



Commission on Quality of Care &  
Advocacy for Persons with Disabilities

## Commission on Quality of Care and Advocacy for Persons with Disabilities

# Profiting from a Not-For-Profit:

## An Investigation into the Financial Practices at Systems and Abilities, Inc.

**ANDREW M. CUOMO**  
GOVERNOR

**ROGER BEARDEN**  
CHAIR

BRUCE BLOWER  
PATRICIA OKONIEWSKI  
MEMBERS

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**STATE OF NEW YORK  
COMMISSION ON QUALITY OF CARE AND ADVOCACY  
FOR PERSONS WITH DISABILITIES**

The Commission on Quality of Care and Advocacy for Persons with Disabilities (the Commission) is charged with improving the quality of life for New Yorkers with disabilities and protecting their rights. The Commission provides independent oversight of the quality and cost-effectiveness of services provided by mental hygiene programs in New York State and is also designated by the Governor to serve as the federally mandated “Protection and Advocacy” system for New York State.

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The Commission’s Fiscal Bureau is charged under New York law to review the cost effectiveness in the management, supervision, and delivery of mental hygiene programs, including:

- Investigating allegations of fiscal fraud, waste, and abuse;
- Conducting cost effectiveness studies; and
- Providing oversight to OPWDD, OMH, and OASAS licensed and contracted providers and to impacted Adult Homes.

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STATE OF NEW YORK  
COMMISSION ON QUALITY OF CARE AND ADVOCACY  
FOR PERSONS WITH DISABILITIES  
401 STATE STREET  
SCHENECTADY, NEW YORK 12305-2397  
1-800-624-4143 (Voice/TTY/Spanish)  
[www.cqc.ny.gov](http://www.cqc.ny.gov)

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## **EXECUTIVE SUMMARY**

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This report describes how Darlington Odidika, the CEO of Systems and Abilities, Inc. (Systems) engaged in a scheme to defraud the Medicaid program by:

- Submitting inflated costs for reimbursement;
- Manipulating the bidding process by colluding with others; and
- Falsifying documents to receive higher Medicaid reimbursements.

Mr. Odidika was successful in his scheme partly because the reimbursement system lacked the internal controls necessary to prevent his behavior and partly because the people who should have been checking – the board of directors and the state’s regulatory agencies – were not effectively overseeing what he was doing.

The Commission’s investigation began in response to two anonymous complaints alleging the misuse of Medicaid funds and that Medicaid-reimbursable services were being performed by unqualified staff. The Commission reviewed Systems’ financial and board governance practices from 2007 through late 2010. It included an examination of: Systems’ expenses, the CEO’s compensation package, and staff qualifications to determine whether their credentials were in compliance with applicable regulatory requirements.

Systems is a not-for-profit corporation located in Yonkers, New York, and contracts with the NYS Office for People with Developmental Disabilities (OPWDD) to provide community habilitation and Medicaid service coordination services. It is also an enrolled Medicaid provider with the NYS Department of Health (DOH) to provide Nursing Home Transition services to seniors and persons with disabilities. One hundred percent of Systems’ revenue comes from these services, which is billed to and paid for by Medicaid exclusively. In 2010, Systems’ total revenue was approximately \$416,000.

The Commission’s findings include:

- The CEO overbilled Medicaid by \$23,000 through a scheme to defraud the Medicaid system;
- Systems engaged in improper bidding and collusion with subcontractors;
- The CEO falsified documents in order to receive higher reimbursement from Medicaid;
- The board of directors set the CEO’s compensation at 15 percent of budgeted revenues or \$150,000, whichever was greater, resulting in Mr. Odidika’s compensation equaling 27 percent of Systems’ annual revenues;
- Systems reimbursed the CEO for a \$10,000 “loan” which was actually deferred compensation; and
- Systems billed approximately \$200,000 to the Medicaid program for services provided by unqualified staff in violation of OPWDD requirements for Home and Community Based Service Waiver providers.

In June 2011, the Commission, along with OPWDD, met with Systems’ board of directors to present the Commission’s findings. The Commission also sent a draft report to Systems, OPWDD and DOH asking for a written response to its findings and recommendations. While Systems agreed mostly with the factual content of the Commission’s findings, some minor modifications were made to the final report. The responses are attached as Appendices 3, 4 and 5.

After the June 2011 meeting, Systems' board suspended Mr. Odidika until it could conduct its own internal investigation. Although the board's internal review agreed with much of the Commission's findings, including the fact that Mr. Odidika manipulated the bid process and falsified documents to increase its Medicaid revenue, the board decided against removing him from his position. The board's lack of assertiveness raises the question as to what measures the State can take when a board of directors fails to act in the best interest of the corporation and its clients.

An essential safeguard in granting a private agency a license to provide services to vulnerable people is the State's determination of "character and competence" of the licensee. Both OPWDD and DOH replied that each always review the character and competence of applicants. OPWDD also stated that they were in the process of revising their review process which will be going into effect in the near future. However, accepting that as true and given the findings of this report and other reports issued by the Commission, it is clear that the State's system for reviewing character and competence of current licensed operators and applicants must be strengthened.

In addition to specific recommendations to correct systemic problems which may be occurring statewide, the Commission is recommending that OPWDD and DOH not renew provider agreements with Systems and that OMIG exclude both Systems and Mr. Odidika from participating in the Medicaid program. The Commission also recommends that an interagency task force be convened to study the feasibility of adopting a stronger and more consistent system to evaluate the character and competence of licensed operators and applicants, and make recommendations for legislative and administrative actions that may be needed.

# A. PURPOSE

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## Introduction/Scope of Review

The Commission began an investigation of Systems and Abilities, Inc., in response to two anonymous complaints alleging the misuse of Medicaid funds and unqualified staff members were performing Medicaid-reimbursable services. The complainants also alleged that confidential service records were mishandled with the records being kept in the basement of the CEO's home and in the trunk of his car.

## Methodology

The Commission reviewed Systems' financial and board governance practices from 2007 (when Systems first began performing Medicaid-reimbursable services) through late 2010. The review included an examination of Systems' expenses, the CEO's compensation package, and staff qualifications to ensure that their credentials were in compliance with applicable regulatory requirements. The Commission also reviewed all 29 Nursing Home Transition Diversion (NHTD) projects<sup>1</sup> completed by Systems since it became enrolled as a NHTD waiver provider in mid-2009 through October 30, 2010.

# B. BACKGROUND

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## 1. Systems' History

Systems and Abilities, Inc., (Systems) is a not-for-profit corporation located in Yonkers, New York, that contracts with the NYS Office for People with Developmental Disabilities (OPWDD) to provide Medicaid service coordination and community habilitation services. It is also enrolled with the NYS Department of Health (DOH) to provide Medicaid-reimbursable services to seniors and persons with disabilities under the Nursing Home Transition and Diversion program (NHTD). One hundred percent of Systems' revenue comes from these services, which are billed to, and paid by, Medicaid exclusively.

In August 2007, Systems began providing services to individuals with developmental disabilities through OPWDD's Community Habilitation<sup>2</sup> and Medicaid Service Coordination programs. During Systems' first year of operation, OPWDD conducted a limited fiscal review and found numerous deficiencies including:

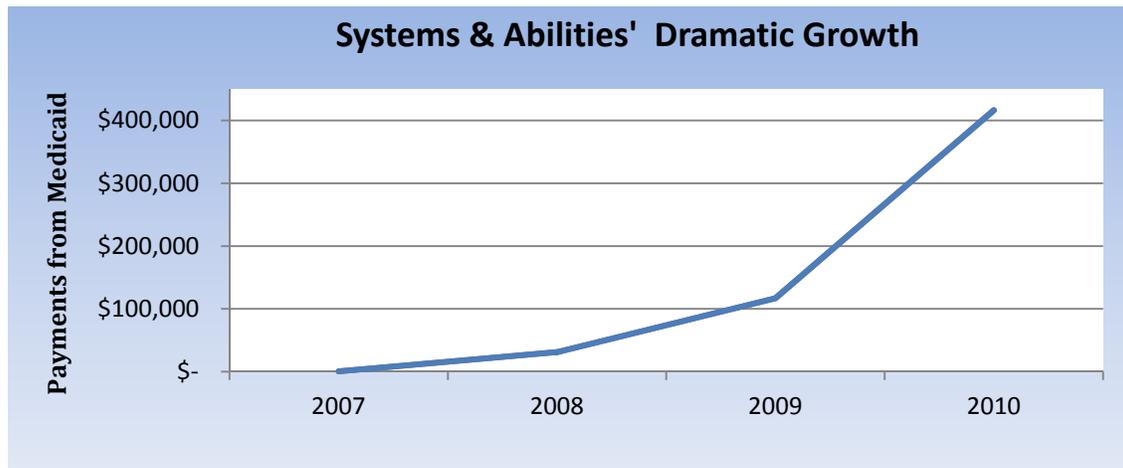
- Systems did not have an accounting system to properly record its revenues and expenses;
- The board of directors did not provide adequate oversight of Systems. The board had one meeting in May 2007 and did not meet again until September 2008;
- Systems' two Medicaid service coordinators were not subjected to the requisite criminal background checks; and,
- Due to the absence of an accounting system, OPWDD was unable to evaluate Systems' system of internal control.

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<sup>1</sup> Environmental Modifications, Community Transitions Services, and Moving Assistance

<sup>2</sup> Formerly known as At Home Residential Habilitation

Despite the deficiencies found by OPWDD, in March of 2009 Systems was authorized by DOH to provide services to persons with disabilities and seniors through the NHTD program. As a result, Systems' annual payments from Medicaid grew substantially, from \$511 in 2007 to more than \$416,000 in 2010.



Systems' Chief Executive Officer, and one of its initial directors, is Okechukwu Darlington Odidika. Systems' other key employee, Ngozi Angela Westery, was also an initial director of Systems. Ms. Westery has a personal relationship with Mr. Odidika and shares a residence with him.

## 2. About the Nursing Home Transition and Diversion (NHTD) Program

NHTD is a Home and Community Based Waiver program, administered across New York State by DOH through nine contracted agencies known as Regional Resource Development Centers (RRDC). The program uses Medicaid funds to provide services to assist individuals with physical disabilities and senior citizens who choose to live in the community rather than an institutional setting. The program assists individuals to move from a nursing facility and back into the community ("transition") or helps prevent admission into a nursing facility ("diversion").

Under this program, a variety of services can be provided and billed to Medicaid including:

- Paying for the cost of transitioning (community transition services or CTS), which can include the cost of moving, security deposits for a new apartment, and purchasing essential furnishings;
- Making internal or external modifications to assure the participant's health and welfare in that setting (Environmental Modifications or E-Mods), such as building a wheelchair ramp; and,
- Helping an individual move their possessions and furnishings (Moving Assistance).

