



The Commonwealth of Massachusetts
Office of the Inspector General

GREGORY W. SULLIVAN
INSPECTOR GENERAL

JOHN W. MCCORMACK
STATE OFFICE BUILDING
ONE ASHBURTON PLACE
ROOM 1311
BOSTON, MA 02108
TEL: (617) 727-8140
FAX: (617) 723-2334

March 1, 2007

Marianne Meacham, Esq.
General Counsel
Department of Mental Retardation
500 Harrison Avenue
Boston, MA 02118

Dear Ms. Meacham:

I am in receipt of your letter responding to my inquiry about potential cost recovery against the Judge Rotenberg Center (JRC) in Canton. My inquiry stemmed from an investigation by the Division of Professional Licensure (the Division) that concluded that unlicensed clinicians had been referring to themselves as psychologists. This violates state law. Your letter indicates that you have not reviewed the Division's findings. Kathe Mullalley, General Counsel for the Division will be happy to provide you with information about the investigation and the 14 consent agreements between JRC and the Division. Please contact her directly for this information.

My review of this information suggests that the Department of Mental Retardation (the Department) can initiate cost recovery action against JRC. I strongly recommend that the Department review the potential for recovery and work with other state agencies¹ with JRC contracts to ensure that the state recoup any money the taxpayers may be entitled to.

The state and the Department in particular have had a series of contracts with JRC since the 1980's. The most recent Department contracts reimburse JRC for services using unit rates of between \$322.00 and \$550.00 per day for each client. These unit rates are among the highest for human service providers with state contracts.

The provision of psychological services is included in this unit rate reimbursement. The state may be entitled to a refund from JRC if the provided services did not meet contractual and/or regulatory requirements. I believe that the Division's recent findings provide grounds for cost recovery. For example:

¹ Department of Mental Health, Massachusetts Rehabilitation Commission

- 1) Even if Department contracts do not specify the use of licensed psychologists, incorporated by reference in the contract is the departmental regulation 115 CMR 7.06 "Standards for all Services and Supports" that states: "All providers arranging or providing professional services or consultation shall ensure that such professionals are licensed, certified, or registered if such is required by law for persons who provide such professional services to the general public."
- 2) JRC's response to the Department's Request for Proposals (RFP) cited the use of "psychologists" to provide services to clients. Under M.G.L. c.112, you may not use the term psychologist in any form unless you are licensed with the state Board of Registration in Psychology. JRC may have misrepresented the level of service provision in its response.
- 3) JRC budget information contained in its contracts and also submitted annually in its Uniform Financial Report (UFR) to the state used a budget code for "Psychologist-Doctorate" (as you referenced in your letter) that is defined in budget documents as a "licensed" position.
- 4) Your letter stated that Department regulations have "some specified requirements relative to psychologists" that pertain to the behavioral modification treatments offered by JRC. By using the term psychologists, Department regulations require a licensed individual.
- 5) Individual Service Plans (ISP) and/or Individual Education Plans (IEP) for clients served by JRC may specify the use of psychologists and/or psychological services. The Department should review these ISPs.
- 6) As a result of the Division's findings, JRC has stopped using the budget code for "Psychologist-Doctorate." JRC now uses the code for "clinician." However, reimbursement rates have not changed. The Department should work with the Operational Services Division to ensure the proper reimbursement.

This office reviewed JRC's annual financial filings with the state since 2002. During this five-year period, JRC budgeted and received payment from the state for nearly \$2.1 million for the position of "Psychologist-Doctorate." According to psychologists this office has spoken with, reimbursement rates differ significantly between licensed psychologists and unlicensed clinicians with knowledge of and/or a degree in psychology.

A review of budgets and reimbursement rates for all providers that have submitted financial reports to the state between 2002 and 2006 indicates an approximately 24 percent difference in hourly rate reimbursement between licensed and unlicensed providers. As mentioned, although JRC has altered its budget and cost

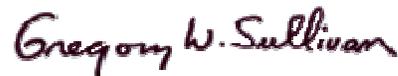
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coding for its filings with the state as a result of the licensure investigation, the reimbursement rate it charges has remained the same. My staff estimates a possible overcharge by JRC of almost \$400,000 on all state contracts since 2002. The Department's share of this overcharge would be significant based on the value of the Department's contract with JRC.

This estimate does not include the approximately 20 Massachusetts school districts that have students placed at JRC. These districts may be entitled to reimbursement as well. Based on financial reports filed with the state by JRC, the school districts in total, may be entitled to an amount equal or greater than the possible \$400,000 overcharge to the state or approximately \$13,000 per enrolled student.

I would appreciate your immediate review of this matter. If you require additional information from my office, please contact Neil Cohen, Deputy Inspector General at (617) 722-8819. Thank you for attention to this matter.

Sincerely,



Gregory W. Sullivan
Inspector General

cc: Secretary JudyAnn Bigby, M.D.
Commissioner Gerald Morrissey
Kathe Mullaney Esq., Division of Professional Licensure
Ellen Bickelman, State Purchasing Agent