

***State of New York
Office of the State Comptroller
Division of Management Audit
and State Financial Services***

**DEPARTMENT OF HEALTH AND
OFFICE OF CHILDREN AND FAMILY
SERVICES**

**NEW YORK'S OVERSIGHT OF ADULT
CARE FACILITIES**

REPORT 98-S-60



H. Carl McCall

Comptroller



State of New York Office of the State Comptroller

Division of Management Audit and State Financial Services

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Dear Dr. Novello and Mr. Johnson:

The following is our report addressing the oversight of adult care facilities by the Department of Health and the Office of Children and Family Services.

This audit was done according to the State Comptroller's authority as set forth in Article V, Section 1 of the State Constitution and Article II, Section 8 of the State Finance Law. We list major contributors to this report in Appendix A.

*Office of the State Comptroller
Division of Management Audit
and State Financial Services*

November 4, 1999

Executive Summary

Department of Health and Office of Children and Family Services

New York's Oversight of Adult Care Facilities

Scope of Audit

Adult care facilities provide non-medical residential care to adults who are substantially unable to live independently. Facilities that house five or more adults are overseen by the Department of Health (Department), while facilities that house four or fewer adults (called family-type homes) are overseen by the Office of Children and Family Services (OCFS). The Department oversees a total of 529 facilities that can house up to 37,000 residents, while OCFS oversees a total of 741 family-type homes that can house more than 2,100 residents. The family-type homes are directly supervised by 58 local social services districts, and these local districts are overseen by OCFS. Each type of facility must be licensed and periodically inspected by its supervising agency.

Our audit addressed the following question about the oversight of adult care facilities by the Department and OCFS for the period April 1, 1997 through April 30, 1999:

- Were the facilities effectively overseen through the licensing process, the inspection process and the investigation of complaints?

Audit Observations and Conclusions

If the health and safety of facility residents are to be adequately protected, significant improvement is needed in the oversight provided by the Department and OCFS. In particular, the two agencies need to actively try to identify unlicensed facilities, verify information provided by license applicants, and more closely monitor facility inspections and complaint investigations to ensure that they are properly performed.

According to State law, a license to operate an adult care facility should be issued only to applicants who can demonstrate that they have the character, competence and financial resources to operate such a facility. When we examined the processes used by the Department and OCFS to evaluate license applications, we found that both agencies require applicants to provide letters of reference and information about their prior work experience and financial resources. However, neither agency verifies the information provided by the applicants, and neither agency routinely seeks independent information about the applicants. As a result, there is increased risk that licenses may be issued to applicants who lack the character, competence or financial resources to operate adult care facilities. (See pp. 5-8)

Even though adult care facilities are required by law to be licensed, neither the Department nor OCFS actively tries to identify unlicensed facilities. Moreover, when possible unlicensed facilities are brought to the attention of the agencies, the status of these facilities is not always resolved in a timely manner. When facilities are not licensed, their operators are not screened through the license application review process and the facilities are not inspected to ensure that they provide adequate care to their residents. As a result, the residents in unlicensed facilities are less likely to be treated in an appropriate manner. (See pp. 8-9)

Adult care facilities are required by law to be inspected at certain intervals. We found that the facilities overseen by the Department are not always inspected within the required intervals, especially in New York City. Facility inspectors are required to perform certain procedures, such as interviewing residents and ensuring that medications are properly dispensed. However, many of these required inspection activities were not adequately documented. As a result, there is insufficient assurance that facility inspections are thorough and complete. When inspections are not thorough and complete, inappropriate practices are less likely to be detected, and we identified a number of inappropriate practices in our visits to 29 randomly selected facilities. (See pp. 11-18)

We also found that a number of improvements are needed if complaints about adult care facilities are to be adequately addressed. For example, 6 of the 11 urgent complaints we reviewed were not responded within the required 24 hours, including one complaint that took 36 days to respond to. In addition, the phone numbers and addresses provided to residents for making complaints were often incorrect. We also determined that actions taken against facility operators who violate laws and regulations are subject to considerable delays, and improvements are needed in the monitoring of the enforcement process to ensure that the required actions are taken. (See pp. 18-24)

We made a total of 20 recommendations for improving the oversight provided to adult care facilities by the Department and OCFS.

Comments of Department and OCFS Officials

Department officials generally agreed with our recommendations and stated that the audit report represents external input which can be used to review existing policies and procedures to determine their effectiveness. OCFS officials stated that although they disagree with some recommendations, they regard the audit report as a useful tool in their continuing efforts to strengthen and refine their oversight activities.

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Major Contributors to This Report	
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Response of Office of Children and Family Services Officials	
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Introduction

Background

Adult care facilities provide temporary or long-term, non-medical residential care to adults who are substantially unable to live independently. Adult care facilities were the responsibility of the former New York State Department of Social Services (DSS). However, in January 1997, the Department of Health (Department) was made responsible for supervising larger, institutional adult care facilities. After DSS was dissolved on August 20, 1997, the Office of Children and Family Services (OCFS) became responsible for overseeing smaller homes for four or fewer adults (called family-type homes) and the Office of Temporary and Disability Assistance (OTDA) became responsible for regulating adult shelters, which provide temporary shelter to adults.

The Department and OCFS supervise adult care facilities primarily through the licensing and inspection processes. According to the New York State Social Services Law, adult care facility operators must receive an operating license from the State and must be inspected by the State every 12 to 18 months. The Department supervises a total of 529 adult care facilities that can house up to 37,000 residents. OCFS supervises a total of 741 family-type homes that can house more than 2,100 residents. The family-type homes are directly supervised by 58 local social services districts, and these local districts are overseen by OCFS.

Audit Scope, Objective and Methodology

We audited Department and OCFS activities related to the supervision of adult care facilities for the period April 1, 1997 through April 30, 1999. We did not audit OTDA's oversight activities related to adult shelters. The objective of our performance audit was to assess how effectively adult care facilities were supervised through the licensing process, the inspection process and the investigation of complaints. To accomplish our objective, we interviewed officials and reviewed policies and records at the Department's central office, OCFS's central office, two of the Department's four regional offices (the Eastern and Metropolitan regional offices), three local social services districts (Nassau, Oneida and Westchester counties), 20 adult care facilities supervised by the Department, and nine adult care facilities supervised by OCFS (See Exhibit A). We also visited these 29 facilities, interviewed residents at the facilities, and reviewed selected aspects of the facilities' operations while accompanied by facility and agency officials. In addition, we visited one unlicensed facility and contacted officials responsible for monitoring adult care facilities in California and Texas.

We conducted our audit according to generally accepted government auditing standards. These standards require that we plan and do our audit to adequately assess those procedures and operations included within the audit scope. Further, these standards require that we understand the Department's and OCFS's internal control systems and their compliance with those laws, rules and regulations that are relevant to the operations included in our audit scope. An audit includes examining, on a test basis, evidence supporting transactions recorded in the accounting and operating records and applying such other auditing procedures as we consider necessary in the circumstances. An audit also includes assessing the estimates, judgments and decisions made by management. We believe our audit provides a reasonable basis for our findings, conclusions and recommendations.

We use a risk-based approach when selecting activities to be audited. This approach focuses our audit efforts on those operations identified through our preliminary survey as having the greatest probability for needing improvement. Consequently, by design, we use our finite audit resources to identify where and how improvements can be made. Thus, we devote little audit effort to reviewing operations that may be relatively efficient or effective. As a result, our audit reports are prepared on an "exception basis." This report, therefore, highlights those areas needing improvement and does not address activities that may be functioning properly.

Response of Department and OCFS Officials to Audit

We provided draft copies of this report to Department and OCFS officials for their review and comment. Their comments were considered in preparing this report and are included as Appendix B and Appendix C, respectively.

Department of Health officials responded that the Office of Continuing Care reorganized the manner in which it provides oversight to Adult Care Facilities in November 1998. According to Department officials, our audit began immediately after organizational changes were instituted and the audit represents external input which can be used to review existing policies, procedures and processes to determine their effectiveness. In general, Department officials agreed with our recommendations and stated that actions were under way to implement them.

In their response, Office of Children and Family Services officials stated that although they disagree with some of the recommendations in the report, they are committed to promoting the well-being and safety of residents in Adult Care Facilities and regard the audit report as a useful

tool in their continuing efforts to strengthen and refine their oversight activities.

Within 90 days after final release of this report, as required by Section 170 of the Executive Law, the Commissioner of the Department of Health and the Commissioner of the Office of Children and Family Services shall report to the Governor, the State Comptroller, and the leaders of the Legislature and fiscal committees, advising what steps were taken to implement the recommendations contained herein, and where recommendations were not implemented, the reasons therefor.

Licensing of Adult Care Facilities

We reviewed the procedures used by the Department and OCFS to evaluate applications for licenses to operate adult care facilities. We also reviewed the processes at these two agencies for identifying and investigating facilities that may be operating without a license. In our prior audit of New York State's oversight of adult care facilities (Report 90-S-34, which was issued in September 1990), we found that DSS needed to improve its review of license applications, did not actively try to identify facilities that were operating without a license, and did not promptly investigate potentially unlicensed facilities when they were identified. In this audit, we found that improvements continue to be needed in the review of license applications and additional actions are still needed if unlicensed facilities are to be identified and investigated promptly.

