



pennsylvania

DEPARTMENT OF HUMAN SERVICES
BUREAU OF FINANCIAL OPERATIONS

June 22, 2017

Mr. Steve Dennis, M.S., President
Premier Care and Staffing Services, Inc.
6754 Market Street
Upper Darby, Pennsylvania 19082

Dear Mr. Dennis:

I am enclosing for your review the final audit report of Premier Care and Staffing Services, Inc. as prepared by the Division of Audit and Review (DAR). Your response has been incorporated into the final report and labeled as an Appendix. The report covers the period from July 1, 2014 to June 30, 2016 (Audit Period).

I would like to express my appreciation for all of the courtesy extended to my staff during the course of the fieldwork. I understand that your staff was especially helpful to [REDACTED] in completing the audit process.

The final report will be forwarded to the Office of Long Term Living (OLTL) to begin the Department's resolution process concerning the report's contents. The staff from OLTL will be in contact with you to follow-up on the actions taken to comply with the report's recommendations.

If you have any questions concerning this matter, please contact David Bryan, Audit Resolution Section at [REDACTED]

Sincerely,

A handwritten signature in black ink that reads "Tina L. Long".

Tina L. Long, CPA
Director

Enclosure

c: Mr. Michael Hale
Ms. Peggy Morningstar
Ms. Kim Barge
Mr. James Michael
Ms. Ramona Humbert



June 22, 2017

Mr. Brendan Harris, Executive Deputy Secretary
 Department of Human Services
 Health & Welfare Building, Room 334
 Harrisburg, Pennsylvania 17120

Dear Deputy Secretary Harris:

The Bureau of Financial Operations conducted a performance audit of Premier Care and Staffing Services, Inc. (PCSS). The audit was designed to determine the sufficiency of documentation to support payments from the Provider Reimbursement and Operations Management System (PROMISe) for client care. Our audit covered the period from July 1, 2014 to June 30, 2016.

This report is currently in final form and therefore contains PCSS' views on the report's findings.

Summary of Conditions and Questioned Costs

Description of Condition	Location of Details	Questioned Costs
PROMISe Claims Were Not Supported by Adequate Documentation	Appendix A Finding No. 1	\$3,362,946
Services Were Not Always Delivered According to the Approved Service Authorizations	Appendix A Finding No. 2	\$0
Independent Contractors Provided All Direct Care Services	Appendix A Finding No. 3	\$0
Internal Control Deficiencies	Appendix A Finding No. 4	\$0
	Total:	\$3,362,946

See Appendix A for the Details of the Audit Findings.

See Appendix B for the Background, Objective, Scope and Methodology, and Conclusion on the Objective.

See Appendix C for the Analysis of Questioned Costs.

See Appendix D for PCSS' Response to the Draft Report.

Exit Conference

An exit conference was held on May 25, 2017. PCSS's management stated that it had implemented all of the recommendations detailed in the report with the exception of the questioned costs. They have revised their time sheet template to include adequate space to document scheduled hours and a check list to document service delivery; all care givers are now regular employees and are offered a full benefit package; and procedures have been developed and implemented to address internal control weaknesses. Based on the discussion, the BFO made some minor changes to the draft report.

Premier Care and Staffing Services, Inc.
July 1, 2014 to June 30, 2016

In accordance with our established procedures, an audit response matrix will be provided to the Office of Long Term Living (OLTL). Once received, OLTL should complete the matrix within 60 days and email the Excel file to the DHS Audit Resolution Section at:



The response to each recommendation should indicate OLTL's concurrence or non-concurrence, the corrective action to be taken, the staff responsible for the corrective action, the expected date that the corrective action will be completed, and any related comments.

Sincerely,

A handwritten signature in black ink that reads "Tina L Long".

Tina L. Long, CPA
Director

PREMIER CARE AND STAFFING SERVICES, INC.

APPENDIX A

Appendix A – Details of the Audit Findings

Premier Care and Staffing Services, Inc.

July 1, 2014 to June 30, 2016

Finding No. 1: PROMISE Claims Were Not Supported by Adequate Documentation

Condition (“What was found?”)

PCSS management stated that caregivers did not complete daily activity notes during the audit period; only timesheets were completed to document claims reimbursed through PROMISE. Additionally, the BFO noted deficiencies in the timesheet documentation such as incomplete timesheets, missing dates, times, and/or signatures.

Criteria (“What should it be?”)

Providers must maintain books and records supporting the units that they billed as specified in the following Code sections:

55 Pa Code, Chapter 52:

§ 52.14 (g) (2) Ongoing responsibilities of providers

§ 52.15(a) (2) Provider records

§ 52.42(d) Payment Policies

§ 52.43(h) (1) and (2) Audit Requirements

55 Pa Code, Chapter 1101;

§ 1101.11 General Provisions

§ 1101.51 Ongoing responsibilities of providers

Effect (“What is the impact?”):

The lack of daily activity notes resulted in 100% questioned costs for the audit period. Total questioned costs are \$3,362,946.

Cause (“Why did it happen?”):

PCSS management stated that they were not aware of the requirement to document services with a daily activity note. PCSS was notified of this requirement during a routine Quality Management Efficiency Team (QMET) monitoring. PCSS management has developed a daily activity note to document service delivery and has implemented it effective July 1, 2016.

Recommendations (“What needs to be done to correct it?”):

- The BFO recommends that PCSS ensure that service delivery is fully documented with a timesheet and a daily activity note before billing PROMISE.
- The BFO recommends that PCSS develop and implement procedures to ensure that a daily activity note is completed and that timesheets are accurate and properly reflect the hours worked.
- The BFO recommends that OLTL recover \$3,362,946 in questioned costs due to the lack of daily activity notes.
- The BFO recommends that OLTL continue to monitor PCSS to ensure they are properly documenting services with a daily activity notes and timesheets.

Appendix A – Details of the Audit Findings

Premier Care and Staffing Services, Inc.

July 1, 2014 to June 30, 2016

Finding No. 2: Services Were Not Always Delivered According to the Approved Service Authorizations

Condition (“What was found?”):

Services were not always delivered in accordance with the type, scope, amount, duration and frequency as specified in the approved service authorizations.

Criteria (“What should it be?”):

Services must be delivered according to the approved service authorizations as specified in 55 PA Code, Chapter 52 § 52.42(d) Payment Policies.

