

**State of New Jersey
Office of the State Comptroller
Medicaid Fraud Division**



**AUDIT REPORT
CONTRACT COMPLIANCE REVIEW OF
THE STATE OF NEW JERSEY'S
PERSONAL PREFERENCE PROGRAM**

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I. Executive Summary

As part of its oversight of the Medicaid and New Jersey FamilyCare programs (Medicaid), the Medicaid Fraud Division of the Office of the State Comptroller (OSC) initiated an audit of Community Access Unlimited, Inc. (CAU), which served as the fiscal agent for all Program Participants (Participants) in the Personal Preference Program (PPP). The PPP allows Participants to direct and manage their own home and personal care services. As the audit progressed and the audit scope expanded, OSC found issues both with CAU's adherence to contract terms and with the supervision of and guidance provided to CAU by the contract manager, the New Jersey Department of Human Services, Division of Disability Services (DDS).

CAU is a private, non-profit organization established in 1979 to assist New Jersey residents with disabilities and their families in their effort to access self-directed personal care assistance services. In 1999, the State of New Jersey entered into a contract with CAU through which CAU acted as the state's contracted fiscal agent for Participants in the PPP. In 2006, after the expiration of the 1999 Contract, the state awarded a new contract to CAU for these same services. Pursuant to both contracts, CAU established bank accounts on behalf of Participants, acted as the custodian of those accounts, and performed bookkeeping and payroll services on behalf of the Participants. All of these responsibilities were designed to enable Participants to easily identify, access, and pay for needed services. DDS oversaw CAU's performance under both of these contracts.

During the course of this audit, OSC identified numerous instances where CAU failed to comply with contract terms, as well as serious weaknesses in DDS' oversight of the contracts. For example, both contracts required CAU to annually return unspent Participant funds to the state Medicaid program, yet it failed to do so. The 2006 Contract further clarified the state's intention

that as a “program practice” CAU also was to annually return unspent administrative funds to the state, but again CAU failed to do so.

OSC also found that, although CAU provided an annual accounting of these funds to DDS and even notified DDS twice in a 10-year span that it was willing to return the funds, for several years DDS failed to provide a mechanism for CAU to return such funds to the state. Specifically, OSC found that from 2000, the end of the first year of the PPP, through August 2012, CAU failed to return, and DDS failed to provide a mechanism to return \$9.5 million, to the state. These funds included \$7.8 million in unspent Participant funds and \$1.7 million in unspent administrative funds. Indeed, only after OSC brought this issue to CAU’s attention did CAU and DDS implement a process through which CAU returned some of these funds. To date, however, CAU continues to hold additional unspent Participant and administrative funds.

In addition to improperly holding unspent Participant and administrative funds, CAU has retained the interest on such funds and maintains that it is not obligated to return the interest to the state. Allowing CAU to retain the interest earned on funds would amount to a benefit to CAU beyond the terms of both contracts. OSC has calculated an amount of interest that DDS should consider recovering during the Final Contract Closeout period. A failure to consider the recovery of interest in this instance would amount to a contractual overpayment by the state for the services covered in both PPP contracts and should be evaluated accordingly.

CAU compounded these collective failings by transferring a portion of the retained funds to the wife of CAU’s Executive Director to invest on CAU’s behalf. CAU’s unauthorized use of Participant and administrative funds for this purpose appears to be a violation of its fiduciary duty to both the state and the Participants.

Throughout the term of the 2006 Contract, OSC also determined that CAU and DDS executed multiple Memoranda of Understanding (MOU) to the contract, none of which were

authorized or approved by the state Department of the Treasury, Division of Purchase and Property (DPP), as required by the contract, state law, and a Treasury Circular Letter. Under the terms of one of these MOUs, CAU billed DDS and the Medicaid program separately for services related to nursing assessments in an amount above what was agreed upon in the contract. Another MOU called for CAU employees to physically work in DDS offices, performing DDS functions such as enrolling Medicaid beneficiaries in the PPP, approving Participant cash management plans, and taking other actions that should have been performed by state employees. By allowing CAU employees to perform actions that could benefit CAU and possibly harm the Medicaid program, both DDS and CAU again violated the terms of the contract, state law, and a Treasury Circular Letter.

Additionally, OSC found several other deviations from required contract terms, including those that: (a) limit each full-time counselor's caseload to 120 Participants and each part-time counselor's caseload to 60 Participants; (b) require CAU to retain records regarding Participants' employees' timesheets; and (c) require CAU to ensure that its counselors made and documented monthly contact with each Participant for the first six months of participation.

Further, during the course of this audit, DDS and CAU, with DPP's approval, executed one properly authorized amendment to the 2006 Contract, effective July 1, 2014. This amendment memorialized the state's transition from a consumer-directed PPP to a managed care delivery option. This amendment altered the operation of the contract by, among other things, explicitly allowing CAU to retain unspent funds to directly pay providers for services rendered to beneficiaries. In essence, this change allowed CAU to retain accumulated unspent funds from the effective date of the amendment through the Final Contract Closeout period.

On November 6, 2016, after a public bid process, the state awarded the PPP services contract to a different vendor, with an effective date of March 31, 2017. As a result, on March 31,

2017, DDS, CAU, and the new vendor began a 90-day period to transition the performance of responsibilities under the 2006 Contract from CAU to the new vendor. This transition period has been followed by a 120-day Final Contract Closeout period during which DDS and CAU must reconcile any outstanding financial issues.

As discussed in greater detail in this report, OSC found that a significant amount of PPP funds were not returned to the state in accordance with the contracts. While it is true that, during the course of this audit, CAU returned \$7.8 million of Participant funds to the state, OSC has calculated that as of June 30, 2014 CAU has retained an additional \$10.7 million in Participant funds, administrative funds, and accumulated interest that must be considered for return to the Medicaid program.

The release of this Final Audit Report concludes a process during which CAU and DDS officials have had multiple opportunities to provide input on OSC's findings during the course of the audit. CAU and the state Department of Human Services (DHS), the department that oversees DDS, provided written comments in response to the Revised Draft Audit Report. OSC carefully considered each response from CAU and DHS in preparing this Final Audit Report. Copies of each of these responses are attached to this Final Audit Report as Appendix A (CAU's response) and Appendix B (DHS' response). Because CAU's PPP contractual responsibilities ceased on June 30, 2017, all other non-monetary CAU-specific recommendations have been omitted from this report.

II. Background

The PPP, also known as the New Jersey Cash and Counseling Program, was established as part of a national research and demonstration project focusing on new and innovative ways to help people with disabilities obtain personal care assistance (PCA) services. PCA services are non-

emergency services that include help with bathing, dressing, meal preparation, and light housekeeping.

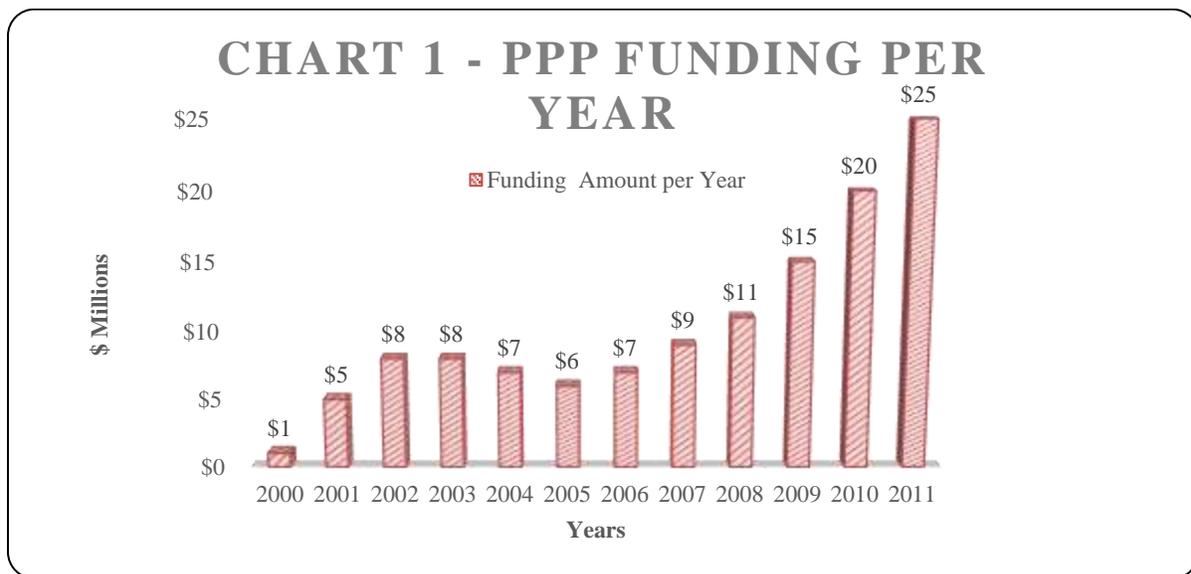
The PPP is designed to be consumer-oriented. To that end, Participants may choose whom they hire, including friends, family members, neighbors or a PCA agency, to perform the approved tasks that facilitate daily living activities. This approach is designed to offer Participants more control and flexibility over the selection of service providers and the delivery of those services.

In administering the funds within the PPP, DDS initially calculates a monthly cash allowance for each Participant based on the Participant's condition, as determined through a nursing assessment. The Participant (or a representative if the Participant is cognitively impaired), with the assistance of a CAU counselor, then develops a Cash Management Plan (CMP), which is submitted to DDS for approval. The CMP is a budget document that includes monthly wages for the Participants' employees, employment taxes, and cash allowances for incidental expenses such as transportation costs.

Once the CMP is approved, the fiscal agent, in this case CAU, establishes an account for each Participant's funds and acts as the fiduciary for this account. As part of the 2006 Contract, the fiscal agent provides payroll, bookkeeping, and counseling services to Participants. To perform these functions, the fiscal agent receives each Participant's Medicaid allowance on a monthly basis and allocates 90 percent of those funds to the Participant's individual account and 10 percent into the PPP Administrative Account, which is used to pay the fiscal agent for its state-approved documented services. Under the terms of both contracts, at the end of each year, the fiscal agent is contractually required to return all unspent funds in Participants' accounts and, by "program practice," as clarified under the 2006 Contract, all unspent funds in the Administrative Account to the state.

With regard to the PPP, CAU’s contractual relationship with the state began in 1999 when the state awarded a contract to CAU to act as the fiscal agent for the program. Services under this contract began in calendar year 2000. After multiple contract extensions, another contract award in 2006, and several subsequent contract extensions, CAU remained the state’s contractor for the PPP through March 31, 2017. At that time, a 90-day transition period to a new PPP contractor began. CAU’s PPP contractual responsibilities ceased on June 30, 2017 at which point, CAU and DDS entered a 120-day Final Contract Closeout period during which they must reconcile any financial issues that exist between the parties. DDS has been responsible for managing the PPP during the entire contract period.

From PPP contract implementation in 2000 through 2011, Medicaid’s annual funding for CAU’s PPP services grew from \$1 million to \$25 million. During that time period, CAU received an aggregate total of \$122 million in Medicaid funds on behalf of the Participants. This annual growth is shown in Chart 1 below.



From 2000 through 2011, PPP enrollment also grew from 197 Participants to 1,799 Participants, as shown in Chart 2 below.

CHART 2 - PPP ENROLLMENT PER YEAR



III. Audit Objective and Scope

This audit was conducted pursuant to OSC’s authority as set forth in *N.J.S.A. 52:15C-1 et seq.* and the Medicaid Program Integrity and Protection Act, *N.J.S.A. 30:4D-53 et seq.* The initial objective of this audit was to review CAU’s compliance with the 2006 Contract for the period of January 1, 2010 through December 31, 2011.

The scope of this audit included a review of CAU’s fiscal-agent duties and the administration of Medicaid funds received on behalf of Participants, a review of counseling services provided to Participants and other activities that impacted the administration of the PPP during the audit period. Due to the significant audit findings detailed below, OSC expanded the original audit scope to review and analyze how CAU administered Medicaid funds received on behalf of Participants since 2000, which is when the PPP became operational. In addition, due to findings regarding CAU’s retention of funds and unauthorized investment of funds, OSC also reviewed CAU’s general ledger fund balance accounts for 2012 and claims data for 2012, 2013, and the first six months of 2014. Finally, OSC examined DDS’ role as contract manager for the PPP contracts.

IV. Discussion of Auditee Comments

The release of this Final Audit Report concludes a process during which CAU and DDS officials have had multiple opportunities to provide input on OSC's audit findings throughout the course of the audit. OSC sent a Summary of Findings to CAU and DDS and elicited their respective responses. CAU provided a written response to the Summary of Findings in advance of an exit conference, during which the parties discussed the Summary of Findings. Thereafter, OSC provided CAU and DDS with a Draft Audit Report and again requested their comments. In advance of providing written comments, CAU requested a meeting with OSC, which took place in November 2016 resulting in revisions to the Draft Audit Report. The Revised Draft Audit Report was circulated to CAU and DDS. CAU and DHS, the department that oversees DDS, provided written comments in response to the Revised Draft Audit Report in May 2017. Copies of each of these responses are attached to this Final Audit Report as Appendix A (CAU's response) and Appendix B (DHS' response).¹ OSC carefully considered each response from CAU and DHS in preparing this Final Audit Report.

