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STATE OF NEW YORK
**OFFICE OF THE STATE COMPTROLLER**

April 24, 2013

Ms. Arlene González-Sánchez
Commissioner
Office of Alcoholism and Substance Abuse Services
1450 Western Avenue, 5th Floor
Albany, NY 12203

Re: Report 2010-0417

Dear Commissioner González-Sánchez:

Our Office examined[1] select payments made by the Office of Alcoholism and Substance Abuse Services (OASAS) to Phoenix Houses of New York, Inc. (PHNY) for the period July 1, 2009 through June 30, 2010. During this period, OASAS paid PHNY a total of $8.5 million for gambling and chemical dependency treatment services under contract C003716. The objectives of our examination were to determine if OASAS properly reimbursed PHNY according to the terms and conditions of the contract and to determine if PHNY claimed only those costs allowed by the contract.

## A. Results of Examination

Our examination identified questionable actions of PHNY officials including potential fraud which will be referred to law enforcement for its review. These actions include: (i) improper purchases of Walmart gift cards by a PHNY employee, (ii) attempts to conceal the fraudulent gift card purchases by a PHNY employee or employees, and (iii) the creation of forged bid documents in an attempt to conceal an employee's failure to follow required procurement procedures and competitive bidding requirements.

In addition, we found that due to a lack of adequate controls, OASAS did not reimburse PHNY according to the terms and conditions of the contract. This allowed PHNY to claim costs *not allowed* by the contract and claim additional costs that *may not be allowed* by the contract. This includes $27,000 for executive bonuses, $21,402 for fringe benefits, and $12,441 for vehicle leases that PHNY could not substantiate were necessary and/or used for OASAS program-related

[1]We performed our examination in accordance with the State Comptroller's authority as set forth in Article V, Section 1 of the State Constitution, as well as Article II, Section 8, and Article VII, Section 111 of the State Finance Law.

purposes. As a result of these and other claims, OASAS overpaid PHNY for administrative costs by $14,336.

We also found PHNY officials failed to report $290,000 in Medicaid revenue, despite OASAS' instructions to do so. Had that revenue been reported, OASAS would have reduced its reimbursement to PHNY by that amount.

In conjunction with the audit of OASAS funding, we found PHNY provided benefits to officers and executives that may not be reasonable and could jeopardize its not-for-profit status because the expenditures benefited only the employees and not PHNY. A portion of these were reimbursed by OASAS as indicated above, with the balance from other funding sources. The additional findings are discussed more fully at the end of this report. As a result of these questionable practices and actions of PHNY officials and OASAS' lack of controls, funds were diverted from their intended purpose of providing needed treatment services.

We shared a draft report with OASAS officials. We considered their comments (Appendix A) in preparing this final report. The comments of the State Comptroller on their response are attached as Appendix B. OASAS officials stated they have instituted additional controls to ensure proper reimbursement for contracted programs. OASAS has enhanced its oversight capacity by hiring new auditors and is conducting risk based audits of providers to ensure contract compliance. OASAS will also conduct a follow-up audit of PHNY to explore the findings in this report.

OASAS officials also stated they support the referral of PHNY and its employees to law enforcement for investigation of the issues surrounding the submission of fraudulent documents to our auditors, criminal acts and any other act which violates the not-for-profit corporation law. OASAS will fully cooperate in any investigation.

## B. Background and Methodology

OASAS entered into a net deficit-funded contract with PHNY to provide a wide range of chemical dependency and gambling treatment services. In this type of contract, OASAS reimburses PHNY the difference between the revenues PHNY collects from non-OASAS sources and its expenditures. For the year ended June 30, 2010, PHNY reported approximately $18.2 million in revenues and $26.7 million in program-related expenditures. As a result, OASAS reimbursed PHNY the $8.5 million difference between the revenues and expenditures. If revenues equal or exceed expenditures, PHNY would not receive any reimbursement from OASAS.

To accomplish our objectives, we reviewed PHNY's general ledger transactions, invoices, and supporting documentation, and issued subpoenas for additional relevant records. We also interviewed various OASAS and PHNY staff and relevant PHNY vendors. Of the $26.7 million in program-related expenditures PHNY incurred during our examination scope, we examined 373 transactions totaling $1.03 million, or 4 percent.

