Facilities as Fiduciaries:

A Review of the Management of Residents' Funds by NYS Mental Hygiene Residential Facilities

New York State
Commission on Quality of Care
for the Mentally Disabled

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Preface

In accordance with its statutory responsibility to improve the administration of mental hygiene facilities, the Commission has conducted a review of the procedures and practices of State mental hygiene facilities to manage their residents' personal funds. Collectively, the over 2,000 State-operated or -licensed mental hygiene facilities serve as legal "representative payees" or directly manage over $35 million in personal funds of approximately 40,000 residents. This review was also initiated in concert with the Commission's mandate, as the Governor's designated statewide Protection and Advocacy agency, to ensure protection of the rights of persons with mental disabilities

This report contains the findings, conclusions, and recommendations of this review. As noted in the report, the Commission was heartened by the strong accounting practices for personal funds management in the vast majority of the sample facilities reviewed. At the same time, the review surfaced significant systemic weaknesses in the current State legal and regulatory framework for the management of residents' personal funds. The report's recommendations urge for certain legislative, regulatory, and policy changes to remedy these weaknesses, thereby providing adequate safeguards to protect the rights of persons with mental disabilities with regard to their personal monies.

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Executive Summary

At any one time, over $35 million in patients'/clients' personal funds are under the direct management of the State's nearly 2,000 mental hygiene residential facilities. A single large residential facility, like a State psychiatric or developmental center, may manage as much as $1 million in residents' funds at any one time, while it is not unusual for small ten-bed community residences to be managing up to $3,000 in clients' personal funds.

These funds, managed by mental hygiene facilities, may come from the State-mandated personal allowance portions of the residents' Supplemental Security Income (SSI) or Old Age Survivors or Disability Insurance (OASDI). The residents' personal funds may also include earned income from sheltered or other employment, gifts from friends or relatives, veterans benefits, railroad retirement benefits, or other pensions.

The responsibility of facilities to manage residents' funds may be formally conferred by the Social Security Administration's (SSA) designation of the facility as the resident's representative payee for SSI and OASDI benefits. In other cases, the facility, usually upon written agreement with the resident or his/her representative payee, assumes a management responsibility for a resident's funds even though it may not be the official representative payee.

The management of these funds represents a major financial responsibility of mental hygiene facilities. This responsibility not only entails safeguarding residents' funds and making them available when residents need or desire them, but also maintaining accurate individual resident account records of expenditures and deposits, investing excess funds and distributing earned interest to residents, assisting residents in making appropriate decisions regarding personal funds expenditures, and ensuring that funds are expended for the general benefit of the resident.

Despite the magnitude of mental hygiene facilities' management responsibilities over residents' funds and the amount of funds managed by individual facilities, complaints registered with this Commission by families and advocates regarding the management of their relatives'/clients' funds suggest limited oversight of this responsibility by the Office of Mental Health (OMH) and the Office of Mental Retardation and Developmental Disabilities (OMRDD). The Commission's investigations of the general management of selected OMRDD licensed facilities have also frequently revealed deficiencies in residents' personal funds management which had gone undetected by OMRDD. In addition, the State Comptroller's audits of State psychiatric and developmental centers have repeatedly cited a number of deficiencies in these facilities' management practices with respect to residents' funds. These deficiencies have included:

1. disbursement of personal funds not supported by proper authorizing signatures, sales slips, or invoices;

2. earned interest from personal funds not maximized due to excessive balances in non-interest-bearing checking accounts or because investments were not of the highest possible yield;

3. errors in prorating interest earned on residents' accounts;

4. failure to transfer residents' personal funds upon discharge;

5. general interest funds (comprised of undistributed interest) used for improper or unauthorized expenditures; and

6. failure to deposit federal benefit checks directly into an interest-bearing account.

Finally, recent accounts in the press have surfaced the nationwide concern of advocates that representative payee management of individuals' federal benefits are inadequately monitored.

In response to these concerns, and in accordance with the Commission's statutory responsibility to advise and assist the Governor in developing policies for improving the administration of mental hygiene facilities, the Commission undertook a systemic review of personal funds management practices of mental hygiene facilities. The Commission's review had five specific objectives:

1. to determine the adequacy of accounting practices for the management of personal funds;

2. to determine the appropriateness of investment practices for personal funds;

3. to determine whether interest accrued from residents' personal funds is distributed to their accounts;

4. to determine whether there were adequate controls to ensure the appropriateness of expenditures from residents' personal funds; and

5. to determine the timeliness of the transfer of residents' personal funds upon discharge from the facility.

The initial sample of the study included 28 facilities licensed or operated by the Department of Mental Hygiene. This randomly selected stratified sample included facilities of different sizes and auspices located across the State. It included large facilities like State psychiatric and developmental centers, medium-sized facilities like large community-based ICF-MRs and private schools for the mentally retarded, and small facilities like community residences and ten-bed community-based ICF-MRs. Of this sample of 28 facilities, only 24 facilities actually managed residents' personal funds. In the remaining 4 facilities, the residents managed their own personal funds. The review, therefore, considered 24 facilities' management practices for personal funds. A total of 162 residents' accounts in these 24 facilities were reviewed. In addition, a detailed audit of 33 accounts in 7 of these facilities was conducted to determine if residents actually received the supplies and services purchased with their personal funds and whether these purchases were in accordance with the residents' needs and desires.

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The findings of the Commission's review were, in many respects, heartening. Most significantly, the Commission noted strong accounting practices for personal funds among the facilities reviewed. Commission staff found comprehensive, up-to-date individual account ledgers for these funds at all facilities, with appropriate authorizing signatures for withdrawals. Withdrawals were also usually verifiable with receipts at all but two facilities. Also significant were the sound overall management procedures, granting residents ready access to their funds, restricting the commingling of personal funds with facility funds, and limiting the accruals of negative balances in residents' accounts wherever possible. Within the general standards of the SSA regulations and Social Services Law, the Commission's review showed that individual expenditures from residents' accounts were appropriate and that group purchases from these funds were made only on a very limited basis. Finally, the review indicated that, with the exception of four OMRDD licensed sample facilities, the sampled facilities were investing excess residents' personal funds in interest-bearing accounts.

Notwithstanding these significant areas of sound practice, the Commission noted several areas in need of improvement. First, a clear statement of fiduciary responsibility for mental hygiene facilities which manage residents' personal funds is

absent from State law and Federal SSA regulations. In addition to this absence of a clear statement of fiduciary responsibility, existing standards for personal funds management by mental hygiene facilities are scattered in various sections of State Mental Hygiene Law and regulations, Federal Social Security Administration regulations, State Social Services Law and regulations, and a myriad of State agencies' policies and procedures. Since none of these sources provides a comprehensive listing of even basic management standards and, in some instances, individual sources imply conflicting standards, it is hardly surprising that the policies and practices of mental hygiene residential facilities for personal funds management are variable, or that many mental hygiene providers, particularly OMRDD community-based providers, frankly express confusion with regard to their management responsibilities. Perhaps most important, these existing standards do not extend to all personal funds of residents managed by mental hygiene facilities, with most standards applying only to the personal allowance portion of clients' SSA and SSI benefits. The many other types of residents' funds--including sheltered employment earnings, gifts, and other retirement/pension benefits--often managed by a facility are not covered by many of these standards.