In essence, CAU disagrees with the Report's findings and recommendations. In its response, CAU states that "the Revised Draft Report is rife with innuendo and factual and legal inaccuracies. In an apparent effort to reach a predetermined result, OSC/MFD has willfully ignored voluminous data and documentation provided over a period of almost five (5) years. As a result, OSC/MFD reaches numerous incorrect conclusions."

OSC disagrees with CAU's response. Contrary to CAU's inflammatory assertions, OSC's Report is based on validated factual information. Although CAU presents a number of arguments

¹ The exhibits attached to CAU's and DHS' written responses are not appended hereto because of the sheer volume of documents contained therein. These exhibits are available on OSC's website at the following addresses: www.nj.gov/comptroller/news/docs/cau.exhibit.pdf and www.nj.gov/comptroller/news/docs/dhs.exhibit.pdf.

that attempt to refute the Report's findings, many of its positions are contradictory, factually unsupported, or inaccurate. OSC, however, did agree with certain assertions and has made modifications, where appropriate, throughout this Final Audit Report. In particular, OSC agrees, to some extent, with CAU's claim concerning OSC's proposed interest calculation. Accordingly, instead of applying six percent (6%) interest on all withheld funds, as it had done in the Revised Draft Audit Report, OSC now proposes applying a combination of the following – the actual interest that CAU earned as ascertained from account statements provided by CAU, and the rate set forth for post-judgment interest from the New Jersey Court Rules (R. 4:42-11) for periods when the interest rate earned is not known.² This methodology is appropriate, fair, and eliminates the inequitable result that CAU would be unjustly enriched by holding state funds indefinitely. Moreover, in certain places throughout the Final Audit Report, OSC has modified the presentation of issues to ensure that the responsibility for certain deficiencies in contract compliance is correctly attributed. Any suggestion, however, that OSC sought to achieve some predetermined result is baseless.

With respect to DHS' response, that agency agrees with many of the Report's findings and recommendations while taking issue with others. For example, DHS states that "OSC's Revised Draft Audit Report incorrectly asserts that the State did not establish a mechanism for CAU to return the unspent Medicaid funds. From 2000 through 2011, DHS has no records supporting CAU's allegation that it requested to return the unspent Medicaid Funds to the State." Further, "DHS contends that the MOUs were permissible since it relied on DPP's directive that DPP did

² Pursuant to R. 4:42-11(a)(ii), the annual post-judgment interest rate is equal to the average rate of return for the State of New Jersey Cash Management Fund for the preceding fiscal year, rounded off to the nearest one-half percent.

not need to provide its approval for the modifications encompassed by the MOUs.” OSC, however, has confirmed with DPP that they have no documentation to support DHS’ assertion.

Finally, DHS does not claim that it provided a mechanism for CAU to return accumulated unspent funds from the beginning of the PPP until August 2012. OSC appreciates DHS’ stated intent to take appropriate corrective actions to address OSC’s recommendations.

V. Audit Findings and Recommendations

A. Unspent Participant Funds and Associated Interest were not Returned to the Medicaid Program

As the state’s PPP vendor, CAU was required to act as a fiscal agent or custodian of all received Medicaid funds. Thus, CAU was expected to manage the funds for the benefit of the state and the Participants. Based upon the plain language of the contracts, other than being paid for its services through invoices approved under the terms of the contracts, CAU should not have derived any financial benefit from its management of these funds.

Pursuant to the 2006 Contract, Section 3.2.4, *Fiscal Agent Duties Related to the Program Participants*,³ CAU is subject to various requirements regarding its oversight of Participant funds.

For example, CAU must:

³ From this point forward, specific references to “the Contract” refer to the contract executed in August 2006. OSC is aware that the “original” contract, executed in October 1999 does not contain some of the specific language cited in the 2006 version. Page 12 of the 1999 contract does, however, require:

“All undesignated, accumulated cash shall be returned to the State either by the participants or the State Fiscal ISO [Intermediary Service Organization or CAU].”

The 1999 Contract thereby seeks the same result memorialized in the Contract albeit using different language. OSC has relied on the language in the Contract because that was the controlling document during the stated audit period. While the language may differ, the intent of both contracts was the same – unspent program funds should have been returned to the state at the end of each contract year.

[c]reate an interest bearing account for the Program Participants for the purposes of receiving the state cash grant money and shall act as the custodian of Program Participants' cash grants. All payments made by the contractor on behalf of Program Participants will be made from Program Participants' contractor-managed account.

This Contract provision further provides that:

[a]t the end of each 12 month period, the counselor will meet with Program Participants to determine if the accumulated cash is needed for the purchase of additional items or services. **All undesignated, accumulated cash shall be returned to Unisys by the contractor.** (emphasis added).⁴

Despite the contractual requirement that CAU return “undesignated, accumulated cash” each year, DDS, through its failure to require CAU to return these funds, and CAU, through its failure to return such funds, collectively violated the Contract.⁵ As a result of their actions, CAU held unspent Participant funds for more than 10 years. CAU compounded that contractual noncompliance by investing unspent Medicaid funds in the stock market and treating all investment gains and interest earned on this money as its own. Although CAU provided DDS with annual recoupment reports (*i.e.*, unspent Medicaid fund reports), DDS did not establish a mechanism for CAU to return the unspent Medicaid funds it held from 2000 through August 2012. In essence, by not recouping unspent funds, DDS enabled CAU to improperly retain and invest the unspent Medicaid funds for the sole benefit of CAU.

OSC reviewed CAU documents related to the accumulated unspent Participant funds, including the 2011 PPP general ledger fund balance accounts for the 2,411 Participant accounts.

⁴ Unisys Corp. was the state's former fiscal agent for the entire Medicaid program. Molina Information Systems, LLC (Molina) now performs that function.

⁵ CAU and DHS respond to this point in different ways. CAU asserts that it made numerous requests for instructions as to how to return the funds that went unanswered and, therefore, could not return the money. To the contrary, DHS claims that it has no records that such requests were made. While contradictory, these responses do not change the fact that PPP program funds were not returned to the state until 2012, which was after the OSC auditors made their inquiries.

The general ledger included active Participant fund balance accounts during the audit period, as well as inactive Participant accumulated fund balance accounts for years 2000 through 2009. In addition, OSC reviewed CAU's PPP Main Account and the PPP Business Super Money Market Account statements for the period from 2006 through 2012. The PPP general ledger fund balances should have been equivalent to the combined balances in the PPP Main Account and PPP Business Super Money Market Accounts. OSC's review identified several exceptions that are discussed immediately below.

- OSC's review of the general ledger fund balance accounts revealed that CAU had an accumulated fund balance from Participants' unspent funds of \$7,789,177 as of December 31, 2011. During the audit, OSC confirmed with CAU that these were Participant funds that had been accumulating since the inception of the PPP in 2000. CAU's management explained that it had not returned these funds to the state's Medicaid fiscal agent because DDS had not implemented a mechanism to do so. Thereafter, in September 2012, shortly after OSC had discovered that these unspent funds had been improperly held by CAU and alerted CAU about the issue, DDS provided a process for CAU to remit funds. CAU then remitted \$7,789,164 to the state.
- OSC not only found that CAU had failed to return Participant funds on an annual basis, but also compared accounts and identified a discrepancy in funds. The Participant fund balance in the general ledger (\$7,789,177) should have been equivalent to the Participant balances in the PPP Main Account and the PPP Business Super Money Market Account. OSC's review of CAU's bank statements for the PPP Main Account and the PPP Business Super Money Market Account, however, revealed a combined balance of only \$3,584,703 as of December 31, 2011. This amount was \$4,204,474 less than the combined total of the general ledger Participant fund balance of \$7,789,177.
- In light of the difference in the account balances referenced above, OSC discussed the matter with CAU's management and reviewed additional bank and investment account statements and found that CAU had transferred unspent Medicaid funds to its investment accounts. Specifically, OSC determined that on October 1, 2009, CAU transferred \$4,511,379 from the PPP "Disobligated Account" to an investment account that CAU opened in a financial institution. Records showed that CAU retained an investment manager, who was the wife of CAU's Executive Director, to invest the funds in stocks, bonds, and similar instruments. A month after that transfer, CAU opened another investment account with the same manager and institution and transferred \$1 million from the first investment account to the second investment account. The second account appears to have been structured for the purpose of producing a steady monthly income. Based on its review of investment account statements provided, OSC found that CAU regularly withdrew funds from these accounts.

- The investment fund manager for the CAU investment accounts was the wife of CAU's Executive Director and herself also a Director/Trustee of a CAU affiliate, Community Access Institute, Inc. From 2009 through 2011, CAU did not disclose any of its related-party transactions with her or her firm on either its IRS Form 990 filing (the public disclosure form that non-profit organizations must file annually with the IRS) or in the Notes to the Financial Statements contained in CAU's Annual Reports.⁶
- Due to the significance of the four above-noted exceptions, OSC expanded the audit scope to include the period through June 2014. Within this expanded audit scope, OSC found that CAU also had failed to return accumulated unspent Participant funds from January 1, 2012, through June 30, 2014. OSC reviewed CAU's 2012 general ledger fund balance accounts for Participants and noted a balance of \$1,560,931. Despite OSC's request, CAU refused to provide its 2013 and 2014 general ledgers. Therefore, OSC has estimated the amounts held for those periods. Applying a seven percent historical average of accumulated unspent Participant funds from prior years, OSC estimates that CAU is holding accumulated unspent Participant funds of \$3,341,783 for 2013 and \$2,276,388 for the first six months of 2014.⁷

Chart 3 below shows the PPP funding and amounts of unspent Participant funds for each year.

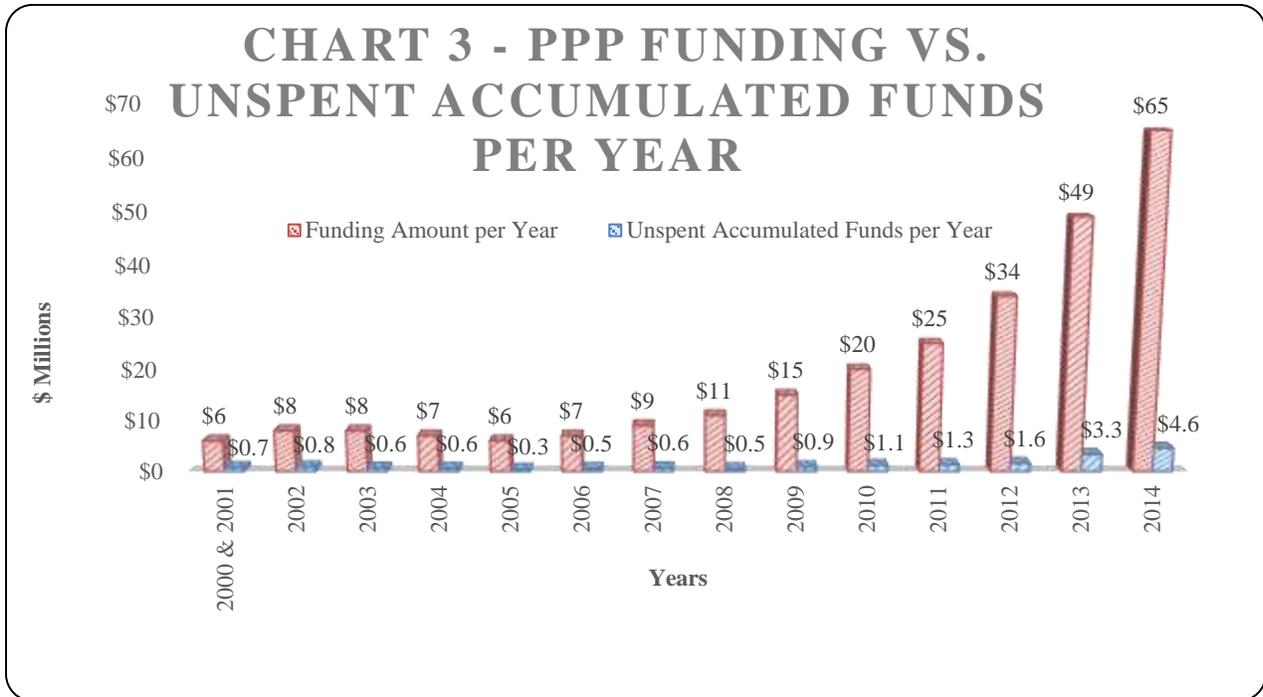
OSC prepared this chart to illustrate the changes in CAU's Medicaid funding from January 1, 2000 through June 30, 2014, the date the contract amendment changed the manner in which the PPP is

⁶ In its response to the Revised Draft Report, CAU maintains that it was not required to disclose on its IRS Form 990 filings these transactions between CAU and the wife of CAU's Executive Director. Among its reasons, CAU states that: (1) the IRS instructions to the Form 990 did not require the disclosure; and (2) CAU's independent auditing firm considered the transactions "not to be material because the amount involved did not reach the materiality threshold." *See* Appendix A7.

