



**Buffalo
Urban League**

*Empowering Communities.
Changing Lives.*

January 4, 2016

Erie County Legislature
92 Franklin Street, 4th Floor
Buffalo, New York 14202

Dear Honorable Members:

On behalf of the Buffalo Urban League, this letter responds to the report, dated December 9, 2015 (the "Report"), setting forth the results of the review by the Erie County Comptroller (the "Comptroller") of the Agreement dated January 16, 2014 between the Erie County Department of Social Services ("ECDSS") and the Buffalo Urban League for the purchase of traditional preventive services ("Preventive Services Agreement" or "Agreement").

Executive Summary

One of our most important responsibilities as a community is to protect the safety and well-being of our children. Through the Preventive Services Agreement, the Buffalo Urban League serves some of the most vulnerable and at-risk children and families in Erie County. The ECDSS refers these children and families to preventive services providers, including the Buffalo Urban League, following an indicated Child Protective Services ("CPS") report of child abuse or neglect. We assess the need for and provide or arrange for the services the family is assessed to require to support the caregivers and to increase the safety and well-being of the children. The goal is to prevent a child's placement into foster care and/or to enable a child already in foster care to return to the family sooner than otherwise would be possible. We take these responsibilities seriously, and we have a documented record of excellence in providing preventive services.

We are committed to the diligent oversight of billings for preventive services under the Agreement. Consistent with that commitment, as soon as we became aware of employee allegations relating to billings, the Buffalo Urban League's executive management, in close consultation with its board of directors, conducted a full investigation. We shared our findings with ECDSS and, together with ECDSS staff, we conducted a complete reconciliation of all amounts the organization had received under the Agreement through 2014 for the entire contract year. On March 13, 2015 – nine months before the Comptroller issued the Report – we delivered a check to Erie County in the amount of \$30,575.71 to pay it in full for every item we had identified through this process.

Of the total amount, \$20,313.12 related to a one-time, isolated error that had occurred outside the organization's standard practices and protocols and without executive management's knowledge. The remaining amount, \$10,262.59, related primarily to retroactive rate adjustments due to a mid-year increase in the total reimbursement under the Agreement. Thus, the Buffalo Urban League, through its own systems and efforts, identified and paid, long before the

Comptroller's staff reviewed any documents or issued any findings, the entire amount – \$30,575.71 – that the Report identifies in its findings.

In the Report's summary section (at page 4), the Comptroller states that the Buffalo Urban League "overbilled the County \$39,897.66," consisting of \$23,222.40, \$12,833.40, and \$3,841.86 on the first three findings. This statement is incorrect. The first finding erroneously includes \$2,909.28 for hours the organization did not bill, and the second and third findings improperly apply a multiplier to inflate the amounts of \$241.90 and \$640.31, which the Buffalo Urban League already repaid. In fact, the Report identifies nothing more than the \$30,575.71 we uncovered on our own, in coordination with ECDSS, and paid in full. As a result, and as the Report acknowledges (at page 17), the Comptroller "made no recommendation to recover any additional amount."

Equally important, the Comptroller did not identify a single compliance issue relating to payroll practices or case record management. In the Report, the Comptroller seeks to invoke a provision of the New York Labor Law for the proposition that preventive services employees should not work more than eight hours a day or five days a week. That provision is inapplicable, because it applies only to manual laborers on public works (construction-like) projects, not to preventive services workers providing preventive services under the Agreement. We explained this in detail in our November 20, 2015 response to the draft report.¹ The ECDSS Commissioner makes clear in his November 24, 2015 response that ECDSS did not intend to require preventive services providers to apply these provisions to their employees. The Report offers no support for any contrary suggestion.

The Comptroller also references a contract clause describing the statewide CONNECTIONS database as the "sole system of record" for the proposition that contractors cannot maintain any other records of their services under the Agreement. That proposition is incorrect, because the purpose of the clause is to designate CONNECTIONS as the official client record, not as the only record a preventive services contractor can maintain. As the Commissioner confirms in his comments, ECDSS did not intend to prohibit contractors from using ancillary computer systems, in addition to the statewide CONNECTIONS system, so long as those systems do not circumvent confidentiality requirements. The Buffalo Urban League safeguards the confidentiality of client information, and the Report offers no facts to suggest otherwise.

The Buffalo Urban League performs its responsibilities under the Agreement with demonstrated excellence. According to the ECDSS 2014 Preventive Services Report, 98.30% of the families we served had no new indicated report of child abuse or neglect, 98.89% of the children in those families were able to remain safely at home; and 98.89% of the families remained intact, with no out-of-home placements, during the 2014 reporting period. In each of these measures, the Buffalo Urban League's averages were higher than the Erie County system overall

¹ At the end of the Report, the Comptroller's staff includes summaries of the Buffalo Urban League's response, dated November 20, 2015, and ECDSS's response, dated November 24, 2015, to the draft report. Those summaries, however, do not fully or accurately reflect the written comments. Therefore, we are including, as attachments to this letter, copies of our written response, as well as ECDSS's written response, to the draft report. We also will make the exhibits to our written response available to you upon request.

averages for the year. The Report does not raise any issues about the quality or effectiveness of the services the organization provides to children and their families.

No organization is immune from human error. For this reason, throughout the year and at the end of each contract year, we conduct a reconciliation of billings and payments. On an ongoing basis, we make every effort to identify potential issues in advance and to put in place effective systems to minimize the likelihood of error. We foster a culture of openness around the reporting of any and all concerns. When issues come to our attention, we investigate them promptly and take action to address them. As a result of the Comptroller's review, we have enhanced our systems for monitoring the accuracy of billings and instituted system edits to identify outliers for further investigation. We are dedicated to the continued oversight and improvement of our processes and systems on an ongoing basis.

Background

The Buffalo Urban League was established in 1927 to address the employment, housing, and social needs of immigrants and African-Americans migrating from the South to the North. Its mission is to empower African-Americans, other minorities and disadvantaged individuals in securing economic self-reliance, parity, power, and civil rights. In support of this mission, the Buffalo Urban League offers services aimed at family preservation, education and employment support, and housing and community development. In the nearly 90 years since its inception, the organization has steadfastly adhered to its core values of trust, excellent service and results.

Central to the Buffalo Urban League's mission is supporting and strengthening the family unit, which is the foundation of a strong community, through a comprehensive continuum of services. One of the ways we do this is by providing preventive services to children at risk of abuse or neglect, and their families, through the Agreement that is the subject of the Report. Our case planners and parent aides are the front-line workers with primary responsibility for providing or coordinating and evaluating the provision of services to the family. Working together with ECDSS, our preventive services workers seek to identify and address the barriers to safety, to intervene as appropriate, and to support the parent or caregiver in establishing a safe and permanent home for their children.

The Report Supports the Buffalo Urban League's Good Faith Compliance with the Contractual Requirements

The Report addresses three broad categories of issues: (i) payments to the Buffalo Urban League under the Agreement; (ii) the Buffalo Urban League's compliance with the terms of the Agreement; and (iii) additional comments from the auditor. We addressed and provided extensive documentation addressing these issues throughout the review in response to the Comptroller's requests; in response to each of the Comptroller's six interim audit memoranda setting out preliminary findings; at the November 20, 2015 exit conference with the Deputy Comptroller and the Division of Audit and Control staff; and in our attached November 20, 2015 written response to the draft report. We summarize our responses to each of these issues below.

The Comptroller's Findings Confirm the Buffalo Urban League's Timely Reconciliation of All Payments Under the Agreement. The Report contains three interrelated

findings relating to payments under the Agreement. In each case, the Comptroller's findings confirm, we fully reconciled and completely repaid all of the amounts at issue long before the Comptroller issued the Report.

The Buffalo Urban League promptly identified and fully corrected the identified one-time, isolated error relating to supervisory review charges. The first finding relates to an one-time, isolated occurrence, involving three employees who departed from our standard practice and protocols, without executive management's knowledge, by recording their supervisory and quality assurance activities on a single day rather than throughout the month as they occurred. As soon as we learned about their actions, we conducted a complete investigation. This included a review of all payments we had received under the Agreement through 2014 for the entire contract year and a root cause analysis to determine the reason for any apparent discrepancies. After we completed this process, we worked closely with ECDSS to reconcile all billings and payments under the Agreement and to confirm the completeness of our documentation and information. Our check dated March 13, 2015 in the amount of \$30,575.71 included \$20,313.12 to refund Erie County in full for these billings. The Report confirms (at pages 5, 16 and 21) that our payment included "all the supervisory hours" at issue. It also reflects that we responded proactively, by repaying the County before the Comptroller commenced his review of any of the requested documentation.

