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**Testimony of Cary LaCheen  
Senior Staff Attorney  
National Center for Law and Economic Justice, Inc. before**

**General Welfare Committee  
New York City Council**

**October 22, 2007**

Good afternoon. My name is Cary LaCheen, and I am a Senior Staff Attorney at the National Center for Law and Economic Justice here in New York. The Center works in New York and around the country to ensure that benefits programs for low income individuals and families are administered fairly and in compliance with the law.

I am a disability rights lawyer and the director of a national project focusing on the intersection of disability rights laws and public benefit programs. I have advised and worked with both advocates and welfare agencies in numerous states on how to bring their welfare and other benefits programs into compliance with federal disability rights laws.

It is clear from the extensive documents and data we have reviewed, client and advocate experiences, the internal ResCare evaluation,<sup>1</sup> the Community Voices Heard report,<sup>2</sup> and the testimony you will hear today, that the WeCARE program suffers from a number of serious problems, which are too numerous to list. These problems need to be addressed now, as the contracts are coming up for renewal. WeCARE is a large, expensive program: The value of the three-year Arbor and F.E.G.S. contracts is almost \$200 million, and the program was intended to serve 135,000 clients over a three-year period.

The question for this Committee is not just what can be done to address these problems, but why HRA hasn't done a more effective job of monitoring the program, enforcing contract

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<sup>1</sup> A copy of this report has been provided to this Committee.

<sup>2</sup> Alexa Kasdan and Sondra Youdelman, *Community Voices Heard, Failure to Comply: The Disconnect Between Design and Implementation in HRA's WeCARE Program* (2007) (hereinafter "Failure to Comply"), available at [www.cvhaction.org](http://www.cvhaction.org).

terms, and making necessary changes.

My testimony will touch on the WeCARE programs's failure to comply with federal disability rights laws, the internal ResCare investigation of Arbor's performance as a WeCARE contractor, the absence of case management in the program, the program's poor track record of getting clients onto SSI, and HRA's failure to engage in effective oversight and enforcement of the WeCARE contracts.

**The WeCARE program does not comply with federal disability rights laws**

HRA is required to comply with federal civil rights laws, including the Americans with Disabilities Act (ADA)<sup>3</sup> and Section 504 of the Rehabilitation Act (Section 504),<sup>4</sup> in the operation of their programs, services and activities, including the WeCARE program. The ADA and Section 504 apply to HRA programs operated directly and programs such as WeCARE that are operated by contractors and subcontractors.<sup>5</sup>

The ADA and Section 504 prohibit HRA, WeCARE contractors and subcontractors from using methods of program administration that have a discriminatory effect on people with disabilities.<sup>6</sup> They require the WeCARE program to provide a meaningful opportunity for people with disabilities to participate in and benefit from the program.<sup>7</sup> And they require the WeCARE program to make a range of reasonable accommodations for people with disabilities in every aspect of the program, such as helping clients to navigate the program, reducing the number of appointments that clients must attend if their disabilities make it difficult to attend appointments, giving clients another chance to comply before closing their cases if they miss appointments for disability-related reasons, and giving clients work activities that are tailored to and appropriate for their disabilities.

Given that WeCARE is a program designed and intended for individuals with known or suspected disabilities, and given that HRA has been sued successfully more than once for failure

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<sup>3</sup> 42 U.S.C. § 12131 et seq., 28 C.F.R. Part 35.

<sup>4</sup> 29 U.S.C. § 794(a); 45 C.F.R. Part 45.

<sup>5</sup> 28 C.F.R. §§ 35.130(1); (b)(3); 45 C.F.R. § 84.3(f).

<sup>6</sup> 28 C.F.R. § 35.130(b)(1); 45 C.F.R. § 84.4(b)(4).