Effect (“What is the impact?”):

Services that are not delivered according to the approved service authorizations are not subject to reimbursement as stated in the above criteria.

Cause (“Why did it happen?”):

PCSS management did not ensure that its caregivers followed the approved service authorizations related to the frequency of service delivery. Additionally, the time sheets used during the Audit Period did not have adequate space to document hours when the hours were not provided consecutively.

Recommendations (“What needs to be done to correct it?”):

- The BFO recommends that PCSS develop and implement procedures to ensure that their caregivers provide services according to the approved service authorizations.
- The BFO recommends that OLTL continue to monitor PCSS to ensure they are providing services according to the approved service authorizations.

Appendix A – Details of the Audit Findings

Premier Care and Staffing Services, Inc.

July 1, 2014 to June 30, 2016

Finding No. 3: Independent Contractors Provided All Direct Care Services

Condition (“What was found?”):

PCSS classified all its caregivers as independent contractors during the audit period. Based on the Internal Revenue Service’s definition of an independent contractor, the employer cannot direct the services that are performed by an independent contractor. Since PCSS is a Home and Community Based Services (HCBS) provider, services must follow the approved service authorizations which direct the caregiver in the way the services must be delivered. As such, a caregiver providing HCBS must be considered an employee.

Criteria (“What should it be?”):

PCSS must adhere to the following:

55 PA Code, Chapter 52:

§ 52.21(b) Staff Training

§ 52.52 Subcontracting for a Vendor Good or Service

Office of Long term Living Bulletin, “Overtime and Minimum Wage Requirements in Participant Directed Models of Service” 54-16-01, 59-16-01

Internal Revenue Service Publication 15 and Publication 1779

Effect (“What is the impact?”):

In classifying employees as independent contractors, PCSS management did not provide the necessary oversight, which may have contributed to the deficiencies detailed in Finding No. 2. Additionally, PCSS allowed caregivers to work more than 40 hours per week, which may have affected the quality of services that were provided.

Cause (“Why did it happen?”):

PCSS management stated that consumers have the right to select their own caregiver, and most consumers request a specific caregiver to provide their care. As a result, PCSS allowed caregivers to provide the authorized services and paid them as independent contractors without regard to the number of hours and/or days worked per week.

Recommendations (“What needs to be done to correct it?”):

- The BFO recommends that PCSS ensure all of its caregivers providing direct services under the HCBS model are considered employees. This should include proper supervision, oversight, and direction in providing authorized services.
- The BFO recommends that PCSS ensure all employees are paid appropriately according to the number of hours they work.
- The BFO recommends that OLTL continue to monitor PCSS to ensure that the caregivers under the HCBS model are considered employees.

Appendix A – Details of the Audit Findings

Premier Care and Staffing Services, Inc.

July 1, 2014 to June 30, 2016

Finding No. 4: Internal Control Weaknesses

Condition (“What was found?”):

The BFO identified the following internal control weaknesses:

- Caregiver timesheets were not adequately reviewed before claims were submitted to PROMISe for reimbursement.
- In some cases the caregiver’s supervisor, the caregiver, and/or the consumer did not sign the timesheets.
- Timesheets were missing the time in and time out, and the date on the timesheets contained only the month and the day but not the year.
- The timesheet hours were not always calculated correctly resulting in over and/or under billing

Criteria (“What should it be?”):

Effective internal controls should include procedures that are in writing, are functional, are used consistently, and are adequate to produce reliable documentation to support PROMISe reimbursements.

Effect (“What is the impact?”):

Internal control weaknesses contributed to the questioned costs identified in Finding No. 1.

Cause (“Why did it happen?”):

PCSS management did not have the proper controls in place to ensure an adequate review of timesheets occurred prior to billing PROMISe.

Recommendations (“What needs to be done to correct it?”):

- The BFO recommends that PCSS design and implement a reliable system of internal controls over the recording and billing of time and the preparation of daily activity notes, and ensure that all documentation necessary to support PROMISe billing is maintained and available.
- The BFO recommends that OLTL continue to monitor PCSS to ensure that the internal control procedures are implemented and are effective.

PREMIER CARE AND STAFFING SERVICES, INC.

APPENDIX B

**Appendix B – Background, Objective, Scope and Methodology,
and Conclusion on the Objective**

Premier Care and Staffing Services, Inc.
July 1, 2014 to June 30, 2016

Background

PCSS is a for-profit privately held company located in Upper Darby, PA. Since 2008, PCSS has provided OLTL waiver services to consumers living in Delaware and Philadelphia counties. PCSS participates in the Independence Waiver, Pennsylvania Department of Aging Wavier, ACT150 Wavier, the Attendant Care Waiver, and the Attendant Care +60 Waiver programs.

Objective, Scope and Methodology

Our audit objective is shown in the Conclusion on the Objective section below. In pursuing our objective, we analyzed available documentation for the audit period, including payroll records, caregiver timesheets, billing data, background checks, PROMISe reimbursement data, and other documentation as appropriate.

We conducted this performance audit in accordance with generally accepted government auditing standards (GAGAS). Those standards require that we plan and perform the audit to obtain sufficient appropriate evidence to provide a reasonable basis for our findings and conclusions based on our audit objective. We believe that the evidence obtained provides a reasonable basis for our findings and conclusions based on our audit objective.

Government auditing standards require that we obtain an understanding of management controls that are relevant to the audit objective described below. The applicable controls were examined to the extent necessary to provide reasonable assurance of their effectiveness. Based on our understanding of the controls, there are deficiencies in supporting documentation related to claims reimbursed through PROMISe. Areas where we noted an opportunity for improvement in management controls are addressed in the findings and recommendations in this report.

The BFO’s fieldwork was performed intermittently between November 1, 2016 and January 27, 2017. A closing conference was held with PCSS’ management on January 9, 2017 to discuss the results of the audit. At the closing conference, the BFO gave PCSS the opportunity to provide additional documentation supporting the claims that the BFO questioned. PCSS provided documentation and the BFO analyzed and considered it before drafting this report. This report is available for public inspection.

Conclusion on the Objective

Objective Number	Audit Objective	Conclusion on the Objective
1	To determine if PCSS has adequate documentation to substantiate claims reimbursed through PROMISe.	PCSS did not maintained sufficient documentation to support its PROMISe claims for the audit period, which resulted in questioned costs of \$3,362,946.

