A REPORT BY THE NEW YORK STATE OFFICE OF THE STATE COMPTROLLER

Alan G. Hevesi
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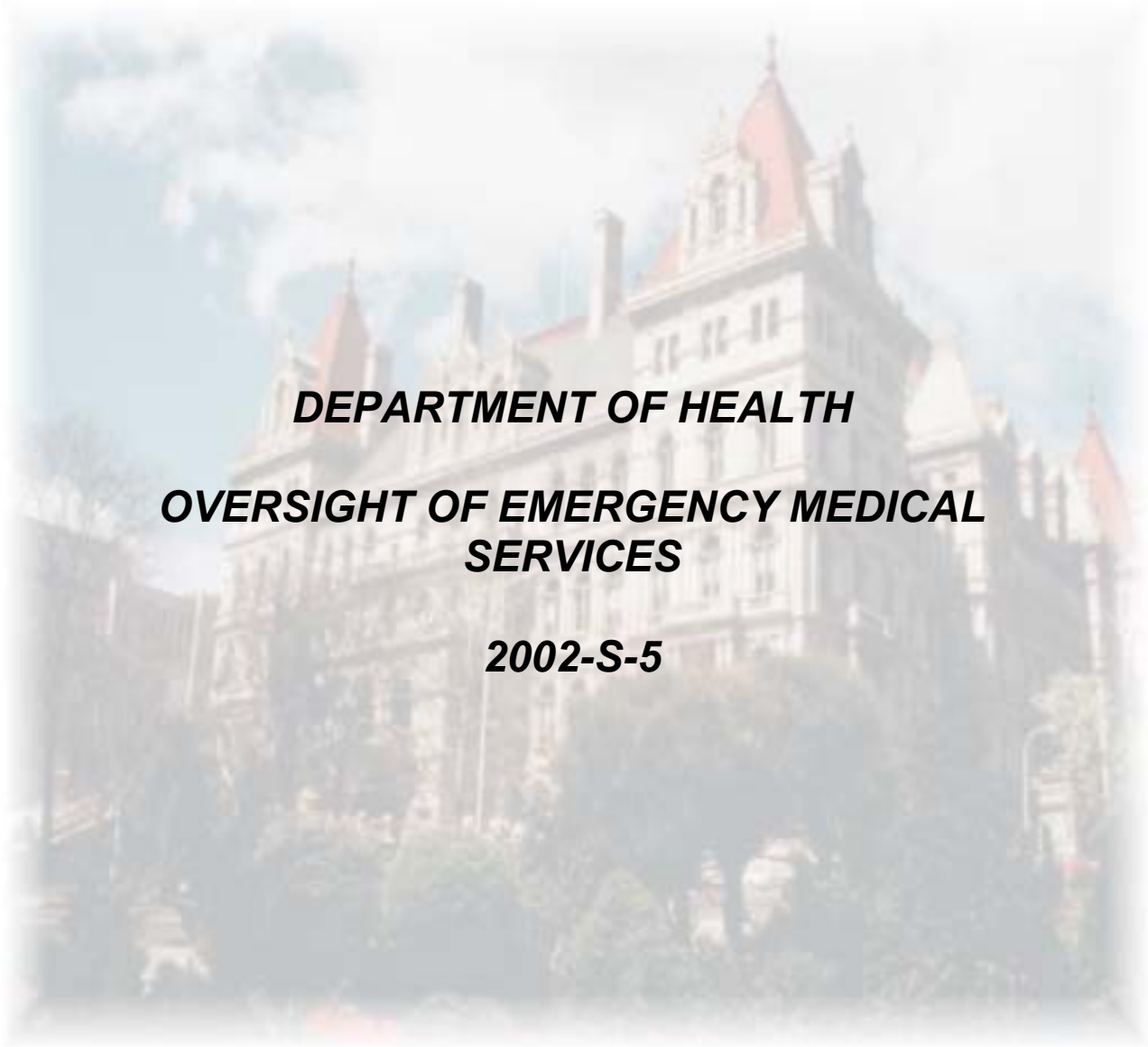

DEPARTMENT OF HEALTH

OVERSIGHT OF EMERGENCY MEDICAL SERVICES

2002-S-5

DIVISION OF STATE SERVICES

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Report 2002-S-5

Antonia C. Novello, MD, MPH, Dr. PH
Commissioner
Department of Health
Corning Tower
Empire State Plaza
Albany, NY 12237

Dear Dr. Novello:

The following is our report on the Department of Health's oversight of emergency medical services.

We performed this audit pursuant 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 State Services

February 21, 2003

EXECUTIVE SUMMARY

DEPARTMENT OF HEALTH
OVERSIGHT OF EMERGENCY MEDICAL SERVICES

SCOPE OF AUDIT

Pre-hospital emergency medical care and the safe and effective transportation of sick and injured people are essential public health services. As of March 31, 2002 there were 1,224 individual agencies (Services) statewide that provide ambulance services and advanced life support first response services to the public. The mission of the Department of Health's (Department) Bureau of Emergency Medical Services (Bureau) is to ensure that all Services in New York State provide quality and competent pre-hospital emergency medical services. The Bureau is comprised of a central office and four regional offices. To accomplish its mission, the Bureau determines whether Services operating in the State meet certain requirements with respect to their vehicles, equipment and staffing as set forth in the New York State Public Health Law and the New York Codes, Rules and Regulations (NYCRR). Services that meet the requirements receive an operating certificate from the Bureau. Operating certificates are valid for two years, after which the Services are responsible for renewing their certification. The Bureau conducts inspections and investigations to determine whether Services and emergency medical services personnel are complying with various requirements.

Our audit addressed the following question concerning the Bureau's oversight of emergency medical services for the period April 1, 1999 through August 31, 2002:

- Does the Bureau certify, inspect and investigate Services in a timely and thorough manner in accordance with the New York State Public Health Law, NYCRR, and Bureau policies and procedures?