<sup>7</sup> *Alexander v. Choate*, 469 U.S. 287 (1985); *Henrietta D. v. Bloomberg*, 331 F.3d 261 (2<sup>nd</sup> Cir. 2004), *cert. denied*, 541 U.S. 936 (2004).

to comply with disability rights laws in its programs,<sup>8</sup> one would think that HRA would bend over backwards to ensure that the WeCARE program complies with the ADA and Section 504. But it does not. The program is marked by disorganization and fragmentation, which creates particular hurdles for clients with disabilities. F.E.G.S. and Arbor data shows that many clients miss appointments at each stage of the process, and many do not complete the assessment process or subsequent stages of the program. Although case management could help some clients meet program requirements, clients are not receiving it. Further, the assessments used to make employability decisions are superficial, so clients are put into program “tracks” that are not appropriate, given their disabilities. In sum, the WeCARE program is administered in a manner that pushes clients out of the program, instead of addressing their needs. It is a cruel irony, that a program designed for clients with disabilities is administered in a manner that is so user unfriendly for people with disabilities. It is also unlawful.

**A recent internal review by Arbor’s parent company confirms that the program is in disarray and services are of poor quality**

A June 2007 internal evaluation of Arbor’s WeCARE services that was conducted by ResCare, Arbor’s parent corporation,<sup>9</sup> describes a program with fragmented, poor-quality services. Problems identified by the review include:

- inadequate client interviews;
- inadequate or no medical examinations of some clients;
- poor documentation of client medical and mental health problems;
- failure to follow-up mental health and substance abuse problems;
- vague goals and objectives in client service plans;
- failure to refer clients for evaluations by specialists;
- poor staff understanding of the program;
- inadequate staff training;
- long waits to see doctors;
- no resource guide for staff making referrals to community-based providers;
- insufficient communication with subcontractors;
- lack of standard operating procedures;
- high case manager client ratios;
- lack of client privacy during interviews; and
- other problems.

In a cover letter accompanying the report, ResCare identified the steps it intends to take to correct deficiencies, but these steps do not even begin to address most of the problems identified.

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<sup>8</sup> *Henrietta D. v. Bloomberg*, 331 F.3d 261 (2<sup>nd</sup> Cir. 2004); *Lovely H. v. Eggleston*, 235 F.R.D. 248 (S.D.N.Y. 2006).

<sup>9</sup> See note 1.

***This Committee should ask HRA why it took an internal investigation by a parent corporation of one of the contractors to identify many of the problems HRA should have found through its own monitoring efforts.***

### **Lack of case management and coordination**

Case management is one of the program features that was supposed to distinguish WeCARE from previous HRA programs for cash assistance recipients with disabilities. The contracts are full of case management requirements. They require case management – as a distinct service – to be provided to eligible clients.<sup>10</sup> They also require case management to be provided to every client as part of every service provided in the program.<sup>11</sup> They require case management-like services to be provided to all clients in the program.<sup>12</sup> And finally, they require “escalating outreach” to clients to re-engage them if they miss assessment appointments.<sup>13</sup>

Only one of the two main contractors subcontracted to provide any case management to clients. It is not clear from the contracts whose responsibility it is to provide the case management that all clients are supposed to receive. The contracts say that “the contractor” must provide it, as if clients interact with a single contractor in the program, instead of one contractor and many subcontractors. It is clear from the Community Voices Heard report that many clients are not getting help navigating the process or attending appointments.<sup>14</sup> In addition, serious staffing shortages at Arbor and F.E.G.S., particularly in the case manager job title, have undoubtedly limited the amount of case management that contractors have been able to provide. In September 2005, more than 6 months after the program began, Arbor had only hired slightly

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<sup>10</sup> Arbor and F.E.G.S. contracts, Part 1, Article 6 § G.

<sup>11</sup> Arbor and F.E.G.S. contracts, Part I, Article 6 § B.2(d) (Comprehensive Services Plans); § C.4(e) (Wellness Rehabilitation Plans); § 6.D.5(f) (Diagnostic Vocational Evaluations); § 6.E.4(b) (Individualized Plan for Employment); § 6.F.3(f) (Vocational Rehabilitation, Employment Preparation, and Training).

<sup>12</sup> For example, the contracts require the contractors to monitor and assist clients in complying with each activity or stage of the program, link the client with services specified in the client’s plan, and maintain ongoing contact with the client’s other service providers. Arbor and F.E.G.S. contracts, Part I, Article 6 §§ B.2(b), (e) (Comprehensive Services Plans); §§ 6.C.4(b), (c), (f) (Wellness Rehabilitation Plans); §§ 6.D.5(d), (e) (Diagnostic Vocational Evaluations); §§ 6.E.4(a),(d),(e), (f), (g) (Individualized Plan for Employment); §§ 6.F.3(a), (b), (c), (g) (Vocational Rehabilitation, Employment Preparation, and Training).

