



September 10, 2010

**TO:** Mary Wakefield, Ph.D., R.N.  
Administrator  
Health Resources and Services Administration

**FROM:** /Lori S. Pilcher/  
Assistant Inspector General for Grants, Internal Activities,  
and Information Technology Audits

**SUBJECT:** Results of Limited Scope Review at Whitney M. Young, Jr., Health Center, Inc.  
(A-02-10-02006)

The attached final report provides the results of our limited scope review of Whitney M. Young, Jr., Health Center, Inc. This review is part of an ongoing series of reviews performed by the Office of Inspector General (OIG) to provide oversight of funds provided by the American Recovery and Reinvestment Act of 2009, P.L. No. 111-5 (Recovery Act).

Section 8L of the Inspector General Act, 5 U.S.C. App., requires that the Office of Inspector General (OIG) post its publicly available reports on the OIG Web site. Accordingly, this report will be posted at <http://oig.hhs.gov>.

Please send us your final management decision, including any action plan, as appropriate, within 60 days. If you have any questions or comments about this report, please do not hesitate to call me at (202) 619-1175 or through email at [Lori.Pilcher@oig.hhs.gov](mailto:Lori.Pilcher@oig.hhs.gov). Please refer to report number A-02-10-02006 in all correspondence.

Attachment

Department of Health & Human Services

**OFFICE OF  
INSPECTOR GENERAL**

**RESULTS OF LIMITED SCOPE  
REVIEW AT  
WHITNEY M. YOUNG, JR.,  
HEALTH CENTER, INC.**



Daniel R. Levinson  
Inspector General

September 2010  
A-02-10-02006

# *Office of Inspector General*

<http://oig.hhs.gov>

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The mission of the Office of Inspector General (OIG), as mandated by Public Law 95-452, as amended, is to protect the integrity of the Department of Health & Human Services (HHS) programs, as well as the health and welfare of beneficiaries served by those programs. This statutory mission is carried out through a nationwide network of audits, investigations, and inspections conducted by the following operating components:

## *Office of Audit Services*

The Office of Audit Services (OAS) provides auditing services for HHS, either by conducting audits with its own audit resources or by overseeing audit work done by others. Audits examine the performance of HHS programs and/or its grantees and contractors in carrying out their respective responsibilities and are intended to provide independent assessments of HHS programs and operations. These assessments help reduce waste, abuse, and mismanagement and promote economy and efficiency throughout HHS.

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# *Notices*

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**THIS REPORT IS AVAILABLE TO THE PUBLIC**  
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Section 8L of the Inspector General Act, 5 U.S.C. App., requires that OIG post its publicly available reports on the OIG Web site.

## **OFFICE OF AUDIT SERVICES FINDINGS AND OPINIONS**

The designation of financial or management practices as questionable, a recommendation for the disallowance of costs incurred or claimed, and any other conclusions and recommendations in this report represent the findings and opinions of OAS. Authorized officials of the HHS operating divisions will make final determination on these matters.

## **EXECUTIVE SUMMARY**

### **BACKGROUND**

The Health Centers Consolidation Act of 1996 (P.L. No. 104–299) consolidated the Health Center Program under Section 330 of the Public Health Service Act (PHS Act), codified at 42 U.S.C. § 254(b). Pursuant to 42 U.S.C. § 254(b), the Health Center Program is a national program designed to provide comprehensive primary health care services to medically underserved populations through planning and operating grants to health centers. Within the U.S. Department of Health & Human Services, the Health Resources and Services Administration (HRSA) administers the Health Center Program. The HRSA health centers are community-based and patient-directed organizations that serve populations with limited access to health care.

Under the American Recovery and Reinvestment Act of 2009, P.L. No. 111-5 (Recovery Act), enacted February 17, 2009, HRSA received \$2.5 billion, including \$2 billion to expand the Health Center Program to serve more patients, stimulate new jobs, and meet the significant increase in demand for primary health care services among the Nation’s uninsured and underserved populations.

The Whitney M. Young, Jr., Health Center, Inc. (Whitney), a non-profit agency, provides medical, dental, and addiction services to residents of the Albany, New York area without regard to income or insurance status.