The program requires that a service coordinator be involved to develop and implement a person-centered plan to ensure that the services provided are appropriate.

Services provided through the NHTD program generally follow an approval and service delivery process, which includes:

1. The regionally contracted DOH program administrator determines that an individual is eligible for the program, and provides him/her a list of service coordination agencies in the region;
2. The service coordinator decides what services the individual needs (such as CTS, E-Mods, or Moving Assistance);
3. The service coordinator and the individual decide who will provide the service (the service provider);
4. The service provider gives an estimate of the cost to provide the service (for example, the price of installing a wheelchair ramp). If the projected amount is over \$1,000, the service provider must obtain three bids; and,
5. Once the service is completed, the service provider submits a “Final Cost” report, which certifies the actual cost to complete the project. The service provider is authorized to bill Medicaid for the actual cost of the service plus a ten percent administrative fee.<sup>3</sup>

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<sup>3</sup> More information about the NHTD program can be found at [www.nyhealth.gov](http://www.nyhealth.gov)  
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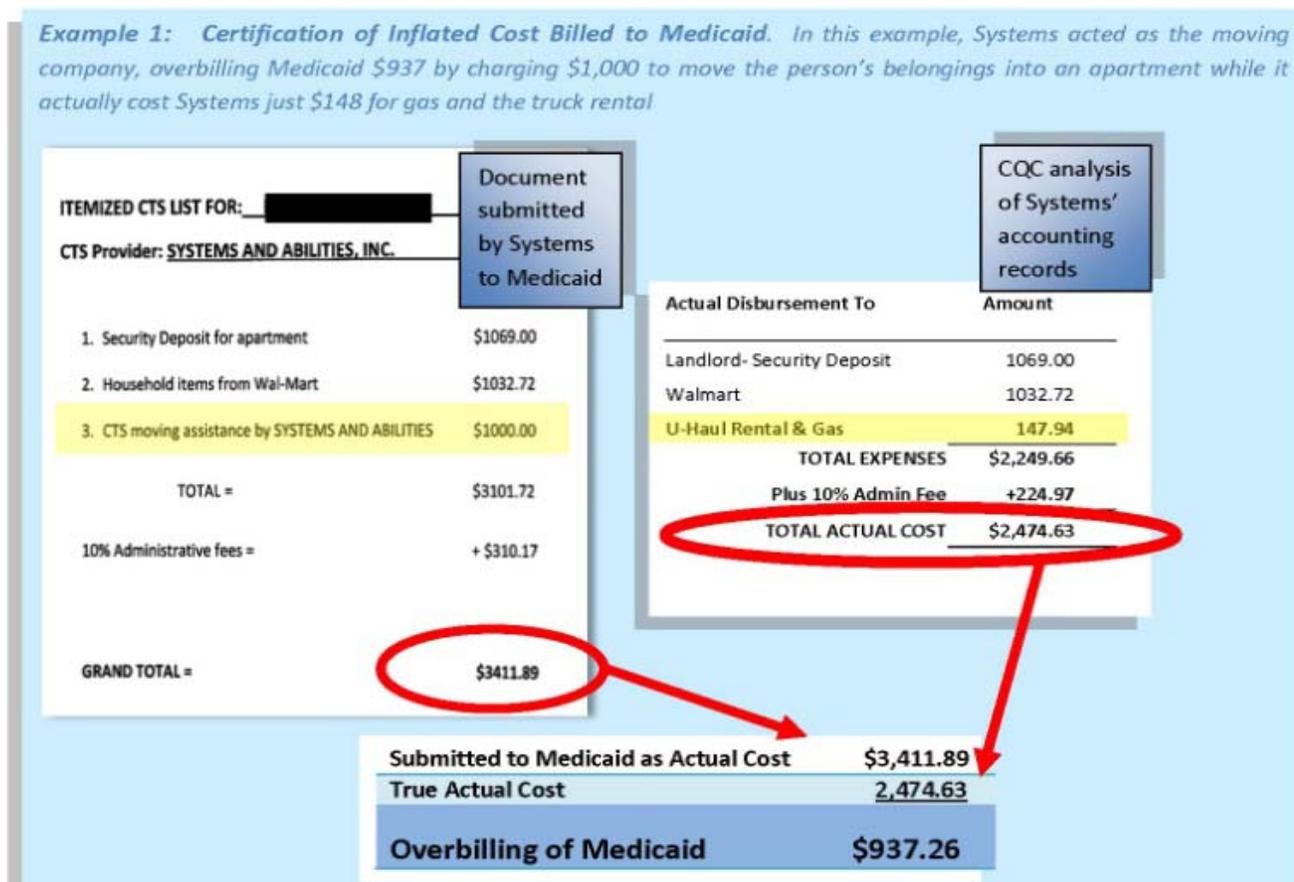
# C. FINDINGS

## 1. Systems Engaged in Deceptive Practices in a Scheme to Defraud Medicaid

### A. Systems Submitted Inflated Costs for Medicaid Reimbursement

Systems overbilled Medicaid by \$23,000 by inflating the costs in 20 of 29 of its NHTD projects and then submitted the higher amount for reimbursement (see appendix 1). Although the 20 projects in question only cost Systems about \$55,000, Systems billed Medicaid approximately \$78,000.

Example 1 below illustrates how the scheme worked. In January 2010, Systems assisted an individual to move into an apartment by paying the security deposit, purchasing household items, and providing moving assistance. The total cost of the project was \$2,474.63.<sup>4</sup> However, Systems submitted the “Final Cost Certification,” which attested that the cost of the project was \$3,411.89. The Final Cost Certification was signed by both Ms. Westery (as the Service Provider) and Mr. Odidika (as the Service Coordinator). The inflated cost certification allowed Systems to overbill Medicaid \$937.26.



<sup>4</sup> The total cost includes a 10 percent administrative fee that Service Providers are allowed to bill Medicaid above the actual cost of the project.  
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***Systems and Abilities Response:*** *Systems believes that the amount identified as “Inflated Costs” are in error for two reasons. First, “the Board found that CQC did not include the 10 percent administrative fees that are due to Systems and Abilities in their calculations.” Second, the Commission did not take into account labor costs which were included in the amounts submitted for reimbursement.*

***CQC Rebuttal:*** *While the Commission was aware of the 10 percent administrative fee, the report has been revised to more clearly present the inclusion of the fee and agrees that this is an allowable cost in the NHTD Program.*

*The Commission agrees that labor costs are a reimbursable expense. However, the labor costs that Systems included for reimbursement were made in cash and are unsubstantiated. Systems claims that “[t]he practice of paying cash for labor is not uncommon.” The Commission does not dispute this claim. It does however question whether the costs were ever incurred in the first place as they were never properly documented in the business records of Systems and it did not file the appropriate tax forms. The Commission, therefore, stands by its position that unsubstantiated costs should not be reimbursed by Medicaid.*

### ***B. Systems Engaged in Improper Bidding and Colluded with Subcontractors***

Systems was also able to overbill Medicaid by bidding on its own projects and colluding with outside subcontractors. As the Environmental Modification (E-Mod) Service Provider, Systems acted as the general contractor and submitted bids on the very projects for which it was soliciting bids. Because Systems was soliciting and receiving outside bids, it had inside knowledge of the bid amounts submitted by others. Mr. Odidika acknowledged that he knew what the other bids were and that he would submit a bid slightly less than the next lowest bidder in order to satisfy the DOH requirements, which mandated a minimum of three bids for the work. In some instances, Systems would subcontract with one of the losing bidders to actually perform the work.

For example, Systems modified an individual’s apartment to make it more accessible by constructing a ramp, relocating a bedroom door, and expanding the hallway leading to the bedroom. Two outside bids were obtained for \$4,500 and \$4,000 respectively; Systems submitted the third – and lowest bid – at \$3,800. Systems then subcontracted with Anthony International Construction, the highest bidder, to provide the labor for the project.<sup>5</sup> Anthony International was paid \$1,150, while Systems’ cost for material and its 10 percent administrative fee was \$943, making the total allowable cost of the project \$2,093. Systems, however, billed Medicaid \$4,180 (\$3,800 bid amount plus its 10 percent administrative fee), resulting in Medicaid being overbilled \$2,087.

According to the NHTD provider manual, Systems, as the service provider, was responsible for soliciting bids for E-Mod projects with costs in excess of \$1,000. Systems won 100 percent of the projects for which it submitted a bid. In addition, for projects under \$1,000, Systems performed the work 100 percent of the time.

Mr. Odidika told investigators that due to time constraints, he would underbid the lowest bidder in some projects to satisfy DOH’s requirement that three bids be obtained. However, he stated that

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<sup>5</sup> Anthony International Construction is owned by Anthony Adopley, who is an associate of Mr. Odidika, and for a time period was sharing Mr. Odidika’s home address.

he did this because it was difficult to get three bidders and because of the urgency in getting the project completed. Mr. Odidika stated that when that happened, he ensured that Systems' bid was only a small amount below the next lowest bidder, generally \$50 to \$100. In other projects, Mr. Odidika said that the recipient wanted to use "their own preferred contractor," and in those cases, Systems would accept three bids that were reportedly obtained by the recipients. He said that if the preferred contractor was not the lowest bidder, he would tell the family to "ask the contractor if they are willing to match the lowest bid or get lower, even by a penny. If they do, then they [the preferred contractor] will get the job."

Another example of Systems' improper bid process was for work done in July 2010 at an individual's home which included a "curb cutout," constructing a ramp, and widening a bathroom doorway. According to Systems' records, three bids were submitted for the project, \$4,000, \$4,500 and \$4,800.

In this case, although Anthony International Construction was the lowest bidder at \$4,000, the construction company never acted as general contractor on the project. Instead, Systems became the general contractor even though it never submitted a bid. Systems again subcontracted with Anthony to provide labor for the project.

Systems paid Anthony \$1,400 for labor, while Systems' cost for materials and its 10 percent administrative fee were \$408.74, making the total cost of the project \$1,808.64. However, Ms. Westery certified that the project was completed and that its final allowable cost was \$4,000. Systems then billed Medicaid \$4,400 (the bid amount plus the 10 percent administrative fee), which was \$2,591.36 more than the project's actual allowable cost.