<sup>13</sup> Arbor and F.E.G.S. contracts, Part I, Article 6 § A(10).

<sup>14</sup> *Failure to Comply*, pp. 22, 28.

more than half of the case managers for which they had budgeted (73 of 136).<sup>15</sup> A June, 2007 HRA Performance Evaluation for F.E.G.S., submitted to the Mayor's Office of Contracts, concluded that "high turnover rates among case management staff have necessitated the use of temporary staff."<sup>16</sup> In short, case management seems to be more of an illusion than a reality in the program.

### Low SSI success rate

A critical component of the WeCARE program is assisting clients with permanent disabilities in applying for SSI (Supplemental Security Income). Getting cash assistance recipients onto SSI is a win for clients because it provides a higher level of benefits than cash assistance, and a win for New York City because SSI is 100% federally funded so it saves the City money. It also helps the City and State meet the new federal welfare work participation rates by taking clients who cannot engage in activities that count towards the required federal work participation rates out of the program.

The WeCARE program has not done a good job of getting clients onto SSI. The most recent data that we have for Arbor, from early December 2006, appears to show that only 15% of initial SSI applications submitted by Arbor had been approved.<sup>17</sup> In contrast, nationwide data from the Social Security Administration shows that over 29 % of applications filed in 2006 were approved.<sup>18</sup> F.E.G.S. appears to be doing better: The most recent F.E.G.S. data provided to us shows that as of April 2007, 34% of the SSI applications submitted by F.E.G.S were approved.<sup>19</sup> But that is not much better than the national rate, which is made up of many applicants who received no help with their applications. If the WeCARE program was doing a good job of getting clients onto SSI, one would expect the WeCARE SSI application success rate to be *significantly higher* than the national rate. We also know that the WeCARE program has gotten many fewer clients onto SSI than HRA and the contractors initially estimated.<sup>20</sup>

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<sup>15</sup> Arbor WeCARE Stat Report (September, 2005).

<sup>16</sup> HRA Performance Evaluation of F.E.G.S., submitted to Mayor's Office of Contracts (June 29, 2007), p.2.

<sup>17</sup> Arbor WeCARE Stat Report (December 19, 2006 ), p. 7.

<sup>18</sup> See [www.ssa.gov/OACT/ssir/SSI07/AllowanceData.html](http://www.ssa.gov/OACT/ssir/SSI07/AllowanceData.html).

<sup>19</sup> F.E.G.S. WeCARE Stat Report, Packet A (May 8, 2007), p. 14.

<sup>20</sup> According to HRA testimony before this Committee, as of March 2007 (approximately two years after the program began), the WeCARE program was successful in getting 2,433 clients onto SSI. *Testimony of Commissioner Robert Doar before General Welfare Committee, New York City Council*, March 15, 2007, page 5. The F.E.G.S. bid estimated that within the first

There are programs across the country with success rates on initial SSI applications that are more than twice the F.E.G.S. success rate, and five or six times Arbor's success rate. The Federal Substance Abuse and Mental Health Services Administration, which is part of the U.S. Department of Health and Human Services, has developed a training protocol for helping homeless individuals get onto SSI that has been implemented around the country with 65% to 95% success rate.<sup>21</sup>

There are several reasons why the WeCARE program isn't doing a more effective job of getting clients onto SSI:

1. Organizations with a proven track record in getting clients onto SSI are not involved in the program

Arbor and F.E.G.S. stated in their contract bids that they would sub-contract with organizations with experience in assisting clients in getting onto SSI. They never subcontracted with anyone to perform this service. As a result, their own staff are performing this task. Neither Arbor nor F.E.G.S. have a proven track record in this area.

It is our understanding that Arbor and F.E.G.S. did not subcontract out the SSI application assistance because the payment scheme for this part of WeCARE contracts is 100% performance-based. In other words, Arbor and F.E.G.S. do not get paid by HRA until a client's SSI application is approved.<sup>22</sup> Arbor and F.E.G.S. wanted to pass this financial risk onto potential subcontractors, who did not want to bear this risk. One potential bidder on the WeCARE contract also withdrew its bid, at least in part, because of this payment scheme.