## C. Details of Findings

OASAS is responsible for monitoring the contract and for properly reimbursing PHNY. The contract prohibits expenses that are not reasonable or necessary for providing services as well as fringe benefits not available to all employees. OASAS implemented controls to ensure PHNY's expenses are within the contract's budgeted amounts. However, because the controls do not include a review of the documentation that supports the expenditures listed on PHNY's Consolidated Financial Report (CFR), those controls are not adequate to: (i) ensure proper reimbursement, (ii) determine if PHNY claims only those costs allowed by the contract, or (iii) ensure PHNY reports all revenue. As a result, OASAS failed to detect the questionable actions of PHNY officials or improper reimbursements detailed in this report.

### Fraudulent Walmart Payments

Our auditors found a Walmart receipt for the purported purchase of nine SONY Playstation® video game systems, totaling $3,515, by its Yorktown facility (PHNY Yorktown) in 2009. The receipt contains the disclaimer: "Invalid Receipt – Training" (Training Receipt). In response to our questions regarding the receipt, PHNY Yorktown described a very unorthodox process whereby PHNY Yorktown asserts that Walmart will provide a Training Receipt prior to the actual purchase of goods that lists the items and prices of the goods PHNY Yorktown intends to purchase. PHNY Yorktown uses the Walmart Training Receipt to obtain pre-approval for the purchase and to generate a check to pay for the goods delineated on the Training Receipt. A PHNY Yorktown employee then: (i) returns to Walmart and purchases the goods listed on the Training Receipt with the PHNY-generated check, (ii) obtains a valid Walmart receipt documenting the purchase, (iii) transports the goods to PHNY Yorktown, and (iv) submits the valid Walmart receipt generated at the time of the actual purchase to document the purchase. PHNY Yorktown officials also use the valid receipt to ensure only approved goods are purchased.

We determined that the PHNY Yorktown employee who was to purchase the goods in question was also a part-time Walmart employee at the time of purchase and did not provide the valid

Walmart receipt to her supervisor to document the purchase of the SONY Playstation® video game systems. We further found that the supervisor did not verify that the employee purchased only pre-approved goods with the PHNY-generated check. Auditors then asked to see the nine SONY Playstation® game systems listed on the Training Receipt to verify they had been purchased. Instead of presenting nine SONY Playstation® game systems, PHNY Yorktown officials showed our auditors four Microsoft Xbox® and five SONY Playstation® game systems claiming that these were the items purchased in 2009. Contradicting PHNY Yorktown's claim that these were the items purchased in 2009, not only were eight of the nine game systems still in original, unopened boxes, but also we confirmed with SONY officials that the five SONY Playstation® game systems were actually purchased on May 24, 2011, one month after we notified OASAS of this examination.

The Office of the State Comptroller's (OSC) Investigations Unit issued a subpoena to Walmart to obtain records relevant to the PHNY Yorktown transactions. Our review of the subpoenaed records revealed that an Administrative Assistant for PHNY Yorktown (the part-time Walmart employee) purchased Walmart gift cards totaling $3,953 instead of the approved program-related goods. These gift cards were used to purchase what appear to be program-related items totaling $1,641 and personal items totaling $2,312. The personal item purchases included alcohol, cigarettes and weight loss supplements. Of the $2,312, we noted that the Administrative Assistant's Walmart employee discount was used when purchases totaling $1,847 were made.

When OSC questioned the Administrative Assistant regarding the inconsistencies in the documentation she submitted as well as evidence we gathered about her purchases, she claimed that: (i) she purchased five SONY Playstation® game systems and used the remaining balance to purchase gift cards, (ii) she did not maintain copies of the original purchase receipts for the gift cards, (iii) she placed the gift cards in a locked safe on the PHNY Yorktown premises, (iv) she subsequently handed out the gift cards to other PHNY Yorktown employees for program-related purchases, and (v) she did not purchase the personal items in question with the gift cards.

We question the veracity of the Administrative Assistant's denial that she purchased the personal items. The Administrative Assistant admitted to purchasing the gift cards. In addition, her Walmart employee discount was sometimes used when the personal items were purchased.