AUDIT OBSERVATIONS AND CONCLUSIONS

We found that the regional offices operate autonomously, and that this arrangement has sometimes led to ineffective and inconsistent oversight of the Services. We also found that the central office does not adequately oversee the performance of the regional offices. As a result, the Services do not always renew their certifications in a timely manner. We also found that the regional

offices and the central office need to take steps to make inspections and investigations more timely and thorough. Without improvements in these areas, there is increased risk that Services are not providing quality and competent emergency medical services to sick and injured people.

It is important for Services to be properly certified as a control over the quality and competence of emergency medical services being provided to the public. Further, Services that do not have valid certificates are operating illegally, and there is a risk that they also inappropriately bill Medicaid for reimbursement. However, we found that many Services did not have a valid operating certificate for some time frame during our audit scope period, and that the Bureau did not properly oversee the certification renewal process to determine non-compliance by the Services. We also found that the regional offices have varied policies and procedures to handle late certifications. (See pp. 6-8)

If Services are not inspected as required, there is an increased risk that Services will not be maintained in compliance with requirements and that patients will not receive the best possible medical treatment. We determined that the central office does not track the frequency or assess the quality of Service inspections performed by the regional offices. As a result, we found many instances where required inspections were not timely, complete and properly documented. (See pp. 9-12)

Investigations are an important function as they help resolve breakdowns in the delivery of pre-hospital care. Investigations are generated in a number of ways, such as receipt of a complaint or a media report, or when there is an indication that an individual working in emergency medical services has a criminal background. We found that investigators did not always follow required steps nor conduct investigations in a timely and thorough manner. We also determined the Bureau could take additional action to identify individuals working in emergency medical services who may have criminal histories. For example, we identified two instances in which individuals were allowed to work in emergency medical services despite having criminal records. In addition, the Bureau needs to improve the manner in which it records and monitors investigations, including oversight of enforcement actions. (See pp. 13-20)

COMMENTS OF OFFICIALS

Department officials generally agree with the report's recommendations and indicated actions planned or taken to implement them. Officials did not agree with some of the conclusions in the Executive Summary. A complete copy of the Department's response is included as Appendix B. Appendix C contains State Comptroller's Notes, which address matters of disagreement included in the Department's response.

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INTRODUCTION

Background

Pre-hospital emergency medical care and the safe and effective transportation of sick and injured people are essential public health services. As of March 31, 2002 there were 1,224 individual agencies (Services) statewide - either private, voluntary or government-sponsored - that provide ambulance services and advanced life support first response services to the public. The mission of the Department of Health's (Department) Bureau of Emergency Medical Services (Bureau) is to ensure that all Services in New York State provide quality and competent pre-hospital emergency medical services. The Bureau is comprised of a central office and four regional offices: the Capital District Regional Office (CDRO), the Central New York Regional Office (CNYRO), the Metropolitan Regional Office (MARO), and the Western Regional Office (WRO).

To accomplish its mission, the Bureau determines whether Services operating in the State meet certain requirements with respect to their vehicles, equipment and staffing as set forth in the New York State Public Health Law and the New York Codes, Rules and Regulations (NYCRR). Services that meet the requirements receive an operating certificate from the Bureau. Operating certificates are valid for two years, after which the Services are responsible for renewing their certification by complying with the terms of the Bureau's renewal policy. The Bureau conducts inspections and investigations to determine whether Services and emergency medical services personnel are complying with various requirements.

Audit Scope, Objective and Methodology

We audited the Bureau's practices related to the certification, inspection and investigation of emergency medical services for the period April 1, 1999 through August 31, 2002. Where our audit involved a review of inspections, we expanded our scope period to earlier than April 1, 1999, in order to include each certified Service's last full inspection. The primary objective of our performance audit was to determine

whether the Bureau conducts certifications, inspections and investigations in a timely and thorough manner in accordance with the New York State Public Health Law, NYCRR, and Bureau policies and procedures.

To accomplish our objective, we interviewed officials from the Bureau's central office and four regional offices, and we reviewed the State Public Health Law, NYCRR, and Bureau policies and procedures. We examined all certifications, a random sample of 100 inspections, a sample of 108 investigations (95 random, 13 judgmental), and 33 of 91 Statements of Deficiency issued to Services by the Bureau. Our tests included reviews of certification, inspection and investigation case files at all five offices, as well as databases maintained by the Bureau to track related data. We also attempted to determine the extent to which Services received Medicaid payments while operating without a valid operating certificate, but as explained in our report, we were unable to do so.

We conducted our audit in accordance with generally accepted government auditing standards. Such standards require that we plan and perform our audit to adequately assess those operations of the Department that are within our audit scope. Further, these standards require that we understand the Department's internal control structure and its 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 for audit. This approach focuses our audit efforts on those operations that we have identified through a preliminary survey as having the greatest probability of 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 Officials to Audit

Draft copies of this report were provided to Department officials for their review and comment. Their comments have been considered in preparing this report and are included as Appendix B. Appendix C contains State Comptroller's Notes, which address matters of disagreement contained in the Department's response.

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 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.

OVERSIGHT OF EMERGENCY MEDICAL SERVICES

The Bureau is responsible for overseeing all Services in the State. Within the Bureau, the regional offices are responsible for the individual Services operating in their geographic area. The regional offices are responsible for monitoring whether Services renew their certifications in a timely manner, as well as for performing inspections and investigations to determine whether Services and emergency medical services personnel are complying with their various requirements. The regional offices generally play a more direct role than the central office in the oversight of Services. However, the central office is responsible for determining whether the regional offices are properly overseeing the Services, and therefore must have systems in place to monitor the performance of the regional offices.