Using a 100% performance-based payment scheme for paying contractors to assist clients with SSI applications is unwise. Because clients whose SSI applications are initially denied win more than half of the hearings when they appeal the decisions at hearings,<sup>23</sup> it is important for contractors to develop and submit high-quality applications and supporting documents even for

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two years of the program, F.E.G.S. alone would get 4,732 clients onto SSI. Appendix B-1 to F.E.G.S. WeCARE proposal, (Participant Profile/Unit Prices/Milestone Payments).

<sup>21</sup> See Deborah Dennis, et al., Policy Research Associates, Inc., *Expediting Access to SSA Disability Benefits: Promising Practices for People who Are Homeless*, (2007), available at [www.prainc.com/SOAR/about/PromisingPractices.pdf](http://www.prainc.com/SOAR/about/PromisingPractices.pdf)

<sup>22</sup> See Arbor and F.E.G.S. contracts, Appendix B-1.

<sup>23</sup> See [www.ssa.gov/ssir/SSI07/AllowanceData.html](http://www.ssa.gov/ssir/SSI07/AllowanceData.html). For each year from 1995 through 2005, 54% to 60% of applicants who appealed SSI application denials beyond the reconsideration level (i.e., at an administrative hearing or in court) were granted benefits.

clients whose applications may initially be denied, because they affect the chance of success on appeal. Here, we know that the result of this payment scheme was to scare away potential subcontractors with expertise. ***If the WeCARE program continues, the payment scheme for assisting clients with SSI applications should be modified so that organizations with a good track record in this area want to contract to perform this service.***

2. Contractor staffing shortages

The most extreme staffing shortages were in Arbor's case management staff.<sup>24</sup> This appears to be the job title for staff who assist with SSI applications.

3. Inaccurate WeCARE employability determinations

\_\_\_\_\_ The WeCARE program places only a small percentage of the clients who complete the assessment process on the SSI track. The most recent data that we have for F.E.G.S., for February through April 2007, shows that only 7 ½ % of individuals with completed biopsychosocial assessments were placed on the SSI track.<sup>25</sup> This percentage is low, given the severe disabilities many cash assistance recipients have.

Many clients who should be placed in the SSI track are not placed in that track. We know this because F.E.G.S. WeCARE data shows that month after month, approximately 15 to 20% of the clients in the "Wellness" track (the track used for clients with unstable medical or mental health conditions) apply for SSI on their own, or with the help of advocacy organizations, and their applications are approved.<sup>26</sup> We also know that many clients given Wellness Plans do not improve and are placed in the SSI track after their Wellness Plans expire.<sup>27</sup> Clearly, many of these clients should have been put in the SSI track at the outset.

4. No-one but HRA knows whether HRA is doing an effective job handling SSI appeals

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<sup>24</sup> See note 16.

<sup>25</sup> F.E.G.S. WeCARE Stat Report, Packet A (May 8, 2007), p. 6. We do not have corresponding data for Arbor.

<sup>26</sup> See, e.g., F.E.G.S. WeCARE Stat report, Packet A (April 10, 2007), p. 11 (showing that from mid-February 2007 through mid-April, 2007, 15% of clients with Wellness plans had their cases closed because an application for SSI was approved). The Arbor reports do not contain corresponding data.

<sup>27</sup> As of March 31, 2007, 16% of F.E.G.S. clients given Wellness Plans were placed in the SSI track after their Wellness Plan expired. F.E.G.S. WeCARE Stat Report, Packet A (May 8, 2007), p. 8. The Arbor reports do not contain corresponding data.

Because a large percentage of SSI applications are denied initially but approved at the hearing level, a successful strategy for getting cash assistance recipients onto SSI must include high-quality advocacy at the appeal level. HRA has a Disability Appeals Unit (DAU) to assist cash assistance recipients whose SSI applications are denied. ***We urge this Committee to look closely at the number of appeals handled by this Unit, the Unit's success rate, the quality of the representation provided by the DAU at SSI appeal hearings, and the professional qualifications and training of staff who work in the DAU. If the Unit's success rate is far below that of legal advocacy organizations that handle SSI appeals, the Committee should ask why HRA continues to handle these appeals instead of contracting with or referring clients to organizations with a proven track record to handle them.***

### **HRA's failure to monitor and enforce the contracts**

HRA has not done an adequate job of contract monitoring and enforcement. This Committee should take a close look at whether HRA is up to the task of doing so. A recent audit by the New York City Comptroller of HRA's employment services contracts concluded that HRA's monitoring of employment services contractors had "several significant weaknesses."<sup>28</sup> If HRA is not up to the task of monitoring the weCARE contracts, changes must be made in HRA's Office of Contract Compliance.

