COUNTY OF LOS ANGELES
DEPARTMENT OF AUDITOR-CONTROLLER

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JOHN NAIMO
ACTING AUDITOR-CONTROLLER

July 30, 2014

TO: Supervisor Don Knabe, Chairman
Supervisor Gloria Molina
Supervisor Mark Ridley-Thomas
Supervisor Zev Yaroslavsky
Supervisor Michael D. Antonovich

FROM: John Naimo
Acting Auditor-Controller

SUBJECT: **AIDS HEALTHCARE FOUNDATION – A DEPARTMENT OF PUBLIC HEALTH DIVISION OF HIV AND STD PROGRAMS PROVIDER – CONTRACT COMPLIANCE REVIEW**

We completed a contract compliance review of AIDS Healthcare Foundation (AHF or Agency), which included a sample of transactions from Contract Years (CY) 2011-12 and 2012-13. The Department of Public Health (DPH) Division of HIV and STD Programs (DHSP) contracts with AHF to provide Ryan White Comprehensive AIDS Resources Emergency Act (Ryan White) services such as medical outpatient, medical sub-specialty, mental health, HIV counseling and testing, and early intervention.

The purpose of our review was to determine whether AHF provided the services outlined in their County contracts and appropriately spent DHSP program funds. We also evaluated the adequacy of the Agency's financial records, financial controls, and compliance with their contracts and other applicable guidelines.

Our review covered seven DHSP contracts with AHF, for which DHSP paid AHF approximately $19.2 million on a cost-reimbursement basis during CYs 2011-12 and 2012-13. AHF provides services to clients residing in all Supervisorial Districts.

Results of Review

AHF recorded and deposited DHSP payments timely, and maintained personnel files as required. However, the Agency did not maintain a Cost Allocation Plan in compliance with their contracts, and did not separately track most expenditures related to the

Medical Outpatient contract. As a result, AHF charged DHSP $3,539,208 for expenditures that should have been allocated for non-Ryan White-responsible client services. AHF also did not always maintain documentation to support other DHSP program expenditures resulting in questioned costs totaling $321,241. The following is a summary of our audit findings:

- AHF did not allocate costs appropriately for the Medical Outpatient contract. Specifically, the Agency billed up to their contract maximum amount on their contract budget for some expenditures, instead of allocating the expenditures using an equitable and supported cost allocation methodology. After our fieldwork, AHF provided an alternative allocation methodology which was also unsupported and not in compliance with the County contract. Based on the percentage of Ryan White-responsible client visits to total AHF client visits, AHF overbilled DHSP by $1,623,264 in CY 2011-12 and $1,915,944 in CY 2012-13. We noted a similar finding in our prior monitoring review.

  AHF's attached response indicates that they have filed a lawsuit challenging the findings noted during our review. In addition, the Agency's response implies that the County has recently changed its view regarding AHF's original allocation of costs. However, DHSP's financial evaluation reports dated August 24, 2006, and our prior monitoring report dated August 16, 2012, confirm the County continues to be in disagreement with AHF's cost allocation methodology.

- AHF billed DHSP $290,168 on their Cost Reports for costs that were not supported by their financial records. We noted a similar finding in our prior monitoring review.

  After our review, AHF provided additional documentation to support $61,493 in questioned costs. The Agency's response indicates that they dispute the remaining $228,675 ($290,168 - $61,493) because they provided documentation, such as meeting agendas, to support that the employees worked on the DHSP contracts. However, the documentation provided was conflicting and did not adequately support the questioned costs.

- AHF billed DHSP $31,073 in unsupported or unallowable expenditures.

  After our review, AHF provided additional documentation to support $12,201, and their response indicates that they will repay the remaining $18,872 ($31,073 - $12,201) in questioned costs.

- AHF did not complete their bank reconciliations timely.

  AHF's response indicates that the Agency transitioned their accounting system in 2013, and will timely complete bank reconciliations going forward.

- AHF did not obtain DHSP approval for their client fee schedule as required by the County contract.

  AHF's response indicates that they dispute the finding, but they will seek formal approval as instructed.

Exhibits 1 and 2 summarize the questioned costs noted during our review. Based on the significant issues identified during this and our prior monitoring review, we recommend that DPH place AHF in the County's Contractor Alert Reporting Database.

Details of our review, along with recommendations for corrective action, are attached.

Review of Report

We discussed the details of our findings with AHF management on August 21, 2013, September 10, 2013, April 17, 2014, and June 25, 2014. We also discussed our report with DHSP. AHF's attached response indicates that they disagree with some of our findings and recommendations.

We thank AHF management and staff for their cooperation and assistance during our review. Please call me if you have any questions, or your staff may contact Don Chadwick at (213) 253-0301.

JN:AB:DC:EB:ku

Attachments

c: William T Fujioka, Chief Executive Officer
Jonathan E. Fielding, M.D., M.P.H., Director, Department of Public Health
Rodney L. Wright, M.D., Board Chair, AIDS Healthcare Foundation
Michael Weinstein, President, AIDS Healthcare Foundation
Public Information Office
Audit Committee

AIDS HEALTHCARE FOUNDATION
DIVISION OF HIV AND STD PROGRAMS
CONTRACT COMPLIANCE REVIEW
CONTRACT YEARS 2011-12 AND 2012-13

CASH/REVENUE

Objective

Determine whether AIDS Healthcare Foundation (AHF or Agency) recorded revenue in their financial records properly, deposited cash receipts into their bank accounts timely, and that bank account reconciliations were reviewed and approved by Agency management appropriately and timely. In addition, determine whether AHF's client fee schedule was in compliance with Ryan White Comprehensive AIDS Resources Emergency Act (Ryan White) requirements and approved by the Department of Public Health (DPH) Division of HIV and STD Programs (DHSP).

