Mary Scott Nursing Center, Dayton, OH

Section 232 Loan Program

Office of Audit, Region 5
Chicago, IL

Audit Report Number: 2017-CH-1009
September 30, 2017

To:	Roger Lewis, Office of Residential Care Facilities, OHP
	//**signed**//
From:	Kelly Anderson, Regional Inspector General for Audit, 5AGA
Subject:	The Owner and Management Agents Lacked Adequate Controls Over the Operation of Mary Scott Nursing Center, Dayton, OH

Attached is the U.S. Department of Housing and Urban Development (HUD), Office of Inspector General's (OIG) final results of our review of the Mary Scott Nursing Center, a Section 232 HUD-insured nursing facility.

HUD Handbook 2000.06, REV-4, sets specific timeframes for management decisions on recommended corrective actions. For each recommendation without a management decision, please respond and provide status reports in accordance with the HUD Handbook. Please furnish us copies of any correspondence or directives issued because of the audit.

The Inspector General Act, Title 5 United States Code, section 8M, requires that OIG post its publicly available reports on the OIG website. Accordingly, this report will be posted at http://www.hudoig.gov.

If you have any questions or comments about this report, please do not hesitate to call me at 312-353-7832.

Audit Report Number: 2017-CH-1009
Date: September 30, 2017

The Owner and Management Agents Lacked Adequate Controls Over the Operation of Mary Scott Nursing Center, Dayton, OH

Highlights

What We Audited and Why

We audited Mary Scott Nursing Center (project) based on our analysis of risk factors related to the U.S. Department of Housing and Urban Development's (HUD) multifamily nursing projects in Region 5's jurisdiction (States of Illinois, Indiana, Michigan, Minnesota, Ohio, and Wisconsin). The audit was part of the activities in our fiscal year 2017 annual audit plan. Our objective was to determine whether the project's owner and management agents operated the project in accordance with HUD's requirements and the regulatory agreement.

What We Found

The owner and management agents used project funds for ineligible expenses and did not provide sufficient documentation to support that project funds were used for eligible, reasonable operating expenses or necessary repairs of the project. Further, the owner and management agents (1) did not ensure that rental revenue was collected for the residents, (2) could not provide sufficient documentation to support that the owner received market value for the sale of the operating rights for 10 licensed beds, and (3) were unable to provide documentation to support that the owner received approval from HUD before entering into agreements with the management agents. In addition, the owner did not make payments on the project's mortgage in a timely manner. As a result, nearly $550,000 in project funds was not available for reasonable or necessary project operations and debt service, HUD and the owner lacked assurance that nearly $261,000 in project funds was used for eligible, reasonable operating expenses or necessary repairs of the project, and the owner did not receive nearly $391,000 in rental revenue. Further, HUD is at risk of paying a claim of nearly $1.6 million on the mortgage.

What We Recommend

We recommend that HUD require the owner to (1) reimburse the project from nonproject funds for inappropriate disbursements and disposal of resident charges, (2) support disbursements or reimburse the project from nonproject funds, and (3) implement adequate procedures and controls to address the weaknesses cited in this audit report. We also recommend that HUD work with the owner to develop an action plan to prevent a claim on the mortgage.

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Background and Objective

Mary Scott Nursing Center (project) is a 108-bed licensed nursing facility in Dayton, OH, that provides 24-hour short-term or long-term comprehensive inpatient care. In June 2001, the U.S. Department of Housing and Urban Development (HUD) insured the project's mortgage of $5 million under Section 232 of the National Housing Act and entered into a regulatory agreement with the project's owner, Mary Scott Nursing Home, Inc. The regulatory agreement governs the operation of the project and the owner is responsible for any violation of the regulatory agreement.[1]

The owner defaulted on the mortgage in October 2012, and HUD allowed the owner to make the October and November 2012 mortgage payments from the project's reserve for replacements account. The owner also defaulted on the mortgage in December 2012. In January 2013, PNC Bank, N.A., assigned and transferred the mortgage to Greystone Servicing Corporation, Inc., to modify or refinance the mortgage. The owner continued to be in default of the mortgage since January 2013. As of June 2017, the owner had not made payments for principal and interest on the mortgage totaling more than $1.1 million and reserve for replacements totaling nearly $236,000. Further, Greystone had charged the owner nearly $35,000 in late charges and paid more than $189,000 in taxes and insurance for the owner. In addition, Greystone had not modified or refinanced the mortgage as of July 2017. As of June 2017, the unpaid principal balance for the (Federal Housing Administration) FHA-insured mortgage was more than $4 million.

