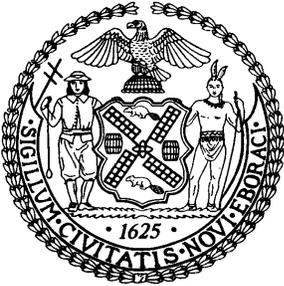


AUDIT REPORT

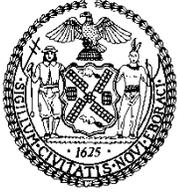


CITY OF NEW YORK
OFFICE OF THE COMPTROLLER
BUREAU OF MANAGEMENT AUDIT
WILLIAM C. THOMPSON, JR., COMPTROLLER

Audit Report on the Human Resources Administration's Fiscal Oversight of Personal Care Service Providers

MJ09-055A

June 30, 2009



THE CITY OF NEW YORK
OFFICE OF THE COMPTROLLER
1 CENTRE STREET
NEW YORK, N.Y. 10007-2341

WILLIAM C. THOMPSON, JR.
COMPTROLLER

To the Citizens of the City of New York

Ladies and Gentlemen:

In accordance with the Comptroller's responsibilities contained in Chapter 5, §93, of the New York City Charter, my office has examined the adequacy of Human Resources Administration (HRA's) efforts to monitor the fiscal activities of contracted personal care service providers and their compliance with fiscal provisions of their HRA contracts.

HRA's Home Care Services Program contracts with personal care agencies to provide Medicaid-funded, non-institutional, long-term care options designed to help the elderly or disabled remain at home rather than in a nursing home or other institution. Audits such as this provide a means of ensuring that City agencies adequately oversee parties under contract with the City and are properly accountable for their use of public funds.

The results of the audit, which are presented in this report, have been discussed with HRA officials, and their comments were considered in the preparation of this report.

I trust that this report contains information that is of interest to you. If you have any questions concerning this report, please e-mail my audit bureau at audit@comptroller.nyc.gov or telephone my office at 212-669-3747.

Very truly yours,

A handwritten signature in cursive script that reads "William C. Thompson, Jr.".

William C. Thompson, Jr.
WCT/ec

Report: MJ09-055A
Filed: June 30, 2009

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*The City of New York
Office of the Comptroller
Bureau of Management Audit*

**Audit Report on the
Human Resources Administration's
Fiscal Oversight of Personal Care Service Providers**

MJ09-055A

AUDIT REPORT IN BRIEF

This audit assessed the adequacy of the Human Resources Administration's (HRA's) efforts to monitor the fiscal activities of contracted personal care service providers and their compliance with fiscal provisions of their HRA contracts.

HRA's Home Care Services Program (HCSP) provides Medicaid-funded, non-institutional, long-term care options designed to help the elderly or disabled remain at home rather than in a nursing home or other institution. One such option, the Personal Care Program, provides home attendant and/or housekeeping services to Medicaid-eligible clients who are in stable medical condition, but who have difficulty with daily life activities, such as walking, cooking, cleaning, bathing, or using the bathroom.

HRA contracts with not-for-profit and for-profit personal care agencies to provide personal care services to eligible individuals. In Fiscal Year 2008, HRA had 93 contracts with different personal care agencies to provide home attendant and housekeeping services to approximately 47,000 individuals at a cost of more than \$2 billion, half funded by the Federal government and half funded by New York State.

Audit Findings and Conclusions

HRA has a number of activities in place to monitor the fiscal affairs of contracted personal care providers. However, these activities are nullified by HRA's failure to act decisively and promptly. The audit found severe delinquencies in the completion of independent CPA audits and in HRA closeouts of personal care agencies' annual financial statements. These delinquencies occurred because of HRA delays in contracting for CPA audit services and resulted in significant delays in the annual HRA closeouts and the recovery of overpayments made to service providers. Consequently, the State and the City lost the use of those funds and could have lost up to an estimated \$25 million in interest revenue on a total of \$203 million in outstanding overpayments that remained with the personal care agencies.

Although the contracts of personal care providers require them to safeguard government funds, HRA does not expressly require the agencies to maintain their cash balances in accounts insured by Federal Deposit Insurance Corporation (FDIC) coverage or to secure the accounts through collateralization or other acceptable means. This matter is of great concern, especially when considering that on June 30, 2008, providers held \$255 million in bank balances of which an estimated \$233 million was not secured at that time by FDIC insurance or through a collateralization arrangement. Although, on October 14, 2008, the FDIC implemented a program to provide unlimited coverage of funds held in non-interest-bearing transaction accounts, the program is temporary and scheduled to expire on December 31, 2009.

The audit also disclosed that HRA Fiscal Managers do not perform field visits on a routine basis, nor do they make visits to all contracted personal care programs each year. Further, HRA's annual performance evaluations of its contracted personal care programs are not based on complete information or information relevant to the contract year. Also, the Director of the Fiscal Operations unit performed and oversaw several key functions, some of which were not adequately segregated. Lastly, HCSP's formal operating procedures do not reflect all current fiscal monitoring policies and procedures followed by the Fiscal Operations unit.

HRA, however, has established cost containment and control policies for service providers to follow and incorporated these measures in its performance monitoring and evaluation of contractors. In general, we found that the service providers adopted these policies. In addition, we noted that the personal care provider rates for Fiscal Year 2008 calculated by HRA and approved by New York State Department of Health appeared reasonable and justified.

Audit Recommendations

To address these issues, we make 12 recommendations, among them that HRA should:

- Ensure that contracts for CPA audit services are established sufficiently in advance of the end of each fiscal (contract) year to ensure that personal care provider financial activities will be audited in a timely manner.
- Require personal care providers to issue their financial statements within a set period of time after the end of each fiscal year.
- Perform timely closeouts for all contracts at the end of each contract year.
- Establish and distribute to all contracted personal care providers a policy statement expressly requiring them to maintain cash deposits in bank accounts that are secured by FDIC insurance and secure the funds exceeding FDIC limits through collateralization or other acceptable methods. The policy should include periodic reporting requirements for the providers' financial institutions and standardization of the information to be reported.
- Implement a formal audit cycle requiring that each service provider undergo an audit or targeted review by Fiscal Managers at least once every cycle.

- Review the HCSP *Contract Management System Procedures Manual*, identify deficiencies, and update policies to reflect procedures implemented since the manual was last updated. Prospectively, the manual should be updated periodically to address newly implemented or revised policies and operating procedures.

Agency Response

In their response, HRA officials agreed with 10 of the audit recommendations and disagreed with two.

INTRODUCTION

Background

The Human Resources Administration¹ (HRA) is responsible for helping individuals and families achieve and sustain their highest degree of self-sufficiency. As such, HRA provides a broad range of programs and services to eligible individuals and families, including income assistance, food stamps, and public health insurance. HRA also provides ongoing services to eligible elderly and disabled individuals to ensure their safety and independence.

HRA's Home Care Services Program (HCSP) provides Medicaid-funded, non-institutional, long-term care options designed to help the elderly or disabled remain at home rather than in a nursing home or other institution. One such option, the Personal Care Program, provides home attendant and/or housekeeping services to Medicaid-eligible clients who are in stable medical condition, but who have difficulty with daily life activities, such as walking, cooking, cleaning, bathing, or using the bathroom. According to HRA statistics, about 65 percent of Medicaid-funded home care clients are served through the HCSP Personal Care program.

HRA contracts with not-for-profit and for-profit personal care agencies to provide personal care services to eligible individuals. HRA solicits and awards personal care contracts through the joint efforts of the Office of the Agency Chief Contracting Officer (ACCO) and the HSCP Home Care Contracts unit. The amount of Medicaid funds expended for personal care contracts is considerable. In Fiscal Year 2008, HRA had 93 contracts with different personal care agencies² to provide home attendant and housekeeping services to approximately 47,000 individuals at a cost of more than \$2 billion, half funded by the Federal government and half funded by New York State.

Each contracted personal care service provider is assigned a client caseload based on specific contract parameters (i.e., service hours and requested caseload) and borough service needs. HRA negotiates the hourly rate to be charged by each provider for each service hour billed and submits the rate for approval to the New York State Department of Health (NYSDOH). The hourly rate consists of a direct labor rate—employee wages, health insurance, and other fringe benefits—and an overhead rate—general administrative and indirect labor (GAIL) costs. For-profit agencies are allocated an additional profit margin of three percent of the direct labor and GAIL budget.

¹ HRA is the State-designated social services agency for the New York City district (one of the five social service districts in the State) with the responsibility to deliver social services to eligible individuals throughout the five boroughs.

² One contractor may operate multiple HRA personal care contracts. Since the focus of this audit is HRA oversight of contracts, not the contract organizations, for clarity the term "personal care contract" is used interchangeably with terms for the contract organization (i.e., agency, program, contractor, provider, and vendor).

Most personal care providers use a third-party telephone and Web-based field management application³ to track and monitor the arrival and departure times of personal care workers at client sites, to submit bills to the New York State Department of Health's Medicaid Management Information System (MMIS), and to interface with other systems for scheduling, case management, and payroll.

In general, each contracted personal care provider must (1) comply with all HRA fiscal and bookkeeping procedures and generally accepted accounting principles, (2) exercise effective internal controls, (3) maintain separate books, records, and bank accounts for the program, (4) safeguard and ensure the appropriate use of funds, and (5) operate in compliance with their contract and applicable laws and regulations.

HRA is responsible for overseeing case management, verifying client eligibility, assessing medical needs, and determining the appropriate care required for each individual. Although providers are paid directly by the NYSDOH, HRA determines the service authorization and provides prior approval of client caseloads and service hours for the contractor's billings for services. HRA is responsible for reviewing and monitoring provider caseloads and approving related adjustments. It is also responsible for monitoring and auditing contractors' provision of personal services, evaluating the quality of care provided, and monitoring the fiscal soundness and compliance of each provider.⁴

The HCSP Home Care Contract Management Services Division is responsible for directly overseeing personal care service contracts. It consists of three separate units: (1) the Procurement Contracts Development unit, which is responsible for ensuring that HCSP contracts reflect current legal and policy requirements, assisting in the procurement process, overseeing annual vendor performance evaluations, and analyzing program regulations, service utilization, and program expenditures, (2) the Program Contracts Management unit, which is responsible for ongoing monitoring of programmatic issues (i.e., provision of services) of each personal care agency, and (3) the Fiscal Operations unit (Fiscal Operations), which is responsible for monitoring the fiscal operations and fiscal compliance of contracted personal care providers. This audit focused on the fiscal monitoring activities of Fiscal Operations.

