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September 28, 2004

Antonia C. Novello, M.D., M.P.H., Dr. P.H.
Commissioner
Department of Health
Corning Tower
Empire State Plaza
Albany, NY 12237

Re: Report 2003-F-41

Dear Dr. Novello:

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 have followed up on the actions taken by officials of the Department of Health (Department), to implement the recommendations contained in our audit report, *Nursing Home Complaints* (Report 2001-S-36).

Background, Scope and Objectives

The Public Health Law requires the Department to investigate and resolve reported complaints of physical abuse, mistreatment and neglect of persons in residential health care facilities and to report to the Governor and the Legislature on such incidents no later than March 15 of every year. The Federal Centers for Medicare and Medicaid Services (Federal Centers) established time frames for initiating complaint investigations and identified information that should be provided to and collected from complainants. The Department's Division of Quality Assurance and Surveillance for Nursing Home and Intermediate Care Facilities (Division) processes and investigates nursing home complaints and maintains a central office in Albany as well as four regional offices. As of December 2003, 682 nursing homes were operating in New York State. The Division received a total of 8,296 complaints during the 2003 calendar year.

Complaints are received and triaged (classified) as to their nature and severity by central office staff. Complaints alleging a resident's health or safety is in immediate jeopardy must be investigated within two working days. Central office staff enters complaints into the Department's Uniform Complaint Tracking System (Tracking System

or UCTS), and then forwards them electronically to the appropriate regional office for investigation.

Our initial audit report, which was issued on July 24, 2002, examined the practices used by the Department to determine if the Division investigates complaints in a timely and thorough manner, if the Division ensures that all complaints received are properly recorded and accurately triaged, and if the Department reports annually on nursing home complaints.

Our report identified a number of weaknesses as many of the investigations we reviewed were not initiated promptly, particularly in New York City. We further found that many of the allegations may not have been investigated thoroughly, as the actions of the Department investigators were not documented. Moreover, some allegations were not investigated at all, as Division investigators relied instead on the nursing homes' own internal investigations. Also, the Division had no formal disaster recovery plan in place for their Tracking System, and there were no written procedures for receiving and responding to complaints if the Tracking System were to fail. In addition, since 1998, the Department had not prepared the required annual reports on incidents of physical abuse, mistreatment and neglect of persons receiving care or services in residential health care facilities. We concluded the Department needed to make improvements to ensure all complaints made are properly recorded, accurately triaged and annually reported to the Governor and the Legislature. The objective of our follow-up, which was conducted in accordance with generally accepted government auditing standards, was to assess the extent of implementation as of January 30, 2004 of the 11 recommendations included in our initial report.

Summary Conclusions and Status of Audit Recommendations

We found Division officials have made some progress in implementing our prior audit recommendations. Nevertheless, additional actions should be taken to achieve full implementation of the recommendations. Division officials have taken steps to reduce the backlog of cases; certify all active investigators; ensure cases are recorded and triaged appropriately; improve the accuracy of the tracking system; and develop formal written procedures for disaster recovery and continued operations in the event of a failure by the system. However, cases are still assigned to individuals who are not performing investigations, and some investigators are not certified even though they have enough experience to qualify for the certification test. Also, the Division has not taken any steps to ensure that complaints are forwarded to the proper regional office, and has not issued any of the required annual reports.

Of the 11 prior audit recommendations, Department officials have implemented 4 recommendations, partially implemented 2 recommendations, and did not implement 5 recommendations.

Follow-up Observations

Recommendation 1

Take steps to ensure complaint investigations are initiated in a timely manner and are thorough. Maintain documentation of investigations in the case files.

Status - Not Implemented

Agency Action - Surveillance Reports from the tracking system are now being generated on a monthly basis. These reports list the number of cases that were not initiated within the required time frames. If these statistics are not favorable, the regional offices are required to provide explanations to the central office. However, the reports do not address whether complaints, other than two-day and ten-day complaints, are initiated within the expected time frames. Furthermore, officials could not provide verification that the reports are discussed with regional offices.

Additionally, the Division created a task force to reduce the backlog in the New York City local office of the Metropolitan Area Regional Office (MARO), and created a Complaint Resolution Bureau to close cases that are self-reported by a nursing home, where a thorough investigation has been done and corrective action has been taken. According to the Federal Centers, these cases can be closed without an on-site investigation.

The Director of Investigations visits NYC approximately every two weeks to review 10 to 15 randomly selected closed cases for both content and decision-making. When we asked for evidence of these reviews and feedback provided, officials could not provide evidence these reviews had taken place.

Recommendation 2

Provide additional training to Division staff and managers regarding:

- *the need to update UCTS data in a timely manner;*
- *the importance of entering and maintaining accurate data on UCTS; and*
- *how to use reports available on UCTS for tracking the status of complaint investigations and for monitoring local office performance.*

Status - Implemented

Agency Action - Although the Department did not provide any formal staff training, officials have issued an information Tracking System Bulletin #02-1 dated January 7, 2002 which indicated the minimum milestones that must be updated on the tracking system along with definitions of each field. These milestones are to be updated within two working days of their completion.

We were provided with surveillance reports which are reviewed by both central office and regional office staff members. These reports indicate, for each regional office, how many cases have not been initiated in a timely manner and how many have been open for an extended period of time. If these numbers are not favorable, the regional offices are required to provide explanations to the central office.

Recommendation 3

Establish time standards for closing cases and monitor the performance of the regional offices in meeting these standards.