Based upon the evidence in this matter, it appears that the Administrative Assistant: (i) diverted New York State funds intended for PHNY Yorktown program-related expenses, (ii) utilized the diverted funds for self-enrichment, (iii) masked the diversion of funds by obtaining and submitting Training Receipts to document fictitious program-related purchases and purchasing more difficult to trace gift cards, (iv) failed to provide valid sales receipts which would have alerted PHNY Yorktown supervisors to the gift card purchases, and (v) provided highly suspect explanations to our auditors and investigators when confronted with evidence suggesting her diversion and subsequent cover-up.

Compounding this apparent misuse of State funds, either the Administrative Assistant or other PHNY officials purchased similar game systems shortly after learning of our auditors' impending site visit and attempted to deceive us by passing off the new game systems as those having been purchased in 2009. Our findings related to the Walmart purchases will be referred to law enforcement for appropriate action.

**PHNY Employee Submits Forged Paperwork to OSC**

OASAS Purchasing Guidelines require PHNY to abide by its internal bidding policies for all purchases, regardless of the source of the funds. According to PHNY's Purchasing Policy Procedure 5.300, PHNY must document its procurement process when conducting a competitive bid or obtaining comparative pricing for purchases. When conducting the competitive bid, the purchaser must provide written specifications reflecting the goods or services sought to at least three vendors for the purpose of soliciting bids.

In order to determine if PHNY complied with this policy, we requested and reviewed the procurement record for seven purchases, totaling $79,996. We also requested and subpoenaed original bid documents from relevant vendors in order to substantiate the authenticity of the documents contained in PHNY's procurement records. We found PHNY did not have documentation to support it followed proper procedures for four procurements totaling $47,624, as summarized below.

OSC compared documents supplied by PHNY and vendor bid documents for two procurements totaling $25,877. OSC found that the formats and dates on four bid documents did not match the corresponding bid documents contained in the PHNY procurement record. In fact, the vendors' bid documents were dated 2011 although the purchases were made in 2009. The vendors informed us they were solicited by PHNY to bid on these purchases in 2011 and not in 2009 as reflected in the official PHNY procurement record supplied to our Office.

When questioned by OSC investigators and auditors, PHNY's Deputy Director of Marketing and Communications (Deputy Director) initially claimed that she received a new work computer and lost all of her electronic mail prior to 2010, including all bid documents originally e-mailed to her in 2009. When further questioned, the Deputy Director admitted to contacting the vendors to obtain new bid documents in 2011 for both procurements and altering the formats and dates on those documents.

Finally, the Deputy Director admitted that she was fully aware that she had offered false instruments to a governmental entity and claimed she submitted the forgery out of fear of retribution from her supervisor for not having copies of the original bids she purportedly solicited in 2009. However, we determined that the relevant vendors never submitted bids on the project, undercutting the Deputy Director's rationale for her falsifying records.

We also found PHNY did not maintain sufficient procurement documentation for the two other procurements totaling $21,747. Therefore, it is uncertain if PHNY complied with its purchasing policy for these procurements. Our findings related to the altered bid documents will be referred to law enforcement for appropriate action.

**Questionable Bonus Payments**

During our scope period, PHNY paid $91,050 in bonuses to six executive staff members. Of this amount, OASAS reimbursed PHNY $27,000 as a direct expense. Based on the evidence available, we found the bonus payments may not be justified. It is also unclear if and when the PHNY Board of Directors (Board) approved the bonus payments.

According to OASAS officials, it would be appropriate for PHNY to pay its employees bonuses if the PHNY Policy and Procedures Manual (Procedure Manual) expressly allowed for such bonuses and provided guidance on how those bonuses are awarded. However, the Procedure Manual did not include guidance for executive bonuses. If the Procedure Manual does not contain guidance, OASAS would allow the bonuses if the intended purpose was to make PHNY salaries competitive with similar job titles in other organizations.

According to PHNY officials, the bonus payments were intended to make the executive salaries competitive with similar job titles in other organizations. To justify the payments, PHNY hired a consultant to conduct a comparison of the salaries paid to PHNY executives and salaries paid to employees of other companies in similar job titles. We found the organizations the consultant used in the salary comparison had an average revenue exceeding $100 million, while PHNY's revenue is only about $18 million. Because of the wide disparity in revenue used in the comparison, we question the validity of this justification.