Fiscal Operations employs various strategies to carry out HRA's fiscal monitoring mandate and is staffed by a Director, six Fiscal Managers, and support staff. The unit reviews audited financial statements for all contracts for each contract year, performs year-end closeouts to identify and recover overpayments, and completes the annual fiscal performance assessment for each personal care provider. Fiscal Operations also calculates the hourly rates to be billed by personal care agencies based on documentation provided by each agency, and submits the rates to NYSDOH for approval.

In general, Fiscal Managers are responsible for conducting monitoring visits to deter fraud and to assess contractors' fiscal compliance with internal control requirements; for

³ According to HRA officials, more than 90 percent of the providers use the Sandata Technologies, Inc.'s Santrax application and the rest of the providers use Infocrossing, Inc.'s Healthcare IT application.

⁴ According to New York State Compilation of Codes, Rules and Regulations (NYCRR) Title 18, Chapter II, Subchapter E, Article 3, Part 505, §14 (18NYCRR 505.14).

reviewing and monitoring corrective action plans; for conducting follow-up visits concerning identified deficiencies; and for collecting and reviewing various information, including weekly payroll summaries and billings, and monthly financial reports to ensure financial soundness.

In addition to performing continuous monitoring, HRA establishes cost reduction and control policies and requirements for contractor agencies to follow to enhance the effectiveness and efficiency of their operations.

Objective

The objective of this audit was to determine the adequacy of HRA efforts to monitor the fiscal activities and fiscal contract compliance of contracted personal care service providers.

Scope and Methodology

We conducted this performance audit in accordance with generally accepted government auditing standards. Those standards require that we plan and perform the audit to obtain sufficient, appropriate evidence to provide a reasonable basis for our findings and conclusions based on our audit objective. We believe that the evidence obtained provides a reasonable basis for our findings and conclusions based on our objective. This audit was performed in accordance with the audit responsibilities of the City Comptroller as set forth in Chapter 5, §93, of the New York City Charter.

The audit scope covered Fiscal Year 2008 (July 1, 2007, to June 30, 2008). However, because Fiscal Years 2003 and 2004 personal care contracts represented those last audited by an independent CPA and closed out by HRA at the beginning of our audit fieldwork, the audit scope was expanded to include certain information from Fiscal Years 2001 through 2009 to perform various necessary audit tests and analysis.

To accomplish our objective, we carried out the following procedures.

To familiarize ourselves with HRA's responsibilities regarding personal care contractors, we reviewed the New York City Charter, the Mayor's Management Reports for Fiscal Years 2007 and 2008, and other relevant information obtained from the HRA Web site and other sources.

To determine the contractual requirements of personal care providers, particularly as they pertain to their fiscal responsibilities and reporting requirements, we reviewed and abstracted the terms and provisions of the HRA contracts. To determine statutory and regulatory requirements for both HRA and personal care providers, we also reviewed:

- New York State Compilation of Codes, Rules and Regulations (NYCRR) Title 18, Part 505 §14, "Personal Care Services," Part 517, "Provider Audits," and Part 518, "Recovery and Withholding of Payments or Overpayments"
- Comptroller's Directive #1, "Principles of Internal Control"
- Comptroller's Directive #5, "Audits of Agency Programs & Operations"

- Comptroller’s Directive #11, “Cash Accountability and Controls”
- Comptroller’s Memorandum #92-12, “Use of Personal Bank Accounts for City Business”
- Procurement Policy Board (PPB) rules, Chapter 4, “Contract Administration”
- New York City Local Law 94 of 1985

We used these regulations as audit criteria in conjunction with applicable HRA policies and procedures and personal care contract provisions.

Further, we reviewed a previous audit of HRA conducted by the Comptroller’s Office and noted findings and conditions in those audits that addressed matters relevant to this audit.⁵

Review of Controls

To gain an understanding of, and evaluate, the processes and controls involved in HRA’s fiscal oversight and monitoring of personal care providers, we reviewed organization charts and interviewed various officials and staff. We reviewed the HRA self-assessment of its internal controls covering Calendar Year 2007, performed in compliance with New York City Comptroller’s Directive #1 and submitted to the Comptroller’s Office.

We also reviewed formal operating procedures pertaining to HRA’s monitoring and oversight of personal care contractors as contained in the HCSP *Contract Management System Procedure Manual* (dated May 1986).

We interviewed HRA officials and personnel, identified the activities employed by Fiscal Operations for monitoring the fiscal activities of personal care providers, and performed walkthroughs of these activities. To supplement our understanding and to ascertain the adequacy of HRA’s policies and procedures, where applicable, we compared them to regulatory and contract requirements. Further, we ascertained whether there was adequate segregation of duties and supervisory oversight.

We evaluated HRA’s calculation of the hourly rates established for each service provider. In addition, we familiarized ourselves with the components of the hourly rate and traced the individual components to the supporting statutory regulations (i.e., living wage requirements, union contracts, tax rates, etc.). Further, we obtained the list of approved rates for all providers, compared the rates in effect for Fiscal Years 2008 and 2009, identified provider rate changes, and determined whether those changes were reasonably justified by HRA and approved by NYSDOH.

Review of Data Reliability

Fiscal Operations does not use HRA computer systems to monitor service providers’ fiscal activities. Instead, Fiscal Operations has read-only (inquiry) access to third-party service

⁵ Office of the New York City Comptroller, *Audit Report on the New York Department of Human Resource Administration’s Home Care Services Program* (#ME05-063A), issued June 30, 2005.

organization systems that are used by most personal care providers to track home care worker visits, attendance, and work hours, and to submit billing information to NYSDOH. Fiscal Operations provided us with requested information related to personal care provider hours generated through the third-party Sandata and Infocrossing systems for each contracted personal care provider for Fiscal Year 2008.

To assess reliance on the reports generated through Sandata's Santrax application, we reviewed an independent report issued by Marcum and Kliegman, LLP, Certified Public Accountants (CPAs), dated January 23, 2009, which expressed an opinion that the general controls that Sandata had placed in operation as of December 31, 2008, provided reasonable assurance that Sandata's control objectives would be achieved. Likewise, to assess reliance on Infocrossing-generated reports, we reviewed an independent report prepared by Eisner LLP, Accountants and Advisors, dated December 16, 2008, which expressed an opinion that the general controls that Infocrossing had placed in operation as of September 30, 2008, provided reasonable assurance that Infocrossing's control objectives would be achieved. These independent reports provided reasonable assurance that the data maintained by Sandata and Infocrossing were reliable for our audit purposes.

Evaluation of Fiscal Monitoring Activities

HRA employs various activities to monitor the fiscal operations of contracted personal care providers. As enumerated below, we performed tests of these activities to assess the adequacy of HRA's fiscal oversight and monitoring of personal care providers.

Using the population of 93 contracts for Fiscal Year 2008, we categorized the different contract types into six groups based on the type of provider organization (i.e., for-profit or not-for-profit), type of service (e.g., housekeeping or home attendant), and site. We judgmentally selected one contract from each category to conduct an in-depth evaluation of HRA monitoring activities.

In addition, we judgmentally selected four contracts from a list of approximately 30 contracts that had either been terminated or not renewed between Fiscal Year 2003 and Fiscal Year 2008. We identified the activities undertaken by HRA to oversee the winding down of affairs and, based on available information, calculated the costs incurred by those contractors after contract termination, including personnel and office space the organization is required to maintain until the financial statements can be audited and the final contract year closed out by HRA. These four contracts were selected because of problems with the contractors, according to the Director of Contract Management Services.

For other audit procedures applied by Fiscal Operations to assess the monitoring of personal care providers' fiscal activities, we tested the information that HRA had available, as follows.

Regarding personal care providers' annual financial statements, we interviewed officials from the Bureau of Audit Review and Contracts (BARC) to identify HRA practices for engaging independent CPAs to audit and provide opinions on personal care providers' annual financial

statements. To determine whether each contractor was audited by an independent CPA, we reviewed the Fiscal Year 2003 audited financial statements submitted to HRA and checked whether each report contained an independent auditor opinion. For completeness, we also matched the financial statements to the list of State-approved rates for each provider for that year.⁶ To measure the time it took to initiate the CPA audits, we calculated the time elapsed from June 30, 2003, (the end of Fiscal Year 2003) through the audit start dates. We also reviewed the audited financial statements for Fiscal Year 2004 for 23 personal care providers that were closed out (discussed below).⁷ For the six sampled contracts (one selected for review from each category), we read the audited financial statements and accompanying audit notes, and evaluated findings and conditions cited by the independent auditors.

Regarding year-end closings by HRA, we reviewed the closing statements and supporting documentation for Fiscal Year 2003 and 2004 contracts that were closed out in December 2007 and October 2008, respectively. The Fiscal Year 2003 and 2004 contracts represented the most recent closings performed by Fiscal Operations. We calculated the time elapsed from the audit completion date to the HRA closeout date to determine the timeliness of closeouts. To assess the accuracy of HRA's closeout calculations, for the six sampled contracts, we traced selected items (i.e., fund balance and security deposit) from the closeout statements to the audited financial statements for Fiscal Year 2003. We also reviewed various supporting documentation (i.e., billing statements and copies of checks submitted to HRA) to assess whether HRA had billed and collected the excess funds held by those service providers with reported surplus fund balances.