Verification

We interviewed AHF management, and reviewed their financial records and December 2012 bank reconciliations.

Results

AHF recorded revenue in their financial records properly and deposited DHSP payments timely. However, the Agency did not reconcile their bank accounts timely. As of September 2013, the most recent completed bank reconciliations were from December 2012. After our review, AHF provided more recent bank reconciliations that were also not completed timely. Specifically, their December 2013 bank reconciliations were completed in April 2014.

In addition, AHF did not obtain approval from DHSP for their client fee schedule as required by Paragraph 48 of the Additional Provisions section of their County contract.

Recommendations

AIDS Healthcare Foundation management:

1. **Ensure that bank reconciliations are completed timely.**

2. **Obtain approval from the Division of HIV and STD Programs for their client fee schedule, as required by their County contract.**

EXPENDITURES

Objective

Determine whether AHF's Cost Allocation Plan (Plan) complied with their County contract, and if expenditures charged to DHSP were allowable, documented properly, and billed accurately for Contract Years (CY) 2011-12 and 2012-13.

Verification

We interviewed Agency personnel, and reviewed two Plans prepared by the Agency. We also reviewed financial records provided by AHF, including 26 non-payroll expenditures, totaling $111,758, that the Agency charged to DHSP from March 2011 to March 2013.

Results

The Agency did not maintain a Plan in compliance with their contracts, and did not separately track most expenditures related to the Medical Outpatient contract. A Plan is critical because AHF provides services that are billable to other funding sources. Paragraph 6 of the County contract indicates that DHSP should not be billed for items or services covered by other funding sources.

During our review, the Agency provided a Plan that described AHF's practice of billing DHSP up to the budgeted amounts of most approved costs, which is not in compliance with their County contract. Paragraph 9 of the County contract's Additional Provisions indicates that financial records should be supported by actual data such as reports, studies, and statistical surveys. As a result of not following County contract requirements, AHF charged DHSP for program expenditures that should have been allocated to funding sources for non-Ryan White client services.

After the completion of our fieldwork, AHF provided an Alternative Plan. The Alternative Plan was also not in compliance with their County contract. For example, the Alternative Plan indicates that payroll allocation percentages are based on the Agency's history and staff interviews. However, Attachment B, Paragraph 8 of Office of Management and Budget Circular A-122 states that "the distribution of salaries and wages to awards must be supported by personnel activity reports." In addition, the Alternative Plan does not address allocation methodologies between programs, and does not state how often costs will be allocated.

Subsequent to our review, AHF provided a Time and Motion Study (Study) to support the payroll allocation percentages used in their Alternative Plan. However, the Study was not sufficient to support the payroll allocation percentages. For example, the Study only covered a period of three days to support 22 months of personnel time, and was not specific as to the actual time calculations observed.

Given the unallowable and/or unsupported nature of the allocation methodologies proposed by AHF, as an alternative, we reviewed AHF's client medical outpatient visits to calculate the amount that AHF overbilled DHSP. From March 1, 2011 to February 29, 2012 (CY 2011-12) DHSP was the primary payer for 58.5% of AHF client visits, and from March 1, 2012 to December 31, 2012 (CY 2012-13) DHSP was the primary payer for 57% of AHF client visits. We then applied the percentage of Ryan White-responsible client visits to each of AHF's reported costs to determine the level of DHSP-responsible funding. As indicated in Exhibit 1, based on the calculated percentage of Ryan White-responsible client visits, AHF billed DHSP $1,623,264 for costs that should have been allocated to non-Ryan White funding sources for CY 2011-12, and $1,915,944 for CY 2012-13. We noted a similar finding in our prior monitoring review.

We also noted that AHF did not provide adequate documentation to support $31,073 (28%) in expenditures of the $111,758 reviewed. For example, documentation to support the percentage of rent allocated between their medical outpatient clinic and their pharmacy was not provided, and the Agency billed for unallowable telephone costs. Exhibit 2 lists the unsupported costs by contract.

After our review, AHF provided additional documentation to support $12,201 in questioned costs. Some of the additional documentation supported rent allocation percentages. However, the rent allocation percentages actually used did not reconcile to the supported percentages, resulting in only a portion of the rent expenditures being allowable. AHF should ensure that allocation percentages used reconcile to the percentages supported by documentation.

Based on the significant issues identified during this and our prior monitoring review, we recommend that DPH place AHF in the County's Contractor Alert Reporting Database.

Recommendations

AIDS Healthcare Foundation management:

3. **Repay the Division of HIV and STD Programs $3,558,080 ($1,623,264 + $1,915,944 + $31,073 - $12,201).**

4. **Develop a Cost Allocation Plan that specifies how costs will be allocated using equitable methodologies that comply with the County contract and applicable federal requirements.**

5. **Ensure that expenditures are allocated appropriately.**

6. **Maintain adequate documentation to support expenditures and allocations.**

7. **Ensure that billed expenditures are allowable.**

8. **Ensure that allocation percentages used reconcile to the percentages supported by documentation.**

Department of Public Health:

9. **Place AIDS Healthcare Foundation in the County's Contractor Alert Reporting Database.**

FIXED ASSETS AND EQUIPMENT

Objective

Determine whether the Agency's fixed assets and equipment purchased with DHSP funds were used for the program, and adequately safeguarded.

We did not perform test work in this section as AHF did not use DHSP funds to purchase fixed assets or equipment.

PAYROLL AND PERSONNEL

Objective

Determine whether AHF appropriately charged payroll costs to DHSP, and maintained personnel files as required.

Verification

We compared the payroll costs for 20 AHF employees, totaling $92,790 for December 2012, to the Agency's payroll records and time reports. We also interviewed staff, and reviewed personnel files for the same 20 staff.

