Department of Health and Human Services

OFFICE OF
INSPECTOR GENERAL

AUDIT OF COSTS INCURRED BY THE NATIONAL ASSOCIATION OF PROTECTION & ADVOCACY INC. DURING FISCAL YEAR 2000

SEPTEMBER 2001
A-03-01-00219

DEPARTMENT OF HEALTH & HUMAN SERVICES
OFFICE OF INSPECTOR GENERAL
OFFICE OF AUDIT SERVICES
150 S. INDEPENDENCE MALL WEST
SUITE 316
PHILADELPHIA, PENNSYLVANIA 19106-3499

SEP 28 2001

Mr. Curtis Decker
Executive Director
National Association of Protection & Advocacy Systems, Inc.
900 Second Street, N.E., Suite 211
Washington, D.C. 20002

Dear Mr. Decker:

Enclosed are two copies of the U.S. Department of Health and Human Services (HHS), Office of Inspector General, Office of Audit Services' report entitled "Audit of Costs Incurred By The National Association of Protection & Advocacy Inc. during Fiscal Year (FY) 2000." A copy of this report will be forwarded to the action official noted below for his/her review and any action deemed necessary.

Final determination as to the action taken on all matters will be made by the HHS action official named below. We request that you respond to the HHS action official within 30 days from the date of this letter. Your response should present any comments or additional information that you believe may have a bearing on the final determination.

In accordance with the principles of the Freedom of Information Act (5 U.S.C. 552, as amended by Public Law 104-231), OIG, OAS reports issued to the Department's grantees and contractors are made available to members of the press and general public to the extent information contained therein is not subject to exemptions in the Act which the Department chooses to exercise. (See 45 CFR Part 5.)

To facilitate identification, please refer to Common Identification Number A-03-01-00219 in all correspondence relating to this report.

Sincerely yours,

David M. Long

David M. Long
Regional Inspector General
for Audit Services

Enclosures - as stated

Direct Reply to HHS Action Official:
Director
Division of Financial Integrity
Room 702 Aerospace Building
370 L'Enfant Promenade S.W.
Washington, D.C. 20477

EXECUTIVE SUMMARY

Background

The National Association of Protection & Advocacy Systems, Inc. (NAPAS) is a nonprofit voluntary membership organization under contract annually with the Department of Health and Human Services (DHHS), Administration for Children and Families (ACF), Administration on Developmental Disabilities (ADD), to provide technical assistance and training to protection and advocacy agencies (P&As). The ADD contract represents about 68 percent of NAPAS' annual revenue. The remainder of its revenue comes from dues from the P&As and other small grants and contracts. The ADD contract has increased over the years as the appropriations for the P&As have increased and other agencies have participated in the funding through interagency agreements.

The Centers for Medicare and Medicaid Services (CMS), formerly known as the Health Care Financing Administration, funded NAPAS, through the existing ADD contract, to administer a demonstration project aimed at increasing enrollment in the Qualified Medicare Beneficiary (QMB) Program and the Specified Low Income Beneficiary (SLMB) Program (the CMS project). These Medicaid programs cover out of pocket costs such as co-insurance, deductibles and Part B premiums for Medicare beneficiaries with low incomes and limited assets. These programs are referred to as the Medicare Savings Programs.

The ADD contract award totaled $2,031,600, and covered the period September 25, 1999 through September 24, 2000. The CMS project represented $850,000 of the $2,031,600 contract award. The NAPAS retained $200,000 of the CMS funding to administer the project and passed through $650,000, via subcontracts, to four State P&As who were chosen to conduct the project. Because the CMS funds were commingled with the other appropriations awarded to NAPAS, we performed an incurred costs audit covering the entire ADD contract which included the CMS award.

Objective

To determine if costs incurred by NAPAS during the period September 25, 1999 through September 24, 2000 were claimed in accordance with Federal requirements.

Summary of Findings

During the contract period, NAPAS received payments of $1,999,518. Our review determined that $12,091 of the cost reimbursed by ADD was unsupported or unallowable. In addition, NAPAS could not document that funds received for the CMS project were used for their intended purpose. The NAPAS could not account for $123,280 of the $200,000 that it retained to administer the CMS Project. In this regard, we found that NAPAS was not required, by ADD in its contract, to separately account for the CMS funds or the other appropriations.

Recommendations

We recommend that NAPAS:

1. Refund $12,091 of unsupported or unallowable cost charged to the ADD contract.

2. Establish procedures to account for each Federal appropriation separately.

3. Refund to ADD $123,280 in unsupported CMS project funds.

NAPAS Response

In response to our draft report, NAPAS did not fully agree with our findings and recommendations. The NAPAS requested that only $499 be recovered as unallowable costs relating to over invoicing direct salary charges for a temporary employee. The NAPAS did not agree that they be required to refund the $123,280 in unsupported CMS funds stating that the organization was not required by ADD to separately account for the monies.

The NAPAS also disagreed with our recommendation that they establish procedures to account for each Federal appropriation separately. The NAPAS stated that the recommendation is a policy decision outside the scope of the audit and best left to program managers. In addition, NAPAS stated that training and technical assistance conducted under the contract, both management and legal, crosses all programs. Training on non-profit management, fiscal accountability, and organizational design, which are cross program activities, would be difficult to assign to individual programs unless arbitrary cost allocation percentages are utilized.

