



# Office of Mental Health

## Oversight of Criminal History Record Checks for Service Provider Employees

Report 2008-S-87



Thomas P. DiNapoli



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# State of New York Office of the State Comptroller

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## Division of State Government Accountability

July 2, 2009

Dear Dr. Hogan:

The Office of the State Comptroller is committed to helping State agencies, public authorities and local government agencies manage government resources efficiently and effectively and, by so doing, providing accountability for tax dollars spent to support government operations. The Comptroller oversees the fiscal affairs of State agencies, public authorities and local government agencies, as well as their compliance with relevant statutes and their observance of good business practices. This fiscal oversight is accomplished, in part, through our audits, which identify opportunities for improving operations. Audits can also identify strategies for reducing costs and strengthening controls that are intended to safeguard assets.

Following is a report of our audit of the Office of Mental Health entitled “Oversight of Criminal History Record Checks for Service Provider Employees.” This audit was performed pursuant to the State Comptroller’s authority under Article V, Section 1 of the State Constitution and Article II, Section 8 of the State Finance Law.

This audit’s results and recommendations are resources for you to use in effectively managing your operations and in meeting the expectations of taxpayers. If you have any questions about this report, please feel free to contact us.

Respectfully submitted,

*Office of the State Comptroller  
Division of State Government Accountability*





## State of New York Office of the State Comptroller

### EXECUTIVE SUMMARY

#### **Audit Objective**

The objective of our audit was to determine whether the Office of Mental Health provided adequate oversight to ensure that service provider employees received required criminal history record checks.

#### **Audit Results - Summary**

The Office of Mental Health (OMH) provides inpatient and outpatient services for approximately 500,000 persons with mental illness each year. OMH operates 27 psychiatric centers throughout the State and regulates, certifies and oversees affiliated programs operated by private nonprofit service providers (service providers). As of May 2008, OMH records report 474 service providers administering 1,719 licensed programs.

According to the Executive Law and the Mental Hygiene Law (Law), persons with a criminal history of violence, abuse, or sexual assault are prohibited from working closely and/or unsupervised with persons who are mentally ill. As such, prospective employees of OMH and its service providers are required to undergo a criminal history record check (CHRC) prior to their employment. OMH's Bureau of Criminal History Information (Bureau) is responsible for forwarding the fingerprints of service provider employees to the NYS Division of Criminal Justice Services and the Federal Bureau of Investigation which perform the actual CHRCs. The results are posted to the Bureau's Criminal History Information Tracking System (database) and made available to designated employees of service providers for use in their hiring decisions. Between April 1, 2005 and April 28, 2008, OMH facilitated more than 42,000 CHRCs. Less than one percent of the applicants (about 294) were denied employment by service providers based on the nature of their respective criminal histories.

Bureau staff is also responsible for performing on-site (full regulatory) reviews of service providers to determine their compliance with CHRC requirements. We found that the OMH has been providing adequate oversight to ensure that service provider employees receive the required criminal history record checks.

We judgmentally selected the files supporting eight of the reviews performed by Bureau staff during the audit period. For each of the eight files, we determined whether the Bureau's established review procedure steps were being followed, determined whether the correct number of service provider employees was selected for review, and assessed the accuracy of the noted findings. We

found the files for each of the sampled reviews adequately documented the procedure steps used to assess service provider compliance, included the correct number of employees for review, and properly identified the review results. We also found that the Bureau took follow up action when it was determined that a service provider did not fully comply with review recommendations.

As an additional step to assess the adequacy of Bureau reviews, we performed our own on-site reviews at two randomly selected service providers, which had already been subject to a full regulatory review by Bureau staff. We obtained the employee rosters for these two providers and traced employee names to the Bureau's database to ensure their CHRCs were performed. For one of these providers, we found that two of its employees had not received their respective CHRC until after each was hired. When we looked at the Bureau's own files for these providers, we found that both of these instances had been identified and addressed by Bureau staff.

Our report contains two recommendations addressing continued OMH compliance and periodic reassessment of its oversight policies and procedures. OMH officials agreed with our recommendations.

This report, dated July 2, 2009, is available on our website at: <http://www.osc.state.ny.us>.