Results

AHF appropriately maintained the personnel files as required. However, as indicated in the Expenditures section, the Agency did not allocate expenditures appropriately, which included payroll costs. In addition, payroll costs billed to DHSP for one employee sampled were not supported by AHF's financial records. The questioned costs for this employee are included with the unsupported costs in the Cost Reports section. After our review, the Agency provided documentation to support that the employee worked on the Medical Sub-Specialty contract.

Recommendation

Refer to Recommendations 5 and 6.

COST REPORTS

Objective

Determine whether AHF's CY 2009-10, CY 2010-11, CY 2011-12, and CY 2012-13 Cost Reports reconciled to their financial records.

Verification

We compared the Agency's CY 2009-10, CY 2010-11, CY 2011-12, and CY 2012-13 Cost Reports to their financial records.

Results

AHF's CY 2010-11, CY 2011-12, and CY 2012-13 Cost Reports did not reconcile to their financial records. Specifically, expenditures reported in AHF's Cost Reports for the Medical Outpatient, Medical Case Management, and Medical Sub-Specialty contracts included $290,168 in costs that were not supported by their financial records. Exhibit 2 lists the unsupported costs by contract. We noted a similar finding in our prior monitoring review. After our review, the Agency provided additional documentation that supported two employees' payroll costs billed, totaling $61,493.

Recommendations

AIDS Healthcare Foundation management:

10. **Repay the Division of HIV and STD Programs $228,675 ($290,168 - $61,493).**

11. **Ensure that Cost Reports reconcile to the accounting records.**

AIDS HEALTHCARE FOUNDATION

Medical Outpatient Services
H209006 Sch 311
March 1, 2011 - February 29, 2012 (Contract Year 2011-12)

Expenditure Item	Budget	General Ledger	Costs for DHSP Clients	Amount Paid	Overpayment/ Unallowable Costs	
Salaries & Employee Benefits						
Office Administrators	$ 171,608	$ 220,805	$ 129,171	$ 171,608	$ 42,437	
Front Office Clerk	$ 282,797	$ 262,210	$ 153,393	$ 282,797	$ 129,404	
Physician Specialist	$ 1,005,107	$ 1,230,632	$ 719,920	$ 1,005,107	$ 285,187	
Referral Coordinator	$ 96,928	$ 68,764	$ 40,227	$ 96,928	$ 56,701	
Benefits Counselor	$ 182,370	$ 214,456	$ 125,457	$ 182,370	$ 56,913	
LVN	$ 94,838	$ 125,702	$ 73,536	$ 94,838	$ 21,302	
Medical Assistant	$ 415,025	$ 402,871	$ 235,679	$ 412,238	$ 176,559	
PA/NP	$ 352,718	$ 460,815	$ 269,577	$ 352,718	$ 83,141	
Registered Nurse	$ 253,474	$ 332,150	$ 194,308	$ 253,474	$ 59,166	
Part-Time Physician Specialist	$ 300,845	$ 380,458	$ 222,568	$ 300,845	$ 78,277	
Part-Time Nurse Practitioner	$ 64,438	$ 140,599	$ 82,250	$ 64,438	$ -	
Part-Time Physician Assistant	$ 69,751	$ 76,335	$ 44,656	$ 69,751	$ 25,095	
Employee Benefits	$ 620,365	$ 683,223	$ 399,685	$ 620,365	$ 220,680	
Operating Expenditures						
Medical Supplies	$ 71,001	$ 101,011	$ 59,092	$ 71,001	$ 11,909	
Pharmacy	$ 500,000	$ 440,588	$ 440,588	$ 441,788	$ 1,200	(1)
Equipment Rental	$ 61,752	$ 65,628	$ 38,392	$ 61,752	$ 23,360	
Insurance - Liability	$ 98,000	$ 158,553	$ 92,754	$ 98,000	$ 5,246	
Insurance - Malpractice	$ 67,846	$ 78,591	$ 45,976	$ 67,846	$ 21,870	
Rent	$ 881,000	$ 983,173	$ 575,156	$ 881,000	$ 305,844	
Telephone	$ 82,000	$ 105,689	$ 61,828	$ 82,000	$ 20,172	
Consultant and Contractual Services						
Laboratory	$ 1,179,295	$ 1,425,736	$ 1,425,736	$ 1,179,294	$ -	
Radiology	$ 160,000	$ 168,997	$ 168,997	$ 160,000	$ -	
Totals	$ 7,011,158	$ 8,126,987	$ 5,598,946	$ 6,950,158	$ 1,623,264	

Note:
(1) Pharmacy costs are questioned in the Cost Reports section of the report, and are excluded here. Refer to Exhibit 2.

AIDS HEALTHCARE FOUNDATION

Medical Outpatient Services
H209006 Sch 319
March 1, 2012 - December 31, 2012 (Contract Year 2012-13)