Evaluation of Applicants

Section 461 of the New York State Social Services Law states that a license to operate an adult care facility shall be granted only to applicants who satisfactorily demonstrate that they have the character, competence and sufficient financial resources to operate such a facility. Section 485 of the New York State Codes, Rules and Regulations (NYCRR) states that “. . . assessment and verification of information submitted by the applicant or solicited from other sources by the Department shall be based on such factors as financial status . . . letters of personal recommendation . . . credit review . . . [and] review of related public documents” The NYCRR also specifically requires that the applicant be able to “insure financial viability for the period of the operating certificate,” which is generally four years.

In our prior audit, we found that DSS did little to verify the information provided by applicants. In our current audit, we found that neither the Department nor OCFS verifies the information provided by applicants, and neither agency routinely seeks independent information about the applicants such as criminal histories or credit reports. As a result, there is increased risk that licenses may be issued to applicants who lack the character, competence or financial resources to operate adult care facilities.

Department of Health

The Department's Bureau of Licensing and Certification (Bureau) is responsible for assessing the character, competence and financial viability of applicants. Bureau officials told us they fulfill this responsibility by obtaining three letters of reference for each applicant, assessing each applicant's experience, and evaluating the financial resources of each

applicant. When we asked to review the written procedures for these tasks, we were told that the Bureau has not formalized the procedures. In the absence of written guidelines, required tasks are less likely to be performed as expected or in a consistent manner.

According to Department records, between April 1, 1997 and February 2, 1999, the Department issued 34 operating licenses for adult care facilities. We selected a non-statistical sample of 10 of these 34 licenses from throughout the period and reviewed the files, to determine whether the license applications had been reviewed in accordance with Bureau procedures and whether these procedures adequately met the requirements of Section 461 of the Social Services Law and Section 485 of the NYCRR. In addition, we contacted officials in the states of California and Texas to ascertain their procedures for assessing applications for licenses to operate adult care facilities.

We found that the Bureau obtained three letters of reference for each license application, as required by its procedures. However, contrary to Section 485 of the NYCRR, the Bureau does not verify the information contained in the letters of reference and does not routinely seek information about the applicant from independent parties (e.g., criminal background checks and credit reports). We therefore conclude that the Bureau does not adequately assess the character and competence of applicants. In our prior report, we recommended that criminal histories routinely be investigated as part of the application review process and legislation be sought authorizing the Division of Criminal Justice Services to provide such criminal history information, but this recommendation was not implemented. We note that, in California, a criminal background check is performed for operators of custodial facilities such as adult care facilities.

We also found that the Bureau generally evaluated the financial resources of each applicant, as required by its procedures. However, the Bureau does not routinely seek information about these financial resources from independent parties (e.g., credit reports or a verification of assets by banks or other financial institutions). We note that, when applications are reviewed in Texas, officials routinely search for current liens, judgments and bankruptcy information.

We also note that the Bureau does not require the financial statements submitted by applicants to be certified, and does not verify financial information provided by parties who are not independent of the applicant. For example, the attorney for one applicant stated that the applicant had sufficient financial assets to ensure the continued viability of the facility in the event of any economic difficulties. Even though the attorney was

hired by the applicant and therefore was not independent of the applicant, the Bureau did not verify the existence and availability of the assets referred to by the attorney. The attorney for another applicant stated that the applicant's parents had issued a promissory note for \$2 million that could be used in the event of a financial emergency. However, the Bureau did not obtain a copy of the note or assess the parents' ability to honor that commitment.

OCFS

An application for a license to operate a family-type home for adults must be filed with the social services district in which the home will be located. The application is evaluated by the local district, which recommends whether the application should be approved or denied. This recommendation is forwarded to OCFS, which approves or denies the application.

Officials at the three districts we visited told us that, in accordance with the application form provided by OCFS, they obtain two letters of reference for each applicant, a history of the applicant's prior work experience, and a listing of the applicant's financial resources. However, contrary to Section 485 of the NYCRR, neither the districts nor OCFS verifies any of the information provided by the applicant, and neither the districts nor OCFS seeks independent information about the applicant. The officials in the three districts told us they were not aware that the information should be verified and noted that OCFS does not require any evidence of verification when processing the license applications received from the districts.

Recommendations

To the Department of Health and OCFS:

1. Verify (*the Department*), or take steps to determine that the local social services districts verify (*OCFS*), the information received from applicants and parties related to the applicants.
2. Obtain (*the Department*), or take steps to determine that the local social services districts obtain (*OCFS*), independent information (such as criminal histories, credit reports and bank confirmations) about the applicants' character, competence and financial viability.
3. Develop written procedures describing how the character, competence and financial viability of applicants should be evaluated. OCFS should distribute these written procedures to the local districts.

Unlicensed Facilities

According to Section 461 of the New York State Social Services Law, adult care facilities should not be operated without a license. However, Department officials told us they believe as many as 50 unlicensed facilities are operating in the New York City area alone, while an OCFS official told us he believes as many as 800 unlicensed family-type homes are operating statewide. Neither the Department nor OCFS actively tries to identify unlicensed facilities. In addition, OCFS has not given local social services districts direction on how to identify unlicensed facilities, and none of the three districts we visited actively tries to identify such facilities. Officials at both the Department and OCFS told us they do not actively try to identify these facilities because the identification of such facilities is not mandated by law and is not considered a priority.

Officials at both the Department and OCFS told us that they are sometimes made aware of facilities that may be operating without a license. These facilities are usually identified through complaints by licensed operators or other individuals, although they may also be identified as a result of activities performed for other reasons (for example, a number of unlicensed facilities were identified by the Department when a memorandum was issued to hospital administrators reminding them that patients cannot be discharged to facilities that are not

licensed by the State). When a possible unlicensed facility is identified, both the Department and OCFS investigate the facility to determine whether it should be licensed. If a license is needed, the agencies either ensure that the license is obtained or close the facility and transfer the residents to a facility that is licensed. However, neither agency has established time frames for completing the investigation of possible unlicensed facilities. In the absence of such time frames and of overall guidance, the status of unlicensed facilities is less likely to be resolved in a timely manner and facilities may continue to be operated without a license for extended periods.

When we reviewed records at both agencies relating to possible unlicensed facilities, we found indications that the status of these facilities may not always be resolved in a timely manner. For example, the Department's log of possible unlicensed facilities included a total of 68 facilities. We judgmentally selected five facilities and status reports on unlicensed homes provided by the Department's regional offices and reviewed the actions taken by the Department to investigate those homes. According to Department records, the status of these five facilities had yet to be resolved, even though the Department had been aware of four of the facilities for between 2.5 and 6.25 years. We note that the Department's automated system for recording information about the status of possible unlicensed facilities may not be reliable, because some of the data on the system is not consistent with the hard copy source of the information and the number of possible data fields for each facility is not consistent, making it difficult to determine whether data is missing. In addition, Department officials told us they dedicate only about 10 percent of one staff person's time to tracking the progress on investigations of possible unlicensed facilities.

When facilities are not licensed, their operators are not screened through the license application review process to ensure they are of good character, competent and financially viable and the facilities are not inspected to ensure that they comply with all laws and regulations and provide adequate care to their residents. As a result, the residents in unlicensed facilities are less likely to be treated in an appropriate manner. For example, when we visited an unlicensed facility, we found that one of the residents had required skilled nursing care for at least two years, but had yet to be transferred to a facility that provided such care. If this facility had been licensed, this resident's need for skilled nursing care could have been identified during the periodic inspection of the facility. To reduce the likelihood of such needs not being met, we recommend that the Department and OCFS actively try to identify unlicensed adult care facilities and minimize any delays that are encountered in resolving the status of such facilities.

Recommendations

To the Department of Health and OCFS:

4. Develop procedures for actively trying to identify potential unlicensed facilities, and monitor implementation of these procedures by the regional offices (*the Department*) or the local social services districts (*OCFS*).
5. Establish expected time frames for completing the investigations of possible unlicensed facilities and for resolving the status of facilities that are not licensed. Monitor these activities and take the actions necessary to foster adherence to these time frames.

To the Department of Health:

6. Ensure that complete and accurate information is maintained about the investigations and follow-up of possible unlicensed facilities.

Inspecting Facilities and Investigating Complaints

According to the New York State Social Services Law, every adult care facility must receive a complete inspection at least every 12 to 18 months. An Operating Manual, which was developed by DSS in April 1997, is intended to provide guidance to facility inspectors. For example, the Operating Manual specifies the number of case files to be reviewed and the number of residents to be interviewed for an inspection to be complete. Partial inspections are also conducted to follow up on prior violations and to investigate complaints from residents or other parties. Department inspections are conducted by regional office surveyors who are overseen by the Department's Bureau of Surveillance and Quality Assurance. Family-type homes are inspected by local district inspectors who are overseen by the OCFS Bureau of Adult Services.