We also reviewed Board minutes, interviewed PHNY officials and requested documentation to determine if the Board approved the bonuses prior to payment. Although PHNY did provide some documentation, it was not provided until six months after our request. In addition, the documentation did not indicate that the Board approved all six bonus payments. Because of the insufficient documentation available and the amount of time it took PHNY to provide the documentation, it is unclear if the Board approved all of the bonus payments. However, even if the Board did approve the bonus payments, that approval would have been based on the questionable salary comparison. Therefore, the bonus payments may not be warranted.

**Non-Allowable Expenses**

All service providers operating programs under the jurisdiction of OASAS, the Office of Mental Health, the Office for People With Developmental Disabilities and the State Education Department must file an annual Consolidated Fiscal Report with their respective agencies to document the expenses and revenues related to those programs. The New York State Consolidated Fiscal Reporting and Claiming Manual (Manual) provides guidance related to allowable and non-allowable expenses.

According to Appendix X in the Manual, fringe benefit expenses that are not available to all employees are not allowable. Appendix X also states that expenses that are not reasonable and/or necessary for providing services are not allowable.

During our examination period, we found OASAS reimbursed PHNY $33,843 for direct expenses not allowed under the Manual. These include:

- $21,402 for "Officer's Supplemental" expense. We found "Officer's Supplemental" is a fringe benefit available to PHNY officers, but not available to PHNY staff.

- $12,441 for vehicle leases assigned to executive staff. We found PHNY could not substantiate the vehicles were necessary and used for OASAS program-related purposes. Furthermore, direct costs claimed by PHNY for gasoline, maintenance and repairs for these vehicles are not allowed, and OASAS should determine and recoup that amount.

**Administrative Costs**

OASAS reimburses PHNY for administrative costs based on a percentage of direct costs rather than reimbursing total actual administrative costs. PHNY uses the federally approved indirect cost rate of 22.7 percent.

During our examination we identified inappropriate direct costs reimbursed by OASAS totaling $63,155, including: $27,000 for executive bonuses, $21,402 for fringe benefits not available to all employees, $12,441 for unsubstantiated vehicle leases, and $2,312 in fraudulent Walmart purchases. Therefore, OASAS overpaid administrative costs by $14,336 (22.7 percent of $63,155).

**Failure to Report Medicaid Revenue**

The contract requires PHNY to report to OASAS the full Medicaid amount collected for its Residential Rehabilitation Services for Youth program. OASAS then reduces its payment to PHNY by that amount. In correspondence dated August 21, 2009 between OASAS and PHNY, OASAS reinforced the need for PHNY to report the entire amount of Medicaid received. Despite the contract requirement and subsequent reminder, PHNY officials told us they underreported the Medicaid revenue received during our scope period by $109,153.

By underreporting Medicaid revenue, PHNY inappropriately increased its reimbursement from OASAS by $109,153 for the year ended June 30, 2010. Since the inception of the contract, PHNY has underreported approximately $290,000 in Medicaid revenue to OASAS. Since the contract specifically requires PHNY to report the full amount of Medicaid collected, and OASAS issued a reminder to PHNY to ensure it did so, we question if PHNY was deliberately seeking to increase its payments from OASAS.

**Possible Violation of Not-for-Profit Status**

During the course of the examination of OASAS reimbursements, auditors identified a possible violation of PHNY Not-for-Profit status based on expenditure of OASAS and other funds. According to New York State's Not-for-Profit Corporation Law Article 5, Sections 508 and 515, incidental profits should be applied to the lawful activities of the corporation and a corporation shall not pay dividends or distribute any part of its income or profit to its members, directors, or officers. A corporation can pay compensation to its members for services rendered but the compensation should be reasonable. We found the following benefits paid to PHNY officers and executives may not be reasonable because they benefit only the individual receiving them and not PHNY:

- PHNY purchased a car totaling $15,586 and gave that car to a director when he resigned from the organization. This car had special equipment installed, including an ignition lock designed to prevent someone under the influence of alcohol from starting the car.

- PHNY entered into a separation agreement with the same director that included a contract for consulting services. The consulting contract paid $2,000 a week for 13 weeks, even if the contract was terminated by either PHNY or the former director. After 13 weeks, if the former director had not found other employment, PHNY would extend the contract for an additional 12 weeks or until the former director found employment. In total, PHNY paid the former director $40,400 under this separation agreement. The separation agreement also contained a clause which paid for an employment service to help the former director find employment after he resigned.

