

NEW YORK STATE OFFICE OF THE STATE COMPTROLLER

**H. Carl McCall
STATE COMPTROLLER**



***NEW YORK CITY DEPARTMENT OF HEALTH
MONITORING OF CHILD DAY CARE***

2000-N-20

**DIVISION OF MANAGEMENT AUDIT AND
STATE FINANCIAL SERVICES**

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H. Carl McCall
STATE COMPTROLLER

Report 2000-N-20

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

Dear Dr. Frieden:

The following is our report on selected aspects of the New York City Department of Health's monitoring of child day care.

This audit was performed 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. Major contributors to this report are listed in Appendix A.

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

February 25, 2002

Division of Management Audit and State Financial Services

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EXECUTIVE SUMMARY

NEW YORK CITY DEPARTMENT OF HEALTH MONITORING OF CHILD DAY CARE

SCOPE OF AUDIT

The New York City Department of Health (DOH) regulates the more than 20,000 providers of child day care services in New York City (City). DOH is responsible for issuing permits, registrations and licenses; monitoring compliance with standards; and taking certain enforcement actions. DOH employs inspectors to monitor day care. DOH has a central office and three field offices.

Our audit addressed the following questions relating to DOH's monitoring of day care for the period July 1, 1998 through May 31, 2001:

- Does DOH have an adequate system that accounts for and resolves complaints?
- Does DOH confirm that day care centers ensure the proper screening of employees' background and health?

AUDIT OBSERVATIONS AND CONCLUSIONS

To establish appropriate control over the complaint process, DOH should have a central record keeping system that accounts for complaints and records key information. We found that DOH does not have a central system that accounts for all complaints received, including the results of DOH's investigations. As a result, DOH cannot readily determine the status or disposition of complaints received, and lacks assurance that all complaints have been appropriately accounted for and addressed. (See pp. 5-7)

DOH has guidelines establishing the time frame that complaints should be responded to, based on the nature of the complaint. Complaints are required to be rated as to their seriousness. However, 12 of the 60 complaints (20 percent) received in DOH's central office during the month of November 2000 had not been rated. In our judgment, two of these complaints would have been rated as "A" complaints, because they presented imminent hazards to the children. While these complaints were investigated by the next day of business operations, as required, DOH's failure to rate the complaints increases the risk of untimely investigation. Further, 36 of the 60 complaints (60 percent) were not investigated

within the required time frames. It took investigators two and five days, respectively, to investigate two “A” complaints of imminent danger. Thirty-one “B” complaints of a more routine nature, which should be resolved in ten or 15 working days, took from 11 to 100 days to resolve. In addition, investigation reports are required to be reviewed by the complaint coordinator to ensure that the inspectors properly addressed the complaints. However, investigation reports were not reviewed for 18 of 60 complaints we analyzed. As a result, we found deficiencies and inconsistencies in the investigations and the subsequent reports on those investigations. (See pp. 7-9)

Day Care Centers are required to be licensed. We found two instances from our sample of 60 complaints where DOH, through the investigation process, had identified unlicensed centers and had issued violations against those centers, but nevertheless had not closed their operations. DOH allowed these centers to continue operating even though they did not meet certain licensing requirements, such as obtaining an approved certificate of occupancy or hiring qualified staff. (See pp. 9-10)

Day Care Centers must arrange for staff to be screened by the New York City Department of Investigations for possible criminal background, obtain clearance from the State Central Registry of Child Abuse and Maltreatment for their staff, and ensure staff members have annual medical examinations. DOH is responsible for ensuring center compliance with these requirements. We identified five Day Care Centers that did not obtain all the necessary clearances for a total of 12 staff members prior to hiring them. The failure to properly screen these individuals could have exposed children in Day Care Centers to unsafe environments with caregivers who were unsuitable for their responsibilities. (See pp. 11-12)

Our report contains four recommendations to address these and other matters we identified during our audit.

COMMENTS OF DOH OFFICIALS

DOH officials stated they agree with three of the report’s four recommendations and intend to implement them. DOH officials did not agree with our recommendation as stated to establish firm time periods within which unlicensed centers must comply with the Health Code or be closed. A complete copy of DOH’s response is included as Appendix B to this report. Appendix C contains State Comptroller’s Notes, which address matters of disagreement included in DOH’s response.

