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May 3, 2001

**Mr. Gregor Macmillan**  
Director  
Division of Provider Relations  
NYS Department of Health  
99 Washington Avenue, Suite 601  
Albany, New York 12210-2808

Dear Mr. Macmillan:

In the course of a review of the financial practices at Transitional Services for New York, Inc. (TSI), a not-for-profit corporation which operates clinic and continuing day treatment programs in the New York City area, the Commission found evidence of improper Medicaid billings because TSI did not adhere to state regulations governing service delivery and record keeping.

At a February 15, 2001 meeting, Commission staff presented its preliminary findings on improper claims to TSI officials. The agency's March 7, 2001 response indicated that some of the missing notes and documentation to support its claims had been found. The Commission examined these records and adjusted its recommended disallowance accordingly. Enclosed is a summary of the Commission's final audit findings, as well as TSI's response to its preliminary findings.

The Commission reviewed a statistically valid sample of Medicaid billings for the period January 1, 1998 through September 30, 2000 for TSI's clinic and continuing day treatment programs. It found that \$2.1 million or 32 percent of the \$6.5 million claimed for these programs was improperly billed by TSI. Most of the improper billings resulted from the fact that case records did not support the hours of group therapy claimed. Other problems noted included: illegible case records and billings for services which were not Medicaid eligible.



The results of the Commission's audit are being referred for recoupment or remedial actions deemed necessary by your department. These matters were discussed with John Jordan at an April 18, 2001 meeting. There was agreement that, because of the systemic nature of the continuing day treatment findings, further discussion should take place among members of your department, the Office of Mental Health and the Commission.

The Commission and its staff are available to provide you with any further elaboration including its detailed audit working papers which support these findings. Your staff may contact John Rybaltowski at (518) 381-7025 to arrange a meeting or to discuss these matters.

Sincerely,



Walter E. Saurack  
Deputy Director

cc: John Jordan  
Jayne Vanbramer  
Larry Chase

Enclosure

## **Transitional Services for New York, Inc.**

This memorandum summarizes a fiscal review of Transitional Services for New York, Inc. (TSI) conducted by the Commission on Quality of Care for the Mentally Disabled (Commission). The Commission's involvement with TSI began in March 2000 following a complaint by employees of TSI alleging mishandling of the discharge of a client who committed suicide within days of leaving the program. During the initial investigation by the Commission's Quality Assurance and Investigations Bureau, issues involving possible improper billing of clients were raised and referred to its fiscal bureau.

In response to this referral, the fiscal bureau performed a limited-scope review of TSI's spending and billing practices. While the Commission's on-site review found no irregularities in the agency's spending practices, it did find cause to conclude that a Medicaid review of the clinic and continuing day treatment programs was warranted. The Commission selected for review a statistically valid sample of 382 claims for TSI's clinic and continuing day treatment programs for the period January 1, 1998 through September 30, 2000. During this period, TSI billed Medicaid for 91,404 services totaling approximately \$6.5 million dollars. The random sample of 382 claims included 76 claims for the clinic and 306 claims for two continuing day treatment programs.

### **Background**

TSI was incorporated as a not-for-profit corporation on April 16, 1974. TSI's administrative office is located at 10-16 162<sup>nd</sup> Street, Whitestone, NY. Its public benefit purposes, as stated in various amendments to its certificate of incorporation, are "to plan, establish and maintain...community residences for the mentally disabled...to plan, establish and maintain apartment accommodations for the independent living of the mentally disabled and day training and vocational rehabilitation centers...[and] to own, lease, establish, operate and maintain one or more outpatient facilities for the mentally disabled."

TSI presently operates various residential programs located throughout Queens and Bronx Counties which serve approximately 180 individuals, an outpatient clinic program, and two continuing day treatment programs. The continuing day treatment programs have a combined certified capacity of 170. The agency also operates other programs for mentally-ill persons such as: case management, peer advocacy, self-help programs and supported housing. Finally, vocational services provided by the agency include supported employment and a sheltered workshop.