Whitney is primarily funded by patient service revenues and Federal and State grants. During CY 2009, HRSA provided Recovery Act funds to Whitney totaling \$1,268,985. Of that amount, \$955,565 was allocated for renovation and construction costs, including the purchase of new equipment and technology, and \$313,420 was allocated for increasing the number of patients served.

### **OBJECTIVE**

Our objective was to assess Whitney’s financial viability, capacity to manage and account for Federal funds, and capability to operate a health center in accordance with Federal regulations.

### **SUMMARY OF FINDINGS**

Based on our assessment, Whitney’s financial viability may be adversely impacted by its financial condition in CYs 2007 and 2008. During this period, Whitney’s expenditures exceeded revenues and its liabilities significantly increased. Moreover, while Whitney has the capacity to manage and account for Federal funds and is capable of operating a health center in accordance with Federal regulations, we noted issues related to Whitney’s accounting system, procurement practices, Recovery Act reporting, and whistleblower process. In addition, Whitney’s inventory records do not include all required elements and written procedures have not been established for periodically performing a physical inventory. Finally, Whitney’s fees for patients with income at or below established Federal guidelines were not always correctly calculated.

## **RECOMMENDATION**

When monitoring the Recovery Act funds, we recommend that HRSA consider the information presented in this report in assessing Whitney's ability to account for and manage Federal funds and to operate a community health center in accordance with Federal regulations.

## **WHITNEY M. YOUNG, JR., HEALTH CENTER, INC., COMMENTS**

In written comments on our draft report, Whitney agreed with the findings and described actions that it had taken to address them. Whitney's comments are included in their entirety as the appendix.

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## INTRODUCTION

### BACKGROUND

#### **The Health Center Program**

The Health Centers Consolidation Act of 1996 (P.L. No. 104–299) consolidated the Health Center Program under Section 330 of the Public Health Service Act (PHS Act), codified at 42 U.S.C. § 254(b). Pursuant to 42 U.S.C. § 254(b), the Health Center Program is a national program designed to provide comprehensive primary health care services to medically underserved populations through planning and operating grants to health centers. Within the U.S. Department of Health & Human Services, the Health Resources and Services Administration (HRSA) administers the Health Center Program.

The Health Center Program provides grants to nonprofit private or public entities that serve designated medically underserved populations and areas, and vulnerable populations composed of migrant and seasonal farm workers, the homeless, and residents of public housing. Health centers funded by HRSA are community-based and patient-directed organizations meeting the definition of “health center” under 42 U.S.C. § 254(b).

Under the American Recovery and Reinvestment Act of 2009, P.L. No. 111-5 (Recovery Act), enacted February 17, 2009, HRSA received \$2.5 billion, including \$2 billion to expand the Health Center Program to serve more patients, stimulate new jobs, and meet the significant increase in demand for primary health care services among the Nation’s uninsured and underserved populations.

#### **Whitney M. Young, Jr., Health Center, Inc.**

The Whitney M. Young, Jr., Health Center, Inc. (Whitney), a non-profit agency, provides medical, dental, and addiction services to residents of the Albany, New York area without regard to income or insurance status.<sup>1</sup>

Whitney is primarily funded by patient service revenues and Federal and State grants. During CY 2009, HRSA provided Recovery Act funds to Whitney totaling \$1,268,985. Of that amount, \$955,565 was allocated for renovation and construction costs, including the purchase of new equipment and technology, and \$313,420 was allocated for increasing the number of patients served.

#### **Requirements for Federal Grantees**

Nonprofit organizations that receive HRSA funds must comply with Federal cost principles found at 2 CFR pt. 230, “Cost Principles for Non-Profit Organizations” (formerly Office of Management and Budget (OMB) Circular A-122). In addition, 42 U.S.C. § 254(b) defines requirements for health centers under the Health Center Program.

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<sup>1</sup> Whitney is also referred to as Whitney M. Young, Jr., Health Services.

