SPECIAL ED-ITION

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Connected to your students...
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OSC Audits

CERINI & ASSOCIATES LLP
CERTIFIED PUBLIC ACCOUNTANTS

From the Editor - Ken Cerini

Dear Special Education Community,

It seems that every time you turn around, there is someone looking over your shoulder. Between the OSC, the OAG Counties, SEQA audits, and who knows who else, it seems that programs are in oversight overload. Even so, the audits and related headlines continue to batter programs, as providers try to work within the context of the reimbursement methodology.

Having gone through several audits with my clients, it is important to understand that providers need to really take the time to understand the SED regulations, the RCM, and the CFR claiming manual and follow them. In addition, you need to make sure you have in place proper policies and procedures; strong systems; and an effective internal control environment. As auditors, if we go into a client and everything is easily accessible, it's neat and orderly, it's consistent, the staff are knowledgeable, and there appears to be proper support and oversight, we feel much more comfortable and rely more on the clients systems and records. If, on the other hand, things are messy, documentation is missing, and we can't get reasonable explanations to questions, we are going to dig in and look at more documentation. We realize that it is hard to invest in both a quality program and administrative support when there haven't been rate increases in 6 years, but, believe me, it is well worth the investment.

The good news is that the OSC auditors have a lot of audits ahead of them, so they are focusing their attention on the last filed cost report year. Make sure that you have read through past audit reports, familiarized yourself with potential issues, and create stronger systems for 2015.

We have tried to provide some interesting articles in this issue, focusing on time studies, the potential direction of the pre-school reimbursement system, and what you can take away from the recent OSC audits. We are holding out hope that there will be a rate increase for 2016 (my crystal ball says yes).

As always, we are here for you if you need anything, just let us know.

Sincerely,

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Conducting Appropriate Time Studies

SED continues to stress that the most acceptable way to charge personnel costs is either through detailed contemporaneous time records or by conducting acceptable time studies throughout the year. It is important to understand that time clocks, that acknowledge when a staff member comes and goes, do not meet the requirement of a time study or contemporaneous record. This is only sufficient for an employee that is charged to a single entity or program. For all other staff, staff members need to at least perform time studies, to ensure salary costs are properly allocated between entities or programs.

Time studies are required to be done quarterly for all employees for whom time is allocated across more than one entity and/or program. The time studies must be performed over a two week period each quarter, must be contemporaneously maintained, and the employer must use a different two week period each quarter (e.g. they can't do the last two weeks of each quarter).

There are a few methods which can be utilized for reporting employee time. For direct staff (200 and 300 code staff), "functional" timesheets must be maintained, which document the number of hours worked in each program in each shift (according to the OSC auditors, this applies to such staff as floaters). For program administrative staff (500 code staff) who split their time between direct and indirect services (for example, a program director serving part-time as a therapist), then time may be reported in a functional timesheet. For indirect staff (600 code staff), employees need only document time if they are charged to multiple codes. If a staff is charged 100% to a single 600 code (say 605 – office worker), than no specific time studies are necessary as the employee's time will get allocated to programs utilizing the ratio value method as outlined in the CFR instructions. For internal control purposes, employees should report time contemporaneously, time records should be reviewed and approved by a supervisor, and all documentation must be maintained. Documentation, particularly for employee time reporting is crucial when the entity is under audit. Controls and procedures should be implemented in order to ensure proper documentation and support is maintained. It is also important to note that the use of budgeted time, or time studies performed on an annual basis are not acceptable methods. To ensure that employees are accurately reporting their time, periodic observations should also take place. For electronic time systems, each employee should also be given a unique user identification to help mitigate false time reporting by other employees. Whatever system is utilized to report employee time, it should adequately maintain a record of all manual entries, including overwrites, deletions, etc.

Time reported must be based on actual time spent and effort devoted in each program. Keep in mind, that when the time studies are to be reviewed, there should be proper documentation which supports the conduct and evaluation of the study, ensuring that the time period was properly selected and observations satisfactorily performed and results of the study were also documented accurately and completely. Time studies should be used as the basis for recording employee's time within the agency's general ledger and ultimately CFR.