In our prior audit, we found that improvements were needed in the DSS inspections of larger institutional facilities and in the DSS oversight of local district inspections of family-type homes. In this audit, we found that the inspections conducted by the local districts are generally timely, but the inspections conducted by the Department are not always timely. We also found that the inspections conducted by both the Department and the local districts need to be more thorough, better documented, and more closely monitored by central office managers. We further found that complaint mechanisms are not well known to residents and efforts to resolve complaints require improvement.

Timeliness of Inspection Process

Every adult care facility supervised by the Department must be completely inspected, on an unannounced basis, every 18 months, unless certain problems were identified during the prior inspection, in which case the facility's next inspection must be within 12 months. According to the Operating Manual, this periodic inspection (which may be performed by as many as three inspectors responsible for different aspects of facility operations) must be completed no later than 30 calendar days after it is begun, and a report describing the results of the inspection must be issued to the facility operator within 30 calendar days of the completion of the inspection. In addition, according to Section 486 of NYCRR, the operator must correct, or have an acceptable plan to correct, all violations identified during the inspection within 30 calendar days of the issuance of the report.

Certain information about the inspections conducted by the Department is to be maintained on the Department's automated Facility Inspection System. However, when we sought to evaluate the timeliness of the

Department's inspections by analyzing the information on the System, we found that the information contained errors and was incomplete (for example, the most recent inspection information was not always maintained on the System). Department officials told us the information was flawed because inspection reports were misfiled and various practices were used to enter data on the System. According to the officials, the Department plans to replace the Facility Inspection System by the end of 1999.

Therefore, to evaluate the timeliness of the inspections conducted by the Department, we judgmentally selected ten facilities from the Department's Eastern Region and ten facilities from the Department's Metropolitan Region, based on risk factors such as the number of complaints received. We then reviewed the inspection reports and supporting records for each of these facilities to determine whether the most recent complete inspection was (a) within 18 months, or 12 months if appropriate, of the prior complete inspection, (b) completed within the required 30 day period, and (c) reported on within 30 days of the completion of the inspection.

As is shown in the following chart, some aspect of the inspection process was not timely for as many as half of the selected facilities, and some aspect of the process was not timely for most of the selected facilities in the New York City area:

Region	Facilities	Inspections Overdue	Average Days Overdue	Inspection Not Completed in 30 Days	Avg. Days When Not Completed in 30 days	Report Not Issued in 30 Days	Avg. Days When Not Issued in 30 Days
Eastern	10	2	110	2	53	0	-
Metro	10	8	126	5	75	9	63
Totals	20	10	123 avg.	7	69 avg.	9	63 avg.

When the inspection process is not timely, there are delays in identifying conditions that need to be corrected and in developing plans to correct these conditions. As a result of such delays, the residents in some adult care facilities may continue to receive inadequate services for periods longer than necessary.

The Directors of the two regions told us it has become difficult to keep the inspection process timely because of staff reductions of 50 percent in the Metropolitan Region and 23 percent in the Eastern Region, while the number of facilities to be inspected has remained about the same in both regions. We acknowledge this difficulty, but also note

that neither the central office nor the regional offices have adopted a system of project management or performance measures (such measures could include the number of inspections a surveyor should be able to perform in a year) to help maximize available resources. Each regional office does maintain a schedule for inspections, but this scheduling process is manual and labor intensive, and cannot readily provide managers with key statistics (such as the number of inspections overdue or the number of days overdue) or a quantifiable means by which to assess the performance of each surveyor. Such statistics may help the Department to justify additional resources in the budget process.

Recommendation

To the Department of Health:

7. Develop a project management system that includes performance measures so that managers can readily assess the inspection status of any facility and the workload of any surveyor. Use this system to monitor regional performance in achieving mandated inspection goals, and take action to improve the performance when the goals are not met. Ensure that the information on the system is complete and accurate. Evaluate information to determine whether additional staffing is warranted.

Reliability of Inspection Process

According to the Operating Manual, adult care facilities are inspected in order to guarantee that at least a minimum level of care and protection is provided to the facilities' residents. Section 486 of the NYCRR defines an inspection as including, but not limited to, private interviews with residents, investigations of books and records, gathering of physical evidence and other collateral contacts as may be necessary to determine compliance with applicable laws and regulations. To provide Department and OCFS management with reasonable assurance that inspections are complete and meet all requirements, the activities conducted during each inspection must be adequately documented.

Department of Health

To determine whether the Department's inspections were conducted in accordance with the requirements contained in the Operating Manual and the NYCRR, we reviewed the inspection files for the most recent complete inspections at the ten randomly selected facilities in the Metropolitan Region and the ten randomly selected facilities in the Eastern Region. We also visited each of these 20 facilities and reviewed key aspects of their operations, such as their practices for maintaining residents' cash accounts and their practices for storing and disposing of medications. In addition, we interviewed two residents at each facility. During our visits, we were accompanied by Department and facility officials.

We found that many of the inspection activities required by the Operating Manual and the NYCRR were not adequately documented in the inspection files. For example, according to the Operating Manual, conversations with residents are crucial in determining the quality of care provided by a facility. However, interviews with residents were not documented in any of the ten inspection files from the Metropolitan Region or in any of the five inspection files that we examined from the Eastern Region (for the Eastern Region, we reviewed only five of the ten selected files after reaching consensus with Region officials that much of the documentation we sought was not maintained). In addition, according to the NYCRR, a facility's practices for storing and dispensing medications should be reviewed during an inspection to ensure that the medications are stored safely and dispensed properly. However, a review of the practices for storing medications was documented in only seven of the ten inspection files from the Metropolitan Region and in only two of the five inspection files that we examined from the Eastern Region, and a review of the practices for dispensing medications was documented in only five of the ten inspection files from the Metropolitan Region and in only one of the five inspection files that we examined from the Eastern Region. Other required inspection activities that were not adequately documented include a review of the residents' funds to ensure they were safeguarded and a review of employee files to ensure the employees were adequately trained.

Officials at the two regional offices told us that their inspection documents are generally limited to checklists and evidence to support any violations identified during the inspection. However, we note that many of the surveyor's efforts, such as testing the cash balances in the residents' accounts or inventorying medications, require written analysis by the surveyor and should therefore be evident in the case files. We also note that the Department does not require any standardized documentation of inspection efforts or standardized organization of surveyor files. Such

standardization facilitates a review by management or quality assurance reviewers to ensure that inspections are properly performed. However, we further note that the Department does not perform a systematic quality assurance review to ensure inspection efforts are timely, sufficient and adequately support the inspection report. In the absence of adequate documentation and a systematic quality assurance review, Department managers have insufficient assurance that facilities are inspected in accordance with requirements. If the facilities are not inspected in accordance with requirements, they are less likely to be operated in accordance with requirements, as inappropriate practices are less likely to be detected when inspections are not thorough and complete.

When we visited the 20 facilities, we identified a number of areas in which facility operations could be improved. We believe the need for such improvements is more likely to be identified if the Department's inspections were better documented and subject to a quality assurance review. Following are examples of some of our findings at the facilities:

- According to the Operating Manual, residents in adult care facilities should be familiar with evacuation procedures and the facilities should conduct periodic fire drills. However, 6 of the 40 residents we interviewed (15 percent) told us they were not familiar with evacuation procedures and did not have fire drills in their facilities. One facility in Brooklyn may have been a fire hazard, as cardboard boxes were stacked to the ceiling in two of the residents' rooms. We note that the Metropolitan Regional Office does not have a fire and safety inspector on its staff (the position was vacant at the time of our audit), thereby increasing the risk some fire and safety concerns may not be detected.
- According to Section 487 of the NYCRR, adult care facilities should maintain logs to document the medication that is dispensed to residents. However, such logs were not current at 2 of the 20 facilities we visited. We also determined that 6 of the 20 facilities did not have adequate procedures for disposing of controlled substances, and 3 of the 20 facilities did not secure controlled substances adequately.
- Facility residents are allowed to place personal funds in a personal needs account that is maintained by the facility. At one facility, we reviewed three withdrawals for a resident and found two receipts bore distinctly different signatures and the third receipt had no signature at all. At this same facility, a

resident died with more than \$800 in the personal needs account, but facility officials could not provide us with receipts for the disposal of these funds.

Officials at both regional offices told us they never received the Operating Manual, and as a result, were unaware of some of the requirements for inspections.

One of the facilities we visited had changed operators in February 1998 as a result of a successful enforcement action taken by the Department in response to repeated violations for sanitation and maintenance. However, the Department did not inspect this facility again until January 1999, and it was still in very poor condition when we visited in February 1999. For example, both of the resident rooms we entered had shower stalls with heavy mold, a missing faucet, water damage in the ceiling, and mattresses that were so worn they had become concave and very thin. Boxes of fruits and vegetables were on the floor in the kitchen area. The medication cart, which contained controlled substances, was also in the kitchen area, and it was unlocked, unattended and accessible to anyone in the facility. In the basement, we found food stored on the floor, open bags of food and a fire extinguisher being used as a doorstop. We believe facilities that change operators because of poor conditions should be inspected more frequently until the conditions significantly improve.

