201,469 in LUSA billings; DDS improperly using $381,924 of LUSA funding to pay Fidelity for capital assets and other non-service items; and DDS improperly using $17,674 of LUSA funding to pay Fidelity 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 $601,067.

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 Fidelity 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.[3]

[3] 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 ASFs 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 underlying 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:[4]

> *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 Fidelity-related issues identified as part of testing procedures performed.

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

a. Inadequate Documentation Related to $201,469 in LUSA Service Authorizations and Payments

Despite the above-described ASF processing requirement established by DDS, we found that for $201,469 in accounts-payable-period LUSA payments to Fidelity that were subject to service authorization requirements, Fidelity had not maintained the authorization documentation necessary to determine whether authorization requests had been processed and approved before service delivery. As a result, we could not obtain assurance that these payments and services were properly authorized. Fidelity managers stated that the reason documentation was missing was that DDS had never provided it to them.

We found additional documentation problems for these LUSA payments. These problems involved 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 Documentation Deficiencies

	Fiscal Year 2009	Fiscal Year 2010	Fiscal Year 2011	Total
Major Documentation Deficiencies	$22,810	$86,014	$92,645	$201,469

Required underlying documentation of actual service delivery was 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, Fidelity 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. Fidelity did not provide us with contemporaneously prepared service delivery documentation necessary to verify the accuracy of its invoices and service delivery reports for testing. The limited documentation that was provided typically consisted of summary staffing schedule reports that usually identified only position titles rather than employee names and did not correlate to individually identified clients or the programs in which clients were served.

Documentation both in Fidelity's year-end financial report filings with OSD[5] and in Fidelity's 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 Fidelity was excessive.

b. Improper Transactions, Totaling $381,924, for Capital Asset and Other Non-Service-Item Reimbursements

LUSA agreements are supposed to be used to provide direct services to clients, rather than to directly reimburse contractors for capital items such as vehicles or other non-service items such as employee overtime costs. Pursuant to rules and regulations established by OSD and the Office of the State Comptroller (OSC), contractors providing human services to state agencies are, with limited exceptions, reimbursed only for providing units of service such as a day of residential service programing to a client. However, contractors often require the use of capital assets such as property and equipment to provide these services. Such items are typically treated as capital-asset items, and contractors are allowed to charge the costs of the capital items they purchase over their useful life against their state contracts. OSD has also established a Capital Item Procurement Policy that, under special circumstances, allows DDS and other state agencies either to lend state-owned assets to contractors for program use or to reimburse contractors for the preapproved purchase of certain capital items. Those special arrangements are carefully restricted to protect the Commonwealth's ownership interest in the assets and, in addition to requiring preapproval, require that purchased items be competitively procured and that purchases be limited to movable assets such as vehicles, appliances, and furniture rather than

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

fixed assets such as buildings, heating systems, or other property improvements such as driveway paving. State capital-item reimbursements must also be separately accounted for through special contracting forms promulgated by OSD and be recorded in the state accounting system using special expenditure classification codes different from the ones established by OSC for use in purchasing human-service program and support services. Regardless of whether a particular non-service item is a capital item or another form of non-service activity such as non-capitalized small-value items, none of these non-service items should be purchased through the LUSA contracting mechanism, since the purchase of these items would not be consistent with the specified purpose of LUSA funding.

Despite these restrictions, we found that DDS and Fidelity improperly used $381,924 in LUSA funding during our testing period to purchase capital and other non-service items rather than for LUSA-related services, as detailed in the table below:

Payments for Capital and Other Non-Service Items

	FY 2009	FY 2010	Total
Capital Items			
FY 2009: Capital items consisted of curtains and accessories. FY 2010: Capital items consisted of vehicle expenses, installation of generators and gas pipes, furniture, household appliances with installation charges, computers, and lift service repairs.	$ 6,858	$ 114,426	$ 121,284
Other Non-Service Items			
FY 2009: Non-service items consisted of household appliances and other items, miscellaneous freight, service repairs, and miscellaneous household goods.			
FY 2010: Non-service items consisted of household appliances and other items, equipment, medical equipment, client meals, client hotel charges, staff mileage reimbursements, miscellaneous freight/shipping charges, and other unknown expenses.	33,165	227,475	260,640
Total Capital and Other Non-Service Payments	$ 40,023	$ 341,901	$ 381,924

c. Inappropriate Use of $17,674 in LUSA Funding to Pay for Personal Support Services and Inadequate Service Delivery Documentation for $9,294 of Those Transactions