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Major Contributors to This Report

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INTRODUCTION

Background

The New York City Department of Health (DOH), through its Day Care Program (Program), regulates providers of child day care services in New York City (City). There are four major groups of providers, based on the number of children they serve and the type of facility where the service is provided. At the time of our audit, there were more than 20,000 day care providers in the City, categorized as follows: 2,387 Group Day Care, 1,182 School-Age Child Care, 1,414 Group Family Day Care, and 15,572 Family Day Care.

Group Day Care providers, commonly referred to as Day Care Centers, which are governed by Article 47 of the City Health Code of New York (Code), offer care in a commercial facility for seven or more infants and children as old as six years. The other three groups of providers are governed by the New York State Social Services Law (State law). School-Age Child Care providers offer after-school programs/care in a commercial facility for groups of seven or more children aged 5 to 13 years. Group Family Day Care providers offer care in their own homes for 7 to 12 children aged 6 weeks to 12 years. Family Day Care providers also offer care in their homes for three to six children ages six weeks to six years.

The New York State Office of Children and Family Services (OCFS) has oversight responsibility for School-Age Child Care, Group Family Day Care and Family Day Care. However, OCFS has delegated its oversight responsibilities for these providers (with the exception of enforcement action) by way of a contract, to DOH. 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. DOH 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 concerning School-Age Child Care, Group Family Day Care and Family Day Care providers. In addition, DOH receives and investigates complaints about

licensed and unlicensed operators and offers technical assistance to individuals and organizations involved in day care in the City.

DOH employs two types of inspectors (Early Childhood Education Consultants and Public Health Sanitarians) to monitor day care. As of May 2001, DOH had 18 Early Childhood Education Consultants and 9 Public Health Sanitarians on its staff. The Early Childhood Education Consultants assess the provider's overall program with an emphasis on the education and supervision of children. This 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 that the provider is requiring both employees and the children served to have appropriate annual physical examinations and immunizations.

The Public Health Sanitarians focus on environmental conditions of the facility that will affect the safety of children. This focus includes monitoring for physical facility violations (child-specific hazards, such as peeling paint and rooftop fencing); ensuring proper food storage and handling; and ensuring adequate light, heat, ventilation and square footage.

For the fiscal year ended June 30, 2000, the Program had a City-funded budget of approximately \$2.2 million in addition to the \$3.2 million State contract it received for the 2001 calendar year from OCFS. DOH has a central office and three field offices that monitor the City's day care providers.

Audit Scope, Objectives and Methodology

We audited selected aspects of DOH's monitoring of day care during the period July 1, 1998 through May 31, 2001. The objectives of our performance audit were to determine whether DOH has an adequate system that accounts for and resolves complaints, and whether DOH confirmed that centers ensured the proper screening of employees' background and health. To accomplish our objectives, we selected and reviewed the 60 complaints received by DOH's central office during the month of November 2000. We selected November 2000 complaints because, according to DOH guidelines, the required investigations that would have been needed on those complaints should have been completed by April 2001, when we

initiated the review of these complaints. We reviewed DOH's guidelines; the City Code and State law; the provider folders maintained by DOH; selected materials maintained in day care centers' files; and complaints and inspection reports. We also visited the field offices (Manhattan/Bronx, Brooklyn/Staten Island and Queens) to assess the effectiveness of DOH's monitoring efforts.

As is our practice, at the outset of the audit we requested a representation letter from DOH management. The representation letter is intended to confirm oral representations made to the auditors and to reduce the likelihood of misunderstandings. Agency officials normally use the representation letter to assert that, to the best of their knowledge, all relevant financial and programmatic records and related data have been provided to the auditors. They affirm either that the agency has complied with all laws, rules and regulations applicable to its operations that would have a significant effect on the operating practices being audited, or that any exceptions have been disclosed to the auditors.

However, officials of the Mayor's Office of Operations have informed us that, as a matter of policy, Mayoral agency officials do not provide representation letters in connection with our audits. As a result, we lack assurance from DOH officials that all relevant information was provided to us during this audit. We consider this refusal to provide a representation letter to be a scope limitation on our audit. Therefore, readers of this report should consider the potential effect of this scope limitation on the findings and conclusions presented in the report.

Except as discussed in the preceding paragraphs, 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 DOH that were included within our audit scope. Further, these standards require that we understand DOH's internal control structure and its compliance with those laws, rules and regulations that are relevant to those 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

that our audit provides a reasonable basis for our findings, conclusions and recommendations.

We use a risk-based approach when selecting activities to be audited. This approach focuses our audit efforts on those operations identified through our preliminary survey as having the greatest probability for needing improvement. Consequently, by design, we use 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 DOH Officials

We provided draft copies of this report to DOH officials for their review and comment. We considered their comments in preparing this report; the comments are included as Appendix B. Appendix C contains State Comptroller’s Notes, which address matters of disagreement included in DOH’s response.