To determine whether not-for-profit providers submitted required monthly financial reports to HRA, we obtained and reviewed the Vendor Agency Monthly Financial Reports (financial reports) for the 68 not-for-profit contracts for the month of June 2008, which represented the most recent month for which such reports were submitted to HRA at the time we performed the test. These unaudited monthly reports show bank balances (by bank account), accounts receivable, available lines of credit, and liabilities of each provider. The reports also reflect the computation of the vendor's equity and liquidity ratios.⁸ We determined whether information was reported as required and assessed how the information was used by HRA to monitor the providers' cash position. We recalculated the ratios for accuracy.

Regarding Fiscal Manager field visits, we reviewed the "Audit Procedures for Field Audits," Field Visit Worksheets, internal control questionnaires, and other supplemental materials used by Fiscal Managers to monitor personal care agency financial operations as well as to collect information from personal care providers.

To ascertain the frequency of Fiscal Managers' field visits to personal care providers, for Fiscal Years 2006 through 2008, we reviewed weekly attendance schedules detailing Fiscal

⁶ At the time the test was performed in September 2008, Fiscal Year 2003 represented the last year for which HRA had contracts in place with CPA firms for the provision of independent audit services.

⁷ Personal care providers directly contracted with CPA firms for independent audit service in Fiscal Years 2004 and 2005, subject to HRA approval.

⁸ Fiscal Operations did not require monthly reports from for-profit agencies.

Managers' daily work sites, attendance, and field visits to service providers. We also reviewed audit reports conducted by Fiscal Managers for the Fiscal Year 2006 contracts.

Regarding HRA's annual assessment of service providers, for the six sampled contracts we obtained the Performance Evaluations for Fiscal Years 2003 through 2007 and reviewed the programmatic and fiscal benchmarks used to assess and rate the contractors each year, and determined whether the overall ratings were adequately supported.

Further, we reviewed various cost containment and control policies established by HRA and, on a limited basis, assessed whether those policies were appropriately communicated to and implemented by service providers.

Discussion of Audit Results

The matters covered in this report were discussed with HRA officials during and at the conclusion of this audit. A preliminary draft report was sent to HRA officials and discussed at an exit conference held on May 18, 2009. On May 22, 2009, the Commissioner of HRA submitted additional information for consideration. We reviewed that information and made slight modifications to our report as we deemed appropriate. On June 9, 2009, we submitted a draft report to HRA officials with a request for comments. We received a written response from HRA officials on June 22, 2009. In their response, HRA officials agreed with 10 of the audit recommendations and disagreed with two. HRA officials stated:

Our services allow our frail and disadvantaged clients to live in dignity and safety within the comfort of their communities. This is the primary focus and mission of HRA's Home Care Program. We seek to carry out this mission in the most effective and cost-efficient manner for the City. In that spirit, we thank the Comptroller's staff for bringing to our attention areas in which we may improve our operations. The *Audit Report on the Human Resources Administration's Fiscal Oversight of Home Care Service Providers* makes some important and extremely helpful recommendations. We appreciate the time and effort expended by the Comptroller's office.

The full text of the HRA response is included as an addendum to this report.

FINDINGS AND RECOMMENDATIONS

HRA has a number of activities in place to monitor the fiscal affairs of contracted personal care providers. However, the effectiveness of these activities is nullified by HRA's failure to act decisively and promptly. Because of these problems, the recovery of contract overpayments made to the service providers were delayed for years. Consequently, the State and the City lost the use of those funds and could have lost up to estimated \$25 million in interest revenue on a total of \$203 million in outstanding overpayments that remained with the personal care agencies.

The above issues are the result of severe delinquencies in the completion of independent audits and in closeouts of provider annual financial statements. These delinquencies occurred because of HRA delays in contracting for CPA audit services. For example, it took a total of three years, on average, for HRA to contract with CPAs and for the CPAs to complete the audits of Fiscal Year 2003 personal care provider contracts. Consequently, the annual HRA closeouts were delayed, and the excess funds held by contractors remained unrecovered for a significant period of time.

In addition, we determined that HRA closeouts for Fiscal Year 2003 and 2004 contracts were neither promptly nor consistently performed for all contracts for each contract year. On average, it took 1.8 years after the completion of the independent audit of providers' fiscal records for HRA to perform closeouts. Generally, such significant delays increase the risk of fraud or other improprieties and can cause providers to incur excessive additional operational costs associated with those delays.

Although the contracts of personal care provider require them to safeguard government funds, HRA does not expressly require the agencies to maintain their cash balances in accounts insured by Federal Deposit Insurance Corporation (FDIC) coverage or to secure the accounts through collateralization or other acceptable means. This matter is of great concern especially when considering that on June 30, 2008, providers held \$255 million in bank balances of which an estimated \$233 million were not secured by FDIC insurance or through a collateralization arrangement, at that time. Although, on October 14, 2008, the FDIC implemented a program to provide unlimited coverage for funds held in non-interest bearing transaction accounts, the program is temporary and scheduled to expire on December 31, 2009.

Also, Fiscal Operations' field reviews of personal care providers do not monitor all the providers on a regular and consistent basis. Specifically, Fiscal Managers do not perform field visits on a routine basis, nor do they make visits to all contracted personal care programs each year.

During field visits, Fiscal Managers are expected to perform various audit services, such as, a review of internal controls or targeted fiscal records and transactions. In Fiscal Year 2008, however, Fiscal Managers spent less than five percent of their workdays performing field visits to only 20 of the 93 contract programs. With respect to the selection of programs to visit and type of audit service to perform, we noted that Fiscal Operations lacks a formal, risk-based audit plan and

does not perform fiscal audits of service providers on a cyclical basis or with sufficient frequency to assess compliance.

Further, HRA's annual performance evaluations of its contracted personal care programs are not based on complete information or information relevant to the contract year. Programmatic evaluations represented the contract year being evaluated, but the fiscal evaluation was based on the providers' last audited financial statements, which, as noted above, lagged three years behind the contract evaluation period.

Our review also determined that the Director of Fiscal Operations performed and oversaw several key functions, some of which were incompatible and not adequately segregated. Also, HCSP's formal operating procedures do not reflect all current fiscal monitoring policies and procedures followed by Fiscal Operations.

HRA, however, has established cost containment and control policies for service providers to follow and incorporated these measures in the performance monitoring and evaluation of contractors. In general, we found that the service providers adopted these policies. In addition, we noted that the personal care provider rates calculated by HRA and approved by NYSDOH for Fiscal Year 2008 appeared reasonable and justified.

These findings are discussed in more detail in the following sections of the report.

Severe Delays in the Independent Audits and Closeouts of Providers' Annual Financial Statements

HRA does not ensure that independent audits of personal care providers' annual financial statements are performed within a reasonable period of time after the end of each contract year. Overall, delays in the completion of independent audits and closeouts of providers' annual financial activities increase the risk of fraud or other improprieties and can cause providers to incur excessive additional operational costs associated with those delays. These matters are discussed below.

Delays in Independent CPA Audits of Providers' Annual Financial Statements

In accordance with New York State Social Service Law, Title 18 NYCRR §505.14(i), HRA personal care contracts require service providers to submit an annual financial statement that is audited by an independent CPA.

BARC is directly responsible for engaging a group of CPA firms to provide independent audit services to personal care service providers. In general, these contracts establish the fee structure and audit services to be provided by various CPA firms. Each CPA firm engaged by HRA is assigned to audit the financial activities of a group of personal care providers. The providers are responsible for paying the CPA firms. However, on the whole, HRA has been

delinquent in soliciting and establishing contracts with independent CPAs to perform the mandated audits of personal care service programs.

At the start of the audit, Fiscal Year 2003 represented the most recent year for which HRA had contracts in place with CPA firms for the provision of independent audit services. Using the audited Fiscal Year 2003 financial statements for each of the 96 personal care contracts, we measured the time elapsed from the end of the year, June 30, 2003, through the independent audit start dates, and determined that it took an average of 2.2 years (ranging from 1.1 years to 4.8 years) for the independent audits for Fiscal Year 2003 to begin. In addition, we calculated that it took an average of six to eight months for them to be completed and for HRA to review and accept the personal care providers' annual financial statements. Therefore, on the whole, it took an average of three years for personal care providers' audited financial statements to be audited after the end of the Fiscal Year 2003 contract year. This delay poses significant concerns about the likelihood of recovering overpayments from agencies that may have had material operating weaknesses and it increases the risk that funds could be misappropriated.

At a meeting on November 14, 2008, BARC officials stated that the contracting process is lengthy, resulting in the delay of contracting CPA audit services. They also asserted that between approximately July and December 2004, BARC contracted with different CPA firms to audit the Fiscal Year 2003 financial activities of personal care providers. However, this means that BARC contracted for CPA services 12 to 18 months *after* the end of Fiscal Year 2003, which is an unacceptable amount of time, especially since Comptroller's Directive #5 states that "the selection of CPAs must be completed *no later than 60 days after the start of the program or fiscal year.*" (Emphasis added)

Further, BARC officials asserted that BARC prepared a Requests for Proposal (RFP) covering audit services for Fiscal Year 2004 and 2005 personal care contracts, which for undisclosed reasons was either not approved or was delayed. Instead, the personal care providers were allowed to contract independently for CPA audit services, subject to HRA approval. Based on available information, we determined that most of the providers' Fiscal Year 2004 financial statements were audited by approximately October 2008, three to four years after the end of the Fiscal Year 2004.

Regarding the CPA audits of Fiscal Year 2005 personal care contracts, based on information provided by BARC officials after the exit conference, as of October 2008, BARC had received audited financial statements for only 21 (23%) of the 93 contracted personal care agencies. As of May 2009, BARC had received audited financial statements for a total of 58 (62%) of the 93 contracted personal care agencies, and audited financial statements for the remaining 35 providers for Fiscal year 2005 remained outstanding. In addition, by the end of our audit fieldwork, HRA had not performed closeouts for any of the Fiscal Year 2005 personal care contracts.