Both the absence of a clear statement of fiduciary responsibility and the confusion over existing management standards in law, regulation, and policies seriously limit the ability of

mentally disabled citizens, their families, or advocates to take legal recourse when they believe a facility may have mismanaged or misappropriated clients' funds. The Commission has also experienced this difficulty when its investigations of several facilities have surfaced mismanagement of personal funds. These instances have included unexplained deductions from clients' personal funds, use of personal funds for facility purposes, and incomplete accounting records for funds. Confounded by a lack of clarity of standards for management of personal funds, and stymied by the absent legal fiduciary responsibility of the facility, the Commission has been unable to pursue legal action in these cases.

Secondly, the review noted that existing guidelines for distributing earned interest to individual resident's accounts, stated in Mental Hygiene Law, permit a large proportion of the earned interest not to be returned to residents' accounts, but, instead, to be deposited in facilities' general interest funds "for the general benefit, comfort, and entertainment of the patients in the respective facilities." (MHL §33.07(d).) Four of the five sampled psychiatric centers and three of the four sampled developmental centers distributed less than two-thirds of the earned interest from pooled accounts to residents for the period reviewed. Three of these centers distributed less than half of the earned interest from pooled accounts.

As a result of these interest distribution guidelines, many State psychiatric and developmental centers have amassed large

"general interest" funds which, at the time of this review, typically exceeded $25,000 and ranged to amounts as high as $130,000. Extrapolating these figures from the nine sampled facilities to the State's 45 adult psychiatric and developmental centers, one can estimate that, at any one time, the total amount in State institutions' general interest funds exceeds $1.7 million. While the guidelines stated in Mental Hygiene Law for interest distribution have allowed these funds to exist, it appears these guidelines are inconsistent with Social Security Administration regulations which plainly state that earned interest from SSI and OASDI funds must be considered the property of the beneficiary (the resident) and not the representative payee. Indeed, recent audits by the Social Security Administration of personal funds management of both psychiatric and developmental centers stated that this interest distribution policy of New York State's mental hygiene institutions is no longer acceptable.*

Relatedly, further examination of the management and expenditures of general interest funds for the nine sample State facilities indicate loose management of these funds and that

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*Representative Payee Onsite Review Program, NYS Office of Mental Retardation and Developmental Disabilities, U.S. Department of Health, Education, and Welfare, March 1980, p. 20; Representative Payee Onsite Review Program, NYS Office of Mental Health, U.S. Department of Health, Education, and Welfare, 1978, p. 23.

general interest fund expenditures were largely at the discretion of the facility director and/or other senior facility administrators. Across the nine facilities, expenditures from these funds totaled $156,759 for a six-month period. While expenditure patterns from these funds were extremely variable among the sampled facilities, the review also evidenced many instances of expenditures for items/activities that one would have expected to be covered by the facility rate (e.g., program supplies and refurbishing the facility). Other times, these funds were expended for supplies and services, like spending money for indigent residents, which clearly did not benefit the residents' whose funds earned the interest. In still other cases, it was unclear whether the residents whose funds earned the interest would have approved the expenditures.

It was also clear from the Commission's review that residents, their families, and advocates had minimal oversight over expenditures from general interest funds. Typically, these decisions were handled informally by a committee comprised primarily of facility staff. Parents or boards of visitors members* served on these committees at only three of the nine facilities; and only three facilities, including two of the

*State Mental Hygiene Law (MHL §7.33 and §13.33) provides that the administration of each State psychiatric and developmental center shall be monitored by a board of visitors, comprised of lay advocates and family members, appointed by the Governor and confirmed by the Senate.

three which had parent or board of visitors involvement, had formal participation of residents on the committees. The general interest fund committees of facilities also operated under very broad guidelines for determining appropriate expenditures and, thus, exhibited a great deal of latitude in drawing up budgets for expenditures. Although these budgets were ultimately reviewed by Central Office of OMH or OMRDD and the State Division of the Budget, without specific guidelines for appropriate expenditures, these reviews tended to be perfunctory.

A fourth area noted to be in need of improvement was the investment practices of facilities for personal funds. Although 20 of the 24 facilities invested excess funds in interest-bearing accounts, 4 facilities still maintained all excess funds in non-interest-bearing checking accounts. Similarly, the excessively large balances exceeding $50,000 in low-yielding pooled interest-bearing savings accounts appeared to be poor practice. In another area, the variable interest rates earned by pooled certificate accounts suggested that some facilities may not have been maximizing the interest earned on pooled accounts.

Finally, there appear to be continuing barriers to the timely transfer of a resident's personal funds upon discharge from a State facility. One barrier to the timely transfer of personal funds upon discharge is the time consuming SSA procedure for reassigning the resident as direct beneficiary for

his/her SSI or OASDI funds or for designating a new representative payee. While this barrier is beyond the facility's control, the failure of facility staff to notify the Business Office of the resident's pending discharge as soon as possible compounds the delay in the transfer of funds. Especially in the case of developmental centers where discharges are planned a long time in advance, such timely notifications would greatly facilitate the process. Another factor which hindered the timely transfer of funds at one of the sampled psychiatric centers was the standard practice to place a three-month hold on a patient's funds to ensure that all charges had cleared the account.

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Based on these conclusions, the Commission, while recognizing that the vast majority of mental hygiene facilities carefully manage and safeguard residents' funds, urges that the following recommendations be implemented. These recommendations are necessary to correct systemic weaknesses in the management of these funds, especially among State institutions, and to provide a legal framework to allow mentally disabled citizens, their families, and advocates to pursue appropriate legal action when they believe personal funds have been mismanaged or misappropriated.

(1) Mental Hygiene Law should be amended to include a clear statement of the fiduciary responsibility of State-operated or -licensed mental hygiene facilities which serve as representative payees for residents' funds or which assume management responsibility over these funds. The amendment should pertain to all funds of the residents, so managed by the facility, regardless of the source of these funds. In addition, OMH and OMRDD should develop regulations stating comprehensive standards for this fiduciary responsibility of facilities. These standards should include, but not necessarily limited to:

- Resident's funds managed by a facility must be expended only for supplies and services which personally benefit the resident;
- Residents must have reasonably ready access to funds managed by a facility and, in all cases, must have access to these funds within regular working hours of the facility's operating agency;
- Facilities which serve as the representative payee for a resident's funds, must ensure that expenditures from a resident's funds are in accord with the resident's desires as they can best be ascertained and in his or her best interests;
- Facilities which manage a resident's funds, but do not serve as a representative payee for the resident, should assist the resident in making appropriate expenditures from his/her funds, consistent with the resident's needs and desires, to the extent possible;
- The State-mandated personal allowance portion of a resident's federal benefits managed by a facility must be limited to services and supplies which personally benefit the resident and which are <u>not</u> included in the facility rate;

- Residents' funds managed by a facility must not be commingled with facility funds;
- Individual account ledgers must be maintained for a resident's funds, identifying all withdrawals and deposits, and containing appropriate authorizing signatures. These ledgers must be available for review and auditing, upon request, by the resident, his/her legal guardian, OMH/OMRDD, and the Commission on Quality of Care;
- Where the resident is incapable of purchasing items, receipts must be maintained by the facility for all expenditures exceeding $5;
- A resident's funds managed by a facility, not required for his/her current needs (exceeding $150), must be maintained in preferred insured interest-bearing accounts, and all earned interest must become the property of the resident;
- Upon discharge of a resident, a facility must ensure the prompt transfer of the resident's funds to the resident or his/her new representative payee. If the designation of a new representative payee, or any other circumstances, delays the transfer of a resident's funds at the time of discharge, the facility is obliged to ensure that the resident has ready access to his/her funds. Such arrangements must be specified in the resident's discharge plan.