The Buffalo Urban League did not maintain "incompatible billing documentation." To initiate billing for the preventive services program, ECDSS generates paper "vouchers," on green-bar computer paper, which reflect authorization to bill for specific cases for specified periods of time. Our billing staff annotates these paper vouchers with the number of hours attributable to the case for the authorized period, and with the applicable rate, and then returns them to ECDSS for processing. CONNECTIONS is not a billing system, but a system for ECDSS caseworkers and the contractor's staff to record the actions they take on each client's case. As the CONNECTIONS system lacks a billing component, we use the Access database to retrieve the information to add to the paper voucher. As part of the reconciliation process described above, we compared the information in the Access database with the information on the vouchers. We resolved any inconsistencies and repaid ECDSS in full for every item we identified through this process. In the review, the Comptroller used documentation that does not capture billing to assert discrepancies with documents that do capture billing, and that we review for accuracy and correct as needed. In fact, we maintain only one set of billing documentation, the Access database, and it is completely consistent with ECDSS's billing documentation, the paper vouchers. Thus, this finding is unsubstantiated.

It should be noted that this finding involves a single payment, in the amount of \$241.90, which is attributable to the same one-time, isolated occurrence described above. We identified this amount and repaid it in full as part of the reconciliation process. The Report confirms (at pages 5, 16 and 21) that "the \$241.90 was subsequently refunded." Our reconciliation included all payments for the entire contract year, so there was no basis to extrapolate this amount to produce an inflated "annualized" finding in the amount of \$12,833.40. Moreover, as the first and second findings address the same issue, there was no apparent reason for the Comptroller to break them out separately into two findings in the Report.

The Buffalo Urban League reconciled and adjusted all “voucher calculation errors,” most of which were the result of retroactive rate adjustments under the Agreement. The third finding involves adjustments in the amount of \$640.31, primarily attributable to retroactive rate changes due to the executed contract modification we received in October 2015. We addressed the \$640.31 in the reconciliation, as described above. The Report confirms (at page 6) that “[t]he \$640.31 was subsequently refunded following a review by the BUL of payments requested and received.” In addition, ECDSS confirmed in its comments on a draft of the report that “[a]ll known discrepancies have been reconciled and no known issues exist currently.” As noted above, the reconciliation included all payments for the entire contract year, so there was no basis to extrapolate the \$640.31 to produce an inflated “annualized” finding of \$3,841.86.

We take our billing obligations under the Agreement very seriously. It is for this reason that, each year and throughout the year, we conduct a reconciliation of billings and payments, as an adjunct to our independent audit. Our payment to Erie County included all the amounts we identified through 2014 for the entire contract year. In the Report, the Comptroller found nothing more than what we had uncovered on our own, in coordination with ECDSS. Moving forward, we are continuing our efforts, both internally and with ECDSS, to improve our processes and systems to oversee the accuracy of billings and payments under the Agreement.

The Comptroller’s Findings Confirm the Buffalo Urban League’s Substantial Compliance with All Contractual Requirements. The Report also contains four findings relating to the Buffalo Urban League’s compliance with certain terms of the Agreement. Two of these findings reflect a misunderstanding of the cited terms in the Agreement. Two other findings relate to documentation issues, which the Buffalo Urban League has already addressed.

The Buffalo Urban League complied with applicable employee overtime requirements under the Agreement. The Report states (at pages 5 and 7), that the review identified “475 instances where individuals work more than 8 hours in a day when the contract specifies no more than 8 hours a day are to be worked.” The reference to the contract requirements is incorrect: the Agreement does *not* limit employees to no more than eight hours a day. Instead, it provides that, *if the contractor hires laborers* to perform public works (construction-like) projects, it must comply with Labor Law Sections 220 and 220-d, by limiting the laborers’ work to no more than eight hours a day and five days a week. As the Report recognizes (at page 7), “these sections apply to public work, which the purpose of this contract does not contemplate.” These provisions do *not* apply to our staff, who provide preventive services to at-risk children and their families and do not engage in construction-like labor. In 2014, the Buffalo Urban League did not hire laborers, workmen or mechanics to perform any public works or construction-like projects.

ECDSS, in its comments on a draft of the report, agreed that Labor Law Sections 220 and 220-d do not apply to preventive services employees and disagreed with this finding. As the Commissioner confirms, “[i]t was not the intention of DSS to require Preventive Service providers to abide by Labor Law Sections 220 and 220-d for work the statute does not explicitly require.”

The Comptroller suggests, as an alternative argument, that if the Labor Law provisions do not apply, then the Buffalo Urban League “may not have” (page 5) compensated its employees enough in overtime wages. His findings do not support any such suggestion. As part of the review, the Comptroller’s staff prepared a chart (pages 7-9) based upon payroll records provided by the

Buffalo Urban League. As that chart reflects, when employees actually worked over 40 hours in a week in 2014, they consistently received premium wages for their overtime hours. In fact, the totals (at page 9) show that the Buffalo Urban League paid employees for *more* hours (4,172.38 hours) than the Comptroller computed they actually worked (4,144.72 hours). Thus, this finding is unsubstantiated.

The Buffalo Urban League complied with applicable confidentiality requirements under the Agreement. The Agreement does not require the Buffalo Urban League to use the statewide “CONNECTIONS” system as its “sole system” for case notes. Instead, it requires the use of the CONNECTIONS system “as the sole system of record.” This means that the New York State Office of Children and Family Services (“OCFS”) has designated the CONNECTIONS system as the agency’s official record under the New York Personal Privacy Protection Law, Public Officers Law, Article 6-A. It does not mean, and OCFS has never construed it to require, that a preventive services provider cannot use any other “system” or “record” to document the delivery of services under the Agreement. Thus, this finding does not raise any compliance issue under the Agreement.

ECDSS fully supports our interpretation of this provision. The Commissioner, in his comments on the draft report, expressly “disagree[s] with the interpretation of ‘sole system of record’ in [the Comptroller’s] review.” He confirms that “[i]t was not the intention of DSS to prohibit preventive service providers from using ancillary computer systems to assist with business processes in addition to CONNECTIONS as the sole system of record, as long as the system does not circumvent any confidentiality requirements.”

There is no basis to assert, and the Report does not suggest, that our system circumvented any applicable confidentiality requirements. In fact, confidentiality is central to the Buffalo Urban League. Among other things, our policies require staff to collect, use, and retain only such personal information as is necessary for the organization’s business; to retain information only for as long as necessary or as required by law; to protect the physical security of this information; to limit internal access to client personal information to those with a legitimate business reason for seeking it; and to use client personal information only for the purposes for which it was originally obtained, among other things. Every employee must agree in writing, as a condition of employment, to adhere to these requirements. Failure to comply with our confidentiality requirements is grounds for disciplinary action including termination. At no time has ECDSS or OCFS brought to our attention any issue about the confidentiality of information at the Buffalo Urban League. Thus, this finding, too, is unsubstantiated.

The Buffalo Urban League provided adequate training to its staff and ensured appropriate education credentials under the Agreement. In the area of education and training, we provide adequate training to existing and newly hired employees to enable them to carry out their job responsibilities with excellence. Among other things, as we explained to the Comptroller’s staff, during the first 90 days of employment, all new hires receive orientation, intensive one-on-one peer training and close supervision as they progressively receive their initial case assignments. We provided the Comptroller’s staff with documentation demonstrating employee training in 2014. With respect to the specific findings in the Report (at pages 9-10), the two referenced employees had the required mandated reporter training prior to 2014 (and one of them repeated it in 2015, although there was no requirement for her to do so); the case planner received a promotion to the case planner position only after he completed his four-year degree; all new case workers, clinical

and supervisory staff received a common training to enable them to fulfill the responsibilities of their positions; and staff received additional annual training throughout the year. We could not achieve and maintain our demonstrated high level of success without a dedicated, carefully trained staff, who receive ongoing internal training and shadow more experienced case planners before carrying a caseload of their own. We recognize that there is room for improvement in the area of documentation. Therefore, we have enhanced our systems by instituting an individualized employee training record to document the internal and external training our employees receive.

The Buffalo Urban League filed the required reports under the Agreement. The Buffalo Urban League provided all quarterly programmatic reports, as well as the fourth quarter financial report (which included all quarterly financial reports for 2014), in a timely manner. In addition, we provided documentation of actual expenses as compared to budget expenses and revenues billed and/or received under the Agreement. Thus, we submitted all of the required information for 2014. As the Report acknowledges (at page 18), ECDSS confirmed the receipt of all quarterly programmatic reports, as well as the fourth quarter financial report which included information for all four quarters. In response to this finding, we instituted a “alert” system to facilitate our submission of timely reports.

The Comptroller’s Findings in the Report Negate the “Auditor’s Comments.” Finally, the Report includes three “auditor’s comments,” which are not “findings,” but merely unsubstantiated “observations.” The findings in the Report do not support the auditor’s comments.