With respect to the years subsequent to 2005, according to assertions made by BARC officials during the audit and information provided subsequent to the exit conference, in July 2008, BARC issued RFPs for CPA audit services covering Fiscal Years 2006 through 2008, with proposals initially due by September 4, 2008 (amended to October 3, 2008), and an anticipated

contract start date of January 1, 2009. Information provided by BARC indicated that proposals were received from CPA firms for Fiscal Years 2006 through 2008. However, contracts for those years were not in place by the end of our audit fieldwork. Therefore, audits of personal care provider financial statements for the 2006–2008 contract years were not started as of May 2009.

BARC officials also asserted that as part of their catch-up attempts, they prepared an RFP for Fiscal Years 2009 through 2012 CPA audit service and were awaiting approval of the RFP from oversight agencies so that future independent CPA audits of personal care providers could be performed more promptly. BARC officials provided us with a cover sheet of the draft RFP for “Home Care Services Program Audits for Fiscal Years 2009 through 2012.” However, without further substantive information, we could not ascertain how far along BARC was in the process of procuring audit services for Fiscal Years 2009 (now ending) through 2012.

We acknowledge that the procurement process can be lengthy. Nevertheless, if the process is started in sufficient time prior to the end of the contract year, delays can be significantly reduced, if not avoided. Overall, the fact remains that HRA has sustained significant lapses in promptly procuring CPA services, which in turn severely delayed the audits of provider financial statements and annual closeouts.

In general, government and publicly traded firms must release their audited financial reports within months of the close of their fiscal years so that management and stakeholders can make sound decisions based on the most current information. For example, New York City is required to issue its audited financial statements “within four months after the close of the city’s fiscal year.” Allowing nearly three years to elapse before personal care providers issue their annual financial statements is highly irregular and unacceptable.

It should be noted that at times delays arise due to Fiscal Operations challenging a provider’s financial statement. For example, HRA challenged the Fiscal Year 2003 financial report for the Henry Street Housekeeping agency (Henry Street), which claimed a write-off of \$831,599 for unpaid billings for Fiscal Years 2001 and 2002. (A write-off allows the provider to offset that amount against any overpayments it receives.) Henry Street could not substantiate the write-off and restated its financial statement, reducing the write-off amount to \$92,910. HRA challenged this reduced write-off as well, requiring the agency to provide adequate substantiation or it would disallow the write-off.

The timeliness in engaging CPAs is important to ensure that there is not a break in continuity in the auditing process and, if necessary, to facilitate the transfer of information from one firm to its successor. The delinquency in procuring contracts for CPA audit services sufficiently in advance of the end of a contract year delays year-end closeouts and recovery of overpayments, rendering HRA’s fiscal monitoring activities generally ineffective. Therefore, contracts for CPA audit services should be established sufficiently in advance of the end of each fiscal (contract) year to ensure that personal care provider financial activities will be audited in a timely manner.

Untimely Closeouts and Recovery of Overpayments

According to closeouts performed for contract years 2001 through 2004, HRA billed service providers \$203 million to recover excess funds. However, while we determined that the closeout calculations were generally accurate, the closeouts were neither timely nor consistently performed for all contracts for each contract year. Consequently, recovery of overpayments was delayed for several years. Not only did this result in the State and the City losing use of these funds, it also resulted in the potential loss of up to \$25 million in estimated interest revenue on the outstanding overpayments.

New York State Social Service Law, Title 18, Article 3, §518 (18NYCRR518) states, “Recovery of overpayments may be made in connection with an audit, review or investigation. . . . An overpayment includes any amount not authorized to be paid under the medical assistance program, whether paid as the result of inaccurate or improper cost reporting, improper claiming, unacceptable practices, fraud, abuse, or mistake.” These provisions are embodied in HRA personal care contract provisions, which establish that the personal care contractors “shall return such funds paid in excess of Allowable Payments” and that HRA has the “right to recoup such unspent portion of those funds from the Contractor.”

Fiscal Operations performs closeouts of personal care contracts when a provider’s annual financial statements are audited and HRA accepts the financial report. The audited financial statements form the basis of HRA’s closeouts, which consist of reconciling payments made based on estimated contractor billings (the approved rate multiplied by the estimated service hours established by the contract) to the allowed payments (approved rate multiplied by the actual, authorized service hours provided). In general, after considering working capital needs and other required costs or adjustments, HRA generally recovers excess payments (overpayments) through directly billing the service providers.

As shown in Table I below, HRA’s closeouts and billings for contracts for Fiscal Years 2001 through 2004 were untimely and inconsistent. For example, in November 2005, Fiscal Operations completed closeouts for certain for-profit and not-for-profit Fiscal Year 2001 contracts. It performed no closeouts for Fiscal Year 2002 contracts. However, in and around December 2007, it completed closeouts for Fiscal Year 2003 not-for-profit contracts, which cumulatively included Fiscal Year 2002.

Table I

Summary of HRA Closeouts and Overpayments Billed to
Personal Care Service Providers for Contract Years 2001–2004

Contract Year (Fiscal Year) July 1–June 30	Approximate Time Closeouts Completed and Overpayments Billed	For Profit Contracts		Not-for-Profit Contracts		Total Amount Billed \$(in millions)
		# of Contracts Closed out	Amount Billed \$(in millions)	# of Contracts Closed out	Amount Billed \$(in millions)	
2001	November 2005	9	\$11.3	44	\$37.5	\$48.8
2002	Not Closed Out	Not Closed Out		Not Closed Out		\$0
2003 ^(a)	December 2007 ^(a)	Not Closed Out		64 ^(a)	\$96.7 ^(a)	\$96.7
2004 ^(b)	October 2008	23	\$57.5	Not Closed Out		\$57.5
Totals			\$68.8		\$134.2	\$203

^(a) Contract years 2002 and 2003 were closed out cumulatively.

^(b) Fiscal Year 2004 was the last year for which closeouts were performed. No contracts for Fiscal Years 2005-2008 were closed out as of March 31, 2009.

Regarding timeliness, Fiscal Operations was delinquent in performing closeouts and recovery of overpayments. It took an average of 1.8 years after the completion of independent audits of personal care provider financial statements for Fiscal Operations to accept them and to perform closeouts for Fiscal Year 2003 contracts. When added to the average of 2.2 years for independent audits to be initiated and another six to eight months for the audit to be completed, on the whole it took nearly five years, on average, for HRA to perform closeouts after the end of Fiscal Year 2003. Similar results were reflected for the Fiscal Year 2004 for-profit contracts that Fiscal Operations closed out.

Regarding completeness, although HRA had 96 personal care contracts in effect in Fiscal Year 2003, it elected to close out not-for-profit contracts only. Sixty-four of the 69 not-for-profit contracts were closed out, for which HRA billed \$96.7 million and collected \$93 million in overpayments for 56 of the 69 providers, as of February 28, 2009.

The remaining 5 of the 69 not-for-profit personal care contracts for Fiscal Year 2003 were not closed out because of various reasons: one contract started in June 2003 and operated for less than one month, one contract was terminated and closed out at an earlier date, and two others were not closed because the independent audits of the providers' financial statements were not completed by December 2007. One remaining not-for-profit contractor, ETNA Home Attendant Corp., was not closed out because there was no remaining cash. The Director was arrested and convicted of embezzling more than \$666,000 in public funds between 1997 and November 2001. HRA turned this matter over to the Department of Investigation for investigation, which resulted in the criminal indictment and arrest of the Executive Director for misappropriation of \$666,000 in Medicaid funds.

For Fiscal Year 2004 contracts, HRA decided to close out for-profit personal care contracts only. Twenty-three for-profit personal care contracts for Fiscal Years 2002, 2003, and 2004 were closed out cumulatively in October 2008. HRA billings and collections of

overpayments for 22 of these providers were \$57.5 million and \$8.1 million, respectively, as of February 28, 2009. At that time, Fiscal Operations was still in the process of collecting the overpayments and addressing a challenge raised by almost half of the for-profit personal care agencies that were closed out for Fiscal Year 2004 and that refuted both the closeout calculations and HRA's authority to recover overpayments.

HRA's delays in contracting for CPA audits of personal care providers and delays in closing out contracts led to delays in the closeout of the contracts and recovery of overpayments from providers holding excess public funds. Consequently, the State and the City lost the use of those funds and could have additionally lost potential revenue of up to estimated \$25 million in interest. (The calculation of the interest is shown in the Appendix.)

HRA Response: "Home Care provider contracts require that providers maintain all funds in interest bearing accounts, including overpayments. . . . HRA collects the overpayment along with any interest accrued in accordance with provider contracts. Accordingly, though closeouts are delayed, the State and City accrued interest on the providers' overpayments."

Auditor Comment: We recognize that providers have contractual requirements to maintain public funds in interest-bearing accounts and that they accrue interest on that portion of funds they maintain in interest-bearing accounts. Our concerns lie in the risk that funds might not be recouped despite these controls because of HRA's delay in recouping overpayments. HRA has allowed a significant amount of public funds to remain with the personal care agencies for several years until such time that CPA audits are completed and HRA closes out and recoups overpayments. Although interest may accrue on providers' accounts over time, HRA does not recoup those funds until it completes the closeouts. Therefore, in addition to overpayments, the accruing interest also remains in the providers' custody and subject to risk and uncertainty. As reflected in the Appendix, between January 1, 2002, and December 31, 2007, personal care provider agencies held up to \$203 million in overpayments for contract years 2001 through 2004. Since these funds were not recouped promptly, the State and the City lost use of those funds.

In the worst case scenario, whereby none of the \$203 million in billed overpayments were held in interest-bearing accounts, the State and City could have lost up to \$25 million in interest revenue on the outstanding overpayments by not having custody of those funds. As it stands, evidence presented by HRA officials showed that the cash reserves held by providers are not consistently held in interest bearing accounts. For example, at the exit conference on May 18, 2009, HRA officials stated that most of the \$300 million held between November 30, 2008, and February 25, 2009, by 79 Fiscal Year 2009 contracted personal care agencies was in non-interest bearing checking accounts. In addition, since overpayments have remained in providers' custody for several years, the risk of fraud or misappropriation of those funds and applicable interest is significantly increased. Further, the years of delaying the closeout and recoupment of overpayments from providers has also led to the imposition of unnecessary additional

expenditures, thereby increasing the loss of potential interest revenue that could have been earned if the closeouts had been conducted promptly.