The project's management agents were HC Consulting/Management, LLC, from July 2014 through June 2016 and Toledoth Rehab, LLC, since July 2016.

Our objective was to determine whether the project's owner and management agents operated the project in accordance with HUD's requirements and the regulatory agreement. Specifically, we wanted to determine whether (1) project funds were used only for reasonable operating expenses or necessary repairs of the project, (2) the owner sold the operating rights for 10 licensed beds for market value, (3) the owner received approval from HUD to write off resident charges for the project, (4) the owner received approval from HUD before entering into agreements with the management agents, and (5) the owner made timely payments on the project's mortgage.

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[1] The regulatory agreement includes requirements regarding but not limited to (1) the use of personal property and funds of the project for usual operating expenses and necessary repairs, (2) the settlement of litigation by the owner, (3) use of the dwelling accommodations or nursing facilities of the project, (4) contracting for supervisory or managerial services, (5) the prompt payment of all amounts due under the note and mortgage, and (6) the establishment and continued maintenance of a reserve for replacements account for replacing structural elements and mechanical equipment of the project or any other purposes.

Results of Audit

Finding: The Owner and Management Agents Did Not Operate the Project in Accordance With HUD's Requirements

The owner and management agents used project funds for ineligible expenses and did not provide sufficient documentation to support that project funds were used for eligible, reasonable operating expenses or necessary repairs of the project. Further, the owner and management agents (1) did not ensure that rental revenue was collected for the residents, (2) could not provide sufficient documentation to support that the owner received market value for the sale of the operating rights for 10 licensed beds, and (3) were unable to provide documentation to support that the owner received approval from HUD before entering into agreements with the management agents. In addition, the owner did not make payments on the project's mortgage in a timely manner. These weaknesses occurred because the owner and management agents lacked adequate procedures and controls to ensure that the project was operated in accordance with HUD's requirements and the regulatory agreement. As a result, nearly $550,000 in project funds was not available for reasonable or necessary project operations and debt service, HUD and the owner lacked assurance that nearly $261,000 in project funds was used for eligible, reasonable operating expenses or necessary repairs of the project, and the owner did not receive nearly $391,000 in resident charges. Further, HUD is at risk of paying a claim of nearly $1.6 million on the mortgage.

Project Funds Were Not Used in Accordance With the Regulatory Agreement

Contrary to the owner's regulatory agreement, the owner and management agents did not use nearly $550,000 of the project's funds for eligible project expenses. Further, the owner and management agents were unable to provide sufficient documentation to support that nearly $261,000 was used for reasonable operating expenses or necessary repairs of the project.

General Operating Account Disbursements

We reviewed 78 disbursements from the project's general operating fund account totaling nearly $1.3 million. Of the disbursements reviewed, $542,443 from 41 disbursements was not for eligible project expenses. The 41 disbursements included (1) nearly $214,000 to replace the project's roof,[2] (2) nearly $160,000 to two vendors for litigation settlements for past due amounts, (3) more than $140,000 to reimburse the State of Ohio for Medicaid overpayments,[3] (4) $15,000 to a former employee for a litigation settlement on a charge of discrimination, and (5)

[2] The replacement of a roof is a capital improvement to be paid for with funds from the reserve for replacements account rather than general operating account. Further, disbursements from the account must be approved by HUD.

[3] The Ohio Department of Job and Family Services or the Ohio Department of Medicaid conducted audits or postpayment claims overpayment reviews of Medicaid payments for the project from July 2006 through June 2012. The Departments determined that the owner received nearly $561,000 in Medicaid overpayments. The owner could not provide sufficient documentation to support that the Medicaid payments it received for the project were appropriate due to Medicaid applications not being completed properly. If the owner had maintained sufficient documentation for the Medicaid payments, it would not be reimbursing the State.

nearly $14,000 for accounting and bookkeeping services that were to be performed by the management agent. The owner and management agents could not provide documentation to support that HUD had approved the disbursements for the replacement of the roof and litigation settlements. A senior account executive with HUD's Office of Residential Care Facilities said that HUD did not receive a request from the owner or management agents to use the project's funds to pay for the replacement of the roof and litigation settlements.

Further, the owner owed the State an additional $384,772 (nearly $561,000 in overpayments – more than $140,000 reimbursed to the State – more than $36,000 in reduced Medicaid payments) for the Medicaid overpayments.