Expenditure Item	Budget	General Ledger	Costs for DHSP Clients	Amount Paid	Overpayment/ Unallowable Costs
Salaries & Employee Benefits					
Office Administrator	$ 171,608	$ 175,998	$ 100,319	$ 171,608	$ 71,289
Front Office Clerk	$ 282,797	$ 275,565	$ 157,072	$ 264,466	$ 107,394
Physician Specialist	$ 1,073,689	$ 1,098,149	$ 625,945	$ 1,028,788	$ 402,843
Referral Coordinator	$ 49,928	$ 48,912	$ 27,880	$ 48,912	$ 21,032
Benefits Counselor	$ 169,370	$ 222,371	$ 126,752	$ 169,370	$ 42,618
LVN	$ 130,838	$ 157,202	$ 89,605	$ 130,838	$ 41,233
Medical Assistant	$ 402,355	$ 350,143	$ 199,581	$ 350,143	$ 150,562
PA/NP	$ 233,636	$ 323,364	$ 184,317	$ 233,636	$ 49,319
Registered Nurse	$ 187,473	$ 209,865	$ 119,623	$ 187,473	$ 67,850
Part-Time Physician Specialist	$ 320,845	$ 361,254	$ 205,915	$ 320,845	$ 114,930
Part-Time Nurse Practitioner	$ 69,438	$ 58,528	$ 33,361	$ 58,528	$ 25,167
Part-Time Physician Assistant	$ 69,751	$ 67,149	$ 38,275	$ 67,149	$ 28,874
Employee Benefits	$ 591,522	$ 560,944	$ 319,738	$ 566,605	$ 246,867
Operating Expenditures					
Medical Supplies	$ 60,000	$ 52,505	$ 29,928	$ 52,505	$ 22,577
Pharmacy	$ 413,980	$ 376,184	$ 376,184	$ 376,184	$ -
Equipment Rental	$ 40,752	$ 53,221	$ 30,336	$ 40,752	$ 10,416
Insurance - Liability	$ 84,000	$ 1,415	$ 806	$ 84,000	$ 83,194
Insurance - Malpractice	$ 62,846	$ 67,802	$ 38,647	$ 62,846	$ 24,199
Rent	$ 834,978	$ 955,705	$ 544,752	$ 834,978	$ 290,226
Telephone	$ 113,000	$ 83,500	$ 47,595	$ 113,000	$ 65,405
Consultant and Contractual Services					
Laboratory	$ 1,178,414	$ 1,169,093	$ 1,169,093	$ 1,108,193	$ -
Radiology	$ 160,000	$ 124,610	$ 124,610	$ 124,610	$ -
Outside Contractor - Registry Nurses	$ 144,000	$ 114,773	$ 65,421	$ 114,168	$ 48,747
Outside Contractor - Physician Consultant	$ 148,568	$ 427,319	$ 243,572	$ 148,568	$ -
Outside Contractor - Referral Coordinator	$ 7,000	$ 10,175	$ 5,799	$ 7,000	$ 1,201
Totals	$ 7,000,788	$ 7,345,744	$ 4,905,126	$ 6,665,165 (1)	$ 1,915,944

Note:
(1) The Amount Paid column includes $86,972 in additional costs submitted through the annual cost report which is currently being reconciled by DHSP.

AIDS HEALTHCARE FOUNDATION
DIVISION OF HIV AND STD PROGRAMS
CONTRACT YEARS 2011-12 AND 2012-13

Contract/Program Expenditures	Unsupported Cost Report Amounts	Unsupported/ Unallowable Expenditures
Medical Case Mgmt (H209006 Sch 307)		
Employee Benefits	$ 309	
Medical Case Mgmt (H209006 Sch 314)		
Salaries	$ 23,154	
Employee Benefits	$ 1,382	
Medical Case Mgmt (H209006 Sch 322)		
Salaries	$ 159,445	
Employee Benefits	$ 34,803	
Medical Outpatient (H209006 Sch 311)		
Pharmacy	$ 1,200	
Rent		$ 7,183
Medical Outpatient (H209006 Sch 319)		
Pharmacy		$ 10,178
Rent		$ 10,976
Registry Nurses		$ 1,368
Medical Sub-Specialty (PH002226 Sch 1)		
Salaries	$ 59,792	
Employee Benefits	$ 10,083	
HIV Counseling/Testing ATS (PH000804 Sch 14/15)		
Rent		$ 874
HIV Counseling/Testing Mobile (PH000822 Sch 11/12)		
Telephone		$ 493
Totals	$ 290,168	$ 31,073

July 25, 2014

By U.S. Mail and Email, c/o Katherine Urbanski
(kurbanski@auditor.lacounty.gov)

John Naimo
Acting Auditor-Controller
County of Los Angeles
Department of Auditor-Controller
Kenneth Hahn Hall of Administration
500 West Temple Street, Room 525
Los Angeles, California 90012-3873

Re: AIDS Healthcare Foundation – a Department of Public Health Division of HIV and STD Programs Provider – Contract Compliance Review

Dear Mr. Naimo,

AIDS Healthcare Foundation (AHF) responds to the draft Contract Compliance Review report (Draft Report), covering CY 2011-12 and 2012-13, provided by your Department to AHF for comment. The purpose of the Review, as stated in the Draft Report, was "to determine whether AHF provided the services outlined in their County contracts and appropriately spent DHSP [Division of HIV and STD Programs] program funds."

Any objective review of AHF's history could only conclude that AHF has both provided the contracted services and appropriately spent Ryan White funds. AHF has been caring for and advocating on behalf of Angelenos with HIV since the beginning of the AIDS epidemic. It has provided Ryan White services to the County's underserved residents for over a quarter of a century. Historically, the County has not found any material misuse of funds, despite countless program reviews, surveys, and independent single audits. Yet recently, the County has wildly changed its view, purporting to find that AHF has been overpaid by millions of dollars.

The timing of this change corresponds to the timing of AHF's public criticism of the County on a number of critical public health issues, including the County's failure to take action to reduce the risk of sexually transmitted diseases in the adult film industry and the County's unlawful practice of awarding contracts without public bidding. This criticism has been leveled at a time when County officials and programs are facing charges by the press and law enforcement of corruption

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and dereliction of duties to serve and protect L.A. County's most vulnerable residents. AHF has repeatedly raised concerns that Department of Auditor-Controller has not been neutral in its review of AHF, but has been improperly influenced by other agencies and politicians, who are motivated to punish AHF, even at the expense of the patients AHF serves, for speaking out.