As deemed necessary, Fiscal Operations may perform interim closeouts to recover excess funds held by a personal care provider until the provider's audited financial statements are accepted by HRA and a final closeout can be performed. However, Fiscal Operations performs interim closeouts infrequently. Considering the average three-year delay in the completion of CPA audits, HRA could strengthen its fiscal oversight by performing interim closeouts to recover some of the excess funds held by providers.

By allowing significant periods of time to pass before closing out personal care contracts, HRA not only renders its fiscal monitoring activities ineffective, it also signals its inadequate oversight to contractors and significantly increases the risk of noncompliance, fraud, and misappropriation of public funds. This is of great concern, especially when considering the \$2 billion cost of personal care contracts in Fiscal Year 2008.

Also, delays in CPA audits result in unnecessary additional costs, especially when a contract is terminated and the organization is required to maintain personnel and office space until the financial statements can be audited and the final contract year closed out by HRA. For example, the Lyndon Baines Johnson Health Complex Home Attendant Program (LBJ program) contract for Fiscal Year 2003 was terminated early, in April 2003. Over the 47 months following contract termination, the LBJ program incurred \$235,000 (approximately \$5,000 per month) to maintain an office and staff. Ultimately, the program exhausted all available funds waiting for a CPA audit to be performed. Consequently, the LBJ program requested additional funds from HRA for the shredding of documents and other costs related to the winding down of affairs.⁹ Overall, the agencies holding three of the sampled home care contracts—two terminated and one active that was eventually terminated by HRA—incurred at least \$360,000 in post-termination expenses while awaiting the start and/or completion of a CPA audit.

HRA Response: “While pointing out lapses in HRA’s fiscal oversight, the Report fails to account for the varied ways in which HRA has monitored providers’ fiscal activities on a regular and effective basis,” including:

- reviews of providers’ cash reports,
- the review of quarterly revenue reports generated by Sandata and Infocrossings that detail labor costs, attendance, and work hours,
- the review of providers’ year-end direct labor package detailing annualized direct labor costs, and
- the conduct of three annual programmatic visits to evaluate the operations of each provider during the calendar year.

Auditor Comment: While these four “monitoring” activities may provide HRA with certain financial information and may even provide indications of certain irregularities,

⁹ As of March 31, 2009, the LBJ program’s books were still not closed out because its financial statements for Fiscal Year 2003 had not been audited.

they do not provide a complete picture of the agencies' overall fiscal operations. Rather, in line with HRA's goal—ensuring the continued, uninterrupted delivery of personal care services to clients—these activities primarily focus on programmatic issues and direct labor topics. We do not agree with HRA that its programmatic monitoring is sufficient to ensure the sound and responsible fiscal operations of provider agencies.

According to representations made by HRA officials throughout the audit, HRA uses the unaudited, monthly cash (financial) reports, submitted by not-for-profit agencies only, to monitor those agencies' cash position (shortage or overage) and to adjust the providers' caseloads, when necessary, so that client services will not be interrupted. HRA uses the quarterly revenue reports to determine whether a vendor is providing services to clients. Further, HRA uses the annual direct labor package to calculate an hourly rate for each provider to meet its operating costs and prevent interruption in client services caused by cash shortages. Further, as explicitly apparent, the three annual programmatic visits review the delivery of personal care services to clients.

Therefore, while HRA has monitoring activities in place to monitor the fiscal affairs of contracted personal care providers, the effectiveness of these activities is diminished by HRA's failure to act decisively and, especially, promptly.

Recommendations

HRA should:

1. Ensure that contracts for CPA audit services are established sufficiently in advance of the end of each fiscal (contract) year to ensure that personal care provider financial activities will be audited in a timely manner.

HRA Response: “We agree with recommendation #1. As we communicated to the auditors on several occasions, we are in the final stage of completing the RFP for CPA audits for fiscal years 2009-2012. In the future, we will continue to establish contracts for CPA audit services sufficiently in advance of the end of the fiscal year to ensure that providers' financial statements will be audited in a timely manner.”

2. Require personal care providers to issue their financial statements within a set period of time after the end of each fiscal year.

HRA Response: “We agree with recommendation #2. Accordingly, we will establish clear-cut guidelines requiring providers to issue their financial statements within a set period of time after the end of each fiscal year and communicate these guidelines to the providers in a systematic manner.”

3. Perform timely closeouts for all contracts at the end of each contract year.

HRA Response: “We agree with recommendation #3. Accordingly, we will establish procedures to perform timely closeouts for provider contracts at the end of each fiscal year.”

4. If CPA audits are delayed more than three to six months after the end of the contract year, perform interim closeouts of providers that have surplus funds to recover some of those funds. The final closeouts can be performed once the audits of the providers’ financial statements are complete.

HRA Response: “We agree with recommendation #4. Accordingly, we will establish procedures to enable HRA to perform interim closeouts.”

Lack of Clear Requirements for Providers To Secure Cash Balances Appropriately

Our review of the monthly financial reports for the month ended June 30, 2008, raised concerns about the security of \$255 million in bank balances reported by the 68 not-for-profit personal care agencies as of June 30, 2008.¹⁰ This sum represented 13 percent of the overall \$2 billion cost of Fiscal Year 2008 home care contracts. Based on analysis of the reported balances, we found that an estimated \$233 million was not secured by Federal Deposit Insurance Corporation (FDIC) insurance¹¹ or through a collateralization arrangement. Although the personal care providers’ contracts require the agencies to safeguard government funds, HRA did not expressly require the agencies to maintain their cash balances in FDIC-insured accounts or to secure the accounts through collateralization or other acceptable means.

Comptroller’s Memorandum #92-12, states that “agencies should insure that funding levels are neither excessive, resulting in the accumulation of balances, nor insufficient.” Excessive funding unnecessarily subjects those funds to a greater risk of misappropriation. In addition, Directives #1 and #11 establish that agencies must secure and safeguard vulnerable assets, such as cash.

At any given time, personal care agencies maintain a significant amount of program (Medicaid) funds in bank accounts. These funds represent monies reimbursed to the contractors for service hours billed and paid to workers, working capital requirements, unpaid liabilities, and also excess funds eventually due to HRA, which are calculated and identified through future closeouts. Since closeouts are not performed annually for all service providers, such funds may accumulate significantly. Therefore, HRA needs to ensure that service providers adequately safeguard these funds.

In September 2008, given the weaknesses experienced by the banking industry and the failures of financial institutions, we discussed our concerns about unsecured large bank balances

¹⁰ For-profit are not required to submit monthly financial reports.

¹¹ As of June 30, 2008, the FDIC insured total deposits in member banks up to \$100,000 per institution.

with HRA officials. At the time, the Director of Contract Management Services told us (and provided supporting documentation) that he had previously contacted certain personal care agencies and advised them to move their funds from failing banks to financially sound banks. Pursuant to our further discussions regarding the matter, on November 24, 2008, the Director requested that all of the agencies provide current bank balance information and the amounts secured by FDIC insurance. In addition, the Director notified providers that they were required to maintain all program funds in protected (i.e., FDIC-insured) accounts and ensure that all account balances are within FDIC limits.

In response to HRA's request, agencies holding 79 of the 89 Fiscal Year 2009 contracts responded, notifying HRA that bank balances held by these programs between November 30, 2008, and February 25, 2009, totaled at least \$300 million. Ten contractors did not respond, including eight for-profit contractors that questioned HRA's authority to request this information, and two not-for-profits. Because of a lack of standard responses and specific information, the portion of the \$300 million covered by FDIC insurance could not be calculated. Nevertheless, considering that each of the 79 responding programs had an average of \$3.8 million in funds on deposit, HRA's requirement for programs to maintain funds in accounts within FDIC-insured limits may not be sufficient, especially if a provider maintains its entire account in a single bank.

Effective October 14, 2008, the FDIC increased coverage of interest-bearing accounts in FDIC-member banks to \$250,000 in total deposits for each depositor per banking institution from \$100,000. In addition, the FDIC instituted a Temporary Liquidity Guarantee Program (TLGP), which provides unlimited coverage of non-interest-bearing transaction accounts. In general, these changes are scheduled to expire on December 31, 2009, at which time depositors in FDIC-member banks will be covered up to only \$100,000 of total deposits per banking institution. However, the depositor (e.g., home care agency) can request their banking institution to pledge collateral to secure the uninsured portion of total deposits.

At the exit conference on May 18, 2009, HRA officials stated that they were satisfied that the funds held by providers are adequately secured since the providers maintain most funds in checking accounts for which the FDIC's TLGP provides unlimited coverage. Even though the TLGP currently provides adequate safeguards, because it is temporary and scheduled to expire at the end of 2009, we believe that HRA should ensure that providers take appropriate action to safeguard funds held on deposit. HRA needs to establish clear-cut requirements, communicate them to the service providers, and institute monitoring procedures to ensure compliance.

Recommendations

HRA should:

5. Consult with the City's Law Department regarding the eight for-profit contractors who refused to provide bank balance information.

HRA Response: "We disagree with recommendation #5. . . . HRA's Legal Affairs is seeking to compel these providers to comply with our requests for information. Given

the efforts of HRA's lawyers to resolve this matter, we do not think it necessary at this time to involve the City's Law Department."

6. Establish and distribute to all contracted personal care providers a policy statement expressly requiring them to maintain cash deposits in bank accounts that are secured by FDIC insurance and secure the funds exceeding FDIC limits through collateralization or other acceptable methods. The policy should include periodic reporting requirements for the providers' financial institutions and standardization of the information to be reported.

HRA Response: "In accordance with recommendation #6, we will continue to require that all providers maintain cash deposits in bank accounts that are secured by FDIC insurance and secure funds exceeding the FDIC limits through collateralization or other acceptable methods. In addition, we will communicate this requirement in a standard policy statement to all providers and require them to provide periodic reports."