In addition, the owner and management agents were unable to provide sufficient documentation to support that $189,524 from 19 disbursements was for reasonable operating expenses of the project. The 19 disbursements included (1) more than $183,000 for management agent services, (2) $5,000 for legal services, and (3) $1,500 for psychiatric care. The owner and management agents were also unable to provide sufficient documentation to support that the management agent services, which the owner paid for by transferring the project's van, valued at $20,000, to HC Consulting/Management, LLC, were reasonable.[4]

Credit Card Purchases

We reviewed 14 months of credit card purchases for the project totaling more than $59,000. The owner and the management agents were unable to provide sufficient documentation to support that $51,261 in credit card purchases was for reasonable operating expenses or necessary repairs of the project. Further, $2,020 in purchases included more than 100 store gift cards that had been given to employees as Christmas gifts, which were not reasonable operating expenses of the project.

Petty Cash Expenses

We reviewed nearly $5,400 in petty cash expenditures for the project. Of the expenditures reviewed, $5,302 was not for reasonable operating expenses of the project. The expenditures included more than $4,400 for bingo prizes, more than $500 for employee awards, and more than $300 for resident loans.

The owner's administrative assistant-payroll manager said that the owner did not have formal procedures for overseeing the management agents to ensure compliance with the regulatory agreement. In addition, the management agents believed that they could use project funds for gifts and awards to the owner's employees as incentives and provide loans to a resident.

Rental Revenue Was Lost

The owner did not receive $390,583 in resident charges. Contrary to the regulatory agreement, the owner and management agents did not ensure that nearly $355,000 in rental revenue was collected for residents. The former interim executive director of the owner said that one reason

[4] The owner and management agents could not provide sufficient documentation showing how the fees for the management agent services were calculated and the specific work completed for the legal services and psychiatric care.

why rents were not collected for residents was that Medicaid applications were not completed properly. Therefore, Medicaid payments were not received for the residents.

Further, the State reduced Medicaid payments for the residents by more than $36,000 for the previously mentioned Medicaid overpayments.

No Support That Operating Rights for Licensed Beds Were Sold for Market Value

In August 2014, HUD approved the owner's request to sell the operating rights for 10 licensed beds. In April 2015, the owner sold the operating rights for the 10 licensed beds for $150,000. However, the owner and management agents could not provide sufficient documentation to support that the owner received market value for the licensed beds as required by HUD Handbook 4232.1. The owner's former interim executive director said that he did not know how the owner determined the basis for charging $15,000 per bed.

No Support That HUD Approved Management Agents

The owner entered into management agent agreements with HC Consulting/Management, LLC, on July 1, 2014, and Toledoth Rehab, LLC, on September 2, 2016. However, the owner and management agents were unable to provide documentation to support that HUD approved the entities to manage the project as required by the regulatory agreement. The former interim executive director stated that the owner's board of directors was not aware that it needed to obtain HUD's approval for new management agents.

Mortgage Payments Had Not Been Made

The project's mortgage had been in default since December 2012.

Contrary to the regulatory agreement, the owner defaulted on the project's mortgage in December 2012. The mortgage was assigned and transferred to Greystone in January 2013 to modify or refinance the mortgage. However, the owner continued to be in default of the mortgage since January 2013 and Greystone had not modified or refinanced the mortgage as of July 2017.

We also reviewed Greystone's borrower's mortgage statements for the period January 2014 through November 2016. During this period, the owner was required to make more than $1.1 million in principal and interest payments on the mortgage. However, the owner made only more than $384,000 in principal and interest payments on the mortgage.[5] The owner was also required to make more than $150,000 in reserve for replacements payments. Although the owner paid more than $150,000 through two reserve for replacements payments, $150,000 of that amount was from the sale of the operating rights for 10 licensed beds, which HUD agreed could be used to pay for accrued payables once the owner reduced the accrued payables to $150,000 or less, using excess cash from the project. Further, Greystone charged the owner more than $22,000 in late charges during the period. In addition, Greystone paid more than $168,000 in taxes and insurance for the owner during the period.

[5] Regarding principal and interest payments on the mortgage, the owner did not make any payments from January 2014 through August 2015, made three partial payments from September 2015 through February 2016, and did not make a payment in October 2016.

As of June 2017, the owner had not made payments for principal and interest on the mortgage totaling $1,132,030 and reserve for replacements totaling $235,959. Further, Greystone had charged the owner $34,828 in late charges and paid $189,032 in taxes and insurance for the owner. Greystone had not filed a claim on the mortgage with HUD as of June 2017.

The former interim executive director of the owner said that one reason that the owner was unable to make the mortgage payments was that it did not receive Medicaid payments for residents because the Medicaid applications were not properly completed. The former interim executive director said that the project experienced a shortfall in income and the owner had to prioritize payments to vendors and all other creditors.