While other allocation methodologies have been used and accepted by SED and OSC, it is important to understand, SED methodology principally requires time studies or contemporaneous records. Unless you have specific approval you may want to ensure you have supportable studies.

SED Issues Report for Proposed Preschool Education Change

In December, the New York State Education Department ("SED") released a 59 page report to the Governor, State Comptroller, and New York State Legislature outlining the preschool special education system and recommendations on how to improve the system. While this does not provide any definitive guidance on how the preschool special education sector will be funded for 2016 and forward, it does provide some insight into the initial thoughts that SED has on the subject, and the direction we can expect to see things moving.

SEIT Services:

The New York State Legislature has mandated that SEIT move to a fee for service basis rather than a mandated tuition rate, however, the legislature did not mandate how such a system would be implemented nor did they outline what such a system should look like. In its report, SED outlined three proposals:

1. Remaining with a cost based tuition rate, similar to what is in place now, with the rate developed based upon delivered units and not mandated units. In such a model, each provider's rate would need to be modified to develop a provider specific rate that is based off delivered services not mandated. The rate would still get reconciled annually, similar to how it is reconciled now.

2. A provider specific fixed fee for service rate which is not cost based. Under this methodology, providers would still need to complete a CFR, but the rate would not undergo an annual reconciliation. SED would still explore recoupments for inappropriate spending by a provider or could potentially adjust a provider's rate on a prospective basis if the provider underspent its rate in a particular year. This would effectively remove any ability to generate long-term profitability from a provider's SEIT program.

3. A regional fixed fee for service rate which is not cost based. Similar to provider specific fixed rate, providers would still need to complete a CFR and there would not be a reconciliation of the rate. SED could explore readjusting the rate prospectively if the overall rate for a region were to decline from one year to the next. If a regional rate is used, it could have a significant impact, positive or negative, for a provider. As a result, in establishing a regional rate, a phase-in may be implemented for fiscal 2016 (e.g. a provider's rate cannot fluctuate by more than 10%).

All three of these models would be delivery based as mandated. Other issues identified by SED which could be considered in developing new SEIT rates, especially with respect to the first bullet, are:

- Revisiting the minimum billable units. Right now SEIT staff must spend at least 66% of their time providing direct service, otherwise SED will modify SEIT units of service, thus driving down rates. SED is looking at whether this percentage should be regionalized to allow providers in rural areas more flexibility for travel time.

- In its report, SED stated that SEIT teacher salaries are much higher than classroom staff. This is attributable to many providers paying their staff only for direct service time and not for indirect time. In order to bring SEIT staff salaries "more in line," SED has suggested holding SEIT teacher's compensation to a regional average.

- Reducing non-direct care screens for SEIT programs to some amount less than 30%.

- Altering median salaries for executives based upon size and complexity of organizations, similar to how Executive Order 38 allows agencies to look at salary studies to justify compensation. This would be very beneficial for large multi-agency providers, but could have a negative impact on small, stand-alone agencies.

In his proposed budget, governor Cuomo proposed a regional rate with a phase in of the regional rate. While this seems to be the option getting traction, how these methodologies and identified issues will ultimately shake out in the final SEIT rates is still uncertain.

PRESCHOOL SELf CONTAINED and Integrated C lassrooms

The current reimbursement has several flaws in it. The current rate structure doesn't adequately consider: fluctuations in enrollment; significant differences in classroom needs of children and related classroom ratios; related service needs of children; the difficulty for programs to attract typically functioning children; and numerous other concerns. In its open forum, SED heard the fields concerns, and outlined in its report, several ideas that should be considered in whatever model is selected, as well as three methodologies for calculating rates. These three methodologies include:

Method ONE

A cost based reimbursement system similar to the one that currently exists with potential modifications to provide consideration to some of the issues identified during the open forum process such as:

- An enrollment adjustment factor that would consider in the reconciliation fluctuations in enrollment, up or down, similar to those implemented last year within the school-age reimbursement methodology.