Contrary to CAU's assertions, the Instructions for IRS Form 990, Schedule L require an organization to report related-party business transactions. From the records available to OSC, the Executive Director's wife's investment firm earned an advisory management fee of \$13,717 in 2010 and \$20,338 in 2011. With regard to CAU's position that the amounts paid to the Executive Director's wife's firm "did not reach the materiality threshold," OSC notes that CAU disclosed on its 2009 Form 990 business transactions with two of its Board members and their affiliated companies. For one, the amount of the reported transaction was \$4,760 which was well below the \$10,000 threshold the Form 990 required for disclosure.

⁷ OSC did not calculate the amount of unspent funds held by CAU for any period after June 30, 2014, because effective that date DPP amended the 2006 Contract to reflect the state's transition to a managed care delivery model.

funded. It is noted that the funding amount for calendar year 2014 is annualized for chart comparison purposes. The total amount received by CAU as of June 30, 2014 was \$32,519,831. Therefore, applying the seven percent historical growth rate to that amount, OSC estimates that CAU has retained \$2,276,388 in Participant funds for the time period of January 1, 2014 through June 30, 2014.



With respect to this finding, CAU claims that “[a]ll Participant and Program funds . . . have been properly held, accounted for, reported and managed.” What CAU does not claim is that the funds were properly returned to the state as required by the Contract. Indeed, CAU cannot make such a claim and instead blames DDS for “repeatedly fail[ing] to establish and provide CAU with a mechanism to return Unspent Program Funds” *See* Appendix A6.

Similarly, DHS admits that “unspent balances were allowed to accumulate in a segregated account” while claiming that it was unaware that any of the funds were transferred to separate investment accounts. *See* Appendix B3. DHS, however, does not provide any documentation that it gave CAU a mechanism to return unspent funds, it instead focuses on the fact that it has no

record, at least from 2000 to 2011, of CAU asking for instructions. In either case, it is clear that DDS did not take steps to ensure that the funds were returned to the state at the end of each contract year as required by both contracts.

Thus, while both responses on this point are instructive, they are of no moment. The fact remains that CAU is still in possession of funds that should be returned to the state by the end of the Final Contract Closeout period and that warrant the inclusion of additional interest. In sum, after its consideration of CAU's and DHS' responses, OSC believes that CAU should return to the state a total of \$8,786,273 in accumulated unspent Participant funds.⁸ This total amount owed is comprised of \$7,179,103 in unspent Participant funds for years 2012, 2013, and the first six months of 2014, plus \$1,607,170 in interest on the funds that CAU improperly held for the period of 2001 through June 30, 2014. It is noted that OSC's total outstanding balance of \$8,786,273 does not include the principal amount of unspent Participant funds — \$7,789,164 — that CAU returned to the state during the course of this audit. It does, however, include \$1,267,122 in interest on those funds for the time period in which CAU withheld the same. Chart 4 summarizes OSC's calculations.

⁸ In its response to the Revised Draft Report, CAU represents that in 2015 it returned \$2.25 million in PPP funds to the state. *See* Appendix A9. Because this payment occurred outside the audit period covered in this Report, OSC has not considered it in its analysis of total funds due to the state. Accordingly, DDS and CAU should address this payment during the Final Contract Closeout.

Chart 4 - Unspent Participant Funds				
Funds	Contract Years	Principal	Interest	Total
Unspent Participant Funds	01/01/01-12/31/11	\$7,789,164*	\$1,267,122	\$ 9,056,286
Unspent Participant Funds	01/01/12-06/30/14	\$7,179,103	\$ 340,048	\$ 7,519,151
Sub-Total		\$14,968,267	\$ 1,607,170	\$ 16,575,437
Unspent Participant Funds Returned	01/01/01-12/31/11	(\$7,789,164)	\$ 0	(\$7,789,164)
Total Outstanding Balance		\$7,179,103	\$1,607,170	\$ 8,786,273

* **Note:** This amount was returned to the state during the course of this audit.

As shown in Chart 4, OSC has calculated interest due on the principal amount of \$14,968,267 for the period from January 1, 2002 through June 30, 2014 in the amount of \$1,607,170. OSC's interest calculations require additional explanation. OSC calculated interest based on two methods. For the periods when OSC did not possess CAU account statements reflecting actual interest earned, it applied the post-judgment interest rate from the New Jersey Court Rules (R. 4:42-11).⁹ For periods when OSC did possess actual interest based on CAU bank records, it used the actual amounts of interest earned. Using these methods, for the period from January 1, 2002 (the end of the first year of the 1999 Contract) through December 31, 2005 and from January 1, 2013 through June 30, 2014, OSC applied the applicable post-judgment interest rates. For the period from January 1, 2006 through December 31, 2012, OSC calculated interest using the actual interest information it obtained from the CAU bank records and investment statements.

⁹ During the course of this audit, OSC was not provided with records showing the "actual interest" earned on some of the withheld funds. Thus, for the time periods where actual interest is not known, OSC has suggested as a reasonable interest rate that provided for by the New Jersey Court Rules. Notwithstanding, during the Final Contract Closeout period, DDS should make every effort to obtain documentation from CAU concerning the "actual interest" earned on withheld funds. See Recommendation 1.

Pursuant to the Contract, CAU was required to return the accumulated Participant funds including interest. It failed to do so. CAU questions the legal authority for imposing interest. In addition to contract language that requires these funds to be maintained in an interest-bearing account, to permit CAU to keep interest and investment gains earned on state funds over the relevant period would amount to unjust enrichment and would result in CAU receiving compensation beyond what was negotiated for in the Contract.

Thus, based upon the records available to OSC for the audit period, OSC determined that CAU held a total of \$8,786,273 in unspent funds, which is comprised of \$7,179,103 in accumulated unspent Participant funds that should have been returned to the state and \$1,607,170 in interest.

Recommendations:

1. DDS should seek the return of all unspent Participant funds from CAU, including interest as contemplated by the contracts, during the Final Contract Closeout period. In the event DDS cannot determine the “actual interest” earned during certain time periods, it should consider applying the interest rate provided for by R. 4:42-11. In that circumstance, DDS would seek the return of \$8,786,273, which represents \$7,179,103 in unspent Participant funds and \$1,607,170 in interest as calculated by OSC based upon available records.
2. CAU should return to the Medicaid program all withheld unspent Participant funds, including interest as contemplated by the contracts, during the Final Contract Closeout period.

B. Unspent Administrative Funds and Associated Interest Should be Returned to the Medicaid Program

Pursuant to the Contract, Section 3.5.2, *Administrative Expenses*, “[i]t has been program practice that any funds remaining in the Administrative Account at the end of each year are returned to Medicaid.”

Prior to the contract amendment effective July 1, 2014, CAU received funds monthly from the Medicaid program on behalf of the Participants. Specifically, DDS would send CAU a statement that specified the total amount of funds for all Participants for the subsequent month, which CAU used to bill Molina. Molina would then transfer the Participant funds to CAU.

Pursuant to the Contract, 90 percent of those funds were to be used for programmatic purposes and 10 percent were to be used to pay CAU's administrative costs. Thereafter, at the end of every month, CAU would send an invoice to DDS detailing all billable work performed by CAU for the month. Upon approval by DDS, CAU was authorized to pay itself for the month by withdrawing the approved amount from the Administrative Account.

OSC reviewed CAU's bank statements for the Administrative Account, CAU's billings for its services for the period of January 1, 2005 through December 31, 2011, and all corresponding approved administrative and counseling invoices and determined the following:

- From 2005 through 2011, CAU deposited funds into its PPP Administrative Account. However, CAU did not return any surplus funds in this account to the state at the end of each year, despite contract language stating that it was "program practice" to return such funds to the state. As of December 31, 2011, the surplus balance in the Administrative Account was \$1,719,254.
- CAU neither sought nor obtained approval from the state to withdraw funds from the Administrative Account for anything other than compensation for its services. However, it regularly withdrew the interest earned on the surplus funds in the Administrative Account and transferred these funds to another CAU bank account. CAU did not report the amount of interest earned in the account to the state. By failing to report to the state the transfer of funds from the Administrative Account and any interest earned on such funds, CAU derived an inappropriate financial benefit from its use of these funds.

CAU disputes OSC's finding, claiming that OSC "erroneously applies provisions . . . under the current contract . . . to the first contract period . . . [which] did not contain a provision for the remittance of remaining administrative funds. . . ." *See* Appendix A9. DHS too agrees that the 1999 contract did not contain the specific language regarding the return of administrative funds, but acknowledges that the "program practice" language regarding the return of funds is present in the 2006 Contract. *See* Appendix B4. While the original contract may not have contained the specific return provisions of the Contract, it did provide that "[a]ll undesignated, accumulated cash shall be returned to the State by the participants or the State Fiscal ISO [CAU]." Moreover, CAU

does not dispute that it is in possession of unspent administrative funds, and accumulated interest, built up over the course of its years as a state vendor. As a result, OSC has calculated interest on the remaining ending balance of \$1,719,254 for the period from January 1, 2004 through June 30, 2014, in the amount of \$182,304 pursuant to R. 4:42-11. Calendar year 2004 was used as a beginning surplus balance for the Administrative Account.

Based upon the findings above and after a thorough review of CAU's and DHS' responses, OSC determined that CAU held \$1,901,558 in unspent administrative funds, which is comprised of \$1,719,254 of the remaining Administrative Account principal balance that should have been returned to the state, and \$182,304 in interest on that amount.

Recommendations:

3. DDS should seek the return of all unspent administrative funds from CAU, including interest as contemplated by the contracts, during the Final Contract Closeout period. In the event DDS cannot determine the "actual interest" earned during certain time periods, it should consider applying the interest rate provided for by R. 4:42-11. In that circumstance, DDS would seek the return of \$1,901,558, which represents \$1,719,254 in unspent administrative funds and \$182,304 in interest as calculated by OSC based upon available records.
4. CAU should return all unspent administrative funds to the Medicaid program on or before the expiration of the Final Contract Closeout period.
5. CAU should provide to DDS a reconciliation of accumulated unspent administrative funds for 2012, 2013, and January 1, 2014 through June 30, 2014, the date of the Contract Amendment.
6. DDS should determine whether additional unspent administrative funds and interest should be returned to the Medicaid program for the time period of July 1, 2014 through June 30, 2017 — the expiration date of the 90-day transition period. If so, DDS should seek the return of these additional funds during the Final Contract Closeout period.

C. Modifications Made to the PPP Contract Without DPP Approval

Throughout the life of the Contract, DDS and CAU entered into agreements that modified the manner in which the Contract operated. These changes, memorialized in Memoranda of Understanding (MOUs), amounted to, in some cases, fundamental shifts away from the original

advertised specifications for the scope of work and associated costs. Such changes to existing contracts are not uncommon. Indeed, in this Contract, as in other publicly bid contracts, there was a specific mechanism in place to make such modifications. The Contract required that DPP review and approve changes. This type of review is built into the contracting process for a number of reasons, including for example, to preserve the integrity of the contract and the procurement process used to award the same, ensure that the state does not pay more than it has contracted for goods and services, and to ensure that the beneficiaries of each contract are delivered services as required and as intended by each contract.

Generally, a state contract may be changed or modified if the changes or modifications are made pursuant to a process that is set forth in the contract and otherwise complies with state laws, regulations and any applicable Circular Letters. DPP is the central contracting body for state agencies. This Contract, state law, and a Treasury Circular Letter all required the Director of DPP to authorize any amendment to the Contract. Indeed, pursuant to the Contract, Section 5.8, *Contract Amendment*, “Any changes or modifications to the terms of this contract shall only be valid when they have been reduced to writing and executed by the contractor and the Director of DPP.” The Contract further provides in Section 5.24, *Additional Work and/or Special Projects* that “[n]o additional work and/or special project may commence without the Director's written approval.” That Section cautions that if a contractor proceeds with any additional work without obtaining the Director's written approval, the state will not be obligated to pay for the work.

In addition to the Contract, *N.J.S.A. 52:34-10.7, Responsibilities of State Contract Manager for a Contract*, codifies the requirement that the DPP Director authorize any amendment to a state contract. That statute provides in pertinent part that “the State Contract Manager [DDS] shall be responsible for obtaining permission from the [DPP] director to reduce the scope of work, amend the contract or add work or special projects to the contract after contract award.”