The Buffalo Urban League treated its employees with fairness, dignity and respect. The Buffalo Urban League recognizes the importance of empowering employees to report on activities that could have an adverse impact on the organization. Through a written Whistleblower Policy, we protect from retaliation employees who report on such activities in good faith. Here, there are no facts to support the auditor’s comment that employees who complained to the Comptroller have since “either been fired or forced to actively or constructively resign.” Indeed, every other federal and state agency that examined the issue found no basis to support such an allegation. Two of the former employees filed complaints, one with the New York State Division of Human Rights and the other with the U.S. Department of Labor’s Occupational Safety and Health Administration, alleging discrimination (in one case) and retaliatory discharge (in the other case). These agencies, after thorough investigations, rejected the employee accusations as unfounded and without any factual support. Instead, they concluded, the facts supported “performance problems” for one employee and “employee misconduct” for the other employee. The Commissioner points out in his comments that “turnover in child welfare positions is quite common,” and he requests the Comptroller to provide proof that the Buffalo Urban League retaliated against its employees. The Comptroller has not provided any such proof to us or, to our knowledge, to the Commissioner.

The Buffalo Urban League experienced substantial growth in the preventive services program, which more than warranted a modest 6.5% increase in the contract sum. The auditor’s reference to a 9% caseload increase significantly understates the growth in the preventive services program. In fact, from the beginning of January to the end of July 2014, the Buffalo Urban League’s preventive services caseload increased from 56 families to 77 families, a 37.5% increase. By the end of December 2014, the Buffalo Urban League was serving 92 families, a 64% increase from January 2014. This rapid, substantial growth would justify additional compensation many times the 6.5% increase the Legislature appropriated.

The auditor's statement also fails to take into account the needs and intensity of each case, which dictate the number of cases the organization can serve. As the Commissioner confirms in his response to the draft report, preventive services casework "does not lend itself well to the methodology used by the auditor to determine if the increase to the BUL contract was justified" because it treats "all cases as equal" and "does not take into account the differences in each case."

Further, it was not the Buffalo Urban League, but ECDSS that requested the increase in the contract compensation. As the Commissioner states in his response, "there was not adequate capacity in our preventive services providers to transition child protective cases to preventive services." This caused a "logjam" in the CPS division and, "[w]ithout the increase," the "CPS caseloads would be higher than they would be otherwise." Thus, the facts do not support, but instead directly refute, the auditor's comment "the BUL requested and received a \$65,000 increase," in the contract without "sufficient evidence" to demonstrate a "significant" increase in its caseload.

The Buffalo Urban League cooperated fully with and responded in a timely manner to the Comptroller's burdensome requests for confidential documents about vulnerable children and their families. It is incorrect to assert that the Buffalo Urban League and ECDSS delayed in responding to documentation requests, thereby "drastically impacting" the auditor's ability to complete the review in a timely manner. In fact, the Comptroller's staff controlled the pace of the review. On November 25, 2014, the Comptroller's Office first formally notified us of its intent to conduct a review of the preventive services program. At an entrance conference on December 15, 2015, the Comptroller's staff said they would begin their work during the week of January 5, 2015. Three days later, they sent a document describing the proposed scope of work, and we did not hear from them again until January 26, 2015, when they convened a follow-up meeting to discuss the process. It was not until February 6, 2015 – 10 weeks after the Comptroller announced his planned review – that we received the first request for information.

On August 30, 2015, the auditor began sending a series of interim audit memoranda for our comments. We submitted the last of our comments about two weeks later, on September 16, 2015. The Comptroller's Office then waited another 7 weeks, until November 4, 2015 – the day after Election Day – to issue the Draft Report. In all, this was a period of 17 weeks, nearly fifty percent longer than the "initial estimated completion period of 12 weeks," during which there were no outstanding requests affecting the auditor's ability to complete the review.

We cannot overstate the burden on the Buffalo Urban League from responding to the auditor's requests for case notes, daily activity records and other documents containing sensitive, personally identifiable information about vulnerable children and their families. By law, information about children and families receiving preventive services is confidential. On issues of confidentiality, the Buffalo Urban League takes its direction from OCFS and ECDSS. In its response to the draft report, ECDSS emphasizes its statutory responsibility to preserve the confidentiality of all child abuse and neglect records to protect the privacy rights of the child and of the child's parents or guardians. The Buffalo Urban League, following ECDSS's direction, expended great effort and expense in identifying and compiling documentation and carefully redacting it to preserve client confidentiality. The Comptroller's Office called for, and the Buffalo Urban League produced, thousands of pages of documents. The process was onerous and time-consuming.

During the review, the staff auditor expressed disdain, more than once, about the applicability of these confidentiality restrictions and characterized the burden as “self-imposed.” These comments reflect a disturbing lack of sensitivity to the confidentiality of information concerning neglected and abused children that the Comptroller’s office required the organization to provide.

The Comptroller Failed to Follow the Required Accounting Standards

Throughout the review, we expressed concern about several aspects of the Comptroller’s process, including his failure to comply with Generally Accepted Government Auditing Standards (“GAGAS”) and his excessive reliance upon disgruntled former employees who bypassed the organization’s internal written Whistleblower Policy and complained directly to his office, rather than bringing their allegations to the attention of the Buffalo Urban League’s executive management or its board of directors. GAGAS provides the framework for audits of governmental contracts. The Comptroller’s process disregarded these standards.

For example, the Comptroller did not conduct a proper, documented unbiased risk assessment, as the government auditing standards require. Instead, he focused on the allegations of a handful of disgruntled employees who wrote a letter identifying supposed “concerns” about billing, staffing and procedures. Disappointingly, the Report relies on the employee allegations, without consideration of other factors that may bear on their credibility. It fails to mention that state and federal agencies investigated claims from some of these former employees and determined that the claims were unfounded. Instead, using the employee allegations as a roadmap, the Comptroller focused exclusively on identifying errors in the categories they had identified.

The Comptroller also failed to establish materiality thresholds or to provide guidance about what should be considered significant in the context of a \$1,065,000 Agreement. Instead, the Report treats any claimed error or discrepancy, no matter how insignificant, as a finding. This creates a misleading impression about the extent of the organization’s compliance. The Report refers to “extrapolated” findings, but the Comptroller did not use any reasonable random sampling methodology to develop a representative sample or any valid extrapolation methodology. Instead, he merely inflated his findings by a multiplier to create the semblance of a significant finding.

Further, the Comptroller failed to take reasonable steps to ascertain the meaning of the contractual requirements, a matter that is ordinarily beyond an auditor’s professional competence to determine. Instead, he used the Report as a platform to advance untested and unsupported theories about the application of the law and the meaning of the Agreement without citing any agency opinions or precedents supporting those interpretations. He also failed to consider all the evidence, including the evidence supporting and corroborating the Buffalo Urban League’s good faith compliance with the terms of the Agreement.

Contrary to the Comptroller’s claim in the Report, the auditors did not follow GAGAS, and this resulted in a flawed report. As the Comptroller’s findings reflect, our payment to Erie County included all the amounts the Comptroller identified. The Report fails to identify any material deficiencies or substantiate any compliance issues. This reinforces the organization’s good faith, diligence and effectiveness in carrying out its obligations under the Agreement.

The Comptroller's Statements to the Media Lack Any Basis in Fact

There is a significant disconnect between the Comptroller's findings in the Report and his inflammatory statements to the media about the content of the Report. In his press release, for example, Mr. Mychajliw accused the Buffalo Urban League of engaging in "outrageous overbilling," of "failure to train employees," and of "failure to protect children's privacy," among other things. Nothing in the Report supports his rhetoric. Contrary to these public statements, the Report does not identify "outrageous overbilling," or any failure to train employees, or to protect children's privacy, or any of the Comptroller's other assertions in his statements to the media. To frame a one-time employee error as rising to the level of systemic fraud, or even mismanagement, as Mr. Mychajliw sought to do in his public statements, is not only wrong, but it is a gross disservice to the needy people in Erie County who depend on the Buffalo Urban League to provide services, and indeed to the greater Western New York community. We encourage the members of this Legislature to review the Report and then compare its findings to the Comptroller's public statements. The discrepancies are staggering.

Conclusion

The Buffalo Urban League appreciates this opportunity to comment on the Comptroller's Report. We take seriously our responsibility to steward all of the organization's resources, including those we receive under the Agreement. We welcome opportunities to improve. Toward that end, we have carefully reviewed all of the Comptroller's recommendations. We have enhanced our systems and implemented additional safeguards and systems to reduce errors and to address promptly any issues that come to our attention.

We are proud of our efforts to help vulnerable, underserved, disadvantaged populations in Erie County. With our focus on the future, we look forward to devoting our full attention to continuing the organization's critical work serving residents of Erie County, especially vulnerable children.

Very truly yours,



Brenda McDuffie
President and Chief Executive Officer

Attachments

cc: Mark Poloncarz, Erie County Executive
Albert F. Dirschberger, Ph.D., Commissioner, Department of Social Services
Stefan Mychajliw, Erie County Comptroller
Robert W. Keating, Director of Budget and Management
Erie County Fiscal Stability Authority



**Buffalo
Urban League**

*Empowering Communities.
Changing Lives.*

To: Scott Kroll, Deputy Comptroller
David Kinda, Senior Auditor

From: Buffalo Urban League

Re: Erie County Comptroller's Office Draft Report dated November 4, 2015

Date: November 20, 2015

Introduction

We appreciate this opportunity to comment on the draft report, dated November 4, 2015 (the "Draft Report"), setting forth the results of the Erie County Comptroller's Office's review of the Agreement dated January 16, 2014 (PS3591) between the Erie County Department of Social Services ("DDS") and the Buffalo Urban League for the purchase of traditional preventive services (the "Agreement").