(2) OMH and OMRDD should revise State regulations governing all residential care modalities to include a comprehensive statement of the services and supplies to be provided by the facility out of the proceeds of its rate payment, and of the services and supplies which may be chargeable to the resident outside of the facility rate. Prior to admission to the facility, the resident or his or her guardian or representative payee should sign a contract based on these regulations, clearly

specifying the services and supplies included in the facility rate and those chargeable to the resident.

(3) OMH and OMRDD should take steps to discontinue general interest funds and to distribute all earned interest from pooled accounts to individual client accounts. Accordingly, §33.07 (c)(d) of Mental Hygiene Law, which state interest distribution guidelines for residents' funds and which allow the Commissioner to authorize directors to expend undistributed interest from residents' funds for the general benefit of facility residents, should be repealed. Recognizing, however, that a precipitous change in the interest distribution guidelines could have a deleterious effect on resident care and, particularly, on indigent patients of OMH facilities, the Commission recommends that in the course of the coming year OMH and OMRDD develop alternate means of funding services and supplies now funded by general interest funds and within a one-year period discontinue the practice of maintaining general interest funds.

(4) Pending the abolition of general interest funds, revised and more comprehensive policies and procedures should be issued and enforced governing the management of general interest funds. At a minimum, these policies and procedures should:

- Forbid expenditures for supplies and services included in the basic facility rate or for the general upkeep and renovation of the facility,
- Allow expenditures from the general interest funds only for services and supplies which directly benefit the residents, and disallow expenditures for services and supplies which are included in the facility rate; and
- Ensure a viable role for boards of visitors, other family advocacy groups, and residents in decision making over the expenditures from general interest funds.

(5) OMH and OMRDD should issue guidelines to all licensed and operated facilities for the investment of excess funds in interest-bearing accounts. These guidelines should ensure that excess funds are invested in interest-bearing accounts, and, also, that these investments provide for the maximization of earned interest to client accounts.

(6) OMH and OMRDD should reinforce the requirement that all licensed facilities be required to maintain receipts of personal fund expenditures. During routine certification reviews, OMH and OMRDD should monitor compliance with this requirement.

(7) OMH and OMRDD should review and revise the procedure of State facilities to allow for the more timely transfer of a resident's funds upon discharge from a facility. These revised procedures should ensure that there are no mandated delays of more than thirty (30) days for the release of such funds. They should also require

the immediate notification of the Business Office of a resident's pending discharge, and the immediate negotiations with the Social Security Administration to re-evaluate the resident as direct beneficiary of his or her benefits, or to establish a new representative payee.

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A draft copy of this report and its recommendations has been shared with the Office of Mental Health, the Office of Mental Retardation and Developmental Disabilities, and the State Department of Social Services. These agencies' written responses to the draft report are included in Appendix A.

CHAPTER I

Overview of the Study

At any one time, over $35 million in patients'/clients' personal funds are under the direct management of the State's nearly 2,000 mental hygiene residential facilities. A single large residential facility, like a State psychiatric or developmental center, may manage as much as $1 million in residents' funds at any one time, while it is not unusual for small ten-bed community residences to be managing up to $3,000 in clients' personal funds.

These funds, managed by mental hygiene facilities, may come from the State-mandated personal allowance portions of the residents' Supplemental Security Income (SSI) or Old Age Survivors or Disability Insurance (OASDI). The residents' personal funds may also include earned income from sheltered or other employment, gifts from friends or relatives, veterans benefits, railroad retirement benefits, or other pensions.

The actual amount of personal funds which accrues to residents varies depending on their living situation and benefits. Some may receive only the State-mandated personal allowances from SSI or OASDI. Others may also have other sources of personal funds income. In addition, the State-mandated personal allowance rate depends on the type of residential facility in

which a client lives. As shown in Table 1 , these amounts range from $25 a month for an SSI eligible resident of an intermediate care facility for the mentally retarded (ICF-MR), to $58 a month for an SSI recipient in an Office of Mental Health (OMH) community residence.

Management of Personal Funds

Residents living in a mental hygiene facility may manage their own personal funds. Alternately, and more typically in most facilities, the facility plays a significant role in managing a resident's personal funds. The facility's authority to manage a resident's personal funds may be formally conferred by designation of the facility as the resident's "representative payee" for SSI or OASDI benefits. Although it is the stated policy of the Social Security Administration (SSA) that every beneficiary has the right to manage his or her own benefits, the SSA regulations also provide that some beneficiaries, due to mental or physical condition or due to youth, may be unable to do so [20 CFR §§404.2001(b) and 416.601(b)].

In these latter cases, a representative payee will be appointed to manage a beneficiary's benefits. This representative payee may be the facility director. In other cases, SSA may appoint a relative or a friend as the representative payee or may decide that, despite the resident's mental disability, he or she is capable of managing the benefits. In these cases, the facility may still play a significant role in managing a

Table 1. PERSONAL ALLOWANCE RATES FOR OASDI AND SSI BY TYPE OF MENTAL HYGIENE FACILITY

Types of facilities	OASDI[a]	SSI[a]
OMRDD FACILITIES		
ICF-MRs	$28.50	$25.00
Community residences	55.00	55.00
Private schools for the mentally retarded	30.00	30.00
OMH FACILITIES		
Psychiatric centers	28.50	25.00[b]
Community residences	20.00	58.00

[a]Certain residents may be eligible for both OASDI and SSI benefits.

[b]Only available for patients under 22 years of age or 65 years of age and over.

resident's personal funds if the resident or his or her representative payee asks the facility to manage these funds. Indeed, New York State Social Services Law provides that each residential facility shall, for each resident, offer to establish a separate account for the personal allowance [SSL §131-o(2)].

Standards for the management of a resident's personal funds can be found in Social Security Administration regulations at the Federal level, and Social Services Law and regulations, and Mental Hygiene law, regulations, and policies and procedures at the State level. The jurisdiction for each of these separate sets of standards is different and overlapping. SSA regulations provide standards for the representative payee's responsibilities and duties for total SSI and OASDI funds. Social Services Law and regulations govern the management of the personal allowance portion of SSI and OASDI benefits for residents of some, but not all, mental hygiene residential facilities. The mental hygiene facilities technically covered by Social Services Law and regulations include licensed community residences, private schools for the mentally retarded, and family care homes. At the same time, both the Office of Mental Health and the Office of Mental Retardation and Developmental Disabilities have applied Social Services standards to their other facilities, including psychiatric and developmental centers and community-based intermediate care facilities for the mentally retarded.