Finally, Treasury Circular Letter 14-08-DPP, Section V(A)(2), *Duties and Responsibilities of the State Contract Manager*, specifically sets forth the process for amending a state contract and mandates that the DPP Director must ultimately approve any amendment. That Circular Letter provides that:

The State Contract Manager must seek the consent of the Division of Purchase and Property Procurement Supervisor, before entertaining a discussion with the contractor(s) concerning potential scope changes, compensation changes Only with the consent of the Division of Purchase and Property may such discussion move forward between the State Contract Manager and the contractor(s), and only the Director or his/her designee may agree to changes to the contract.

As part of this audit, OSC reviewed five MOUs executed by CAU and DDS effective October 11, 2006; February 4, 2008; June 1, 2009; December 13, 2010; and December 12, 2011, none of which were signed by or showed evidence of approval by DPP. Rather, all five of the MOUs were signed only by representatives from CAU and DDS, which is contrary to the express language of the Contract, state law, and the applicable Circular Letter as outlined above. This practice weakens the state's ability to properly oversee CAU's performance of its contractual requirements and DDS's oversight of its vendor. In light of that, the practice of entering into MOUs in a manner that is contrary to the express terms of a contract, state law and the applicable Circular Letter should cease immediately. As noted in the specific examples below, the MOUs changed the nature of the Contract, increased the cost, and created vulnerabilities that were not subject to review.

1. Unauthorized MOUs Allowed CAU to Perform Services Prohibited by the Contract

The February 4, 2008 MOU altered the scope of work and changed specific responsibilities that were to be performed by DDS. For example, *N.J.A.C. 10:140-3.3(h)* requires the State Program Administrator [referred to in the Contract as the "State Contract Manager"] to approve all Participants' CMPs. The Contract, Section 3.2.2, *Statewide FISO vs. Fiscal Agent Duties*, reiterates this requirement by specifically prohibiting CAU from approving CMPs.

From a random sample of 32 Participants, OSC reviewed 68 CMPs to determine whether they were approved in accordance with *N.J.A.C. 10:140-3.3(h)* and Section 3.2.2 of the Contract. OSC found that 49 of the 68 CMPs (72 percent) had been approved by a CAU employee rather than the State Contract Manager, as required by regulation and the Contract.¹⁰ The gross amount of funds disbursed to the sampled Participants based on these unauthorized approvals totaled \$519,227 for the two-year audit period.

OSC reviewed a further sample from the selected 32 Participants' CMPs to determine whether the State Contract Manager had approved them before the expenditure of any funds, as required by *N.J.A.C. 10:140-3.3(h)* and Section 3.3.7 of the Contract.¹¹ Specifically, OSC tested 17 Participants' CMPs and found that the State Contract Manager approved 3 of the CMPs (18 percent) after the billing start date, in violation of the regulation and Contract.

2. DDS Gave Vendor's Employees Unauthorized Access to State Resources

Pursuant to the MOUs entered on February 4, 2008, June 1, 2009, December 13, 2010 and December 12, 2011, OSC also found that CAU employees worked at DDS' office during the audit period. These employees performed functions that mirrored those performed by state employees. The access given to CAU employees, compounded by the lack of DDS oversight of those employees, left the system vulnerable to abuse. Thus, from an internal control perspective, the fact that CAU employees were physically working in the DDS office, given access to state resources including computers and files, and permitted to perform functions prohibited by the Contract (Section, 3.2.2.) including approving CMPs, increased internal vulnerability to the state.

¹⁰ Specifically, a CAU employee who was located at DDS' offices approved 44 of 49 CMPs and a CAU regional supervising counselor approved the remaining 5 CMPs.

¹¹ This requirement is also consistent with sound internal controls, ensures that expenditures are only made for CMP-designated services and are performed by appropriate providers.

3. Changed Billing Practices May Have Led to Potential Overpayment

By virtue of the unauthorized MOUs between CAU and DDS, OSC determined that CAU began to bill two state entities (DDS and Medicaid) for nursing assessments in a manner that was contrary to the original terms of the Contract. Such billing allowed CAU to receive payments for services that exceeded those contemplated under the Contract. Specifically, by entering into the February 2008 MOU, DDS allowed CAU to directly bill Medicaid \$35 for each nursing assessment and also bill DDS an additional \$35 for the administration of these same nursing assessments. Pursuant to *N.J.A.C. 10:60-11.2*, Medicaid reimburses a total of \$35 for each nursing assessment and reassessment. By agreeing to pay an administrative charge of \$35 as part of the unauthorized MOUs, DDS allowed CAU to be paid more for this service than was originally contemplated in the Contract and permitted by regulation. OSC has calculated that CAU billed the state \$113,645 for administrative charges related to these nursing assessments.

Both CAU and DDS claim that the two \$35 payments were not for identical services. Instead, they contend that one \$35 charge was for the service itself and the other \$35 charge was an additional payment to CAU for administrative responsibilities that were beyond the scope of the Contract. That may be true. CAU, however, has no documentation to support its position on this point. DDS points to a memorandum that appears to offer some support for that position but does not address the specific issue. DDS also claims, without any documentary support, that it received advice from DPP which led the agency to believe that contract modifications of this type did not require DPP's approval. DPP, however, advised OSC that it has no records in its files memorializing such advice, or any other advice regarding efforts to amend this contract.

Whether the two \$35 charges were for the same service or for different ones is of no moment. Neither DDS nor CAU can point to any dispositive memorialization of the basis for the second \$35 charge. Indeed, the fact that the second charge equals the contracted-for charge for the

service could support a conclusion that it was at best arbitrary or at worst a deliberate attempt to mask the fact that DDS permitted a second charge. In either case, however, the change to the Contract that allowed this charge to be added was done in a manner that did not comport with the Contract, state law, and the operative Treasury Circular Letter.

Additionally, CAU asserts that, as a vendor, the modification process lies beyond its control and that any criticism related to the contract modification process can only be directed at DDS. OSC agrees in principle that DDS controlled the process, but given the specific contract language that warns vendors that payments for improper modifications may not be approved and given the fact that CAU was a sophisticated, long-term vendor of the state, it cannot be completely absolved of responsibility. Notwithstanding that fact, the core findings on this point and the recommendations that follow focus more substantially on DDS as the contract manager.

Recommendations:

7. DDS should ensure its practices with regard to DPP approvals for contract modifications comply with the terms of the operable contract, state law and Treasury Circular Letter 14-08-DPP. Any approvals or advice given in that regard should be in writing and retained for the entire term of a contract and as required by the state's document retention policies.
8. DDS as the State Contract Manager should approve all acceptable CMPs before the billing start date as required by state regulation and the terms of the Contract.
9. DDS should not improperly delegate its contractual responsibilities to contracted vendor staff.
10. DDS should ensure that it provides its contracted vendors with only the most limited form of access to state information and databases needed to perform their contractually required duties.
11. DDS should not approve price increases for contracted services, whether billed to Medicaid or to DDS, without first seeking approval from DPP and memorializing the increase through a contract amendment or without memorializing the rationale for concluding that DPP's written approval was not required.
12. During the Final Contract Closeout period, DDS and CAU should address the potential overpayment of \$113,645 for the additional services related to nursing assessments.

D. Failure to Meet Certain Contract Terms

As with any state contract, a vendor – here CAU – has a contractual obligation to deliver services in accordance with the terms of the contract. A contract manager – here DDS – has an obligation to ensure that those services are delivered as bargained for. OSC’s audit has revealed a number of areas where the parties did not meet their contractual obligations. As with the balance of this audit report and in recognition of the fact that CAU is no longer the vendor for the PPP, OSC’s recommendations in this area are limited to DDS’s continued role as contract manager of the PPP.

1. Failure to Retain Payroll Processing Documents

The PPP is a consumer-directed service through which Participants hire individuals to provide their care. CAU assists in that effort by establishing a payroll process and creating individual accounts in its accounting system for the purpose of managing funds received on behalf of the Participants from Medicaid. CAU then uses those funds to pay employees hired by Participants.

According to the Contract, Section 3.2.5.2, *Fiscal Agent Duties and Employees*, the contractor – CAU – “shall distribute, collect and process the domestic household employees' bi-weekly timesheets” and “prepare bi-weekly payroll checks and send them to the Program Participant for distribution or to the worker directly within five (5) business days after receipt of the relevant timesheet.”

OSC selected a sample of 32 Participants and reviewed their employees’ timesheets for the audit period for accuracy and completeness. Based on the review, OSC determined that 1,267 timesheets should have been sent to CAU to support the billings for the services rendered. However, CAU did not provide OSC with copies of 20 of the 1,267 timesheets (1.5 percent). Unsupported payments related to the missing timesheets amount to \$10,366. Furthermore, CAU’s

failure to provide those documents constitutes a violation of its seven-year document retention policy.

OSC also reviewed the same sample of 32 Participants' employees and their timesheets for the audit period, focusing specifically on the timesheet submission dates, days worked by the household employees, and payroll processing dates. Of the 1,247 timesheets reviewed, OSC found 149 (12 percent) instances where timesheets were submitted before the work had been performed by Participants' employees.

CAU, in its response, contends that it followed proper payroll procedures and that any errors were the result of "misfiling." CAU does not dispute that the relevant timesheets could not be produced.

Recommendation:

13. DDS and CAU should address the overpayment of \$10,366 for unsupported payments related to the missing timesheets during the Final Contract Closeout period.

2. CAU and DDS Failed to Follow Contractual Training Requirements

CAU provides counselors to help the Participants recruit, hire, train, and, if necessary, terminate domestic household employees. These counselors must first receive training, which is provided by DDS, as the State Contract Manager. The training occurs in both a classroom setting and during a home visit, and must take place before the counselors can provide these services in accordance with Contract, Section 3.3.2, *Training of Counselors*. That Section provides that:

All staff assigned by the contractor to provide counseling services shall complete a three (3) day training course, provided by the State Contract Manager and staff from the Division of Disability Services prior to those counselors working with any Program Participants. This training will be provided at no cost to the contractor; however, the counselor's time attending the training will not be reimbursed by the State or by Medicaid. Counselors need only be trained once.

According to DDS, the training requirements were verbally modified to reduce the training requirement from three days to one. OSC found that DDS did not formalize this Contract

modification, as required by the Contract, Section 5.2.2 (c), *Other Duties of the State Contract Manager*, which provides that “the State Contract Manager is responsible for obtaining permission from the Director [of DPP] to **reduce the scope of work**, amend the contract or add work or special projects to the contract after contract award.” (emphasis added). In its response, DDS concedes that it modified training requirements without DPP approval to address the rapid growth of the program.

Recommendations:

14. DDS should obtain DPP’s approval and properly memorialize all contract revisions before changing the scope of work.
15. DDS should adhere to and enforce all training requirements in the PPP contract.

3. Failure to Meet Contractual Participant-Counselor Matching Requirements

Pursuant to the Contract, Section 3.3.4, *Matching Counselors with Program Participants*, “The contractor will be required to match a Program Participant with a trained counselor within 48 hours (two (2) business days) of receiving a referral from the Program. The counselor will be required to make the first contact via telephone within 48 hours of receiving the referral.”

OSC tested the 48-hour contact requirement and found that 11 of 16 (69 percent) Participants did not receive the required first telephone contact within 48 hours of the assignment.¹²

OSC’s testing resulted in the following findings:

- 5 of 16 (31 percent) Participants were contacted by telephone 6 days or more after the counselor had received the assignment. In one case, a Participant was contacted by telephone 18 days after the counselor received the assignment.
- 5 of 16 (31 percent) Participants were not contacted until their assigned counselor made the first home visit, which occurred anywhere from 6 to 27 days after the Participant/counselor assignment was made.

¹² To review CAU’s compliance with the contractual participant-counselor matching requirements, OSC selected 16 of the 32 randomly sampled Participants who entered the program during the audit period.

- 1 Participant of 16 (6 percent) was contacted by the assigned counselor 1 day before the counselor's assignment.

Pursuant to the Contract, Section 3.3.6 (10), *Responsibilities of Counselors*, counselors must maintain "telephone contact with Program Participants on a monthly basis for the first six months of participation to ascertain that service needs are being met." Further, in accordance with the Contract, Section 3.3.10, *Reports*:

The Contractor shall maintain an accurate list of Program Participant/counselor matches and generate a biweekly report that identifies the Program Participant/counselor matches. At a minimum, the list will include the Program Participant's name, counselor's name, counselor's contact number, and the date in which the assignment was made. This report will be sent to the State Contract Manager.

OSC tested whether the counselors contacted the Participants on a monthly basis for the first six months of their enrollment in the Program and whether the list of Participant/Counselor match reports contained the information required by the Contract. OSC found the following:

- 9 of 17 (53 percent) Participants were not contacted on a monthly basis by the counselor for at least 1 of the required 6 months and 1 Participant was not contacted by a counselor for as long as 4 months.
- All 128 Participant/counselor match reports reviewed by OSC for completeness in the audit period omitted the counselor's contact information as required by the Contract.