The senior account executive said that he met with the former interim executive director and staff from the current management agent in early 2016 to discuss ways to bring the mortgage current. The owner planned to conduct fund-raising activities and verbally agreed that the donations would be used to reduce the mortgage debt. In November 2016, the owner received more than $310,000. However, the donations were used to pay for the replacement of the roof and other operating expenses rather than to reduce the mortgage debt; therefore, the owner did not abide by the agreement with HUD.

In addition, as of July 2017, an action plan to resolve the delinquent mortgage payments had not been submitted to HUD as required by HUD Handbook 4232.1.

Conclusion

The weaknesses described above occurred because the owner and the management agents lacked adequate procedures and controls to ensure that the project was operated in accordance with HUD's requirements and the regulatory agreement. Specifically, the owner lacked adequate oversight of the management agents, the management agents and owner did not fully understand or comply with HUD's requirements for the management of the project, and the owner disregarded its agreement with HUD regarding the use of donated funds. As a result, nearly $550,000 in project funds was not available for reasonable or necessary project operations and debt service, HUD and the owner lacked assurance that nearly $261,000 in project funds was used for reasonable operating expenses or necessary repairs of the project, and the owner did not receive nearly $391,000 in rental revenue. Further, HUD is at risk of paying a claim of nearly $1.6 million on the mortgage (more than $1.1 million in principal and interest on the mortgage + nearly $236,000 in reserve for replacements + nearly $35,000 in late charges + more than $189,000 in taxes and insurance).

Recommendations

We recommend that the Director of HUD's Office of Residential Care Facilities require the project's owner to

1A. Reimburse the project from nonproject funds for the $542,443 in disbursements from the project's general operating fund account that was not used for reasonable operating expenses or necessary repairs of the project.

1B. Reimburse the State from nonproject funds for the additional $384,772 in Medicaid overpayments.

1C. Support or reimburse the project from nonproject funds for the $189,524, as appropriate, in disbursements from the project's general operating fund account without sufficient documentation showing that the disbursements were for reasonable operating expenses of the project.

1D. Support or reimburse the project from nonproject funds for the $20,000 value of the project's van, which was transferred without sufficient documentation showing that the transfer was for reasonable operating expenses.

1E. Support or reimburse the project from nonproject funds for the $51,261, as appropriated, in credit card purchases without sufficient documentation showing that the purchases were for reasonable operating expenses or necessary repairs of the project.

1F. Reimburse the project from nonproject funds for the $2,020 in credit card purchases that was not used for reasonable operating expenses of the project.

1G. Reimburse the project from nonproject funds for the $5,302 in petty cash expenditures that was not used for reasonable operating expenses of the project.

1H. Pay the project from nonproject funds for the $390,583 in uncollected rental revenue.

1I. Determine the market value of the operating rights for the 10 licensed beds sold in April 2015. If the licensed beds were sold for less than market value, the owner should reimburse the project from nonproject funds for the difference between the market value and the $150,000 sales price of the operating rights for the 10 licensed beds.

1J. Implement adequate procedures and controls to ensure that it (1) uses project funds for reasonable operating expenses or necessary repairs of the project, (2) obtains HUD approval before disposing of the project's assets, (3) receives market value for the sale of licensed beds, (4) obtains HUD approval for the entities selected to manage the project before entering into management agent agreements with the entities, (5) properly completes Medicaid applications, and (6) makes timely mortgage payments to prevent a $1,591,849 claim to HUD on the mortgage.

We also recommend that the Director of HUD's Office of Residential Care Facilities

1K. Work with the project's owner and Greystone for the owner to develop an action plan to bring the owner current on the project's mortgage, reserve for replacements, and taxes and insurance to prevent a claim to HUD on the mortgage.

Scope and Methodology

We performed our onsite work from December 2016 through May 2017 at the project located at 3109 Campus Drive, Dayton, OH. The audit covered the period January 2014 through November 2016 and was expanded as determined necessary.

To accomplish our objectives, we reviewed

- Applicable laws; HUD's regulations at 24 CFR (Code of Federal Regulations) Parts 200 and 232; HUD Handbooks 4232.1 and 4370.2, REV-1, CHG-1; HUD's regulatory agreement with the project's owner; and HUD's files for the project.

- The owner's audited financial statements, financial records, management agent agreements, mortgage note, and organizational chart.

- Project data in HUD's Integrated Real Estate Management System and Online Property Integrated Information Suite system.