The NAPAS response to our draft report are included as an Appendix to this report. We summarized NAPAS' response along with our comments after each finding in our report. Modifications were made in the final report based on NAPAS' response.

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INTRODUCTION

Background

The National Association of Protection & Advocacy Systems, Inc. (NAPAS) is a nonprofit voluntary membership organization, located in Washington, D.C., which provides technical assistance and training to protection and advocacy agencies (P&As). Under an annual cost reimbursement plus fixed fee contract, the Department of Health and Human Services (DHHS), Administration for Children and Families (ACF), Administration of Developmental Disabilities (ADD) funds NAPAS directly. However, the total award is comprised of funds from various Federal agencies which have entered into interagency agreements with ADD.

The contract, effective on September 25, 1998, includes a base year and two option years, both of which were exercised. We audited option year one which covered the period September 25, 1999 through September 24, 2000. The total award, from various Federal agencies, amounted to $2,031,600, as follows[1]:

ADD Contract # 105-98-7004 (Option Year One)		
Federal Department	**Program**	**Award**
Health and Human Services-CMS	QMB/SLMB[2]	$850,000
Health and Human Services-ACF	PADD[3]	534,360
Health and Human Services-PHS[4]	PAIMI[5]	451,140
Education	PAIR[6]	196,100
TOTAL		**$2,031,600**

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1 The breakdown of the revenue components is not communicated directly to NAPAS in a formal manner by the ADD.

2 Qualified Medicare Beneficiary/Specified Low Income Beneficiary

3 Protection and Advocacy for Persons with Developmental Disabilities.

4 Public Health Services

5 Protection and Advocacy for Individuals with Mental Illness.

6 Protection and Advocacy of Individual Rights.

Many low-income Medicare beneficiaries have difficulty paying out of pocket medical expenses such as co-insurance, deductibles and Part B premiums. Several Medicaid programs, known as the Medicare Savings Programs, cover these type of costs for dually eligible individuals. Even though the Medicare Savings Programs can reduce the financial burden for eligible beneficiaries, a significant number of those eligible for the benefits are not enrolled in the programs.

The Centers for Medicare and Medicaid Services (CMS), formerly known as the Health Care Financing Administration, has made efforts in recent years to increase enrollment in the Medicare Savings Program. As part of this effort, CMS funded NAPAS through an interagency agreement with ADD to administer a demonstration project aimed at increasing enrollment in two programs, the Qualified Medicare Beneficiary (QMB) program and the Specified Low Income Beneficiary (SLMB) Program, hereafter referred to as the CMS project.

The CMS transferred $850,000 to ADD for the CMS project. The NAPAS distributed $650,000 to four State P&As, located in Michigan, Georgia, New York and Washington and retained $200,000 to administer the CMS project. The CMS funded the project through the existing ADD contract to expedite the contract award process. This was the first time that NAPAS had any involvement with CMS.

Objectives, Scope and Methodology

The objective of our review was to determine if costs incurred during the period September 25, 1999 through September 24, 2000 were claimed in accordance with Federal requirements. Our audit was conducted in accordance with generally accepted government auditing standards. The contract included a base year and two option years. The NAPAS is performing under option year two of the current award, however, we audited option year one. At the time of our review, NAPAS had received payments totaling $1,999,518.

Because NAPAS did not separately account for CMS project funds, but were instead commingled with appropriations from other Federal agencies, we audited option year one of the entire ADD contract. Regarding CMS project funds, we audited the $200,000 retained by NAPAS. We verified that payments totaling $650,000 were made by NAPAS to the four P&As. However, we did not perform an incurred cost audit of these funds.

Our understanding of the internal control structure was obtained during our substantive testing of expenditures. Our audit was performed at NAPAS during the period December 2000 through January 2001. The NAPAS formally responded to our draft report on August 23, 2001. To accomplish our objective we:

- reviewed Federal criteria related to non-profit organizations.
- reviewed the ADD contract and its modifications.
- reviewed all canceled checks and wire transfers to identify any personal and/or unallowable use of Federal funds.

- audited 100 percent of salaries charged to contract as direct expenses to determine if they were supported in accordance with Office of Management and Budget (OMB) Circular A-122[7].

- audited 100 percent of rent related expenses charged to the contract.

- reviewed subcontracts and verified that payments were made to the four State P&As.

- reviewed NAPAS accounting of CMS funds.

RESULTS OF REVIEW

During the period September 25, 1999 through September 24, 2000, NAPAS was reimbursed $1,999,518 under its contract with ADD. We determined that NAPAS could:

- Not support $12,091 charged to the ADD contract.

- Not account for $123,280 of the $200,000 it retained to administer the CMS project. In this regard, we found that the ADD contract only required NAPAS to account for the contract awards as a whole and did not require NAPAS to maintain a separate accounting for each of the awards.

By letter dated August 23, 2001, NAPAS responded to a draft of this report. The NAPAS did not fully agree with our findings and recommendations and has made both general as well as specific comments on our report. We have summarized NAPAS' response in the following paragraphs along with our comments. The entire response is included as an Appendix to this report.

NAPAS Response

The NAPAS objected to the table on page 1 of our draft report. They indicated that it implies that NAPAS has or had knowledge of the specific amounts contained in the contract. The NAPAS indicated that it was not provided with this breakdown.