DDS contends that matching delays were caused by inaccurate contact information or by Participants' unwillingness to respond. *See* Appendix B8. CAU asserts that delays were the result of the unavailability of required training programs that prevented CAU from deploying newly hired staff to meet the demands of a rapidly expanding program. *See* Appendix A12. Under either scenario, neither party disputes the finding that this critical Contract term was not met. Going forward, DDS must ensure that vendors are meeting their contractual obligations and that DDS is not creating any impediments to achieving that goal.

Recommendation:

16. DDS should establish a compliance benchmark for matching counselors with Participants and periodically select case files to verify contractor compliance.

4. Contractual Counselor Case Load Limits were Exceeded

Pursuant to the Contract, Section 3.3.5, *Maximum Caseload*, CAU counselors must not, at any time, exceed 120 cases for a full-time employee and 60 cases for a part-time employee. OSC attempted to review all CAU counselors' caseloads during the audit period to determine whether CAU exceeded the Contract caseload thresholds.¹³ From the information that CAU did provide, OSC found that, in 2010, 37 of 203 (18 percent) counselors had a greater caseload than that permitted by Contract. In 2011, 79 of 261 (30 percent) counselors had a greater caseload than that permitted by Contract. The excessive counselor caseloads could potentially reduce the quality of services provided to Participants.

Again, DDS and CAU have different explanations for OSC's findings. Neither party, however, disputes that there were compliance exceptions in this area of the Contract. As a result, DDS must evaluate the manner in which it monitors contract terms, particularly when non-compliance may have a direct impact on the quality of services provided.

Recommendation:

17. DDS should create and implement a monitoring system to ensure that the vendor complies with the counselor caseload contractual requirements.

5. Contractual Monitoring Requirements were not Met

Pursuant to the Contract, Section 3.3.10, *Report*, "Counselors, during their quarterly monitoring visits, shall complete a written report of their findings on each Program Participant.

¹³ OSC did not receive documentation for three counselors. As a result, OSC was not able to verify whether those three counselors exceeded the number of allowable cases.

The Quarterly Monitoring Visit Report must be completed and submitted to the State Contract Manager within 30 days of the Program Participant’s quarterly anniversary.”

OSC compared the date on the quarterly counselors’ report logs to the date on the quarterly home visit consumer contact sheets. For a sample of 20 Participants, OSC reviewed 164 Participants’ reports and found the following:

- 22 of 164 (13 percent) Participants’ reports were not included in the counselors’ quarterly report, but were included in the consumer contact sheets. As a result of these discrepancies, OSC cannot determine whether a home visit actually occurred in these instances.
- 38 of 164 (23 percent) Participants’ required reports were not performed during the required month. By not performing these reports in a timely manner, Participants’ program service issues and concerns may not have been addressed.
- 8 of 164 (5 percent) counselors’ quarterly reports were dated before the home visits occurred. Having quarterly reports dated before the home visits occur raises questions as to whether home visits occurred and were accurately reported on the quarterly reports.

In response, CAU makes the bare assertion that “[c]ounselors’ visits with Participants occur in accordance with the contract requirements.” *See* Appendix A12. DDS notes that it created a position, in 2013, to “monitor vendor’s contractual responsibilities.” *See* Appendix B9. While the new position created at DDS may address this issue, neither response warrants a modification to OSC’s findings or recommendations.

Recommendations:

18. DDS should review the counselors’ quarterly reports to ensure that these reports contain accurate information, are prepared as required, and are completed in a timely manner.
19. DDS should review the counselors’ quarterly reports to verify that the documentation supporting the visits adequately supports the services performed.

VI. Auditee Responses

Appendix A - Community Access Unlimited, Inc.’s Response

Appendix B - Department of Human Services’ Response

Appendix A - Community Access Unlimited Response

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May 12, 2017

VIA EXPRESS MAIL

Mr. Josh Lichtblau
Director
Office of the State Comptroller
Medicaid Fraud Division
P.O. Box 025
Trenton, New Jersey 08625-0025

Re: CAU Response to Revised Draft Audit Report – Compliance of
Community Access Unlimited, Incorporated with the
State of New Jersey's Personal Preference Program Contract

Dear Mr. Lichtblau:

Community Access Unlimited, Inc. (CAU) hereby responds to the Revised Draft Audit Report, entitled "The Compliance of Community Access Unlimited, Inc. with the State's Personal Preference Program ("PPP") Contract" dated April 26, 2017 (the "Revised Draft Report") prepared by the State of New Jersey ("State"), Office of the State Comptroller, Medicaid Fraud Division ("OSC/MFD").

As discussed more fully below, the Revised Draft Report is rife with innuendo and factual and legal inaccuracies. In an apparent effort to reach a predetermined result, OSC/MFD has willfully ignored voluminous data and documentation provided by CAU over a period of almost five (5) years. As a result, OSC/MFD reaches numerous incorrect conclusions.

As a preliminary matter, much of the Revised Draft Report is devoted to identifying errors and omissions by State agencies (many of which CAU first raised). CAU, however, has no responsibility for the agencies, let alone any ability to rectify their mistakes or lack of compliance. The Revised Draft Report also contains multiple criticisms of various State entities; while no doubt correct, these deficiencies cannot be attributed to CAU. Rather, identified deficiencies about and criticisms of State agencies contained in the Revised Draft Report, demonstrate some of the difficulties CAU was forced to address, overcome and manage to ensure PPP remained operational and sound. Any inference in the Revised Draft Report that CAU should somehow be held



A United Way Member Agency

Selected programs at Community Access
Unlimited have been accredited by



responsible for the acts and omissions of such governmental entities amounts to nothing more than scapegoating.

As a further threshold matter, CAU notes that despite repeated requests, the OSC/MFD in the Revised Draft Report again fails to provide information regarding certain of its calculations thereby precluding CAU from responding as fully as it would have wished to do. In part, this is because OSC/MFD repeatedly modified and expanded a prior 2012 audit and a 2014 preliminary report, without notice to, or important factual input and explanation from, CAU and then failed to include information provided by CAU in response to OSC/MFD's 2016 draft report.

The Revised Draft Report demonstrates OSC/MFD has, at best, an incomplete understanding of PPP and lacks, or has otherwise ignored, critical information which unequivocally shows that CAU acted properly in all regards, including in its establishment of safeguards for funds it held while awaiting instructions from the State as to their proper remittance.

CAU once again requests reconsideration and correction of the incorrect factual assertions and inaccurate conclusions contained in the Revised Draft Report.

Background

Summary of the Contracts

In or around 1999, CAU was awarded and entered into a contract (Contract 99-X-26931) with the State to provide fiscal and counseling services related to PPP. At the time this was a pilot program administered by State of New Jersey Department of Human Services ("DHS") Division of Disability Services ("DDS") under a Medicaid waiver. The contract was originally for three years and then was extended numerous times until it was rebid.

Thereafter, in or about 2006, CAU was awarded and entered into a second, five (5) year contract (Contract A66489) with the State to provide services for PPP. This second contract differed in several substantive ways from the first. (Contract 99-X-26931 and Contract A66489 are collectively referred to as the "Contracts.")

Beginning in 2011, the State administratively extended Contract A66489 more than 20 times. The extensions alone are a testament to CAU's compliant, and indeed excellent, administration of the contract, in what has been an indisputably changing and challenging governmental environment. The last extension ended March 30, 2017 and Contract A66489 is currently in a transition period, which is scheduled to terminate on June 30, 2017, after which CAU will need to complete required DHS Policy Circular P7.01 Contract Close out procedures.

Summary of the OSC/MFD Audit

On or about July 16, 2012, OSC/MFD commenced an audit of the PPP services CAU provided to DDS from 2010 through 2011. Over one year later, on October 9, 2013, OSC/MFD requested additional documentation covering the period January 1, 2011 through December 31, 2012. Approximately six months later, on April 3, 2014, OSC/MFD issued a Preliminary Summary of Findings ("Preliminary Summary").

Following receipt of the Preliminary Summary, CAU provided extensive additional information and documentation that OSC/MFD had not considered, in most instances because OSC/MFD had not requested it. At OSC/MFD's invitation, CAU presented further information and documentation at an Audit Exit Conference held on June 9, 2014. CAU heard nothing more from OSC/MFD for more than two (2) years until October 25, 2016, when OSC/MFD suddenly provided CAU with a document entitled "Draft Audit Report on Compliance of Community Access Unlimited, Incorporated's (sic) with the State of New Jersey Personal Preference Program Contract" ("Draft Report").

The Draft Report revealed that OSC/MFD, without any notice to or input from CAU, had substantially expanded the scope of audit to include one and one-half additional years, i.e. 2013 and the first six months of 2014. OSC/MFD's failure to consult with CAU about the expanded time frame of the audit is perplexing because CAU has always cooperated fully with auditors and would have readily provided information to further educate OSC/MFD about PPP and its administration of the contract, which would have addressed many, if not all, of OSC/MFD's apparent questions and misconceptions. Unfortunately, OSC/MFD's failure to realize that it needed additional information led it to confuse and misconstrue a number of items and to reach numerous erroneous conclusions, which could otherwise – and easily – have been avoided.

Following receipt of the Draft Report, CAU endeavored to inform OSC/MFD regarding these issues in order to correct the mistakes. CAU once again provided extensive documentation which showed that OSC/MFD's conclusions were based on incorrect understanding and incomplete information and therefore wrong. In November 2016, at CAU's request, OSC/MFD personnel met with CAU personnel. Thereafter, CAU's auditors also provided information that further substantiated that the Draft Report was wrong.

Summary of OSC/MFD's Errors

The errors in the Revised Draft Report pertain to several different issues.

First, OSC/MFD made erroneous assertions regarding the duties and supervision of CAU employees who work under DDS's direction in Trenton. CAU provided these employees upon the specific request and under the specific direction of DDS. CAU was

obligated to abide by DDS's demand for employee assistance to assure that CAU would be able to administer the contract, which otherwise would have been put at risk. DDS told CAU that the on-site assistance of CAU employees was essential for DDS to meet its operational responsibilities. Thus, the audit plainly included investigation of matters within the scope and control of DDS and not CAU. Moreover, OSC/MFD never contacted the CAU employees based in Trenton to find out who actually provided their day-to-day oversight and assigned tasks. Had OSC/MFD done so, it would have learned that DDS both controls and supervises all the day-to-day work performed by those employees. Even after having been provided with conclusive evidence that the State is responsible for oversight of these employees, OSC/MFD improperly kept this mandated arrangement controlled by DDS as a CAU audit issue in the Revised Draft Report.

Second, the expanded audit period implicates two different PPP contracts -- a critical fact that OSC/MFD failed to take into account in its analysis and which led to erroneous conclusions. The two contracts contain *distinct* Contractor requirements and responsibilities, as well as other differences. OSC/MFD did not properly apply each distinct contract to the applicable contract periods being audited. As a result, OSC/MFD made mistakes in its evaluation which led to improper conclusions in the Revised Draft Report.

Third, OSC/MFD asserted in the Revised Draft Report that interest is due on certain Unspent Participant Funds (also referred to as "Disobligated Funds") despite there being no legitimate basis for this conclusion. Indeed, in the Revised Draft Report, OSC/MFD acknowledges that for many years CAU repeatedly inquired and was *specifically directed* by DDS to hold these monies. Later, an addendum to the contract by the New Jersey Department of the Treasury ("Treasury") *mandated* that CAU hold certain monies – but required nothing more. Nevertheless, OSC/MFD ignored these facts (as well as applicable law) in reaching its baseless conclusions.

As was extensively discussed with OSC/MFD from 2012 to 2014, and as evidenced in documents provided by CAU after receipt of the Preliminary Summary and at the June 2014 Audit Exit Conference, for the period from 2001 to 2011, CAU was repeatedly instructed by DDS *not* to transmit funds back to Unisys/Molina, the companies that administered and now administer the claims adjudication system for fee-for-service Medicaid in New Jersey, which had disbursed the funds. CAU produced documentation unequivocally showing that it repeatedly asked DDS to provide instructions for return of Unspent Program Funds. As that extensive written documentation shows, DDS failed to provide instructions for how to return the funds, but only reiterated that CAU *not* forward the funds to Unisys/Molina. Only after CAU shared its concerns and quandary with OSC/MFD in 2012 did DDS finally provide direction. Thereafter and as instructed, CAU promptly returned a total of \$7,789,164 to the Treasurer, State of New Jersey, Division of Revenue. CAU was, however, explicitly told

to await further instructions before remitting any such Unspent Participant Funds in the future. No further instructions were received. As a result of this silence, as well as conflicting directives received from various State entities, CAU was finally constrained to file a lawsuit; that proceeding bearing docket number UNN-C-019-17 is pending in Superior Court Law Division in Union County ("Lawsuit"). Thereafter, CAU received a letter dated April 20, 2017 from Joseph Amoroso, Director of DDS, purporting to provide directions to CAU for return of Unspent Participant funds. That letter however, is incorrect and raises several of its own issues and concerns, which are outlined in a response from CAU dated May 5, 2017.