Certainly, the timing of the County's change in views about the propriety of AHF's billing and reimbursement cannot be attributed to any change in how AHF provided for and was paid for Ryan White services delivered under its contracts with the County. For decades, AHF and the County operated as follows: The County awarded AHF certain Ryan White services contract (for example, ambulatory outpatient medical). With an eye to working within the limited funds available, AHF developed budgets that allowed it to cover some of the key costs of providing Ryan White services. Thus, AHF developed budgets that included most of its rent and all of the salaries of some of its core providers (not all, as funding was never adequate to cover all salaries). The County reviewed and approved AHF's budgets each year. AHF would then bill and be reimbursed up to the budgeted amounts, and often received supplemental amounts when the County had available funds because the contract funds simply did not cover the full costs of care for AHF's patients eligible for Ryan White services.

It has *never* been the agreement or practice of the County and AHF to reimburse AHF *only* for the cost of providing services to patients for whom Ryan White is the primary payer. Yet, in a stunning re-writing of the parties' ambulatory outpatient medical contract and history, the Department of the Auditor-Controller proposed to find that AHF has "overbilled" the County because, in its new view, the AHF/County contract only covers costs of services of those patients for whom Ryan White is the primary payer. On that basis, the Department proposes to reduce AHF's reimbursement by 42 percent and recommends repayment by AHF to the County of $3.5 million. That is catastrophically wrong for at least five reasons:

1. The Auditor-Controller's proposed action is contrary to the terms of the AHF/County ambulatory outpatient medical contract. The contract is a "net cost" contract – *not* a fee for service contract – under which the County was obligated to "compensate [AHF] for performing services hereunder for actual reimbursable net costs." (Contract No. H-209006-17, Amendment No. 17, ¶ 5.) The parties have always understood this provision to mean that AHF was to be reimbursed for the costs of keeping its clinics open and staffed so as to able to serve Ryan White eligible patients. Thus, after receiving DHSP's budget approval, AHF would bill rent and designated providers' salaries to the contract as direct costs. The County has always known from AHF's patient data reports, annual cost reconciliations, the County's own surveys, reviews, and inspections, and its general oversight of AHF's program that AHF's clinics also treat patients with insurance, but this has never been a basis for reducing reimbursement. Rather, the revenue from this insurance was

accounted for through annual cost reconciliations to ensure the Ryan White program did not pay for services covered by other payers.

If there were any doubt about the DHSP's agreement with and acceptance of AHF's practice of budgeting certain salaries and rents under the ambulatory outpatient medical contract, it was dispelled when County ratified this approach by approving AHF's budgets even after the auditors first challenged AHF's billing practice, as these budgets continued to include 100% of AHF's designated personnel and rent costs.

In undertaking the Contract Compliance Review at the request of DHSP, the auditors were bound to understand and apply the contract's net costs reimbursement provision, as confirmed by the parties' conduct, and not to impose an entirely new interpretation of their own choosing. Yet the auditors steadfastly refused to consider this history, even cutting off AHF's questions about this very history and practice when AHF tried to pose them to DHSP's Chief of Financial Services at the preliminary exit conference.

2. There is no provision in the contract that allows the County to allocate costs in the manner proposed by the Report. The auditors have not, and cannot, point to any language in the contract granting them the authority to make such allocations. Any right to audit AHF's program does not translate into the right to add new terms to the contract.[1]

3. The federal HIV/AIDS Bureau (HAB), which administers the Ryan White HIV/AIDS Program, allows physicians whose salaries are 100% funded by Ryan White grants to see patients with other payers. HAB simply requires that the provider not report those services not covered by Ryan White through what is called the "RSR report." As explained in guidance provided by HAB's technical assistance provider, "If the service visit was paid for entirely by Medicaid, Medicare, or another third-party payer, the provider will not report the service [on Health Resources and Services Administration's RSR report] (*even if the clinician's salary is paid for with RW program funds*)," emphasis added. "Let's take a moment to

[1] Moreover, the auditors' proposed 42% reduction is itself arbitrary, because, among other reasons, it assumes that all patient visits are equal, when in fact Ryan White primary patients generally have longer visits and utilize more staff resources. Additional reasons why the reduction is arbitrary have been set forth in AHF's prior correspondence.

clarify. We are not saying that staff whose salary is 100% funded can only see Ryan White clients."[2]

4. Moreover, it is indisputable that Ryan White funds may be used for services provided to not just uninsured patients with no other payer source, but also for services provided to *underinsured* patients who have third-party insurance, when that insurance does not cover needed Ryan White services. For example, private insurance does not pay for critical nursing services like care coordination and case management that are specifically required under AHF's ambulatory outpatient medical contract. No one besides Ryan White pays for these services. Thus, if patients meet the other eligibility criteria set out in the contract, they are eligible to receive these services. And this rationale is consistent with the repeated guidance of Health Resources and Services Administration (HRSA), the federal agency that is the ultimate source of and administrator over Ryan White funds. HRSA expressly allows Ryan White funds to be used for services to the underinsured. Ryan White funds "may be used to complete coverage that maintains PLWH [People Living With HIV] in care when the individual is either underinsured or uninsured for a specific allowable service, as defined by the" Ryan White Program.[3] In the Medicaid arena, Ryan White funds may be used "to pay for any medically necessary services which Medicaid does not cover or only partially covers, as well as premiums, co-pays and deductibles." Agencies may use Ryan White funds for "core medical services such as adult dental, vision, or enhanced adherence and prevention counseling services as a part of primary care if those services are not covered or are limited under Medicaid, even when those services are provided at the same visit as Medicaid covered services."[4] Outside of Medicaid, Ryan White funds may be used

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[2] See *Introduction to the RSR Client-Level Data Elements,* October 7, 2013, powerpoint presented by R. Melo, at pp. 14-15, available at: http://www.airsny.org/RSR/Introduction%20to%20the%20CLD%20Elements%20v5b%20edited.pdf. This guidance is issued by HAB's technical support contractor, WRMA/CSR, *see* http://hab.hrsa.gov/manageyourgrant/clientleveldata.html.