The Standards for Financial Management Systems found at 45 CFR § 74.21, establish regulations for grantees to maintain financial management systems. Grantees' financial management systems must provide for accurate, current, and complete disclosure of the financial results of each HHS-sponsored project or program (45 CFR § 74.21(b)(1)); must ensure that accounting records are supported by source documentation (§ 74.21(b)(7)); and must provide effective control over and accountability of all funds, property, and other assets so that recipients adequately safeguard all such assets and assure they are used solely for authorized purposes (§ 74.21(b)(3)). Grantees also must have written procedures for determining the reasonableness, allocability, and allowability of costs in accordance with the provisions of the applicable Federal cost principles and the terms and conditions of the award (§ 74.21(b)(6)).

In addition, grantees must establish written procurement procedures that include certain provisions as set forth in 45 CFR § 74.44. In addition, grantees must establish procedures related to whistleblower protection. Finally, grantees are required to maintain inventory control systems.

## **OBJECTIVE, SCOPE, AND METHODOLOGY**

### **Objective**

Our objective was to assess Whitney's financial viability, capacity to manage and account for Federal funds, and capability to operate a health center in accordance with Federal regulations.

### **Scope**

We conducted a limited review of Whitney's financial viability, financial management system, and related policies and procedures. Therefore, we did not perform an overall assessment of Whitney's internal control structure. Rather, we performed limited tests and other auditing procedures on Whitney's financial management system to assess its ability to administer federally funded projects.

We performed our fieldwork at Whitney's administrative office in Albany, New York, during December 2009, and January 2010.

### **Methodology**

To accomplish our objective, we:

- reviewed relevant Federal laws, regulations, and guidance;
- obtained Whitney's HRSA grant application packages and supporting documentation;
- interviewed Whitney personnel to gain an understanding of its accounting system and internal controls;

- reviewed Whitney’s financial management procedures related to accounting documentation, preparation of financial reports, procurement, inventory, fee schedules, and other financial matters;
- reviewed Whitney’s independent audit reports and related financial statements for CYs 2006 through 2008;
- performed ratio analyses of Whitney’s financial statements;
- reviewed Whitney’s administrative procedures related to personnel, conflict resolution, whistle-blower protection, and other non-financial matters.

We conducted this performance audit in accordance with generally accepted government auditing standards. 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 objectives. We believe that the evidence obtained provides a reasonable basis for our findings and conclusions based on our audit objective.

## **FINDINGS AND RECOMMENDATION**

Based on our assessment, Whitney’s financial viability may be adversely impacted by its financial condition in CYs 2007 and 2008. During this period, Whitney’s expenditures exceeded revenues and its liabilities significantly increased. Moreover, while Whitney has the capacity to manage and account for Federal funds and is capable of operating a health center in accordance with Federal regulations, we noted issues related to Whitney’s accounting system, procurement practices, Recovery Act reporting, and whistleblower process. In addition, Whitney’s inventory records do not include all required elements and written procedures have not been established for periodically performing a physical inventory. Finally, Whitney’s fees for patients with income at or below established Federal guidelines were not always correctly calculated.

### **FINANCIAL VIABILITY**

Whitney is a longstanding and viable organization. However, our assessment of Whitney’s financial position for CYs 2007 and 2008 identified two weaknesses:

- Whitney’s expenditures exceeded its revenues by \$388,353 in CY 2007 and by \$14,328 in CY 2008.
- Whitney’s total liabilities increased from \$2,179,189 in CY 2007 to \$3,693,156 in CY 2008 (69.47 percent). However, for the same period, its total assets only increased from \$5,631,969 to \$7,203,976 (27.91 percent).

For an organization to be considered fiscally sound, revenues should exceed expenditures. In addition, an organization's liabilities should not increase at a rate higher than its assets. Therefore, the weaknesses we identified could adversely impact Whitney's financial viability.<sup>2</sup>

## **ACCOUNTING SYSTEM**

Pursuant to 45 CFR § 74.21(b)(1), grantees must maintain financial systems that provide for accurate and complete reporting of grant related financial data. Pursuant to 45 CFR § 74.21(b)(3), grantees' financial management systems must provide effective control over and accountability of all funds, property, and other assets.