OCFS

To determine whether the local districts' inspections were conducted in accordance with the requirements contained in the Operating Manual and the NYCRR, we reviewed the inspection process at each of the three local districts we visited, and we reviewed the practices used by OCFS in overseeing these efforts. In addition, we reviewed the inspection files for the most recent complete inspections at three randomly selected family-type homes in each of these districts. We also visited these nine homes to review key aspects of their operations. During our visits, we were accompanied by local district and home officials.

We found that many of the inspection activities required by the Operating Manual and the NYCRR (such as interviews with residents or a review of the practices used in handling medications) were not adequately documented in the inspection files. Rather, local district

inspectors, like Department surveyors, generally use checklists to document their inspection activities and record details only when violations are found. As a result, OCFS managers have less assurance that the homes are inspected in accordance with requirements. When we visited the nine homes, we identified a number of conditions that underscore the need for better oversight and documentation of inspections. For example:

- According to Section 489 of the NYCRR, adult care facilities should maintain logs to document the medication that is dispensed to residents. However, such logs were maintained at none of the three homes in Westchester County, at only one of the three homes in Nassau County, and at only two of the three homes in Oneida County.
- According to Section 489 of the NYCRR, evacuation procedures should be posted at every adult care facility. However, such procedures were posted at none of the three homes in Oneida County, at only one of the three homes in Nassau County, and at only one of the three homes in Westchester County.

Local district officials told us that OCFS is not actively involved in local inspection efforts and provides little training to the districts. We note that OCFS does not regularly receive information about local inspection activities. Rather, OCFS requires information about these inspections only once every four years prior to a home's recertification. OCFS also does not maintain a tracking system to monitor the inspections performed by the local districts, and has not established a quality assurance function to ensure that the inspections are performed in accordance with requirements. We further note that the three local districts never received the Operating Manual, and as a result, were unaware of some of the requirements for inspections.

According to OCFS officials, the oversight of family-type homes is not a priority for the agency, and most of the responsibility for such oversight is assigned to a single person. In the absence of more active oversight, OCFS officials cannot be assured that these homes are operated in accordance with laws and regulations, and that the health and safety of facility residents are adequately protected.

Recommendations

To the Department of Health and OCFS:

8. Take steps to determine that inspection activities are documented in adequate detail and inspection records are maintained in a standard organized format.
9. Develop and implement a quality assurance function to help ensure inspections are performed in accordance with requirements.
10. Distribute the Operating Manual to the regional offices (*the Department*) or to the local social services districts (*OCFS*).

To the Department of Health:

11. Conduct frequent inspections at facilities that change ownership as a result of operating violations, and continue the frequent inspections until the conditions at the facilities significantly improve.

To OCFS:

12. Develop a project management system for actively monitoring local district inspection activities, use this system to monitor the activities, and take action to improve the performance when inspections are not conducted in accordance with requirements.
13. Work with the local districts to identify and meet their training needs in relation to the inspection of family-type homes.

Investigation of Complaints

According to the Operating Manual, complaints about adult care facilities should be prioritized when they are received, complaints involving urgent situations should be responded to within one working day, and the complaining party should be provided with a letter of findings whenever possible. In addition, according to the New York State Social Services Law, residents of adult care facilities have a right to present grievances to facility personnel and government officials without the fear of reprisal, and a statement of this and other residents' rights must be conspicuously posted in a public area of the facility. DSS produced and distributed

residents' rights posters that include the addresses and phone numbers for residents to use when filing complaints.

Department of Health

The Department generally receives complaints through its regional offices. Officials in the regional offices told us they prioritize complaints as category 1 (urgent, respond within 24 hours), category 2 (less urgent health/safety issues, respond within ten business days), or category 3 (other matters that can be addressed at the next scheduled inspection). The Department's Bureau of Surveillance and Quality Assurance is responsible for overseeing regional office efforts to resolve complaints.

To assess the Department's effectiveness in addressing complaints, we reviewed the system for managing complaints at the Bureau of Surveillance and Quality Assurance, the regional offices and the 20 facilities we visited. We also reviewed ten complaints from the Metropolitan Regional Office and ten complaints from the Eastern Regional Office to assess the timeliness and thoroughness of the Department's response to the complaints. This sample of 20 complaints was judgmentally selected to focus on category 1 and category 2 complaints.

We found that many of the complaints we reviewed were not responded to within the Department's prescribed time frames. For example, 11 of the 20 complaints were classified as urgent (category 1), and therefore should have been responded to within 24 hours. However, 6 of the 11 complaints were not responded to within 24 hours, including three complaints that took at least a week to respond to (one of these complaints took 36 days to respond to). In one of these complaints, it was stated that no medications were available to facility residents; despite the urgency of the situation, it took the Department seven days to respond to the complaint. In addition, eight of the complaints were classified as category 2, which meant they should have been responded to within ten business days. However, six of the eight complaints were not responded to within ten business days, including three complaints that took at least 21 business days to respond to (one of these complaints took 30 business days to respond to).

We also found that, for six of the ten complaints from the Metropolitan Regional Office, documentation was not available demonstrating that the complaint was thoroughly addressed. We further found that, contrary to the Operating Manual, the Metropolitan Regional Office does not provide the complainant with a letter of findings unless such a letter is requested by the complainant. We note that the Department's Bureau of

Surveillance and Quality Assurance does not routinely gather and analyze complaint data from the regional offices to ensure that complaints are addressed in accordance with requirements.

In addition, in our visits to the 20 facilities, we noted that the residents' rights posters were not posted in four of the facilities and were out-of-date (because they listed the incorrect address and phone number for filing a complaint) in six of the facilities. Moreover, 28 of the 40 residents we interviewed (70 percent) stated that they did not know how to file a complaint with the Department.

We therefore conclude that a number of improvements are needed in Department practices if complaints are to be addressed in a manner that adequately protects the health and safety of facility residents, and if the right of residents to present grievances is to be fully realized.

OCFS

Even though the Operating Manual requires that certain actions be taken in response to complaints, none of the three local districts we visited maintains a formal system for recording complaints when they are received and tracking complaints as they are investigated. Consequently, we could not determine whether the complaints received by the districts were addressed in accordance with requirements.

Operators of family-type homes are required by the NYCRR to adopt a statement of rights and responsibilities of residents, and to treat each resident according to the principles of that statement. When we examined OCFS's residents' rights poster, we found that the phone numbers to use for filing complaints were no longer in service. In addition, 9 of the 11 residents we interviewed during our visits to family-type homes stated that they did not know that complaints can be made to local district offices or to the OCFS central office. We therefore conclude that, if the right of residents to present grievances is to be fully realized, significant improvements are needed in certain aspects of the administration of family-type homes.

Recommendations

To the Department of Health:

14. Develop a system for monitoring the actions taken by the regional offices in response to complaints, use this system to actively monitor how complaints are addressed, and take action to improve compliance when complaints are not addressed in accordance with requirements.
15. Ensure that up-to-date residents' rights posters are posted in all adult care facilities.

To OCFS:

16. Require each local district to establish a formal system for recording complaints when they are received and tracking complaints as they are investigated.
17. Distribute an up-to-date residents' rights pamphlet to all family-type homes.

To the Department of Health and OCFS:

18. Take steps to determine that all residents know how to file a complaint with the appropriate State or local government agency.

Enforcement of Laws and Regulations

According to Section 460 of the New York State Social Services Law, if an adult care facility does not comply with applicable laws or regulations, the Department or OCFS can close the facility; revoke, suspend or limit the operator's license; and/or impose civil or criminal penalties on the operator. A penalty cannot be levied until the operator has had 30 days to correct the violations, and operators are entitled to a formal hearing before an administrative law judge on any enforcement action sought by the Department or OCFS.

We examined the timeliness of the enforcement process and found that enforcement actions are often subject to considerable delays. We also found that the implementation of enforcement actions could be better monitored by the Department.

Timeliness of Enforcement

When an adult care facility supervised by the Department repeatedly violates laws or regulations, the regional office can refer the facility to the Department's Bureau of Surveillance and Quality Assurance, which may initiate an enforcement action. When a local social services district determines that a family-type home is violating laws or regulations, it can work with OCFS to initiate an enforcement action. A formal hearing is not always needed to resolve an enforcement action, as cases can be settled outside the hearing process.

To evaluate the timeliness of the enforcement actions initiated by the Department and OCFS, we judgmentally selected for review ten cases initiated by each agency. We selected these 20 cases because they involved serious violations.

We found that the enforcement process can be subject to considerable delays. At the Department, five of the ten cases we reviewed had yet to be resolved, even though they had been open for an average of 38 months. Two of these cases had been open for about six years. The other five Department cases were open for an average of 45 months before they were resolved. Department officials told us that most of the delays in the process occur after cases are referred for a hearing.

At OCFS, five of the ten cases we reviewed had yet to be resolved, even though they had been open for an average of about 18 months. One of these cases had been open for about 2.5 years. The other five OCFS cases were open for an average of about 12 months before they were resolved.