- PHNY leased vehicles for executive staff totaling $35,996 ($12,441 in OASAS reimbursements), but could not substantiate the vehicles were used for program-related activities.

- PHNY provided fringe benefits ("Officer's Supplemental" expense) to PHNY officers totaling $40,447 ($21,402 in OASAS reimbursements), which are not allowed pursuant to the New York State Consolidated Fiscal Reporting and Claiming Manual.

- Six PHNY executive staff received bonuses totaling $91,050 ($27,000 in OASAS reimbursements) that were based on questionable justification and may have been approved after they were paid.

As noted, a portion of some of these benefits was reimbursed by OASAS, as previously discussed in this report. We question if a not-for-profit should be paying its officers and executives such benefits. If doing so is determined to be unreasonable, PHNY could be jeopardizing its not-for-profit status. In addition, since this is a net deficit-funded contract, paying unreasonable benefits would also increase the amount OASAS reimburses PHNY.

Therefore, we are referring this matter to law enforcement to determine if PHNY violated its not-for-profit status by providing officers and executives unreasonable compensation. If law enforcement determines these benefits are unreasonable, OASAS may be entitled to a recovery.

## Recommendations

1) *Strengthen existing controls to monitor and evaluate PHNY compliance with the terms and conditions of contract C003716.*

2) *Recover $2,312 for improper and potentially fraudulent Walmart purchases.*

3) *Determine if bonuses paid to PHNY officials were justified. Recover any overpayments identified.*

4) *Recover $21,402 for Officer's Supplemental expense not allowed under Appendix X of the Manual.*

5) *Determine if vehicles leased for executive staff were necessary and used for program-related activities. Recover any overpayments identified, including direct costs claimed for gasoline, maintenance and repairs for unsubstantiated vehicles.*

6) *Recover $14,336 for inappropriate administrative costs.*

7) *Determine and recover all Medicaid revenue that went unreported by PHNY.*

We would appreciate your response this report by May 24, 2013, indicating any actions planned to address the recommendations in this report. We thank the management and staff of the Office of Alcoholism and Substance Abuse Services for the courtesies and cooperation extended to our auditors.

Sincerely,

Bernard J. McHugh
Director of State Expenditures

Enclosures: Appendix A
Appendix B

cc: Trisha Schell-Guy

OASAS NEW YORK STATE
OFFICE OF ALCOHOLISM & SUBSTANCE ABUSE SERVICES
Improving Lives. *Addiction Services for Prevention, Treatment, Recovery*

Governor
Andrew M. Cuomo

Commissioner
Arlene González-Sánchez, M.S., L.M.S.W.

March 8, 2013

Bernard J. McHugh
Director of State Expenditures
Office of the State Comptroller
110 State Street
Albany, NY 12203

Re: Draft Report 2010-0417

Dear Mr. McHugh:

Thank you for the opportunity to respond to the Draft Report 2010-0417 wherein the Office of the State Comptroller (OSC), Division of State Expenditures, conducted an audit of the OASAS contract to fund Phoenix Houses of New York, Inc. (PHNY) for gambling and chemical dependency treatment services. The following is submitted in response to the draft findings and recommendations.

OASAS agrees that monitoring all providers for contract compliance is essential and in fact we have sufficient controls in place to ensure proper reimbursement for contracted programs. Our existing controls include more than the CFR reviews referenced by OSC and therefore, we object to the narrative and audit findings which indicate that OASAS does not have sufficient controls in place to properly monitor this contract and does not have adequate controls in place to verify that information reported was accurate. Instead, OASAS requests that the report be revised to recommend strengthening existing controls and acknowledge the new controls and processes recently implemented by OASAS.

* Comment 1

* Comment 2

We call to your attention the following additional controls OASAS currently has in place including annual program review, regularly scheduled fiscal reviews, performance reviews, facilities reviews and a fiscal self-assessment questionnaire. Additionally, we have enhanced our oversight capacity of our providers by hiring new auditors to work in our Fiscal Audit and Review Unit (FARU). In addition to the regularly scheduled fiscal reviews, FARU conducts risk based audits of provider contracts to assure compliance.