[3] *Clarifications on Ryan White Program Client Eligibility Determinations and Recertifications Requirements*, Policy Clarification Notice (PCN) #13-02 at p. 1, at http://hab.hrsa.gov/manageyourgrant/pinspals/pcn1302clienteligibility.pdf

[4] *Clarifications Regarding Medicaid-Eligible Clients and Coverage of Services by Ryan White HIV/AIDS Program*, Policy Clarification Notice (PCN) #13-01 at p. 3, at http://hab.hrsa.gov/manageyourgrant/pinspals/1301pcnmedicaideligible.pdf

for patients enrolled in private health plans for "Ryan White HIV/AIDS Program services not covered or partially covered by the client's private health plan."[5]

DHSP has provided similar guidance to Ryan White providers, allowing them to use Ryan White funds for uncovered care and services provided to Healthy Way LA clients and to patients after implementation of the Affordable Care Act.[6]

Therefore, the Auditor-Controller's arbitrary decision to limit AHF's reimbursement only to cover costs of services to its uninsured patients violates the rules and principles of the federal Ryan White program, as well as the express language and terms of the contract.

5. The Auditor-Controller's approach, which only allows reimbursement for care provided to Ryan White primary patients, would have terrible real-world consequences. Providers would have the perverse incentive to limit services to their insured patients to only those discrete items of service that were actually covered by the patients' insurance. For example, providers would have to turn away insured patients calling their nurse triage line for help, or not include these patients on their rosters for followup calls when they fall out of care, because these services – contractually required for Ryan White patients – would not be reimburseable for non-Ryan White primary patients. Such discriminatory treatment of patients based on payer status violates the very core of the Ryan White program, which is intended

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[5] *Clarifications Regarding Clients Eligible for Private Health Insurance and Coverage of Services by Ryan White HIV/AIDS Program*, Policy Clarification Notice (PCN) #13-04 (Revised 9/13/2013) at p. 4, at http://hab.hrsa.gov/manageyourgrant/pinspals/pcn1304privateinsurance.pdf; *see also Ryan White HIV/AIDS Program Client Eligibility Determinations: Considerations Post-Implementation of the Affordable Care Act*, Policy Clarification Notice (PCN) #13-03 (Revised 9/13/2013) at p. 2, at http://hab.hrsa.gov/manageyourgrant/pinspals/pcn1303eligibilityconsiderations.pdf (after Affordable Care Act implementation, Ryan White "will continue to provide those [Ryan White] services not covered, or partially covered, by public or private health insurance plans")

[6] Cross, J., *Transitioning Ryan White Clients to Healthy Way LA* (11/17/2011) at http://ph.lacounty.gov/aids/HealthcareReform/TransitioningRWClients11-11.pdf (slide 16: "Ryan White will continue to be the payer for services not covered under Healthy Way LA: Dental, Case management, Certain mental health services, Substance abuse treatment"); *see also* Cross, J., *Health Care Reform and HIV Treatment Access* (4/30/2010) at http://ph.lacounty.gov/aids/MAC/MACHealthCareReform4-30-10.pdf (slides 26 & 27: James: "May need Ryan White support for things that aren't covered under a Medicaid package"; Vicky: "May need RW support to pay premiums and out-of-pocket costs and get dental and vision care")

> to be the payer of last resort for both the underinsureds and uninsureds. It would also be antithetical to both the Ryan White CARE Act's and the County's goal of effectively addressing the HIV/AIDS epidemic, which can only be done through a comprehensive care approach.

AHF has filed a lawsuit challenging the County's misinterpretation of the parties' contract, and that lawsuit is currently set for trial in March 2015. AHF has also written HRSA for its guidance and has requested a meeting with HRSA and the County to resolve the confusion. Indeed, County counsel has acknowledged that the threshold contract interpretation issue must ultimately be decided by a court of law, yet while AHF has repeatedly adjured both the County and the auditors to refrain from publishing any findings until the court has issued its decision, the Department of Auditor-Controller has plowed ahead with its draft final report.

In addition to the general response provided above, AHF responds to each draft finding below. AHF reserves its right to supplement all its responses with additional information or arguments as it becomes aware of them.

CASH/REVENUE

Draft Finding 1[7]: AHF did not reconcile its bank accounts timely.

Response: From the beginning of 2013, AHF underwent a system-wide transition of its accounting system. As explained to the auditors during fieldwork and exit meetings, the system implementation impacted AHF's bank reconciliations. AHF is putting processes in place to address this issue.

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Draft Finding 2: AHF did not obtain approval from DHSP for its client fee schedule as required by Paragraph 48 of the Additional Provisions section of the contract.

Response: AHF disputes this finding. DHSP program staff have annually reviewed AHF's sliding fee scale as part of the eligibility check performed during their Ryan White programmatic reviews. Thus, DHSP thus has been aware of and approved the scale. However, to the extent the

[7] The Auditor-Controller did not number its findings as AHF has done, but presented them in a narrative form. AHF did its best to identify, separate, and address the individual findings and respond to each, but to the extent it does not fully respond to every potential finding, nothing in this response waives AHF's right to make a fuller or additional response at a later date.

Auditor-Controller requires formal approval based on some other method, AHF will seek to comply with that instruction going forward.

* * * * *

AHF's Response to Auditor-Controller's Recommendations

1. AHF will timely complete bank reconciliations going forward.

2. AHF will formally seek DHSP's approval of its fee schedule, following DHSP's instructions on how to obtain approval going forward.