OIG Comment

The chart on page 1 identified the source of funding in the ADD contract. We obtained this information from ADD. We acknowledge that NAPAS may not have been formally provided with the breakdown of the individual award amounts. However, NAPAS was aware of the amount of the CMS project. Of the $850,000 in CMS project funds, NAPAS retained $200,000

[7] 48 CFR Subpart 31.703 requires that OMB A-122 be used to determine the allowability of costs.

to administer the project and awarded the remaining $650,00 to four P&As. On December 15, 2000, NAPAS provided ADD with an accounting of the $200,000 NAPAS retained to administer the CMS project.

NAPAS Accounting for ADD Contract

The NAPAS accounted for the ADD contract as one revenue source and did not separately account for each appropriation included in the award. According to NAPAS representatives, they had not, since the inception of the contract, been required to account for each appropriation separately. In addition, we found nothing in the ADD contract which required NAPAS to separately account for the CMS project. As a result, we reviewed cost incurred under the option year one of the entire ADD contract, and we determined that, although NAPAS was able to support the majority of the expenditures charged to the contract, it claimed $12,091 for costs which were unsupported or unallowable. These unsupported or unallowable costs are as follows:

Direct Salaries

The NAPAS claimed $4,861 in direct salaries which were not supported. The OMB Circular A-122 requires that salaries be supported by personnel activity reports for all staff whose salaries are charged in whole or in part directly to awards. Furthermore, it requires that the personnel activity reports be completed after the fact based on actual work performed. Budget estimates are not appropriate support for costs claimed for reimbursement.

The NAPAS maintained personnel activity reports in accordance with OMB Circular A-122. In several instances, NAPAS used budget estimates when an employee did not submit a personnel activity report timely. The NAPAS reversed several, but not all, of the overcharges that resulted from using budget estimates. We compared each direct salary charged to the contract to the supporting personnel activity report and determined that $4,861 charged to the ADD contract was not supported.

NAPAS Response

The NAPAS acknowledged that they claimed direct salaries based on budgeted estimates rather than the actual time an employee spent on the project. They also stated that they no longer submit public vouchers based on budgeted estimates. The NAPAS did not agree however that they should refund $4,861. The NAPAS accounted for the $4,861 difference as follows:

> **$2,613** - For an employee who did not have a personnel activity report to support the actual time worked during the period February 1 - 28, 2000. The NAPAS provided an office calendar as “alternate backup documentation”. The office calendar is used to record daily absences at NAPAS.
>
> **$1,360** - For direct salaries paid to two temporary employees who did not maintain personnel activity report. The NAPAS stated that the $1,360 was properly accounted for and supported.

$860 - For over invoicing for a temporary staff member. However, NAPAS stated that the $860 should be offset by $361 for which NAPAS claims that it paid to another temporary employee but did not include on a public voucher. The NAPAS feel that they owe only $499 as a result of over invoicing for direct salary charges.

$28 - The NAPAS attributes this difference due to rounding.

OIG Comment

We reviewed personnel activity reports for all staff whose salaries are charged in whole or in part directly to awards. We questioned the salary for those individuals whose personal activity reports did not support the time charged to the contract. In our opinion, the additional documentation submitted by NAPAS is not sufficient to support the $4,861 questioned in our report.

Local Meals

The NAPAS claimed $613 for local meals charged to the contract under the Staff Travel account. The OMB Circular A-122, Paragraph 55, Travel Costs, states that meals can be allocated to a Federal grant when an employee is in travel status due to work being done concerning that grant. Travel status means that the employee is out of the local area for legitimate business purposes. We questioned the $613 claimed for meals incurred when an employee was not in a travel status.

NAPAS Response

The NAPAS stated meals associated with the conduct of meeting are allowable in accordance with OMB Circular A-122, Attachment B, Paragraph 29. In addition, NAPAS states that some of the questioned expense related to meals provided to NAPAS employees as an incentive for attending full day planning meetings in preparation for major conferences conducted by NAPAS under the contract. The NAPAS states, "By providing the lunch, staff can continue to work and the meeting is not delayed waiting for people to return from lunch."

OIG Comment

The OMB Circular A-122, Paragraph 55, Travel Costs, states that meals can be allocated to a Federal grant when an employee is in travel status due to work being done concerning that grant. Travel status means that the employee is out of the local area for legitimate business purposes. Our review showed that the meals charged to the contract were incurred when employees were not in travel status.

Indirect Costs

The NAPAS over claimed indirect costs by $6,617. We attributed $821 as being applicable to the unallowable costs identified above. The remaining $5,474 was attributable to charging an incorrect rate.

The NAPAS charged the ADD contract 15 percent for indirect costs. However, their predetermined indirect cost rate was 14.5 percent. The NAPAS Finance Director explained that NAPAS submitted an indirect cost proposal to the Division of Cost Allocation (DCA) requesting a 15 percent indirect rate. The NAPAS expected that the proposed rate would be approved. On September 12, 2000, the DCA notified NAPAS that the rate was 14.5 percent[8]. The NAPAS failed to make the necessary adjustment to the indirect cost claimed for reimbursement.