*Example 2: Inflated Cost and Collusion with a Losing Bidder*

### Final Cost Certification (Amount Billed to Medicaid)

**WAIVER SERVICES FINAL COST**

**HOME AND COMMUNITY BASED SERVICES MEDICAID WAIVER  
Nursing Home Transition and Diversion (NHTD)**

Applicant/Participant: \_\_\_\_\_ CIN: \_\_\_\_\_

Final cost for: (Check One)  
 Assistive Technology  Community Transition Services  Environmental Modifications  
 Moving Assistance

1. Original Projected Cost \$ 4,400.00 Final Cost \$ 4,400.00  
(If final cost is GREATER THAN 10% attach documentation of RRDS approval)

2. Describe the completed Service. (Attach itemized list and copies of receipts for all items incurred).

The building is on an elevated plain, and Environmental Modifications was used to create an access way from the curb, by creating a cutout from the curb and constructing a concrete ramp that is 15 feet in length and 4 feet wide from the curb to the main entrance of the building to allow access from the curb into the building, with the appropriate side railings installed as needed. Environmental Modification was used to widen the door of the bathroom to allow wheelchair access into the bathroom as needed. Environmental modification was used to widen the door to the bathroom from its current 28 inches width to standard 36 inches width, to allow for wheelchair access into the bathroom as needed. All electrical fixtures were moved and reinstalled to ensure that the doorway was widened effectively.

3. Justify any difference of less than 10% of the above original cost between the projected and final costs.

N/A

I certify that the above Service was provided in accordance with the above costs.

**SYSTEMS AND ABILITIES, INC.**  
 Waiver Service Provider Agency  
 30 STREIT AVENUE, POUGHKEEPSIE, NY 12603 Telephone 914-318-2858  
 Provider Address  
 ANGELA WESTBY Signature Date 7/23/10  
 Provider Contact

I acknowledge that the above Service was provided in accordance with the Service Plan.  
 DARLINGTON ODOLICK Signature Date 7/23/10  
 Service Coordinator

NHTD C.11  
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### ACTUAL Cost (Cost of Project Paid by Systems and Abilities)

Date	To	Amount
07/19/2010	Anthony Adopley/ International Construction	1,400.00
07/13/2010	Grand Rental Station	210.00
07/13/2010	Home Depot	34.22
<b>TOTAL EXPENSES</b>		<b>\$1,644.22</b>
Plus 10% Admin. Fee		+164.42
<b>TOTAL ACTUAL COST</b>		<b>\$1,808.64</b>

<b>Certified Final Cost</b>	<b>\$4,400.00</b>
<b>Actual Final Cost</b>	<b>1,808.64</b>
<b>Overbilling of Medicaid</b>	<b>\$2,591.36</b>

**Systems and Abilities Response:** Systems agreed with the Commission’s finding. “The board has decided that improper bidding cease immediately and that Systems and Abilities Inc. should institute a new policy for submitting bids. The CEO, Systems and Abilities, Inc. or any entity related to the organization may not submit bids.”

**C. Mr. Odidika Falsified a Document used to Support a Medicaid Claim**

In one instance, Mr. Odidika falsified a document to increase Medicaid reimbursement to Systems. Systems contracted with a certified mover for \$300, paying the contractor the agreed amount. Mr. Odidika then altered the contractor’s invoice to show that the cost was \$450.

**Example 3: Falsification of a Document Submitted to Medicaid**

**Actual Receipt  
(obtained directly from vendor)**

**Altered Receipt  
(Amount Billed to Medicaid)**

**LOCAL MOVING PROPOSAL**

Furnish Van/Truck 3 Men for 160 Hours at 160 Per Hour

Major Furniture (Piano, Medical Equipment) Valuation at \$ \_\_\_\_\_ per hundred dollars

Insurance \$ \_\_\_\_\_ Other Services \_\_\_\_\_

**MOVING TOTAL \$ 300.00**

**LOCAL MOVING PROPOSAL**

Furnish Van/Truck 3 Men for 4 1/2 Hours at 160 Per Hour

Major Furniture (Piano, Medical Equipment) Valuation at \$ \_\_\_\_\_ per hundred dollars

Insurance \$ \_\_\_\_\_ Other Services \_\_\_\_\_

**MOVING TOTAL \$ 450.00**  
+ 10% Admin. fee = \$49.50

**Furniture to be Moved**

BEDROOMS	LIVING ROOM	KITCHEN/DINING	MISCELLANEOUS
Boxes: 8	Boxes: 8	Boxes: 8	Boxes: 8
Bed's Description: Sofa/Seal Bed	Table	Table	Air Conditioners
Lowcost	Chairs 4	Chairs 4	Fans
Sectional	China Cabinet	China Cabinet	Lamps
Chairs	Hutch	Hutch	Floor Lamps
Nightstands 11	TV's	TV's	Wall Pictures
Dresser	Office Table	Microwave	Mirrors
Mirror	Entertainment Center	Refrigerator	Stoves
Chard of Drawers	TV's 32 in	Washer	Speakers Small
Armoire	TV Stand	Dryer	Speakers Large
TV's	Stand	Stools	Bikes
TV Stand	Piano	Stand	Grill
Cub	Add'l	Add'l	Add'l
Add'l	2 Recliners	Add'l	Add'l
	25 K & chair		

**Total Estimated Charges \$ 300.00**

**Furniture to be Moved**

BEDROOMS	LIVING ROOM	KITCHEN/DINING	MISCELLANEOUS
Boxes: 8	Boxes: 8	Boxes: 8	Boxes: 8
Bed's Description: Sofa/Seal Bed	Table	Table	Air Conditioners
Lowcost	Chairs 4	Chairs 4	Fans
Sectional	China Cabinet	China Cabinet	Lamps
Chairs	Hutch	Hutch	Floor Lamps
Nightstands 11	TV's	TV's	Wall Pictures
Dresser	Office Table	Microwave	Mirrors
Mirror	Entertainment Center	Refrigerator	Stoves
Chard of Drawers	TV's 32 in	Washer	Speakers Small
Armoire	TV Stand	Dryer	Speakers Large
TV's	Stand	Stools	Bikes
TV Stand	Piano	Stand	Grill
Cub	Add'l	Add'l	Add'l
Add'l	2 Recliners	Add'l	Add'l
	25 K & chair		

**Total Estimated Charges \$ 450.00**  
+ 10% Admin. fee = \$49.50

When Mr. Odidika was questioned about this transaction, he admitted to changing the original invoice to reflect the higher cost, but stated that the cost increased by \$150 due to a change in a work order. Even though the project was completed eight months prior to his interview, Mr. Odidika told Commission investigators that Systems only reflected the \$300 payment because the vendor had not yet been paid.

The Commission contacted the vendor after Mr. Odidika’s interview to verify his claim. The vendor stated that there was a change in the work order to purchase more boxes, but that the vendor never billed Systems for the additional expense. The vendor stated that the additional expense would have only been \$52.75, not the \$150 amount that was added on by Mr. Odidika. The vendor stated: “I don’t know where he got that from.”

**Systems and Abilities response:** Systems agreed with the Commission’s finding. “The Board found the alteration of the figure \$300.00 to \$450 unacceptable...Mr. Odidika should not have altered the figures instead he should have added it to the side.”

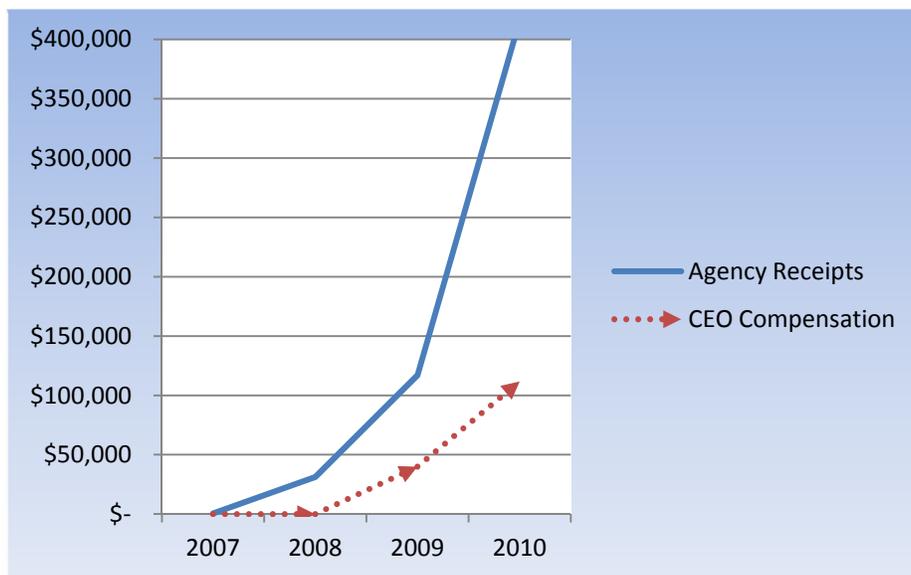
**CQC Rebuttal:** Altering a business record in any way is unacceptable. Proper business practices require that an invoice be issued for the additional amount or that a credit be issued for the original invoice and a new invoice be submitted for the entire amount.

Systems dismisses the alteration as an honest mistake that can easily be fixed. However, it should be noted that the document was altered to change not only the total amount, but also the amount of time necessary to complete the service in order to receive a higher reimbursement and had nothing to do with the costs of additional materials. This change does not support Systems’ explanation of the events that lead to the alteration.

## 2. Systems’ Board Tied the CEO’s Compensation to Systems’ Budget which Encouraged Medicaid Overbilling

Systems’ board of directors also failed in its fiduciary duty to set a reasonable compensation for its CEO by approving an employment contract with no upper limit on compensation and without regard to reviewing data on salaries and benefits paid to executives of comparable agencies. Further, the board allowed the CEO to be paid a portion of his salary as an independent contractor, thereby avoiding payment of the required payroll taxes.

During its review of Systems, the Commission found that Systems’ board of directors entered into a five-year contract with Mr. Odidika, setting his annual compensation at 15 percent of budgeted revenues or \$150,000, whichever was greater. As a result of this agreement, Mr. Odidika’s compensation increased 180 percent, from \$40,000 in 2009 to \$111,896<sup>6</sup> in 2010.



<sup>6</sup>Mr. Odidika’s pay increase to \$150,000 occurred during 2010, thus it was not effective for the entire year.  
Systems and Abilities, Inc.  
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The Commission questions this compensation arrangement for several reasons. First, because the contract contains only a minimum salary level of \$150,000 and no upper limit; it is impossible for the board of directors to determine in advance what Mr. Odidika's total compensation will be for any given year during the life of the contract. Therefore, it is equally impossible to ensure the reasonableness of Mr. Odidika's total compensation in future years, as required by law.