Whitney's accounting software does not allow the organization's costs to be segregated by grant. As a result, in order to maintain complete and accurate financial data, Whitney officials manually review and track grant-related expenses.

Whitney's accounting procedures do not adequately ensure effective control and accountability of all funds. Specifically, Whitney has not developed comprehensive policies and procedures related to accounts payable. Moreover, Whitney has not implemented procedures that provide for adequate segregation of duties, or restricted access to computer systems and sensitive program documentation.

## **PROCUREMENT PRACTICES**

Pursuant to 45 CFR pt.74, grantees are required to establish written procurement procedures which ensure that materials and services are obtained in an economical and practical manner in an environment which allows for open and free competition, to the maximum extent possible.

Whitney has established written procurement procedures. However, these procedures do not require the use of requests for proposals or sealed competitive bids to ensure that materials and services are obtained in an economical, practical, and competitive manner.

## **RECOVERY ACT REPORTING**

Section 1512 of the Recovery Act requires grantees to provide awarding agencies with quarterly reports detailing the total amount of Recovery Act funding received and the total amount of Recovery Act funding expended or obligated by project or activity. Contrary to this requirement, Whitney has not established quarterly Recovery Act reporting procedures.

## **WHISTLEBLOWER PROCESS**

Section 1553(a) of the Recovery Act prohibits reprisals against employees of an organization awarded Recovery Act funds for disclosing to appropriate authorities – including members of Congress, the Government Accountability Office, a State or Federal regulatory or law enforcement agency, a court or grand jury, or the head of a Federal agency, any credible

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<sup>2</sup> We note that pursuant to 45 CFR § 74.14, awarding agencies may impose additional requirements, as needed, if an applicant or recipient has a history of poor performance or is not financially stable.

evidence of (1) gross mismanagement of an agency contract or grant relating to covered funds; (2) a gross waste of covered funds; (3) a substantial and specific danger to public health or safety related to the implementation or use of covered funds; (4) an abuse of authority related to the implementation or use of covered funds; or (5) a violation of law, rule, or regulation related to an agency contract (including the competition for or negotiation of a contract) or grant, awarded or issued relating to covered funds.

Whitney has an established whistleblower policy that explains how employees can communicate instances of wrongdoing to Whitney officials or its Board of Directors. The policy also protects whistleblowers from any form of retaliation. However, the policy does not address all of the required rights and remedies provided by the Recovery Act for reporting suspected instances of wrongdoing. Specifically, the policy does not address the right of a whistleblower to report wrongdoing to appropriate authorities.

## **INVENTORY RECORDS**

Pursuant to 45 CFR § 74.34(f), grantees must maintain inventory records that contain the following information for equipment acquired with Federal funds: a description of the equipment, an identification number, its location, acquisition and disposition data, condition of property, and whether title vests with the grantee or the Federal Government. In addition, grantees must perform a physical inventory and reconcile the results of its inventory with existing records at least once every two years.

Whitney maintains inventory records. However, its inventory records do not include the condition of the property or whether title vests with Whitney or the Federal Government. In addition, Whitney does not have written procedures which require a physical inventory of equipment to be performed at least once every two years to validate the accuracy of its inventory records. As of December 31, 2009, Whitney's equipment, furniture, and fixtures were valued at \$2,772,417, according to its 2009 audited financial statements.

## **FEE SCHEDULE**

Pursuant to 42 CFR § 51c.303(f), health center grantees must establish a fee schedule (often referred to as a "sliding fee scale") to ensure that discounted rates are provided to patients with income at or below established Federal poverty guidelines.

Whitney utilizes a sliding fee scale for patients with income at or below established Federal poverty guidelines. However, during the period CY 2006 through CY 2008, Whitney's independent auditors reported that Whitney's sliding fees were not always correctly calculated because personnel did not properly apply the scale. In addition, personnel did not always obtain documentation supporting the patient's income level.

## **RECOMMENDATION**

When monitoring the Recovery Act funds, we recommend that HRSA consider the information presented in this report in assessing Whitney's ability to account for and manage Federal funds and to operate a community health center in accordance with Federal regulations.