Officials attributed these processing delays to the hearing process and other administrative barriers beyond their control. However, we note that neither agency has established guidelines for the amount of time that should be taken at each stage of the enforcement process. We believe some of the delays in the enforcement process could be reduced if such guidelines were established and if the timeliness of the process were monitored against these guidelines, because once it is determined that some stage of the process has exceeded the expected amount of time, actions can be taken to try to expedite the process. We also note that most of the cases we reviewed were initiated by the former Department of Social Services; accordingly, some of the delays we identified were not the responsibility of Department and OCFS managers.

When enforcement cases are not resolved in a timely manner, corrective actions may be delayed at facilities with inappropriate practices. For example, a facility supervised by the Department was referred for enforcement in August 1998 because it had not provided appropriate treatment to a resident who was ill. Since there were delays in the enforcement process, penalties were not assessed and the facility continued to be run by the same operator. In November 1998, there was a complaint, which was substantiated, that a resident at the facility was given the wrong medications. As of March 31, 1999, the case had yet to be resolved and corrective actions had yet to be taken.

Recommendation

To the Department of Health and OCFS:

19. Establish guidelines for the amount of time that should be taken at each stage of the enforcement process, and actively monitor the timeliness of the process against these guidelines.

Enforcement Outcomes

An enforcement case may be resolved through a hearing or a settlement between the agency and the facility's operator. When a case is resolved, the facility may be required to change operators, the operator may be required to pay a fine, and/or the operator may be required to make certain changes in facility operations. To determine whether hearing and settlement requirements were in fact fulfilled, we examined the Department's records relating to five judgmentally selected enforcement cases.

In some instances, we could not determine, and Department officials could not tell us, how a case had been resolved. In other instances, we determined that the requirements of the hearing or settlement had not been fulfilled. For example, in an enforcement action that was initiated in April 1993, Department records indicate that a settlement agreement was sent to the operator in October 1997. However, no copies of the signed agreement are included in Department files, and Department records do not indicate the status of any corrective actions that were to be taken by the operator or of any fines that were to be collected from the operator. Department officials could not tell us the specific terms of the settlement agreement, but they did say that the agreement called for a change in operators. However, as of March 31, 1999, that change had not taken place. Another facility was required by a settlement agreement to either spend \$5,000 for facility repairs or pay \$5,000 to the State. However, the Department's records do not indicate that the repairs were made or that a fine was collected from the operator.

We note that the Department does not centrally monitor all aspects of enforcement proceedings, and does not have procedures describing either the enforcement process or the duties of all the parties involved in the process. In the absence of adequate monitoring and formal procedures, the requirements of hearings and settlement agreements are less likely to be fulfilled.

Recommendation

To the Department of Health:

20. Develop formal procedures describing the enforcement process and the duties of all the parties involved in the process, and actively monitor the process to help ensure that the requirements of hearings and settlements are fulfilled.

Major Contributors to This Report

Kevin McClune
Lee Eggleston
Lawrence Wagner
James Nellegar
Michael Filippone
Patrick Hall
Judith Middelkoop
Dana Newhouse

AGENCY	COUNTY	NAME OF FACILITY	LOCATION	CITY
DOH	ALBANY	Homestead	543 NO PEARL ST	ALBANY
DOH	ALBANY	Colonie Manor	626 WATERVLIET-SHAKER ROAD	LATHAM
DOH	ALBANY	Loudonville	298 ALBANY SHAKER RD	LOUDONVILLE
DOH	BRONX	Andrew Freedman	900 GRAND	BRONX
DOH	BRONX	Parkview HFA	3200 BRONX BLVD.	BRONX
DOH	HERKIMER	Country Manor	RD #1	HERKIMER
DOH	KINGS	Mermaid Manor	3602 MERMAID AVE	BROOKLYN
DOH	KINGS	Pacific House	1140 PACIFIC ST	BROOKLYN
DOH	MONTGOMERY	Hillcrest	BOX 368, ROUTE 30	AMSTERDAM
OCFS	NASSAU	Caliste	142 EAST GRAHAM AVENUE	HEMPSTEAD
OCFS	NASSAU	McJunkins	825 JAMES PLACE	UNIONDALE
OCFS	NASSAU	Alexander	541 LIBERTY STREET	UNIONDALE
DOH	NEW YORK	74th St. Home	300 AMSTERDAM AVE	NEW YORK
DOH	NEW YORK	St. Zita's	143 WEST 14TH ST	NEW YORK
OCFS	ONEIDA	McIellan	35 RIVER ROAD	CAMDEN
DOH	ONEIDA	Presbyterian Res. Community	4300 MIDDLE SETTLEMENT ROAD	NEW HARTFORD
OCFS	ONEIDA	Doneza	5794 ROUTE 26	ROME
DOH	ONEIDA	Loretta Home	1445 KEMBLE STREET	UTICA
OCFS	ONEIDA	Logan	4 SHAW STREET	UTICA
DOH	OTSEGO	Rosewood Terrace, Richfield Springs	6 GOULD AVE, BOX 71	RICHFIELD SPRINGS
DOH	QUEENS	Seaview Manor	210 BEACH 47TH ST	FAR ROCKAWAY
DOH	QUEENS	Scharf Manor	112-14 CORONA AVE	FLUSHING
DOH	RENSSELAER	St. Mary's	UPPER TIBBITS AVE	TROY
DOH	RICHMOND	Anna Erika	110 HENDERSON AVE	STATEN ISLAND
DOH	RICHMOND	Hylan Manor	3565 HYLAN BLVD..	STATEN ISLAND
DOH	SCHENECTADY	Scotia Mansion	39 WALLACE STREET	SCOTIA
OCFS	WESTCHESTER	Plummer Home	602 SOUTH 10TH AVENUE	MT VERNON
OCFS	WESTCHESTER	Young Home	29 NUTGROVE STREET	WHITE PLAINS
OCFS	WESTCHESTER	Cote Home	36 GLOVER AVENUE	YONKERS



STATE OF NEW YORK
DEPARTMENT OF HEALTH

Coming Tower

The Governor Nelson A. Rockefeller Empire State Plaza

Albany, New York 12237

Antonia C. Novello, M.D., M.P.H.
Commissioner

Dennis P. Whalen
Executive Deputy Commissioner

September 23, 1999

Kevin M. McClune
Audit Director
Office of the State Comptroller
Alfred E. Smith State Office Building
Albany, New York 12236

Dear Mr. McClune:

Enclosed are the Department of Health's comments on the Office of the State Comptroller's draft audit report 98-S-60 on "Oversight of Adult Care Facilities".

Thank you for the opportunity to comment.

Very truly yours,

A handwritten signature in black ink, appearing to read 'D. Whalen', written over a horizontal line.

Dennis P. Whalen
Executive Deputy Commissioner

Department of Health
Comments on the
Office of the State Comptroller's
Draft Audit Report
98-S-60 Entitled
"Oversight of Adult Care Facilities"

In November 1998, the Office of Continuing Care (OCC) reorganized the manner in which it provides oversight of Adult Care Facilities. This action resulted in the creation of the Bureau of Licensure and Certification, which reviews initial application and change in ownership proposals for Adult Care Facilities, and the Bureau of Surveillance and Quality Assurance, which is responsible for ongoing surveillance and patient complaint resolution activities. The audit activity associated with this report began immediately after these changes were instituted. As such, they represent external input which can be used in conjunction with the internal process that was already underway to review existing policies, procedures, and processes to determine their effectiveness.

Recommendations 12, 13, 16 and 17 were addressed solely to the Office of Children and Family Services; therefore, no comments are provided to them by DOH.

Recommendation #1:

Verify (the Department), or ensure that the local social services districts verify (OCFS), the information received from applicants and parties related to the applicants.

Recommendation #2:

Obtain (the Department), or ensure that the local social services districts obtain (OCFS), independent information (such as criminal histories, credit reports and bank confirmations) about the applicants' character, competence, and financial viability.

Responses #1 and #2:

The DOH is currently revising the application review process to be more aligned with Certificate of Need for other entities licensed by the DOH. Therefore, our review will include a more substantial background check to determine the competence of the applicant. Since criminal background checks will require changes in the law, we do not anticipate that this change will be made at this time. Financial verifications of loan commitment and assets are part of the current process and will continue to be done.

Recommendation #3:

Develop written procedures describing how the character, competence and financial viability of applicants should be evaluated. OCFS should distribute these written procedures to the local districts.

Response #3:

The Department agrees with this recommendation. Revised procedures for this process are currently being developed, which will reflect consistency with current Department procedures for other provider categories and reflect the 1995 changes in law, which recognized business corporations as ACF operators.

Recommendations #4 and #5:

Develop procedures for actively trying to identify potential unlicensed facilities, and monitor the regional offices (the Department) or the local social services districts (OCFS) to ensure that the procedures are implemented.

Establish expected time frames for completing the investigations of possible unlicensed facilities and for resolving the status of facilities that are not licensed. Monitor these activities and take the actions necessary to ensure that the time frames are met.