OASAS has also instituted a new initiative whereby our regional Field Office representatives conduct fiscal reviews during their regular provider site visits to further assess provider performance. As part of the regular Field Office staff site visits they are reviewing relevant documentation pertaining to a provider's Board of Directors, policies and procedures, employee handbooks, audited financial statements, and any corrective action plans or fiscal viability-financial recovery plans as applicable. In addition, a number of other "checklist areas" are covered at the discretion of the reviewer(s). Given the current fiscal climate and consistent with OSC audit recommendations key areas usually reviewed include personal services costs, credit card use, equipment, consultant/contractual services and vehicle use. In addition, as appropriate, the timeliness of submitting claim documents is also addressed along with any slight variances between the CFR submissions and the required

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* See State Comptroller Comments, Appendix B

backup schedules. The implementation of this added fiscal component has already helped to identify provider problem areas, some of which will be addressed by field staff, and other issues that will be referred to FARU for more appropriate follow-up (reviews and audits).

PHNY operates 8 certified treatment programs, a recovery community center and a prevention program. While each of these programs is listed on the Appendix B of the contract (contract and budget funding summary); the Yorktown program is not funded with state aid. Specifically, for 2009-2010, the year reviewed in the OSC audit, the reported costs and revenues of Yorktown are equal resulting in no OASAS deficit funding for this program. Prior to 2009, the Yorktown program was an OASAS certified residential chemical dependence program for youth. This service was not a Medicaid service and was funded primarily by State Aid. In 2007/2008 this program converted to a residential rehabilitation service for youth, which at that time was a new state plan service eligible for Medicaid reimbursement. As OASAS and the provider were not certain whether Medicaid revenues would sustain program operation upon conversion, the program was included on the 2009-2014 contract, but was not budgeted to receive any state aid. Upon close out of the 2009-2010 contract year, the Yorktown program operated without a deficit and therefore did not receive any state aid. The program has received no OASAS state aid ever since and in line with the normal practice of OASAS, will not be included on the next 5 year contract. The contract language states that OASAS will reimburse the Contractor (PHNY) "up to the Net Operating cost incurred by the CONTRACTOR in the conduct of the program….subject to the Total OASAS State Aid amount indicated on the Appendix B…for each annual budget period and for the programs indicated in the Appendix B." While OASAS acknowledges that OSC clearly has the authority to audit this contract and the vouchers paid there under, OASAS does not agree that it can recoup money from a program that did not receive any State Aid payments and requests that recommendations related to the Yorktown program be removed from the audit report. OASAS acknowledges it has authority to monitor Yorktown by virtue of its Operating Certificate; however this monitoring relates to program performance and operation, fiscal viability and facilities requirements not fiscal monitoring of program expenditures. (See 14 NYCRR 810.14). OASAS suggest that a referral be made to an agency that has the authority and ability to audit the appropriateness of payments and revenues received by the Yorktown program.

* Comment 3

* Comment 4

In the draft audit report you state that OSC believes that certain actions of PHNY and its employees may constitute criminal acts of fraud and other acts that may be violations of the New York not-for-profit corporation law. OASAS supports the referral of PHNY and its employees to law enforcement for investigation of issues surrounding submission of fraudulent documents to governmental authorities, criminal acts and any other act which are violations of the not-for-profit corporation law and stands ready to cooperate fully in any investigation.

Below are responses related to the 7 specific recommendations:

1. Establish a process to monitor and evaluate PHNY compliance with the terms and conditions of contract C003716.

**OASAS Response:**

As set forth above, OASAS has sufficient processes in place to monitor and evaluate provider contract compliance. OASAS requests this finding be reworded to "Evaluate PHNY compliance with the terms and conditions of contract C003716."

OASAS will conduct a follow-up audit of PHNY to explore the findings in this OSC audit.

* Comment 2

2. Recover $2,312 for improper and potentially fraudulent Wal-Mart purchases.

**OASAS Response:**

OASAS supports OSC's vigilant investigation and a referral to law enforcement of suspicious purchases made by a PHNY Yorktown employee. OASAS will participate and cooperate fully in any investigation.

However, OASAS requests this finding be removed as it relates to a non-funded program.