Within 90 days after the final release of this report, we request that the Commissioner of the New York City Department of Health report to the State Comptroller, advising what steps were taken to implement the recommendations contained herein, and where recommendations were not implemented, the reasons therefor.

COMPLAINT PROCESSING

In addition to performing periodic inspections, DOH relies on feedback (complaints) from the public, generally parents, to actively monitor the more than 20,000 day care providers in the City. The Code and DOH guidelines require DOH to investigate all complaints it receives. Most complaints are received at the central office, where a complaint coordinator is required to review and rate them based on their seriousness. There are instances when complaints are received in the field offices. DOH's practice is for field office personnel to record complaints received directly from the public and send these complaints to the complaint coordinator at the central office. This arrangement was established to ensure that the central office has all complaints. The complaint coordinator triages each complaint, adds his instructions as to the preferred investigation steps, and forwards the complaint to the appropriate field office. Inspectors at the field offices are responsible for performing an investigation, and for completing and sending an investigation report to the complaint coordinator. The complaint coordinator is responsible for reviewing the investigation report to determine whether the inspector took proper action. If the complaint was not handled in accordance with his instructions, the coordinator should require a re-investigation. In cases where the problems mentioned in a complaint persist, DOH may take legal actions if the complaint involves a Day Care Center. If the complaint involves one of the other groups of providers, DOH can only refer the matter, along with DOH's recommendation, to OCFS for legal action.

We tested DOH's compliance with the guidelines described above using the 60 complaints received by the central office in November 2000. We found that DOH lacks a system that ensures proper processing of complaints and did not comply with its guidelines. As a result, complaints and associated investigation reports were unaccounted for and sometimes unresolved.

Accountability Over Complaint Process

An effective system of internal control requires a record keeping system that provides accountability over the complaint process. Accordingly, DOH should have a central system for filing and monitoring complaints that records key information, such as date received, nature of the complaint, required action, resolution of complaints, etc.

We reviewed the 60 November 2000 complaints maintained in the central office to determine whether DOH had an effective record keeping system. We found that DOH did not have a central system that accounts for all complaints received. For example, in the central office, complaints are grouped in batches by the month, although we located many of the complaints in subsequent months' batches. The batches are neither recorded nor filed in an orderly fashion. In addition, of the three field offices, two had a filing system to account for complaints received; one (Brooklyn/Staten Island) did not have an adequate filing system. In this office, just 11 of the 29 November complaints that had been forwarded by the central office had been logged in as received. Sixteen of the remaining complaints were located in folders, but two complaints could not be located. In addition, we found two complaints, one at each of two field offices (Manhattan/Bronx and Brooklyn/Staten Island), that were apparently received by those offices directly from the public, but were never forwarded to the central office, as required.

Accountability over the complaint process was also weak as it related to the control over investigation reports. According to DOH's guidelines, after complaints are investigated, the investigation reports are required to be completed by inspectors and sent to the complaint coordinator at the central office. The complaint coordinator is required to attach the investigation report to the original complaint as evidence that the complaint had been resolved. During our review of the 60 November 2000 complaints, we found that 20 investigation reports had not been attached to the original complaints. We accounted for 19 of these reports (no investigation was performed on one complaint): 9 at the central office in complaint batches for subsequent months, and 10 at the field offices.

As a result of this lack of accountability over complaints and investigation reports, DOH cannot readily determine the status

or disposition of complaints received, and lacks assurance that all complaints have been appropriately accounted for and addressed.

Complaint Resolution

DOH has guidelines to manage the processing of complaints received. These guidelines include a rating system, time frame for investigations, review and follow-up of investigations, and enforcement actions to be taken against providers. The complaint coordinator is required to review each investigation report to verify that appropriate actions had been taken and the complaint had been resolved. However, we found that DOH does not follow its guidelines, as follows.

Complaints Are Not Rated or Investigated on a Timely Basis

DOH has guidelines that establish the time frame that complaints should be responded to, based on the nature of the complaint. According to the guidelines, complaints fall into two categories or ratings, A and B. Complaints rated “A” are considered as imminent hazards to the children and require immediate investigations of the facility no later than the next day of program operation. Complaints rated “B” are considered routine and should be investigated within either ten or 15 working days, depending on the category of care provided. (According to DOH officials, the 10 day criterion is an internal DOH goal, which has been set as a target for improved performance. The State standard is 15 working days.)