## **WHITNEY M. YOUNG, JR., HEALTH CENTER, INC. COMMENTS**

In written comments on our draft report, Whitney agreed with the findings and described actions that it had taken to address them. Whitney's comments are included in their entirety as the appendix.

### **OTHER MATTER: MANAGEMENT OFFICIAL SEVERANCE PACKAGE**

Pursuant to 2 CFR pt. 230, to be allowable under a Federal award, costs must be reasonable in nature. In determining the reasonableness of a given cost, consideration is given to whether the cost is generally recognized as ordinary and necessary for the operation of the organization and whether the organization acted with prudence.

During our audit period, Whitney's Board of Directors allowed a senior Whitney management official to resign rather than terminating the individual's employment for breaching the terms of his employment agreement. Consequently, Whitney provided the official an \$86,677 (\$47,542 Federal share) severance payment.<sup>3</sup> The severance payment was comprised of 6 months salary (\$75,000), a \$5,000 bonus, and the cash value of 6 months of health insurance coverage (\$6,677). Normal severance payments are generally allowable for Federal reimbursement and Whitney's employment agreement contained provisions for such payments. However, given the nature of the contract breach, Whitney could have elected to terminate the employee, thereby avoiding the severance payment. HRSA should consider whether the Board's decision to allow the official to resign rather than terminating the individual's employment was prudent given the fact that Whitney was experiencing financial difficulties, as outlined in this report.

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<sup>3</sup> To calculate the impact of the severance payment on Federal funds, we examined Whitney's 2009 unaudited financial statements and calculated the percentage of Federal revenues (\$8,843,051) to revenues received from all sources (\$16,121,399). We then applied this percentage (54.85 percent) to the total severance payment (\$86,677) to determine the Federal share.

# **APPENDIX**

APPENDIX: WHITNEY M. YOUNG, JR., HEALTH CENTER, INC., COMMENTS



July 12, 2010

James P. Edert  
Regional Inspector General for Audit Services  
Region II  
Jacob Javits Federal Building  
26 Federal Plaza Room 390  
New York, NY 10278

Re: Report Number A-02-10-02006

Dear Mr. Edert:

The following is our response to the findings indicated in the review dated July 1, 2010.

**Financial Viability due to financial results in 2007 and 2008**

In 2007 Whitney M. Young Jr., Health Services (WMY) had an operating loss of \$388,353 and a net loss of \$74,241 after investment income and non-operating income of \$314,112. In 2008 WMY had an operating loss of \$14,328 and a net loss of \$139 after investments and non-operating income of \$14,189. In 2009 this positive trend accelerated as WMY had an operating gain of \$546,568 and a net gain of \$1,254,075 after investments and non-operating income of \$707,507. The 2009 financial results significantly improved the balance sheet.

The loss in 2007 was due primarily to the implementation of the EMR/PMS mid-year and several doctors left the practice and the positions took some time to refill. Newly hired providers then were not paid by the managed care organizations until they completed their lengthy credentialing process. The practice management system required a substantial amount of work before it could process NYS Medicaid claims correctly. These problems caused delays and re-work of claims and in some cases lost revenue. During 2007 WMY acquired a new dental practice from a local hospital and opened 3 school based health sites. Therefore, the operating income in 2007 does not reflect the significant strides WMY made in implementing electronic medical records and a new integrated practice management system; in addition to substantially growing the practice.

WMY worked diligently with our PMS vendor to make the necessary improvements so that Medicaid claims could be processed correctly and efficiently. Many of these changes were made in 2008 and during 2009 WMY caught up on patient accounts receivable. WMY's provider base in 2009 was very stable. This improved their

**WMY LOCATIONS**

**Albany Health Center**  
920 Lark Drive  
Albany, NY 12207  
(518) 465-4771

**Troy Health Center**  
6-102nd Street  
Troy, NY 12180  
(518) 833-6900

**Schuyler Achievement Health Center**  
676 Clinton Avenue  
Albany, NY 12206  
(518) 475-6708

**Giffen Memorial Health Center**  
274 South Pearl Street  
Albany, NY 12202  
(518) 462-3802

**Sheridan Preparatory Health Center**  
400 Sheridan Avenue  
Albany, NY 12206  
(518) 475-6872

**Methadone Maintenance Treatment Program**  
10 Dewitt Street  
Albany, NY 12207  
(518) 463-3882

**Family Alcoholism & Chemical Dependency Treatment Services**  
900 Lark Drive  
Albany, NY 12207  
(518) 465-9345

[www.wmyhealth.org](http://www.wmyhealth.org)

productivity and there were fewer credentialing problems with managed care companies.