- Elimination of the reconciliation process when the difference between the prospective rates and final reconciliation rates are within 1% of each other, either way.

- As outlined under the SEIT section, potentially modifying executive compensation based upon the complexity of the program run by a provider.

- Potentially revising 1:1 aide, 1:1 nurse, and 1:1 interpreter rates to better reflect the costs providers are actually incurring.

Method TWO

A budget based rate that would allow providers more flexibility to change funding requests from one contract period to another depending on the educational and related services to be provided in accordance with its program approval. This would provide programs with a better alignment of funding with program and educational needs. Under this approach, SED is considering specific cost parameters in the areas of direct classroom expenses, support services, clinical services, non-personnel expenses, administrative expenses, and property costs. The per-student FTE rate would be reconciled annually. This would be similar to grant based contracts (such as UPK) where a specific budget is remitted and approved, and if the full grant isn't appropriately expended, funds would need to be returned.

Method THREE

A rebased tuition rate using mandated services to build-in required costs. This would be a regional rate, but it would be more of an add-on rate where based open the classroom ratios and IEP mandate requirements, a provider would get a regional rate that covers various cost categories such as: instructional classroom staffing; related service or clinical staffing; direct care support staffing; Administrative support staffing and OTPS; non-direct-care support staffing; other than personnel services; and property costs. Under this methodology, student FTE utilization would need to be considered to account for the volatility of student volumes throughout the year. This methodology would not necessarily need a reconciliation with SED, however SED would rebase rates on a regular basis to account for changes in regional costs as reported on CFR's.

As mentioned earlier, SED recognizes that programs are having a difficult time attracting typically developing children into integrated programs. As such, many programs have had to offer discounted rates to attract students. SED is considering several options to the current OCFS offset rate including:

- Allowing the offset to occur on a combined basis, considering both full-day and half-day programs in determining offsetting revenue. Under this approach, if a program is generating revenue in excess of the OCFS offset in its half-day program and its full-day revenue from typically developing children is below the OCFS offset, the excess in the half-day program would be used to reduce the shortfall in the full-day program.

- Limiting offset to the lower of the OCFS offset or actual costs to provide services to the typically functioning children in the classroom. If this approach is implemented, SED would need to establish standards as to what costs represent the costs associated with providing services to typically functioning children.

- Utilizing the OCFS offset for the county where the program operates as opposed to the county where an agency's corporate offices are located.

- Limiting the offset to actual costs as outlined in the second bullet above without consideration to the OCFS offset.

The NYS Legislature will now need to evaluate SED's report and determine which approach/approaches make the most sense, with any decisions to take effect July 1, 2015. Whether any of this will include any level of trend factors for fiscal 2016 is uncertain. All that is certain is that there will be some level of change over the next few months and providers will have a short amount of time to digest these changes and implement them.

The OSC AUDIT - Be Prepared

We like to stalk the State Comptrollers website looking for reports that have been issued in the special education area so that we can gain insight into what the OSC is looking at when auditing special education providers. This is extremely helpful to ensure providers are fully complying with SED regulations and provides areas for schools to focus on to ensure that they do not have similar issues. In January, 2015, the OSC issued a summary report dated December 2014, that provides some overall statistics of what they have found during their audits. Providers should read this report and use it as a guide to test their operations so they don't become part of future statistics.