Secondly, there is no evidence that the board of directors obtained or relied on any relevant data regarding executive compensation at similarly sized agencies. Investigators found nothing in Systems' board minutes to support even the minimum contract salary of \$150,000. Moreover, through its own analysis, the Commission found that the median compensation for the CEO at a similarly situated not-for-profit agency in Westchester County was approximately \$50,000.<sup>7</sup>

Finally, percentage-based compensation arrangements, by their very nature, can foster inappropriate behavior. By linking compensation solely to revenue or budget totals – rather than specific performance objectives – employees may be tempted to place their immediate self-interest ahead of the long-term goals of the organization, resulting in unethical conduct. In this case, Mr. Odidika had a virtual contractual incentive to increase his salary through inflation of Systems' revenues. Overbilling Medicaid was an avenue to that end.

The Commission also found problems with the way Mr. Odidika's compensation was reported to taxing authorities. As Systems' CEO, Mr. Odidika's wages should have been reported on a standard W-2 with the appropriate taxes withheld. Despite the fact he was in a traditional employer/employee relationship, Mr. Odidika received his entire \$40,000 salary in 2009 as an independent contractor. In 2010, he once again received \$40,000 as an independent contractor, with the balance of his salary of \$71,886 paid to him as an employee of Systems. Paying him as an independent contractor avoided the statutory withholdings required for such things as social security taxes and disability insurance. Mr. Odidika stated that he was paid as an independent contractor because Systems did not have enough cash to cover these payroll taxes.

One of the primary duties of an agency's board of directors is to fix the "reasonable" compensation of its officers, directors and employees. According to the New York State Not-for-Profit Corporation Law (§202(a)(12)), reasonable compensation is defined as an amount commensurate with the services performed. Internal Revenue Service (IRS) regulations further define reasonable compensation as "the amount that would ordinarily be paid for *like* services by *like* enterprises under *like* circumstances." (26 C.F.R. §53.4958-4, emphasis added.) IRS guidelines for setting executive compensation suggest the following procedures be employed to avoid penalties for excessive compensation:

- The compensation arrangement should be approved in advance by members of an authorizing body of the organization, none of whom have a conflict of interest with respect to the transaction;
- The authorizing body should obtain and rely upon appropriate data as to comparability prior to making its determination that the compensation arrangement, in its entirety, is reasonable; and

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<sup>7</sup> Represents the median salary for a CEO at agencies in Westchester, Putnam and Rockland Counties with annual revenues of \$500,000 or less based on the Commission's study, "*Best Practices: Board Governance and Executive Compensation in Non-Profit Mental Hygiene Agencies, April 2010.*" 2006 data is trended at 4 percent per year. On the high end, the 75<sup>th</sup> percentile would equate to \$70,800.

- The authorizing body should document the basis for its determination concurrently with making its decision.

**Systems and Abilities Response:** *Systems agreed with the Commission’s finding. “[T]he board has decided to follow recommendation and peg the executive compensation for Systems and Abilities, Inc. chief executive to be \$95,000. The board will review the figure in the last quarter of 2011 and draft a new contract.”*

**CQC Rebuttal:** *While the board is willing to reduce the CEO’s compensation from \$150,000 to \$95,000, a more reasonable level, one of the criteria that the State must consider in allowing an agency to receive public funds is “character and competence” of the directors of that agency. Given the acts of the CEO as chronicled in this report, it is unclear why the board would retain Mr. Odidika.*

### **3. Unreported Compensation Paid to the CEO was Misreported as a Loan**

The Commission found that Mr. Odidika was also receiving payments from Systems for a \$10,000 “loan” that did not exist. Mr. Odidika reported to investigators that these payments related to time he had worked for which he was uncompensated, as well as for expenses for which no receipts were available.<sup>8</sup>

In September 2008, Systems’ board of directors authorized the repayment of \$10,000 to the CEO for loans that he supposedly made to Systems from January 2004 through December 2007. However, the Commission’s review found no evidence that any funds from Mr. Odidika were ever deposited into Systems’ accounts, with the exception of a single \$100 deposit which was used to open one account. When questioned about the “loan,” Mr. Odidika stated that the amount was for various unreimbursed start-up expenses, and for the time that he spent prior to 2007 for which he was never compensated. To support his claim, Mr. Odidika provided the Commission with a worksheet itemizing the expenses. Other than the estimated amount imputed to his time at work for Systems (\$6,600), the Commission found that the remaining costs could not be substantiated by any supporting receipts. Mr. Odidika stated that, “as the founder of the business, I didn’t make it a point at that time to keep adequate records of what we spent.”

The payments to Mr. Odidika, the majority of which were for deferred wages, have the effect of allowing the CEO to circumvent paying taxes, since no taxes were withheld and no payments were reported on a W-2.

**Systems and Abilities Response:** *“The board approved this payment and believes that the issue here has to do with how it was reported and/or how it was reflected in the financial statements. At the board meeting of September 14 2008, the board agreed that Mr. Odidika be paid \$2,000.00 per year for five years to cover the startup costs.”*

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<sup>8</sup>OPWDD also questioned the validity of this loan when it conducted its limited fiscal review in 2008. OPWDD’s report noted “[t]he Executive Director stated that he loaned the Agency in excess of \$10,000 for start up costs, but there was no evidence of the Agency receiving a loan.” At the end of 2009, Systems had paid Mr. Odidika \$4,000 of the \$10,000.  
Systems and Abilities, Inc.  
CQC-2011-02-FB

***CQC Response:*** *Although it appears that the board approved these payments, this does not change the facts of the transactions. The payments, at best, are a reimbursement for undocumented purchases and an estimate of time worked without compensation. The Commission was not supplied with invoices supporting the purchases or any document showing a calculation of uncompensated time. The lack of documentation makes all of these payments taxable income and the payments should have been reported to the Internal Revenue Service as such.*

#### **4. Services Provided by Systems were Supervised by Unqualified Staff which Jeopardizes the Financial Viability of Systems**

The Commission found that as the supervisor of Systems' Medicaid Service Coordination (MSC) program, Mr. Odidika did not meet the educational requirements required by OPWDD. Consequently, Systems is at risk of a Medicaid disallowance for the services billed to Medicaid since Systems' inception.

Likewise, although Angela Westery provided MSC services for Systems and has represented herself both as an MSC "manager" and a Qualified Mental Retardation Professional (QMRP), it does not appear that she met the minimum educational requirements to hold those titles and job functions.

According to OPWDD requirements,<sup>9</sup> an MSC must meet minimal educational, experiential and training requirements as follows: (s)he must possess an associate's degree in a health or human services field, or be a registered nurse; have one year of experience working with people with a developmental disability or one year of experience as a service coordinator with any population; and, complete 15 hours of professional development annually. Supervising MSC's must meet additional requirements such a bachelor's degree, plus one year's experience.

A review of Mr. Odidika's personnel file reflects that he was awarded a Bachelor of Science degree from the University of Benin (Nigeria) in biochemistry. But, there was no evidence of him having earned any degree in a health or human services field. Additionally, his personnel file had no college transcript of the courses taken and no verification that the degree claimed was actually conferred.

Likewise, although Angela Westery provided MSC services for Systems and represented herself as an MSC "manager", it does not appear that she met the minimum educational requirements for those titles and job functions. According to her personnel file, Ms. Westery obtained a bachelor's degree in Business Administration from the University of Lagos, Nigeria.

Finally, Mr. Odidika and Ms. Westery represented themselves as being a QMRP, a designation required in the development and approval of the community habilitation plans of services. Neither of them fulfilled OPWDD requirements to be a QMRP.

In light of the finding that Systems' two main principals do not have the required credentials to provide MSC services, as well as the community habilitation service plans possibly being invalidated due to the lack of the required involvement of a credentialed QMRP, the Commission estimates that Systems is at risk of a Medicaid disallowance of more than \$200,000, which could jeopardize the financial viability of Systems.

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<sup>9</sup> Medicaid Service Coordination Vendor Manual, Chapter 2 and Chapter 3; and OPWDD Home and Community Based Service Waiver Application C: Qualified Providers.  
Systems and Abilities, Inc.  
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***Systems and Abilities Response:*** “Our interview reveals that Mr. Odidika and Ms. Westery met the minimum qualifications for their positions at that time.”

***CQC Rebuttal:*** The Commission disagrees. An “interview” by Systems’ board cannot displace fixed statutory and regulatory threshold job requirements. Mr. Odidika and Ms. Westery are not and never have been qualified to act as MSC Supervisors or as QMRPs.

## **5. Systems’ Recordkeeping was Inadequate**

### ***a. No Accounting System Prior to 2009***

Although Systems began billing for services and receiving Medicaid funds in 2007, it did not have an accounting system to record any financial transactions until February 2009. Until that time, OPWDD and Systems’ board of directors had no records by which to evaluate the financial condition of Systems and to ensure the safekeeping of its funds.

### ***b. Systems Paid Employees as Independent Contractors***

Until 2010, in addition to paying its CEO as an independent contractor, Systems also paid other employees as independent contractors (using Form 1099s at the end of each year). When first asked about this, Mr. Odidika told investigators that Systems did not have enough money or sufficient cash flow to cover payroll taxes, so the employees were paid as 1099 contractors. Later, Mr. Odidika stated that the reason that Systems paid employees as 1099 contractors was because it did not have a payroll system until 2010. However, it should be noted that Systems was utilizing Quickbooks in early 2009, which has a function for payroll administration.

### ***c. Systems did not meet Federal and State Reporting Requirements***

Systems failed to file external reports and audits in a timely basis as required by government agencies. According to regulations found at 14 NYCRR §635-4.2, a provider receiving funding from OPWDD is required to file an annual Consolidated Fiscal Report (CFR) to document the expenses and revenues of the provider. However, Systems’ financial statements for the years ending December 31, 2007, 2008 and 2009 were issued together on April 2, 2010. When the financial statements were finally issued, not only was the financial data stale and of limited use for licensing and oversight purposes, but there were also several issues of concern in the content of the statements as they were presented (see section d below).

Additionally, although incorporated in 2004, Systems did not file its annual reports for 2005, 2006, and 2007 with the NYS Charities Bureau until 2008. According to its annual filings for 2008 and 2009, Systems falsely certified that it was exempt from additional reporting requirements for those years because Systems’ gross receipts were under \$25,000; however, Systems received \$31,000 and \$117,000, respectively, from Medicaid in those years.

***d. Systems' Financial Statements did not Adhere to Auditing Standards***

Systems' CPA, Ibe Moses & Associates, issued financial statements which did not meet current Generally Accepted Auditing Standards (GAAS) of reporting<sup>10</sup> and lacked adequate disclosures to meet current financial reporting standards.

For example, the undocumented loan from the CEO is included in the liability section of the financial statements, but there is no footnote disclosing the origin or payment terms, as required. The treatment of loan payments is also at odds with basic accounting principles. Repayments are shown as expenses, when the proper accounting treatment is to reduce the loan liability. No loan transaction, whether concerned with receiving proceeds or making principal payments, results in any income or expense. Based on this limited review, the Commission intends to perform a detailed analysis of the financial statements. If warranted, the Commission will refer its findings to the New York State Department of Education's Office of Professional Discipline.