Weaknesses in Field Monitoring Visits

Fiscal Operations' field monitoring visits do not ensure that all personal care providers' fiscal activities and fiscal compliance are monitored regularly and consistently.

HRA's home care contracts establish that the "Department personnel may . . . review, in accordance with the Department's Contract Management System, all program activities, procedures, records, and record recording, and conduct other evaluatory activities as the Department deems necessary and appropriate, including, at reasonable times, unannounced and unscheduled visits." Further, the HCSP *Contract Management System Procedures Manual* states that Fiscal Managers are to conduct field visits throughout the year to monitor the fiscal compliance of contracted service providers.

Fiscal Monitoring Field Visits Not Made for All Service Providers

The *Contract Management Service Procedures Manual* elaborates on the fiscal monitoring activities performed by Fiscal Managers. These activities primarily consist of performing various audit services or functions, including time sheet verification, walkthroughs of fiscal operations to ensure that appropriate internal controls are in place, and review of financial records and transactions to ensure the proper recording of financial data.

According to HRA officials, fiscal monitoring visits (field visits) are conducted to deter fraud and assess contractor compliance with internal control requirements. However, our review found otherwise. As reflected in Table II, below, during Fiscal Year 2008, there were 93 personal care contracts. Our review of weekly attendance schedules detailing Field Managers' daily work sites, attendance, and field visits to service providers showed that Fiscal Managers spent approximately five percent of their time in the field and visited only 20 (22%) of the 93 contract programs in Fiscal Year 2008.

Table II

Analysis of Fiscal Manager Field Visits in Fiscal Years 2006 through 2008

Item	Fiscal Year 2006	Fiscal Year 2007	Fiscal Year 2008
Number of Fiscal Managers	7	7	6
Total Number of Workdays for all Fiscal Managers (223 days for each Fiscal Manager)	1,561	1,561	1,338
Total Days Spent on Field Visits (Percent of all workdays for all Fiscal Managers)	153 (10%)	343 (22%)	60 (5%)
Total Personal Care Contracts for the year	93	93	93
Number of Contracts Visited (Percent of all contracts for the year)	41 (44%)	81 (87%)	20 (22%)

As shown in Table II, in Fiscal Years 2006 and 2007, a greater amount of the Fiscal Managers' time was spent in performing field visits than in Fiscal Year 2008. One reason for the significantly higher number of visits performed in Fiscal Year 2007 was due to a complaint alleging that a provider was not paying appropriate wages. Subsequently, Fiscal Managers visited most of the contract programs to check on wages being paid to workers. However, the drastic fluctuations in the number of visits performed from Fiscal Years 2006 to 2008 shows that there is no established standard for performing visits on a regular basis.

Without performing adequate field visits to each provider, HRA is unable to gather the information necessary to monitor vendors' fiscal activities and fiscal compliance effectively. Information gained from field visits should be used in evaluating providers' fiscal operations and compliance, since nearly three years elapse after the end of a contract year before the completion of an independent audit by a CPA. Regular and frequent field visits would also limit the risk of misuse of funds.

Without adequate ongoing monitoring to ensure the fiscal compliance of providers with contract and regulatory requirements, there is a greater likelihood that funds could be misappropriated and fraudulent activities could occur without being detected.

Recommendation

HRA should:

7. Establish a minimum number of field visits to be made by Fiscal Managers to each personal care provider each fiscal year.

HRA Response: "We agree with recommendation #7. Accordingly, we will institute a policy beginning in fiscal year 2010, to conduct at least one fiscal monitoring visit to each provider per year."

Weaknesses in Fiscal Operations' Audit Function

Fiscal Operations carries out the audit function, which is part of HRA's overall monitoring mechanism to assess service providers' contractual and regulatory compliance. However, Fiscal Operations does not audit personal care providers with sufficient frequency to provide strong and "continual monitoring of activities and programs," as required by Comptroller's Directive #1.

Fiscal Operations undertakes audits of various provider records primarily on the basis of complaints rather than on a planned regular or cyclical basis. Further, according to HRA officials, audits may be assigned based on conditions disclosed in an independent CPA audit, an inadequate cash position derived from the providers' monthly financial reports, or other weaknesses noted in the timeliness or accuracy of provider billings. While being responsive to complaints and following up on reported weaknesses is important, these actions alone do not provide assurance of routine compliance of service providers, particularly when HRA allows nearly three years to pass before a service provider is audited by an independent CPA and when Fiscal Manager field visits are sporadic at best.

According to Fiscal Operations officials, Fiscal Year 2006 was the last contract year for which Fiscal Managers performed comprehensive audits of service providers, and only 14 of the 93 contract programs for that year were audited. While Fiscal Managers perform more targeted audit engagements of service providers, such as verification of wages, timekeeping, and capital assets, and a determination of providers' audit readiness, as reflected in Table II above, they do not do so with sufficient frequency or on a planned regular or cyclical basis to provide reasonable assurance of widespread and routine compliance by service providers.

Considering the cost of the personal care service program (more than \$2 billion in Fiscal Year 2008) and the risk of potential fraud and improprieties by service providers, HRA needs to ensure that audit engagements (full scale or targeted) are performed with sufficient frequency. The longer the time that passes before Fiscal Managers audit particular service providers, the greater the risk of noncompliance and the greater the opportunity for fraudulent activities to occur and go undetected.

Recommendation

HRA should:

8. Implement a formal audit cycle requiring that each service provider undergo an audit or targeted review by Fiscal Managers at least once every cycle.

HRA Response: "We disagree with recommendation #8. . . . We believe that such an interim audit is unnecessary in light of the annual audit of each provider contract and the multiple and varied fiscal monitoring activities that HRA performs throughout the year. With respect to targeted reviews, we already perform them when we detect irregularities in a provider's fiscal operations, and this practice will continue."

Auditor Comment: We disagree with HRA’s position. Since independent CPA audits of service providers have been and remain significantly delayed by several years and since Fiscal Manager field visits are sporadic at best, we maintain that HRA needs to strengthen its fiscal monitoring of service providers by conducting regular audits of personal care providers.

Annual Performance Evaluations
Not Based on Complete Information

Our review of the annual performance evaluations for six sampled category contracts disclosed that while HRA conducts annual performance evaluations of contracted personal care programs, the ratings assigned to those contractors were not based on complete information or information relevant to the contract year.

Local Law #94 of 1985 and the City’s PPB rules require that City agencies conduct an annual performance evaluation of contracted service providers and rate each provider accordingly. Such evaluations are critical to any City agency when deciding whether to award, renew, extend, or terminate a contract.

According to the HCSP *Contract Management System Procedures Manual*, “the total contract management system designed to be conducted on a cyclical basis to coincide with the City’s contracting requirements, such that the determination of the vendor agency’s compliance rating will be completed in time for the annual presentation.”

Overall, annual performance evaluations are based on a programmatic evaluation and a fiscal evaluation. The programmatic evaluation is performed by the Program Contracts Management Unit and is based on three monitoring visits during the contract year to assess providers’ program performance, which is “measured using 34 quality-of-service performance indicators in 13 contract compliance areas,” according to HRA officials. The fiscal performance evaluation is conducted by Fiscal Operations and, according to HRA officials, is based on the independently audited financial statements of each provider, Fiscal Manager monitoring visits, and vendor compliance with reporting and timeliness requirements.

Despite HRA officials’ representations regarding the basis of the fiscal performance evaluation, our review of sampled contracts found that while independent audited financial statements are used as a component of the fiscal evaluation, the financial statements do not represent the same contract year for which the annual performance rating is performed. Instead, HRA uses the *most recent* audited financial statement for the personal care agency, which, on average, is behind by nearly three years. Thus, HRA based its contractor performance ratings on incomplete and outdated information.

Since this information is shared with other City and State agencies through the City’s Vendex database,¹² it is important that complete, current, and accurate information be used in

¹² Vendex is an acronym for the City’s Vendor Information Exchange System, which is the repository for vendor information, including annual performance ratings established by the agencies with whom vendors

rating contractors. By not having an up-to-date fiscal evaluation and using outdated fiscal information combined with a current programmatic evaluation, HRA is unable to render a reasonable and justifiable Performance Evaluation rating for its service providers. Further, a decision to award or renew a contract based on such information may be in error.

For example, one provider, Tremont Community Council Home Attendant Program, Inc., (Tremont)—against which allegations of fiscal improprieties were raised—received overall ratings of “Satisfactory” for its Fiscal Years 2006 and 2007 contracts, which consisted of the Fiscal Years 2006 and 2007 programmatic evaluations and the fiscal evaluations based on Tremont’s Fiscal Year 2003 and 2004 audited financial statements, respectively. If HRA ensured that CPA audits were done promptly and the fiscal evaluations represented the contract year actually being evaluated, Tremont’s contract for Fiscal Year 2007 or Fiscal Year 2008 would most likely not have been approved. The alleged misappropriation of funds by Tremont’s Executive Director appeared to begin as early as February 2006, and would likely have been uncovered through either an independent CPA audit of or by Fiscal Managers review of Tremont’s Fiscal Year 2006 financial activities. Instead, Tremont’s Executive Director allegedly continued to misappropriate funds, totaling approximately \$1 million through November 2008.

Recommendation

HRA should:

9. Require that the annual fiscal evaluations include certain indicators and information pertaining to the providers’ current period fiscal activities and fiscal compliance to supplement providers’ most recently audited financial reports. This supplemental information should include the Fiscal Monitor’s reports submitted to each agency’s Fiscal Committee (discussed later) as well as the results of Fiscal Manager reviews of providers’ current year financial activities.

HRA Response: “We agree with recommendation #9. . . . In order to facilitate the review of our providers’ fiscal performance, we will incorporate these different components into a standardized format with performance indicators that will mirror our programmatic performance indicator format.”