As of June 30, 1999, TSI's financial statements showed assets of \$7.6 million with liabilities of \$5.7 million and unrestricted net assets of \$1.9 million. Total revenues for the year ended June 30, 1999 totaled \$9,944,457, total expenses \$9,704,296, with a resulting net surplus of \$240,161.

## **Audit Findings**

As noted, TSI operates two continuing day treatment sites as well as a clinic treatment program for adults. These programs are governed by OMH regulations (14 NYCRR 587 & 588) which define the types of services that can and/or must be provided. Among the required services for both programs are health referral, symptom management, medication therapy and education, and psychiatric rehabilitation readiness determination and referral. Additionally, clinic programs must also provide verbal therapy. While continuing day treatment programs may offer case management and rehabilitation readiness development as core services, they may also provide optional services such as supportive skills training, verbal therapy and activity therapy. Regulations require that the specific type, purpose, and frequency of services be agreed upon in a treatment plan devised by the provider in cooperation with the recipient.

### **Continuing day treatment program review**

TSI's continuing day treatment documentation system consists of three major components: the daily attendance (sign-in, sign-out) sheet, the group attendance sheet, and the client's treatment record (treatment plan, progress notes, etc.). The daily attendance sheet (*attachment 1*) is used by the agency to keep track of when a client arrives at and leaves the facility. This is also the source document used by TSI to bill Medicaid. In February 1999, the Department of Health (DOH) performed a Medicaid review of TSI's continuing day treatment programs for the period January 1, 1994 through December 31, 1995. DOH disallowed \$47,000 based on sign-in, sign-out sheet discrepancies (*attachment 2*). At that time, TSI had no documentation to record the actual number of hours of group therapy being provided. Following DOH's recommendation, TSI implemented the "group attendance" sheet (*attachment 3*) to keep track of the number of groups attended by a recipient and who attended what group. This document is signed by each client attending the group and by the agency therapist running the group. The group attendance sheet also provides a brief description of the purpose of the group. The agency's two continuing day treatment programs also maintain treatment records for each client which contain a treatment plan, progress notes, individual session notes, etc.

In the continuing day treatment programs, the Commission compared hours billed with hours of service actually provided, as evidenced by group therapy notes. Its review found that in 97 percent of the cases sampled (297 of 306 cases), the number of hours billed exceeded the number of hours of therapy actually provided. For instance, even though numerous group attendance sheets recorded a client attending only three or four hours of therapy sessions per day, TSI billed Medicaid for the full five hours that day.

The Commission found, of the total number of hours billed in its sample (1,471 hours), that 708 hours of service or 48 percent of the claims submitted could not be supported by the appropriate documentation, as follows:

- In 275 cases, TSI billed Medicaid for more hours than what group attendance records reflected was the actual number of hours of service; e.g., two or three hours of service provided, but four or five hours were billed.
- In 19 cases, group attendance sheets reflected that a recipient did not attend any group.
- In two cases, a recipient who was previously discharged from the program was billed as if attending.
- In one case, no group sheets were present to support that any service was provided.

Also, in 11 cases, a recipient was recorded as having attended two different groups at the same time. The amount recommended for recovery allows TSI credit for the recipient attending one of the two groups.

When these findings were presented to TSI management, they responded by disagreeing with the Commission's "interpretation" of the regulations. They acknowledged that there were no documents supporting the five hours of service typically billed, but stated that they felt "the whole day is a clinical experience" and therefore their billing was justified.

In addition to the major finding regarding the lack of documentation, the Commission also encountered problems with the documentation that did exist. For instance, as noted above the sign-in, sign-out sheet is still used by TSI as the source document to bill Medicaid for continuing day treatment sessions. Thus, if a client signed-in at 9:00 a.m. and signed-out at 3:00 p.m., TSI, after reducing the total hours for the lunch hour, would bill Medicaid for five hours of service. The agency presumed that as long as a client signed the daily attendance sheet, s/he was also attending the program for this length of time. The Commission, however, found several systemic problems with TSI's system.