The Buffalo Urban League was established in 1927 to address the employment, housing, and social needs of African-Americans and immigrants migrating from the South to the North. Today, the organization's mission is to empower African-Americans and other minorities and disadvantaged individuals and to enable them to secure economic self-reliance, parity, power, and civil rights. In support of this mission, the Buffalo Urban League offers services aimed at family preservation, education and employment support, and housing and community development. Through the preventive services program, the Buffalo Urban League keeps children safe in their homes and prevents them from entering foster care. We take this responsibility seriously, and our track record is outstanding. In the 90 nearly years since its inception, the organization's core values have emphasized trust, excellent service and results. We remain committed to these core values.

Like any organization of its size, the Buffalo Urban League considers audits to be an ordinary, and necessary, part of business. Outside firms routinely audit our operations and financials, and we perform self-audits on a regular basis. We are a deliberately transparent organization with oversight from a dedicated board of directors whose members represent every part of the Western New York community and every sector of the economy. We are accustomed to audits, and we welcome the opportunity that audits provide to improve our operations for the benefit of our clients, benefactors, volunteers, government contractors, and the communities we serve. This response to the Draft Report is shaped by the organization's extensive experience with auditing agencies, governance and management of internal controls.

Executive Summary

As we discussed during the exit conference today, we are disappointed with the tone and results of the audit. In several key respects, as we discussed and as detailed below, we believe the Draft Report to be materially incorrect and incomplete. Among other things, it fails to take into account the effectiveness of our services, the thoroughness of our recordkeeping, the accuracy of our financial oversight, and the diligence with which we adhere to the requirements of the preventive services Agreement. It also overlooks the systemic constraints within which all preventive services providers, including this organization, operate.

We believe that, in important respects, the Draft Report portrays the organization in a false light. We are concerned that this will harm our good reputation and standing in the community and undo the relationships with contracting agencies and supporters that we have worked so hard to foster. This would threaten irreparable harm to the needy children at risk for exploitation, neglect and abuse, and their families, who rely on the Buffalo Urban League to deliver vital preventive services, which we do with recognized excellence.

Specifically, we disagree with the allegation that the Buffalo Urban League “overbilled” Erie County \$39,897.66, consisting of: (i) \$23,222.40 in “excessive” supervisory charges from August 2014; (ii) \$12,833.40 for unsubstantiated billable hours; and (iii) \$3,841.86 in voucher calculation errors.¹ As described in more detail below:

- In March 2015, long *before* the Comptroller’s Office’s audit, the Buffalo Urban League had already reconciled payments with the Erie County Department of Social Services and repaid Erie County \$30,575.71 under the Agreement, as set forth in the reconciliation summaries annexed as **Exhibit A and Exhibit B**.
- This included **\$20,313.12 to refund the County** for the August 2014 quality assurance supervisory charges (see **Exhibit A**).
- We disagree that the organization “still owes Erie County \$1,451 for supervisory services” because, as described below, the Buffalo Urban League either it did not bill or already refunded this amount as part of the March 2015 reconciliation.
- Moreover, as of November 20, 2015, **Erie County still owes Buffalo Urban League \$2,600.43** for preventive services provided in 2014.
- The assertion that the Buffalo Urban League still owes the County \$12,833.40 based upon an “unsubstantiated” claim in the amount of \$241.90 is equally baseless. The Buffalo Urban League already repaid the identified claim in the amount of \$241.90 as part of the March 2015 reconciliation. Moreover, this is

¹ The Draft Report states, on page 4, that Buffalo Urban League has “six other contracts with Erie County totaling \$203,719.” This is incorrect, because it omits one program, Foster Care, which provides funds to the organization and includes another that provides in-kind meals rather than funding. In any event, it is irrelevant. We request that this reference be deleted from any final report.

an immaterial sum, *less than 0.02%* of the total contract, and it was not part of a random sample. In any event, the reconciliation included all payments for the entire year. For these reasons, extrapolation to yield the inflated sum of \$12,833.40 is inappropriate.

- Further, the Buffalo Urban League does *not* owe \$3,841.86 based upon \$640.31 in voucher calculation errors. On its own, the organization identified and repaid – at least eight months ago – \$640.31 on the claims in issue as part of its year-end reconciliation (**Exhibit B**). As the reconciliation included all payments for the entire year, it would be improper to extrapolate this amount and require the organization to repay it twice.

We also disagree that the review identified any material instances of contractual non-compliance. Specifically,

- the Agreement does not limit employees to no more than eight hours of work in a day;
- the Buffalo Urban League compensated employees for the hours they worked;
- the organization provides sufficient training, on an ongoing basis, to existing and newly hired employees to enable them to carry out their job responsibilities with excellence;
- we use the Connections system as the sole “system of record,” within the meaning of the Privacy Law, which defines that term and imposes no restriction upon the maintenance of other recordkeeping systems for billing, payroll, documentation or other purposes; and
- we submitted all quarterly programmatic reports, as well as the fourth quarter financial report (which included all quarterly financial reports for 2014), in a timely manner.

In addition, we view the “Auditor’s Comments” to be unwarranted. The increased preventive services caseload fully supported the 6.5% increase in the contract compensation; we cooperated fully and promptly with the auditors’ burdensome requests; and there is no factual basis to assert that we underpaid workers or fired or forced disgruntled employees to resign.

For these reasons, and as more fully set out below, we object to the Draft Report, and we request that you withdraw it immediately, in its entirety. At a minimum, we believe it is incumbent upon your office to correct the inaccuracies and misstatements before any further publication.

Procedural Comments

We also have concerns about the audit process, including the improper use of extrapolation to arrive at exaggerated findings and the excessive reliance upon individuals who complained to your office without first invoking the organization’s internal whistleblower protections. Before

turning to our specific comments on the Comptroller's proposed findings, and to place those comments in perspective, we summarize our views on the process below.

A. Failure to Comply with Generally Accepted Government Auditing Standards

The Draft Report states that the auditors conducted the review "in accordance with Generally Accepted Government Auditing Standards" (the "Government Auditing Standards" or "GAGAS"). These standards, which provide the framework for audits of governmental contractors, incorporate by reference the American Institute of Certified Public Accountants ("AICPA") Codification of Statements on Auditing Standards for Auditing. See GAGAS 2.08. We disagree that the review complied with these standards. We have identified *at least six ways* in which the review deviated from the Government Auditing Standards and the AICPA's standards, as follows:

- **Failure to Perform an Unbiased Risk Assessment.** In designing a compliance review, the AICPA's standards on compliance reviews, which the Government Auditing Standards incorporate (GAGAS 2.08), instruct auditors to perform and document risk assessment procedures. This includes asking management about "findings and recommendations in reports or other written communications" and using the responses "to assess risk and determine the nature, timing, and extent of the audit procedures for the compliance audit" (see AICPA Standards, §§ 935.16, 935.40). The audit did not involve a proper, documented risk assessment, but instead focused on the allegations of a handful of disgruntled employees who wrote a letter identifying supposed "concerns" about billing, staffing and procedures. With these allegations as a roadmap, the audit focused on identifying errors in the categories the employees had identified. We believe that this approach tainted the process and produced unfairly skewed and misleading results.
- **Failure to Identify Materiality Thresholds.** In planning and performing an audit, the Government Auditing Standards instruct auditors to identify noncompliance "that may have a material effect on the financial statements" and to make "judgments about the size of misstatements that will be considered material" (GAGAS 5.07). Likewise, the AICPA's standards state that "[t]he auditor should document materiality levels and the basis on which they were determined" (see AICPA Standards, § 935.41). The Draft Report fails to establish materiality thresholds or provide any guidance about what should be considered significant in the context of the \$1,065,000 Agreement for preventive services. Instead, it treats any error, no matter how insignificant, as a finding. This creates a misleading impression about the extent of the organization's compliance with the contractual requirements.
- **Failure to Use Valid Sampling and Extrapolation Methodology.** Extrapolation involves taking the audit findings from a small sample of claims and projecting them over a larger universe of claims. The AICPA's

standards define audit sampling as the selection of less than 100% of the population such that the sample is “representative of the population and, thus, likely to provide a reasonable basis for conclusions about the population” (see AICPA Standards, § 530.05). This review did not involve any reasonable sampling methodology likely to develop a representative sample or provide a reasonable basis for conclusions about the population. Thus, we believe that the use of extrapolation is inappropriate.