***Systems and Abilities Response:*** *Systems agreed with the Commission's findings. "The board decided that Systems and Abilities, Inc. should retain a new CPA auditor to audit its books moving forward."*

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<sup>10</sup>Statement on Auditing Standards (SAS) No. 32: Adequacy of Disclosure in Financial Statements  
Systems and Abilities, Inc.  
CQC-2011-02-FB

## **D. RECOMMENDATIONS**

### **To the Department of Health**

1. Given the seriousness of the Commission's findings, DOH should immediately terminate its contract(s) with Systems and begin to transition consumers to other providers.
2. To prevent overbilling Medicaid similar to what occurred at Systems, DOH should ensure that only actual costs plus the 10 percent administrative fee is billed to Medicaid for all applicable services provided under the NHTD program.
3. Due to an inherent conflict of interest, DOH should consider prohibiting Service Coordinators and NHTD Service Providers from working for the same agency on the same project.
4. Prior to approving new NHTD providers, DOH, as part of its Character and Competence reviews, should ensure that it has information from other state agencies, before making its decision.

### **To the Office for People with Developmental Disabilities**

1. Given the seriousness of the Commission's findings, OPWDD should immediately terminate its contract(s) with Systems and begin to transition consumers to other providers.
2. Prior to approving any new service provider, OPWDD should ensure that applicants meet minimum Character and Competence standards, such as an approved business plan, minimum capital requirements, qualified and experienced staff, and that basic business and accounting systems are in place.
3. OPWDD should consider placing all new providers on a "probationary" status. During this period, OPWDD should evaluate each new provider's operations to assess its performance in meeting minimally established standards for providing quality of care services and operating in an efficient and effective manner.
4. After the initial evaluation, if an agency is not meeting minimum standards, OPWDD should suspend the agency from any further development until the deficiencies are corrected. If after the next three months problems are found to persist, OPWDD should immediately cease allowing the agency to provide services and all consumers should be transitioned to a more qualified agency.

## E. REFERRALS

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### **To the Office of Medicaid Inspector General for:**

1. Recovery of the amount of Medicaid inappropriately billed in the Nursing Home Transition Diversion Program of approximately \$22,600 through October 2010.
2. Recovery of the amount of Medicaid inappropriately billed for Service Coordination services which were supervised by unqualified staff of approximately \$152,000 through November 2010.
3. For their consideration whether Systems and Abilities meets the criteria for immediate suspension of all payments from the Medicaid system due to a credible allegation of fraud in accordance with Section 6402(h)(2) of the Affordable Care Act.
4. Exclusion of Systems and Abilities, Inc. and Darlington Odidika from the Medicaid program.

### **To the Attorney General's Office, Medicaid Fraud Control Unit for:**

Investigation into possible Medicaid fraud and filing of false business records.

### **To the New York State Education Department - Office of Professional Discipline (OPD) for:**

Disciplinary actions against the independent certified public accountant for violations of regulations relating to the practice of public accountancy.

## Appendix 1: Inflated Prices in the NHTD Program

*The inflated cost vs. actual cost to complete projects resulted in Systems overbilling Medicaid in 20 services provided through the NHTD program (through 10/31/2010)*

Date	Medicaid Recipient Name (initials)	Service Type (Emod/CTS/Moving)	Amount Paid by Medicaid	EMod Winning Bidder	Amount submitted as estimated EMod cost projection	Actual cost by Systems plus allowable 10% admin fee	Overbilling of Medicaid
08/31/2009	L.M.	Emod	990.00	Systems	900.00	292.45	<b>697.55</b>
09/12/2009	L.S.	CTS	4,787.01			3,397.72	<b>1,389.29</b>
10/01/2009	R.E.	CTS	4,517.62			4,058.02	<b>459.60</b>
10/18/2009	C.D.	Emod	987.25	Systems	897.50	543.40	<b>443.85</b>
11/02/2009	S.W.	Emod	3,300.00	Systems	3,000.00	2,153.73	<b>1,146.27</b>
11/02/2009	S.W	CTS	4,828.37			4,142.59	<b>685.78</b>
01/12/2010	P.A.	Emod	4,180.00	Systems	3,800.00	2,093.10	<b>2,086.90</b>
01/12/2010	P.A.	CTS	3,411.89			2,474.63	<b>937.26</b>
01/12/2010	V.K.	CTS	4,944.72			3,955.16	<b>989.56</b>
01/22/2010	W.B.	Emod	550.00	Systems	500.00	228.49	<b>321.51</b>
02/15/2010	K.R.	CTS	4,625.27			3,891.62	<b>733.65</b>
05/01/2010	K.G.	Emod	14,850.00	Barrier Free	13,500.00	8,467.80	<b>6,382.20</b>
05/01/2010	E.W.	CTS	4,814.35			3,714.51	<b>1,099.84</b>
08/01/2010	P.P.	Emod	4,400.00	Systems	4,000.00	1,808.64	<b>2,591.36</b>
08/01/2010	P.P.	CTS	4,811.06			4,426.06	<b>385.00</b>
08/01/2010	M.R.	CTS	4,614.24			3,813.51	<b>800.73</b>
09/01/2010	D.D.	CTS	4,783.83			4,233.83	<b>550.00</b>
09/17/2010	M.H.	Emod	990.00	Systems	900.00	592.90	<b>397.10</b>
10/08/2010	E.R.	Moving	495.00			330.00	<b>165.00</b>
10/28/2010	M.H.	Emod	990.00	Systems	900.00	592.90	<b>397.10</b>
<b>TOTALS</b>			<b>\$77,870.61</b>			<b>\$55,211.06</b>	<b>\$22,659.55</b>

Appendix 2: Salary contract with CEO Darlington Odidika

**FEES:** The Board of Directors of SYSTEMS AND ABILITIES, INC. will pay the CEO \$150,000.00 Per Annum, with an annual trend of 5% Per Annum, or 15% of the agency's annual proposed budget for all subsequent budget year, (Whichever is greater).

**Payment schedule will be as follows:**

Bi-Weekly [ ], Monthly [ ], Bi-annually [ ], Annually [ ]

**AGREEMENT:** The Board of Directors of SYSTEMS AND ABILITIES, INC., and CEO named above understand this contract and agree to abide by the terms of this contract. This contract will be effective on October 1, 2010, and will be reviewed on September 30, 2015.

**SIGNATURES:**

CEO Sign: Darlington Odidika Date: 9/28/10

Board Rep Sign: [Signature] Date: 09/28/10

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**BOARD OF DIRECTORS  
INVESTIGATION RESPONSE TO:  
CQC'S AUDIT OF SYSTEMS AND  
ABILITIES, INC.  
AUGUST 2008 THRU OCTOBER  
31, 2010**

**BOARD OF DIRECTORS INVESTIGATION RESPONSE TO:  
CQC'S AUDIT OF SYSTEMS & ABILITIES INC. AUGUST 2008 THRU OCTOBER 31, 2010**

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**SUMMARY**

On Thursday, June 30, 2011; CQC presented a DRAFT Report of its 9 month investigations on the operations of Systems & Abilities, Inc to its board of directors.

The board took the issues raised on that report very seriously and took some immediate actions on 7/12/2011, which was communicated to CQC via e mail on the same day. We would note that Mr. Odidika stated that the individuals and families for whom services are provided have not filed any complaints against Systems and Abilities Inc. and believes that the anonymous writers have interests in bringing down the company.

The issues raised on that DRAFT Report included, but not limited to the following:

- ❖ Inflated costs submitted to Medicaid for Reimbursement
- ❖ Improper Bid Process
- ❖ Alteration of Documents
- ❖ Executive Compensation
- ❖ Undocumented Loan from CEO
- ❖ Medicaid Service Coordination Staff Not Qualified

The board performed a total and complete review of the issues raised. The board investigated the 20 projects mentioned by CQC and broke those projects into 3 according to NHTD Waiver Services.

1. CTS (Community Transitional Services ) Projects 9 amount \$46,138.36
2. E-mod ( Environmental Modifications Services) Projects 10 amount \$31,237.25
3. Moving Assistance –Projects 1 amount \$495.00

a) CTS Moving Assisting Cost:

The board's investigation reveals that, for Service type CTS, Medicaid was billed for \$46,138.36 and the actual cost of this service was \$46,203.92 a difference of (\$65.56) which represents unbilled amount to Medicaid. The reason for this discrepancy between CQC's calculations and Systems And Abilities, Inc calculations is that the labor cost for CTS moving by Systems and Abilities, Inc which includes a) The cost of equipments and supplies, and b) The cost of the physical labor cost of moving participants furniture, and essential belonging.

The details are on the table below and all receipts are available. (See Attached Exhibit "F").

CQC in its DRAFT Report excluded some costs which are allowed in the NHTD manual section VI-Waivers Services.

- I. The cost of moving essential furniture and other belongings (cost of labor)
- II. Plus 10% Administrative fee allowed by the program.

b) E-Mod Service Cost:

The board after investigating the 10 participant's E-Mod Services projects conducted by Systems and Abilities, Inc concedes that upon investigation of all records found that for Service type E-mod, Medicaid was billed for \$31,237.25 and the actual cost of this service was \$25,112.51 a difference of \$6,124.25 which represents over payment by Medicaid. **That is an Overpayment.**

During the board interview with Mr. Odidika regarding this overpayment situation, he reported that he thought that Systems And Abilities, Inc was not prohibited from bidding as an agency performing as the Service Coordination and being the Service Provider for E-mod.

The details are on the table below and all receipts are available. (See Exhibit "F")

c) Moving Assistance Service Cost:

During the board's investigation, the board asked Mr. Odidika to provide an explanation to the report of altered receipt documentation with regards to the agency providing Moving Assistance Services. Mr. Odidika reported that a few days after the bid was submitted and arrangements made for moving the individual, the moving company called the agency and informed them that the family needed boxes which would be an estimated additional cost of \$150.00. He reported that he adjusted the copy of the estimate on file to reflect the information given by the vendor. He reports that the moving company later informed him that the boxes used totaled \$52.25 and that they have since received an invoice from the moving Vendor for additional moving expenses and that the additional cost of \$52.25 has been paid to the moving company.

**The board investigation found that for Service type Moving Assistance, Medicaid was billed for \$495.00 and the actual cost of this service is \$352.25 plus 10% administrative fees of \$35.23 (total of \$387.45) a difference of \$107.55 which represents over payment by Medicaid.**

(See copy of bill from Vendor attached as Exhibit "C").