At all times, CAU followed appropriate and acceptable accounting and business practices in the handling and reporting of Contract funds. Moreover, CAU was always completely transparent with respect to its obligations and the identification of the monies. Each and every year, the monies were designated in the annual reports of audits performed by CAU's auditors and these reports were provided to the State. The State never established any special requirements for how or where CAU was to hold the funds - only that CAU was not to remit the funds until receiving instructions. Indeed, the Revised Draft Report, issued after an audit that spanned more than five (5) years (and which remains incomplete and inaccurate), identifies no law or regulation that required CAU to do anything more than return funds upon receiving proper instructions.

In July 2014, the State transitioned PPP from Medicaid fee-for-service to manage long term supports and services. This meant that PPP was integrated into Medicaid managed care and that New Jersey's Medicaid managed care contractors became responsible for funding PPP for their members, who were PPP participants, rather than Molina.

Pursuant to contract addenda entered into by the State and CAU in connection with modification of PPP, CAU became contractually *obligated* to hold funds in support of program operations for PPP. CAU was and is *mandated* to hold monies. The record firmly establishes that CAU has at all times acted to preserve and safeguard the funds, repeatedly sought direction from the State and never betrayed its duty to act as a fiduciary to the State or for the PPP participants.

From the inception of what began as a small pilot program in 1999 to the present day, CAU has worked closely and continuously with DDS and State Program Managers as the program evolved and as DDS implemented new policies, procedures and parameters for PPP. At no time did CAU act outside of the Contracts, which over more than fifteen years the State repeatedly and essentially unilaterally modified, expanded and extended. CAU always performed its duties in a manner consistent with the Contracts and the direction it received from the State, specifically DDS.

Responses to Recommendations

The following are CAU's responses to OSC/MFD's "Audit Findings and Recommendations" set forth on pages 7 through 26 of the Revised Draft Report. The section numbers below correspond to the section references in the Revised Draft Report.

A. All Participant and Program funds held by CAU in connection with Contract 99-X-26931 and Contract A66489 have been properly held, accounted for, reported and managed. The State has no right to interest on funds the State directed CAU to hold.

DDS repeatedly failed to establish and provide CAU with a mechanism to return Unspent Program Funds, also referred to as Disobligated Program Funds, to Unisys/Molina under Contract 99-X-26931 and under Contract A66489. In fact, in response to CAU's regular and repeated inquiries, DDS specifically directed that CAU **not** return the monies to Unisys/Molina which had disbursed them. DDS told CAU to wait for further direction. CAU continued to seek direction, but DDS continued to fail to establish and provide CAU with a mechanism to return Disobligated Program Funds. It was only after CAU brought the situation to the attention of OSC/MFD in 2012 that DDS *finally* issued a Memorandum on or about August 27, 2012 ("2012 Memorandum") which *finally* advised CAU as to how it was to return PPP Unspent Program Funds. This Memorandum is attached as **Exhibit #1**. Once CAU was finally provided, in response to its many requests to the State, with a mechanism to remit Unspent Program Funds, CAU promptly did so.

Moreover, OSC/MFD ignores that the 2012 Memorandum specifically directs CAU to await further instruction regarding return of funds in the future. For nearly five years, CAU awaited directions for how and where to return the funds without receiving further information. Only after filing the Lawsuit did CAU receive a letter from DDS dated April 20, 2017 purporting to contain instructions applicable to the end of the contract transition period, including for return of Unspent Participant funds. That letter, however, raises several of its own issues and concerns, which CAU addressed in a responsive letter, dated May 5, 2017. Among other issues, the letter instructed that all monies be sent to the same address that mishandled CAU's 2015 remittance discussed in connection with Audit Recommendation B on page 8 of this letter.

OSC/MFD also ignores the fact that CAU is now contractually required to hold the funds that it is currently holding. CAU will remit the funds only after the contract transition period ends and the required Contract Closeout procedures have been concluded.

Of particular concern, the Revised Draft Report makes unfounded, salacious and arguably defamatory statements regarding the investment of certain funds by an investment manager who is the wife of CAU's Executive Director and the purported omission of related party disclosure of this relationship on CAU's Form 990 which is filed annually with the Internal Revenue Service ("IRS").

First, OSC/MFD apparently failed to realize or appreciate that Form 990 and the IRS's guidance for completion of the form have changed substantially since 2009. The IRS's guidance at the time the Form 990 at issue was prepared and filed did not instruct that such a relationship was reportable. CAU followed the applicable instructions for completion of the Form 990 at the time it was completed, when there was no direction for disclosure. It is nonsensical for OSC/MFD to criticize CAU for not complying with some future purported requirement that CAU could not have known about and which simply did not exist at the time.

In addition, OSC/MFD criticizes CAU for not including a disclosure with respect to the relationship on its financial statements and disingenuously insinuates that CAU was hiding it. In fact, as OSC/MFD plainly knows, CAU's auditors were well aware of the relationship but correctly considered the information not to be material because the amount involved did not reach the materiality threshold. Since CAU's auditors did not consider the information to be material, it was not included on the financial statements. Had OSC/MFD properly conferred with CAU's auditors before preparing the Revised Draft Report, OSC/MFD would have known that the auditors did not consider the information material and that was the reason the information was not included.

Finally, OSC/MFD ignored the axiomatic fact that money is fungible. The money placed in the investment account was CAU operating funds. Nothing obligated CAU to treat these funds in any particular way. Simply CAU needed to have sufficient money on hand to remit when it finally received proper instructions. Indeed, OSC/MFD completely ignored the fact that the money that CAU remitted, once DDS finally provided direction and authorization, came from a Sovereign/Santander bank account and not the investment account. See **Exhibit 2** for copies of eleven (11) separate checks - one for each year for which funds were remitted. Therefore, in addition to the fact that absolutely nothing related to the investment account was amiss, scrutiny of it was not warranted. OSC/MFD's criticism is particularly off-target because CAU's decision to open the investment account was a voluntary protective measure to ensure it would have funds on hand to remit when instructions were finally received. Essentially, it served as a reserve. CAU was entitled to select the investment instrument and to deposit (or not deposit) whatever amount of money it wanted into it. Nevertheless, to further protect the funds, CAU's auditors showed these funds as segregated on CAU's financial statements -- and which, of note, was a disclosure.

In sum:

- CAU complied with all Contract Terms under both contracts.
- Neither contract contains a provision for interest on Unspent Program Funds.
- CAU was repeatedly directed NOT to remit monies. As soon as DDS authorized remittance, CAU promptly made the remittance. Thus, there is no legal or equitable basis for a claim that interest is due.
- N.J.S.A. 30:4D-17 (e) – (g) does not apply.
- Certain statutes of limitation have expired.
- There is no basis for interest on money held while CAU waited for DDS to establish and provide CAU with a mechanism to remit Disobligated Program Funds.
- CAU is not currently holding \$7,179,102.00 in unspent accumulated Participants' funds for 2012, 2013 and the first six months of 2014 as asserted by OSC/MFD. CAU is currently holding \$4,672,792.08 which CAU is contractually *required* to hold pursuant to amendment to the contract. The monies will be remitted at the expiration of the Contract A66489 transition period after Policy 7.1 Close Out procedures have been completed and upon the State providing CAU with appropriate direction regarding return of the funds. It is inaccurate and disingenuous for OSC/MFD to criticize CAU for doing something it is required to do, for not yet doing something it is not yet permitted to do, and for referencing numbers which are simply wrong and which could have been corrected had OSC/MFD properly consulted with CAU.
- Assertions regarding the investment account are completely without merit - factually or legally.

B. All requirements under both Contracts have been properly and responsibly carried out by CAU.

CAU has provided DDS and other State divisions with regular and repeated reports and reconciliations of monies being held. The monies were also properly shown as restricted on financial statements and in no instance were the funds merely treated as unrestricted net assets. Reconciliations of Disobligated Funds for the periods January 2012 through June 2014 were provided to DDS as required in 2013, 2014 and 2015. See **Exhibit #3**. These reconciliations support the level of funding held by CAU for support and operation of PPP as *authorized and required* by Contract 66489 Addendum 12. In recommending that CAU do something that CAU has already done, OSC/MFD suggests that CAU is or has been deficient and that is just not true, as the facts demonstrate.

In fact, the amount currently held by CAU has been reduced by payments totaling \$2,250,000.00 which were made in 2015 at the direction of DDS. Curiously, although CAU provided this information to OSC/MFD, OSC/MFD ignored it and failed to acknowledge that the State had the money for almost two (2) years. Moreover, on April 7, 2017, CAU learned for the first time - and only as a result of numerous OPRA requests - that New Jersey had never advised the federal government of CAU's remittance, never provided credit to the federal government for its portion of the monies and simply noted, the "checks will be recorded on this quarter's CMS-64." In other words, the State just pocketed the money without advising the Federal government of its share- and presumably would have continued to do so had CAU not uncovered the matter and raised a red-flag.

The Revised Draft Report also erroneously applies provisions with respect to the return of remaining administrative funds under the current contract (A66489) to the first contract period. Contract 99-X-26931 did *not* contain a provision for the remittance of remaining administrative funds and that is one of the reasons the Revised Draft Report could not include a citation to such a requirement in the first contract - there was no such requirement. Moreover, any purported claim for the remittance of such funds related to Contract 99-X-26931 (which in any event would be meritless), has long expired by virtue of expiration of the statute of limitations.

The Revised Draft Report, like the prior Draft Report, also fails to provide any calculations for the amounts claimed to be due to the State and appears to contain only estimates and approximations because of OSC/MFD's lack of information or lack of understanding about the information it has received. As stated above, and as it has always done before CAU will cooperate and provide information to OSC/MFD, if CAU is requested and afforded a reasonable opportunity to do so. OSC/MFD should similarly share the basis for its conclusions, including its calculations of interest in the Revised Draft Report. It is improper and inflammatory for OSC/MFD to include amounts claimed to be due without also providing information regarding how the interest was calculated and providing authority for its calculation. However, as stated above, N.J.S.A. 30:4D-17 (e) - (g) does not apply and there is no legal basis for interest.

With respect to the return of remaining administrative funds under the current contract, no money is presently due since the contract transition period is still pending and Contract Closeout procedures have not been completed.

A reconciliation of unspent administrative funds will be provided to the State after the end of the current contract, but a reconciliation is premature and not due now. However, as the transition period is not scheduled to end until June 30, 2017, a reconciliation and return of funds could not possibly be provided on the same day the contract ends because of the work required to prepare the reconciliation and it is disingenuous to contend that it could be prepared instantaneously. CAU must follow

DHS Policy Circular P7.01 Contract Closeout procedures, and await DHS action. As OSC/MFD is no doubt aware, Contract Closeout these procedures typically are not completed on a timely basis by DHS but usually only after multiple years have passed. This is because DHS's settlement letter is based on the contractor's final report of expenses and the certified audit number as agreed by the parties. Interest is not charged even if multiple years have passed.

Finally, it is inappropriate to include recommendations with respect to DDS since those are not the responsibility of CAU and it is not proper to suggest otherwise.

C. DDS, as the State Contract Manager, and not CAU, is obligated to obtain approval from the State's Division of Purchase and Property ("DPP") as to contract changes, modifications or work added. In furtherance of DDS' obligations, CAU directly sought guidance from the DPP on contract changes, modifications and the performance of additional work that was being requested. All changes were codified within Contract A66489 Amendment 12 and MOUs that DPP approved. See **Exhibit #4**, Addendum 12 and communications with DPP and CAU memorializing Memoranda of Understanding ("MOUs") with DDS. Moreover, the few MOUs that OSC/MFD references in the Draft Report as being signed by only DDS and CAU were from long ago. One was from more than ten (10) years ago, and the most recent one was from more than five (5) years ago. Therefore, given the passage of time and turnover of staff, it is possible that there is additional correspondence from DPP memorializing its concurrence that simply was not located. Finally, the fact that there is nothing at issue for more than the last five years demonstrates that CAU has been diligent about assuring that DPP has approved all contractual adjustments. Nevertheless, the responsibility lies with DDS, not CAU. Similarly, the recommendation with respect to audit finding C is directed at DDS, not CAU and should not have been included in the Revised Draft Report.

D. CAU acted in accordance with the contract. The State Contract Manager's modifications to the Contract were approved by DPP in Addendum 12 and various MOUs. The CAU employees referenced in the Revised Draft Report work at DDS' offices upon the request of DDS to facilitate and expedite participant enrollment, which, without the assistance of CAU employees, would have been excessively backlogged. The CAU employees are trained and, with regard to daily activities, supervised by DDS. Statements collected from six staff working at the DDS offices verify that these CAU employees working at the DDS office carry out work "as assigned ... by the DDS Assistant State Program Manager, Ursula Baker, in Trenton." "On a day to basis... [the employees] formerly took direction from... and [were] supervised by the DDS State Contract Manager, Renee Davidson, in Trenton." The CAU employees have also certified that "DDS, not CAU, advises... if [the worker] is to perform any certain services" and that DDS, and not CAU, provides all oversight of ... work, including access to secured information and databases." If there is a problem with the "lack of segregation of duties" or "access to information" as OSC/MFD claims, then those are

issues that OSC/MFD should address with DDS. See **Exhibit #5**. This is another instance in which OSC/MFD could have been provided with information prior to preparation of the Draft Report had CAU been consulted. This is also another instance in the Revised Draft Report in which OSC/MFD infers impropriety by CAU with respect to something for which CAU is absolutely not responsible.