- **Failure to Take Reasonable Steps to Determine Contractual Requirements.** As the Government Auditing Standards make clear, understanding the laws establishing a program and the provisions of any related contracts is a necessary prerequisite to identifying the provisions that are significant to an audit. GAGAS 6.15. According to the AICPA’s standards, “[w]hether an act constitutes noncompliance with laws and regulations is a matter for legal determination, which ordinarily is *beyond the auditor’s professional competence to determine* (see AICPA Standards, § 250.A5 (emphasis added)). Here, the Draft Report advances untested and unsupported theories about the application of the law and the meaning of the Agreement without citing any agency opinions or case law precedents supporting those interpretations. This suggests an ad hoc process applied on a selective basis to a single entity rather than consistently to all organizations providing the same preventive services in the community.
- **Failure to Consider All the Audit Evidence.** The AICPA’s audit standards require the auditor to obtain sufficient appropriate “audit evidence” to support reasonable conclusions and instruct that audit evidence includes “both information that supports and corroborates management’s assertions and any information that contradicts such assertions” (see AICPA Standards, § 500.A1). The Draft Report contains insufficient audit evidence to support the conclusion that the organization overbilled Erie County in any amount. It also disregards important information – including the Buffalo Urban League’s repayment, long before the issuance of any findings, of the all identified sums in issue – that supports and corroborates the organization’s good faith compliance with the terms of the Agreement. This suggests an unfairly biased, skewed and one-sided analysis.
- **Failure to Address Management’s Comments and Documentation.** Under the Government Auditing Standards, if the audit discloses noncompliance, the “auditors should obtain and report the views of responsible officials of the audited entity concerning the findings, conclusions, and recommendations, as well as any planned corrective actions.” When auditors receive written comments, the Government Auditing Standards require them to “include in their report a copy of the officials’ written comments, or a summary of the comments received.” If the auditors disagree with the audited entity’s comments, the Government Auditing Standards instruct them to “explain in the report their reasons for

disagreement” and to “modify their report as necessary if they find the comments valid and supported with sufficient, appropriate evidence.” (See GAGAS §§ 4.33, 4.35, 4.38, 7.32, 7.33, 7.34, 7.35, 7.36, 7.37.) Before issuing the Draft Report, the Comptroller’s Office shared proposed findings (aside from the Auditor’s Comments) with the Buffalo Urban League’s management, which responded with extensive comments and supporting documentation. The Draft Report does not include any of those comments or documentation, or even a summary of the comments or documentation. It fails to indicate whether the auditors agreed with management, or if not, the reasons for their disagreement, or whether they modified their findings to take management’s views into account, and if so how. This reflects an unduly result-oriented approach to the analysis.

In its responses to the interim audit memoranda, the Buffalo Urban League demonstrated, in some instances repeatedly, that the proposed findings were inaccurate, incorrect or simply false. We are troubled that the Draft Report continues to contain some of the same inaccuracies. We request that you correct the inaccuracies and allow us an opportunity to review the corrections before your office issues any final report of your findings.

B. Excessive Reliance on Employee Complaints

As the Draft Report discloses (on page 11), the Comptroller commenced this review after receiving a letter signed by seven disgruntled Buffalo Urban League employees. We are disappointed with the Draft Report’s reliance on the employee allegations, without consideration of other factors that may bear on their credibility.

Although we do not have the signed letter that prompted this review, media reports identified two of the seven employee signatories. As discussed in greater detail below, these two employees also filed complaints, one with the New York State Division of Human Rights (“DHR”) and the other with the Occupational Safety and Health Administration (“OSHA”), alleging discrimination (in one case) and retaliatory discharge (in the other case). The agencies, after thorough investigations, rejected the employee accusations as unfounded and without any factual support. Instead, they concluded, the facts supported “performance problems” for one employee and “employee misconduct” for the other employee (see **Exhibit C**, **Exhibit D**, and **Exhibit E**). We believe that these determinations are highly relevant to the credibility of the employees and bear on their motivation in advancing the allegations in the letter that prompted your review.

Detailed Comments on the Comptroller’s Proposed Findings

The Buffalo Urban League’s detailed responses to each of the Comptroller’s proposed findings are set forth below. The Buffalo Urban League respectfully requests that any final report include a copy of these written comments, together with the exhibits to this response.

I. Previously Repaid Supervisory Review Charges

The Draft Report asserts that on August 29, 2014, three supervisors recorded 480 supervisory review or quality assurance hours totaling \$23,222.40. Although the Draft Report does not so state, this was an isolated, one-time event, in which the supervisors, in a departure

from our standard practice and without senior management's knowledge, recorded their supervisory activities in the Connections database on a single day, rather than throughout the month as they occurred. The narrative acknowledges that on March 13, 2015 – nearly *eight months before* the Draft Report – we delivered a check to Erie County for \$30,575.71, which included *\$20,313.12 to refund the County* for the supervisory charges and the balance for billing rate adjustments. (See Exhibit A.) Nevertheless, the Draft Report asserts that the Buffalo Urban League “still owes Erie County \$1,451.40 for supervisory hours not refunded.” We disagree.

The Draft Report does not specify the cases to which this finding relates, but in a separate correspondence, the auditor informed us that it involves the following six cases:

and Our staff reviewed these cases and confirmed that:

- the Buffalo Urban League *did not receive a bill or receive payment* for the supervisory charges for five of the six cases, and
- our check to Erie County for \$30,575.71 *included repayment* for the five-hour supervisory charge for the remaining case, Exhibit A, page 3 of 4, line 11).

We previously provided this information in response to Interim Audit Memorandum #1 addressing this issue. The Draft Report took into account some of the information we provided and reduced this proposed finding from \$2,419.00 to \$1,451.40. With no explanation, however, the Draft Report disregarded the information we provided about the six cases referenced above, and these cases incorrectly remain in the Draft Report. These findings are unwarranted, and they should be reversed.

This finding may have resulted from the audit's use of the Connections notes, rather than billing vouchers, to calculate the billed supervisory hours. The Connections system is not a billing system, but a case activity recording system. The preventive services staff enter their case notes into the electronic Connections database, but because the Connections system lacks a usable billing component, these entries *do not translate into billings*. Instead, the Erie County DSS uses a manual billing system to pay for services under the Agreement. Under this manual system, the County delivers “green-bar” paper “vouchers” listing specific cases with authorization to bill for a specified period of time. Our office staff manually enters on the paper voucher the number of hours attributable to each case for the authorized period in question, along with the hourly billing rate, and returns it to the County for payment. It is the manually completed *voucher* that triggers payment, *not the case notes* in the Connections database.

According to the narrative, the auditors identified the five-hour supervisory hours from the Connections notes, not from billing vouchers. For five of the six cases, we are not aware of evidence, in the form of a *billing voucher*, that the Buffalo Urban League billed DSS for the supervisory hours at issue. In the sixth case, the Buffalo Urban League *already repaid* this amount, as the documentation reflects that the March 2015 repayment to the County reflects (Exhibit A, page 3 of 4, line 11). As we either *did not bill or already refunded* these amounts, no additional repayment is warranted.

We disagree with the recommendation that the Buffalo Urban League “take the steps necessary to ensure that the billing vouchers represent only the actual hours of work performed on a case for that specific date.” We already take the necessary steps to bill correctly in the first instance and to correct inadvertent errors promptly. Thus, this finding should be eliminated in its entirety or, at a minimum, corrected to reflect that as a result of the Buffalo Urban League internal audit and reconciliation, the amount identified was already repaid in full.

II. Comparison of Billing Records with Other Documentation

In proposed Finding #II, the Draft Report states that there were “unsubstantiated” billings of \$241.90 in the sample, which would equate to \$1,069.45 if extrapolated for the month or \$12,833.40 when annualized. In a separate communication, the auditor informed us that this finding relates to case We object to this proposed finding because the Buffalo Urban League *already paid back* the five-hour supervisory charge for case As reflected in the accompanying documentation, our check to Erie County in the amount of \$30,575.71 included that amount for this case (Exhibit A, page 3 of 4, line 9). Thus, *no repayment* at all is warranted. This finding should be eliminated, in its entirety.

Even if the Buffalo Urban League had not already identified and repaid this amount, which it did, we would also object to the proposed extrapolation. To conduct a valid extrapolation, it would be necessary to: (i) determine the ratio of the challenged hours to the total hours in the sample; and (ii) *multiply* that ratio to the total hours in the total cases for August. According to the information you provided, however, you: (i) determined the ratio of the entire sample size (19 cases) to the total number of cases in August (84 cases), regardless of the existence or non-existence of any error, which yielded a sample size of *23% of the universe* (not a 23% error rate); and (ii) *divided* the total challenged hours for August (\$241.90) by the sample size of 23% ($\$241.90/23\%$) – effectively multiplying it by the inverse of 23% ($1/23\%=4.34$) – to yield a “rate” of \$1,069.45 for the month (and \$12,833.40 for the year). This makes no sense.

Among other things, it inaccurately treats every case in the sample as if it were defective, when in fact your analysis challenged *only 5 hours in only one* of the 19 sampled cases out of 84 cases in the month. *A sample size of 23% of the cases in a month is not the same as an error rate of 23% of the hours billed in that month.* Additionally, by dividing instead of multiplying, the effect was not to “extrapolate” but merely to inflate the single challenged finding by 4.34 (the inverse of 23%). More fundamentally, as noted above, the use of extrapolation in the first place fails to take into account the fact that the Buffalo Urban League *already paid back* the \$241.90 for the 5 challenged hours at issue. Thus, there is nothing to extrapolate.