PREMIER CARE AND STAFFING SERVICES, INC.

APPENDIX C

Appendix C – Analysis of Questioned Costs

Premier Care and Staffing Services, Inc.

July 1, 2014 to June 30, 2016

Procedure Code	Reimbursed Amount in Sample	Total Amount Questioned in Sample	Reimbursed Amount in Universe	Total Questioned Costs
W1793	\$800,796	\$800,796	\$3,362,946	\$3,362,946
Total:				\$3,362,946

PREMIER CARE AND STAFFING SERVICES, INC.

RESPONSE TO THE DRAFT REPORT

APPENDIX D

Kenneth R Frohlich, Attorney at Law
551 West Lancaster Avenue – [REDACTED]
Haverford, PA 19041
Phone: 484-222-1864
Fax: (610) 527-8381
[REDACTED]

May 11, 2017

Ms. Barbara Miller, Audit Manager
Division of Audit and Review
Bureau of Financial Operations
Department of Human Services
801 Market Street, [REDACTED]
Philadelphia, Pennsylvania 19107-3126

Re: PCSS Response to “draft” Performance Audit report of Premier Care and Staffing Services, Inc. (PCSS) for the period July 1 2014 to June 30, 2016

Dear Ms. Miller,

I represent Premier Care Staffing Services, Inc (PCSS) and Mr. Steven Dennis, the CEO of PCSS. This letter along with the attached “Specific Responses to the Draft Audit Report” and the attached Exhibits are the formal response of PCSS to the audit. This response should be made part of the audit documents, and should be discussed at the exit conference at the Business Office of PCSS on May 25 2017.

PCSS has been operating since 2008, providing quality care and staffing under various programs. PCSS has always tried to comply with the letter and spirit of all requirements. PCSS has always cooperated with OLT and QMET, has welcomed their inspections and been responsive in implementing recommended changes.

PCSS prides itself on its commitment to its Clients and its Caregivers. The company has programs to train Caregivers, and it is diligent in providing oversight on the care provided. PCSS is proud of the quality service it provides to Clients, and has been responsive to any complaints from its Clients.

An example of its commitment is that PCSS continues to provide a consistent level of service to Clients and Caregivers despite problems beyond its control at HCSIS. The HCSIS problems have made it impossible for PCSS to submit claims for certain Caregivers. PCSS has not allowed this to affect its services to Clients or its payment to Caregivers, and has

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paid Caregivers for services for which reimbursement is now delayed. The volume of delayed claim submissions has now exceeded \$100,000, which has caused some financial strain on a small company like PCSS.

The audit of PCSS by this BFO audit team resulted in several types of recommendations. Almost all of the recommendations have been accepted and implemented by PCSS. I've grouped them into five categories to summarize the PCSS response:

1. There were recommendations to document daily activities. PCSS has **accepted** these recommendations and effective July 2016 had implemented procedures to accomplish this.
2. There were recommendations to improve controls. PCSS has **accepted** these recommendations and has implemented additional controls.
3. There was a recommendation to make all Caregivers employees, rather than contractors. PCSS does not accept the reasons given by the audit team for why this is necessary, but nevertheless has **accepted** this recommendation. PCSS is in the process of converting all Caregivers to employees. This has cost it some business since some Caregivers (along with their Clients) have left PCSS to work for companies that would allow them to work as contractors. To help overcome the resistance of some Caregivers, PCSS has established a package of benefits. The cost of doing this is not unsubstantial.
4. There were recommendations that OLTL monitor certain conditions. PCSS has **accepted** these recommendations and pledged to cooperate with OLTL as it always has.
5. There was a recommendation that OLTL recover over \$3 million in past payments, despite the fact that the payments were for authorized services provided to Clients. PCSS finds this recommendation outrageous. PCSS has **not accepted** it. Aside from the impossibility of PCSS paying, PCSS questions the legal basis of seeking any recovery of payments for which services were provided. Of necessity, PCSS will take all available measures to fight this.

The PCSS response to the audit is intended to be detailed and clear. In furtherance of these objectives, when a "Condition" or an "Effect" had more than one sentence, PCSS commented on each sentence, numbering the sentences, so it will be easy to discuss at the exit conference. When Recommendations had dot-points, they are labeled in order #1, #2, etc.

PCSS is hopeful that as a result of the exit conference, there will be some changes made to the draft audit report before the report becomes final. If that were the case, PCSS would like the chance to modify its response to reflect any changes made. For example, PCSS believes that there were no missing timesheets, and would like this corrected in the audit

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report. Another example is that PCSS never billed on *authorized hours* instead of *hours providing authorized services*, and believes this finding should be removed. And, of course, the major item PCSS wants changed is the recommendation that OLTL recover payments. Should these changes or others occur, PCSS would like to change its response to remove the wording challenging these items.

We look forward to discussing these items at the exit conference on May 25.

Sincerely,



Kenneth Frohlich, Ph.D., FCAS, ASA, J.D.
Attorney at Law

cc. Mr. Steven Dennis

Kenneth R Frohlich, Attorney at Law

Specific Responses to the “draft” Audit Report

Finding No. 1: PROMISE Claims Were Not Supported by Adequate Documentation

Condition (1st sentence): *PCSS management stated that caregivers did not complete daily activity notes during the audit period; only timesheets were completed to document claims reimbursed through PROMISE.*

PCSS Response: This has been fixed and is no longer a problem. PCSS has always tried to do what was required. PCSS changed its process in July 2016 at the suggestion of QMET. However PCSS feels it is important to clarify what its former procedures were.

PCSS maintained a Client file for every Client. Each Client file contained an updated Service authorization form (SAF) that specified the services authorized for that Client. PCSS dispatched Caregivers to provide the specific services that were authorized in the Client file. The Caregivers were instructed that only hours spent providing authorized services were counted as working hours.

In 2008, the Philadelphia Corporation for the Aging (PCA) had provided PCSS with their recommended form for a *time sheet*. PCSS had adopted the PCA-recommended format. After the authorized services were provided, the Caregiver was required to fill out, sign and submit to PCSS a *time card form* (in the PCA-recommended format), which listed the hours the Caregiver had worked providing authorized services. The Client or a Supervisor would review the daily hours for accuracy and sign the form.