Mental Hygiene Law contains only one brief reference to personal funds. Section 33.07, "Care and custody of the personal property of patients," affirms patients' rights to retain their personal property, and states that personal property taken into temporary custody for the patient's protection shall be used for the support or benefit of the patient or shall be conserved for his benefit. This section of law also clarifies that if a patient is transferred, his personal funds shall be transferred with him. The final issue addressed in law is the distribution of interest to client accounts. The law states, "Any interest on money received and held for the patient in multiples of one hundred dollars shall be the property of the individual patient and shall not accrue for the general welfare of all patients in department facilities." [MHL §33.07(c), emphasis added.] The law adds that the Commissioner may authorize the directors of department facilities to expend the interest accrued on monies of patients which are not accounted for by the above interest distribution guideline.

Mental Hygiene regulations also contain only brief references to the management of personal funds. One reference basically restates the section of Mental Hygiene Law discussed above [14 NYCRR 15.1]. The regulations governing community residences for the mentally ill specify that a minimum of $50 in unearned income from the resident's SSI benefits and other

sources must be set aside for each resident's personal allowance [14 NYCRR 586.5]. Another subsection of regulations governing ICF-MRs briefly identifies record keeping requirements for personal funds in these facilities, including the requirement for the maintenance of receipts.

In addition to the above references, both OMH and OMRDD have numerous pages of policies and procedures governing the technical accounting practices for personal funds in State psychiatric and developmental centers. These procedures cover how account records should be maintained, how transactions should be made and recorded, and the requirement for maintaining receipts, among many other accounting details. The Institution Business Manual also outlines the specific interest distribution guidelines pursuant to §33.07(c) of the Mental Hygiene Law, discussed above. (Recently, OMH has revised this Institution Business Manual with publication of a new Administrative Support Procedures Manual.)

In short, Mental Hygiene Law and regulations do not contain any comprehensive reference to the management of personal funds. Simultaneously, the numerous pages of OMH and OMRDD policies and procedures focus primarily on technical accounting details and also fail to provide comprehensive basic guidelines for the management of personal funds. As a result of these gaps in Mental Hygiene Law, regulations, and policies and procedures, the legal base for management guidelines for personal funds in

mental hygiene facilities remains the SSA regulations and New York State Social Services Law and regulations. It is important to clarify the essence of this legal base.

SSA regulations spell out four responsibilities of a representative payee:

> (1) To use the payments he or she received only for the use and benefit of the beneficiary in a manner and for the purposes he or she determines under the guidelines of SSA to be in the best interests of the beneficiary;
>
> (2) To notify SSA of any event that will affect the amount of benefits the beneficiary receives or the right of the beneficiary to receive benefits;
>
> (3) To submit to SSA, upon request, a written report accounting for the benefits received; and
>
> (4) To notify SSA of any change in the representative payee's circumstances that would affect the performance of the payee's responsibilities [20 CFR §§404.2035 and 416.635].

These regulations further state that a beneficiary's SSI and OASDI benefits are to be used for current maintenance. They elaborate that current maintenance may include institutional (residential) care and that, in these cases, expenditures can also be made which will aid in the beneficiary's recovery or release from the institution. The representative payee may also use the beneficiary's benefits, <u>if all current maintenance needs are met</u>, to support legal dependents or to meet claims from creditors [20 CFR §§404.2040(b) and 416.640(b)]. (Emphasis added.)

Federal regulations also require that if payments are not needed for the above purposes, the representative payee must invest them on behalf of the beneficiary. The regulations state

that "any investment must show clearly that the payee holds the property in trust for the beneficiary" [20 CFR §§404.2045(a) and 416.645(a)]. Preferred investments for excess funds are U.S. Savings Bonds and deposits in an interest-or dividend-bearing account in a bank, trust company, credit union, or savings and loan association which is insured under either Federal or State law. The regulations clarify that the interest or dividends which result from an investment are the property of the beneficiary and may not be considered the property of the representative payee [20 CFR §§404.2045(c) and 416.645(c)]. Significantly, the interest distribution guideline stated in Mental Hygiene Law and clarified in the department's policies and procedures is not consistent with this provision. According to this SSA regulation, all interest must accrue to the beneficiary, while Mental Hygiene Law allows facilities to distribute only a portion of this interest using a specified interest distribution guideline, and for the Commissioner to authorize facility directors to expend the remaining interest "for the general benefit, comfort, and entertainment of the patients in the respective facilities." [MHL §33.07(c)(d).] (This issue is discussed later in the report; see pp. 36-41.)

Finally, in terms of liability for misuse of benefits by or a means of recouping such monies from representative payees, SSA regulations are unclear. The regulations unequivocally disclaim that SSA has any liability to the beneficiary beyond making the

correct payment to a representative payee. Yet, the same regulation equivocally states that the payee "may" be liable for misuse without further specification of the legal basis, the extent, potential penalties, or a procedure for recoupment of misspent funds of a beneficiary. Recent federal and state court decisions have also cited this deficiency in federal SSA regulations.*

Social Services Law, directed only toward the management of the State-mandated personal allowance portion of the SSI or OASDI benefits by certain licensed mental hygiene facilities, identified above, further elaborates on the facility's management responsibilities over this portion of a resident's personal funds. According to law, the facility must provide a statement upon request of the resident, or at least quarterly, setting forth deposits and withdrawals, and the current balance of the account. The facility must also guarantee that the residents' personal allowance funds are not used for supplies or services covered by law, regulation, or agreement in the facility rate. The facility is also required to specify in writing its agreement with the residents to manage their personal allowance and to ensure that personal allowance funds are not mingled with

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*See Abrams v. Schweiker, 543 F. Supp. 589 (N.D. Ga. 1982); Jordan v. Schweiker, 14 Clearinghouse Review 27, 212 (December 1982) (pending litigation); and Andrews v. Mensh, 100 Misc. 2d 79, 418 NYS 2d 597 (Sup. Ct. 1979).

facility funds. Social Services Law also clarifies that OMH and OMRDD, as agencies with supervisory responsibilities over residential facilities, "shall at the time of any inspection of such a facility inquire into the furnishing and accounting for resident personal allowances, and shall report any violations or suspected violations of this section to the department" [SSL §131-o(5)].

Social Services Law further states that a resident may seek punitive damages if a facility fails to comply with the provision of the law.

> Any individual who has not received or been able to control personal allowance funds to the extent and in the manner required by this section may maintain an action in his own behalf for recovery of any such funds, and upon a showing that the funds were intentionally misappropriated or withheld to other than the intended use, for recovery of additional punitive damages in an amount equal to twice the amount misappropriated or withheld. . . . [SSL §131-o(3)].

Another section of Social Services Law adds, that in addition to any damages or civil penalties, any person who intentionally withholds a resident's personal allowance, or who demands, beneficially receives, or contracts for payment of all or any part of a resident's personal allowance in satisfaction of the facility rate for supplies and services shall be guilty of a Class A misdemeanor. Any person who commingles, borrows from, or pledges any personal allowance funds required to be held in a separate account shall also be guilty of a Class A misdemeanor

[SSL §130-o(9)]. It should be noted that this facility fiduciary responsibility stated in State Social Services Law applies only to the personal allowance portion of residents' SSI and OASDI benefits and not to other funds managed by the facility.