E. As outlined in response to audit finding D and recommendation D above, CAU employees performed services at the request of DDS and in conformance with the contract Addendum and various MOUs and were supervised at all times by DDS and its personnel. CAU was always in conformance with contract requirements. The recommendation in E is directed to DDS and does not pertain to CAU.

F. All billings for Nursing Assessments, and the provision of the administration and management of the Nursing Reassessment Process, were in accordance with the applicable provisions contained in the contract. These are different, albeit interrelated, services. Had OSC/MFD conferred with CAU when OSC/MFD reopened and expanded the audit or considered the information provided by CAU to OSC/MFD, following receipt of the Draft Report, OSC/MFD could have and would have avoided this erroneous conclusion. No money is due to the State from CAU in interest or otherwise.

G. All payroll processing was conducted in accordance with the requirements of the contracts. All timesheets are processed in accordance with contract requirements. The contract does not contain a requirement for CAU to independently verify work performance nor is there a mechanism to do so. CAU processes payroll in accordance with timesheets submitted. These timesheets contain representations by both the employer and the employee that the services were performed.

Documents are preserved in accordance with a seven (7) year document retention policy approved by the State. The rare misfiling of timesheets does not invalidate payroll processing that was performed in accordance with the contract for work that employees provided to their Participant through PPP. Certifications from workers who performed work for Participants were provided to the DPP at the Audit Exit Conference on June 9, 2014 and are attached as **Exhibit #6**. This is an issue that was fully addressed back in 2014 and reiterated following receipt of the Draft Report but ignored in the Revised Draft Report. No monies are due the State from CAU, either in interest or in principal.

H. Counselor training records are maintained in accordance with the contract. Trainings are scheduled and provided by DDS staff. Thus, this issue and the other recommendations contained in audit finding H pertain to DDS, not CAU, and should not have been included in a report regarding CAU's compliance. CAU has always endeavored to work with DDS and other State agencies and divisions to assure that

both the spirit and the letter of the contract are followed. CAU, however, is not responsible for what DDS does or does not do and cannot properly be held responsible. Once again, both recommendations pertaining to audit finding H apply to DDS, not to CAU.

I. Counselor assignment of new Participants and ongoing contact with Participants is provided in accordance with the contract. The State, and not CAU, controls scheduling and delivering the Mandated Counselor Training. Thus, CAU must rely on the State to provide training after CAU hires new counselors. Any deviations in assigning Counselors in accordance with contract requirements are promptly addressed within the counseling department. The recommendation with respect to establishment of benchmarks including in audit finding I does not apply to CAU and should not have been included in a report entitled "Compliance of CAU...".

J. Contractual counselor caseload limits are adhered to by CAU. Counselors are hired in accordance with the growth projected by DDS. Fluctuations in those projections are managed and accounted for by CAU, subject to matters outside CAU's control, such as predictability and notice; while always preserving the Participants' access to a counselor and program services. Counselors, once hired, are not permitted to see Participants until they have attended the State-mandated training which – again – is scheduled and provided by DDS, not CAU. Although CAU has input with regard to the timing of the training, ultimately it falls within the purview of DDS, and predicates the availability of new counselors. An increase in counselor caseload assignment has also resulted from PPP's unpredictable growth, over which CAU has no control and about which it has no advance notice. Any deviations are identified and corrected within the counselor resources available at the time while also taking into account Participant geography and language spoken. Swift realignment of counselor caseloads is made when necessary; while always preserving the Participants access to a counselor. CAU is certainly in favor of the coordination of program growth and counselor training but again, these are things that are not, nor have they ever been, within CAU's responsibility or control. The recommendation pertaining to this audit finding is made to DDS, not CAU.

K. Counselors' visits with Participants occur in accordance with the contract requirements. Counselors' documentation of visits with Participants is maintained in accordance with the contract requirements. Quality assurance checks are performed by CAU supervisory staff. Supervisors provide guidance and implement progressive discipline as deemed warranted. Both recommendations pertaining to this audit finding are directed to DDS, not CAU.

L. What was previously called the Participant Advisory Committee is now called the Quality Assurance Committee. Meetings of the committee are convened at the request of the State as amended in Contract A66489 Addendum 12 and MOUs that

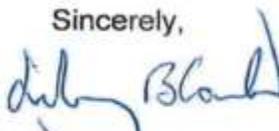
DPP approved. Specifically, contract A66489 Addendum 12 made changes to the Participant Advisory Committee and changed the name of this committee to the Quality Assurance Committee. See **Exhibit 4**, excerpt of this related language changing the name and parameters of the Quality Assurance Committee. CAU maintains meeting agendas and detailed minutes as required by the contract for all meetings held as requested by the State. There is full compliance by CAU in the function and purpose of the committee. CAU conferred with OSC/MFD following receipt of the Draft Report and advised OSC/MFD of the name change but the Revised Draft Report makes no reference to this. OSC/MFD's statement that the Participant Advisory Committee was not active during the audit is misleading and disingenuous because the committee functions were performed by the Quality Assurance Committee. Finally, the recommendation pertaining to audit finding L is directed to DDS, not CAU.

M. Again, the recommendation pertaining to audit finding M is directed at DDS. A reconciliation of the Contract Reserve will be provided by CAU to the State at the conclusion of the contract. The money that is due will be returned but no money is due now since the contract has not expired and no interest is due or will be due or payable for the many reasons outlined above.

CAU appreciates OSC/MFD's role and responsibility and has always strived to work with OSC/MFD in a cooperative and collaborative manner. However, the Revised Draft Report contains numerous inaccuracies and, as a result, the recommendations are misguided. CAU reiterates its request for reconsideration of these issues as outlined above and revision of the Revised Draft Report.

Thank you for your consideration.

Sincerely,



Sidney Blanchard
Executive Director
Community Access Unlimited

Exhibits 1-6

cc: Mr. Michael Morgese, via Via Express Mail
Mr. Joseph Amoroso, Director, New Jersey State Division of Disability Services
Via Express
Harold Poltrock, Esq., President, Board of Trustees, CAU (via Email w/o Exhibits)

CAU Response to *"Draft Audit Report on Compliance of Community Access Unlimited, Incorporated's with the State of New Jersey's Personal Preference Program Contract"*

Issued by the Office of the State Comptroller

May 12, 2017

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Ms. Millie Aurigemma, Director of Finance, CAU (via email w/o Exhibits)



State of New Jersey

DEPARTMENT OF HUMAN SERVICES
PO BOX 700
TRENTON, NJ 08625-0700

CHRIS CHRISTIE
Governor

KIM GUADAGNO
Lt. Governor

ELIZABETH CONNOLLY
Acting Commissioner

May 31, 2017

VIA HAND-DELIVERY AND ELECTRONIC MAIL

Philip James Degnan, Esq.
State Comptroller
Office of the State Comptroller
P.O. Box 024
Trenton, NJ 08625-0025

**RE: Revised Draft Audit Report- The Compliance of Community
Access Unlimited, Inc. with the
State of New Jersey's Personal Preference Program Contract**

Dear Mr. Degnan:

The NJ Department of Human Services ("DHS") is in receipt of the Revised Draft Audit Report prepared by the Office of the State Comptroller ("OSC"), Medicaid Fraud Division regarding *The Compliance of Community Access Unlimited, Inc. with the State's Personal Preference Program Contract*. The objective of this audit was to review Community Access Unlimited, Inc.'s ("CAU") compliance with its State contract and, due to significant audit findings, it was expanded to review and analyze how CAU administered Medicaid funds received on behalf of participants in the Personal Preference Program ("PPP") since 2000.

PPP is an alternative way for individuals ("Participants") to receive their NJ FamilyCare Personal Care Assistant services. These services include assistance with activities of daily living and with household duties essential to Participants' health and comfort. Using a "Cash & Counseling" approach, along with the idea of "consumer direction," PPP provides services that allow seniors and people with disabilities who are NJ FamilyCare recipients to direct and manage their own services. With a monthly cash allowance, Participants work with a consultant to develop a Cash Management Plan. This plan helps Participants decide the services that they need and select the individuals and/or agencies they can hire to provide those services. PPP also includes Fiscal Management services to help Participant's with the

financial aspects of PPP. As of the April 30, 2017, there were 9,537 Participants enrolled in PPP.

As OSC is aware, on November 6, 2016, the State awarded the contract for PPP services to a new vendor, Public Partnerships LLC (the "New Contract"). The New Contract currently is in the contract transition period, with the new vendor scheduled to take over services on July 1, 2017.

Attached is DHS' Response and Corrective Action Plan to the Revised Draft Audit Report. Many of the findings and recommendations already have been addresses by the New Contract. DHS also has provided additional information and documentation in its Response, which we believe will be helpful to OSC to finalize its audit findings.

Sincerely,

A handwritten signature in blue ink, appearing to read "Elizabeth Connolly".

Elizabeth Connolly
Acting Commissioner

EC:04
Enclosure

C: Josh Lichtblau, Esq., Director, Medicaid Fraud Division
Mark E. Talbot, CPA, CPM, Director, Office of Auditing
Joseph M. Amoroso, Director, Division of Disability Services

**Response and Corrective Action Plan to the Office of the State Comptroller, Medicaid
Fraud Division's Revised Draft Audit Report on compliance of Community Access
Unlimited, Inc.'s Personal Preference Program Contract**

- A. CAU Held \$19.1 million of unspent participants' funds and interest that were required to be returned to the State

DHS Response: The Office of the State Comptroller ("OSC") should be aware that since the inception of the Personal Preference Program ("PPP"), unspent balances were allowed to accumulate in a segregated account in order to be a source of available funds to pay emergency claims on an expedited basis rather than requesting these emergency funds through the Medicaid Program's fiscal agent. Notwithstanding, the Department of Human Services ("DHS") had no knowledge that Community Access Unlimited, Inc. ("CAU") transferred unspent Medicaid funds to its investment accounts because the unspent funds always appeared on CAU's balance sheets, which were provided to DHS at regular intervals. In accordance with the contract to serve as the fiscal agent for PPP (the "Contract"), CAU is required to "act as the custodian of Program Participants' cash grants." (See Exhibit 1) CAU's unauthorized transfer of the unspent Medicaid funds to its investment accounts and subsequent investment of these funds in the stock market not only violated the Contract, but seriously jeopardized the funds that CAU was responsible for safeguarding. Accordingly, it is DHS' position that CAU must remit to the State: (1) the remaining balance of the unspent Medicaid funds, (2) pursuant to the Contract, all interest accrued on the unspent Medicaid funds and (3) any other financial benefit derived by CAU as a result of its unauthorized investment of the unspent Medicaid funds.

OSC's Revised Draft Audit Report incorrectly asserts that the State did not establish a mechanism for CAU to return the unspent Medicaid funds. From 2000 through 2011, DHS has no records supporting CAU's allegation that it requested to return the unspent Medicaid Funds to the State. We note that this unsupported allegation by CAU directly contradicts the fact that it made unauthorized investments of unspent Medicaid funds in the stock market during the same timeframe it now alleges it was trying to return these funds to the State. Nevertheless, on August 27, 2012 DHS provided instructions to CAU on the process for remitting the unspent Medicaid funds to the State. (See Exhibit 2) CAU was aware of and familiar with the protocols to return unspent Medicaid funds as evidenced by the fact that it entered into a Contract Modification effective July 1, 2014 which states in relevant part: "On August 27, 2012, the State NJ State Director of Disability Services issued a letter to CAU that provided a process for CAU to remit Unspent Participant Funds. CAU promptly remitted Unspent Participant Funds for the period 2001 through 2011 once the State provided CAU with a process to do so." (See Exhibit 3) CAU made 2 additional payments in June and July 2015 and further acknowledged its understanding of this process in a letter to DHS dated July 20, 2015. (See Exhibit 4) Furthermore, as part of the contract closeout process, DHS sent a letter to CAU dated April 20, 2017 to remind CAU of the process for the remittance of unspent Medicaid funds and any other funds due to the State. (See Exhibit 5) It also should be noted that as part of a CAU Corrective Action

Plan following the August 27, 2012 instructions, DHS attempted to recover the remaining balance of unspent Medicaid funds from CAU. (See Exhibit 6)

Recommendations:

1. CAU should remit \$11,250,412 by no later June 30, 2017 — the expiration of the 90-day transition period.

DHS Corrective Action: After DHS completes its review of CAU's reconciliation of funds owed to the State following the expiration of the Contract transition period, DHS will take reasonable steps to require CAU to return the remaining balance of unspent accumulated Participant funds, accrued interest and any other financial benefit derived by CAU as a result of its unauthorized investment of these funds. In addition, it should be noted that a contract for these services has been awarded to a new vendor (the "New Contract"). (See Exhibit 7) Under the terms of the New Contract, numerous changes to PPP were made, including eliminating the necessity for a State funded reserve for unspent funds.