We also continue to object to the sampling methodology. As previously noted, crucial to any valid extrapolation is the importance of choosing the sample fairly to represent the universe. In a letter dated February 27, 2015, we requested a description of the sample size and methodology you would be using to generate the random sample, and if it involved a software application that uses an algorithm and a “seed number,” identification of the application, along with the original seed number, so that we would be able to confirm the randomness of the sample. Your office never responded. The month of August 2014 was not representative, because it included the one-time five-hour supervisory charges, which the Buffalo Urban League had already repaid prior to

the time of your review. The lack of any showing that the sample is random provides another basis to challenge the extrapolation methodology and results.

In sum, for many reasons, this proposed finding is inaccurate and misleading.² We request that you delete it in its entirety.

III. Minor Mathematical Errors

We disagree that there were errors in the amount of \$640.31 which, if annualized, “would have totaled about \$3,841.86. Shortly after the end of the 2014 contract year, the Buffalo Urban League conducted a comprehensive review of the amounts it received under the Agreement through February 2015. After identifying items for adjustment, we gave the Erie County DSS an opportunity to comment on our analysis. Following discussion and additional review, the process resulted in an agreed-upon list of repayments.

On March 13, 2015 – nearly eight months before the Comptroller’s Office issued any proposed findings – we issued Check No. 015340 in the amount of \$30,575.71 to reimburse Erie County in full for the agreed-upon amounts. (The spreadsheets reflecting these amounts are annexed as **Exhibits A and B.**) As the Draft Report acknowledges, this included the claims identified in this proposed finding.

Our repayment to Erie County included not just the amounts in this finding for June and August 2014, but also all the other amounts we identified *for the entire year through February 2015*. Of the total payment, \$10,262.59 was attributable to a decrease in the contract rate, mathematical errors, duplicate payments, and other minor, inadvertent inaccuracies. As we already refunded the amounts at issue for June and August, as well as for the entire year, there is no basis for this finding. It should be deleted from any final report.

We disagree that the Buffalo Urban League and DSS should “implement the steps necessary to establish a sufficient check of the vouchers that would help ensure accuracy prior to payment.” The County’s manual paper “voucher” system maximizes the opportunity for human error, which no amount of oversight will entirely eliminate. We suggest that the more appropriate recommendation would be for the County to implement a more effective, computerized approach to billing services under the preventive services program.

IV. Contract Compliance

A. Labor Law 220 Issues

Under the Agreement, to the extent Labor Law § 220 and 220-d apply, the Contractor will not permit or require any “laborer, workman or mechanic” in its employ to work more than eight hours in a calendar day or more than five days in any one week. In the Draft Report, the

² We also take issue with the use of Connections as the basis for asserting any billable hour “discrepancies.” Connections is the uniform case record for the child and the child’s family, *not* a billing system. One of the problems with using it to identify so-called billing “discrepancies” is that after 15 days, a note entered in Connections “locks” and cannot be corrected, even if staff identifies and corrects an error in the Access database. Thus, a “discrepancy” between the two systems is not evidence of a billing “error” at all.

Comptroller's Office acknowledges that Labor Law § 220 and 220-d "apply to public work" projects, and the Agreement contemplates preventive services for children and their families, not public work. Nevertheless, the Draft Report implies that these provisions *may* apply to the Buffalo Urban League's staff. They do not.

There is a three-pronged test for determining whether a particular project is a public work project and subject to the prevailing wage requirements of Labor Law § 220 and 220-d:

First, a public agency must be a party to a contract involving the employment of laborers, workmen, or mechanics. Second, the contract must concern a project that *primarily involves construction-like labor* and is paid for by public funds. Third, the primary objective or function of the work product must be the use or other benefit of the general public.

See New York State Department of Labor, "Article 8 (Construction): Frequently Asked Questions" (available at https://labor.ny.gov/workerprotection/publicwork/PW_faql.shtm) (emphasis added). Generally, "projects for *construction, reconstruction, or maintenance* done on behalf of a public agency (entity) are public work projects." *Id.* (emphasis added).

Here, the Agreement does not involve construction, reconstruction, maintenance, or any "construction-like labor." Instead, as the Comptroller's Office acknowledges, it involves the delivery of "preventative services for children and their families." These services include a comprehensive assessment to identify safety issues; family-centered engagement to help caregivers to meet safety needs; and intervention to protect children from abuse and neglect. This is not "construction-like labor." Thus, these services do not meet the three-pronged test, and Sections 220 and 220-d of the Labor Law do not apply.

The Draft Report asserts, as an alternative argument, that if Labor Law §§ 220, 220-d and 220-e do not apply, then the Buffalo Urban League did not compensate its employees enough in overtime wages. We disagree. The Agreement does not address the issue of employee overtime. Thus, if the cited Labor Law provisions do not apply – and they do not – the Comptroller's inquiry into the organization's overtime practices is over. In any event, and as the Comptroller's own findings confirm, the Buffalo Urban League *consistently paid* its direct preventive services staff for the approved hours they work in excess of eight hours in a day.

As a general practice, Buffalo Urban League employees work a standard 40-hour work week, which includes 35 hours of on-duty time and also includes payment for one hour of lunch each day. Overtime applies only to hours the employee actually works after 40 per week. To take into account the five hours of paid lunch each week, the employee receives additional pay at the straight time rate, for the first five hours of work over 40 hours per week. The premium portion of the overtime calculation begins after 45 hours. This explains the difference in the columns on the auditor's chart reflecting "Regular" overtime and "Premium" overtime hours.

In general, the Buffalo Urban League does not ask its employees to work more than 40 hours in a week. Throughout 2014, however, there was an unanticipated increase in caseload leading to an expansion of the Agreement. At the beginning of January 2014, the Buffalo Urban League was serving *56 families*, but by the end of October 2014, this had grown to *82 families*, a

46% increase. To meet the increasing need for services, and to compensate employees for their additional efforts, management offered the direct preventive services staff, for a limited period, overtime wages for the actual hours they worked over 40 per week. As we explained in response to the interim audit memorandum on this issue, this limited offer was in effect only from September 8, 2014 through December 12, 2014, and it was subject to preauthorization and supervisory approval, for those specified staff who voluntarily accepted the offer.

As the auditor's chart reflects, when employees actually worked over 40 hours in a week in 2014, they received additional pay in the form of overtime compensation. Although the Draft Report asserts "discrepancies," it makes no effort to identify or explain the alleged inconsistencies. We note that the totals on page 9 show **4,172.38 total hours paid** but only **4,144.72 hours total hours worked**, an apparent anomaly that favors the employees, not the organization.

Separately, as we noted in the exit conference, the chart on pages 7-9 contains confidential information in the form of employee initials. In the event the Comptroller's Office declines to rescind this finding, we request, at a minimum, the deletion of any information, including employee initials, that would identify any individual employee.

In sum, the Agreement does not limit employees to eight hours in a calendar day or five days in any one week, and the Buffalo Urban League pays its employees premium wages for the actual hours they work over 40 hours in a week. Consequently, this proposed finding is completely without merit, and it should be deleted from any final report.

B. Education and Training

We disagree with the finding that employees did not have the appropriate training for their positions. Employee training, which is extensive, is summarized in the New Hire Checklist and outlined in the Preventive Services Policy Manual we provided during the review. It includes, among other things, the mission, vision and values of the organization; its programs, casework strategies, documentation practices; and other information employees need to deliver effective preventive services.

We disagree that seven of eight new employees did not receive the required orientation, introduction and documentation training. During the first 90 days of employment, each new hire receives orientation, intensive one-on-one peer training and close supervision as they progressively receive their initial case assignments. This is significantly more than the 80 hours of introductory training and case documentation training referenced in the Draft Report.

We also disagree that 24 of 30 employees did not receive sufficient annual training. The majority of the training is through one-on-one contact with the supervisor, clinical specialist and coordinator who address staff needs and casework issues as they arise. Ongoing peer-to-peer training and case consultation is an important and effective aspect of staff development. Employees also have the opportunity to attend community training sessions outside the organization.

The proof of the existence and effectiveness of the employee training is in the outcome: the vast majority of the families we serve through the preventive services program are able to remain together safely, without any further issues. We could not achieve and maintain this level

of success without a dedicated, carefully trained staff, who receive ongoing internal training and shadow more experienced case planners before carrying a caseload of their own.

C. Shortcomings in the State's Connections System

The recommendation that the Buffalo Urban League use the Connections database as its "sole system" for documenting and billing case activity completely misconstrues the contractual requirements. Connections is the uniform case record for the child and the child's family. *It is not a billing system, and it does not have a billing component.* In paragraph 9b of the Agreement, the "Contractor agrees to utilize the Connections system including all case management components as the sole system of record." This means that the New York State Office of Children and Family Services ("OCFS"), the state agency with responsibility for the regulation and supervision of child welfare services, has designated the Connections system as the agency's record under the New York Personal Privacy Protection Law, Public Officers Law, Article 6-A (the "Privacy Law"). It does not mean that the organization cannot use any other "system" or "record" to document the delivery of services under the Agreement. This recommendation is unwarranted.

