



Department of
Veterans Affairs

Office of Inspector General

REVIEW OF SELECTED ASPECTS OF THE COMPENSATED WORK THERAPY PROGRAM, VA MEDICAL CENTER WEST LOS ANGELES, CA

Report No.: 7AN-A14-113

Date: August 13, 1997

Office of Inspector General
Washington DC 20420

Department of Veterans Affairs

Memorandum

Date: August 13, 1997

From: Assistant Inspector General for Auditing (52)

Subj: Advisory Report: Review of Selected Aspects of the Compensated Work Therapy Program, VA Medical Center West Los Angeles, CA (Report No. 7AN-A14-113)

To: Director, VA Medical Center West Los Angeles, CA (691/00)
Regional Counsel, Los Angeles, CA (02)

1. SUMMARY

The Office of Inspector General initiated a review of selected aspects of the Compensated Work Therapy (CWT) program at the Department of Veterans Affairs (VA) Medical Center (VAMC) West Los Angeles, CA. The objective of the review was to evaluate the effectiveness of management controls over CWT program revenues and payroll. CWT is a clinical program that offers a variety of therapeutic work experiences for VAMC patients.

After the review started, the Chief Medical Officer advised us that the VAMC was in the process of contracting for an evaluation of CWT internal controls and accounting transactions. Consequently, we curtailed the scope of our review. We did observe one issue that needs management attention. Specifically, we noted five individuals who were being paid from CWT funds, but were not participating in a VAMC therapeutic work program. CWT program officials stated that the services of these five individuals were obtained as "contract employees" because their staffing ceiling did not permit the hiring of additional personnel. We believe that certain practices surrounding this use of contract employees raise questions. The VA Acquisition Regulation encourages VA activities to seek the Regional Counsel's opinion under such circumstances. However, the Regional Counsel was not asked to review the practice of using contract employees.

2. OBSERVATIONS

As of July 31, 1997, CWT funds were being used to pay five contract employees who were not patients participating in a VAMC therapeutic work program. These individuals filled four types of positions -- accounting technician, clerical support staff, work site supervisor, and golf course groundskeeper. CWT program officials obtained the services of the five individuals as contract employees because their staffing ceiling did not permit hiring the five individuals as VAMC employees. The five contract employees were paid \$88,763 in calendar year 1996 (see Attachment II for further details).

We believe practices surrounding the contract employees raise questions because:

- Contracts were not prepared, and
- Contract employees appeared to be functioning as VAMC employees rather than contractors.

Contracts Were Not Prepared.

VAMC CWT program officials stated that contracts were not prepared for the five contract employees because it was not known how long their services would be needed. The five individuals were paid by issuing VA Forms 90-2237 (Request, Turn-in and Receipt for Property or Services) quarterly or semiannually. The first VA Form 90-2237 was prepared in August 1995. A legal review was not requested on the procedure used to obtain contract employee services. The VA Acquisition Regulation encourages VA activities to seek the Regional Counsel's opinion when the contracting officer determines that legal assistance is necessary in determining whether a proposed service contract is for personal or non-personal services.

The Contract Employees Appeared to Be Functioning as Employees Rather Than Contractors.

VA Acquisition Regulation states that personal service contracts having an employer-employee relationship should not be awarded. The five contract employees appeared to be functioning as VAMC employees rather than independent contractors because:

- They were continuously and directly supervised by VAMC staff.
- They were paid by the hour rather than by results to be accomplished.
- Their primary place of work was the VAMC.
- Equipment and supplies needed to perform their work was furnished by the VAMC.
- Comparable services were performed at the VAMC by civil service personnel.

3. CONCLUSION

We noted five individuals who (1) were being paid from CWT funds, and (2) were not participating in a VAMC therapeutic work program. Although the services of these individuals were obtained as contract employees, contracts were not prepared. In addition, they appeared to be functioning as employees rather than contractors. In our opinion, these practices raise questions. Therefore, we believe that the Regional Counsel needs to review and opine on the practices used for obtaining and compensating these contract employees, and the VAMC Director needs to take appropriate actions based on the Regional Counsel's opinion.

4. Our review was conducted in accordance with government auditing standards for qualifications, independence, and due professional care. You are not required to comment on this memorandum since we are not making any formal recommendations. However, we would appreciate receiving any comments you desire to make. We plan to follow up on any actions taken during future reviews of the CWT program. If we can assist you further, please contact Mr. Jack Shigetomi, Manager, Los Angeles Audit Residency Office, at (310) 268-4336.