PCSS paid the Caregivers based on the hours on the time card form. (The purpose of the old time card form was to list for payroll purposes the hours the Caregiver worked providing authorized services. The new form expands this purpose to include documenting daily services provided). During the QMET monitoring, PCSS learned that OLTL wanted them to use a more detailed form, which included the services provided each day (notes). Although each Caregiver was paid a rate that did not vary by the specific services provided, the more detailed form required that each day the services provided be indicated by placing a check mark next to each service provided that day. Upon learning of this, PCSS adopted the new form and has been using it since July 2016.

In summary, Caregivers hired by PCSS provided the authorized services to Clients. Clients received the services they were supposed to receive. The Caregivers were paid by PCSS. PCSS then filed the claims on PROMISE to be reimbursed for the authorized services it had provided and which it had already paid Caregivers to provide. PCSS then received payment for the services it had provided. “Condition (1st sentence)” above does not dispute that the services for which PCSS submitted its claim for reimbursement were provided, nor does it deal with the accuracy of the hours, but rather with the fact that level of detail desired was not provided in the notes in the files backing up the claim submission.

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Condition (2nd sentence): *Additionally, the BFO noted deficiencies in the timesheet documentation such as missing timesheets, missing dates, times and/or signatures.*

PCSS Response: The “Condition (2nd sentence)” lists specific types of deficiencies in the timesheet documentation.

For an audit to be fair and accurate, each finding should be backed up with documented facts that can be verified. In addition, the audit team should have given PCSS a chance to correct any misperceptions or errors of the audit team. In addition the audit team should have calculated numbers, dollars and frequency for each type of error. Therefore, before issuing the draft report:

1. The BFO audit team should have retained a copy or a record of every timesheet that the audit team believed might contain an error so that PCSS could review the timesheet and verify or dispute the result.
2. The BFO audit team should have kept a list of all missing timesheets and given the list to PCSS to review.
3. The BFO audit team should have calculated the total number of records for each type of error and the total dollars involved for each type of error. Using the number and dollars, the audit team should have calculated the percent of timesheets that contained each error and the percent of total dollars that contained the error. This would tell PCSS and any reader of the audit report whether an error was frequent or infrequent, and more important or less unimportant.
4. The BFO audit team should have reviewed with PCSS the errors of commission or omission, giving PCSS a chance to dispute the findings at the detail level before they issued a report.
5. The BFO audit team should have modified the information on number and frequency of errors to reflect any findings that PCSS validly disputed. If the audit team did not agree with PCSS on any items disputed by PCSS, the audit team should have explained its position to PCSS.

Members of the BFO team did discuss with PCSS its list of errors and its list of missing timesheets. PCSS believed it showed the auditors that there were no missing timesheets. The BFO audit team appeared to have accepted that all sheets were accounted for, and therefore this type of error ought to be removed from the report’s findings.

For the rest of the errors discussed below, there have been new controls instituted to be sure these errors do not reoccur. But it is important to look at the impact of the errors on the accuracy of the claims PCSS submitted.

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For example, PCSS concedes that there were some incomplete dates. The most common date error was missing year. It is hard to fathom why this could be considered consequential since timesheets were submitted shortly after the end of the time period and filed with all the other timesheets from the same period. There was never a doubt as to the year. (If the BFO team did not know the year, it is likely because they had not kept the timesheets with the batches they were given). While this error may have occurred, PCSS maintains that it was inconsequential since the year was always obvious. Other date errors were less frequent but also inconsequential for the same reason.

PCSS acknowledges that there may have been missing signatures, but denies that this is consequential. Since PCSS verifies with the client through both frequent on-site visits and/or phone calls that services are being provided, PCSS believes these missing signatures have not indicated that clients were deprived of any services.

Although times were sometimes not indicated, it was often because the individual Caregiver was billing for fewer hours than he had actually worked. For example a family member Caregiver may have worked from 10 to 5, providing authorized services, but knowing that only 4 hours per day are authorized, filled in the 4 hours and omitted the times.

PCSS asks that this be discussed at the Conference, and that they be given a list of items still regarded as problematical. PCSS also objects to the way the sentence is written which implies, without quantification, that errors were ubiquitous.

Effect: *The lack of daily activity notes resulted in 100% Questioned costs for the audit period. Total questioned costs are \$3,362,946.*

PCSS Response: This effect is not a reasonable response to the Condition listed above.

OLTL approved the eligibility of these Clients for certain services. Clients received the services that they were supposed to get. The state of Pennsylvania therefore received the benefit it was supposed to get.

PCSS provided these authorized services. PCSS paid the Caregivers providing the services with the expectation that PA would honor PCSS legitimate claims for payment for the services provided. Under either a contract theory or a Quantum Meruit theory, the state should pay for the reasonable value of the benefit it received.

The BFO audit team does not dispute that Clients were provided services, only that the PCSS documentation may be less detailed or that some percent of the forms may be incomplete or contain an error. Yet the audit report disputes 100% of the amount billed. By questioning 100% of the costs, the audit team, in effect, rejects every single claim filed.

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If hourly rates varied for different services, and if PCSS had billed at the rate for the more expensive services, there might be room for dispute of the amount owed to PCSS if the detail of service provided were not documented in each timesheet. But if all the items are paid for at the same hourly rate, the omission of service detail should have no affect on the amount or validity of the claims. Yet the BFO audit Report recommends recovering the payment for every claim.

If the audit has uncovered some over-billing or under-billing, these should be listed and corrected. But except for correcting incorrect amount, claims for services provided should be paid in the amount billed. Yet the draft Audit Report rejects every claim.

Recommendations:

PCSS is a responsible organization, aspiring to meet whatever standards are set by OLTL. They have already instituted changes to prevent future errors, responding to the QMET changes recommended a year ago and going beyond them to institute new controls and procedures.

There are four recommendations under this finding, which are referred to as Recommendation #1, #2, #3 and #4.