In addition, we interviewed employees of the owner, a former interim executive director of the owner, the owner of the current management agent, and a HUD employee.

Through 1,715 disbursements, nearly $7.2 million was disbursed from the project's general operating fund account from August 2014 through November 2016. We initially selected a sample of 24 disbursements totaling more than $697,000. We nonstatistically selected one disbursement from each of the nine vendors that we determined to be high risk. Further, after excluding the nine vendors, we nonstatistically selected one disbursement from each of the five vendors that had received the most disbursements in total dollars. We then excluded the five vendors and stratified the disbursements made to the remaining vendors into five strata based on the disbursement amounts and randomly selected one disbursement from each stratum. Finally, we randomly selected five of the direct online payments to vendors. Based on our review of the 24 disbursements, we then selected a nonstatistical sample of an additional 46 disbursements to the same vendors or for similar expenses. The disbursements totaled nearly $421,000. We also nonstatistically selected another eight disbursements totaling nearly $181,000 from December 2016 through June 2017.

Further, we initially selected a nonstatistical sample of 3 months (October 2014, December 2015, and July 2016) of the project's credit card purchases totaling more than $16,000 of the project's more than $183,000 in credit card purchases from January 2014 through November 2016. Based on our review of the 3 months of credit card purchases, we then selected a nonstatistical sample of 11 months of credit card purchases totaling more than $43,000. We used a nonstatistical sample since we knew enough about the population to identify a relatively small number of items of interest that were likely to be misstated or otherwise have high risk and we were not projecting the results to the population.

We also initially selected 4 random months (May 2014, March 2015, October 2015, and December 2015) of the project's petty cash expenditures from January 2014 through November 2016. Based on our review of the 4 months of petty cash expenditures, we then selected a nonstatistical sample of all petty cash expenditures for bingo prizes, employee awards, and resident loans. The expenditures totaled more than $5,300.

We relied in part on data maintained in the project's systems. Although we did not perform a detailed assessment of the reliability of the data, we performed a minimal level of testing and found the data to be adequately reliable for our purposes.

We conducted the 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 objective(s). We believe that the evidence obtained provides a reasonable basis for our findings and conclusions based on our audit objective.

Internal Controls

Internal control is a process adopted by those charged with governance and management, designed to provide reasonable assurance about the achievement of the organization's mission, goals, and objectives with regard to

- effectiveness and efficiency of operations,
- reliability of financial reporting, and
- compliance with applicable laws and regulations.

Internal controls comprise the plans, policies, methods, and procedures used to meet the organization's mission, goals, and objectives. Internal controls include the processes and procedures for planning, organizing, directing, and controlling program operations as well as the systems for measuring, reporting, and monitoring program performance.

Relevant Internal Controls

We determined that the following internal controls were relevant to our audit objective:

- Effectiveness and efficiency of operations – Policies and procedures that management has implemented to reasonably ensure that a program meets its objectives.
- Reliability of financial reporting – Policies and procedures that management has implemented to reasonably ensure that valid and reliable data are obtained, maintained, and fairly disclosed in reports.
- Compliance with applicable laws and regulations – Policies and procedures that management has implemented to reasonably ensure that resource use is consistent with laws and regulations.

We assessed the relevant controls identified above.

A deficiency in internal control exists when the design or operation of a control does not allow management or employees, in the normal course of performing their assigned functions, the reasonable opportunity to prevent, detect, or correct (1) impairments to effectiveness or efficiency of operations, (2) misstatements in financial or performance information, or (3) violations of laws and regulations on a timely basis.

Significant Deficiency

Based on our review, we believe that the following item is a significant deficiency:

- The project's owner and management agents lacked adequate procedures and controls to ensure that the project was operated in accordance with HUD's requirements and the regulatory agreement (finding).

Appendixes

Appendix A

Schedule of Questioned Costs and Funds To Be Put to Better Use

Recommendation number	Ineligible 1/	Unsupported 2/	Funds to be put to better use 3/
1A	$542,443		
1B			$384,772
1C		$189,524	
1D		20,000	
1E		51,261	
1F	2,020		
1G	5,302		
1H	390,583		
1J			1,591,849
Totals	**940,348**	**260,785**	**1,976,621**

1/ Ineligible costs are costs charged to a HUD-financed or HUD-insured program or activity that the auditor believes are not allowable by law; contract; or Federal, State, or local policies or regulations.

2/ Unsupported costs are those costs charged to a HUD-financed or HUD-insured program or activity when we cannot determine eligibility at the time of the audit. Unsupported costs require a decision by HUD program officials. This decision, in addition to obtaining supporting documentation, might involve a legal interpretation or clarification of departmental policies and procedures.