Responses #4 and #5:

The Department has developed draft procedures, which should be finalized by the end of the year, for the review and resolution of licensed facility cases. These procedures contain specific time frames for completion of investigations. The reference in the audit report to a .1 FTE for Department coordination efforts does not reflect the substantial number of Regional Office staff periodically involved with these activities.

Recommendation #6:

Ensure that complete and accurate information is maintained about the investigations and follow-up of possible unlicensed facilities.

Response #6:

The Department has updated its system for tracking investigation of unlicensed operations. This, combined with additional information obtained from Regional Office staff on pending cases and actions by the Department to close several such facilities, has reduced the current number of outstanding cases to 30, a major reduction from the 68 cited in the audit report.

Recommendation #7:

Develop a project management system that includes performance measures so that managers can readily assess the inspection status of any facility and the workload of any surveyor. Use this system to monitor regional performance in achieving mandated inspection goals, and take action to improve the performance when the goals are not met. Ensure that the information in the system is complete and accurate. Evaluate information to determine whether additional staffing is warranted.

Response #7:

The OCC has already reviewed this process and determined it should be revised. The following activities are under development and the implementation is expected by July 1, 2000.

The Facility Inspection System that has been used to generate inspection reports and inspection tracking will be phased out by December 31, 1999 and replaced by ASPEN (Automated Survey Processing Environment). See the more detailed explanation on the system in Recommendation 8.

Inspectors and supervisors will be required to complete a standardized time and activity form that can be entered into the ASPEN system for every inspection. The system can generate a report that will identify time spent on each inspection categorized by inspector/clerical and/or administrative staff hours. Summary and geographical reports are also available. Information will be collected in this format beginning January 1, 2000. Quarterly analysis began on July 1, 1999 and will assist the Department in assessing inspection time frames and staff time required to complete inspections.

Automated survey scheduling software is currently used in the nursing home program to schedule surveys within the range required by Federal statute. Automated inspection schedules will be a required component of the adult home inspection program. The program will identify acceptable date ranges for future annual inspections based on variables identified by the program such as the scope and severity of previously issued violations, the existence of repetitive violations, and number and/or type of intervening complaints. Inspections not conducted within the date ranges identified will be measurable and appropriate; interventions can then be carried out by regional or central office staff. It will be network compatible so this information can be shared with different offices. The program will be an add-on module obtained via contract with Alpine Technology, the manufacturers of the ASPEN program, or will be created as a parallel system in ACCESS. Software specifications and program parameters are currently being created. Phased in implementation is scheduled for January 1 to June 30, 2000.

Recommendation #8:

Ensure that inspection activities are documented in adequate detail and inspection records are maintained in a standard organized format.

Response #8:

The OCC has already reviewed this process and has determined that it should be revised.

Standardization of Inspection Records, forms and kits

The following activities are under review and development with implementation expected by July 1, 2000.

The protocols in the April 1997 draft operational manual are under review and will be re-issued with the inspection protocols being established by the Bureau of Surveillance and Quality Assurance by July 1, 2000. Tasks that must be completed during each inspection will be identified and described.

Inspection worksheets and forms will be created and documentation parameters will be established for the completion of these forms by Department inspectors. These worksheets will document and support the basis of compliance decisions by the inspectors.

Parameters will be created for inspection team composition, scope and duration of inspection, sample selection and time frames for completion of inspection reports and notification of the operator.

The components of a paper and/or electronic inspection kit for adult homes will be established. The standardized kit would reflect the minimum forms that must be maintained by the regional offices for every inspection. This may include, but is not limited to, such things as inspectors' worksheets for recording observations, interviews and record reviews, resident sample roster, tour worksheet, inspection checklist, kitchen/dining observation worksheet, fire/safety worksheets, time and activity reporting form, inspection report and facility notification letters.

Revised Automated Inspection Reporting System

The following activities are under review and development. The expected completion and implementation date is December 31, 1999.

The existing automated system for generating adult home inspections will be phased out by December 31, 1999 and replaced with ASPEN. This system is used by the Department to generate surveillance reports for the Federally funded nursing home, home care hospitals and ICF/MRs programs inspected by the Department of Health. This program can be adapted to include State licensure regulations.

The transition of the adult home regulations into the ASPEN system began in May 1999, with completion expected by October 1, 1999. The remainder of the year will be used to ensure that regional equipment is properly configured, network connectivity is established and that regional office adult home inspectors and supervisors are trained in the technological aspects of the system and in the program operational changes generated by adopting the inspection reporting program.

Recommendation #9:

Develop and implement a quality assurance function to ensure inspections are performed in accordance with requirements.

Response #9:

The OCC has already reviewed the process and determined that it will be revised.

Adult Home Inspection Quality Assurance Process

The tasks and activities are under development and will be phased in between November 1, 1999 and July 1, 2000 as the changes to the inspection protocols are introduced. The items below represent components of the quality assurance system under consideration.

Parameters will be created to proactively review some inspection reports prior to issuance, and others retrospectively in accordance with established program criteria.

Onsite visits will be conducted with regional office inspectors between October 1, 1999 and February 29, 2000 to observe current inspection processes that will assist central office staff and regional office supervisory staff in the development of the revised inspection protocols.

An onsite visit component where central office and regional office supervisory staff participate or observe some adult home inspections in each region will be established after July 1, 2000 as a routine part of the quality assurance process for the program to monitor inspection performance in accordance with the new inspection protocols introduced.

Monthly inspection schedules will be reviewed routinely for timeliness and inspection data entered into the ASPEN system will be examined on a quarterly basis.

Recommendation #10:

Distribute the Operating Manual to the regional offices (the Department) or to the local social services districts (OCFS).

Response #10:

As noted in previous comments, the operating manual will be revised and shared with all regional offices. Training on all aspects of the operating manual and inspection protocols will be carried out. Full implementation is expected by July 1, 2000.

Recommendation #11:

Conduct frequent inspections at facilities that change ownership as a result of operating violations, and continue the frequent inspections until the conditions at the facilities significantly improve.

Response #11:

Facilities are required to correct violations as described in their plans of correction. New owners are given a time period to correct violations which existed prior to their takeover. Regional staff conduct inspections to assure that violations are corrected.

Recommendation #14:

Develop a system for monitoring the actions taken by the regional offices in response to complaints, use this system to actively monitor how complaints are addressed, and take action to improve compliance when complaints are not addressed in accordance with requirements.

Response #14:

The OCC has already reviewed this process and determined that it should be revised.

A complaint workgroup, consisting of central office and regional office staff, has been operating for a year, working on protocols to determine how complaints are to be resolved in the nursing home program. This model will be used to train adult home inspectors to investigate and resolve complaints. Form letters which acknowledge nursing home complaints will be tailored to address adult home complaints as well. Integration of adult complaint information into the Department's Uniform Complaint Tracking System (UCTS) is being examined. Implementation is expected by July 1, 2000.

Recommendation #15:

Ensure that up-to-date residents' rights posters are posted in all adult care facilities.

Response #15:

Revised resident rights posters will be distributed to all facilities by December 31, 1999.

Recommendation #18:

Ensure that all residents know how to file a complaint with the appropriate State or local government agency.

Response #18:

Complaint posters or pamphlets will be distributed to all facilities by December 31, 1999 that identify a Department of Health telephone number in each region that adult home residents can use to file a complaint. The completion date is expected to be December 31, 1999.

Recommendation #19:

Establish guidelines for the amount of time that should be taken at each stage of the enforcement process, and actively monitor the timeliness of the process against these guidelines.

Response #19:

The OCC has already reviewed this process and has determined that it should be revised.

An "ACCESS" based system currently exists for nursing homes which tracks each key step in the process from survey to enforcement to final action. Discussions have taken place to determine the activities required to convert the current adult home enforcement tracking system to this model. It will be accessible to central and regional office staff. Regular meetings also occur between staff of the Department's Bureau of Surveillance and Quality Assurance and the Division of Legal Affairs to obtain status reports on the enforcement process.

Recommendation #20:

Develop formal procedures describing the enforcement process and the duties of all the parties involved in the process, and actively monitor the process to ensure that the requirements of hearings and settlements are fulfilled.

Response #20:

The OCC has already reviewed this process and has determined that it should be revised.

An enforcement manual identifying the procedural steps and their time frames is being developed for the nursing home program and will be developed for the adult home program as well. As stated above, meetings are held with the Division of Legal Affairs to monitor the status of the enforcement case in that office. Any obligations determined as a result of a settlement are monitored by the regional office staff for compliance; monetary penalties are tracked by the Department's Bureau of Accounts Management.



New York State
Office of
Children & Family
Services

October 19, 1999

FAX AND MAIL

George E. Pataki
Governor

John A. Johnson
Commissioner

Kevin M. McClune, Audit Director
NYS Office of the State Comptroller
A. E. Smith State Office Bldg.
Albany, New York 12236

Re: OSC Audit #98-S-60
Oversight of Adult Care Facilities

Dear Mr. McClune:

Capital View Office Park
52 Washington Street
Rensselaer, NY 12144-2796

The Office of Children and Family Services (OCFS) has reviewed the above-cited draft audit report and our comments are attached. Although we disagree with some of the Recommendations cited in the report, we are committed to promoting the well-being and safety of residents in Adult Care Facilities and regard the audit report as a useful tool in our continuing efforts to strengthen and refine our oversight activities in this area.