We found that the regional offices and the central office need to strengthen their oversight of Services and to better coordinate their oversight functions. We found that the regional offices operate in an autonomous manner, and that this arrangement has sometimes led to ineffective and inconsistent oversight of the Services. We also found that the central office does not adequately oversee the performance of the regional offices. As a result, the Services do not always renew their certifications in a timely manner. We also found that the regional offices and the central office need to take steps to make inspections and investigations more timely and thorough.

In our prior audit of emergency medical services (Report 95-S-56, issued October 30, 1995), we found that the Department needed to improve its certification practices to ensure Services met certification requirements, establish goals for conducting periodic inspections of certified Services, and more closely monitor the activities of regional offices. We also found the Department needed to strengthen its procedures for identifying individuals with criminal histories working in emergency medical services. Our current audit found that these areas continue to need improvement.

Certification of Services

The intent of legislation regulating operating certificates is to protect the public health and safety by ensuring the quality and competence of emergency medical services. Further, Services that do not have valid certificates are operating illegally, and there is a risk that they are inappropriately billing for Medicaid reimbursement. The Bureau is responsible for determining whether all Services operating in the State are properly certified. However, we found that many Services did not have a valid operating certificate for some time frame during our audit scope period, and that the Bureau did not properly oversee the certification process to determine non-compliance by the Services.

Beginning January 1, 2000, Article 30 of the Public Health Law requires all Services to have operating certificates, which are valid for two years. With few exceptions, we found that the Services operating in the State were certified by January 1, 2000. When it is time for a Service to renew its certification, the central office sends the Service an application packet and requires the Service to submit a complete application packet to its respective regional office on or before the expiration date of the certificate. Regional office personnel screen the application packet for completeness and upon their approval, recertify the Service.

We determined that the central office and regional offices do not effectively monitor the timeliness of recertifications. We tested 1,190 Services that were required to recertify during our scope period and determined that 228 Services (or 19 percent) did not recertify on time. Thirty-one of the 228 Services were operating without a valid certificate as of March 31, 2002.

We noted variances among the regional offices regarding the rate at which Services within a region did not submit their applications on time. CDRO and MARO had a 15 percent exception rate, and CNYRO and WRO had a 22 percent and 26 percent exception rate, respectively. The number of days that Services were late in submitting their applications ranged from 1 to 845 days, with an average of 83 days late. We also found that the regional offices did not always approve recertification applications in a timely manner. We identified 113 instances (or 9 percent) where a Service submitted an application on time,

but the regional offices approved the application after the expiration date.

The Bureau's policies and procedures require regional offices to contact, by letter, Services whose certification is approaching expiration, to remind them of the regulatory requirement to maintain certification. If a Service does not submit the application on time, the regional office must issue the Service a written Department Statement of Deficiency (SOD), which requires a Service to provide documentation of its procedures for correcting the deficiency and/or preventing the deficiency from recurring. However, because the regional offices operate in an autonomous manner, we found that they have varied policies and procedures to handle late recertifications. This situation contributed to the deficiencies we identified.

For example, CDRO officials state they do not issue reminder letters to Services because it is too time consuming, but they do issue SODs. We judgmentally selected 19 of the 35 CDRO Services we identified as having submitted their applications late and found that 7 of them did not receive an SOD after their certification had expired. We selected the 19 Services for review because their applications were both submitted late and notarized after the certification expiration date. We identified similar problems at the other regional offices. At CNYRO and MARO, officials do not issue reminder letters as required nor do they issue SODs. At WRO, officials stated that they began to issue reminder letters and SODs to Services in late 2001.

Bureau policy requires that recertification applications be received by the respective regional office before expiration of the current certificate. Nevertheless, we found that regional office officials expressed conflicting opinions of when a certification is considered overdue. We believe that this condition contributed to the exceptions we found. Some regional office personnel determine the timeliness of certifications based on the date an application is notarized, and others determine timeliness based on the date an application is received by the regional office. One regional office incorporates a combination of both methods, depending on the situation.

In addition, to be eligible for Medicaid reimbursement, Services must maintain a valid operating certificate. However, the Bureau does not have a process to notify appropriate Department Medicaid reimbursement offices of Services with

lapsed certifications. We could not determine the impact on Medicaid reimbursements because the Bureau does not maintain Service provider Medicaid identification numbers. (A Service's Medicaid identification number is the key attribute necessary to match a Service to Medicaid reimbursements.) There is a risk that Services with expired operating certificates are inappropriately receiving Medicaid reimbursements.

Services are required to submit complete certification application packets to support their compliance with approved operating terms, such as corporate ownership, structure and operating territory. The regional offices are responsible for screening the applications for completeness and obtaining missing information before approving the certification. Of the 1,190 Services tested, we randomly selected a sample of 87 renewal certification applications and 6 initial certification applications from all regions (35 from CDRO, 21 from CNYRO, 18 from MARO and 19 from WRO) to determine if applications were complete. We found 52 approved applications that were not completely filled out (24 of 35 at CDRO, 9 of 21 at CNYRO, 9 of 18 at MARO, and 10 of 19 at WRO). Information items missing included: type of ownership, organizational structure, name of the owner/partner/government agency (where applicable), operating territory, the name of the Service or Service Medical Director, and the Service's federal employer identification number. An official from one regional office stated that it could be very time-consuming corresponding back and forth to a Service requesting missing information, which can jeopardize a timely certification. Nevertheless, identification of changes to technical information on applications is important so that the Bureau can determine if a Service is operating under its approved structure.

Recommendations

1. Develop a system to identify and track certification lapse periods, and take appropriate corrective action to address identified non-compliance.

2. Direct regional offices to send reminder letters to Services approaching expiration of their operating certificate, and issue SODs to Services that are operating without a valid operating certificate.

Recommendations (Cont'd)

3. Routinely notify the appropriate Department Medicaid office of periods when Services operate without a valid operating certificate.