3/ Recommendations that funds be put to better use are estimates of amounts that could be used more efficiently if an Office of Inspector General (OIG) recommendation is implemented. These amounts include reductions in outlays, deobligation of funds, withdrawal of interest, costs not incurred by implementing recommended improvements, avoidance of unnecessary expenditures noted in preaward reviews, and any other savings that are specifically identified. In this instance, implementation of our recommendations will ensure that the owner does not use project funds to reimburse the State for nearly

$385,000 in Medicaid overpayments and implements adequate procedures and controls to prevent a claim to HUD of nearly $1.6 million on the mortgage.

Appendix B

Auditee Comments and OIG's Evaluation

Ref to OIG Evaluation

Auditee Comments

TO: U.S. Department of Housing and Urban Development
Office of Inspector General

FROM: Mary Scott Nursing Center
Jeff Singleton, LNHA, Executive Director

DATE: September 14, 2017

RE: Response to Draft Audit Report

Comment 1

Comment 2

While the audit period covers January 1, 2014 through November 30, 2016, Toledoth Rehab did not become the official managing agent until September, 2016 although involved since January, 2016 in providing some managerial direction. At the time Toledoth was brought in as manager, HUD requirements and the regulatory agreement were not known by the manager. Since then, Toledoth has sought to ensure that HUD is informed and involved in all aspects of the operation of Mary Scott Nursing Center.

General Operating Account Disbursements

Comment 2

Comment 3

Comment 4

Comment 5

While HUD was not notified of the roof replacement, this was a mandate by CMS (Centers for Medicare/Medicaid Services). Mary Scott had no choice but to repair and replace the roof at the cost of $214,000. $160,000 was paid for two litigated claims brought by vendors against Mary Scott. Again, Toledoth sought reasonable settlement agreements to remove further risk for Mary Scott; a reasonable "cost of doing business." Mary Scott, nor any home, has much recourse with the State of Ohio regarding Medicaid cost settlements. They make the rules. As such, $140,000 was reimbursed to Medicaid through the vendor process. The previous management company, HC Consulting, did charge Mary Scott a montly fee for it's services, which was based on gross revenue. It is not uncommon for that fee to be paid, not by invoice, but by review of the monthly financial statement. The more than $183,000 was paid to HC Consulting, per agreement with the Mary Scott Board of Directors.

Rental Revenue Was Lost

Comment 6

Being an urban/city home, Mary Scott serves a financially challenged population. The $355,000 "rental revenue" was a result of pending Medicaid cases that could not be verified. Medicaid would not pay for these residents care due to some item lacking in their application. Thus, Mary Scott provided free care. It is not that Mary Scott did not collect. It is a fact that Medicaid did not approve payment for some clients, but not for anything Mary Scott did or did not do but due to the client being unable to provide the needed documentation for Medicaid eligibility.

Mortgage Payments Had Not Been Made

Comment 7

Steady mortgage payments had not been made prior to January, 2016. The main reason dealt with cash flow needs. In January, 2016, Toledoth began its management influence and steady payments were initiated except for a two month gap in early 2016, as advised by Greystone (servicing agent for HUD). The gap was closed with a large payment ($120,000) a few months later. This in essence, brought the year's payments to "current." Of course the prior balance remained. Steady payments have been made now for over one and one-half years.

Auditee Comments and OIG's Evaluation

Ref to OIG Evaluation	Auditee Comments
Comment 8	Donations were made specifically for the roof replacement and for no other purpose than that. Those funds could not have been used for any other purpose, but especially for debt service.
	<u>Conclusion and Recommendations</u>
Comment 9	Since Toledoth became the managing agent, many steps have been taken to put Mary Scott Nursing Center back on solid footing with the Ohio Department of Health, CMS, Greystone and HUD. The last annual survey conducted by the Ohio Department showed great opertional improvement with only two clinical citations, well below the State of Ohio average. The facility operated in the black in 2016 and is in the black to-date for 2017. This is a vast improvement from the negative financial condition of Mary Scott in the preceding years. All settlement agreements with Medicaid are current and up-to-date. Mortgage payments have been current since early 2016. Accounts payable are up-to-date and controls have been implemented to not admit pending Medicaid cases, reducing the risk for bad debt. New key management personnel are in place - experienced Executive Director, new Business Office Manager, and new Director of Nursing.
Comment 9	To pay or reimburse accounts for "oversights", some as long as three years ago, would put Mary Scott at risk and especially do a disservice to the very people we are trying to help. Urban Dayton's poor and underserved population count on Mary Scott for care. *That is our mission.*
Comment 9	Mary Scott Nursing Center desires to work with HUD and Greystone to solidify it's operation and improve our condition - fiscally and operationally. We feel Mary Scott has demonstrated steps, certainly over the past two years, to operate as a financially prudent and clinically efficient health care organization. The goal of Toledoth for Mary Scott has been to Recover, Stabilize, and Advance. We understand the audit period covers some of the more bleak times for Mary Scott but 2016 and 2017 have demonstrated that Mary Scott is recovering, moving towards stabilization and preparing to advance.
Comment 9	We trust this HUD Audit can be used a tool to help us become better and not used as an instrument to pull us back. We strive to be a good customer and hope you will continue to work with us to accomplish just that - be better, so that we may continue our mission of serving the African-American community as well as the poor and underserved of the City of Dayton.