Thank you for your efforts and cooperation during the audit process.

Sincerely,

John A. Johnson

cc: K. Robinson
file



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**RESPONSE TO DRAFT REPORT #98-S-60
NEW YORK'S OVERSIGHT OF ADULT CARE FACILITIES**

The Office of Children and Family Services (OCFS) has reviewed draft audit report #98-S-60 "New York's Oversight of Adult Care Facilities". Following are the agency's comments relative to the Office of the State Comptroller's (OSC) assessment of the adequacy of compliance with Family Type Home for Adults (FTHA) regulations concerning inspection and complaint practices, and the timeliness and adequacy in the resolution of enforcement cases.

General Comments

The Bureau of Adult Services (BAS), which has the supervisory responsibility for the Family Type Home for Adults Program, disagrees with some of the recommendations of the Office of State Comptroller. As an agency OCFS strives for continuous improvement. In January 1998, a reorganization of services took place, at which time the responsibilities for oversight of Adult Care Facilities were split between different State agencies. OCFS retained the function of monitoring Local County participation in the FTHA program. The merger did have an impact on the workload of the agency, and created a situation forcing us to work with limited resources. The regulations and laws of the State provide legal guidance, and within the existing laws and regulation, the program seeks full legal compliance. The OSC report begins by stating that "If the health and safety of facility residents are to be adequately protected, significant improvement is needed in the oversight by the department and OCFS." There are many safeguards already in place to protect the well being of the residents of Family Type Homes including, at minimum, an annual unannounced visit to the home to determine the home's compliance with the regulations as set forth. Based upon OCFS monitoring and oversight, we believe the quality of care being provided by the operators of Family Type Homes in the State of New York meets and exceeds the regulatory requirements, in most circumstances. The licensing process of Family Type Homes is outlined in Regulation 18 NYCRR part 485 and relies on a partnership with the local districts for assistance with the implementation, inspection, and enforcement of this program. The documentation review and processing at the state level is done in a professional and thorough manner, to the fullest extent of our legal authority. Inspection of homes is done at the County level and is required at a minimum annually, unless the situation suggests the need for more frequent unannounced visits. This process is adhered to as evidenced by the district submittal of the required documentation at both the initial application stage and then every four years for rectification. The documentation consists of certification of child support, proof of coverage or no need for Workers' Compensation and Disability benefits, a Physician's statement indicating the applicant's good health and capability of providing care and services, fire inspection report, lab report to verify the quality of the water, sketch of the floor plan indicating dimensions and location of smoke detectors/fire extinguishers, emergency evacuation plan, statement of education, experience, employment community activities and letters of reference. Enforcement of Unlicensed Homes is also done in partnership with the local district and county and state legal staff as well as other law enforcement agencies. This process is done within the legal requirements of the program, and includes the recognition that all parties must be afforded their legal due process.

The audit sample consisted of three out of fifty-eight districts, and only nine out of seven hundred forty seven homes; we do not believe this small sample is representative of the population of all the districts.

As a final matter, several of the audit recommendations (#1, 2 5, 8, 9 and 18) provide that OCFS should “ensure” that various actions or outcomes occur. **The word “ensure” should not be used.** OCFS has a statutory duty to monitor and supervise the activities of social services districts with respect to the functions discussed in the Recommendations, but there is no statutory obligation to “ensure” that any of these things occur. (As a practical matter, this agency would have no way to “ensure” such occurrence.) We have been advised by OSC that the final report on Adult Care Facilities, as well as all future OSC audit reports, will not use the word “ensure” and will instead more accurately reflect the legal responsibilities of OCFS relative to monitoring and supervision. * *

*
Note

Response to Recommendations:

Recommendation #1 **

Verify (the Department), or ensure that the local social services districts verify (OCFS), the information received from applicants and parties related to the applicants.

The requirement set forth at Section 461-b (2)(a) of the Social Services Law requires that a proposed operator “satisfactorily demonstrate” that he or she is of good moral character. This objective is accomplished by requiring that the proposed operator submit financial information, three letters of recommendation, undergo an examination by a physician, and have their residence inspected by the district caseworker and fire marshal. Where appropriate or when there is a concern that a prospective applicant does not seem appropriate for the Family Type Home for Adults program, the district will require additional information. The importance of the in-home visit cannot be stressed enough, as this is the first step in building a relationship with the prospective operator. The district evaluates this information together with a statement of education, experience and community activities and makes a recommendation to OCFS to approve or deny the application. OCFS staff reviews each application and supporting documentation prior to issuing a certificate. In the event additional documentation is needed the district is notified in writing. The district has the authority to visit or inspect these homes whenever they feel it is appropriate. If an operator is in question the State recommends at a minimum monthly visits, where the district can interview the residents without the presence of the operator.

Recommendation #2 **

Obtain (the Department), or ensure that the local social services districts obtain (OCFS), independent information (such as criminal histories, credit reports and bank confirmations) about the applicants' character, competence and financial viability.

The districts are required under 18 NYCRR Part 489.4 to collect the following documentation:

- A statement from a physician, stating whether or not the operator is physically and mentally capable.

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- Names and addresses of former employers within the last five years and of two persons not related to the applicant(s) who are acquainted with the applicant(s) desire and ability to operate a family type home.
 - A statement of each applicant's education, experience, and community activities.
 - A statement of income
 - A fire inspection report,
 - A recommendation by the local district as to appropriateness of the operator.

18 NYCRR Part 485.6(b) states that "determination of the adequacy of the applicant's character, competence and standing in the community of the proposed program, shall be made on assessment and verification of the information submitted by the applicant or solicited from other sources by the department and shall be based upon such factors as financial status education, experience past or current performance in the management and operation of adult care facilities or like services to dependent adults; past business associations; letters of personal recommendation; information acquired through credit review, review of related public documents, public comment, or collateral contacts." Upon receipt of all the required information the districts forward said information to the State. The State checks the information for compliance with regulations and for completeness, verifying the district has not missed any pertinent information. If the district deems it appropriate, they may ask for additional information such as financial statements or criminal background checks. This information is collected by the districts not only at the time of the initial application, but also every four years at time of re-certification when an operator changes location, or with an increase or decrease in capacity. In addition, the district can visit a home whenever there is concern over the health or safety of a resident and evaluate the operator first hand.

Recommendation #3

Develop written procedures describing how the character, competence and financial viability of applicants should be evaluated. OCFS should distribute these written procedures to the local districts.

As stated above, there are regulations in place as to what information is required for certification and the districts are not constrained in what or how much information they collect to make a recommendation. OCFS and local districts want competent, financially stable operators of good character and have the means to gather the required information. Evaluation of the information gathered is based on the case at hand. It is the responsibility of the local districts to carry out these functions. This approach seems reasonable since it is unclear as to what sort of written procedure could appropriately address the evaluation of "character".

Recommendation #4 **

Develop procedures for actively trying to identify potential unlicensed facilities, and monitor the regional offices (the Department) or the local social services districts (OCFS) to ensure that the procedures are implemented.

Community awareness and education are the keys to success in finding unlicensed operators. OCFS will develop a Local Commissioners Memorandum (LCM) for distribution to the local districts and will provide oversight and supervision to the local districts on the implementation of these procedures.

Recommendation #5 **

Establish expected time frames for completing the investigations of possible unlicensed facilities and for resolving the status of facilities that are not licensed. Monitor these activities and take the actions necessary to ensure that the time frames are met.

We agree that the investigation of unlicensed facilities is critical. In April 1998, OCFS developed and distributed a section of the procedure manual covering the investigatory process surrounding questionable operations (q-ops.) Districts are notified via letter and subsequent telephone calls which confirm the 30 day timeframe to complete their investigation and report back to OCFS. Logs have been established for tracking these complaints and as a quality control measure. Once legal proceedings are underway and due process is involved, OCFS has no control over timeframes. However, to the extent practicable, we move proceedings along as expeditiously as possible.

Recommendation #6 (Health Department)

Recommendation #7 (Health Department)

Recommendation #8 **

Ensure that inspection activities are documented in adequate detail and inspection records are maintained in a standard organized format.

We will issue an Administrative Directive Memorandum (ADM) which requires that the inspection form be completed, and organized in a required fashion (a sample form will be attached). Random samples will be collected from various districts in the State to evaluate key information and provide quality assurance.

Recommendation #9 **

Develop and implement a quality assurance function to ensure inspections are performed in accordance with requirements.

Within available resources OCFS will monitor and oversee the completion of inspections through field visits and in the review of survey reports (OCFS-2867) completed by local districts. Each of the seven-hundred forty-seven (747) homes must be inspected on a yearly basis. Feedback on the completion of these inspections will be done verbally and in writing.

Recommendation #10

Distribute the Operating Manual to the regional offices (the Department) or to the local Social Services districts (OCFS).