4. Determine that certification applications are complete before approving them.

Inspection of Services

To help maintain a high quality emergency medical system statewide, the Bureau is responsible for conducting full inspections of certified Services in a manner that is timely, complete and properly documented. We determined that the central office does not track the frequency or assess the quality of Service inspections performed by the regional offices. Instead, regional offices act autonomously.

Based on our review of Service inspection records, we concluded that many Services have not received full inspections as required. We found that the rates of non-compliance varied among the four regional offices. If Services are not inspected as required, there is an increased risk that Services will not be maintained in compliance with regulations and that patients will not receive the best possible medical treatment.

Timeliness of Inspections

All new Services applying for certification are required to be fully inspected as part of their initial certification. Such inspections must occur within 30 days of certification. Subsequent to the initial inspection, the Bureau may conduct periodic inspections; however, there is no regulation regarding the frequency or the type of inspection required. The Bureau may set its own policy in this area. The regional offices have nine field representatives that are responsible for inspecting Services.

The Bureau conducts two types of inspections: spot and full inspections. Spot inspections are usually done on an unannounced basis, outside hospital emergency departments after a Service has delivered a patient. Spot inspections entail reviews of the supplies and equipment on board Service vehicles. Full inspections are prearranged, take place at a

Service, and include, among other things, reviews of Service policies and procedures, staff credentials and a full physical inspection of all Service vehicles. Bureau policies and procedures require full inspections every two to four years, depending on the type of Service. However, Bureau officials told us that these guidelines are outdated and that they expect full inspections to occur once every five years. Due to a lack of coordination between the regional offices and the central office, one regional office had no policy regarding the frequency of inspection, two regional offices required full inspections every four years, and one regional office required inspections every five to six years.

To determine whether initial inspections were completed within 30 days of the Service's initial certification, we reviewed the inspection records for each of the 236 Services that were initially certified during the period April 1, 1999 through March 31, 2002. We identified 10 Services (4 percent) that did not receive a full inspection within 30 days of their initial certification. Most of these Services were inspected within three to six months of their initial certification; however, one Service was not inspected until well over two years after its certification date.

In addition, Services that were certified on or prior to March 31, 1997 should have received a periodic full inspection at some point during our audit scope period, based on the five-year cycle expected by Bureau officials. We determined that 510 of 782 Services (or 65 percent) certified on or before March 31, 1997 had not received a periodic full inspection within the last five years. For 95 of these 510 Services (19 percent), there was no record of any inspection having been performed. The rate of non-compliance with the five-year expectation varied among the regional offices, from 38 percent at CDRO to 84 percent at CNYRO. In addition, 173 of 453 Services (38 percent) that have been in operation on or before March 31, 1992 had not received a periodic full inspection for at least ten years.

We found that the central office and the regional offices need to address the following issues in order to adequately monitor the timeliness of inspections:

- Each regional office submits, to the central office, a monthly report summarizing their activities (e.g. spot inspections performed and full inspections performed).

However, the central office does not use this data to track inspections or assess performance of the regional offices.

- When we tested the accuracy of inspection dates provided to us by the regional offices, and compared these dates to the original inspection reports, we identified errors in 15 percent of the dates provided by WRO and 30 percent of the dates provided by MARO. At MARO, the errors ranged from a few days to a few years.

- Copies of inspection reports are required to be maintained at the regional offices and at the central office. However, at CNYRO, reports were not maintained for inspections older than five years, and we determined that such reports were not at the central office, as required. We also determined that MARO does not send copies of periodic inspection reports to the central office, as required.

- It is important that the regional offices and central office maintain complete and updated databases of certified Services to identify Services due for inspection. We obtained listings of certified Services maintained by the Bureau's central office and each regional office and found 14 Services that were not on the databases maintained by the regional offices. This situation may have contributed to the fact that 8 of these 14 Services did not receive a periodic full inspection within a five-year period and three had no record of any full inspection.

Completeness of Inspections

The Bureau has developed standardized forms for use by inspectors when they complete an inspection. Form 139 is used when the inspector reviews a Service's policies, procedures and personnel files. Form 2596 or 3780 is used when a vehicle inspection is conducted. When doing a full inspection, the inspector must check off all items on these forms to indicate a complete inspection was performed.

To ascertain the completeness of inspection reports, of the 1,248 Services that were in business at some point during the period of time covered by our audit, we examined a random sample of 100 Services among the regional offices. These

Services had 218 vehicles in their fleets. For each Service in our sample, we determined whether each vehicle was inspected, and whether all of the required inspection forms existed and were properly completed. We found that 64 of the 218 vehicles (61 from MARO and 3 from WRO) were not inspected. Sixty-eight of the 100 full inspections we reviewed were done as part of initial Service certifications, and therefore all Service vehicles were to receive a full inspection. We determined that for 7 of the 68 inspections (10 percent), inspectors conducted only spot checks of vehicles rather than full equipment reviews. We also determined that inspection form 139 was missing or incomplete for 11 Services. For the 154 vehicles where an inspection was performed, form 2596/3780 was incomplete for 55 of the vehicles.

According to Bureau management, it is a common and accepted practice to inspect a random number of vehicles at large Services. However, we determined that the regional office personnel do not track which vehicles have/have not been inspected during prior inspections. Therefore, a potential exists that some vehicles will never be inspected.

Bureau management stated that the creation of the Inspection Reporting Database (IRD) in the beginning of 2002 would strengthen their ability to monitor inspections. However, for IRD to function properly, inspectors at the four regional offices need access to IRD for the purpose of documenting and tracking inspections. However, an official at CNYRO did not know of IRD's existence until we brought it to his attention nor was he aware of its various uses and functions.

Recommendations

5. Update, expand and recommunicate Bureau policies and expectations regarding inspection frequency, completeness and proper record keeping practices.

6. Take steps at both the central office and regional office levels to strengthen monitoring of compliance with inspection requirements so that inspections are timely, complete and properly documented.