#1: *The BFO recommends that PCSS ensure that delivery is fully documented with a timesheet and a daily activity note before billing PROMISE.*

PCSS Response: PCSS accepts the recommendation from OLTL that they improve tracking of the types of services done each day. To do this they have already begun to use the more detailed form (since July 1, 2016). [See Exhibit 1]

#2: *The BFO recommends that PCSS develop and implement procedures to ensure that a daily activity note is completed and that timesheets are accurate and properly reflect the hours worked.*

PCSS Response: PCSS accepts this recommendation and has implemented procedures to accomplish this since June 2016. PCSS staff were notified by memo of stricter procedures. [See Exhibit 2]. In addition to using the new form that documents specific activities done each day, PCSS has established new controls. As part of the new controls, Caregivers are required to sign in when they drop off the timesheet. The timesheet is then reviewed at the front desk for completeness, insuring that the timesheet includes full dates, hours, notes and signatures. While minor problems like missing year are corrected at the front desk, most incorrect timesheets go back to the Caregiver and must be resubmitted. Timesheets that are complete are passed over to the payroll manager for a second review. The payroll manager checks each timesheet for reasonableness and math errors. After corrections are made, the payroll manager verifies that the hours worked do not exceed the authorized hours and reduces the hours on the time sheet if necessary. She then lists the weekly hours

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onto a payroll summary sheet that is the basis for claims submitted on PROMISE. [See flow chart in Exhibit 3].

#3: The BFO recommends that OLTL recover \$3,362,946 in questioned costs due to the lack of daily activity notes.

PCSS Response: During the closing conference between BFO and PCSS at the conclusion of the audit, BFO acknowledged that they weren't questioning whether services were provided. PCSS vigorously disputes whether the state should recover anything, let alone the entire amount paid by OLTL to PCSS to cover all services provided in the two-year audit period. PCSS is entitled to the payments it received under both a contract theory and a quantum meruit theory. There should be no refund. By suggesting that OLTL recover \$3,362,946 the audit team implies that no authorized services were provided! PCSS provided all services that were authorized to the consumer.

#4: The BFO recommends that OLTL continue to monitor PCSS to ensure they are properly documenting services with a daily activity notes and timesheets.

PCSS Response: PCSS accepts the recommendation that OLTL continue to monitor PCSS and will fully cooperate with this monitoring.

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Finding No. 2: Services Were Not Always Delivered According to the Approved Service Authorizations.

Condition: *Services were not always delivered in accordance with the type, scope, amount, duration and frequency as specified in the approved service authorizations.*

PCSS Response: PCSS has operated its business to provide services to its Clients in accordance with approved service authorizations. It is unaware of instances where it deviated from this.

The "Condition" says, "*Services were not always delivered in accordance with...*" The words "*not always*" means that delivery was not perfect. It does not mean *services were never delivered in accordance with...* PCSS has no doubt that among its Caregivers, there could have been an occasional instance where there was a slight deviation from approved service authorizations, however PCSS never over-billed OLTL. For example there were times when additional services were provided or a Caregiver worked excess hours that were not approved by PCSS and were not billed to OLTL.

PCSS stands ready to correct any problems that exist. But the "Condition" fails to state with any specificity the frequency of the different lapses it is implying, and which it should be able to back up with the specific time sheets that contain each error type. Seeing the specific time sheets would enable PCSS to fix any problem.

PCSS paid Caregivers for providing authorized services. PCSS objects to the BFO audit team equating the lack of daily detail on the specific services on the time sheets with not providing the services. To our knowledge the BFO audit team did not speak with the Caregivers to see if the services were delivered, nor did they speak with Clients to see whether the services were received. Had they done so, they would have received confirmation that the authorized services billed for were provided.

Effect: *Services that are not delivered according to the approved service authorizations are not subject to reimbursement as stated in the above criteria.*

PCSS Response: PCSS agrees with the statement "Services that are not delivered according to the approved service authorizations are not subject to reimbursement." PCSS believes none of that applies to PCSS. PCSS does not believe that this affected its reimbursement, since it only delivered services according to the approved service authorizations in the Client file and that is what it billed for on PROMISE. PCSS understands that despite its attempt to adhere to the authorizations, there may be isolated incidents where there may be an issue, but it believes it has not billed for anything improperly. If the audit team thinks it has identified any of these PCSS would like to see them.

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PCSS was not shown instances where the services were not provided as authorized. Discussions between PCSS and the BFO audit team identified mainly file issues, where daily services provided were not broken down in the documentation.

Recommendations:

#1: *The BFO recommends that PCSS develop and implement procedures to ensure that their caregivers provide services according to the approved service authorizations.*

PCSS Response: While PBSS is unaware of any instances where it did not ensure Caregivers provided services according to approved service authorizations, PCSS accepts this recommendation and has strengthened its procedures in this regard. [See Exhibit 2]

#2: *The BFO recommends that OLTL continue to monitor PCSS to ensure they are providing services according to the approved service authorizations.*

PCSS Response: PCSS accepts this recommendation and will fully cooperate with OLTL.

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Finding No. 3: Independent Contractors Provided All Direct Care Services

Condition (1st sentence): *PCSS classified all its caregivers as independent contractors during the audit period.*

PCSS Response: The word “all” should be changed to “many” or “most.” PCSS agrees that some (but not all) Caregivers were classified as independent contractors during the audit period. This is currently being changed to make all Caregivers employees.

Clients have the right to approve their Caregiver. Because of the intimate nature of caregiving in the home, Clients are particular about their Caregiver. Many Clients want family members to perform this service and in some cases the family members have left jobs to perform these home services. Although PCSS directed, trained, monitored, controlled and paid all Caregivers, the Clients retain their role in not only selecting but also changing (i.e. firing) the Caregiver.

Condition (2nd sentence): *Based on the Internal Revenue Service’s definition of an independent contractor, the employer cannot direct the services that are performed by an independent contractor.*

PCSS Response: This statement is false and misleading.

The IRS **is** concerned about whether a company classifies a worker as an *employee* or a *contractor* because that classification determines the *obligations of the company* with regard to employment taxes, benefits, how pay is reported to the IRS and other regulatory matters. To determine whether a worker is an employee or a contractor can be complex so the IRS has 20 factors it looks at to make the determination, with no one factor determinative.

The worker classification determines the *obligations of the company*, **not** whether the company can direct the services that are performed or control the delivery of services. The IRS takes no position on whether a business can direct the services that are performed by a contractor. In fact, no valid conclusion on the amount of direction given to workers or the degree control over the workers can be drawn just from looking at whether the worker is classified as an employee or a contractor.

PCSS did direct the services provided by all of its Caregivers, regardless of whether they were classified as contractors or employees.