NAPAS Response

The NAPAS stated that they were entitled to claim more indirect cost than they claimed if they used the base used by the OIG. They stated that the OIG used a base of $1,368,000 to calculate its indirect cost finding. If NAPAS applied the approved indirect cost rate of 14.5 percent times the $1,368,000 indirect cost base they would be entitled to $198,360 and not the $174,710 claimed. The NAPAS stated that the base used by the OIG was incorrect because the OIG did not consider the fact that subcontracts are limited to the first $25,000 of incurred costs. The NAPAS indicated that base should be $1,164,738. The NAPAS also stated the DCA approved rate of 14.5 percent was too low.

OIG Comment

In their response, NAPAS made incorrect assumptions about the base that we used to calculate our finding. We used the same base that NAPAS used, i.e. $1,164,738 to calculate our findings. We used the DCA approved 14.5 percent indirect cost rate to calculate our questioned costs.

The CMS Project

The CMS advised us that it had requested, on several occasions, that NAPAS provide an accounting of CMS project funds. Because NAPAS did not respond to CMS's request, CMS requested ADD's assistance in obtaining this accounting. The ADD directed NAPAS to provide an accounting of the CMS project funds by December 15, 2000.

The NAPAS complied and reported on December 15, 2000, that it expended $166,386 of the $200,000 retained to administer the CMS project. Because NAPAS co-mingled contract funds, the majority of the $166,386 was based on estimated allocations rather than identifiable expenditures. The NAPAS provided no accounting for the remaining $33,614. Our review showed that NAPAS could not account for $123,280 ($200,000 - $76,720 per OIG) or about 62 percent of CMS project funds.

The following schedule compares the accounting reported by NAPAS with the results of the OIG review. It shows that NAPAS was able to account for $76,720 of the $166,386 in expenditures it reported to administer the CMS project.

[8]Indirect rate is applicable to a base of all direct costs and limited to the first $25,000 of each subcontract.

The CMS PROJECT			
Expense	**NAPAS Submission**	**OIG Calculations**	**Difference**
Personnel	$77,633	$31,268	$46,365
Rent	15,695	4,252	11,443
Miscellaneous	16,290	15,957	333
Staff Travel	390	390	0
Training Exp	21,632	2,474	19,158
Indirect	34,746	22,379	12,367
Total Reported to ADD	$166,386	$76,720	$89,666

The $89,666 difference between what NAPAS reported to ADD and what the OIG determined to be allowable expenditures is a result of a series of errors made by NAPAS which included:

- *Adding additional supervisory time not reported by supervisors and which differed from their personnel activity reports.* The NAPAS Finance Director told us that NAPAS believed that supervisors under reported the amount of time that they recorded on their personnel activity reports for the CMS project. Therefore, NAPAS added additional time in accounting for the CMS project personnel costs.

  We gave NAPAS credit for any time that was supported by personnel activity reports but did not give NAPAS credit for the additional supervisory time they estimated for the CMS project. The NAPAS could not show how they arrived at the additional hours. We allowed only those hours which NAPAS could support by the employees personnel activity reports. Personnel cost were overstated $46,365.

- *Using a method to allocate rent to the CMS project which was not consistent with the method used to allocate rent to the ADD contract.* The method that NAPAS used to allocate rent cost to the ADD contract was based on full time equivalent (FTE) staff. This was the method included in the NAPAS cost allocation plan and the method that NAPAS used throughout the contract to obtain reimbursement via public voucher submissions. However, at year end when NAPAS was required by ADD to account for the CMS project monies, NAPAS allocated rent to the CMS project based on total costs rather than FTEs. This overstated rent cost to the CMS project by $11,443.

- *Using a general ledger which was not up to date.* After determining that CMS project funds represented approximately 19.1 percent of the total ADD contract operating costs, NAPAS applied this percentage to the costs allocated to the ADD contract for miscellaneous costs which included telephone, postage, supplies, and printing and copying. We agreed with the allocation methodology used by NAPAS. Our numbers differ slightly because NAPAS used an older version of the general ledger and we used the most up to date version. This resulted in these items being overstated by $333.

- *Allocating training expenses even though it was possible to distinguish training related to the CMS project from training related to other ADD programs.* The NAPAS calculated training expenses using the same allocation methodology that was used to allocate the miscellaneous costs referred to above. We determined that NAPAS could identify training expenses that were related to the CMS project, which is more precise than allocating the expenses. As a result of allocating the costs, NAPAS overstated training expense by $19,158.

- *Using an incorrect indirect cost rate*. The NAPAS charged the CMS project indirect costs totaling $34,746. The NAPAS applied a 15 percent indirect cost rate to the total direct costs. However, they should have used the approved predetermined rate of 14.5 percent. Using the correct rate, we determined that NAPAS should have charged the CMS project $22,379. We questioned the difference of $12,367. Of this difference $772 is a result of NAPAS using a 15 percent rate versus the predetermined rate and, $11,595 is the amount that attaches to the unsupportable direct costs described above.

NAPAS Response

The NAPAS agreed that they were unable to account for the entire $200,000 in CMS project funds. The NAPAS stated that their initial accounting included only $166,386 of $200,000 because the CMS project was a 15 month project but their accounting covered the 12 months ended September 30, 2000. The additional 3 months of the period accounted for the $33,614 difference.