EXPENDITURES

Draft Finding 3: AHF did not maintain a Cost Allocation Plan in compliance with its medical outpatient contract and did not separately track most expenditures related to the medical outpatient contract. As a result, AHF charged DHSP for program expenditures that should have been allocated to funding sources for non-Ryan White client services.

Response: AHF strongly disputes this.

First, the contract only requires a cost allocation plan for *indirect* costs. (Additional Provisions, § 9(B)(3).[8]) Until 2014, DHSP allowed providers to classify rents as direct service costs. *See* 2/5/2014 Letter from M. Perez, Director of DHSP, to Ryan White Program Service Providers Re: "New Budget Requirements for Ryan White Program Contracts" ("Unless HRSA instructs otherwise, DHSP can no longer allow rent/lease and utilities to be allocated as direct service costs"). Provider salaries, by definition, direct service costs. Thus, AHF was not obligated to submit a cost allocation plan for its rent and salaries. Moreover, the contract language only requires a cost allocation plan for indirect costs that are incurred for a "common or joint objective which cannot be identified specifically with a particular project or program." For the reasons discussed above, rent and salaries *are* identified specifically with AHF's ambulatory outpatient medical program.

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[8] Contractor shall prepare and maintain financial records, including "[a] written cost allocation plan which shall include reports, studies, statistical surveys, and all other information Contractor used to identify and allocate indirect costs among Contractor's various services. Indirect costs shall mean those costs incurred for a common or joint objective which cannot be identified specifically with a particular project or program."

Second, AHF did in fact submit a cost allocation plan to DHSP each contract year, which DHSP accepted without ever indicating that the plan was deficient. The Department of Auditor-Controller, *which does not know and has refused to learn or consider the parties' past practice,* has determined that the plan does not sufficiently allocate costs. For the reasons explained above, this conclusion is a misinterpretation of the parties' contractual reimbursement agreement and HRSA's guidance.

As AHF explained in its August 2013 Cost Allocation Plan Narrative, AHF utilizes an Electronic Medical Record that allows funding sources to be billed and charged directly by vendors. For example, when a patient is classified as Medicare, the Medicare-covered services performed for that patient (i.e., labs, office visit) are billed directly to Medicare and not reflected in AHF's books. This process, along with the annual cost reconciliation submitted to the County that accounts for payment by third-party payers, ensures that AHF is compliant with Paragraph 6 of its contract, which prohibits County funds from being used to pay for services to the extent that payment has been made or can be reasonably expected to be made by third party payers. In other words, AHF is not paid twice for the same service.

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Draft Finding 4: AHF's alternative cost allocation plan, submitted after completion of field work, did not comply with the County contract because (1) the Alternative Plan does not address allocation methodologies between programs, and (2) does not state how often costs will be allocated.

Response: AHF disputes this finding. After the auditors completed their fieldwork, they expressed their intention to reject the parties' historical cost allocation method. At the preliminary exit conference, the parties disagreed about the auditors' proposal to reduce AHF's reimbursement by 42% (i.e., the percent of AHF's patient population who were not Ryan White primary), but notwithstanding that difference, the auditors indicated they would be receptive to AHF presenting a cost allocation method explicitly based on HRSA guidance that allows Ryan White funds to be used for Ryan White services provided to AHF's underinsured patient population. The parties referred to this as the Alternative Method, or HRSA-Based Method.

AHF thereupon submitted a methodology that listed all the Ryan White ambulatory outpatient medical services delivered by AHF staff and identified which were covered by other payers, and which were not, and then allocated costs proportionately. This method employed a tool widely used in management care environments called a "Division of Financial Responsibility" or "DOFR." The auditors originally faulted the DOFR for reasons that suggested they did not understand the tool and had made numerous wrong assumptions – assumptions that could have been debunked had the auditors simply met with AHF as it repeatedly requested. AHF submitted

detailed responses to each and every criticism made by the auditors to each line item of the DOFR.

Yet in its Draft Report, the Department of Auditor-Controller continues to fault AHF's Alternative Methodology because it "does not address allocation methodologies between programs, and does not state how often costs will be allocated." As to the latter, as AHF explained in its March 21, 2014 letter to County counsel, under the HRSA-Based Method, AHF would allocate costs based upon an agreed-upon schedule, i.e., monthly, or quarterly, and would reconcile annually. As to the former, in AHF's same letter, AHF asked the auditors to clarify this comment, but they have not. AHF therefore responds that all the costs in the HRSA-Based Method are related to the outpatient medical program. There was thus no need to allocate between programs.

Draft Finding 5: AHF's alternative cost allocation plan, submitted after completion of field work, did not comply with the County contract because payroll allocation percentages are based on AHF's history and staff interviews, while OMB Circular A-122 (Attachment B, paragraph 8) states that "the distribution of salaries and wages to awards must be supported by personnel activity reports."

AHF's Response: AHF disputes this finding. The auditors' finding is invalid for at least three reasons.

> (1) The HRSA-Based Method of allocating costs was not in place during the contract years – again, it was proposed at the preliminary exit conference and submitted at the auditors' invitation, so it is not reasonable to expect AHF to have precise historical record keeping on this score.
>
> (2) OMB Circular A-122 (which does not even clearly apply here) only states that while personnel activity reports will support salaries and wages, the agency (here, DHSP) can approve a "substitute system," which can be based on "past experience and reliable projection of the organization's costs." (OMB Circular A-122 at Attachment B, § 8(m)(1) & Attachment A, § E.2(d).) That is precisely what AHF did – it reasonably allocated salaries according to time spent on each service, based on AHF's long history of providing medical services to Ryan White patients and the expertise of its leadership, including but not limited to its RN Chief of Managed Care and Director of Nursing. AHF repeatedly offered to supply more information about its history and experience, and how they support the labor division, but in vain, as the auditors simply and wrongly rejected any type of supporting evidence besides contemporaneous personnel activity reports.