For The Assistant Inspector General For Auditing

(Original signed by:)

VICTOR F. BOURIL

Director, Financial Reviews and Assistance

Attachments

LIST OF ATTACHMENTS

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Contract Attachment II
Employees

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BACKGROUND

CWT Program

In accordance with Veterans Health Administration Handbook 11301.1, Chapter 4, the CWT program provides rehabilitation work for inpatients and outpatients. All veterans participating in the CWT program should be patients and should not be considered “employees” for any purpose. This program makes every effort to create a realistic work environment. Participants in the program receive monetary incentives derived from contracts with private industry, state or local government, or arrangements with Federal entities including VA activities. Reimbursements to CWT participants should be related to their production. Funds for the CWT program are kept in the Special Therapeutic and Rehabilitation Activities revolving fund.

VA Acquisition Regulation

VA Acquisition Regulation, paragraph 837 states that personal service contracts having an employer-employee relationship should not be awarded. The regulation cites the following circumstances that may indicate a possible personal service contract:

- The contract does not call for an end product which is adequately described in the contract.
- The contract price or fee is based on the time actually worked rather than the results to be accomplished.
- Office space, equipment, and supplies for contract performance are to be furnished by the VA.
- Contractor personnel are to be used interchangeably with VA personnel to perform the same function.
- VA retains the right to control and direct the means and methods by which contractor personnel accomplish the work.

The VA Acquisition Regulation also states that when the contracting officer determines that legal assistance is necessary in determining whether a proposed service contract is for personal or non-personal services, the contracting officer should gather all the pertinent facts and request the opinion of the Regional Counsel.

CONTRACT EMPLOYEES

As of July 31, 1997, five individuals were working for the CWT program as contract employees.¹ CWT staff had asked these five individuals if they would like to work for the CWT program. Four of them were former participants in the CWT program and the remaining individual was a former VAMC patient. CWT staff prepared sole source justifications to obtain their services. The five individuals were paid from CWT funds based on VA Form² 90-2237 (Request, Turn-in and Receipt for Property or Services) prepared by CWT staff. Moreover, these individuals were neither processed nor screened through VAMC Human Resources Management Service. In addition, these individuals neither received nor participated in any of the benefits accorded to VAMC employees, such as annual and sick leave, workers' compensation, Social Security, Medicare and Federal and state tax withholding because they were considered contract employees.

During 1996, the five contract employees earned a total of \$88,763. They filled four types of work positions as discussed below:

- One of the contract employees worked as an accounting technician responsible for maintaining the subsidiary ledger and other associated tasks under the direct supervision of the Chief, Community and Rehabilitative Psychiatry. This individual started as a contract employee in April 1996. He was a CWT patient prior to recruitment. For 1996, he worked a total of 1,279 hours and earned \$21,872 as a contract employee. His latest pay rate was \$16 an hour.
- Another contract employee worked as clerical support staff responsible for maintaining veteran productivity data under the direct supervision of a Vocational Rehabilitation Specialist. This individual began as a contract employee in October 1995. He was a CWT patient prior to recruitment. For 1996, he worked a total of 1,712 hours and earned \$19,040 as a contract employee. His latest pay rate was \$10 an hour.
- Two contract employees worked as site supervisors responsible for supervising the work of CWT patients at the Veterans' Garden under the direct supervision of a Program Manager. Both individuals were CWT patients prior to recruitment as contract employees. One of the two individuals started as a contract employee in August 1995; and the other started in September 1996. For 1996, the first individual

¹ Previously, two other individuals worked for the CWT program under similar circumstances during 1995 and 1996. However, these two individuals are no longer working for the CWT program.

² The using activities prepare these forms when they need assets or services, and send them to Acquisition and Materiel Management Service for procurement action.

ATTACHMENT II

worked a total of 2,188 hours and earned \$24,587. His latest pay rate was \$10 an hour. For 1996, the second individual worked a total of 687 hours and earned \$5,000 as a contract employee. His latest pay rate was \$7 an hour.

- The remaining contract employee worked as a golf course groundskeeper under the direct supervision of a Vocational Rehabilitation Specialist. He was a VAMC patient prior to becoming a VAMC employee responsible for maintaining the golf course, and subsequently became a contract employee in April 1996. For 1996, he worked 1,132 hours and was paid \$18,265 as a contract employee. His latest pay rate was \$14.50 an hour.

FINAL REPORT DISTRIBUTION

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