Condition (3rd sentence): *Since PCSS is a Home and Community Based Services (HCBS) provider; services must follow the approved service authorizations, which direct the caregiver in the way the services must be delivered.*

PCSS Response: PCSS agrees with this statement and has adhered to its precepts. Every Caregiver is instructed on the approved service authorizations.

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Condition (4th sentence): *As such, a caregiver providing HCBS must be considered an employee.*

PCSS Response: This conclusion is false because it implies that proper control cannot be exercised unless Caregivers are classified as employees. Despite the fact that this conclusion is false, PCSS is changing all of its Caregivers to employees.

Effect (1st sentence): *In classifying employees as independent contractors, PCSS management did not provide the necessary oversight, which may have contributed to the deficiencies detailed in Finding No. 2.*

PCSS Response: As explained above, the ability to hold workers to standards is not related to their classification as contractors or employees. If this is left in, PCSS asks that the wording on this be changed to substitute the word "Caregivers" for "employees" to recognize that "employees" is a technical term of art requiring a more detailed analysis than was done.

Effect (2nd sentence): *Additionally, PCSS allowed caregivers to work more than 40 hours per week, which may have affected the quality of services that were provided.*

PCSS Response: When the caregiver is a member of the household, it is permitted for them to work more than 40 hours. OLTL has been aware of these regulations.

Recommendations:

#1: *The BFO recommends that PCSS ensure that all of its caregivers providing direct services under the HCBS model are considered employees. This should include proper supervision, oversight and direction in providing authorized services.*

PCSS Response: PCSS agrees that it must exercise proper supervision, oversight and direction in providing authorized services. PCSS maintains that it has always done this for all Caregivers.

However, despite disagreeing with the arguments made in this audit, PCSS has decided that it will require Caregivers to become employees, and is in the process of changing their status. To help overcome the resistance of some Caregivers to this change, PCSS is offering many benefits including medical insurance, vision insurance, dental insurance, life insurance and short-term disability insurance to all employees. [See Exhibit 4]

#2: *The BFO recommends that PCSS ensure all employees are paid appropriately according to the number of hours they work.*

PCSS Response: PCSS agrees with paying caregivers according to the number of hours they work and believe it has consistently done so. This is not a change. Workers were paid by the hour during the entire period just audited. PCSS is puzzled as to why this is in the recommendations, as it implies that Caregivers were not previously paid this way. PCSS

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believes this should be removed as a recommendation because it implies that this was not being done.

#3: *The BFO recommends that OLTL continue to monitor PCSS to ensure that the Caregivers under the HCBS model are considered employees.*

PCSS Response: PCSS thinks that OLTL has a valuable role in verifying that proper supervision of Caregivers is occurring. This has nothing to do with the classification of Caregivers as employees or contractors. As mentioned above, for reasons not necessarily related to the BFO audit, PCSS will be classifying of all of its Caregivers as employees.

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Finding No. 4: Internal Control Weaknesses

The BFO identified the following internal control weaknesses:

1st: *Caregiver timesheets were not adequately reviewed before claims were submitted to PROMISE for reimbursement.*

PCSS Response: PCSS does review timesheets and does not know what standard was used in determining that reviews were inadequate. While PCSS recognizes that despite reviews, an occasional error might be missed, PCSS would like to know the standard that was used by BFO? PCSS does not believe this resulted in improper billing.

PCSS does review timesheets on a weekly basis and records weekly hours provided to each Consumer. It has recently improved controls on data on the time sheets. [See Exhibit 2]

2nd: *In some cases the caregiver's supervisor, the caregiver, and/or the consumer did not sign the timesheets.*

PCSS Response: PCSS agrees that this should not happen. PCSS has improved its controls and has improved the situation since QMET came and monitored in July 2016. All of QMET's recommendations have been adopted.

3rd: *Timesheets were missing the time in and time out and the date on the timesheets contained only the month and the day but not the year.*

PCSS Response: PCSS agrees that timesheets should be filled out in their entirety. The revised timesheet recommended by QMET has been used since July 2016 and combined with the control procedures implemented should insure that incomplete timesheets don't get through.

4th: *The timesheet hours were not always calculated correctly resulting in over and/or under billing.*

PCSS Response: PCSS agrees this should never occur and will work to make sure it doesn't occur. PCSS is unaware of any instances of over-billing.

5th: *Certain timesheets were missing.*

PCSS Response: PCSS keeps all timesheets and can provide any on request. PCSS disputes this finding and believes it should be removed.

6th: *It appears that some of the billings to PROMISE were based on authorized units and not the actual units delivered.*

PCSS Response: PCSS denies that this occurred and asks the BFO team for the evidence they used to reach this conclusion.

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Effect: *Internal control weaknesses contributed to the questioned cost identified in Finding No. 1.*

PCSS Response: The BFO draft audit report questioned all costs, not just those in error. PCSS accepts it is legitimate to question billing if the hours charged are inconsistent with the hours calculated between time-in and time-out. But this is not the case here. BFO is blanket challenging of all the costs, which is unreasonable and legally incorrect.

Recommendations:

#1: *The BFO recommends that PCSS design and implement a reliable system of internal controls over the recording and billing of time and the preparation of daily activity notes, and ensure that all documentation necessary to support PROMISE billing is maintained and available.*

PCSS Response: As stated above, PCSS has improved its controls consistent with QMET recommendations and therefore accepts this recommendation. [See Exhibits 1 and 2].

In addition, as per the QMET recommendation, PCSS began electronically storing all timesheets in July 2016.

#2: *The BFO recommends that OLTL continue to monitor PCSS to ensure that the internal control procedures are implemented and are effective.*

PCSS Response: PCSS accepts this recommendation and will fully cooperate with OLTL.

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Exhibits

Exhibit 1 – new timesheet containing services provided.

Exhibit 2 – Memo to Staff

Exhibit 3 – Flow Chart of new control process

Exhibit 4 - Benefits Offered

Exhibit 1

PREMIER CARE & STAFFING SERVICES, INC.