7. Train regional office personnel in the use of the Inspection Reporting Database.

Investigations

To help ensure public health and safety, the Bureau is responsible for conducting investigations of emergency medical services and personnel. Investigations are an important function as they help resolve breakdowns in the delivery of pre-hospital care.

Investigations are generated in a number of ways, such as receipt of a complaint or a media report, or lack of a signature on a recertification application attesting that an individual seeking recertification does not have a criminal background. Bureau records indicate that 2,529 investigations were opened during the period April 1, 1999 through March 31, 2002.

Bureau guidelines require staff to complete their investigations in a timely and thorough manner. In addition, the Bureau should have an adequate system to monitor investigations and to determine whether issues have been properly resolved. We found that investigators did not always follow required steps nor conduct investigations in a timely and thorough manner. We also determined the Bureau could take additional steps to identify individuals working in emergency medical services who may have criminal histories. In addition, the Bureau needs to improve the manner in which it records and monitors investigations, as well as how it protects investigation databases against unauthorized access. The Bureau also needs to improve record keeping practices at the central office and at the regional offices to allow for effective oversight of enforcement actions.

Timeliness of Investigations

The Bureau conducts five types of investigations. Approximately 67 percent of Bureau investigations are Criminal. A Criminal investigation focuses on the background of emergency medical services personnel, and can include a determination of any prior criminal history based on information provided by the Division of Criminal Justice Services (DCJS). Approximately 23 percent of the Bureau's investigations are Agency investigations of Services. An Agency investigation focuses on matters such as patient care or ambulance accidents. The remaining 10 percent of investigations fall into one of three categories: Individual, Sponsor or Event. An Individual investigation is an investigation of emergency medical

services personnel for matters such as inappropriate patient care. A Sponsor investigation focuses on emergency medical services training and certification of individuals, such as the effectiveness of the training provided by an organization. Event investigations focus on incidents that occur at public events, such as an event that is held without sufficient emergency medical services personnel.

Although the Bureau does not formally designate priority levels to cases, according to the Bureau's senior management, high priority cases such as those involving patient death, patient harm, or a Service operating outside the scope of its duties would take precedence over those deemed less significant. Otherwise, designation of priority is normally subject to the investigator's opinion.

The Bureau requires that Criminal investigations take no longer than 60 days to complete. However, no time-frame requirements exist for the other four types of investigations. Our review of Bureau records found the central office and the regional offices routinely did not complete Criminal investigations in 60 days. We reviewed all 1,707 Criminal investigations opened during the period April 1, 1999 through March 31, 2002 and found that 1,155 cases (68 percent) were open more than 60 days. In fact, 161 cases (9 percent) were open more than one year. Bureau management stated they might lengthen the 60-day timeframe based on our audit findings. However, we believe that lengthening the 60-day timeframe may not be appropriate because of the inherent need for the Bureau to efficiently determine whether prior criminal convictions present a risk or danger to patients or the public.

We also reviewed the timeliness of the other four types of investigations and determined that 122 of the 822 investigations (15 percent) took longer than one year to complete. Given the serious nature of some cases, we believe the Bureau should establish formal criteria for prioritizing investigations accompanied by timeframes for completing investigations based on their assigned priority level for all investigation categories. Bureau officials maintain that establishing formal timeframes for the completion of investigations is not appropriate because the needs of any two cases are often very different. Officials maintain that some investigations will take longer than others and that developing a goal of how long investigations should take can be challenging. Nevertheless, we believe that having

such goals is necessary as they provide investigators with guidelines on how long, in general, they should take to complete their investigations. In addition, the Bureau could use these goals as an effective means for monitoring the timeliness of investigations as well as the performance of their investigators.

Thoroughness of Investigations

Investigations should be conducted in a thorough and timely manner by adequately trained investigators. To help achieve these criteria, the Bureau should monitor whether investigations meet established guidelines. The Bureau has specific investigation guidelines that are to be followed. The guidelines deal with matters such as how quickly a case should be assigned upon receipt of a complaint, how quickly complainants are to be interviewed, and the records that should be reviewed during an investigation.

To determine whether the investigation guidelines were being followed, we selected a sample of 108 cases (95 random, 13 judgmental) from the Bureau's 2,529 cases. We judgmentally selected the 13 cases because they appeared to be untimely and/or high risk in nature. We found that investigation guidelines were not always followed. Central office personnel are responsible for monitoring investigations and reviewing the adequacy of investigations by examining individual case files. However, the Bureau does not have a system for tracking compliance with investigation guidelines and respective timeframes. Therefore, we reviewed source documentation in case files to determine whether the guidelines were followed, and if so, whether the events occurred within the Bureau's desired timeframes. However, excluding our test results on the guideline for the timeliness of enforcement action, we found exception rates between 13 percent and 69 percent. For example, we found no evidence in 36 percent of the applicable cases that complainants were interviewed as required. We found no evidence in 65 percent of the applicable cases that acknowledgement letters were sent to complainants. The following table summarizes the results of our review.

Thoroughness and Timeliness of Investigations For the Period 4/1/99 through 3/31/02	
No Documentation Showing Guideline Was Followed	**Exception Rate**
No acknowledgement letter to complainant, when applicable	65%
No DCJS background check done, when applicable	44%
No interview of complainant, when applicable	36%
No interview of accused, when applicable	15%
No request for medical/administrative records, when applicable	13%
No on-site visit conducted, when applicable	14%
No closure letter to complainant, when applicable	33%
No closure letter to accused, when applicable	24%
No Documentation Showing Guideline Was Followed Within Timeframe	**Exception Rate**
No acknowledgement letter within 10 days	69%
No DCJS background check within 10 days	56%
No interview of complainant within 60 days	38%
Medical Records not received within 10 days	57%
No closure letter to complainant within 10 days	50%
If complaint is unsubstantiated, no closure letter to accused within 10 days of closure	17%
If complaint is substantiated, no closure letter to accused within 10 days of determination	52%
No enforcement action within 10 days	0%

Central office officials need to formalize the investigation guidelines, communicate them to staff, and train investigators on such guidelines. We found that WRO had written investigation guidelines that differed from central office's guidelines. Some Bureau requirements were not included in WRO's written guidelines. For instance, the WRO guidelines do not require acknowledgment and closure letters to be sent or medical records to be reviewed. In addition, MARO does not always require closure letters to be sent to the complainant. We also found that investigators may not be receiving sufficient training. Some investigators expressed to us the need for investigative training, since investigators from two regional offices have reportedly attended only one day of training related to investigations since becoming investigators.