Additionally, in 2007 WMY purchased a building adjacent to the main health center, where we had been leasing the upper level for years. This purchase was financed by a mortgage which accounted for a 41% increase in WMY's liabilities and caused only a 16% increase in assets from 2006 because WMY's ratio of assets to liabilities at the end of 2006 was 2.58.

WMY's current ratio at the end of 2009 was a favorable 2.6. Assets increased 37% from 2007 through 2009 while liabilities increased 36% and the total assets to total liabilities ratio was 2.6. WMY will continue to focus on maintaining fiscally sound operations where the revenues exceed the expenditures.

**Policies and Procedures for Accounting System**

WMY accounting software allows the organization to segregate costs by purpose or by grant. Generally the purpose and the grant are the same. The IDS grant is more of a challenge as WMY used it for several purposes including bringing in providers for different departments and locations, and paying part of staff members' salaries in various departments who would be part time without IDS. WMY used the payroll system to track the personnel costs related to the IDS. We have since determined that WMY can segregate the revenue and expense as requested. We are in the process of implementing this change. The CIP grant is being used for two major projects and is segregated.

WMY has developed written policies that document the procedures for processing accounts payable; and segregation of duties and restrictive access to computer systems and sensitive program documentation to ensure effective control and accountability of funds.

**Policies and Procedures for Procurement Practices**

WMY has revised its procurement procedures to require the use of request for proposal and sealed competitive bids as required by 45 CFR pt. 74.

**Policies and Procedures for Recovery Act Reporting**

WMY has written a policy which documents its procedure for providing awarding agencies with quarterly reports detailing the total amount of Recovery Act funding received and the total amount of recovery Act funding expended or obligated by project or activity.

**Policies and Procedures for Protecting Whistle Blowers**

WMY has revised the Whistle Blower Policy to include the employee's right to report to external authorities as required under the Recovery Act in addition to WMY officials and the WMY Board of Directors.

**Policies and Procedures for Inventory Records**

WMY has revised the inventory policy to capture the information for equipment acquired with Federal funds including: a description of the equipment, an identification number, its location, acquisition and disposition data, condition of property, and whether title vests with the grantee or the Federal Government. WMY has developed a policy that includes a physical inventory of equipment to be performed once every two years. The inventory is expected to be completed by year end.

**Sliding Fee Schedule Calculation and Documentation**

WMY trained staff and performed monthly audits of the staff's calculation of the sliding fee and documentation of the patients' income level. WMY's independent auditors tested the application of the sliding fee schedule during the 2009 A-133 audit and did not report that WMY's sliding fees were incorrectly calculated or documented.

WMY will continue the audit program and provide any necessary training to ensure continued compliance.

**Management Official Severance Package**

Response from the Chairman of the Board regarding the OIG's conclusions in the very last section of the draft report pertaining to "Other Matter: Management Official Severance Package."

The Board of Directors of WMY respectfully disagrees and does not concur with the OIG's conclusions with respect to this "Other Matter."

The Executive Committee of the Board and the Board in full met to address the behavior of the senior management official in question and to determine how best to handle the separation once the decision was made that the individual should in fact be separated from WMY.

We submit that the Board did take into consideration the charge of acting prudently and ensuring that the cost was reasonable and further that consideration was given to its impact on the operations of WMY.

As noted in the report, severance payments are generally allowable for Federal reimbursement and WMY's employment agreement with the management official here in question contained provisions for such payments.