According to NAPAS officials, from the inception of the initial contract with ADD, they were not required to account for each appropriation separately and therefore, accounted for the contract as one revenue source. The NAPAS officials felt that they would have been able to account for the CMS funds had this been a requirement from the inception of the award.

In addition to disagreeing with our findings, NAPAS indicated that they should not be required to refund the unaccounted for difference of $123,280.

OIG Comment

Based on its own accounting records, NAPAS could account for only $76,720 of CMS project funds. They have not provided documentation to support the difference of $123,280. Therefore, NAPAS should refund these funds to ADD.

The NAPAS provided comments on each cost category. We evaluated their comments and have concluded that no new documentation was provided which would cause us to change our opinion. For example,

> *Personnel*: NAPAS indicated that supervisory time was estimated as a percentage of total time. The NAPAS indicated that the amount allocated to the CMS project was low because supervision and impromptu meetings that routinely occur were not broken out by specific contracts and grants.
>
> As stated in our report, OMB Circular A-122 requires that salaries be supported by personnel activity reports for all staff whose salaries are charged in whole or in part directly to awards. Furthermore, it requires that the personnel activity reports be completed after the fact based on actual work performed.
>
> *Rent:* NAPAS believed that the amount reported for rent was under reported given the fact that it was computed based on FTEs and NAPAS believed that personnel costs were understated. The NAPAS provided no additional information to support their position.
>
> *Miscellaneous Expenses*: NAPAS agreed that when they prepared their accounting for CMS project funds they did not use the most current general ledger. They also agreed that when we requested a copy of the general ledger, we were provided with the latest one which included their year end adjustments. This general ledger showed that the amount claimed for miscellaneous expenses was overstated by $333.
>
> *Training Expenses*: NAPAS indicated that some training expenses could be clearly identified as CMS related, other expenses could not. The NAPAS felt that a percentage of total training expenses can be legitimately attributed to the CMS project.
>
> We determined that NAPAS could identify training expenses that were related to the CMS project, which is more precise than allocating the expenses. Therefore, we allowed those expenses identified as being relating to the CMS project.
>
> *Indirect Cost Rate*: NAPAS contends it did not over claim indirect costs for the reasons previously cited. We disagree for the reasons previously cited.

CONCLUSION

During the period September 25, 1999 through September 24, 2000, NAPAS was reimbursed $1,999,518 under the ADD contract. The NAPAS generally accounted for the expenditures related to the contract as a whole. However, we determined that $12,091 was either unsupported or unallowable. The ADD did not require NAPAS to separately account for program expenditures by funding source. As a result, NAPAS could not identify expenditures that related specifically to the CMS project. Overall, NAPAS could not support $123,280 of the $200,000 that it retained to administer the CMS project.

RECOMMENDATIONS

We recommend that NAPAS:

1. Refund $12,091 of unsupported or unallowable cost charged to the ADD contract.

2. Establish procedures to account for each Federal appropriation separately.

3. Refund to ADD $123,280 in unsupported CMS project funds.

NAPAS Response

The NAPAS disagreed with our recommendations. They stated that the recommendations are internally inconsistent regarding NAPAS' responsibility to maintain separate accounting of the CMS money. The NAPAS indicated that everyone involved in the grant process, including the OIG, has stated that there is no obligation to separately account for the CMS money.

The NAPAS stated that during their development, the P&A programs have experienced a variety of training and technical assistance (T/TA) efforts. The programs are unanimous in their recommendations to have a unified, consistent and experienced T/TA Center to assist them in their critical work. The subagencies of HHS, and the Department of Education developed a successful and efficient interagency collaboration strategy to provide this service.

The NAPAS contends that the OIG recommendation to track monies contributed by each agency into the interagency agreement basically destroys the interagency collaboration concept. The NAPAS stated that training and technical assistance conducted under the contract, both management and legal, crosses all programs. Training on non-profit management, fiscal accountability, and organizational design, which are cross program activities, would be difficult to assign to individual programs unless arbitrary cost allocation percentages are utilized.

The NAPAS further stated that the recommendation is a policy decision outside the scope of the audit and best left to the program administrators.

OIG Comment

We disagree with NAPAS that the OIG has made a policy decision on the requirements to be included in the contract between NAPAS and ADD. The OIG does not make policy decisions for program administrators. The OIG reports make recommendations. It is ADD's responsibility to decide whether or not to implement OIG recommendations.

As to the recommendation to separately account for program funds separately, we believe that this would add a measure of control to the accounting process to ensure that contract funds are used for intended purposes.

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OTHER MATTERS

During the course of our audit we noted that NAPAS did not comply with contract terms which required that an annual OMB Circular A-133 audit be performed. Prior to our audit, NAPAS submitted annual financial statement audits to ACF but not OMB A-133 audits. Since our audit, NAPAS has taken action to have an OMB A-133 audit performed.

NAPAS National Association of Protection & Advocacy Systems

August 23, 2001

David Long
Regional Inspector General or Audit Services
Department of Health & Human Services
Office of Inspector General, Office of Audit Services
150 S. Independence Mall West, Suite 316
Philadelphia, PA 19106-3499

Common Identification Number A-03-01-00219

Dear Mr Long:

NAPAS has reviewed the draft audit report received on June 26, 2001 and met with Jack Kahriger, the OIG representative, on July 10, 2001. We requested an extension for our response and it was granted until August 27, 2001.