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The Board's investigation revealed that Systems & Abilities Inc started operation with one MSC staff in 2007 and had 5 MSC in employment at the time of CQC investigative audit in November 2010. A review of their employment records indicates that they were all qualified as MSC staff. According to MSC Vendor Manual Chapter Two page 3, and chapter three page 1; published September 2002, all MSC employed by Systems & Abilities within that period were adequately qualified to perform that Service in 2007 when that agency was approved to provide such services. However, a superseding MSC Vendor manual published on May 23, 2011, Revised on June 20, 2011 but was retroactively effective from October 01, 2010 rendered one of the MSC staff, (Ms. Angela Westery) qualification inadequate.

In the light of the current MSC rule, the board advised Systems & Abilities to reassign the workload of Angela Westery, the only MSC questioned on CQC DRAFT Report. Consequently, the board has authorized the chairman to direct the Ms. Shernell Lucas to hire a new qualified MSC supervisor with immediate effect.

#### **DETAILS:**

##### **Background**

During the board investigation/interview of Mr. Odidika, he informed the board that prior to incorporating the agency in 2004, he had worked for twelve (12) years in the field of human services particularly in the care of individuals with developmental disabilities with a handful of agencies in the OPWDD volunteer organization circle, most noteworthy is his employment with Richmond of New York in the capacity of program manager. He indicated that his responsibilities included but were not limited to assisting individuals with developmental disabilities develop new skills and enhance their lifestyle in the community and to achieve independence in the activities of daily living. He reported that on or about 2004, he discovered that there was a need for providing assistance to the community, which was the underserved, silent individuals and this population included people in poor neighborhoods who were not receiving proper assistance. He stated that it was through this thinking that he embarked on the project to form a Not-for-Profit organization to assist in providing the "badly" needed services. He reported that he hired a CPA who formed the initial organization and after realizing that the CPA did not form the organization as a Not-for-Profit organization, he informed the CPA that for him to serve individuals with developmental disabilities, the organization had to be a Not-for-Profit. His CPA advised him that the corporation documents could be amended to reflect the new proposed program and applied for a 501(3)(C) status with the IRS. He reported that it was with very little funding that this organization began assisting the developmentally disabled and did not embark on this project to benefit himself but to provide a well needed services.

In response to the CQC's opinion in the draft report (page 2, bullet point 2) that the board had met once in 2007, Systems & Abilities, Inc began its operations after the approval of the Agency in 2007 and in 2008 after an audit of the Systems And Abilities, Inc; the Board of Directors met in September of 2008 and worked with the CEO to address all of the problems highlighted by OPWDD audit report.

Since the board meeting in 2008, the Board consistently met every quarter. The board met for two (2) quarters, and from 2009 through 2010 the Board of Directors met for four (4) quarters each and in 2011 twice so far. The board takes all issues presented to the Board seriously and have successfully addressed each and Systems And Abilities, Inc is in full compliance with the Board's recommendation.

(See attached Exhibit "A")

#### A. INFLATED COST SUBMITTED FOR MEDICAID REIMBURSEMENT

During the board investigation, the Board found that CQC did not include the 10% administrative fees that are due to Systems and Abilities in their calculations. For example, in the example 1 of the draft, CQC calculated the actual final cost as \$2,249.66 and profit of **\$1,162.23**. If we take the \$2,249.66 as the actual, 10% administrative fee on that would be **\$224.97**. The profit would there be **\$937.26**. See figure 1 below

The board also interviewed Mr. Odidika about the reported inflated cost reported by CQC, he informed the board that it is not profit but part of the costs of doing business since paying cash vouchers for labor that is not always readily available and could be more expensive if he were to hire professional movers for CTS Moving Assistance services. The practice of paying cash for labor is not uncommon, but considering that this is the first notice that this practice is unacceptable by Medicaid standards, he reports that the agency have no choice but to seize paying cash for labor in the future.

Mr. Odidika reported that "profit" of \$937.26 reported by CQC in their report came as a result of labor cost he contends was part of the moving cost. He stated that part of the cost of moving essentials and other belongings include renting a moving van, the cost of gas for the moving van and having the labor force to do the loading, offloading of these essentials and other belongings; and for setting up the apartment to make it functional for the participant.

The board investigations also revealed that "According to the NHTD HANDBOOK Section VI - Waiver Services pages 17, 18 & 19 APRIL 2008, CTS costs includes"

- 1). **The cost of moving essential furniture and other belongings.**
- 2) Security deposits, including broker's fees to obtain a lease on an apartment or home.
- 3) Purchasing essential furnishings
- 4) Set up fees or deposits for utility or Service access (e.g. telephone, electricity, heating)
- 5) Health and Safety assurances, such as pest removal, allergen control or one-time cleaning prior to occupancy.

**Provider Qualifications:** During the Board investigation, the board reviewed the NHTD Provider Manual for CTS, E-mod and Moving Assistance determined that;

For CTS: all CTS providers must be approved providers of Service Coordination in the NHTD waiver. When the Participant chooses the Provider of CTS it does not have to be the same agency providing service coordination to the participant. Someone other than the participant's SC must be the individual responsible for arranging CTS. The provider of this service must designate an individual that has sufficient knowledge and skills to work with subcontractors and to assist the Participant in utilizing this service.

For E-Mod: Any not-for-profit or for profit and human service agency may provide E-mod or may subcontract with a qualified person or entity to provide E-mod. Agencies approved to provide E-mod by the Office of mental Retardation and Developmental disabilities (OMRDD) may be approved by DOH to provide this for the NHTD Waiver. The E-mod provider must ensure that individuals working on the E-mod are appropriately qualified and or licensed to comply with any state and local rules. All materials and products used must also meet any state or local construction requirements.. Providers must adhere to safety issues addressed in Article 18 of the New York State Uniform fire Prevention and Building Code Act as well as local building codes.

E-mod also include, a) Ramps b) Lifts: hydraulic, manual or electric, for porch, bathroom or stairs 9 Lift may also be rented if it is determined that this is more cost - effective) c) widened doorway and hall hallways .d) Hand rails and grab doors. e) Automatic or manual door openers and door bells. Bathroom and kitchen modifications, additions or adjustments to allow accessibility or improved functioning, include f) Roll-in showers. g) Sink and tubs i) Water faucets controls. j) Plumbing and adaptations to allow for cutouts, toilets/sink adaptations. k) Turnaround space changes/adaptations. l) Worktables/work surface adaptations. m) Cabinet and shelving adaptations. **Other home adaptations include:** n) Medically necessary heating/cooling adaptations required as part of a medical treatment plan. o) Electrical wiring to accommodate other adaptations or equipment or installation. p) Specialized electric and plumbing systems that are necessary to accommodate the medical equipment and supplies that have been determined medically necessary. q) Other appropriate E-mod, adaptations or repairs necessary to make the living arrangements accessible or accommodating for the participants' independence and daily

**The board then reviewed the services for CTS, E-mod and Moving Assistance that Systems and Abilities, Inc provided to the 20 participants that CQC indicated in there Draft Report.**

*See the next page for analysis of the board findings for CTS, E-MODS and Moving assistance programs.*

**BOARD'S ANALYSIS OF 20 PROJECTS UNDER REVIEW BY CQC**

Service Type	Date	Participant	Amount paid by Medicaid	Projected Costs by CQC			Projected Costs by the Board			Medicaid Payment Variance	
				Materials & Supplies	Labor	NHTD ADMIN FEE 10%	Materials & Supplies	Labor	NHTD ADMIN FEE 10%		
1	9/12/2009	LS	4,787.01	3,088.84	-	-	4,041.73	350.00	439.17	4,830.90	-43.89
2	10/1/2009	RE	4,517.62	3,689.11	-	-	3,426.62	700.00	412.66	4,539.28	-21.66
3	11/2/2009	SW	4,828.37	3,765.99	-	-	3,689.43	700.00	438.94	4,828.37	0.00
4	1/12/2010	PA	3,411.89	2,249.66	-	-	2,249.66	852.06	310.17	3,411.89	0.00
5	1/12/2010	VK	4,944.72	3,595.60	-	-	3,606.40	888.80	449.52	4,944.72	0.00
6	2/15/2010	KR	4,625.27	3,537.84	-	-	3,633.84	570.95	420.48	4,625.27	0.00
7	5/1/2010	EW	4,814.35	3,376.83	-	-	3,597.31	779.37	437.67	4,814.35	0.00
8	8/1/2010	PP	4,811.06	4,023.69	-	-	4,023.69	350.00	437.37	4,811.06	0.00
9	8/1/2010	MIR	4,614.24	3,466.83	-	-	3,466.83	727.93	419.48	4,614.24	0.00
10	9/1/2010	DD	4,783.83	3,848.94	-	-	3,398.94	950.00	434.89	4,783.83	0.00
<b>TOTALS</b>				<b>46,138.36</b>	<b>34,643.33</b>		<b>35,134.45</b>	<b>6,869.11</b>	<b>4,200.36</b>	<b>46,203.92</b>	<b>-65.56</b>
				(11,560.59)							

NHTD HANDBOOK Section vi -Waiver  
Services pages 17, 18 & 19. APRIL 2008

**This Service includes:** 1) The cost of moving essential furniture and other belongings. 2) Security deposits, including broker's fees to obtain a lease on an apartment or home 3) Purchasing essential furnishings 4) Set up fees or deposits for utility or Service access (e.g. telephone, electricity, heating) 5) Health and Safety assurances, such as pest removal, allergen control or one-time cleaning prior to occupancy.

**Provider Qualifications:** All CTS providers must be approved providers of Service Coordination in the NHTD waiver. When the Participant chooses the Provider of CTS it does not have to be the same agency providing service coordination to the participant. Someone other than the participant's SC must be the individual responsible for arranging CTS. The provider of this service must designate and individual that has sufficient knowledge and skills to work with subcontractors and to assist the Participant in utilizing this service.