2. DDS should include the collection of the \$11,250,412 assessed in this audit as part of a final financial close out of all funds due to the state before the close of this Contract.

DHS Corrective Action: Since OSC has had to rely on estimates to determine what it believes to be the balance owed by CAU, after DHS completes its review of CAU's reconciliation of funds owed to the State following the expiration of the Contract transition period, it will be in a position to determine the final financial close out of all funds due to the State.

- B. CAU Held \$2.5 million of unspent administrative funds and interest that should have been returned to the state

DHS Response: DHS agrees that CAU must remit all unspent administrative funds at the expiration of the Contract. However, OSC incorrectly implies that the Contract required that these surplus administrative funds had to be returned to the State at the end of each year. The

Contract only references that this "has been program practice" but does not make it a requirement. (See Exhibit 1) Furthermore, DHS had no knowledge that CAU "regularly withdrew the interest earned on the surplus funds in the Administrative Account and transferred these funds to another administrative account." Based on CAU's unauthorized withdrawal of funds from the Administrative Account, OSC has determined that there is legal justification for assessing interest on the unspent administrative funds pursuant to

N.J.S.A. 30:4D-17 (e)-(g). After DHS completes its review of CAU's reconciliation of funds owed to the State following the expiration of the Contract transition period, DHS will take reasonable steps to require CAU to return the remaining balance of unspent administrative funds and accrued interest. To the extent that the interest assessed by OSC relates to

“improperly expended Medicaid funds,” DHS will support any recovery efforts by OSC of the assessed interest pursuant to OSC’s statutory authority under N.J.S.A. 30:4D-53 et seq. to “pursue the recoupment of Medicaid overpayments, damages, penalties, and sanctions.”

Recommendations:

3. CAU should remit \$2,527,677 (comprised of \$1,719,254 in administrative funds plus \$808,423 in assessed interest) by no later than June 30, 2017 — the expiration of the 90day transition period of the amended CAU Contract with the state.

DHS Corrective Action: After DHS completes its review of CAU’s reconciliation of funds owed to the State following the expiration of the Contract transition period, DHS will take reasonable steps to require CAU to return the remaining balance of unspent administrative funds and accrued interest.. Furthermore, under the terms of the New Contract there will no longer be an administrative account. (See Exhibit 7)

4. CAU should provide to DDS a reconciliation of unspent administrative funds for years 2012, 2013, and the first six months of 2014 that accumulated through June 30, 2014, the date of the Contract Amendment.

DHS Corrective Action: The letter that DHS sent to CAU dated April 20, 2017 directed CAU to provide a reconciliation of all funds owed to the State, including unspent administrative funds after the end of the Contract transition period. (See Exhibit 5)

5. As part of its final Contract close-out and reconciliation of funds due to the state, DDS must pay at least \$2,527,677 to account for administrative funds and interest due to the state.

DHS Corrective Action: CAU, not DDS (or DHS), is responsible for remitting all administrative funds due to the State.

6. DDS should determine if additional amounts are due to the state for unspent administrative funds and interest covering the period of July 1, 2014 through June 30, 2017 — the expiration of the 90 day transition period. If so, these amounts must be included in the final close-out and DDS should pursue collection of same.

DHS Corrective Action: After DHS completes its review of CAU’s reconciliation of funds owed to the State, it will be in a position to determine whether additional amounts are due to the State for unspent administrative funds. If DHS is unable to collect additional amounts due to the State for unspent administrative funds and interest from CAU, DHS will support any recovery efforts by OSC of the assessed interest on unspent administrative funds pursuant to OSC’s statutory authority.

C. DDS Did Not Obtain DPP Approval for Several MOUs with CAU

DHS Response: The purpose of the referenced Memorandum of Understandings (“MOUs”) was to remediate unforeseen and emergent program issues as they occurred. It is DHS’ understanding that when it sought approval from the Division of Purchase and Property (“DPP”) to make the modifications encompassed by the MOUs, it was advised by DPP that since these modifications related to the use of administrative funds (which were not explicitly delineated in the Contract), it was not within DPP’s authority to provide its approval. DHS’ contemporaneous internal correspondence supports its understanding of the position taken by DPP at the time.

Recommendation:

7. DDS is required to adhere to the Contract, state law and Treasury Circular Letter 14-08- DPP by obtaining written approval from the Director of DPP for any changes, modifications or work added to the Contract.

DHS Corrective Action: DHS has consistently engaged in the practice of seeking all necessary approvals from DPP for State contract changes and will continue to comply with all related contract requirements, State law and Treasury circulars.

D. Unauthorized MOUs Allowed CAU to Perform Services Prohibited by the Contract

DHS Response: DHS contends that the MOUs were permissible since it relied on DPP’s directive that DPP did not need to provide its approval for the modifications encompassed by the MOUs. DHS also disagrees with OSC’s characterization of Section 3.3.2 of the Contract as strictly prohibiting CAU staff from approving the Program Participant’s Cash Management Plan (“CMP”). Conversely, Section 3.3.2 of the Contract states “*Generally speaking*, the contractor provides all the financial, bookkeeping and record keeping duties related to the Program except...Approving the Program Participant's CMP.” (Emphasis added). (See Exhibit 1) DHS also disagrees with OSC’s characterization of N.J.A.C. 10:1403.3(h), as this regulation only requires final approval from the State Contract Manager to make the CMP active after it has been “developed by the consumer in consultation with the county designated agency.”

Recommendations:

8. DDS as the State Contract Manager should approve all acceptable CMPs before the billing start date as required by state regulation and the terms of the Contract.

DHS Corrective Action: In 2011, DDS restricted the review and approval of all CMPs to State staff. DHS will continue to administer the PPP contract in accordance with all legal requirements.

9. DDS should not improperly delegate its contractual responsibilities to contracted vendor staff.

DHS Corrective Action: DHS will continue to administer the PPP contract in accordance with all legal requirements.

E. CAU Employees' Given Unauthorized Access to State Resources

DHS Response: DHS takes preventative measures to restrict vendors' access to confidential information. To that end, in 2011 DDS restricted the review and approval of all CMPs to State staff. In addition, the New Contract explicitly precludes the new vendor's employees from performing this duty. (See Exhibit 7)

Recommendation:

10. DDS should ensure that it provides its contracted vendors with only the most limited form of access to state information and databases needed to perform their contractually required duties.

DHS Corrective Action: DHS will continue its practice of taking preventative measures to restrict vendors' access to confidential information. Accordingly, in order to perform its contractual responsibilities, the new vendor's employees will have limited access to the NJMMIS database.

F. CAU Double Billed the State for Services Rendered

DHS Response: Following negotiations, DDS' Director agreed to permit CAU to bill Medicaid the prevailing rate for completing the assessments and to compensate CAU an additional \$35 per case for the administrative duties related to nursing assessments. These expenses were disbursed from the PPP administrative account. This additional fee does not constitute "double billing" since it was clerical, not clinical. To the extent that OSC has identified an overpayment of Medicaid funds related to these expenses that is in violation of the law or CAU's Medicaid Provider Certification, DHS will support any recovery efforts by OSC of any such overpayments pursuant to OSC's statutory authority under N.J.S.A. 30:4D53 et seq.

Recommendations:

11. CAU should remit \$149,906 comprised of \$113,645 for double-billing plus \$36,261 in interest.

DHS Corrective Action: DHS disputes the categorization of the administrative fee as double billing, but will support any recovery efforts by OSC of the administrative fee pursuant to OSC's statutory authority.

12. DDS should not allow increases for contracted services, whether billed to Medicaid or to DDS, without seeking approval from DPP and memorializing the increase through a contract amendment.

DHS Corrective Action: DHS will continue its practice of seeking all necessary approvals from DPP for State contract changes and will continue to comply with all related contract requirements, State law and Treasury circulars.

G. CAU Failed to Retain Payroll Processing Documents

DHS Response: CAU provided copies of all payroll processing documents to DHS, upon request.

Recommendation:

13. CAU should remit \$12,716 for unsupported payments related to the missing timesheets, which includes the principal amount of \$10,366 plus \$2,350 in interest.

DHS Corrective Action: DHS will support any recovery efforts by OSC of the unsupported payments related to the missing timesheets pursuant to OSC's statutory authority.

H. CAU and DDS Failed to Follow Contractual Training Requirements

DHS Response: In 2013, the training requirements were modified by DDS to address rapid growth and various operational changes in PPP. The New Contract requires the new vendor to follow specific training requirements.

Recommendations:

14. DDS should obtain DPP's approval and properly memorialize all contract revisions before changing the scope of work.

DHS Corrective Action: DHS will continue to memorialize all contract revisions and seek all necessary approvals from DPP before changing the scope of work and will comply with all related contract requirements, State law and Treasury circulars.

15. DDS should adhere to and enforce all training requirements in the PPP contract.

DHS Corrective Action: All training requirements are explicitly stated in the New Contract. (See Exhibit 7)

I. CAU Failed to Meet Contractual Participant-Counselor Matching Requirements

DHS Response: It is DHS' understanding that the delays were attributed to incorrect contact information, participants' unavailability and participants' unwillingness to respond. Under such circumstances, the vendor should not be held accountable.

Recommendation:

16. DDS should establish a compliance benchmark for matching counselors with Participants and periodically select case files to verify contractor compliance.

DHS Corrective Action: Under the New Contract, the new vendor is required to maintain records of all home visits and contact attempts. (See Exhibit 7) DHS will periodically select case files to verify whether the new vendor is in compliance with these contract requirements.

J. CAU exceeded contractual counselor exceed case load limits

DHS Response: DHS routinely discussed this issue with CAU and both parties collectively made appropriate staffing adjustments on a weekly basis, including having supervisors maintain caseloads. It also should be noted that this issue was due in part to the fact that PPP is a Medicaid state plan Alternative delivery mechanism to a State Plan entitlement service which was compounded by the rapid program growth reflected in Chart 2 of OSC's Revised Draft Audit Report.

Recommendation:

17. Given the significant deviation from the contract requirements, DDS should create and implement a monitoring system to comply with the counselor caseload contractual requirements. On a quarterly basis, DDS should require a contractor to submit a counselor caseload compliance report that would allow DDS to validate the contractual thresholds. This change may require DPP approval and, if so, the parties should request DPP guidance in memorializing this change.

DHS Corrective Action: The New Contract requires the new vendor to maintain a case ratio standard that allows for ongoing retention and training of counselors, which should help to avoid the counselor to Participant ratio issues that occurred with CAU.

K. CAU Failed to Satisfy Contractual Monitoring Requirements

DHS Response: In 2013, DHS created the position of Assistant Program Manager at DDS, with the primary responsibility to monitor the vendor's contractual responsibilities.

Recommendations:

18. DDS must review the counselors' quarterly reports to ensure that these reports contain accurate information, are prepared as required and completed in a timely manner.

DHS Corrective Action: In 2013, DHS created the position of Assistant Program Manager with the primary responsibility of monitoring the vendor's contractual responsibilities.

19. DDS must periodically review the counselors' quarterly reports to verify that the documentation supporting the visits adequately supports the services performed.

DHS Corrective Action: Same as corrective action above.

L. CAU Failed to Maintain a Contractually Required Advisory Committee

DHS Response: When the authority to operate PPP changed from an 1115 Research and Demonstration Waiver to a State Plan Amendment 1915 (j) in June 2008, it eliminated the requirement for an advisory committee. Nevertheless, the New Contract requires the vendor to organize and convene an Advisory Committee.

Recommendation:

20. DDS should adhere to all contract requirements, including any related to ensuring that the contractor establishes and operates contractually required committees.

DHS Corrective Action: The New Contract requires the new vendor to organize and convene an Advisory Committee and to keep and maintain appropriate minutes.

M. Significant Post-Audit Changes to the Contract

DHS Response: DHS concurs with OSC's determination that DHS properly amended the Contract through DPP to "permit CAU to transition from the consumer-directed PPP to a managed care environment."

Recommendations:

21. DDS should complete a final financial closeout of all funds due to the state from inception to the end of the Contract. At a minimum, DDS must collect the \$13.8 million assessed in this Audit and any additional amount determined from its financial reconciliation of funds, including Participant and administrative funds and related interest, due to the state for the period covering July 1, 2014 to June 30, 2017 — the expiration date of the 90-day transition period.

DHS Corrective Action: After DHS completes its review of CAU's reconciliation of funds owed to the State it will be in a position to determine the final financial close out of all funds due to the State.

22. DDS should provide OSC with an itemized final close-out detailing the amounts due to the state and then inform OSC when the amount is collected.

DHS Corrective Action: Same as corrective action above.