Add or update your mailing list by contacting us at (212) 474-3271 or

Office of the State Comptroller

Division of State Government Accountability

110 State Street, 11<sup>th</sup> Floor

Albany, NY 12236

# INTRODUCTION

## **Background**

The Office of Mental Health (OMH) provides inpatient and outpatient services for approximately 500,000 persons with mental illness each year. OMH services include patient emergencies, community support, and residential and family care programs. OMH operates 27 psychiatric centers throughout the State and regulates, certifies and oversees affiliated programs operated by private nonprofit service providers (service providers). As of May 2008, OMH records report 474 service providers administering 1,719 licensed programs.

According to the Executive Law, Section 845-b, and the Mental Hygiene Law, Section 31.35, a/k/a Criminal History Record Check Law (Law), persons with a criminal history of violence, abuse, or sexual assault are prohibited from working closely and unsupervised with persons who are mentally ill. As such, prospective employees of OMH and its service providers (including volunteers) who will have, by virtue of their employment, regular and substantial unsupervised or unrestricted physical contact with persons with mental illness, are required to undergo a criminal history record check (CHRC).

Service provider job applicants are instructed by their prospective employers to have themselves fingerprinted and to submit their fingerprints and associated paperwork (e.g., authorization form, etc.) to OMH's Bureau of Criminal History Information (Bureau). The Bureau is responsible for forwarding the fingerprints to the NYS Division of Criminal Justice Services and the Federal Bureau of Investigation which respectively perform the actual state-wide and nation-wide CHRCs. When the results are returned to the Bureau, they are posted to the Bureau's Criminal History Information Tracking System (database) and made available to designated employees of service providers for use in their hiring decisions.

According to the OMH, between April 1, 2005 and April 28, 2008, the OMH facilitated more than 42,000 CHRCs. About 12 percent of the applicants during this time period (5,040) were found to have a criminal history. However, less than one percent of the applicants (about 294) were denied employment by service providers based on the nature of their respective criminal histories.

Bureau staff is also responsible for performing on-site (full regulatory) reviews of service providers to determine their compliance with CHRC requirements. At the completion of each review, the Bureau submits a report to the respective service provider with identified deficiencies (e.g., employees

who did not receive a CHRC but should have, etc.) and recommendations for corrective action as appropriate. Service providers have 30 days to respond with a written plan to correct the identified deficiencies.

**Audit  
Scope and  
Methodology**

Our audit determined whether OMH provided adequate oversight of service provider compliance with employee criminal history record check requirements. Our audit covered the period May 1, 2007 through October 31, 2008.

To accomplish our objective, we interviewed OMH and service provider officials, and reviewed applicable Law and regulations. We also selected the files supporting eight full regulatory reviews performed by the Bureau (one for each reviewer) to determine whether the reviews complied with approved procedures, to assess the accuracy of findings identified by the Bureau, and to evaluate the follow up action taken. We also performed our own reviews of two providers previously reviewed by the Bureau to determine whether our observations agreed with those of Bureau staff . Our review consisted of a comparison of service provider employee names to the information posted on the Bureau’s criminal history information tracking system (database).

We conducted our performance audit in accordance with generally accepted government auditing standards. Those standards require that we plan and perform the audit to obtain sufficient, appropriate evidence to provide a reasonable basis for our findings and conclusions based on our audit objectives. We believe that the evidence we obtained during this audit provides a reasonable basis for our findings and conclusions based on our audit objectives.

In addition to being the State Auditor, the Comptroller performs certain other constitutionally and statutorily mandated duties as the chief fiscal officer of New York State. These include operating the State’s accounting system; preparing the State’s financial statements; and approving State contracts, refunds, and other payments. In addition, the Comptroller appoints members to certain boards, commissions and public authorities, some of whom have minority voting rights. These duties may be considered management functions for purposes of evaluating organizational independence under generally accepted government auditing standards. In our opinion, these functions do not affect our ability to conduct independent audits of program performance.

**Authority**

The audit was performed 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.

**Reporting Requirements**

A draft copy of this report was provided to OMH officials for their review and comment. Their comments were considered in preparing this final report and are attached in their entirety.

Within 90 days of the final release of this report, the Commissioner of OMH shall report to the Governor, State Comptroller, and the leaders of the Legislature and fiscal committees, explaining the actions taken by OMH officials to implement the recommendations contained herein, and where not implemented, the reasons therefor.

**Contributors to the Report**

Major contributors to this report include Frank Patone, Michael Solomon, Brian Lotz, Scott Heid, Mark Radley, Andrew Davis and Sue Gold.