There are many indications that HRA has done a poor job of monitoring and enforcing the contracts. I will mention only a few:

#### **Delay in hiring a contract evaluator**

\_\_\_\_\_ The WeCARE contracts provide that HRA would contract with an outside organization to perform "independent quality reviews" of all aspects of the WeCARE program.<sup>29</sup> HRA did not contract with an evaluator until March 2007, more than two years after the WeCARE program began.<sup>30</sup> Last month, HRA informed me that it still had no independent quality reviews from this evaluator,<sup>31</sup> even though the contract requires the contractor, the New York County Health Service

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<sup>28</sup> New York City Comptroller, Bureau of Management Audit, *Audit Report on the Human Resources Administration's Employment Services and Placement Efforts for Public Assistance Recipients*, (June 18, 2007), p. 1.

<sup>29</sup> Arbor and F.E.G.S. contracts, Part 1, Article 25 §§ 2(a)-(d).

<sup>30</sup> Contract between New York City Human Resources Administration and New York County Health Service Review Organization (March 12, 2007), PIN Number 069063100034 ("NYCHSRO contract").

<sup>31</sup> Letter from Paul Ligresti, Assistant General Counsel, New York City Human Resources Administration, to Cary LaCheen, National Center for Law and Economic Justice, Inc., September 7, 2007.

Review Organization, to produce 56 quarterly evaluation reports and two annual reports per year for three years.<sup>32</sup> If the purpose of these reviews is to identify problems so they can be addressed promptly, these reviews have not served that purpose. Nor, given the delay, can they be used to make decisions regarding contract renewal. ***This Committee should investigate why HRA took so long to contract with a reviewer when HRA has known about the need for a reviewer since the contracts were in draft form, and why HRA still has no reviews six months after the contract was signed.***

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Delays in setting up databases

The WeCARE contracts require Arbor and F.E.G.S. to use a data system compatible with HRA data systems<sup>33</sup> and provide HRA with monthly and year-to-date reports on a variety of important caseload indicators.<sup>34</sup> In January 2007, more than two years after the WeCARE contracts were signed, HRA informed me that database reports were not available because they were still “under development.”<sup>35</sup> When HRA finally provided me with data reports, in May 2007, I was told that the data was incomplete and inaccurate and contained calculations based on “evolving numerators and/or denominators,” and further, that the calculations in the reports are “adjusted each month on the basis of discussions with the contractors.”<sup>36</sup> In other words, HRA still does not have complete or reliable data on the program.

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What has HRA been doing for the last three years?

It is shameful that HRA has allowed so many problems with the WeCARE program to continue for so long. Subcontracting with a new medical provider, as Arbor has done, may address some problems, but it will not address all of them. Many of the problems with the WeCARE program lie with HRA, not with the contractors and subcontractors. Improvements must be made in HRA’s contract planning, monitoring, and enforcement. Contracting out a massive program such as WeCARE is not a viable approach to service delivery if HRA lacks the staff, expertise, or will to engage in vigorous contract monitoring and enforcement. ***This Committee should use its oversight authority to ensure that HRA does not embark on or renew***

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<sup>32</sup> NYCHSRO WeCARE contract, Part 1, Article 2 § C.1.a.

<sup>33</sup> Arbor and F.E.G.S. Contracts Part 1, Article 10 § 1.

<sup>34</sup> Arbor and F.E.G.S. Contracts Part 1, Article 11 § 1.

<sup>35</sup> Letter from Paul Ligresti, Assistant General Counsel, New York City Human Resources Administration, to Cary LaCheen, National Center for Law and Economic Justice, Inc., January 22, 2007.

<sup>36</sup> Letter from Paul Ligresti, Assistant General Counsel, New York City Human Resources Administration, to Cary LaCheen, National Center for Law and Economic Justice, Inc. May 22, 2007.

*such massive contracts without adequate mechanisms in place to monitor compliance.*

Thank you for giving me this opportunity to testify here today.