Together Federal SSA regulations and Social Services Law and regulations serve as the basic legal standards for the management of personal funds derived from SSI and OASDI benefits. Briefly stated, these standards include requirements that:

(1) Personal funds are to be used to benefit the beneficiary;

(2) Representative payees or facilities managing a resident's personal allowance must keep accurate, separate accounts of these funds for each resident;

(3) Personal funds may not be commingled with facility funds;

(4) State-mandated personal allowance portions of a resident's SSI or OASDI benefits may not be used for supplies or services covered by the facility's customary charges; and

(5) Excess personal funds must be invested in preferred, insured interest-bearing accounts and the interest accrued must be considered the property of the beneficiary.

Within these general requirements, facilities have considerable discretion, however, on how to spend a resident's personal funds. This discretion is compounded by the fact that most facilities do not have a written list of supplies and

services included in the facility rate.* Therefore, most facilities are guided solely by their interpretation of the general requirement that personal funds are to be used for the benefit of the beneficiary. It is also important to emphasize that the provisions of State Social Services law and regulations, regulations, apply only to the personal allowance portion of a resident's SSI or OASDI benefits and not to other resident funds and that these provisions are legally binding for only some types of mental hygiene facilities, notably, not including State psychiatric and developmental centers or community-based ICF-MRs.

Rationale and Purpose of the Study

The purpose of this study was to examine the adequacy of management practices over personal funds in residential facilities for the mentally disabled. The study was initiated in response to a number of complaints to this Commission from parents and advocates regarding the management of personal funds. It was also spurred by the findings of several Commission investigations into more generalized complaints about the quality of care which revealed deficiencies in personal funds management. Finally, the initiation of the study reflected the repeated

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*An earlier Commission report, Profit vs Care: A Review of the Greenwood Rehabilitation Center, Inc. (March 1981), also noted the failure of this private school for the mentally retarded to specify the supplies and services to be provided to residents in the facility rate.

criticism that the State Comptroller has leveled at State psychiatric and developmental centers in the past several years for the management of personal funds.* In reviewing these Audit and Control reports, the Commission noted several areas of recurring problems. These included:

(1) Disbursements of personal funds not supported by proper authorizing signatures or sales slips or invoices;

(2) Earned interest from personal funds not maximized due to excessive balances in non-interest-bearing checking accounts or because investments were not of the highest possible yield;

(3) Errors in prorating interest earned on residents' accounts;

(4) Failure to transfer residents' personal funds upon discharge;

(5) General interest fund (comprised of undistributed interest) used for improper or unauthorized expenditures; and

(6) Failure to deposit Federal benefit checks directly into an interest-bearing account.

These recurring deficiencies, together with the findings of the Commission's investigations, highlighted a need for a general review of the management practices over personal funds.

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*See, for example, Financial and Operating Practices, Central Islip Psychiatric Center (Audit Report NY-ST-13-77); Financial and Related Practices, Bronx Developmental Center (Audit Report NY-ST-16-80); Financial and Related Practices, Kingsboro Psychiatric Center (Audit Report NY-ST-11-78); Financial and Related Practices, Creedmoor Psychiatric Center (Audit Report NY-ST-1-79); Financial and Related Practices, Middletown Psychiatric Center (Audit Report AL-ST-24-80); Financial and Related Practices Hudson River Psychiatric Center (Audit Report AL-ST-1-77).

The Commission's review had five specific objectives:

(1) to determine the adequacy of the accounting practices for the management of personal funds;

(2) to determine the appropriateness of investment practices for personal funds;

(3) to determine whether interest accrued from residents' personal funds is distributed to their accounts;

(4) to determine whether there were adequate controls to ensure the appropriateness of expenditures from residents' personal funds; and

(5) to determine the timeliness of the transfer of residents' personal funds upon discharge from the facility.

The review also included a selective audit of residents' accounts to determine if the residents actually received the services and supplies purchased with their personal funds and to determine if these purchases were in accordance with the residents' needs and desires.

Methodology for the Study

The initial sample for the study included 28 facilities licensed or operated by the Department of Mental Hygiene. This stratified sample included facilities of different sizes and auspices located across the State. Five psychiatric centers, five OMH licensed community residences, four developmental centers, four private schools for the mentally retarded, four OMRDD licensed community residences, four small community-based ICF-MRs, and two large community-based ICF-MRs were included in the sample. With the exception of the large ICF-MRs, one

facility of each type was selected from each OMH or OMRDD region, respectively. Due to the smaller number of large ICF-MRs (only ten statewide) and their concentration in the downstate area, only two large ICF-MRs were included in the study.

Of this sample of 28 facilities, only 24 facilities actually managed residents' personal funds. In the remaining four facilities, three OMH community residences and one small ICF-MR, the residents managed their own funds. The review, therefore, considered 24 facilities' management practices for personal funds.

Data collection for the study was accomplished during a one-day site visit to each facility, a one- or two-day site visit to selective sample facilities to conduct the follow-up audit, and telephone interviews with facility staff. During the one-day site visit, Commission staff:

- Interviewed the facility's business manager or other designated staff to obtain information on the facility's management practices for personal funds;
- Reviewed a random sample of current accounts to ascertain the adequacy of accounting practices;
- Reviewed a sample of discharged accounts to determine the timeliness of the transfer of funds upon the resident's discharge;
- Examined the facility's investment and interest distribution practices for residents' personal funds; and
- Reviewed individual and group expenditures from residents' accounts and the general interest fund.

The site visits to conduct the follow-up audits entailed an in-depth examination of selective account ledgers and receipts; interviews with the primary facility staff person, the resident, and, where appropriate, the next of kin; observation of the clients' possessions; and closing interviews with facility staff.

Follow-up telephone interviews were also held with the business manager or other designated staff to obtain more information on the management of general interest funds for those facilities which maintained such funds. All data collected were recorded on a uniform study instrument.

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The findings of the Commission's review are reported in Chapter II. Chapter III presents the review's conclusion and recommendations.

CHAPTER II

Management Practices for Personal Funds

The Commission staff reviewed the management practices for personal funds employed by 24 of the 28 sampled facilities which managed residents' funds. The remaining four facilities selected in the Commission's random sample reported that they did not manage any residents' funds. Seventeen (17) of the 24 sampled facilities reviewed served as representative payees for more than half of their residents. All but one of these 24 facilities actually managed the funds of more than half of their residents.

The findings of the Commission's review of personal funds management practices are reported in this Chapter in six sub-sections:

- Overall Management and Accounting Practices
- Management of Individual Accounts
- Investment Practices
- Distribution of Interest
- Appropriateness of Expenditures from General Interest Funds
- Timeliness of the Transfer of Residents' Funds Upon Discharge

Overall Management and Accounting Practices

Review of the 162 sampled accounts in the 24 sampled facilities revealed generally sound overall accounting practices.