During our testing period, DDS used LUSA funding to pay Fidelity $17,674 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 $17,674 in LUSA funding to make year-end reconciliation payments to Fidelity for Personal Support Services (PSS) provided through regular residential contract programs. PSS cover 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 provide for the use of amendments to regular DDS contracts to address such situations. DDS should have processed the payments to Fidelity through other, non-LUSA, means such as year-end amendments to Fidelity's regular non-LUSA contracts. The table below breaks out these transactions with Fidelity by fiscal year.

Inappropriate LUSA PSS Transactions

	Fiscal Year 2009	Fiscal Year 2010	Fiscal Year 2011	Total
Personal Support Services	$0	$13,203	$4,471	$17,674

In addition to the inappropriate DDS use of LUSA payment mechanisms, other issues, which were the responsibility of Fidelity, existed for some of these transactions, including major service delivery documentation deficiencies in violation of the previously quoted contracting terms and conditions. These included inadequate underlying documentation (e.g., an absence of service-specific detailed timesheets) that PSS provided on a supplemental one-on-one employee-to-client basis had actually been delivered. Although adequate underlying documentation was available for $8,380 of the PSS transactions, we found that documentation for $9,294 was inadequate.

Recommendations

OSA's overall audit report on DDS's administration of LUSA contracts recommended that responsible oversight agencies, including OSD and OSC, 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 Fidelity are covered by that recommendation. In accordance with the recommendations of the overall report and the testing results specific to Fidelity, Fidelity should implement appropriate control measures to ensure that all LUSA services are performed, documented, billed, and accounted for in compliance with applicable requirements.

Fidelity's Response

Fidelity maintained all of the documentation that was required by the DDS regional contracting office for all of the LUSA transactions that it engaged in above, and provided all of the billing and backup documentation that was asked for regarding these transactions. Fidelity provided all of the services that were billed for—and only as delivered and necessary, following DDS procedures in effect at that time.

Fidelity acknowledges that it followed certain DDS contracting and billing mechanisms without the proper understanding that they were sometimes in violation of LUSA guidelines.

1. *At the time of the billing and contracting period covered by the audit, Fidelity was not receiving [ASF] forms from DDS to authorize services. Fidelity now requests and receives [ASF] forms from DDS within the required timelines.*

2. *The use of the LUSA funding mechanism for the purchase of capital items or other non-service items was not Fidelity's decision, but followed DDS practice in place at the time. Going forward, LUSA payments will only be utilized for the purposes allowed under state guidelines.*

3. *The DDS year-end reconciliation payments involving Personal Support Services (PSS) are now made through amendments to regular program contracts, and Fidelity has followed the new procedure.*

4. *Fidelity was not made aware during the onsite audit of any inadequacies in service delivery documentation. However, Fidelity is concerned that there were some weaknesses identified in this report, and has taken steps to strengthen the internal controls on the "time/service documentation records" of employees when providing one-to-one services to individual clients, which form the basis for the "contemporaneously prepared service delivery documentation necessary to verify the accuracy of its invoices and service delivery reports."*

Subsequent to the audit, Fidelity has reviewed the DDS POS Manual regarding LUSA contracts; it has received additional clarification and guidance from the 1/20/12 DDS Memorandum, "Requirements Pertaining to the use of Master Agreements/Limited Unit Service Agreements (LUSA)"; and on 4/23/12 the contracting staff attended a DDS re-contracting workshop with extensive training on the correct use of LUSA's, and the need for [ASF] forms, and the current OSD Capital Items Procurement policy and use of the Capital Budget form.

As a result, Fidelity believes that it has implemented acceptable and appropriate control measures to ensure that all LUSA services are now performed, documented, and accounted for in strict compliance with the applicable requirements.

Finally, Fidelity House generated a very modest overall UFR surplus (adjusted for capital budget items) of .93%, 1.41%, and .45% from all state funded program operations during the years in question—far below the 5% limitation contained in the 808 CMR 1.03 (7) Division of Purchase statutes. We do not know of any instances of "excessive compensation" paid to Fidelity during the time period covered by the audit.