Service Type	Date	Participant	Amount paid by Medicaid	Projected Costs by CQC			Projected Costs by the Board			Medicaid Payment Variance		
				Materials & Supplies	Labor	NHTD ADMIN FEE 10%	Total	Materials & Supplies	Labor		NHTD ADMIN FEE 10%	Total
1	EMOD 8/31/2009	LM	\$ 990.00	115.86	150.00	-	265.86	115.00	150.00	26.50	291.50	698.50
2	EMOD 10/18/2009	CD	\$ 987.25	494.00	-	-	494.00	494.00	440.23	93.42	1,027.65	-40.40
3	EMOD 11/2/2009	SW	\$ 3,300.00	1,207.94	750.00	-	1,957.94	1,204.68	750.00	195.47	2,150.15	1,149.85
4	EMOD 1/12/2010	PA	\$ 4,180.00	752.82	1,150.00	-	1,902.82	850.69	1,150.00	200.07	2,200.76	1,979.24
5	EMOD 1/22/2010	WB	\$ 550.00	57.72	150.00	-	207.72	57.72	150.00	20.77	228.49	321.51
6	EMOD 5/1/2010	KG	\$ 14,850.00	7,698.00	-	-	7,698.00	13,500.00	-	1,350.00	14,850.00	0.00
7	EMOD 8/1/2010	PP	\$ 4,400.00	244.22	1,400.00	-	1,644.22	836.75	1,400.00	223.68	2,460.43	1,939.58
8	EMOD 9/17/2010	MH	\$ 990.00	539.00	-	-	539.00	539.00	300.00	83.90	922.90	67.10
9	EMOD 10/28/2010	MH	\$ 990.00	539.00	-	-	539.00	591.48	300.00	89.15	980.63	9.37
TOTALS				11,648.56	3,600.00	-	15,248.56	18,189.32	4,640.23	2,282.96	25,112.51	6,124.75
				(9,863.95)	(6,540.76)	(1,040.23)	(2,282.96)					

NHTD HANDBOOK Section vi-Waiver Services  
pages 21 thru 25. APRIL 2008

**Allowable E-mod:** a) Ramps b) Lifts: hydraulic, manual or electric, for porch, bathroom or stairs 9 Lift may also be rented if it is determined that this is more cost - effective) c) widened doorway and hall hallways) Hand rails and grab doors. e) Automatic or manual door openers and door bells. Bathroom and kitchen modifications, additions or adjustments to allow accessibility or improved functioning, include f) Roll-in showers. g) Sink and tubs i) Water faucets controls. J) Plumbing and adaptations to allow for cutouts, toilets/sink adaptations. k) Turnaround space changes/adaptations. l) Worktables/work surface adaptations. m) Cabinet and shelving adaptations. **Other home adaptations include:** n) Medically necessary heating/cooling adaptations required as part of a medical treatment plan. o) Electrical wiring to accommodate other adaptations or equipment or installation. p) Specialized electric and plumbing systems that are necessary to accommodate the medical equipment and supplies that have been determined medically necessary. q) Other appropriate E-mods, adaptations or repairs necessary to make the living arrangements accessible or accommodating for the participant's independence and daily

**Provider Qualifications:** Any not-for-profit or for profit and human service agency may provide E-mod or may subcontract with a qualified person or entity to provide E-mod. Agencies approved to provide E-mod by the Office of mental Retardation and Developmental disabilities (OMRDD) may be approved by DOH to provide this for the NHTD Waiver. The E-mod provider must ensure that individuals working on the E-mod are appropriately qualified and or licensed to comply with any state and local rules. All materials and products used must also meet any state or local construction requirements.. Providers must adhere to safety issues addressed in Article 18 of the New York State Uniform fire Prevention and Building Code Act as well as local building Codes

Service Type	Date	Participant	Amount paid by Medicaid	Projected Costs by CQC			Projected Costs by the Board			Medicaid Payment Variance		
				Materials & Supplies	NHTD ADMIN FEE 10%	Total	Materials & Supplies	NHTD ADMIN FEE 10%	Total			
1 MOVING	10/8/2010	ER	\$ 495.00	300	0	300	300	0	30	387.45	107.55	
TOTALS			\$ 495.00	300	0	300	300	0	30	387.45	\$ 107.55	
<b>G.TOTAL</b>				\$ 77,870.61	\$ 46,291.89	\$ 3,600.00	\$ -	\$ 50,191.89	\$ 53,323.77	\$ 11,509.34	\$ 6,488.54	\$ 71,703.87
(21,424.53)												

## B. IMPROPER BID PROCESS

CQC found that Systems and Abilities in some instances submitted their own bids as general contractor on Environmental Modification projects. The board has decided that improper bidding cease immediately and that Systems and Abilities Inc. should institute a new policy for submitting bids. The CEO, Systems and Abilities Inc. or any entity related to the organization may not submit bids.

## C. ALTERATION OF DOCUMENTS

The Board found the alteration of the figure \$300.00 to \$450.00 unacceptable. Mr. Odidika explained that it was as a result of the fact that the movers told him that more boxes would be needed to actualize the job; this was substantiated in your draft report, footnote on page 9. The mover agreed that there was mention of extra cost which was never billed, the difference being the amount \$52.75 versus \$150.00. Mr. Odidika should not have altered the figures instead he should have added it on the side. Again, we believe there is no willful intent to defraud here. The board investigation also revealed that Systems and abilities has requested and gotten an invoice for \$52.25 from the moving company and has since made a payment of \$52.25 to the moving company. Based on this, Systems and Abilities, inc. should refund \$107.55 to MEDICAID.

## D. EXECUTIVE COMPENSATION

For calendar year 2004 to 2008, the CEO was not paid for his work. Systems and Abilities Inc. income for the year 2004 when the organization started to 2006 was zero. Systems and Abilities made \$500.00 for the year 2007, \$30,500 for the year 2008 and \$125,000 for the year 2009. The board in 2009, when the total the revenue projection was \$100,000.00, decided that remuneration for the CEO to be 35% of the total revenue, which amounted to \$40,000.00 because the actual revenue for 2009 was \$125,000.00. Consequently, for the year 2010, when the projected revenue was \$450,000.00, executive compensation would have been \$157,000.00 based on the agreement of 35% remuneration, but the CEO was paid \$117,000.00. The board decided to lower the remuneration percentage to 15% from 35% because of a projected income of \$900,000.00 for the year 2011. The reason for this action was because if the CEO were paid based on the earlier agreement of 35%, the CEO would be in a position to make \$315,000.000 for 2011. The board also found that the CEO was actually underpaid in 2010 based on the contract at that time of 35%. His compensation for that year would have been \$157,000.00 but was paid \$117,000.00, underpaid by \$40,000.00. Having now read your draft report where you reported that the average compensation of the chief executives in the industry is \$95,000.00; the board has decided to follow your recommendation and peg the executive compensation for Systems and abilities Inc. chief executive to be \$95,000.00. The board will review the figure in the last quarter of 2011 and draft a new contract.

#### E. UNDOCUMENTED LOAN

During the board investigations, we found that the undocumented loan referred to by CQC is actually the start-up costs incurred by the CEO from 2004 through 2008 when the organization had no income. The startup included the following:

1. Filling of documents for registration of business
2. Office equipments and supplies
3. Salaries and compensation
4. Travel and associated expenses
5. Administrative expenses

The board approved this payment and believes that the issue here has to do with how it was reported and/or how it was reflected in the financial statement. At the board meeting of September 14 2008, the board agreed that Mr. Odidika be paid \$2,000.00 per year for five years to cover the startup cost. At the meeting between CQC and the board on June 30, 2011, a member of the CQC questioned if Mr. Odidika paid taxes on the payment. The board interviewed Mr. Odidika and he stated that he files his federal and State income taxes annually.

#### F. MEDICAID SERVICE COORDINATION STAFF NOT QUALIFIED

During the board's investigation into the qualifications of the MSC staff of Systems and Abilities Inc., the board found that based on the MSC Service Coordinator Vendor manual published September 2002, chapter 2 page 3 (required experience, education and training) which was in place when Systems and Abilities was approved to provide MSC services in 2007 and quoted by CQC in their draft report stated that an MSC must meet the minimal educational, experiential and training requirements as follows: (s) he must possess an associate degree in a health or human services field, or be a registered nurse; have one year of experience working with people with developmental disabilities or one year of experience as a service coordinator with any population; and complete 15 hours of professional development annually. Supervising Medicaid Service Coordinators must meet in addition requirements such as bachelor's degree plus one year experience.

Our interview reveals that Mr. Odidika and Ms. Angela Westery met the minimum qualifications for their positions at the time. The board however found that based on the current MSC Vendor Manual published, May 23, 2011 that became effective October 2010, Mr. Odidika and Ms. Westery are no longer qualified for these positions. Consequently, the board has authorized the chairman to direct the Ms. Shernell Lucas to hire a new qualified MSC supervisor with immediate effect and Ms. Westery's caseload has been reassigned to other qualified Medicaid Service Coordinators within the agency.

#### G. SYSTEMS INDEPENDENT AUDITOR

The board decided that Systems and Abilities Inc. should retain a new CPA auditor to audit its books moving forward.

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**CONCLUSION:**

On the issue of inflated cost submitted to Medicaid for reimbursement, the board's investigation, addressed this problem in the attached spread sheet. However, the Board recommends that the cash amount or an agreeable amount be repaid.

For improper bidding process, the Board has recommended that improper bidding should immediately cease and Systems should follow a new policy for submitting bids.

On the alleged alteration of document, Systems and Abilities Inc. CEO told board that CQC based their report on a partial invoice from the moving company. The moving company gave the agency a final invoice of \$352.25 on July 26, 2011 at the request of the agency. The board has ordered Systems and abilities to find a way to refund Medicaid the balance minus their 10% administration fee.

On executive compensation, the board has taken notice of your recommendation and will meet to review the executive compensation figures in the last quarter of 2011 and draft a new contract.

Undocumented loan mentioned on the CQC draft report represented the start-up cost incurred by the CEO. The board approved a repayment of \$2,000.00 per year for five years to defray the cost.

Our interview/investigation reveals that Mr. Odidika and Ms. Angela Westery met the minimum qualifications for their positions at the time. The board however found that based on the current MSC Vendor Manual published, May 23, 2011 that became effective October 2010, Mr. Odidika and Ms. Westery are no longer qualified for these positions. Consequently, the board has authorized the chairman to direct the Ms. Shernell Lucas to hire a new qualified MSC supervisor with immediate effect and Ms. Westery's caseload has been reassigned to other qualified Medicaid Service Coordinators within the agency.

We have recommended that Systems and Abilities Inc. should retain a new CPA auditor to audit its books moving forward.

## APPENDIX 4 – Response from NYS Office for People with Developmental Disabilities



NYS Office For People With Developmental Disabilities



Andrew M. Cuomo, Governor  
Courtney Burke, Commissioner

### Executive Office

41 Holland Avenue  
Albany, NY 12229-0001

TEL: 518-473-1997  
FAX: 518-473-1271  
TTY: 866-933-8889

[www.opwdd.ny.gov](http://www.opwdd.ny.gov)

August 24, 2011

Mr. John Rybaltowski  
Director  
Bureau of Fiscal Investigations  
Commission on Quality of Care  
and Advocacy For Persons with Disabilities  
401 State Street  
Schenectady, NY 12305

Dear Mr. Rybaltowski:

We are in receipt of your draft audit report of Systems and Abilities, Inc. We appreciate you sharing the findings of your audit with us. We note that the focus of your audit was the Nursing Home Transition Diversion (NHTD) projects completed by Systems and Abilities Inc.. We reviewed your report as it pertains to the overall operations of the agency as well as its relevancy to the Office for People With Developmental Disabilities (OPWDD) activities.