All districts have received a copy of the operating manual. When requests are received we forward additional copies. OCFS will send a letter to all districts advising them to contact our agency if they are in need of an operating manual.

Recommendation #11 (Health Department)

Recommendation # 12

Develop a project management system for actively monitoring local district inspection activities, use this system to monitor the activities, and take action to improve the performance when inspections are not conducted in accordance with requirements.

OCFS currently provides technical assistance to all fifty-eight districts through ADMs, INFs, telephone contacts and field visits, within available resources. Districts are mandated by Social Services Law to inspect each Family Type Home on a yearly basis and if problems exist they must notify OCFS. Based on our working relationships with the Family Type Home Coordinators in the local districts, it is our experience that inspections are conducted in accordance with the requirements. The districts are required to submit annual summaries which include information on the number of homes and beds, occupancy rate, residents receiving HR/SSI, homes with SSI/HR residents, residents sixty plus years of age, and homes without residents. The Department also compiles a five year statistical report of the above mentioned data for review and comparison. The statistical forms submitted yearly are one method the department utilizes to verify districts compliance with site visits. OCFS will monitor this area during field visits, although we question whether development of such a system would be a useful expenditure of resources, since we do not see a serious problem in this area.

Recommendation #13

Work with the local Districts to identify and meet their training needs in relation to the inspection of family type homes.

Staff is currently available to review and provide technical assistance to local districts. We have instituted field visits to monitor the districts' compliance. Training videos and operation manuals were distributed to all districts as were numerous informational letters and administrative directives. These directives were issued as training tools and resource guides. OCFS will discuss training needs as they pertain to the inspection of Family Type Homes during the course of our field visits and will determine if further training is needed.

Recommendation #14 (Health Department)

Recommendation #15 (Health Department)

Recommendation #16

Require each local district to establish a formal system for recording complaints when they are received and tracking complaints as they are investigated.

The method of tracking and documenting complaints is at the discretion of the local Department of Social Services. It has been our experience that the majority of complaints, which are received by the districts from hospitals or family members, are investigated in a competent manner. The local Department Protective Services for Adults (PSA) are required to track complaints. Complaints are logged and responded to within three (3) days in a high-risk situation or within thirty days for other complaints. The Family Type Home for Adults program is normally staffed by local district PSA staff familiar with this process. This is a process of tracking complaints, which works but is not specifically a Family Type Home tracking system. If a complaint is received by the Office of Children and Family Services the information is logged and a letter sent out to the appropriate district for action and a response back to our Office within thirty days.

Recommendation #17

Distribute an up-to-date resident's right pamphlet to all family type homes.

This is in the final stages of printing and will be distributed to all districts within the next month. See Attachment.

Recommendation #18 **

Ensure that all residents know how to file a complaint with the appropriate State or local government agency.

OCFS will instruct local districts via letter to discuss the complaint procedure with their operators at the time of inspection, and make sure that the updated "residents rights" pamphlet is posted. In addition per 18 NYCRR Part 489.7(h)(1) and 18 NYCRR Part 489.7(i) operators are mandated to explain, discuss and provide copies of the "residents rights" pamphlet, upon application.

Recommendation #19

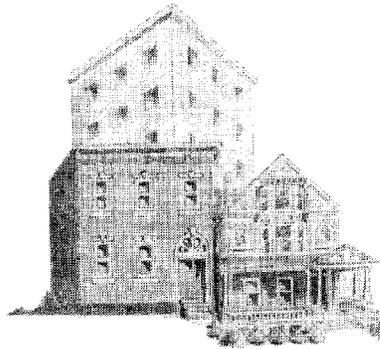
Establish guidelines for the amount of time that should be taken at each stage of the enforcement process, and actively monitor the timeliness of the process against these guidelines.

OCFS and local district staff devote time and energy to rectifying violations rather than automatically de-certifying the Family Type Home. Districts are required to visit the home, cite deficiencies on the Report of Inspection and give the operator specific time frames for correction, (thirty days). At the end of the period another home visit is conducted to determine whether the deficiencies have been corrected. If the home is still in violation, copies of the case record are forwarded to OCFS for referral to the agency's Division of Legal Affairs. This entire process is contained in Section XIII of the procedure manual and has been adhered to by local districts.

Recommendation #20 (Health Department)

**RESIDENT RIGHTS
AND PROTECTIONS IN FAMILY
TYPE HOMES FOR ADULTS**

New York State Office of Children and Family Services



**IF YOU FEEL THAT ANY OF THESE RIGHTS AND PROTECTIONS ARE BEING
VIOLATED, YOU MAY CONTACT**

Your COUNTY DEPARTMENT OF SOCIAL SERVICES

The home in which you are residing is in _____ County. The
_____ County Department of Social Services may be
reached at : _____

OR

The NEW YORK STATE OFFICE OF CHILDREN AND FAMILY SERVICES

The telephone number is: (518) 473-6446

State of New York



Office of Children and Family Service

*Pursuant to the Americans with Disabilities Act,
the State will make this material available
in large print or on audiotape upon request.*

PUB-1342 (Rev. 7/99)

The Social Services Law gives you certain rights as a resident in a Family Type Home.

YOU HAVE THE RIGHT:

- ◆ to receive courteous, fair and respectful care and treatment, and not be physically, mentally or emotionally abused or neglected in any manner.
- ◆ to exercise your civil rights and religious liberties, and to make personal decisions, including your choice of physician, and to have the assistance and encouragement of the operator in exercising these rights and liberties.
- ◆ to have private written and verbal communications or visits with anyone of your choice, or to deny or end such communications or visits.
- ◆ to authorize those family members and other adults who will be given priority to visit, consistent with your ability to receive visitors.
- ◆ to send and receive mail or any correspondence unopened and without interception or interference.
- ◆ to present grievances or recommendations on your own behalf or on behalf of other residents to the operator, the Department of Social Services, other government officials, or any other parties without fear of reprisal or punishment.
- ◆ to join other residents or individuals inside or outside the home to work for improvement in resident care.
- ◆ to confidential treatment of personal, social, financial and health records.
- ◆ to have privacy in treatment and in caring for personal needs.
- ◆ to receive a written statement (Admission Agreement) of the services regularly provided by the operator, those additional services which will be provided if you need or ask for them and the charges (if any) for these additional services.
- ◆ to manage your own financial affairs.
- ◆ to not be coerced or required to perform work; and if you work, to receive fair compensation from the operator.
- ◆ to have recorded on the home's accident or incident report your version of the events leading to the accident or incident.

YOU HAVE THE RESPONSIBILITY:

In addition, Social Services law provides that you are responsible for obeying all reasonable rules of the home and for respecting the personal rights and property of the other residents in the home.

SOCIAL SERVICES LAW AND REGULATIONS ALSO PROVIDE OTHER PROTECTIONS. THESE IMPORTANT PROTECTIONS INCLUDE REQUIREMENTS THAT THE OPERATOR OR AN AGENT OF THE OPERATOR:

- ◆ provide to you, before or at the time of admission interview, a copy of the Admission Agreement, a copy and explanation of resident rights and protections, and a copy of any home rules relating to resident activities, and tell you of your obligation to comply with these rules.
- ◆ provide to you at least 30 days written notice of any change in the home's rate or charges for supplemental services.
- ◆ provide to you, your next of kin or representative of your choice at least 30 days written notice of the operator's intention to terminate your Admission Agreement. The notice must indicate the reason for termination and the date of termination.
- ◆ allow you to terminate your Admission Agreement, subject to the conditions for notice established in your Admission Agreement.
- ◆ guarantee that you keep, from any Supplemental Security Income (SSI) or Home Relief (HR) payments you receive a personal needs allowance to buy any items the operator is not required to provide to you.
- ◆ offer each SSI or HR recipient the opportunity to keep personal allowance funds in a home-maintained account.
- ◆ maintain complete records on your personal allowance account and upon request, or at least quarterly, show or give you a statement which has all deposits, withdrawals, and the current balance in the account.
- ◆ allow you to review upon request the local department of social services inspection report, excluding any confidential attachments, for the most recent two-year period.
- ◆ maintain a system for accepting and responding to grievances and recommendations for changes or improvement in home operations.
- ◆ allow you privacy in your room, subject to reasonable access by operator.
- ◆ allow you privacy in caring for personal needs.
- ◆ neither physically restrain you nor lock you in a room at any time.
- ◆ allow you to leave and return to the home at reasonable hours.
- ◆ neither require from you nor accept from you any gratuity (i.e. tip or gift) in any form.
- ◆ may not threaten or coerce you to work in the home against your will.
- ◆ must provide you with fair compensation for any work you voluntarily perform, subject to the approval of the local department of social services.

State Comptroller's Note

We acknowledge that the Office of Children and Family Services has a statutory duty to monitor and supervise the activities of the social services districts and, as such, it does not have a statutory obligation to ensure compliance with our recommendations by the districts. Therefore, within the scope of its authority, we believe the OCFS officials should take all appropriate steps to determine that our recommendations are implemented by the districts. Hence, we have modified our recommendations accordingly.