## Audit Findings and Recommendations

### Monitoring Service Provider Compliance

In 2005, upon enactment of the Law, Bureau officials initially established a policy of performing full regulatory reviews of each service provider once every two years. According to Bureau officials, they chose the biennial schedule without the benefit of experience or prior identified risks since the requirement to perform the reviews was new and the anticipated outcomes of the reviews were unknown. However, now that the Bureau has been performing reviews for a few years, and staff has become familiar with the length of time it takes to perform a review and the nature of deficiencies identified, Bureau officials have decided to extend the general time period between reviews to three years. According to the Bureau's database, the Bureau performed 339 full regulatory reviews during the two-year period ended October 31, 2008.

To determine whether Bureau reviews are effective in identifying instances of provider noncompliance, we judgmentally selected the files supporting eight of these reviews (one for each Reviewer). For each of the eight files, we determined whether Bureau staff followed established review procedure steps, whether the correct number of service provider employees was selected for review, and whether correct findings were reported. We found the files for each of the sampled reviews adequately documented the procedure steps used to assess service provider compliance, the correct number of employees was selected for review, and the corresponding results were accurate. Four of the eight reviews identified service providers that hired individuals prior to obtaining their respective CHRCs contrary to OMH regulations. The reviewer's findings were reported in writing to the service providers, and the providers' corrective action plans addressed those findings.

We also found that Bureau officials took follow up action when they determined that a service provider did not comply with their report recommendations. One of the files we reviewed documented an imposed fine of \$10,000 on a service provider which failed to do so.

As an additional step to assess the accuracy and effectiveness of Bureau reviews, we performed our own on-site reviews at two randomly selected service providers. These providers had already been subject to a full regulatory review by Bureau staff within the audit period.

To perform our review, we obtained the employee rosters for these two providers and traced their names to the Bureau's database to ensure their CHRCs were performed. At one of the providers, we found that all 77 of their employees requiring CHRCs received them, and the database results did not

prohibit them from being hired. However, at the other provider reviewed, although all 50 of their employees who should have received CHRCs received them, for two employees the CHRCs were not performed prior to their being hired. For one of these employees the CHRC was performed 1.5 months after he was hired, and for the other employee the CHRC was performed three months after he was hired. When we looked at the Bureau's own review files for these providers, we found that both of these instances had been identified and addressed by Bureau staff. Upon Bureau follow up, it was determined that these two employees were previously employed by the service provider so the service provider assumed the previous CHRCs performed for their initial employment would suffice. Bureau staff informed the provider that a CHRC was required each time an employee is hired. As a result, the provider submitted the necessary paperwork so the updated CHRCs could be performed.

We also note that OMH's Bureau of Inspection and Certification, which performs its own reviews of providers to assess their compliance with program licensing requirements, includes CHRCs as part of its own reviews. Their findings, if any, are shared with Bureau staff for follow up as appropriate.

We conclude that OMH is providing adequate oversight to ensure that service provider employees receive criminal history record checks as required.

**Recommendations**

1. Continue providing adequate oversight of service provider compliance with CHRC requirements.
2. Periodically revisit the Bureau's oversight policy and ensure that the frequency of its full regulatory reviews of service providers remains effective.

# AGENCY COMMENTS



State of New York  
David A. Paterson  
Governor

**omh** Office of Mental Health  
44 Holland Avenue  
Albany, New York 12229  
[www.omh.state.ny.us](http://www.omh.state.ny.us)

June 11, 2009

Frank Patone, CPA  
Audit Director  
Office of the State Comptroller  
Division of State Government Accountability  
123 William Street, 21st Floor  
New York, NY 10038

Dear Mr. Patone:

The Office of Mental Health has reviewed the Office of the State Comptroller's draft audit report entitled, "Office of Mental Health: Oversight of Criminal History Record Checks for Service Provider Employees" (2008-S-87). We are pleased that OSC concluded "that OMH is providing adequate oversight to ensure that service provider employees receive criminal history record checks as required."

OMH agrees with both of the report's recommendations. For the first recommendation we will continue to provide adequate oversight of service provider compliance with CHRC requirements. For the second recommendation OMH will periodically review the oversight policy and ensure that the frequency of full regulatory reviews of service providers remains effective.

Thank you for your efforts to make recommendations which further enhance our operations.

Sincerely yours,

A handwritten signature in cursive script that reads "Bruce E. Feig".

Bruce E. Feig  
Executive Deputy Commissioner