In your report, you had made the following recommendations to OPWDD:

1. Given the seriousness of the Commission's findings, OPWDD should immediately terminate its contract(s) with the Agency and begin to transition people to other providers.
2. Prior to approving any new service contract, OPWDD should ensure that applicants meet minimum Character and Competence standards, such as an approved business plan, minimum capital requirements, qualified and experienced staff, and that basic business and accounting systems are in place
3. OPWDD should consider placing all new providers on a "probationary" period. During this period, OPWDD should evaluate the new providers within the first three months of operations to assess its performance in meeting minimally established standards for providing quality of care services, and operating in an efficient and effective manner
4. After the initial evaluation, if any agency is not meeting minimum standards, OPWDD should suspend the agency from any further development until the deficiencies are corrected. If within the next three months, problems persist, OPWDD should immediately cease allowing the agency to provide services and all individuals should be transitioned to a more qualified agency.

We help people with developmental disabilities live richer lives.

While we consider the Commission's findings serious and warrant appropriate action, our process is to provide the agency with sufficient opportunity to respond to your audit report. Once the agency provides its response, OPWDD will review it as it applies to OPWDD operations and then consider appropriate actions as necessary. Our decision at that point could include termination of the contract with the agency and transitioning of individuals to other viable agencies.

Your audit report cites that the agency employed a Medicaid Service Coordination (MSC) Supervisor whose qualifications are questionable. We will require the agency demonstrate to us that their employee's educational qualifications are valid to provide MSC services and if the agency fails to do so, we will then take appropriate remedial actions which again may include transition of its OPWDD activities to other viable agencies.

Regarding your recommendation on evaluation of the character and competency of new applicants, we have always reviewed them. We have now added several other criteria for our evaluation, some of which you have correctly identified in your recommendation. The enclosed documents outline our revised review process of new applicants which will be going into effect in the near future.

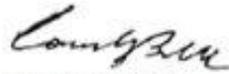
In addition, we have recently strengthened our "Early Alert" process to include several steps which would demand greater responsibility from the governing body of the agencies having serious fiscal, programmatic or governance issues; place such agencies on our website which would assist the individuals and families to better evaluate the quality of services provided and make informed decisions. If the governing body of such agencies fail to take immediate corrective measures that would satisfy our expectations, we will then take measures to transition the services to another suitable agency. Furthermore, in order to better inform our service providers of the changes, we are now posting on our website, the Early Alert triggers which would cause an agency to go on our Early Alert list; and to inform individuals and families of agencies having difficulties, we are posting details of agencies on the Early Alert List.

Our policies and procedures allow us to terminate provider agreements/contracts with voluntary agencies based on our evaluation of agency performance and appropriate notification to them. Therefore, we do not see a need to place any agency on a "probationary" period for any length of time prior to termination of OPWDD funding for them. Our new review process and the enhanced Early Alert process together will further enhance our ability to take swift action whenever necessary.

We will appreciate receiving a copy of the Systems and Abilities response for review so that we can evaluate it and take appropriate actions.

Again, thank you for sharing your audit report on Systems and Abilities.

Sincerely,



Courtney Burke  
Commissioner

Enclosure

## Appendix 5 – Response from NYS Department of Health

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Nirav R. Shah, M.D., M.P.H.  
Commissioner



Sue Kelly  
Executive Deputy Commissioner

September 13, 2011

John Rybaltowski, Director  
Bureau of Fiscal Investigations  
State of New York  
Commission on Quality of Care and Advocacy  
For Persons with Disabilities  
401 State Street  
Schenectady, New York 12305

Dear Mr. Rybaltowski:

This is in response to your recent correspondence to New York State Commissioner of Health, Nirav R. Shah, M.D., M.P.H., regarding the Commission on Quality of Care and Advocacy for Persons with Disabilities (CQC) draft report on Systems and Abilities, Inc. and its findings and recommendations.

The Department of Health (DOH) has reviewed the draft report and is in agreement with the recommendations CQC has presented in this provider's investigation report. However, DOH program staff have found some inaccuracies contained in the report, including the description of the Nursing Home Transition and Diversion waiver and how it functions.

Please refer to the enclosed document for DOH's detailed response to the recommendations and recommended changes clarifying the waiver description background.

If you have any questions, please contact me at (518) 474-5271.

Sincerely,

A handwritten signature in black ink, appearing to read "Lydia J. Kosinski". The signature is fluid and cursive.

Lydia J. Kosinski, Assistant Director  
Home & Community Based Services  
Division of Long Term Care

Enclosure  
cc: Florence Abrams, Esq.

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New York State Department of Health  
Office of Long Term Care  
Nursing Home Transition and Diversion (NHTD) Waiver  
Recommended Changes to the Draft Report on Systems and Abilities, Inc.

A. Purpose.  
Methodology

CQC Report

“The Commission also reviewed all 29 Nursing Home Transition Diversion (NHTD) projects completed by Systems from the inception of the program in mid-2009 through October 30, 2010.”

DOH Response/Corrections

The Commission also reviewed all 29 Nursing Home Transition Diversion (NHTD) waiver cases ~~projects~~ completed by Systems ~~from the inception of the program~~ in mid-2009 through October 30, 2010.

B. Background  
1. Agency History

CQC Report

“Systems and Abilities Inc. (Systems) is a not-for-profit corporation located in Yonkers, New York, and contracts with the NYS Office for People With Developmental Disabilities (OPWDD) and the NYS Department of Health (DOH) to provide Medicaid-reimbursable support and services to senior citizens and to persons with developmental disabilities.”

DOH Response/Corrections

Systems and Abilities Inc. (Systems) is a not-for-profit corporation located in Yonkers, New York, and contracts with the NYS Office for People With Developmental Disabilities (OPWDD). ~~and~~ It is also an enrolled Medicaid provider with the NYS Department of Health (DOH) to provide Medicaid-reimbursable ~~support and services to senior citizens and to persons with developmental disabilities~~ NHTD waiver participants.

2. About the NHTD Program

CQC Report

“NHTD is a Home and Community Based Waiver program, administered by DOH through contracted providers. The program uses Medicaid funds to provide support and services to assist individuals with disabilities and senior citizens to transition into their local community. The program assists individuals to either move out of a nursing facility and back into the community (“transition”) or to participate in the waiver to prevent admission into a nursing facility (“diversion”). Under this program, a variety of services can be provided and billed to Medicaid.”

“Services provided through the NHTD program generally follow an approval and service delivery process that includes:

1. The regionally contracted DOH program administrator will refer an individual to a service coordinator;
2. The Service Coordinator decides what services the individual needs (such as CTS, E-Mods, or Moving Assistance);
3. The Service Coordinator and the individual decide who will provide the service (the Service Provider);

4. The Service Provider gives an estimate of the cost to provide the service (for example, the price of installing a wheelchair ramp). If the projected amount will be over \$1,000, the Service Provider must obtain three bids;
5. Once the service is completed, the Service Provider submits a "Final Cost" report, which certifies the actual cost to complete the project. The Service Provider is authorized to bill Medicaid for the actual cost of the service plus a 10 percent administrative fee."

DOH Response

NHTD is a Home and Community Based Waiver program, administered by DOH through nine (9) contracted providers agencies throughout New York State, known as Regional Resource Development Centers (RRDC). The program uses Medicaid funds waiver to provides support and services to assist individuals at least 18 years of age with physical disabilities and senior citizens to transition into their local who choose to live in the community rather than an institutional setting. The program assists individuals to either move out of a nursing facility and back into the community ("transition") or to participate in the waiver to help prevent their admission into a nursing facility ("diversion"). Under this program, a variety of Enrollees in the waiver have access to seventeen (17) waiver services can be provided and billed to Medicaid as well as State Plan services.

Services provided through the NHTD program generally follow an approval and service delivery process that includes:

1. Once the regionally contracted DOH program administrator will refer an individual to a service coordinator RRDC determines that an individual may be eligible for the waiver, it provides him/her a list of service coordination (SC) agencies in the region;
2. The individual chooses a Service Coordination agency and the Service Coordinator proceeds to develop a Service Plan in conjunction with the individual, based on the individual's identified needs decides what services the individual needs (such as CTS, E-Mods, or Moving Assistance);
3. The Service Coordinator and the individual decides who will provide the other waiver service(s) needed (the Service Provider), such as environmental modifications (E-mod);
4. Some services, such as E-mods, require bids and prior authorization from the RRDC. The Service Provider E-mod provider gives obtains an estimate of the cost to provide the service (for example, the price of installing a wheelchair ramp). If the projected amount will be is over \$1,000, the Service Provider E-mod provider must obtain three bids;
5. Once the service is completed, the Service Provider submits a "Final Cost" report, which certifies the actual cost to complete the project and must be signed off by the Regional Resource Development Specialist prior to billing Medicaid. The Service Provider for E-mods is authorized to bill Medicaid for the actual cost of the service plus a 10 percent administrative fee.

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New York State Department of Health  
Office of Long Term Care  
Nursing Home Transition and Diversion (NHTD) Waiver  
Response to CQC Recommendations

1. Given the seriousness of the Commission's findings, DOH should immediately terminate its contract(s) with the agency and begin to transition consumers to other providers.

DOH Response

DOH has placed Systems and Abilities on Vendor Hold effective May 13, 2011. Further action will be taken if warranted.

2. To prevent overbilling Medicaid similar to what occurred at Systems, DOH should ensure that only actual costs plus the 10% administrative fee is billed to Medicaid for all applicable services provided under the NHTD program.

DOH Response

DOH is exploring options to address this issue.

3. Due to an inherent conflict of interest, DOH should consider prohibiting Service Coordinators and NHTD Service Providers from working for the same agency on the same project

DOH Response

DOH is aware that there is always the risk of a conflict of interest occurring when a Service Coordination agency also provides other waiver services. Revisions are being made to the current NHTD Program Manual to address this concern.

4. Prior to approving new NHTD providers, DOH, as part of its Character and Competence reviews, should ensure that it has as much information about the provider, including information from other state agencies, before making its decision.

DOH Response

Before approving an agency as a NHTD provider, DOH does obtain as much information as possible about that agency, including following up with other state agencies, when applicable. For example, DOH staff will verify a provider's status, when applicable, under the Traumatic Brain Injury (TBI) waiver; Licensed Home Care Service Agency; and/or OMIG audit actions.