The Privacy Law, enacted in 1984, "regulates the collection, maintenance, use, and dissemination of information concerning individuals" by New York State governmental agencies. *See* N.Y. Pub. Off. Law § 91-99. In pertinent part, the law: (i) prohibits a state governmental agency from disclosing any record in a "system of records" about an individual without the individual's written consent, *see id.* § 96, and (ii) grants individuals the right to access state agency records so they can correct or amend their information. *See id.* § 95. The Privacy Law defines the term "system of records" as "any group of records under the actual or constructive control of any agency pertaining to one or more data subjects from which personal information is retrievable by use of the name or other identifier of a data subject." *Id.* § 92(11). A "data subject" is a person about whom an agency collects personal information, *id.* § 92(3), and an "agency" is "any state board, bureau, committee, commission, council, department, public authority ... or any other governmental entity performing a governmental or proprietary function for the state of New York," *id.* § 92(1).

OCFS is a state governmental agency to which the Privacy Law applies. In accordance with the statute, OCFS designated Connections as its system of records. *Id.* § 92(1). In the Agreement, the contractor agreed not to use any other "system of record." The Buffalo Urban League complied with this requirement by entering progress notes into the Connections "system of record," and into no other state agency "system of record." In the Agreement, the contractor did *not* agree not to use any other "system" or "record" to document its activities under the Agreement. The use of Microsoft Access, which is not a governmental "system of record," is not a departure from the contractual requirements.

Connections is the "*sole*" system of record because it superseded OCFS's former "legacy" systems for recording preventive services information. Historically, OCFS maintained two so-called legacy systems to track children receiving child welfare services across New York State. These were: (i) the Welfare Management System ("WMS") for child welfare cases; and (ii) the Child Care Review Service ("CCRS"), for tracking compliance with state and federal legal and

case planning requirements.³ In 2014, New York State was still in the process of migrating its legacy systems to the CONNECTIONS system.⁴ See OCFS 2014 Informational Letter at 2 (describing the CCRS as the “*system of record* for tracking, placement, movement, legal, adoption and level of difficulty activities”) (emphasis added).⁵ The designation of Connections as the “sole system of record” means that Connections, and not the OCFS’s “legacy” systems, is the single, statewide, recordkeeping system for the documentation of information relating to the delivery of child welfare services. It does *not* mean that not-for-profit agencies contracting with counties to deliver preventive services cannot maintain their own records to document their activities or to use for billing purposes.

The Draft Report asserts that the Buffalo Urban League does not use Connections as its sole system of record, because: (i) the preventive services staff either enter case notes initially into Access and copy and paste them to Connections or enter them into Connections and then copy and paste them into Access; (ii) the billing staff uses the casework hours from Access to complete billing vouchers; and (iii) occasionally employees print out copies of notes from Connections to keep in a client's case file. None of these activities reflects a deviation from the contractual requirements.

As for the entry of notes into Access then Connections, or vice versa, one of the known weaknesses in Connections is that the system loses information.⁶ Paragraph 15 of the Agreement (possibly as a work-around to address this known insufficiency) requires the contractor to provide progress notes and case records to designated OCFS and DSS representatives within 24 hours of a request. Copying notes from Access into Connections or vice versa, enables the contractor to meet this requirement. The Agreement thus contemplates that contractors will maintain their own notes and case records separate and apart from Connections; if this were not the common practice, there would be no reason for the Agreement to require contractors to provide OCFS and DSS representatives access to such notes and case records within 24 hours of a request.

As for the use of Access for billing purposes, another known weakness in Connections is the lack of a usable billing component. This means that contractors must develop other means to

³ See OCFS Impact Analysis, dated March 23, 2004 (available at <http://ocfs.ny.gov/connect/imp/build18/ia%20-%20interfaces%20final.pdf>).

⁴ In 1993, the federal government provided financial incentives to encourage states to develop a Statewide Automated Child Welfare Information System (“SACWIS”). In response, OCFS developed Connections to replace its legacy systems with a single, statewide, integrated system to document the delivery of child welfare services. See CONNECTIONS Build 18 Resource Guide for Managerial Staff at 1 (available at <http://ocfs.ny.gov/connect/jobaides/b18%20resource%20guide%20for%20managers%20-%20final.pdf>).

⁵ OCFS Informational Letter 14-OCFS-INF-04 at 2 is available at http://ocfs.ny.gov/main/policies/external/OCFS_2014/INFs/14-OCFS-INF-04%20Child%20Care%20Review%20Service%20%28CCRS%29%20Functionality%20Moving%20to%20CONNECTIONS.pdf.

⁶ The 2001 report of the New York State Assembly Oversight, Analysis and Investigation Committee and the Children and Families Committees, entitled “Too Much, Too Little, Too Late,” noted that Connections users “have found that the system does not reliably record entered information. They therefore feel the need to write down the information before entering it so the information is not lost.” (The 2001 Assembly Committees report is available at <http://assembly.state.ny.us/comm/Oversight/20010508/>).

carry out the billing process. The Buffalo Urban League uses the Microsoft Access system for billing, and other contractors presumably use their own computerized systems. Nothing in the Agreement prohibits a contractor from using a computerized database as an aid to the completion of the antiquated paper-based green-bar voucher process. As for the occasional print-out of notes from Connections, print-outs are necessary from time to time, for example, to respond to a subpoena for records relating to a particular case and in other situations. Nothing in the Agreement precludes, or even addresses, this.

We disagree with the recommendation that the organization confine any form of progress notes to only those preventive services employees and supervisors assigned to a particular case. Confidentiality is central to the Buffalo Urban League. Among other things, the Microsoft Access database is a password-protected system, and only authorized employees may use it. Every time an employee logs into the Access system, the employee must acknowledge the confidentiality requirements. Additionally, our policies require staff to collect, use, and retain only the personal information necessary for the organization's business; to retain information only for as long as necessary or as required by law; to protect the physical security of this information; to limit internal access to personal information to those with a legitimate business reason for seeking that information; and to use personal information only for the purposes for which it was originally obtained, among other things. Every Buffalo Urban League employee must agree in writing, as a condition of employment, to adhere to these requirements. Failure to comply with our confidentiality requirement is grounds for disciplinary action including termination.

We also disagree with the recommendation to destroy notes when a case is closed. The Agreement (paragraph 21) requires us to "retain all books, records, and other documents relevant to this agreement for six years after final payment." Additionally, the applicable regulations require the retention of preventive service records for six years after the 18th birthday of the youngest child in the family. If we followed the recommendation to destroy case notes when the case is closed, we would not be able to comply with these requirements.

The Buffalo Urban League responded to the Interim Audit Memorandum on this issue substantially as summarized above. Contrary to the Government Auditing Standards, however, the Draft Report does not include management's comments, or even a summary of those comments. It fails to take management's comments into account or to explain the basis for any disagreement. According to the AICPA's standards, which the Government Auditing Standards specifically incorporate by reference, "noncompliance with laws and regulations is a matter for legal determination, which ordinarily is *beyond the auditor's professional competence to determine.*" AICPA Standards § 250.A5 (emphasis added). Yet the Draft Report fails to cite any legal support for its interpretation of the phrase "sole system of record." Insofar as we are aware, OCFS has never issued any generally applicable guidance that would support this interpretation.

In sum, this finding is baseless and does not comply with the applicable Government Auditing Standards. Therefore, we request that this finding, along with the associated recommendations, be removed from any final report.

D. Quarterly Reporting

The Comptroller's assertion that we did not comply with paragraph 21 of the Agreement, which requires quarterly fiscal and programming reports, or paragraph 40b of the Agreement, which requires documentation of actual expenses as compared to budget expenses as well as revenues billed and/or received under the Agreement, is incorrect.

The Buffalo Urban League provided all quarterly programmatic reports, as well as the fourth quarter financial report (which included all quarterly financial reports for 2014), in a timely manner. In addition, we provided documentation of actual expenses as compared to budget expenses and revenues billed and/or received under the Agreement. Additional copies of these submissions, which we provided to the auditors during the review, are annexed as **Exhibit F**.

Responses to the Auditor's Additional Comments

At the end of the Draft Report, the Comptroller's Office includes comments expressing the auditor's views on three other issues: (i) the \$65,000 contract increase; (ii) the Buffalo Urban League's and DSS's responsiveness to the auditor's requests; and (iii) employee turnover. The Comptroller's Office did not address any of these issues in the Interim Audit Memoranda, and we had no prior opportunity to respond to them. Our comments are as follows:

I. The Need for a Contract Increase

The Comptroller's Office challenges the \$65,000 contract increase from the Erie County Legislature because, according to the Draft Report, from January through July 2014, the Buffalo Urban League experienced only a **9% increase** in the number of cases handled. The Draft Report concludes, without explanation, that "this is not significant enough to warrant an increase in the contract amount." On its face, however, a 9% increase in the Buffalo Urban League's caseload would appear sufficient to support a 6.5% increase, if not more, in compensation under the Agreement. The lack of any objective basis for the auditor's comment would be reason enough to discount this assertion.