The OSC's report (located at http://www.osc.state.ny.us/audits/seitannualrpt.pdf), provides statistics of some of the most common "errors" noted during the 37 special education audits completed by the OSC over the last decade, including the 19 completed during calendar 2014. The most significant of which are:

- **Unsupported bonuses (41%)** – bonuses not based upon merit and supported by proper performance evaluations.
- **Payrolls not adequately documented (51%)** – Lack of supportive time and attendance records or other documentation to substantiate the work performed by employees.
- **Misuse of funds for personal benefit (57%)** – This is a catch all which includes use of vehicles without appropriate travel logs, lack of proper documentation for staff travel, cell phone usage without adequate support, staff gifts, entertainment and also other personal costs not related to the school.
- **Inadequate documentation (95%)** – These represent expenses which are either not program related or inadequately documented. This category accounted for approximately 40% of all OSC disallowances. Included in this category is staff/parent food costs.
- **Undisclosed related party transactions (30%)** – All related party transactions must be outlined on CFR-5 and in the notes to the financial statements. The OSC reported identifying $5.6 million in costs where such disclosures did not take place.
- **Expenses claimed from other programs (43%)/ Incorrect allocation of costs (41%)** – Programs are required to allocate costs between programs benefited utilizing appropriate allocation methodologies which are documented. The OSC identified misallocations between various programs (e.g. EI costs charged to tuition programs) or misclassified between direct and non-direct.
- **Errors in accounting methodologies used for depreciation, amortization, and accruals (27%)** – OSC found that certain costs that should have been capitalized were inappropriately expensed.
- **Undocumented direct care contract services (27%)** – All payments to contractors must be supported by itemized invoices that indicate the specific services provided, the date of service, the number of hours provided, the fee per hour, the total amount charged, and, where applicable, the names of the students served. The OSC disallowed instances where the required documentation was missing.
- **Inadequate board oversight (57%)** – The OSC determined that boards did not fully meet their fiduciary responsibilities, were not independent, did not meet at least twice annually, did not maintain accurate board minutes, and/or did not comply with conflict of interest policies.

In order to ensure schools are compliant, the OSC recommends that providers:

- Ensure that costs are complete, accurate, and in compliance with RCM requirements.
- Ensure that reported program costs are based on actual expenditures and are supported by adequate documentation.
- Ensure all staff providing special education services are properly qualified and certified.
- Ensure systems and controls are in place and in accordance with RCM guidelines, including all the items found during the OSC audits.
- Ensure costs are reported correctly between direct and non-direct.
- Ensure costs are properly allocated between programs and SED approvals are obtained when necessary (e.g. leases).

You know that by 2018 you are going to be audited by the OSC. By reviewing the OSC reports, and understanding what they are looking at, your program will be better prepared to survive an audit. Become a stalker, and learn from other programs.

BITS & PIECES

SED Releases Q&A s

In January, in an effort to communicate with providers, SED released a series of questions and answers (http://www.oms.nysed.gov/rsu/Training/home.html) posed by various programs throughout the year. These Q&A's cover such areas as coat allocation, personnel costs, rate methodologies issues, CFR training, use of fiscal consultants, and more. We advise all providers to read through these Q&A's and determine how they impact their programs.

Training:

SED is requiring all special education CEO's and audit firm partners certifying special education CFR's to undergo annual CFR training. Make sure that you take the training and document such attendance.

Early Intervention:

As reported by Pam Madeiros, of Greenberg Traurig, the Governor does not offer any proposals around EI in his Executive Health Budget. The appropriation amount outlined in the budget of $159 Million (reduced from the 2014 appropriation amount of $167 Million) reflects projected claiming levels and is NOT intended as a reduction in rates to providers. The 2014 appropriation was "inflated" by nearly $4 Million for payments to providers for unresolved claims from the first quarter of the State Fiscal Agent implementation (April 1 –June 30, 2013) and is thus not carried over into the 2015 appropriation.

OSC Audits:

The OSC will be hiring additional audit staff to be able to meet its obligation to audit all SED providers by the year 2018. To put things in perspective, during 2014, the OSC issued 19 reports and there are currently 17 more reports underway. This still leaves over 260 providers left to audit over the next 3.5 years. The OSC is once again requesting 3 years of information in it's initial audit request.

OAG investigating IDEA spending:

A special education provider recently received notification from the New York City Office of the Auditor General that they are performing a review of the program's IDEA funding. This is the first such review we have heard about.

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