Many of the deficiencies cited in previous Audit and Control reports either were not noted at all or were noted considerably less often than they were cited by the Comptroller. The review found that all facilities had procedures for residents' access to funds and that these procedures generally allowed residents to access their funds within 24 hours. The process of requesting funds, whether through written or verbal requests, was reportedly almost always initiated by the client. The only exception to this policy was the situation where clients were too low functioning to make such requests. In these cases, the staff made purchases for clients based on their needs. This practice occurred primarily in facilities serving persons with severe and profound mental retardation, including all four developmental centers, two private schools, one small ICF-MR, and both large ICF-MRs.

All facilities also maintained residents' personal funds in separate accounts, assuring that these funds were not commingled with facility funds. Accurate records of the names of the residents' representative payees were also always maintained. Finally, the Commission staff found the individual ledgers of the reviewed accounts to be up-to-date. The ledgers always included the date, amount, and source of deposits, as well as the date, amount, and type of expenditures. Staff also found that withdrawals were always supported by authorizing signatures on the ledger or on the withdrawal form.

The maintenance of receipts to verify purchases was also the general practice. Withdrawals from residents' personal funds were also always verifiable with receipts at 15 of the 24 facilities. These 15 facilities were the larger facilities in the study's sample, the psychiatric centers, the developmental centers, the private schools, and the large ICF-MRs. They were usually present (at least 80 percent of the time) at 7 facilities. At the 2 remaining facilities, one OMH and one OMRDD licensed community residence, receipts were, however, only maintained for major or unusual purchases.

Only 5 of the 162 sampled accounts showed negative balances. These negative balances were noted at only four facilities: one private school for the mentally retarded, two OMRDD licensed community residences, and one large ICF-MR. One of the negative balances was negligible ($2.98), while the remaining four resulted from actions beyond the control of the facility. Two of the larger deficits had resulted because clients had been denied SSI eligibility. One other large deficit resulted because the father of the client, who served as representative payee, would not reimburse the agency for the client's expenses from his SSI funds. Another significant deficit had resulted due to a large medical bill which the resident had upon admission to the facility. In accordance with SSA regulations, only small amounts of the resident's personal allowance not needed for current maintenance were being applied to pay off this bill each month.

In summary, all facilities had adequate procedures allowing residents' access to funds and appropriate practices for maintaining separate, up-to-date ledgers for residents' accounts. The records reviewed also showed that accurate records were maintained of the names of the residents' representative payee, that authorizing signatures for withdrawals were present, and that care had been taken to avoid negative balances in residents' accounts whenever possible. The only area of accounting practices which evidenced a need for improvement was the maintenance of receipts for expenditures. While this was a relatively small problem at seven facilities, two facilities rarely kept such receipts to verify expenditures.

Management of Individual Accounts

The Commission's review also included an examination of the appropriateness of the management of individual accounts. This examination included a review of the types of expenditures from 162 randomly selected accounts from the 24 facilities, as well as a selective audit review of 33 accounts from 7 of the 24 facilities. The purpose of the general review of the 162 accounts was to determine the appropriateness of individual and group purchases from individual accounts. The selective audit of 33 accounts allowed a more in-depth accounting of whether residents actually received the supplies and services purchased with their personal funds and whether these purchases were consistent with the residents' needs and desires.

This review had one important limitation. Due to the very general guidelines regarding appropriate expenditure from these funds delineated in Federal SSA regulations, which require only that these funds be spent for the benefit of the beneficiary, it is difficult to declare definitely what is or is not an appropriate expenditure. The requirements of Social Services Law, which identify only those expenditures not included in the facility rate as appropriate for personal allowance funds, are more restrictive. At the same time, it was difficult to evaluate compliance with this requirement since there is no parallel requirement that facilities specify in writing the services and supplies covered by the facility rate. Only 3 of the sampled 28 facilities' procedures contained this information in their written procedures. As a result of this limitation, the Commission's review of the 162 accounts was restricted to the apparent appropriateness of the expenditures in terms of the residents' needs and their exclusion from the basic facility rate. In the cases of the 33 accounts selected for a more in-depth audit, Commission staff also reviewed residents' treatment plans when expenditures appeared inappropriate for their needs.

* General Review Findings

The review of individual expenditures from residents' accounts revealed that there were few questionable expenditures. In all facilities, spending money for use in vending machines, community stores, cigarettes, and other small, miscellaneous personal items was recorded in all accounts. Other commonly

recorded expenditures in at least half of the sampled facilities were clothing and recreation. Expenditures for personal care (haircuts, etc.), gifts for others, and meals off-site were also commonly cited in the accounts of 40 percent of the facilities. Review of the accounts in the sampled facilities also revealed that the pattern of expenditures from individual accounts within a facility was generally consistent. More clearly, most residents' accounts within the same facility showed similar expenditures. It was rare to find unique expenditures among residents within the same facility, and when these were noted (e.g., long distance phone calls, stereo equipment) they always appeared reasonable based on the facility's determination of the residents' needs.

The few questionable expenditures were generally for items or services which most facilities included in their basic facility rate. These expenditures were noted in only a few facilities and were found only in OMH and OMRDD licensed (versus operated) facilities. For example, one private school for the mentally retarded charged accounts for wet laundry, and two schools charged accounts for dry cleaning. One other private school located in a rural area, where it is allegedly difficult to access Medicaid providers, commonly charged residents' accounts for medical care expenses. One OMH community residence charged residents for all local telephone calls which had to be placed using a pay phone. Two OMRDD licensed community

residences billed residents' accounts for routine transportation to day programs.

It should be emphasized that these expenditures were not necessarily inappropriate. All were clearly for the benefit of the resident. They are only questionable in that most facilities included the costs of these items and services in the facility rate and that they, thereby, were not usually chargeable to a resident's personal funds.

The review of group purchases from residents' personal funds revealed that only one-fourth of the 24 sampled facilities had expended personal funds for group purchases during the past year. It also revealed that even among these 6 facilities there were generally few group purchases and that most such expenditures funded communal recreational and entertainment activities. At one psychiatric center, residents shared in the cost of a party. At one developmental center, residents shared in group purchases of grooming supplies and Christmas and building decorations. Among three private schools, group purchases were made for handbells for group music, donations for a music festival held by the agency, canteen costs, a party, and a special agency holiday fund. One OMRDD community residence made group purchases from residents' funds for birthday gifts, cable TV, and a Christmas tree.

Like the individual expenditures from resident funds, the Commission found that the group purchases appeared to be for the

general benefit of the residents. At the same time, the degree to which residents participated in decision making for group purchases was not always apparent and, in some cases, it appeared such decisions were made primarily by facility staff. It also appeared that some group purchases (e.g., grooming supplies, building decorations, handbells for music) were for items which could have reasonably been considered for purchase out of the facility's operating expenditures. It was noteworthy, however, that the practice of making group purchases, which could potentially limit a resident's autonomy over the expenditure of his or her personal funds, was very limited.

• Audit Findings

Although it was not possible for the Commission to audit resident accounts at each of the facilities included in the initial sample due to a shortage of staff resources, accounts were audited at one selected sampled facility in each of the seven residential modalities included in the original sample (i.e., psychiatric center, OMH community residence, developmental center, private school for the mentally retarded, OMRDD community residence, small ICF/MR, and large ICF/MR). The facility with the largest number of clients and/or the greatest amount of personal funds within each modality was selected for the follow-up audit sample.