HRA Cost Containment and Control Policies

HRA’s personal care contracts provide that HRA may, “Implement new or revised performance monitoring and evaluation methods. . . . Incorporate new or revised outcome measures in its performance monitoring and evaluation system. . . .”

As a means to promote greater cost efficiencies and control functions, HRA established cost containment and control policies for service providers to follow and incorporated these measures in the performance monitoring and evaluation of contractors. These policies are discussed below.

contract for the provision of goods and services.

Cost Containment Policy

In 2003, Fiscal Operations established a cost containment policy for not-for-profit service providers to reduce operating costs and advised the providers to adopt this policy.

New York State Unemployment Insurance Law requires every employer who pays wages of \$300 or more in a calendar quarter to contribute to the State unemployment benefits program. Certain not-for-profit organizations can elect to use either the tax calculation method or the direct reimbursement method to calculate contributions.

Under the tax contribution method, generally used to calculate contributions based on unemployment claims experience, employers contribute between 0.075 percent and 9.9 percent of the first \$8,500 of wages paid to employees each year. Alternatively, the direct reimbursement method allows not-for-profit organizations to elect to reimburse the New York State Unemployment Insurance Fund for all unemployment benefits paid to eligible former employees on a dollar-for-dollar basis. Fiscal Operations analyzed the two methods and determined that the direct reimbursement method was more cost effective for its not-for-profit contractors to use. HRA has included a cost containment policy provision in the non-for-profit contracts and in its monitoring procedures. According to HRA officials, in Fiscal Year 2008, 47 of the 54 (87%) not-for-profit personal care providers elected the direct reimbursement method.

Three of the six sampled contractors we reviewed qualified to elect the direct reimbursement method. Based on data provided by HRA, these three non-for-profit agencies saved a total of \$739,058 for Fiscal Years 2003 through 2006 by electing the direct reimbursement method. According to HRA officials, most of the not-for-profit contractors have elected the direct reimbursement option, in accordance with HRA's advisement.

Fiscal Integrity Policy

On October 5, 2006, HRA implemented a policy requiring the Boards of Directors of all programs "to establish a Finance Committee and engage the service of an Independent Fiscal Monitor" (preferably a CPA) to review and report to the committee on the fiduciary practices and internal controls of the agency to prevent and detect fraud, and whether those controls are followed. The Fiscal Monitor services are separate and apart from the required independent CPA audit of a program's annual financial statements. HRA approved approximately \$8,000 for each provider agency to pay for the cost of hiring a Fiscal Monitor.

These new requirements became effective immediately. In 2007, HRA followed up with the Boards to ensure that the required Finance Committees had been established and that the services of a Fiscal Monitor had been engaged. HRA advised the programs that in Fiscal Year 2008, failure to implement this new requirement would be considered in the agencies' annual performance ratings.

We confirmed that the fiscal integrity policy was communicated to personal care service agencies on October 5, 2006, and was followed up with correspondence on September 5, 2007,

and October 18, 2007. Further, based on documentation provided by HRA, it appears that the agencies have engaged the services of a Fiscal Monitor. Upon reviewing a sample Fiscal Monitor report to the Board of Directors of one agency, we determined that the matters reviewed and reported by the independent Fiscal Monitor generally complied with HRA fiscal integrity policy.

However, HRA does not expressly require that the personal care agencies submit a copy of the Fiscal Monitor reports to HRA each year. Rather, it established that a copy of the report should be made available to HRA “upon request,” and we found no evidence that HRA has requested these reports. Since, the independent audit of personal care providers’ financial statements are so greatly delayed and field monitoring visits are infrequently performed, the Fiscal Monitor reports could provide HRA with indications of programs currently experiencing internal control deficiencies or weaknesses that require corrective action and HRA follow-up.

Recommendations

HRA should:

10. Require that personal care contract agencies submit the Fiscal Monitor reports within a reasonable period once issued to the Finance Committee of each agency.

HRA Response: “We agree. . . . Accordingly, HRA will require providers to submit Fiscal Monitor reports within a reasonable period following their issuance to each provider’s Finance Committee, instead of upon HRA’s request as is the current policy.”

11. Establish requirements for Fiscal Operations to review Fiscal Monitor reports for each provider and establish criteria to flag potential weaknesses and procedures to follow up on those potential weaknesses.

HRA Response: “We agree. . . . In response to the Audit, we have already established requirements for Home Care Fiscal Operations to review the Fiscal Monitor reports and set forth criteria to flag potential weaknesses.”

Lack of Adequate Segregation of Duties

Our review determined that the Fiscal Operations unit lacked adequate segregation of duties. Because of staff vacancies and the lack of experience of other staff, the Director of Fiscal Operations performed and oversaw several key functions, some of which were incompatible and not adequately segregated.

Comptroller’s Directive #1 states: “Key duties and responsibilities need to be divided or segregated among different staff members to reduce the risk of error or fraud. This should include separating the responsibilities for authorizing transactions, processing and recording them, reviewing the transactions, and handling any related assets. No one individual should control all key aspects of a transaction or event.”

Fiscal Managers perform various fiscal monitoring activities, which are assigned by the Director of Fiscal Operations. However, we observed that the Director is relied upon to perform, oversee, and approve various incompatible functions because of his expertise and experience and because of limited staffing. For example, we observed that the Director of Fiscal Operations was responsible for:

- Negotiating and processing the hourly rate for the service providers.
- Reviewing the providers' annual financial statements and either approving or challenging write-offs and adjustments.
- Preparing and approving the year-end closeouts.
- Supervising HRA field monitoring activities (including audit functions) and selecting the agencies to focus attention on.

We discussed this matter with the Director of the Contract Management Systems. Subsequently, we were advised that plans were being developed to reorganize the Fiscal Operations unit and hire additional staff to create greater transparency, coverage of monitoring activities, and to segregate incompatible functions. We reviewed the organization for the proposed reorganized unit, which appears to be appropriate. However, because the changes were prospective and not fully implemented by the end of the audit, we did not render an opinion on the effectiveness of those changes.

Outdated Operating Procedures

Our review disclosed that HCSP formal operating procedures do not reflect current procedures followed by the units. While the HCSP *Contract Management Procedures Manual* addresses HRA contract management functions, it was promulgated in May 1986 and does not reflect all policies and procedures currently in force. Regarding Fiscal Operations, the manual does not address year-end closeouts and recovery of excess payments, preparation of annual fiscal assessments, or more recent cost containment and control policies. Further, it does not address the procedures involved in processing the hourly rate paid to service providers.

When we discussed this finding with the Director of the Contract Management Systems, he stated that the procedures were to be reviewed and updated accordingly. However, by the end of audit fieldwork, those modifications were in draft form. Therefore, we did not review or test them.

By not ensuring that its operating policies manual is kept updated, HRA management cannot be assured that policies and procedures are properly communicated and consistently followed. Also, there is no assurance that new personnel have adequate guidance in carrying out their assigned duties.

Recommendation

HRA should:

12. Review the HCSP *Contract Management System Procedures Manual*, identify deficiencies, and update policies to reflect procedures implemented since the manual was last updated. Prospectively, the manual should be updated periodically to address newly implemented or revised policies and operating procedures.

HRA Response: “We agree with recommendation #12. Accordingly, HRA will update the HCSP Contract Management System Procedures Manual to reflect current practices and will do so on a periodic basis.”

Calculation of Potential Interest Revenue Lost
(in millions)

Contract Year	1st Full Year Interest Calculated ⁽¹⁾	Over-payments Billed	Simple Interest Rate Calculation ⁽²⁾							Total
			Calendar Year	2002	2003	2004	2005	2006	2007	
			Annualized Rate ⁽³⁾	0.92%	0.88%	1.71%	3.35%	4.83%	4.71%	
2001	2002	\$48.80		\$0.45	\$0.43	\$0.83	\$1.63	**	**	\$3.35
2002-2003 ⁽⁴⁾	2004	\$96.70		N/A	N/A	\$1.65	\$3.24	\$4.67	\$4.55	\$14.12
2004	2005	\$57.50		N/A	N/A	N/A	\$1.93	\$2.78	\$2.71	\$7.41
Total		\$203.00		\$0.45	\$0.43	\$2.49	\$6.80	\$7.45	\$7.26	\$24.88

**Overpayments for the 2001 contract year were paid by December 2005

N/A Not applicable

Notes:

- 1) Interest calculation begins in January following the end of the previous contract year (contract ends June 30), allowing for six months for the completion of audits of personal care providers, and HRA's review, acceptance of financial statement and closeout of the contract year.
- 2) Interest calculations based on the 12-month calendar year basis (January 1 through December 31) through December 31, 2007.
- 3) For conservatism, interest is based on the annualized average of the lower of the Federal Funds Rate or the Discount Rate.
The Federal Funds rate is a market rate at which banks lend to each other overnight to meet their reserve requirements and other liquidity needs.
The Discount rate is the rate set by the Federal Reserve Bank at which the Fed lends short-term funds to banks.
- 4) The 2002 and 2003 contract years were closed out at the same time.

We reviewed Fiscal (Contract) Years ended 6/30/2001 through 6/30/2004 for which HRA billed back overpayments in 2005, 2007, and 2008, respectively, to calculate potential interest revenue lost as a result of HRA delays in contracting for CPA audits of personal care providers and in closing out contracts.

W-1H
Rev. 01/09



**Human Resources
Administration**

Department of
Social Services

Office of Constituent
Services and Policy
Improvement

Robert Doar
Commissioner

Patricia M. Smith
First Deputy
Commissioner

Jane Corbett
Executive Deputy
Commissioner

180 Water Street
New York, NY 10038

212 331 5500

June 22, 2009

Mr. John Graham
Deputy Comptroller
The City of New York
Office of the Comptroller
1 Centre Street, room 530
New York, N.Y. 10007

Dear Mr. Graham:

HRA's Home Care Services Program provides long-term care options that enable the elderly and disabled to remain at home rather than in a nursing home or other institution. In performing our duties, HRA stands on the frontlines of providing service to one of the most vulnerable populations in the City, and we are determined to deliver the highest quality care. Our services allow our frail and disadvantaged clients to live in dignity and safety within the comfort of their communities. This is the primary focus and mission of HRA's Home Care Program.