Without formal and comprehensive policies, procedures and training, the Bureau is increasing the risk that investigations will

take longer than necessary or that required procedures will not be followed, thereby endangering the public's health and safety.

DCJS Background Checks

According to the NYCRR, individuals who have been convicted of or are charged with certain crimes cannot be certified to provide emergency medical services unless the Bureau determines that they present no risk to public safety. The Bureau has a contract with DCJS that allows the Bureau to conduct criminal history checks of all individuals seeking initial certification and recertification to provide emergency medical services. However, we determined the Bureau does not conduct DCJS background checks of those individuals seeking initial certification, nor does it investigate the backgrounds of all individuals seeking recertification, even though it is allowed to do so under its contract with DCJS.

The Bureau's contract with DCJS authorizes the Bureau to conduct background checks, by way of fingerprinting, on all applicants seeking initial certification. However, the Bureau does not conduct fingerprint inquiries for initial certifications because, according to senior management, it would not be cost effective and would impact the willingness of people to volunteer because of the additional time and inconvenience to a largely volunteer community of providers.

For individuals seeking recertification, the Bureau generally conducts background checks only when an individual does not sign the statement on his or her application attesting they have not been convicted of or charged with a crime that violates the NYCRR. For these individuals, the Bureau opens an investigation that includes a DCJS background check. If a signature is present, the Bureau does not investigate the individual's criminal history. Bureau officials state their current process for conducting background checks has resulted in an increase in Criminal investigations and therefore it is not necessary to further increase DCJS background checks for all individuals currently certified, including those who sign the attestation. However, we believe there is a risk that individuals with criminal histories are illegally signing the attestation, thereby avoiding a DCJS background check.

For example, we identified two instances in which individuals were allowed to work in emergency medical services despite

having criminal records that should have precluded them from holding their positions. In both cases, the individuals had signed the attestation that they had not been convicted of and were not currently being charged with a crime that violates the NYCRR. Thus, they were able to avoid a background check.

In our prior audit of emergency medical services (Report 95-S-56, issued October 30, 1995), we found that the Bureau was not aware of certified Emergency Medical Technicians (EMTs) who may have been convicted of serious crimes, including sexual abuse. We recommended that the Bureau work with DCJS to develop a method for identifying EMT candidates and EMTs with criminal histories. Although such a method was developed by way of a contract with DCJS, we found the Bureau is not acting on all of its privileges set forth in the contract to check the backgrounds of all individuals.

Accuracy and Completeness of Investigation Databases

The Bureau maintains two databases to record investigation information and monitor the status of investigations. For cases that will be investigated, staff access the Case Number Generator (CNG) to generate a unique investigation case number. In addition, central office personnel use the Master Database to monitor investigations, such as the status of cases (open or closed), the date a case was opened and closed, the alleged violation, and corrective action the Bureau intends to take. We reviewed the Bureau's databases and identified weaknesses in how the Bureau records and tracks investigations.

The Bureau should have an accurate, comprehensive database to enable it to effectively monitor all investigations. However, we found that neither database contains the complete population of investigations. We identified 184 open investigations that were not on the Master Database. Bureau officials acknowledge that some cases are not entered onto the Master Database because the regional offices do not always provide information for all cases. Having one complete Master Database of cases would allow the Bureau to identify and follow up on such investigations.

In addition, we tested the accuracy of investigation dates listed on the two databases and found discrepancies in the case open date between the Master Database and the CNG in 9 percent of

the data. We further tested the dates recorded on the databases to information obtained from case logs maintained at the regional offices and found inconsistencies in the open/close dates between the databases and the logs.

The regional offices need to account for all cases under their responsibility. In addition, all closed cases are required to be on file at the central office so that the central office can review the adequacy of each investigation as well as monitor the activities of the regional offices. However, we determined that 4 of 62 randomly selected closed investigation files from the 2,475 cases recorded on the Master Database could not be located at central office, and 3 of 108 selected investigation files could not be located at the MARO office. The three missing cases have been open since March and May of 2001.

In addition, access to the databases should be adequately restricted to protect the integrity of the information on the databases. According to Bureau officials, regional office personnel have "read-only" access to the Master Database, thereby preventing them from making changes to or deleting case investigation information. However, we determined that regional office personnel have inappropriate access to the Master Database and the CNG, and can edit and delete information on both databases. By allowing regional office personnel to have full access rights to the databases, the Bureau is increasing the risk that a region may accidentally or intentionally alter or delete essential investigation data, which can weaken central office's ability to effectively monitor investigations.

Enforcement

If an investigation or inspection determines there are violations of the Public Health Law or the NYCRR, the Bureau may issue an SOD to the Service. Issuance of an SOD requires the Service to submit a written Plan of Correction (POC) to the Bureau within 10 business days of the date the Bureau issued the SOD. The POC must address each deficiency by providing a plan for correcting the deficiency and/or preventing the deficiency from recurring. If a Service fails to submit a POC, the Bureau may suspend or revoke a Service's operating certificate. Complete and accurate records of SODs, along with accompanying POCs, are necessary for the Bureau to properly

monitor Services' abilities to provide safe and effective patient care.