We offer the following response to the findings and recommendations and trust that our response will be given full consideration before a final report is issued.

NAPAS is very concerned about the specific financial findings and the rationale behind them, as well as the overall negative impact the recommendations can have on well established and effective policy in the federal agencies that administer the P&A systems.

While NAPAS will respond to every allegation below, NAPAS would like to make several general observations.

First, the recommendations are internally inconsistent regarding the responsibility of NAPAS to maintain a separate accounting of the HCFA money. HCFA added funds to the interagency agreement in FY 2000. Every federal employee involved in the process, including the OIG, has stated that there was no obligation by NAPAS to separately account for the HCFA money. Additionally, the OIG auditors have stated verbally, and indirectly in writing, that NAPAS has spent all of the FY 2000 contract funds on appropriate contract activity.

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A recommendation to return funds, given the fact that money was spent correctly and there was no requirement to report on specific components of the contract, is simply wrong

Second, the P&A System has grown over the past 25 years into a complex cross disability program administered by six (60 federal agencies. During their development, the P&A programs have experienced a variety of training and technical assistance efforts. The programs are virtually unanimous in their recommendation to have a unified, consistent and experienced T/TA Center to assist them in their critical work. The subagencies of the Department of Health and Humans Services (DHHS) and the Department of Education (DOE) have heard that request and developed a successful and efficient interagency collaboration strategy to provide this service.

This collaborative effort not only responds to the expressed needs of the customer, but supports the intent of Congress and several past Administrations to encourage interagency cooperation and collaboration. President George W. Bush recently reiterated this collaborative approach in his New Freedom's Initiative. DHHS has again solicited a T/TA project for the next 3 years based on the same interagency cooperation (July 16, 2001 - Solicitation #233-01-0019). The recommendation to track the monies contributed by each agency into the interagency agreement basically destroys this concept. (The contract was amended on August 2, 2001 to incorporate the recommendation of the draft OIG report. This amendment was not in the original contract and can only be interpreted as a reaction to the OIG recommendation)

This recommendation is a policy decision which is outside the scope of the audit and best left to the program administrators.

Furthermore, bidders on the request for contract are not made aware of the total amount available for the contract. Nor is a successful contractor privy to the individual amounts contributed by each agency. The training and technical assistance conducted under the contract, both management and legal, crosses all of the programs. Trainings on non-profit management, fiscal accountability, and organization design, which are cross program activities, would be difficult to assign to individual programs unless arbitrary cost allocation percentages are utilized. Thus it would be virtually impossible to track those funds according to each contributing agency in any meaningful way.

NAPAS has already developed sufficient procedures to track grants and contracts separately and does so with a variety of other funds. (See below)

Specific Responses and Recommendations to the Report

Summary of Findings (page i)

This summary does not adequately address the discussions conducted with the auditors. It also does not adequately reflect the true facts of the NAPAS operation. There must be an initial sentence which clearly states that the audit found that NAPAS spent the funds of the contract on contract activities, except for the alleged unsupported or unallowable $13,849 in question (an amount which NAPAS believes is significantly less, as discussed below). This initial sentence should then be followed by the sentence below, which is contained in the summary.

> " We found that NAPAS was not required by ADD in its contract, to separately account for the HCFA funds or the other appropriations."

If the OIG deems it necessary, NAPAS would not object to a statement which would follow to the effect of "even though it was not required to account separately for HCFA funds, the auditors attempted to document those expenses but were unable to do so".

Material Deleted - Report Modified

Recommendations (page ii)

Based on the statements above, the following response and the attached documentation, NAPAS requests that:

Recommendation #1 items be deleted and/or adjusted based on the specific discussion below.

Recommendation #2 be removed completely.

Recommendation #3 be removed completely.

INTRODUCTION (page 1)

Background

NAPAS objects to the table contained on page 1. This table implies that NAPAS has or had knowledge of the specific amounts contained in the contract. Past contract practices prohibited NAPAS from knowing the amount of the contract or the elements that make up the contract when it is funded through an interagency agreement.

If the chart remains in the report, NAPAS requests that a the following statement of explanation be included:

> "While the Chart below reflects the amounts contributed by various agencies, NAPAS was not provided with this information."

Objectives, Scope and Methodology (page 2)

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> "NAPAS was not required, by ADD in its contract, to separately account for the HCFA funds or the other appropriations."

Results of Review (page 3)

The items below are not unsupported or unallowable. There is a disagreement as to the type of documentation NAPAS provided and NAPAS maintains that the items are allowable according to OMB CircularA-122, "Cost Principles for Non-Profit Organizations." NAPAS requests that the OIG adjust the four bullets based on the arguments below.

NAPAS Accounting for ADD Contract:

- Direct Salaries - Attached (#2) you will find documentation explaining the discrepancies noted by the auditor for the questioned amount of $4,861 of direct salaries.