6754 Market Street Upper Darby, PA 19082
 Phone: 610-352-6553 Fax: 610-352-9370

PRINT CAREGIVER'S NAME	PRINT CLIENT'S NAME						
Please fill this paper out in full. We must receive signed time sheet by Monday before 4:00 pm. Please check off each task that has been completed as specified on SAF.	Dates worked						
	Mon	Tues	Wed	Thurs	Fri	Sat	Sun
	Hours worked						
	AM	AM	AM	AM	AM	AM	AM
Duties	AM/PM	AM/PM	AM/PM	AM/PM	AM/PM	AM/PM	AM/PM
	PM	PM	PM	PM	PM	PM	PM
	PM/AM	PM/AM	PM/AM	PM/AM	PM/AM	PM/AM	PM/AM
Bathing Assistance							
Lotion/oil							
Dressing Assistance							
Hair/Makeup							
Shave							
Meal Preparation							
Eating Assistance							
Laundry							
Light House Cleaning							
Shopping							
Distribute Medication							
Social/ leisure activities							
Telephone/communications							
Securing transportation							
Appointment scheduling							
Care for personal possessions							
Obtain seasonal clothing							
Help with prosthetics							
Ambulation							
Exercises (range of motion)							
Supervising walks							
Toileting							
Bladder and bowel management							
Transferring							
Incontinence care							
Catheter care							
Wound care							
G-Tube feeding							
Total hours worked daily(AM-PM)							
Total hours worked daily (PM-AM)							
Total weekly hours							

Caregiver Signature	Client Signature
Comments:	

Exhibit 2

MEMO

DATE: JUNE 20, 2016
TO: PREMIER CARE STAFF & INDEPENDENT CONTRACTORS
FROM: ADMINISTRATION

EFFECTIVE JUNE 27, 2016

YOU MUST BEGIN USING THE NEWLY FORMATTED TIMESHEETS. AND ALL TIME SHEETS MUST BE FILLED OUT PROPERLY. THIS INCLUDES:

PROPER DATES
PROPER TIMES
YOUR SIGNATURE
CLIENT SIGNATURE
DAILY HOURS
WEEKLY HOURS TOTALED
ALL TIMESHEETS MUST BE LEDGIBLE

ALL FIELDS MUST BE PROPERLY CHECKED ACCORDING TO THE CLIENT'S CARE PLAN. IN ADDITION, TIMESHEETS MUST BE IN THE OFFICE EACH MONDAY BY 4PM LATEST. ALL TIMESHEETS MUST BE SIGNED IN ON THE TIMESHEET SIGN-IN FORM LOCATED AT THE FRONT DESK. AFTER SIGNING TIMESHEET PLACE IT IN THE BOX LABELED 'TIMESHEETS' ALSO LOCATED AT THE FRONT DESK. ATTACHED YOU WILL FIND THE EXAMPLE OF A COMPLETED TIMESHEET.

FAILURE TO SUBMIT THE PROPER TIMESHEET, WITHIN THE PROPER TIMEFRAMES, WITH THE PROPER INFORMATION WRITTEN LEDGIBLY AS EXPLAINED ABOVE, MAY RESULT IN A DELAY IN YOUR PAYROLL CHECK BEING PROCESSED.

IF YOU WOULD LIKE DIRECT DEPOSIT PLEASE BRING IN YOUR BANKING INFORMATION ALONG WITH A VOIDED CHECK!

Exhibit 3

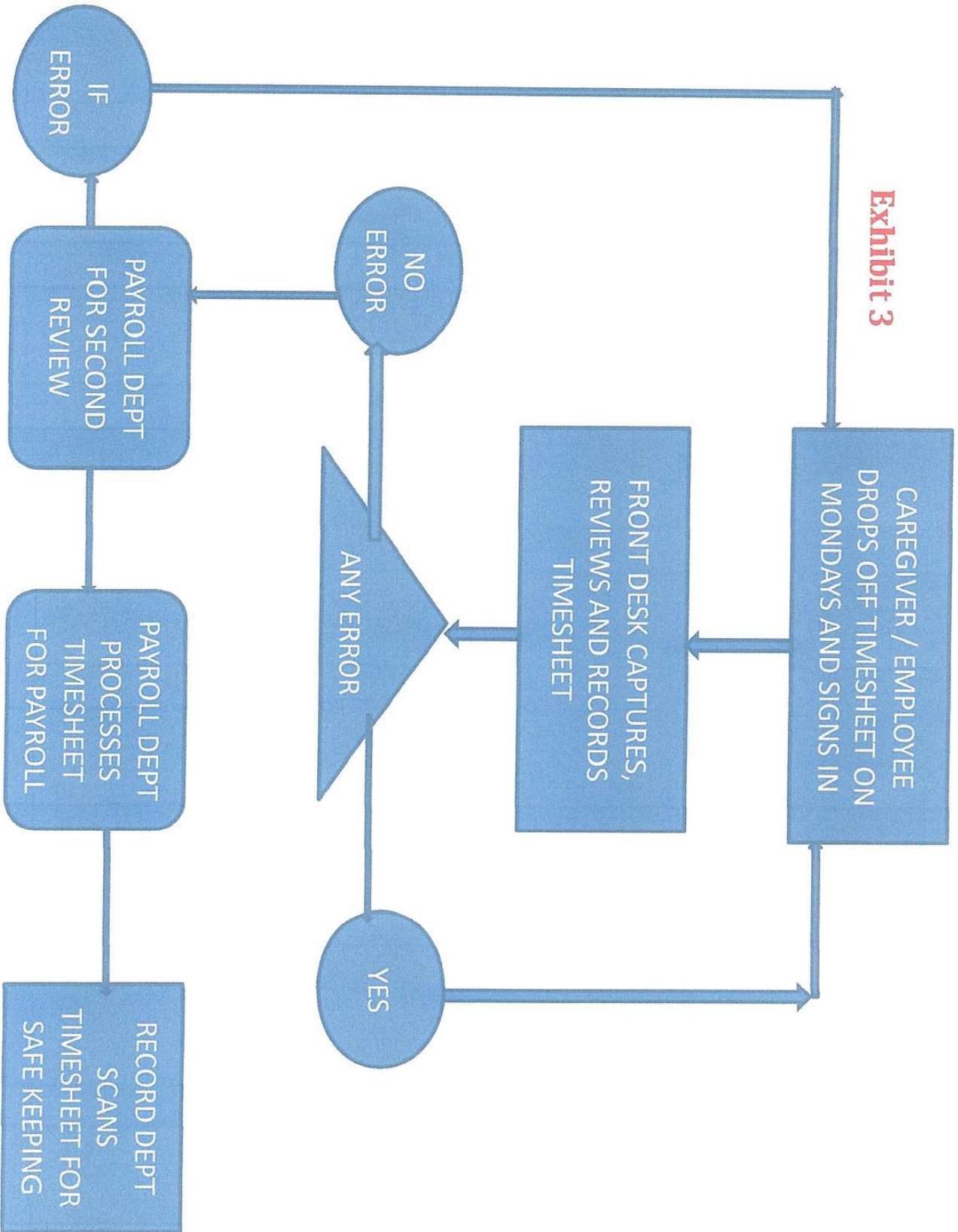


Exhibit 4

Premier Care & Staffing Services, Inc.