Status - Partially Implemented

Agency Action - We reviewed the Tracking System bulletin issued during our previous audit period, dated January 7, 2002. In this memo, Department officials formally established 180 days as the time frame within which investigations should be closed. The regional offices are required to explain to the central office why cases are open for more than 180 days, as reported in the monthly surveillance reports. However, staff at central office are not following up to ensure that the regions are responding to all the issues identified in the surveillance reports.

Recommendation 4

Identify and assign all open cases to investigators and reassign to active investigators any cases that have been assigned to non-active investigators.

Status - Not Implemented

Agency Action - According to central office officials, they generate a monthly report of all cases unassigned in the Tracking System. These reports are then forwarded to the regional offices for assignment. However, the central office does not follow up to ensure that the regional offices actually assign the unassigned cases.

At the time of our prior audit, a total of 865 open cases were not assigned to investigators. During our follow-up review, Tracking System reported, 16 open cases were unassigned. Division officials informed us that 11 of these 16 cases had actually been assigned, but the assignment was not recorded on the system. They further informed us that one of the remaining five cases had been withdrawn, but the withdrawal of the case had not been recorded on the system. The remaining four cases were unassigned, and had been open for 6, 321, 326 and 484 days. We also determined that, according to the Tracking System, 109 open cases were assigned to 32 non-active investigators. These cases ranged from 0 to 621 days old.

Recommendation 5

Take steps to ensure that all complaint investigators are SMQT [Surveyor Minimum Qualifications Test] certified.

Status - Not Implemented

Agency Action - As of September 2003, 11 of the 106 active investigators statewide, who were assigned to open cases were not certified. Ten of the 11 non-certified investigators were from MARO. However, 9 of these 11 investigators had been hired within the past 12 months and investigators are not eligible to take the certification test until they have had at least six months of experience. The other two uncertified investigators were hired in April 1975 and November 1994, and were assigned a total of 28 cases.

Section 4009.1 of the Health Care Facilities Act (HCFA) State Operations Manual states, "New hires must successfully complete an orientation program approved by HCFA within the first twelve months of employment. No individual may serve on a survey team until he or she fulfills this requirement, except for a trainee who is accompanied by a surveyor who has completed the training." The Federal Centers considers complaint investigations abbreviated surveys; therefore, investigators should be certified.

Recommendation 6

Take steps to ensure all complaints received are forwarded to the proper regional office for investigation.

Status - Not Implemented

Agency Action - Our initial audit identified two complaints alleging physical abuse that were sent to the New Rochelle office instead of the Hauppauge office. As a result of this error, the investigations of these two complaints were delayed. Despite the two errors identified in our prior audit, we found no action had been taken to prevent such errors from recurring in the future.

Recommendation 7

Take steps to ensure Division staff comply with written policies and procedures for the proper receipt of nursing home complaints.

Status - Implemented

Agency Action - We assessed the current protocols for Division's Centralized Complaint Intake Program (Intake Program) operations and found they are adequate and meet federal centers standards. Supervisory personnel perform periodic quality assurance reviews for accuracy, completeness and appropriate triage decisions.

Results of these reviews are addressed at biweekly staff meetings. In addition, staff complete these quality assurance reviews on each other as a peer review process. We reviewed a sample of these quality assurance reviews to determine if they were complete and found them acceptable to support this procedure.

Recommendation 8

Establish procedures and controls to ensure that Division intake staff:

- *provide complainants with all required information;*
- *solicit necessary information from complainants; and*
- *acknowledge the receipt of all complainants.*

Status - Implemented

Agency Action - We reviewed the Intake Program's procedures and found them to meet the standards required by the Federal Centers. The procedures require Nursing Home Complaint Hotline staff to solicit specific information from complainants and enter it directly into the tracking system while the complainant is still on the phone. To ensure the information obtained is complete, Complaint Intake/Triage Quality Assurance reviews are performed periodically. In these reviews, an assessment is to be made of the completeness, accuracy and appropriateness of triage decisions. For example, the reviewer determines whether all the required information was solicited from and provided to the complainant. In addition, an acknowledgement letter is to be sent to the complainant, and the investigator is to contact the complainant when the complaint is received at the regional field office.

Recommendation 9

Conduct periodic reviews of sampled complaints to determine if they have been properly triaged, and provide staff with additional training or instruction on the triage process as needed.

Status - Implemented

Agency Action - The Division implemented new procedures that require the Intake Program director to periodically select complaints from the tracking system and perform a Complaint Intake/Triage Quality Assurance review. Staff members also perform such reviews on one another. The issues found during these reviews are addressed during biweekly staff meetings. We reviewed a sample of these quality assurance reviews to determine if they were complete and found them acceptable to support this procedure.

Recommendation 10

Provide all Division staff with copies of the policies and procedures for complaint processing in the event of UCTS or regional computer malfunction and UCTS disaster recovery.

Status - Partially Implemented

Agency Action - We determined the computer malfunction/disaster recovery policies and procedures would allow for the complaint processing continuing in the event that the Tracking System was not available. However, Division staff has not been provided with copies of these policies and procedures. As a result of our follow-up, officials indicated that they will require an acknowledgment sheet for employees to sign to document that they are aware of all new policies and procedures.

Recommendation 11

Prepare annual reports by March 15 of each year as required by the Public Health Law.

Status - Not Implemented

Agency Action - The Department has not complied with the requirement to prepare annual reports since 1998. Department officials have indicated that they intend to issue a comprehensive report covering 1999 through 2003. However, as of January 30, 2004, no report has been issued.

Major contributors to this report were Walter Irving, Tom Kulzer and Wendy Matson.

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 Division management and staff for the courtesies and cooperation extended to our auditors during this process.

Yours truly,

David R. Hancox
Audit Director

cc: Robert Barnes, Division of the Budget
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