(3) AHF did not rely solely on the history and experience of its staff, but also on a Time and Motion Study commissioned from premier third-party healthcare consultants. Such a study constitutes valid support for a cost allocation plan, per the terms of the AHF/County contract. (Additional Provisions, § 9(B)(3).) That study is discussed in more detail next.

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Draft Finding 6: The Time and Motion Study that AHF submitted to support the payroll allocation percentages used in its Alternative Plan was not sufficient because it only covered a period of three days to support 22 months of personnel time, and was not specific as to the actual time calculations observed.

Response: AHF disputes this finding. The Time and Motion Study was performed by MGMA, a premier, third-party healthcare consulting firm with expertise in performing time motion studies. As explained in the Study, MGMA conducted on-site observations, interviews, and questionnaires to validate the allocations set forth in AHF's DOFR. MGMA concluded that "the time spent by staff comported with the allocations listed in AHF's Division of Financial Responsibility," with two minor exceptions, which AHF addressed in the revised DOFR that it submitted to the auditors.

The Department of Auditor-Controller cites no authority for its finding that three days' observation at a number of representative delivery sites was per se insufficient to support the DOFR. It cites no authority for its statement that the Study must be entirely disregarded because the consultants did not include their work papers with their actual time calculations. It has utterly failed to apply neutral, objective audit standards.

There can be no question that AHF provided valuable services to Ryan White eligible underinsured patients – the consultants found so and even the auditors' June 16, 2014 responses to AHF's DOFR affirm this. Rather than engage in a fair review of the documentation AHF supplied, the auditors simply rejected all of it, taking refuge in technicalities and trivialities to deny AHF any reimbursement and wrongly tar AHF as a bad actor.

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Draft Finding 7: AHF did not provide adequate documentation to support $18,872 (i.e., $31,073 - $12,201) in questioned costs (pharmacy/medical office rent allocation, telephone charges).

Response: This finding appears to relate to a discrepancy between the actual measurements that were done by AHF staff during the audit period, to satisfy the auditors' request for additional

supporting documentation, and the allocation percentages in the general ledger, which were derived from the square footage numbers stated in our leases. Going forward, AHF will use the actual measurement methodology.

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AHF's Response to Auditor's Recommendations:

3. AHF will repay $18,872. As to the remaining $3,539,208, AHF does not owe the County any refund and is currently seeking a judicial determination to affirm this.

4. AHF's Cost Allocation Plan comports with both contractual and federal requirements and AHF is currently seeking a judicial determination to affirm this. It will continue to allocate costs as required by contract and law.

5. AHF has allocated expenditures appropriately and is currently seeking a judicial determination to affirm this. It will continue to allocate expenditures as required by contract and law.

6. AHF has maintained adequate documentation to support expenditures and allocations and is seeking a judicial determination to affirm this. It will continue to maintain contractually and regulatorily required documentation. Going forward, it will allocate rents based on actual measurements of its clinic space.

7. AHF did ensure that billed expenditures were allowable when it received DHSP's approval of its budgets and annual cost reports and successfully passed DHSP's and independent party's reviews and audits. Moreover, insofar as AHF now bills the County on a fee-for-service basis, it will bill going forward as provided for under its new contracts.

8. AHF did ensure that the allocation percentages used in its historical Cost Allocation Policy reconciled to the percentages supported by its documentation and will continue to do so.

9. AHF has performed properly under the contract, and therefore objects to this recommendation.

FIXED ASSETS AND EQUIPMENT

Draft Finding 8: None.

Response: Not necessary, as there were no adverse findings.

PAYROLL AND PERSONNEL

Draft Finding 9: AHF appropriately maintained personnel files, but did not allocate expenditures appropriately, which included payroll costs.

Response: AHF has responded to this Finding in the introductory section of this letter.

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Draft Finding 10: Payroll costs billed to DHSP for one employee sampled were not supported by AHF's financial records (see Cost Reports section).

Response: AHF disputes this finding. AHF supplied ample documentation to support that these employees in fact worked on the contracted Ryan White programs. Documentation included meeting agendas, calendar invites, training materials, and certifications by the employees, and their supervisors. The auditors abused their discretion by rejecting valid supporting documentation that is generally accepted under auditing standards.

AHF's Response to Auditor's Recommendations:

Refer to AHF's Responses 5 and 6 above.

COST REPORTS

Draft Finding 11: AHF's CY 2010-2011, CY 2011-2012, and CY 2012-2013 Cost Reports did not reconcile to AHF's financial records. Specifically, expenditures reported in its medical outpatient, medical case management, and medical sub-specialty contracts included $228,675 in costs that were not supported by their financial records.

Response: See Draft Finding 10.

AHF's Response to Auditor's Recommendations:

10. AHF does not owe the County any refund insofar as these were legitimate program costs, supported by valid documentation. AHF will seek a judicial determination to affirm this if needed.

11. AHF will continue to ensure that its Cost Reports reconcile to its accounting records.

In sum, AHF firmly believes that the Compliance Contract Review to which it was subject was inherently flawed and politically motivated. The Draft Report's arbitrary, punitive findings corroborate the perception of community providers, noted in a third-party assessment of the County's Ryan White program, "that there will be retribution if they were to make a complaint against" DHSP. *See* Los Angeles Assessment of the Administrative Mechanism Ryan White Care Act Year 13 (Grant Year 2003-04) at p. 66. AHF rejects the Department's findings and conclusions and will seek vindication in the courts, as there has been no justice in this politically infected process.

Sincerely,

Laura Boudreau
Chief Counsel for Operations

Cc: Andrea Ross,
Senior Deputy County Counsel