We are pleased to offer our staff the following group insurance benefits:

MEDICAL & VISION INSURANCE	MEDICAL INSURANCE BENEFITS	MEDICAL INSURANCE BENEFITS
<ul style="list-style-type: none"> Guaranteed issue; No medical questions No pre-existing conditions exclusions No deductibles No out-of-network penalties Employees choose their own physician Enrolled dependants get same coverage as you Point-of-service Prescription Drug Benefit Durable insurance ID cards ACA (Obamacare) compliant—No penalty HIPAA privacy compliant 	<ul style="list-style-type: none"> Preventative Services are Free Hospital Room & Board Benefits Hospitalizations – Cancer Hospitalizations – Heart Attack Hospitalizations – Accident/Injury Hospitalizations – Stroke Hospitalizations – Child Birth Surgery Benefits Anesthesia Benefits Doctor Office Visit Emergency Room Doctor Visit 	<ul style="list-style-type: none"> Radiology (MRI, CT Scan) Hospital Room & Board Wellness – Annual Physical Wellness – Mammogram Wellness – Cervical Cancer Immunization – Hepatitis A&B Immunization – Influenza (Flu) <p>NON-INSURANCE SERVICES</p> <ul style="list-style-type: none"> Vision Discounts Included Travel Assistance Included 24-Hour Nurse Helpline Incl.

TERM LIFE INSURANCE	SHORT-TERM DISABILITY INSURANCE	PREMIUMS (Cost Per Week)
<ul style="list-style-type: none"> \$10,000 employee Life benefit \$10,000 matching Accidental Death benefit \$2,500 Life only for enrolled dependents (\$500 up to 6 months old) Benefits reduce 50% at age 70 for employee Spouse coverage ends at age 70 	<ul style="list-style-type: none"> Up to 26 weeks' coverage if disabled 50% of base pay to \$125 per week 14-day elimination period for benefits (from first day of hospitalization) Benefits reduce 50% at age 70 	<p><input type="checkbox"/> Medical Plan 1 – EE [REDACTED] EE+Sp \$58.59 EE+Child [REDACTED] Family [REDACTED]</p> <p><input type="checkbox"/> Medical Plan 2 – EE [REDACTED] EE+Sp \$74.40 EE+Child [REDACTED] EE + Family [REDACTED]</p> <p><input type="checkbox"/> Life/STD EE [REDACTED] <input type="checkbox"/> Life/STD Family [REDACTED]</p>

DENTAL INSURANCE - Service Type I	Service Type II	Service Type III
<p>Preventive and Diagnostic Services</p> <ul style="list-style-type: none"> Routine Exams, Bitewing X-Rays Routine Cleaning Emergency Palliative Treatment Sealants (for children) Fluoride Treatments (for children) Space Maintainers (for children) 	<p>Basic Services</p> <ul style="list-style-type: none"> Fillings Crown and Bridge Repair Endodontics (root canal and pulpal therapy) Denture Repair Oral Surgery 	<p>Major Services</p> <ul style="list-style-type: none"> Periodontics (treatment of gums) Crowns and Bridges Dentures
<p>Plan Benefit 80% of Usual and Customary Charges</p>	<p>Plan Benefit 60% of Usual & Customary Charges</p>	<p>Plan Benefit 50% of Usual and Customary Charges</p>
<p>Waiting Period—None</p>	<p>Waiting Period—3 Months</p>	<p>Waiting Period—12 Months</p>

Weekly Rates: Employee Only: [REDACTED] / Employee and Family: [REDACTED]
 \$50 Coverage Year Deductible per Person for all services combined
 \$1,000 Coverage Year Benefit Maximum per Person for all services combined

Details of each insurance plan offered by Premier Care & Staffing Services are available at the office in Upper Darby and online at this link [REDACTED]

HOW TO ENROLL IN A PLAN

You can enroll in a plan by doing any one of the following:

- Visit Premier's Office located at [REDACTED] Upper Darby, PA 19082
- Call [REDACTED] (Premier's Office Manager) or [REDACTED]
- Call [REDACTED] (Allegiance Insurance Agent) on [REDACTED]

From: Ken Frohlich, Esq. [REDACTED]
To: bamiller [REDACTED]
Cc: stvdennis [REDACTED]
Sent: Mon, May 15, 2017 10:03 pm
Subject: Addendum to response

Good evening, Barbara:

The most important disagreement PCSS has with the "draft audit report is the recommendation that \$3,362,946 be recovered. We are hopeful that this item will be dropped in its entirety from the final Audit Report after the BFO and OLTL staffs have considered our response and we have had the opportunity to discuss it at the exit conference. But if the item isn't totally eliminated, we want to preserve all arguments that we might need for our appeal. I am therefore writing to add the additional paragraph below to the PCSS response.

To obtain the recommendation that \$3,362,946 be recovered, the audit team extrapolated their finding to cover all records, even though they only looked at records adding up to a fraction of that amount. Even supposing the audit team found justification for recovering some money in the audited sample (which we dispute), the extrapolation to the broader universe of records requires additional evidence that the sampling technique produced a representative sample that was unbiased, before extrapolation is appropriate. That evidence is not presented in the report. (My Ph.D. and my actuarial credentials both gave me some expertise in experimental design, and the requirements that are necessary to validly extrapolate from a sample).

As I said above, I am hopeful we do not need to get into this, but I want to preserve our right to argue about the validity of the extrapolation, if the current recommendation for financial recovery remains in the report.

Ken

Kenneth R. Frohlich, Esq.

[REDACTED]
Phone: (484) 222-1364
Fax: (610) 527-8381