We seek to carry out this mission in the most effective and cost-efficient manner for the City. In that spirit, we thank the Comptroller's staff for bringing to our attention areas in which we may improve our operations. The *Audit Report on the Human Resources Administration's Fiscal Oversight of Home Care Service Providers* makes some important and extremely helpful recommendations. We appreciate the time and effort expended by the Comptroller's Office.

However, the Report also reveals some misunderstandings on the part of the auditors with respect to HRA's oversight processes. We believe it is important to address these misunderstandings before commenting on the Report's specific findings and recommendations.

The Report states that untimely closeouts "resulted in a loss of an estimated \$25 million in potential revenue that the State and City could have earned in interest had the overpayments been billed and recouped properly." This claim is false, and perhaps derives from a misunderstanding with respect to provider contracts and the manner in which excess funds are maintained by providers and collected by HRA. Home Care provider contracts require that providers maintain all funds in interest bearing accounts,

including overpayments. The boilerplate language of provider contracts states: "Funds shall be deposited in an interest bearing account. All net interest, which is defined as interest minus banking charges, shall be promptly paid to the City at a time specified by the Department." HRA has sent letters to all Home Care provider directors reminding them of this contractual obligation. Indeed, we have copies of letters from 1999, 2002, 2004, and 2006, which contain the following identical language in bold: "Your contract requires that you earn interest on funds not needed immediately for operations. Agencies should maximize interest earned whenever possible." In reviewing the cash reports on a monthly basis, HRA monitors the providers' fund balances, including interest earnings. In preparation of the financial closeout, HRA collects the overpayment along with any interest accrued in accordance with provider contracts. Accordingly, though closeouts were delayed, the State and City accrued interest on the providers' overpayments.

In addition, while pointing out lapses in HRA's fiscal oversight, the Report fails to account for the varied ways in which HRA has monitored providers' fiscal activities on a regular and effective basis. First, HRA carries out rigorous and timely reviews of providers' cash reports. These cash reports provide not only cash balances and short-term and long-term liabilities but also an array of information critical to providers' fiscal operations, including projected provider expenses and the names of banks and types of accounts in which funds are kept. Second, HRA receives and monitors on a quarterly basis revenue reports for each provider generated by Sandata and Infocrossing, third-party data systems that keep track of Home Care visits, attendance, and work hours. Indeed, this third-party data is verified by New York State and deemed "reliable" by the authors of the Audit Report. These independent revenue reports detail providers' labor costs, which account for 91% of provider funds and expenditures. Third, HRA double-checks this 91% of provider funds by requiring each provider to submit a direct labor package within two months following the end of each fiscal year. The direct labor package provides an annualized, itemized accounting of labor costs, including wages, hours, benefits, health insurance, sick leave, accrued sick leave, vacation, accrued vacation, unemployment insurance and other liabilities. Fourth, HRA conducts three programmatic field visits to evaluate the operations of each provider during the calendar year. During the evaluation, HRA conducts a random sampling of vendor agency home attendant and client records, through which data is gathered and analyzed. While these visits are programmatic, they inevitably involve fiscal operations, as HRA workers verify that providers offered appropriate services, that associated activities were valid and in compliance with the contract, and that corresponding expended funds were not misappropriated.

During the time period covered by the Audit Report, 2001-2009, HRA consistently engaged in the four monitoring activities described above. The information gleaned not only enabled HRA to monitor providers' fiscal activities but also to detect any suspicious irregularities, and to conduct targeted audits to uncover fraud and other financial improprieties. For example, during a 2004 programmatic field visit, HRA workers discovered that a provider was billing for nurse visits that had never occurred. HRA subsequently conducted a targeted audit that revealed that the provider wasn't

complying with the living wage law. HRA subsequently did not renew the provider's contract for fiscal year 2005.

Finally, we believe it is important to raise another issue of concern. Based on our continued desire for self improvement, HRA had already recognized many of the problems highlighted in the Audit and had begun implementing changes prior to receiving results of the Audit. Toward that end, the Audit has provided critical help in focusing our energies, delineating the scope of the issues and suggesting specific reforms. However, in suggesting reforms, the auditors, ignore the progress already made by HRA. We do not believe this is a fair representation or a constructive method of reporting.

We agree with recommendation #1. As we have communicated to the auditors on several occasions, we are in the final stage of completing the RFP for CPA audits for fiscal years 2009-2012. In the future, we will continue to establish contracts for CPA audit services sufficiently in advance of the end of the fiscal year to ensure that providers' financial statements will be audited in a timely manner.

We agree with recommendation #2. Accordingly, we will establish clear-cut guidelines requiring providers to issue their financial statements within a set period of time after the end of each fiscal year and communicate these guidelines to the providers in a systematic manner.

We agree with recommendation #3. Accordingly, we will establish procedures to perform timely closeouts for provider contracts at the end of each fiscal year. However, we note that in pointing out prior delays in HRA's closeouts of provider contracts, the Report fails to mention the legitimate reasons HRA had for delaying many of the closeouts in question. Specifically, the Report ignores the implications of the case of *Evelyn Coke v. Long Island Care at Home, LTD.* 376 F. 3d 118 (2d Cir. 2004). In the *Coke* case, the Second Circuit held that the Fair Labor Standards Act applied to home attendants employed by Home Care providers. This decision required providers to pay overtime for home attendants working more than 40 hours per week, exposing the providers to possible cash shortfalls and bankruptcy. HRA was well aware of the case's implications for Home Care providers and their cash positions. Indeed, we have copies of multiple and contemporaneous internal e-mails and analyses setting forth our concerns regarding potential provider cash shortfalls that might result from the *Coke* case, and that would hamper HRA's capacity to serve our clients. While we do not dispute that there were lapses in closing out providers' Home Care contracts, HRA had legitimate and compelling reasons to delay many of the closeouts in question and the recoupment of overpayments.

We agree with recommendation #4. Accordingly, we will establish procedures to enable HRA to perform interim closeouts.

With respect to recommendations #5 and #6:

The Comptroller states that HRA did not expressly require providers to maintain their cash balances in FDIC-insured accounts or to secure the accounts through collateralization or other acceptable means before June 30, 2008, and that as of June 30, 2008, providers held an estimated \$233 million in bank balances that were not properly secured. It is true that HRA did not establish such requirements for providers prior to June 30, 2008, and that providers almost certainly held some funds in non-secured accounts. While we closely monitored providers' bank accounts through their monthly cash reports, HRA did not have serious concerns regarding the possibility of banks failing.

Nevertheless, because we closely monitored providers' bank accounts, HRA was able to respond immediately to the first tremors in the marketplace. In mid-September, we sent notices to every provider with accounts in Washington Mutual and Citibank recommending that they take immediate steps to transfer funds to more secure financial institutions. Thereafter, in November, we sent notices to every provider requesting certification or bank statements indicating that their funds were held in appropriately secured bank accounts. We received responses from 79 out of the 89 Fiscal Year 2009 contracts. Providers indicated that their funds were secured or would be transferred forthwith to secured accounts. Ten contractors did not respond, including eight for-profit contractors that questioned HRA's authority to request this information. HRA's Office of Legal Affairs is seeking to compel these providers to comply with our requests for information. Given the efforts of HRA's lawyers to resolve this matter, we do not think it necessary at this time to involve the City's Law Department. Accordingly, we disagree with recommendation #5. In the meantime, as we review proposals for future contracts and contract renewals, we will take into account providers' non-compliance with HRA's legitimate information requests.

In accordance with recommendation #6, we will continue to require that all providers maintain cash deposits in bank accounts that are secured by FDIC insurance and secure funds exceeding the FDIC limits through collateralization or other acceptable methods. In addition, we will communicate this requirement in a standard policy statement to all providers and require them to provide periodic reports.

We agree with recommendation #7. Accordingly, we will institute a policy beginning in fiscal year 2010, to conduct at least one fiscal monitoring visit to each provider per year.

We disagree with recommendation #8, regarding the implementation of "a formal audit cycle requiring that each service provider undergo an audit or targeted review by fiscal managers at least once every cycle." We believe that such an interim audit is unnecessary in light of the annual audit of each provider contract and the multiple and varied fiscal monitoring activities that HRA performs throughout the year. With respect to targeted reviews, we already perform them when we detect irregularities in a provider's fiscal operations, and this practice will continue.

We agree with recommendation #9, although its premise seems to derive from a misunderstanding on the part of the auditors. The Report states that HRA should "...require that the annual fiscal evaluations include certain indicators and information pertaining to the providers' current period fiscal activities and fiscal compliance..." In fact, HRA factors into providers' annual fiscal evaluations a wealth of information concerning providers' most recent fiscal activities, which is derived from a variety of sources, including providers' monthly cash reports, Sandata and Infocrossing revenue reports, providers' direct labor packages, and fiscal information acquired during the three programmatic visits to each provider. In order to facilitate the review of our providers' fiscal performance, we will incorporate these different components into a standardized format with performance indicators that will mirror our programmatic performance indicator format.

We agree with recommendations #10 and #11. Accordingly, HRA will require providers to submit Fiscal Monitor reports within a reasonable period following their issuance to each provider's Finance Committee, instead of upon HRA's request as is the current policy. In response to the Audit, we have already established requirements for Home Care Fiscal Operations to review the Fiscal Monitor reports and set forth criteria to flag potential weaknesses.

We agree with recommendation #12. Accordingly, HRA will update the HCSP Contract Management System Procedures Manual to reflect current practices and will do so on a periodic basis.

We hope that our response and the measures we already have taken will demonstrate our commitment to addressing the concerns identified in the Audit Report. If you have any questions regarding this matter, please contact Hope Henderson, Director, Bureau of Audit Coordination, at (212) 331-4660.

Sincerely,



Jane Corbett

CC: Commissioner R. Doar
Patricia M. Smith
Mary Harper