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January 9, 2004

Thomas R. Frieden, M.D., M.P.H.
Commissioner
New York City Department of Health and Mental Hygiene
125 Worth Street
New York, NY 10013

Re: Report 2003-F-25

Dear Dr. Frieden:

Pursuant to the State Comptroller's authority as set forth in Article V, Section 1 of the State Constitution, Article II, Section 8 of the State Finance Law, and Article III of the General Municipal Law, we have reviewed the actions taken by officials of the New York City Department of Health and Mental Hygiene (DOHMH) as of November 14, 2003, to implement the recommendations contained in our audit report, *New York City Department of Health - Monitoring of Child Day Care* (Report 2000-N-20). Our report, which was issued on February 25, 2002 addressed DOHMH's system to account for and resolve complaints, and DOHMH's practices to confirm that day care providers properly screen the background and health of employees.

Background

DOHMH, through its Day Care Program (Program), regulates providers of child day care services in New York City (City). As of August 2003, there were approximately 13,700 day care providers in the City, including 1,942 Group Day Care Providers.

Group Day Care Providers, commonly referred to as Day Care Centers, are regulated by Article 47 of the City Health Code of New York (Code). The other three groups of providers (School-Age Child Care, Group Family Day Care, and Family Day Care) are governed by the New York State Social Services Law (State law). The New York State Office of Children and Family Services (OCFS) has oversight responsibility for the three categories of providers governed by State law, but has delegated such responsibilities (with the exception of enforcement action) by way of a contract, to DOHMH. This contract and the relevant Code and State law establish the standards that providers are required to follow regarding the physical facility, the qualifications of staff, and the supervision and education of children. DOHMH is responsible for issuing permits, registrations and licenses; monitoring compliance with the Code and State law; and enforcing the requirements at Day

Care Centers and recommending enforcement measures to OCFS for the other three categories of providers.

DOHMH staff members assess the day care provider's overall program (emphasizing education and supervision of children) and monitor environmental conditions at the facilities that can affect the safety of children. The assessment includes verifying that the provider is employing individuals who meet screening requirements (criminal background check and clearance from the State Central Registry of Child Abuse and Maltreatment), and is requiring both employees and children served to have appropriate annual physical examinations and immunizations.

Summary Conclusions

In our prior audit, we identified DOHMH's need for a central record keeping system that accounts for complaints received and records key information, including the results of DOHMH's investigations. In addition, we found instances where DOHMH issued violations, but allowed day care centers to continue operating even though they did not meet certain licensing requirements, such as obtaining an approved certificate of occupancy, hiring qualified staff, performing criminal background checks and obtaining clearance from the State Central Registry of Child Abuse and Maltreatment for each staff member.

In our follow-up review, we determined that DOHMH officials have made progress in implementing the recommendations contained in our audit report. DOHMH is deploying a central record keeping system, the new statewide Child Care Facility System (CCFS), that addresses the need for a complaint-processing and accountability system. DOHMH has also reduced the number of unlicensed day care centers. However, DOHMH officials need to make additional efforts to ensure that day care centers comply with requirements concerning screening of center staff.

Summary of Status of Prior Audit Recommendations

Of the four prior audit recommendations, DOHMH officials have implemented two recommendations, partially implemented one recommendation, and have not implemented one recommendation.

Follow-up Observations

Recommendation 1

Develop a complaint-processing and accountability system capable of:

- filing and categorizing all complaints,*
- tracking the status of complaints to ensure that they are investigated within the required time frames,*
- monitoring actions taken to resolve the issues raised, and*
- facilitating reporting of results.*

Status – Implemented

Agency Action – DOHMH is deploying a central record keeping system, the new statewide CCFS system. DOHMH officials stated the CCFS complaint system will make the tracking of all aspects of the complaint process readily available to appropriate supervisors and will allow central office management to monitor the status, disposition and timeliness of response to complaints. We saw evidence that day care program staff has received manuals and training in CCFS. We also observed that the complaint system component of CCFS is partially activated and has complaint log and additional features that are consistent with this recommendation.

Recommendation 2

Ensure the complaint coordinator reviews all investigation reports for completeness, accuracy and consistency.

Status – Not Implemented

Agency Action – In response to our prior report, DOHMH officials indicated that until CCFS is operational, they would institute a manual log book tracking system to assure that all complaints are reviewed appropriately and in a timely manner. However, we determined that no manual log book system is used. Although DOHMH officials stated that the complaint coordinator reviews completed investigation reports, they acknowledged that this review could not be confirmed since there is still no requirement for the complaint coordinator to document his review. According to DOHMH officials, once CCFS is fully operational, there will be no complaint coordinator since the supervisors of the various complaint responders will review the inspection reports. Consequently, this recommendation will no longer apply once CCFS is fully operational. However, CCFS is not fully operational at this time.

Recommendation 3

Establish compliance time frames within which unlicensed centers must comply with the Code. Take action to close unlicensed centers that do not meet the Code and whose operations present health and safety concerns.

Status – Implemented

Agency Action – DOHMH officials advised they have instituted a policy whereby, on a case-by-case basis subject to management review, a day care provider with a lapsed license may be allowed up to six months to comply with licensing requirements, and cases beyond this time frame are referred to the DOHMH legal office for enforcement action. Day Care Program officials explained that in implementing this policy, they ensure there are no safety hazards to children while permitting providers flexibility in complying with regulations. We note that this policy is not in writing.

DOHMH has substantially reduced the number of unlicensed centers. Officials advised there were 168 unlicensed providers at the time of our prior report. According to DOHMH's Bureau of Day Care Monthly Report, there were 18 unlicensed providers as of August 2003.

Day Care Program officials advised us of the reasons these providers were not licensed at that time. As of November 2003, only 3 of those 18 providers remain unlicensed.

Recommendation 4

Follow up with centers to ensure that they comply with the requirements of the Code as they relate to the screening of center staff.

Status – Partially Implemented

Agency Action – The prior audit reviewed DOHMH's Day Care Program folders and identified five centers that did not properly screen staff members. In response to our prior audit, DOHMH officials stated they assure that all employees are screened by reviewing the screenings during site inspections, and assure that these reviews are documented in each site's case folder.

During our follow-up review, we again obtained records at Borough offices and examined screening of staff by the same five centers identified during the prior audit that did not properly screen staff members prior to hiring them. We found four of the centers still did not screen employees for SCR clearance and NYC Department of Investigation fingerprint results before they were hired. We observed instances where, shortly after a DOHMH visit, the centers screened employees that had not been properly screened. However, we also found instances where the deficiencies were not promptly corrected.

Major contributors to this report were Allen Cohen, Tenneh Blamah and Unal Sumerkan.

We would appreciate your response to this report within 30 days, indicating any actions planned or taken to address any unresolved matters discussed in this report. We also thank the management and staff of DOHMH for the courtesies and cooperation extended to our auditors during this review.

Very truly yours,

Kevin M. McClune
Audit Director

cc: Charles Troob