Six clients'/patients' accounts were selected for each sample facility with 50 or more clients/patients. Three

clients'/patients' accounts were selected for each sample facility with fewer than 50 clients/patients. The sampled accounts were selected randomly; however, any randomly selected accounts not meeting the following criteria were rejected from the sample and another account was randomly selected:

- the patient/client must have resided in the facility for at least three months; and
- in the three-month period, the patient/client must have expended at least $60 on three purchases, excluding spending money.

A total of 33 randomly selected accounts were audited.

The audits, conducted on site at the sample facilities, entailed the following activities:

- identifying the services/supplies purchased by the resident in the preceding three months (type of services/supplies by amount of the expenditure);
- interviewing the resident, if possible, to verify receipt of services/supplies purchased, to evaluate the appropriateness of expenditures, and to determine the resident's role in expenditure decisions;
- examining the reportedly purchased items to verify their actual receipt by the resident and to evaluate the appropriateness of expenditures;
- when necessary and appropriate, interviewing next of kin to verify the resident's receipt and appropriateness of supplies and services purchased with personal funds;
- conducting follow-up interviews with facility/ward staff to obtain further information about expenditures not verified and/or about apparently inappropriate expenditures; and

- interviewing facility management to determine how personal funds expenditure decisions are made, which levels of staff are involved, and the role/policies of management in reviewing the appropriateness of expenditures.

With the exception of a small number of accounts audited, the Commission's review indicated that:

- residents did receive the services and supplies purchased with their personal funds (33 of the 33 accounts);
- personal funds purchases were generally appropriate for residents' needs and desires (31 of the 33 accounts);
- residents' basic needs for clothing and personal hygiene supplies were addressed through expenditures from their personal funds (33 of the 33 accounts);
- those residents who were capable of handling their own funds did make their own decisions about expenditures from their personal funds (33 of the 33 accounts);
- facilities' management practices for reviewing the appropriateness of expenditures from residents' personal funds were adequate (32 of the 33 accounts).

Significantly, the few instances of deficiencies noted in the audit were primarily found at one State psychiatric center. Of the seven generic deficiencies, discussed below, five were found at this center, one in a large community-based ICF-MR, and one in a private school for the mentally retarded.

Among the 33 accounts audited, Commission staff were unable to verify the receipt of purchase in 7 accounts. It should be emphasized, however, that in all of these cases facility staff indicated that the residents had received the purchased goods,

but that these goods had been misplaced, stolen, or discarded shortly after they were received. These cases included:

- A resident of a psychiatric center who had expended $894.55 during the review period for charges at a local department store, shopping trips, and clothing. Although the resident would not allow Commission staff to open her dresser, the nurse on duty stated that the resident was chronically short of clothing as it was stolen, misplaced, etc. Other staff confirmed that the resident loses clothing, radios, etc., leaving them around the ward or giving them away.

- Another resident of the same psychiatric center also expended $190.72 for clothing during the review period, but appeared to be wearing all the clothing he owned. The resident's social worker confirmed that the clothing was purchased by a Compeer volunteer* and that the clothing did make it to the ward but then disappeared; and

- Six (6) residents of a large community-based ICF-MR each purchased 12 pairs of underwear during the review period; however, only one client appeared to have any underwear. Reportedly, the underwear was discarded by residents and/or staff when it became soiled and the residents returned to wearing diapers.

In all of these cases, it appears that the residents did initially receive the goods purchased by their personal funds, but that there was lax protection of these purchases once they were obtained by the residents. Thus, while these two facilities appeared to be technically compliant with their responsibilities as representative payees for residents' personal funds, they were not fulfilling their responsibilities to protect residents' personal belongings.

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*Compeer is a volunteer program which assigns a lay volunteer to psychiatric center patients to assist them in acquiring socialization skills and in making the transition from inpatient care to community living.

In terms of the appropriateness of personal funds expenditures from the 33 audited accounts, only two instances of questionable expenditures were noted. In both of these instances, cited below, the facility was the representative payee for the clients' SSI funds and appeared to approve purchases inconsistent with the resident's needs.

- One resident at a State psychiatric center was allowed to withdraw $20 to $50 every two to four days which the staff acknowledged she spent on "junk food," although the resident was seriously overweight and on a reducing diet.

- A resident of a private school for the mentally retarded was routinely charged a $6 monthly canteen fee for personal hygiene supplies, although the client purchased all of her own personal hygiene supplies and did not benefit from the canteen fee.

Only at one audited facility, a State psychiatric center, were instances of inadequate controls over expenditures from personal funds accounts noted. At this center, contrary to the center's procedures, eight cash withdrawals from one resident totaling $200 were ordered, drawn by, and approved by the same staff person. In addition, at this same center a check for $403 for clothing made payable to a resident and then was endorsed by the resident and made payable to the same staff person cited above, who subsequently cashed it and held the money in her pocketbook for the resident. (At the Commission's request, facility officials have reviewed these situations and have reported that corrective actions have been taken.)

In summary, the audit of 33 randomly selected accounts at 7 of the 24 sample facilities which managed residents' funds revealed few instances of deficiencies and that, among these few noted deficiencies, most occurred at one State psychiatric center.

Investment Practices

SSA regulations, as stated previously, require that excess SSI or OASDI funds should be invested in interest-bearing accounts for the beneficiary. The Commission reviewed the investment practices of the 24 sampled facilities to examine compliance with this regulatory standard. Commission staff also reviewed the facilities' investment practices to determine if they provided clients with maximization of the interest to be earned on their excess funds.

At the time of the Commission's review, $7,302,682 in personal funds were held by the 24 sampled facilities. The largest percentage of these funds, 95 percent, was maintained by the 9 sampled State psychiatric and developmental centers, which held $3,596,758 and $3,308,536 in personal funds, respectively. Only $397,388 was maintained by all the 15 voluntary and private-operated facilities included in the sample. (See Table 2.)

The review indicated that 19 of the 24 sampled facilities maintained interest-bearing accounts for investing all or some of their personal funds. Eight (8) of these 19 facilities invested at least 98 percent of the personal funds held in

Table 2. TOTAL AMOUNT OF PERSONAL FUNDS MAINTAINED BY SAMPLED FACILITIES AT TIME OF COMMISSION'S REVIEW

Type of facilities	Amount
Total	$7,302,682.03
OMH FACILITIES	
Psychiatric centers	
Center A	367,967.41
Center B	1,078,074.58
Center C	361,389.06
Center D	698,719.47
Center E	1,090,607.69
Community residences	
Residence A[a]	-
Residence B	3,964.46
Residence C[a]	-
Residence D	73.00
Residence E[a]	-
OMRDD FACILITIES	
Developmental centers	
Center 1	732,168.08
Center 2	248,590.69
Center 3	457,451.29
Center 4	1,870,326.00
Community residences	
Residence 1	13,145.13
Residence 2	3,743.27
Residence 3	2,480.71
Residence 4	200.00
Private schools	
School 1	24,287.14
School 2	58,224.45
School 3	13,640.12
School 4	2,776.13
Small ICF-MRs	
Small ICF-MR 1	224.81
Small ICF-MR 2[a]	-
Small ICF-MR 3	264.00
Small ICF-MR 4	1,726.57
Large ICF-MRs	
Large ICF-MR 1	13,982.26
Large ICF-MR 2	258,655.71