First, there were problems with the accuracy of accumulating daily hours. The Commission noted mathematical errors in calculating the hours spent in the program. For example, if the attendance sheet reflected only four hours of attendance (excluding the lunch hour), TSI still billed Medicaid for five hours.

A second problem noted related to the accuracy of entries on the daily attendance sheet. Commission staff observed that clients were signing-out at 3:00 p.m. (the end of the day) even though they had left earlier. For instance, during a site visit to the agency on November 21,

2000, Commission staff obtained copies of the attendance sheet at 2:48 p.m. and noted that 35 of the recipients had already signed-out at 3:00 p.m. The Commission also noted that while sign-in times were very specific and scattered (i.e., 8:45 a.m., 9:05 a.m.) virtually all of the recipients signed-out at 3:00 p.m. These errors on the daily attendance sheet raise doubts about its accuracy, especially considering that it is used as the source document to bill Medicaid.

This same accuracy problem was also found on the group attendance sheets. The Commission noted one sheet where a "fake" name was entered on the sheet. Additionally, several sheets noted recipients participating in a group, but the recipient never signed-in. For example, one group attendance sheet stated "DL [spoke about his] dream of something eating him." However, DL never signed the group attendance sheet for this particular day. In one case, the Commission noted two groups run by the same case manager at the same time. Given the problems noted in both the daily and group attendance sheets, the Commission questions TSI's management and oversight of these documents.

Third, at TSI, the Commission found that a large number of groups appeared to have an inordinate number of recipients. According to OMH regulation (14 NYCRR 588.6(a)(4)), group sessions in a clinic program should have no more than 12 participants. While there is no similar standard in the state regulations for continuing day treatment programs, the Commission observed that the Jamaica and Far Rockaway programs far exceeded this norm. For instance, 72 percent of the groups at the Jamaica site had over 12 participants with the average size of these groups being 30. At the Far Rockaway site, 35 percent of the groups were over 12 and the average size was 19.

Fourth, the Commission found that the groups which were largely attended were either social or recreational in nature. Group titles included: a community meeting (56 participants), the annual agency picnic (103 participants), a movie group (37 participants), the "History of Rock 'N' Roll" (24 participants). While the Commission acknowledges that activities like these may add to the quality of life of recipients, it questions whether these services are proper billings to Medicaid.

Finally, in contrast to the "activity" type of services being provided by TSI's programs, the Commission found that groups such as stress reduction, symptom identification, and medication issues which were providing mandated services, occurred infrequently and were sparsely attended. An analysis of the types of groups being attended reflected that "required" services only occurred in small groups 12 percent of the time at the Jamaica site and even less (four percent of the time) at the Far Rockaway site.

### **Clinic program review**

Documentation at TSI's clinic primarily consists of an individual recipient file. Regulations (14 NYCRR 587 & 588) require the file contain, among other criteria, the following

documentation: a primary diagnosis of mental illness, a treatment plan which is reviewed every three months, and justification/approval if annual utilization exceeds 40 clinic visits. The file must also contain a case record which contains legible progress notes and the duration of the visit.

The Commission's clinic sample found that nine percent of TSI's claims (seven out of 76 claims) did not meet regulatory requirements, as follows:

- In six instances, the note was illegible in violation of 14 NYCRR 587.18(a)(2).
- In one instance, no progress note was found in the file (14 NYCRR 587.18).

TSI management stated that legibility had been an ongoing problem with some of its clinicians, but stated that those examples noted by the Commission were easily readable and therefore its findings were invalid. Copies of the progress notes were reviewed by Commission clinical staff who came to the same conclusion, they are not legible.

### **Recommended Disallowance**

The Commission recommends that DOH recover \$2,082,711.92 or 32 percent of the Medicaid dollars paid to TSI during its audit period. The Commission's working papers and detailed supporting documentation are available for review by DOH.