To determine whether the central office maintains complete records of SODs, we requested a listing from each regional office of every SOD issued from April 1, 1999 through March 31, 2002. Of the 91 SODs reportedly issued by the regional offices, the central office did not have a record of 50 (55 percent) of them. We found no record of any of the 44 SODs that CNYRO reportedly issued, and found 3 exceptions each for SODs reportedly issued by CDRO and MARO.

We also reviewed a sample of 33 of 91 SODs to determine if Services submitted timely and complete POCs. The sample comprised a random sample of 10 SODs from CDRO, a random sample of 10 SODs from CNYRO, all 10 SODs from MARO and all 3 SODs from WRO. Five of 33 SODs could not be located at either the central office or the respective regional office, and there was no documentation that a POC was submitted for 11 cases. We also identified five instances in which Services submitted a POC after its due date, of which one Service was more than two months late.

During our review, we noted that the number of SODs issued by each region significantly varied. CNYRO, which has the second least number of Services of the four regions, reportedly issued 44 SODs during our audit scope. In contrast, MARO, which has by far the most number of Services in operation out of the four regions, reportedly issued only 10 SODs. Of particular note was that the WRO reportedly issued only three SODs during the same timeframe. This variation may be an indication that each region has a different understanding of when to issue an SOD. The Bureau should review and recommunicate its policy on issuing SODs to ensure regional office staff clearly understand when they should issue an SOD.

Recommendations

8. Develop formal investigation policies and procedures that adequately convey investigation requirements, including but not limited to, timeframes for completing investigations, investigation protocol and timeframes for completing such protocol. Determine the need to provide training to investigators on such policies.

Recommendations (Cont'd)

9. Develop a system that enables the central office and the regional offices to accurately and efficiently monitor compliance with investigation protocol and timeframes.

10. Conduct a feasibility study to explore expansion of the scope of DCJS background checks for all individuals providing emergency medical services.

11. Institute access controls that will prevent changes or deletion of database information by unauthorized users.

12. Establish adequate record keeping practices at the central and regional offices that will allow for effective oversight of the SOD process.

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Commissioner

Dennis P. Whalen
Executive Deputy Commissioner

January 20, 2003

Kevin M. McClune
Audit Director
Office of the State Comptroller
110 State Street
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 2002-S-05, "Emergency Medical Services".

Thank you for the opportunity to comment.

Sincerely,

Dennis P. Whalen
Executive Deputy Commissioner

Enclosure

Appendix B

cc: Mr. Howe
Mr. Osten
Mr. Reed
Mr. Van Slyke
Ms. Wickens
Mr. Wronski

Department of Health
Comments on the
Office of the State Comptroller's
Draft Audit Report
2002-S-05 Entitled
"Emergency Medical Services"

The following are the Department of Health's (DOH) comments in response to the Office of the State Comptroller's (OSC) Draft Audit Report 2002-S-05 entitled "Emergency Medical Services (EMS)".

General Comments

The Department disagrees with some of the conclusions in the executive summary section of the audit report and strongly disagrees that the quality of care from a system perspective is questionable. The OSC concludes that regional offices operate autonomously, and that this has led to ineffective and inconsistent oversight of the services. Oversight efforts by the Department's Bureau of Emergency Medical Services (BEMS) have been very effective, especially considering the catastrophic events of September 11, 2001.

* Note 1

Hundreds of inspections and thousands of investigations conducted by nine regional office staff with the cooperation of central office staff during the audit period have helped assure an EMS system that is properly staffed and equipped to handle emergency response. This has been demonstrated by the regular response to two million emergency calls in all areas of the State, and the extraordinary response to catastrophic emergencies when required. Inspections and investigations have documented a well functioning system of response. There is little evidence to support the conclusion that there is an increased risk that services are not providing quality and competent emergency care. Oversight of the EMS system is statutorily shared with the Department by a combination of organizations, including the regional EMS councils, county and local governments and physician medical directors of the services. The combined efforts of all of these components helps assure quality of care. While the Bureau investigates over 800 cases annually, a very small number of these are based on complaints regarding poor patient care. The system of local quality assurance supported by Department inspections and investigations has established an EMS system that provides quality of care to over two million patients annually.

* Note 1

The following comments are provided in response to OSC's specific recommendations.

Recommendation #1

Develop a system to identify and track certification lapse periods, and take appropriate corrective action to address identified non-compliance.

Response #1

The BEMS currently sends all ambulance services a re-certification application at the beginning of the quarter before their current certification expires. This notice is communicated to the regional offices that are responsible for follow up with the service. Currently, a computer certification tracking system is in place that will allow the central office or the regional office to track non-compliance. A policy guideline will be developed by March 31, 2003 that outlines how the tracking system will be utilized to monitor EMS services that are late in submitting certification applications.

Recommendation #2

Direct regional offices to send reminder letters to Services approaching expiration of their operating certificate, and issue SODs to Services that are operating without a valid operating certificate.

Response #2

BEMS' policy is that regional offices should send reminder letters to services approaching expiration. This has been communicated to regional staff and it is currently included in the draft EMS Operations Staff Manual that was jointly developed by central and regional office staff. Both central office and regional management staff will monitor this process.

The BEMS reinforced the policy of issuing Statement of Deficiencies (SODs) for services that are non-compliant with regional office staff during 2002. SODs will be issued by regional staff in all instances of late submission. Central office will monitor compliance by checking the date the application was notarized, which will result in consistency across the State and will allow for easy monitoring.

Recommendation #3

Routinely notify the appropriate Department Medicaid office of periods when services operate without a valid operating certificate.

Response #3

The Department has not seen any evidence that there has been inappropriate Medicaid billing by services whose certification has lapsed. BEMS has worked with the Office of Medicaid Management on crossover issues where appropriate. BEMS will meet with Office of Medicaid Management officials in the near future to determine how ambulance service certification information can be shared to assure proper billing.