Prior to March 2000, when an amendment to our contract was issued concerning invoicing submission, it took between 30 and 61 days (average of 45 days) to receive payment on invoices. Because of the length of time between submission and receipt of payment, NAPAS endeavored to submit all invoices no later than the 13th of each month. Not all time cards were submitted in time to prepare the invoice. NAPAS submitted the invoice based on budgeted time knowing the aggregate direct labor amount would be adjusted on the next invoice to accurately claim actual aggregate time worked based on the time cards. During the contract year, in the absence of time sheets, NAPAS submitted invoices based on previous time sheets, either 100% of the budgeted amount or a portion of the budgeted time was charged on the invoice (see explanation on attachment #, voucher #13-07). Each month the aggregate invoiced amount was checked to ensure the aggregate total direct labor was actual time charged based on time sheets. If there was a difference, the amount was adjusted in that month's invoice.

We had also advanced an employee an amount of salary (this was a new employee who requested the advance to help pay for moving to the DC area) with the payback provision that the advance would be repaid in full within the first 3 months and would be paid through payroll deduction. This is reflected in explanations for vouchers #13-02, 13-03 and 13-04 in the attachment.

NAPAS also hired temporary and part time temporary staff to assist with several annual conference activities supported by the contract. These additional workers did not use our time keeping system. Their time however was appropriately recorded and allocated to the contract. Of the $4,861 in question $1,360 is related to those temp staff

$2,613 is related to a missing time sheet for an employee. The employee did work during that time period, and included in this attachment are copies of the office calendar for the month in question as alternative backup documentation. This calendar is used when staff call in sick, leave the office for meetings (usually longer than 1 hour); are out of town for training or vacation, etc

NAPAS acknowledges it had over invoiced for F. Cleveland by $860 (see voucher #13-04), but we also did not invoice for $361 for a temp staff person in June. The net amount over invoiced should be reduced to $499. NAPAS no longer uses any budgeted time for invoicing, and only invoices for direct labor based on individual time cards.

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- Local Meals - NAPAS is requesting that the questioned cost of $613 be allowed and deleted for the following reasons:

1. OMB Circular A-122, "Cost Principles for non-Profit Organizations" clearly states that expenses for meetings are an allowable expenditure. Attachment B - Selected Items of Cost, Item #29 in OMB Circular A-122 states: "a. Costs associated with the conduct of meetings and conferences include the cost of renting facilities, meals, speakers' fees, and the like. ..." b. To the extent that these costs are identifiable with a particular cost objective, they should be charged to that objective (see paragraph B of Attachment A). ...." c. Costs of meetings and conferences held to conduct the general administration of the organization are allowable." (See Attachment #4)

2. Periodically contract staff are asked to attend all day, in-depth retreats/meetings to plan and coordinate the major trainings under our P&A contract. These are the Winter Conference and the Annual Conference. These meetings/retreats usually last a full day and include discussion/selection of training topics and tracks; specific training sessions: which trainers to use: etc. To help facilitate and accomplish the amount of details and planning necessary to ensure a successful training, NAPAS provides lunch to the program staff. By providing the lunch, staff can continue to work and the meeting is not delayed waiting for people to return from lunch. Given that the work being done was directly related to our contract, NAPAS charged the lunch as a staff expense and recorded/charged to staff travel as what we thought was the appropriate line even though it was not specifically travel. This was a miss-classification. These expenses should be charged to the "Staff Development/In-Service/Meetings"account, in accordance with A-122. NAPAS no longer charges these lunches to the staff travel contract line. These types of costs are being charged to the Staff Development/In-Service/Meetings account.

- Indirect Costs - NAPAS is requesting this item be deleted. The OIG auditor, in calculating the amount considered "over claimed" used $1,368,000 as the base for indirect cost calculations ($1,368,000 X .145 = $198,360; $1,368,000 X .15 = $205,200;

$205,200 - $198,360 = $6,840). The base for the amount of direct costs to use when calculating the invoiced amount of indirect costs is adjusted to limit the subcontracts to the first $25,000 of the subcontracts. This base, however, is accurate. To calculate the base from the total amount invoiced, the fee, the indirect costs included in the total amount invoiced, and amount of contracts over $25,000 must be deducted. The correct base should be $1,210,531 ($1,999,518 less $9,276 (fee), less $174,711 (actual indirect costs invoiced, less $605,000 (contract amount over $25,000). Using the 14.5% indirect rate, total indirect costs allowable under the contract is $175,527. NAPAS invoiced for $174,711 of indirect costs.

Attached (#5) is a table showing each invoice for the period being audited, the total amount invoiced, the base used for indirect calculations using a rate of 15%, and the total amount invoiced for indirect cost reimbursements. NAPAS used only $1,164,739 of direct costs as a base for the indirect calculations. As the table clearly shows, NAPAS only invoiced for $174,711 ($174,710.81) of indirect costs, not the $205,200 or the $198,360 as calculated. NAPAS invoiced for $174,710.81 because our budgeted amount for indirect costs for this contract period was only $174,960. While the auditor calculated that NAPAS could have invoiced for $198,360 in indirect costs, the contract amount did not support more than $174,960, and any difference was covered by the NAPAS fund, not the contract.