OIG Evaluation of Auditee Comments

Comment 1 The owner's executive director stated that Toledoth Rehab, LLC, which did not become the project's management agent until September 2016 and did not know HUD's requirements and the regulatory agreement. However, Toledoth Rehab, LLC, has been the project's management agent since July 2016, the effective date of its management contract. Further, the owner was responsible for ensuring that the project was operated in accordance with HUD's requirements and the regulatory agreement.

Comment 2 The executive director stated that since becoming the management agent, Toledoth Rehab, LLC, had sought to ensure that HUD was informed and involved in all aspects of the operation of the project. The executive director also stated that the owner had to replace the project's roof for nearly $214,000 due to a mandate from the Centers for Medicare and Medicaid Services. However, contrary to the regulatory agreement, the owner and management agents did not obtain HUD's approval to use the project's funds to pay for the replacement of the roof. On October 5, 2016, the owner's former executive director accepted the contractor's proposal for the replacement of the roof. Further, the owner paid the contractor the nearly $214,000 from November 2016 through April 2017. All of these events occurred under the management of Toledoth Rehab.

Comment 3 The executive director stated that Toledoth Rehab, LLC, sought reasonable litigation settlements with two vendors totaling nearly $160,000. This was a reasonable cost of doing business. However, contrary to the regulatory agreement, the owner and management agents did not obtain HUD's approval to use the project's funds to pay for the litigation settlements.

Comment 4 The executive director stated that the owner did not have much recourse in reimbursing the State more than $140,000 in Medicaid overpayments. However, if the owner had maintained sufficient documentation for the Medicaid payments, it would not be reimbursing the State.

Comment 5 The executive director stated that HC Consulting/Management, LLC, charged the owner a monthly fee for management agent services that was based on gross revenue from the monthly financial statements. The owner paid the more than $183,000 to HC Consulting/Management, LLC, per agreement with the owner's board of directors. However, the owner and management agents could not provide sufficient documentation showing how the fees for the management agent services were calculated as required by the regulatory agreement.

Comment 6 The executive director stated that the nearly $355,000 in lost rental revenue was not a matter of the owner not collecting Medicaid payments, but the State not approving Medicaid payments for residents due to some items lacking in the residents' Medicaid applications. Therefore, the owner provided the residents free care. The lost rental revenue was a result of the residents not being able to provide the needed documentation for Medicaid eligibility rather than anything the owner did or did not do.

However, as previously stated, the owner was responsible for ensuring that the project was operated in accordance with HUD’s requirements and the regulatory agreement. Paragraph 4(g) of the regulatory agreement states that without the prior written approval of HUD’s Secretary, the owner must not permit the use of the dwelling accommodations or nursing facilities of the project for any purpose except the use that was originally intended. Providing residents rent-free housing was not the original intent of the project. Therefore, contrary to the regulatory agreement, the owner and management agents did not ensure that nearly $355,000 in rental revenue was collected for residents.

Comment 7 The executive director stated that although the owner did not make steady mortgage payments before January 2016 due to cash flow needs, it has generally made its mortgage payments since January 2016. However, the balance of unpaid principal and interest on the mortgage from before January 2016 remained. The owner should work with HUD’s Office of Residential Care Facilities to resolve recommendations 1J and 1K.

Comment 8 The executive director stated that donations were specifically made to replace the project’s roof and could not have been used for any other purpose. However, neither the owner nor management agent provided documentation to support that the donations could only be used for the replacement of the project’s roof.