* Comment 4

3. Determine if bonuses paid to PHNY officials were justified. Recover any overpayment identified. ($91,050 bonuses paid to 6 executives – OASAS paid $27,000 as direct expense)

**OASAS Response:**

OASAS agrees that to the extent a provider pays bonuses without a clear policy and procedure allowing for such and without prior approval from OASAS or without other justification, such bonuses should not be charged to OASAS. OASAS will further review the consultant report of salary comparisons and investigate PHNY's claim that these bonuses were intended to make executive salaries competitive with similar job titles in other organizations. OASAS will recover any amounts not supported by a sufficient justification. **

4. Recover $21,402 for Officer's Supplemental expense not allowed under Appendix X of the Manual

**OASAS Response:**

OASAS agrees that fringe benefits that are not available to all employees are not allowable. OASAS will review the corporate documents and fiscal records of PHNY. Barring any contractual or specific benefit that was documented as a board authorized salary enhancement for "officers," once validated, OASAS will recover any amounts that exceed enhancements provided for other Phoenix House employees.

5. Determine if vehicles leased for executive staff were necessary and used for program-related activities. Recover any overpayments identified, including direct costs for gasoline, maintenance and repairs for unsubstantiated vehicles.

**OASAS Response:**

OASAS agrees that any vehicle related expenses that cannot be attributed to and documented as program related may be subject to disallowance. Ideally, vehicle logs should

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be maintained to document program related use of vehicles; however other documentation is allowable. Unless documented as an approved fringe benefit, where vehicles are used for personal reasons (e.g. commuting back and forth to work), OASAS would expect employees to reimburse the program. OASAS will investigate the use of leased vehicles by executive staff. If PHNY is unable to provide sufficient documentation that these vehicles are an approved fringe benefit or that use of them is program related, disallowances will be enforced.**

6. Recover $14,336 for inappropriate administrative costs.

**OASAS Response:**

OASAS agrees that any administrative costs associated with validated disallowance should be recovered. **

7. Determine and recover all Medicaid revenues that went unreported by PHNY.

**OASAS Response:**

Assuming that the $116,321 identified by OSC is the correct amount of Medicaid collected but not reported in the audit period, OASAS agrees that this amount is potentially recoverable as additional revenue that may offset State payments made. Initial investigation by OASAS appears to establish that PHNY was segregating the capital add-on portion of Medicaid revenue ($7.51 per paid claim) and maintaining it in a separate account under the mistaken belief that it was not revenue because it was related to capital and not services. PHNY has been advised that this is incorrect and that all Medicaid revenue should be accurately reported. OASAS will require PHNY to correct its reporting documents; however since this revenue applies to a non-funded program, OASAS will consider and determine the appropriate remedies which may include, a reduction in overall State Aid, a referral to an appropriate agency or other permissible action(s). **

** To the extent any of these findings relate to the non-funded Yorktown program, OASAS reiterates the statements made herein concerning its authority and ability to recover funds from a non-funded program and requests that these recommendations be modified accordingly and/or removed from the audit report.

Sincerely,

Robert A. Kent

Robert A. Kent
General Counsel

cc: Arlene González-Sánchez
Sean Byrne
Trisha R. Schell-Guy

## State Comptroller Comments on Auditee Response

1. At the time of our examination, existing controls did not include a review of the documentation supporting the expenses claimed on the CFR. Therefore, existing controls were not adequate to detect the questionable actions of PHNY officials or improper reimbursements detailed in this report.

2. We agree that existing controls include more than the CFR review and will revise the finding and the recommendation in the final report.

3. We disagree that OASAS' monitoring of Yorktown is limited to program performance and operation, fiscal viability and facilities requirements and does not include monitoring of program expenditures. As OASAS stated earlier in its response "monitoring all providers for contract compliance is essential . . . to ensure proper reimbursement for contracted programs." OASAS cannot ensure proper reimbursement for contracted programs without monitoring program expenditures.

4. The Yorktown program provides services to OASAS under Contract C003716. Since Contract C003716 is a net deficit-funded contract, all expenditures could impact the amount OASAS has to reimburse PHNY; therefore, it would be appropriate for OASAS to ensure all expenditures were appropriate, regardless of source. Accordingly, the finding will remain in the report.