Also included in this attachment is the indirect rate cost proposal we submitted in March, 2000. It is, as required, based on the audited financials and shows an indirect rate of 15%. In previous indirect rate cost proposals, NAPAS had never been given a rate different than what had been requested in its submission and we had anticipated that would be the case with this submission. While the Division of Cost Allocation did give us a pre-determined rate of 14.5% on September 12, 2000 (the last month of our fiscal year) rather than the requested 15%, we were not given any reason for the lower rate nor were we informed we could contest or renegotiate that rate. Also attached are the same calculations for an indirect rate based on our audited financials for FY00 showing an actual indirect rate of 16.44%. While NAPAS feels the 15% indirect rate used (and as referenced in our contract as the cap for indirect charges for the final year of that contract) and requested from DCA is a reasonable rate and more accurately reflects NAPAS' costs on this cost reimbursement contract, NAPAS calculated the indirect cost on a lower base amount. NAPAS clearly did not over claim any indirect costs.

The HCFA Project (pages 5-7)

The first paragraph of page 5 is misleading and should be revised. NAPAS was consistently told by the Contract Officer that communications regarding the contract must be handled through the ADD Contract Officer. NAPAS was repeatedly told it was improper to speak with HCFA about the funds and HCFA would have to ask ADD to request an accounting. When ADD finally requested such an accounting it was immediately sent. The accounting indicated the percentage cost of the contract that was attributed to the HCFA project.

The HCFA project was a 15 month project. The state contracts were not negotiated until January 2000 and were still in operation at the end of FY 2000. NAPAS was required to monitor the projects and submit a final report which was prepared in FY 2001. Because NAPAS had not completed all other contract deliverables, NAPAS considered the balance in the overall contract at the end of September 30, 2000 ($33,614) to be HCFA funds to finish the project, and therefore FY 2000 accounting was based only on the $166,386.

The table on page 5 implies that there needed to be specific documentation to HCFA of expenditures related to the project. NAPAS has repeatedly asserted that a separate accounting was not required or maintained and therefore could not demonstrate HCFA specific expenses.

Nevertheless we respond to the findings as follows:

Personnel - Supervisory time was estimated as a percentage of the total time. Supervision and impromptu meetings that occur routinely are not broken out by specific individual sections of contracts or grants, and as such, NAPAS feels that the amount "allocated" to the HCFA project is lower than it really was.

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Rent - Given that rent is allocated based on FTEs and that NAPAS strongly feels that the amount for personnel reflected in the draft report is too low, NAPAS also believes this line to be under reported.

Miscellaneous - This amount clearly should be removed. When the request for an accounting was received, the most current general ledger was used to estimate HCFA related expenses. Given that this audit took place during the months following the close of our fiscal year, adjustments were being made to the general ledger to capture all allowable expenditures related to FY 2000. When the auditors requested a copy of the general ledger, they, of course, were given the version that included these adjustments as the year end closing had been completed.

Training expenses - While some training expenses could be clearly identified as HCFA, other training expenses could not. NAPAS feels a percentage of total training expenses can be legitimately attributed to the HCFA project.

Indirect cost rate - As discussed in the section above, NAPAS did not over claim indirect costs. Given that NAPAS was not required to account for HCFA expenditures separately, that NAPAS repeatedly asserted that a separate accounting was not maintained or required and therefore could not demonstrate actual HCFA specific expenses, recommending an estimated amount be repaid is not accurate. The accounting NAPAS provided indicated estimated percentage costs of the contract being attributed to the HCFA project. While NAPAS did use a 15% indirect cost rate which more accurately reflects NAPAS' costs on this cost reimbursement contract. NAPAS feels the 15 % indirect rate was (1) a reasonable rate given that it was the rate requested in our indirect rate proposal submission and, (2) more accurately reflects costs incurred under this cost reimbursable contract given that our actual indirect rate for the period in question is 16.44%.

Page 7 paragraph 1 again reiterates the internal inconsistencies of the findings - that NAPAS did not have to separately account for the moneys but, because it did not account separately, NAPAS should return a considerable portion of the money.

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Lastly, the four state projects ended their work by the end of the 2nd quarter of FY2001. Staff resigned, were laid off or reassigned. There are no viable activities being conducted by the four states at this time. States report that they receive occasional calls resulting from their outreach efforts but respond to these requests through their other programs. Only Washington state was able to secure some minimal state funding to conduct related but dissimilar activities on the dual eligible population.

Conclusion

NAPAS has well developed procedures and accounting methods to track all monies coming into the agency in generally accepted accounting practices (see independent audits). The OIG auditors reviewed those procedures and had ample evidence that when NAPAS is required to account separately, it clearly does. During FY 2000, NAPAS had a Social Security Administration grant, a Rehabilitative Services Administration grant, as well as other small contracts. Each one was accounted for separately through generally accepted accounting procedures. Had ADD required an accounting of HCFA funds it would have been easily implemented. The conclusion should contain this information.

Recommendations

NAPAS again requests that:

#1 Delete and/or adjust the amount in dispute.
#2 Remove this recommendation.
#3 Remove this recommendation.

Other Matters

NAPAS also requests that the a statement be included which indicates that two separate independent auditors advised NAPAS that it was not required to submit an A-133 audit. Upon hearing from the OIG that it was required, NAPAS immediately complied. The A-133 audit was submitted June 19, 2001 and accepted by the Federal Audit Clearinghouse, Bureau of the Census on June 29, 2001.

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Based on the above response NAPAS requests that the draft report be re-written to reflect these comments. NAPAS acknowledges only $499 in unallowable costs. Thank you for your consideration.

Sincerely,

Curtis L. Decker
Executive Director