Comment 9 The executive director stated that since Toledoth Rehab, LLC, became the project’ management agent, many steps have been taken to put the project back on solid footing with the State of Ohio, the Centers for Medicare and Medicaid Services, Greystone, and HUD. In addition, the executive director stated that the facility operated in the black in 2016 and has been in the black to date for 2017. The owner or management agent did not provide documentation, such as audited financial statements showing that the project has been operating in the black since 2016. The owner should work with HUD’s Office of Residential Care Facilities to resolve the recommendations in this audit report.

Appendix C

Applicable Requirements

Paragraph 1 of HUD's regulatory agreement with the project's owner, dated June 26, 2001, states that the owner must promptly make all payments due under the note and mortgage. Paragraph 2(a) states that the owner will establish or continue to maintain a reserve fund for replacements by the allocation to such reserve fund in a separate account with the lender or in a safe and responsible depository designated by the lender, concurrently with the beginning of payments toward amortization of the principal of the mortgage insured by HUD's Secretary of an amount equal to $4,290 per month, comprised of $1,667 for realty items and $2,623 for nonrealty items. Such fund, whether for the purpose of replacing structural elements and mechanical equipment of the project or any other purpose, may be made after the consent in writing of HUD's Secretary.

Paragraph 4(b) of the regulatory agreement states that without the prior written approval of HUD's Secretary, the owner must not assign, transfer, dispose of, or encumber any personal property of the project, including rents, or pay out any funds except for usual operating expenses and necessary repairs. Paragraph 4(e) states that without the prior written approval of HUD's Secretary, the owner must not enter into any contract or contracts for supervisory or managerial services. Paragraph 4(g) states that without the prior written approval of HUD's Secretary, the owner must not permit the use of the dwelling accommodations or nursing facilities of the project for any purpose except the use that was originally intended.

Paragraph 9(c) of the regulatory agreement states that the owner must not make any payment for services, supplies, or materials unless the services are rendered for or the supplies and materials are delivered to the project and are reasonably necessary for the operation of the project. Payments for the services, supplies, or materials must not exceed the amount ordinarily paid for the services, supplies, or materials in the area where the services are rendered or the supplies and materials are furnished. Paragraph 9(d) states that the mortgaged property, equipment, buildings, plans, offices, apparatus, devices, books, contracts, records, documents, and other related papers must at all times be maintained in reasonable condition for proper audit and subject to examination and inspection at any reasonable time by HUD's Secretary or his duly authorized agents. The owner must keep copies of all written contracts or other instruments that affect the mortgaged property, any of which may be subject to inspection and examination by HUD's Secretary or his duly authorized agents.

Paragraph 13 of the regulatory agreement states that no litigation seeking the recovery of a sum of more than $3,000 or any action for specific performance or other equitable relief may be instituted or may any claim for a sum of more than $3,000 be settled or compromised by the owner unless prior written consent has been obtained from HUD's Secretary.

Section III.3.4.2.A. of HUD Handbook 4232.1 states that licensed beds are valuable project assets securing a mortgage. Any time the number of licensed beds in a project is reduced or increased, the value of the mortgaged project may be affected. Section III.3.4.2.B.7. states that in processing release of collateral requests in which funds are received for the sale of beds, HUD expects to receive market value for the released collateral and the funds must be directly applied to the mortgage balance. Any deviation from this practice, including deposits into the reserve for replacements, must be expressly approved by HUD.

Section III.3.10.15.A. of HUD Handbook 4232.1 states that delinquent mortgage payments are not only a violation of legal obligations by a borrower, but are also a sign of financial distress for a project and are to be closely monitored by a servicer. The borrower is required to notify the servicer and HUD if the mortgage payment is delinquent as of the 16th of a month. Section III.3.10.15.B. states that HUD's Multifamily Delinquency and Default Reporting System will notify HUD of a delinquency after the 16th of a month. HUD will reach out to the servicer for a status of the delinquency and expectations of when the payment will be made. Section III.3.10.15.C. states that upon notification of a delinquency, the servicer must work with the borrower and operator, if applicable, to determine the financial, operational, and other circumstances leading to the nonpayment, including but not limited to evaluating the ability of the borrower to pay the mortgage, any anticipation of payments to be made, the financial strength of the borrower and operator, recent State survey results, extenuating circumstances, and other concerns potentially leading to the delinquency. Section III.3.10.15.D. states that the operator must provide the servicer of the mortgage with an action plan, seeking guidance from the servicer as necessary and appropriate. The servicer must then notify HUD of the situation and provide HUD with an action plan to remedy the delinquency.

The owner's mortgage note for the project, dated June 26, 2001, states that the owner must pay monthly installments of principal and interest totaling $32,065.