Recommendation #4

Determine that certification applications are complete before approving them.

Response #4

The Department will review with staff during training sessions this year the information that must be contained for an ambulance certification application to be complete. It should be noted that the information needed in any application varies depending on the type of ambulance service that is applying, e.g. volunteer, corporate, for profit or municipal. Many applications may have incomplete sections since they only apply to certain types of services. In the event that critical information is missing, appropriate staff will make contact with the service to gather the information. It should be noted that none of the missing information resulted in BEMS rescinding an application or decertifying any service.

Recommendation #5

Update, expand and re-communicate Bureau policies and expectations regarding inspection frequency, completeness and proper record keeping practices.

Response #5

BEMS central office management staff met with regional office management staff responsible for oversight of the EMS program regionally to discuss the frequency of inspections and to develop a policy for inspections. An EMS Operations Staff Manual was drafted that addresses most of these issues and is expected to be approved soon. A policy on record keeping at the regional offices will be discussed and agreed upon with regional management in the first quarter of 2003.

Recommendation #6

Take steps at both the central office and regional office levels to strengthen monitoring of compliance with inspection requirements so that inspections are timely, complete and properly documented.

Response #6

Each regional office submits an annual inspection plan, which will help assure timely inspections of ambulance services. An inspection tracking system is now in place that helps monitor timely inspections. The issuance of an updated staff manual will assist in assuring inspections are complete. BEMS staff are developing a staff training program that will also assist in assuring complete inspections and proper documentation of inspections are done. Regional supervisory staff will monitor the completeness of inspections.

Recommendation #7

Train regional office personnel in the use of the Inspection Reporting Database.

Response #7

Regional office staff received training in the use of the database. BEMS has confirmed that all regional staff responsible for entering the data are trained and now use the Inspection Reporting Database.

Recommendation #8

Develop formal investigation policies and procedures that adequately convey investigation requirements, including but not limited to, timeframes for completing investigations, investigation protocol and timeframes for completing such protocol. Determine the need to provide training to investigators on such policies.

Response # 8

Central and regional management BEMS staff were sent to a nationally recognized training program for investigative training last year. They are developing both an investigative manual and a training program for staff that will be completed this year, and will include investigative guidelines and policies. While the guidelines will also contain timeframes for case load management and completion, the Department does not agree that exact timeframes for completion of a specific investigation are realistic, as investigation timeframes vary widely in relation to the needs of the investigation, scope of the investigation, cooperation of witnesses and availability of evidence. The timeframes established will allow for variation in the completion of any given case, but require that certain case actions have been completed to move the case towards completion. The guidelines will also give direction on caseload management in regional offices, so that the overall age of in-house open cases is kept within certain time frames.

Recommendation #9

Develop a system that enables the central office and the regional offices to accurately and efficiently monitor compliance with investigation protocol and timeframes.

Response # 9

BEMS will recommend regional supervisory review of cases on a monthly basis to assure compliance with protocols. A written review by regional supervisory staff will be mandatory for any investigation older than 90 days, and will contain written case recommendations and be kept on file.

Recommendation #10

Conduct a feasibility study to explore expansion of the scope of DCJS background checks for all individuals providing emergency medical services.

Response #10

The Department disagrees with this recommendation. BEMS has discussed expanding the use of criminal background checks with the Division of Criminal Justice Services (DCJS). At present, DCJS checks may only be used for individuals who are currently certified and under investigation. While a broader system could be implemented if fingerprinting were utilized for all candidates for EMS certification, there is no evidence this is necessary. Since the 1995 OSC audit of EMS, which recommended improvement in the oversight of criminal convictions, BEMS now investigates more than 600 individuals with criminal convictions annually, compared to a handful prior to 1995. It should be noted that OSC's report identified two Emergency Medical

* *Note 2*

* See State Comptroller's Notes, Appendix C

Response #10 continued

Technicians (EMTs) with criminal convictions out of about 58,000 certified providers. Additionally, the statute does not prohibit an individual with a conviction from practicing, unless the Department determines they are a risk or danger to patients. While we agree that monitoring of criminal convictions is important, the Department does not find evidence that further intensified monitoring of a largely volunteer EMS community is necessary.

Recommendation #11

Institute access controls that will prevent changes or deletion of database information by unauthorized users.

Response # 11

Access controls to investigative and inspection databases are in place. These controls have been updated so that regional EMS staff may not change the database. It should be noted that no unauthorized changes have ever been found or reported.

Recommendation #12

Establish adequate record keeping practices at the central and regional offices that will allow for effective oversight of the SOD process.

Response #12

While the audit determined there were some inconsistencies in the SOD process and in some record keeping of SODs, none of the SOD inconsistencies were of a critical nature. We will advise regional offices that SODs and subsequent correction plans must be maintained in files for a period of ten years and that a copy of any SOD be sent to the central office, along with a copy of the service's correction plan to any SOD.

State Comptroller's Notes

1. Our report does not conclude that the quality of care from a system perspective is questionable. We concluded that, without improvements by the Bureau and the regional offices in the certification, inspection and investigation processes, there is increased risk that Services may not always provide quality and competent emergency medical services to sick and injured people. This conclusion is supported by our findings, such as Services operating without a valid certificate, inspections not performed, vehicles not inspected, and investigations not timely or thorough. Given the nature and extent of our findings, we also do not agree that the Bureau's oversight efforts have been effective. The variations in procedures and noncompliance we identified among the regional offices illustrate the need for stronger central office oversight.

2. We identified two Emergency Medical Technicians with criminal records based upon a sample of 108 investigative cases, not 58,000 certified providers, as stated by Department officials. Hence, sufficient evidence may exist to warrant intensified monitoring of a larger volunteer EMS community. Therefore, we believe Department officials should reconsider our recommendation to study the feasibility of expanding the scope of DCJS background checks for all individuals providing emergency medical services.