[a]These sampled facilities did not manage any clients' funds.

interest-bearing accounts. (See Table 3.) Across all 24 of the sampled facilities, 94 percent or $6,845,831 of the total $7,302,682 of personal funds held, was invested in interest-bearing accounts. The only exceptions to the tendency to invest funds in interest-bearing accounts were noted at 5 facilities: three private schools for the mentally retarded, one OMRDD licensed community residence, and one OMH licensed community residence. However, in the case of the OMH licensed community residence, the amount of funds maintained (only $73) did not warrant such investments. The remaining four facilities which did not invest funds in interest-bearing accounts (all OMRDD licensed facilities) chose instead to invest funds in non-interest-bearing pooled checking accounts. These accounts ranged in amounts from $58,224 to $2,776.

The 19 sampled facilities which utilized interest-bearing accounts used a variety of different types of accounts. In addition, most facilities relied on a combination of types of accounts. Fifty-eight (58) percent of these facilities used pooled certificate accounts; 53 percent used pooled savings accounts; and 32 percent used individual savings accounts. Only one facility, a developmental center, used a pooled interest-bearing checking account. As shown in Table 4, pooled certificate and savings accounts were utilized almost exclusively by the larger facilities (e.g., psychiatric and developmental centers and large ICF-MRs). Smaller facilities, like community

Table 3. PERCENT OF PERSONAL FUNDS MAINTAINED IN INTEREST-BEARING ACCOUNTS

Type of facilities	Percent
Total	94
OMH FACILITIES	
Psychiatric centers	
Center A	72
Center B	99
Center C	98
Center D	99
Center E	95
Community residences	
Residence A[a]	-
Residence B[a]	87
Residence C[a]	-
Residence D[a]	0
Residence E[a]	-
OMRDD FACILITIES	
Developmental centers	
Center 1	98
Center 2	80
Center 3	90
Center 4	96
Community residences	
Residence 1	0
Residence 2	100
Residence 3	95
Residence 4	100
Private schools	
School 1	0
School 2	0
School 3	67
School 4	0
Small ICF-MRs	
Small ICF-MR 1[b]	N.A.
Small ICF-MR 2[a]	-
Small ICF-MR 3[b]	N.A.
Small ICF-MR 4	90
Large ICF-MRs	
Large ICF-MR 1	100
Large ICF-MR 2	98

[a]These facilities did not manage any clients' funds.

[b]These facilities did maintain individual interest-bearing savings accounts for clients, but the amounts of these accounts, in proportion to the total funds maintained, were not available to Commission staff reviewers.

Table 4: NUMBER OF SAMPLED FACILITIES INVESTING FUNDS IN INTEREST-BEARING ACCOUNTS BY TYPE OF ACCOUNT

Type of facility	Pooled certificate	Pooled savings	Individual savings	Pooled checking
OMH FACILITIES (n=6)				
Psychiatric centers (n=5)	5	5	0	0
Community residences (n=1)	0	0	1	0
OMRDD FACILITIES (n=13)				
Developmental centers (n=4)	4	3	0	1
Community residences (n=3)	0	0	3	0
Private schools (n=1)	0	1	0	0
Small ICF-MRs (n=3)	0	0	3	0
Large ICF-MRs (n=2)	1	2	0	0

NOTE: Numbers may not total since most facilities maintain multiple types of accounts.

residences and the small ICF-MRs, tended to rely on individual savings accounts.

These findings indicate that the vast majority of the sampled facilities were investing excess personal funds in interest-bearing accounts. They also indicate that larger facilities tended to take advantage of pooled accounts which would yield higher interest rates than if the same funds were invested in individual accounts. At the same time, review of investment practices indicated that further improvement is needed to ensure maximization of earned interest on these funds. For example, the large amounts of funds which continue to be invested by State facilities in pooled savings accounts earning only 5.00-5.50 percent interest, and in pooled non-interest-bearing checking accounts, raise questions as to why available higher rates of interest were not obtained. These issues have also been cited by the State Comptroller.* One or both of these issues were a noted area of concern in 10 of the 24 sampled facilities.** Six of the 24 facilities, or one-fourth of the sample, maintained pooled non-interest-bearing checking accounts with balances in excess of $40,000. These

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*See, for example, Financial Management Practices, Hudson River Psychiatric Center (Audit Report AL-ST-12-80); Financial Management Practices, Bernard M. Fineson Developmental Center (Audit Report NY-ST-8-82); and Financial and Related Practices, Bronx Developmental Center (Audit Report NY-ST-16-80).

**Both of the issues were noted at three of these ten facilities, two psychiatric centers, and one developmental center.

facilities included 2 psychiatric centers, 3 developmental centers, and one private school for the mentally retarded. Pooled savings accounts exceeding $50,000 were maintained by 7 facilities, including 4 psychiatric centers, 2 developmental centers, and one large ICF-MR. In 2 of these facilities, one of the psychiatric centers and one of the developmental centers, these balances exceeded $100,000. One developmental center, in particular, invested $674,266 in a pooled savings account at 5.25 percent.

The rationale offered for the large amounts of funds maintained in pooled savings accounts and non-interest-bearing checking accounts by the State psychiatric and developmental centers was the need to have sufficient funds on hand to pay the room and board expenses of those residents owing such fees to the Department of Mental Hygiene. Typically, the total benefit checks of all such residents were immediately deposited in a pooled account, and the resident was later billed for the portion of the check covering the resident's maintenance fee. Although this rationale may justify the larger amounts in some of the pooled savings accounts, it provides little basis for the maintenance of pooled non-interest-bearing checking accounts or pooled savings accounts with excessively large balances.

Careful review of the interest rates earned--particularly by the pooled certificate accounts--also revealed that these

rates were variable, ranging from 8.00 to 18.26 percent. While this variability in rates is no doubt predicated in part by the amounts of the accounts and the dates when they were opened, the variability also suggests that some facilities may not be investing funds at the maximum possible interest rates.

Distribution of Interest

Another area of concern to the Commission was the fair and equitable distribution of interest to resident accounts. The Social Security Administration regulations specify that the interest and dividends which result from an investment are the property of the beneficiary and may not be considered the property of the representative payee. At the same time, Mental Hygiene Law [33.09(c)(d)], as noted in Chapter I, provides that facilities may distribute only a portion of the earned interest to individual resident accounts and that the remaining interest may be expended by the facility director for the "general benefit, comfort, and entertainment of the patients." Commission staff reviewed accounts to note if regular deposits of interest were recorded. They also reviewed accounts to note the actual proportion of the interest earned from pooled accounts which was distributed to resident accounts.

The findings indicated that regular interest deposits were always recorded at 16 (67 percent) of the 24 sampled facilities. Among the 8 facilities where deposits of interest were not always recorded, 5 facilities did not maintain any interest-bearing accounts. These facilities included the three private