Of even greater concern, however, is that the reference to a 9% increase significantly *understates* the growth in the organization's caseload from January through June 2014. It also fails to take into account the needs and intensity of each case, which dictate the number of cases the organization can serve. In response to the auditor's request, the Buffalo Urban League prepared a document summarizing the number of cases the organization opened and closed in each month, on a rolling basis. This summary, marked for identification as B002002 and annexed hereto as **Exhibit G**, reflects that:

- we served **56 families** at the beginning of January and **77 families** at the end of July 2014, representing a **37.5% increase** in the organization's caseload;
- we served **82 families** at the end of October 2014, when the County Executive signed the contract amendment, representing a **46% increase** from January 2014; and

- by the end of December 2014, we were serving *92 families*, a *64% increase* from January 2014.

This quick, consistent growth would justify additional compensation many times the 6.5% increase the Legislature appropriated.

The Draft Report also makes other comments which find no support in the facts. For example, it highlights a “sharp increase” in new cases from May to June 2014, when the organization served 20 more families *each month* than in January, and a “corresponding decrease in cases from March to April of 2014.” This is incorrect. As the annexed summary reflects, at the beginning of March, the Buffalo Urban League was serving *54 families*, and at the end of April, it was serving *67 families*, a *24% increase* for that two-month period alone. Similarly, the Draft Report incorrectly states that the caseload in June 2014 was the same as it was in the beginning of the year. In fact, the organization served *56 families* during January, and *76 families* in June, an *increase of 35.7%*.

The Draft Report does not provide any work papers or other factual basis to support this comment, and it is not possible to reconcile these misstatements and mischaracterizations with the facts. If any final report is published, we request the deletion of this comment.

II. The Organization’s Responsiveness to the Auditor’s Requests

It is incorrect to assert that the Buffalo Urban League and DSS delayed in responding to documentation requests, thereby “drastically impacting” the auditor’s ability to complete the review within the “initial estimated completion period of 12 weeks.”

One year ago, on November 25, 2014, the Comptroller’s Office first formally notified us of its intent to conduct a review of the preventive services program. It was not until February 6, 2015, *10 weeks* later, that we received the first request for information. On August 30, 2015, the auditor began sending a series of interim audit memoranda for our comments. We submitted the last of our comments about two weeks later, on September 16, 2015. The Comptroller’s Office then waited another *7 weeks*, until November 4, 2015 – the day after Election Day – to issue the Draft Report. In all, this was a period of *17 weeks*, nearly half again as long as the “initial estimated completion period of 12 weeks,” during which there were no outstanding requests affecting the auditor’s ability to complete the review. This suggests that, from the very start, the Comptroller’s Office had complete control over the timing of the audit.

We cannot overstate the burden on the Buffalo Urban League from responding to the auditor’s requests for case notes, daily activity records and other documents containing sensitive, personally identifiable information about vulnerable children and their families. By law, information about the “substance or content of any psychological, psychiatric, therapeutic, clinical or medical reports, evaluations or like materials or information” for a child receiving preventive services, or the child’s family, is not subject to disclosure, unless “absolutely essential to the specific audit activity and the department gives prior written approval.” Social Services Law § 409-a(9)(a). On issues of confidentiality, the Buffalo Urban League takes its direction from OCFS, as the successor to the former Department of Social Services, and the Erie County DSS. OCFS, in an email dated January 7, 2015, refused to allow the Comptroller’s Office direct access to the

CONNECTIONS database, but instead authorized DSS to print out the requested information and provide it to the auditors. DSS's counsel, in turn, opined that the Comptroller's Office can review the data, but only if "certain personal information is redacted and removed." In a letter dated March 18, 2015, the Comptroller's Office confirmed its understanding that the records would be "subject to redaction," unless absolutely essential to the review.

The Buffalo Urban League expended great effort and expense in identifying and compiling documentation and carefully redacting it to preserve client confidentiality. This process was time-consuming. To characterize it as "pushback" suggests a disturbing lack of sensitivity to the confidentiality of information concerning neglected and abused children that the auditor required the organization to produce.

During the audit, the auditor challenged, more than once, the applicability of these confidentiality restrictions. In an email, for example, the auditor asserted that the restrictions were "self-imposed"; that the disruption and expense were "self-inflicted"; that the Government Auditing Standards provide sufficient confidentiality protection; and that, in any event, the "audit staff is required to take a HIPAA training course regarding privacy," implying that no additional protections are necessary. If a family were to challenge the provision of documentation to the Comptroller's Office under New York's privacy laws, it would not be sufficient to argue that the Comptroller's audit staff received HIPAA training and abided by the Government Auditing Standards, since neither supplies the relevant legal standard. Under the circumstances, there is no basis to impugn the Buffalo Urban League's responsiveness or to charge it with delaying in any way the completion of the auditor's review.

III. Employee Credibility Issues

As noted above, the Comptroller's Office commenced this review after receiving a letter signed by seven Buffalo Urban League employees raising issues about billing, staffing and procedures. According to the Draft Report, "we interviewed selected employees" and "determined that all of the workers that signed the whistleblower letter have since either been fired or forced to actively or constructively resign." This suggestion is incorrect, and it has no place in an audit report.

The audit staff conducted the interviews in secret, over the Buffalo Urban League's objections, after refusing the organization's requests to attend. As a result, the Buffalo Urban League's representatives had no opportunity to listen to the employees, to cross-examine them, or to test their credibility and motivation. This process was unfair, and it has prejudiced the organization's ability to defend itself.

Moreover, as noted above, two of the seven employees who signed the letter that prompted this review also filed complaints with the New York State DHR and with OSHA. For example, on November 25, 2014, one of these employees filed a complaint with the DHR alleging that the Buffalo Urban League subjected her to unlawful discriminatory actions, including the denial of promotional opportunities, because due to her gender, ethnicity, and religious beliefs. On April 10, 2015, after investigation, the DHR issued a determination (**Exhibit C** hereto) concluding "there is NO PROBABLE CAUSE to believe that the respondent has engaged in or is engaging in the unlawful discriminatory practice complained of." According to the determination, "[t]he record

does not support complainant's allegations that she was harassed or discriminated against based on her race or creed, or that she was subjected to sexual harassment." The DHR found "*No evidence* was found to indicate complainant was denied a promotion because of her race, but instead the record shows it was because of her *performance record*" or "*any evidence* to indicate complainant received a negative job action because of her race." Instead, the agency observed, "*performance problems* were documented throughout complainant's employment by more than one supervisor," and "*respondent investigated complainant's complaints and took appropriate remedial action.*" The DHR further found "*no evidence* to indicate complainant was subjected to sexual harassment" and "*no evidence . . . that any negative actions were taken against complainant based on her religious beliefs*" or "to indicate complainant was discriminated against based on gender as all of her comparators are the same gender." Thus, the DHR concluded, "*The evidence does not support complainant's contention that she was constructively terminated.*" (Exhibit C (emphasis added).)

On January 30, 2015, the second employee filed a complaint with OSHA alleging that the Buffalo Urban League terminated her employment in retaliation for filing an OSHA complaint alleging workplace hazards. On June 22, 2015, after an investigation, OSHA notified the employee that it was dismissing her retaliatory discharge complaint. In the Notice of Dismissal (Exhibit D hereto), OSHA concluded that the evidence supported the Buffalo Urban League's "defense that they terminated Complainant's employment for the *legitimate, non-retaliatory reason of employee misconduct*" and OSHA therefore "does not have reasonable cause to believe that Complainant's protected activity was a motivating factor in Respondent's decision to terminate Complainant's employment" (Exhibit D (emphasis added).) The employee appealed. On October 30, 2015, OSHA issued a final determination (Exhibit E) dismissing the complaint. According to the determination, OSHA determined, after a complete review of the investigative file, that the evidence *does not* support the allegation that the Buffalo Urban League terminated the employee's employment for health and safety complaints, but instead "because an external organization alleged that [she] engaged in *problematic behavior with a client*, and because of *legitimate concerns that [the employee was] not meeting the Buffalo Urban League's standards of professional conduct.*"

In sum, two separate agencies, after full investigations, dismissed the employee allegations of wrongdoing as completely unfounded and without any facts to support them. Instead, these agencies concluded, the facts supported "performance problems" (in one case) and "employee misconduct" (in the other case). In a letter dated July 27, 2015, we brought the disposition of these matters to the auditor's attention. The Draft Report fails to take any of this information into account, thus underscoring the biased, baseless, result-oriented nature of this review.

Conclusion

In sum, for all the reasons described above, we request that the Comptroller's Office withdraw the Draft Report in its entirety or, at a minimum, correct the inaccuracies as described above before publication of any final report.