For the following reasons we believe the Board acted prudently:

First, the Board immediately hired outside counsel specializing in labor law. Second, under the expressed terms of the parties' Employment Agreement, there were only two ways to terminate the management official's employment with WMY in light of the circumstances existing in November 2009. That is when the management official was allowed to resign voluntarily pursuant to the parties' mutual agreement to terminate their Employment Agreement and his employment thereunder.

The first way, under the Employment Agreement, was to “mutually agree to termination in writing.” This is essentially the option that was agreed upon by the Board and the management official. Second, the management official’s employment with WMY could have been terminated for cause. Of course, “for cause” provisions, whether any such cause in fact existed would have been subject to arbitration and/or litigation in New York courts.

Importantly, however, even if cause existed and even if the management official had been terminated by the Board for such cause and such a termination was upheld by an arbitrator, a judge, or a jury (questions which there is no guarantee would be resolved in favor of WMY), certain severance and “Retirement Payments” were nevertheless still required to be paid to the employee under the express terms of the Employment Agreement. Under such express terms, WMY would have been required to provide the employee with one year’s worth of annual compensation and benefits (far more than what was ultimately paid to the employee). The payment of one years’ worth of annual compensation and benefits, based on this provision, is what was argued by the management official.

Therefore, after thoughtful deliberations and based on counsel’s advice, rather than engage in prolonged and expensive litigation over these issues, the Board and the management official mutually agreed to terminate their Employment Agreement and the management official was allowed to voluntarily resign his position. In reaching this agreement with the management official and providing him with severance benefits only as required by the Employment Agreement, the Board believes it acted prudently by saving WMY additional costs associated with other options including a possible additional six months in Retirement Pay that the employee may have claimed entitlement to as well as incurring additional attorneys’ fees from prolonged litigation.

With respect to the bonus payment made to the management official upon his resignation and the mutually agreed upon termination of the parties’ Employment Agreement, it must be noted that on or about June 2, 2009, in executive session at a regular scheduled meeting of WMY’s Board of Directors, it was determined that the management official in question would be provided with a one-time bonus (not an increase in salary) in the amount of \$5,000.00. This one-time bonus payment was made at the discretion of the Board again as provided by the Employment Agreement, while being “mindful of the current economic conditions and the fact that there had been staff reductions at WMY. This bonus was in recognition of what was then believed in good faith by the Board to be the management official’s “instrumental [involvement] in turning the Center around financially and bringing in several grants,” as well as due to increases in “his and the Center’s visibility both locally and statewide.” Even more importantly, it should be noted that the decision to make this one-time discretionary bonus payment was made and communicated to the management official before the Board learned of the facts giving rise to a claim that he may have breached his Employment Agreement with WMY.

While the OIG report does include a finding around the financial viability of WMY specifically citing CY 2007 and CY 2008 and cites this as part of their finding in the section pertaining to the Severance Package -- “given the fact that Whitney was experiencing financial difficulties” -- in fact, WMY experienced a strong CY 2009 and thus by the time the separation was negotiated, the Board was aware of the positive financial position of WMY.

Finally, it should be noted the Board also considered the non-financial consequences of staff termination on the organization's standing in the community. WMY has been providing essential healthcare services for the past 39 years to uninsured and underserved population of the Capital Region of New York State, and is highly respected in the community. In arriving at the final decision, the Board of Directors demonstrated sensitivity to community relations and perceptions, diligently considered the potential impact on our relationships in the community should we engage in what had the potential to become a long, drawn out, expensive and likely public litigation.

Based on the expressed language of WMY's Employment Agreement with the management official in question, the risks and costs associated with litigating a termination for cause and any attempt to avoid and/or refuse to compensate the employee as required by the parties' agreement, and all of the additional facts set forth above pertaining to this "Other Matter," we maintain that the Board did in fact act prudently in this matter.

If you have any questions, concerns, or require additional information or documentation, please contact me at 518-591-4453 or via email at [ecole@wmyhealth.org](mailto:ecole@wmyhealth.org). We appreciate the thorough review performed by your office as WMY strives to continually improve its operations and make the best use of the Federal funds we are entrusted with to provide health care for our patients.

Very truly yours,

Elizabeth Cole  
Chief Operating Officer