We found that DOH’s guidelines were not followed. Of the 60 November 2000 complaints we reviewed, 12 had not been rated by the complaint coordinator, as required. Eleven of these non-rated complaints were investigated from 1 to 22 business days following their receipt at the central office. One was never investigated. After reading the complaints, we concluded that two complaints should have been rated as “A” complaints. Both of these complaints were investigated by the next day of program operations, as required. However, we believe that by failing to rate complaints, DOH increases the risk that complaints alleging imminent hazards might not receive the priority they require. For the remaining nine investigated unrated complaints, we concluded that they should have been

rated as “B” complaints. Three of these complaints were not investigated within the required ten-day period.

Of the 48 rated complaints, 33 were not investigated within the required time frame. Two “A” complaints were included in the 33. It took two days to investigate one “A” complaint and five days to investigate the other “A” complaint. The remaining 31 complaints were “B” complaints and were investigated in the range of 11 to 100 days. When complaints are not investigated in a timely manner, conditions that precipitated the complaints may persist, exposing children to unnecessary dangers.

Review and Follow-up of Investigations

The complaint coordinator plays a key role in ensuring that complaints are properly resolved. According to DOH guidelines, he should review each investigation report to ensure that the inspectors addressed his concerns about the complaints and followed through on his instructions when performing the investigation. As part of the review, the coordinator should check the investigation reports for completeness and consistency. We found that the coordinator does not always review the reports. Eighteen investigation reports related to the 60 November complaints had no indication that they had been reviewed. As a result, we found deficiencies and inconsistencies in the investigations and the subsequent reports on those investigations.

For example, the investigations for three complaints were performed at the wrong time of the day. In one instance, the inspector went to the provider’s facility at 12:20 p.m. to inspect an after-school program, despite a note in a prior investigation report that the program opened after 3:00 p.m. In two other instances, the complaint referred to a particular address, but the inspector went to investigate at the wrong address. In addition, we reviewed two complaints stating that the Day Care Centers did not have heat. For one of the complaints, the inspector issued a violation to that center, while the inspector that investigated the other complaint did not issue a violation. (A violation is issued when a center is not operating according to the Code, and requires the operator to attend a hearing before a judge where the provider may be assessed a fine.)

Furthermore, the contents of the 59 investigation reports varied. Some were detailed and covered all issues raised in the

complaints, while others, in our opinion, did not provide enough information about conditions found at the facility and actions taken by the inspector during the investigation. We also found six reports indicating that, in the inspector's judgment, a follow-up inspection of the facility should be performed. However, no one performed the recommended follow-up inspection.

In response to our preliminary audit findings, the complaint coordinator acknowledged these problems and stated that he was inundated with other work that limited his review of investigation reports. We believe, however, that the purpose of the review of investigation reports is to ensure that all complaints against day care facilities have been properly investigated and corrective actions have been taken. The complaint coordinator should review investigation reports to ensure that the process has reached its desired conclusion. Otherwise, complaints might not be properly resolved, exposing children to unsafe conditions over extended periods of time.

Centers Allowed to Operate Without a License

According to the Code, "Upon finding reasonable cause to believe that a day care service is operating in a manner, or is maintaining a condition, which constitutes a detriment or danger to the health or safety of the children or staff, the Commissioner may order such day care service to close and discontinue operation." We found two instances from our sample of 60 complaints where DOH, through the investigation process, had identified unlicensed Day Care Centers and had issued violations against them, but had not taken effective and timely corrective actions to bring the centers into compliance with the Code or to seek closure of their operations.

One Day Care Center had been operating unlicensed for over one year before DOH issued a violation on October 18, 2000. The operator paid a fine of \$900. However, DOH allowed the center to continue operating even though it did not meet the licensing requirements, including obtaining an approved certificate of occupancy, screening new employees or hiring qualified staff. As of May 9, 2001, when we last reviewed this center's folder, the center was still not in full compliance with the Code and was still unlicensed. For the other unlicensed Day Care Center, DOH issued a violation on December 1, 2000. Numerous complaints had been lodged against this center,

including its failure to obtain a certificate of occupancy and to hire qualified staff. As of June 2001, this unlicensed center continued to operate even though it did not obtain a certificate of occupancy or hire qualified staff. We believe that, in such instances, DOH should take timely actions to bring the centers into compliance with the Code or to close the centers. In this regard, we noted that DOH does not establish time frames for unlicensed centers to meet the Code and obtain a license. Such guidelines should be established and enforced.

Recommendations

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

EMPLOYEES NOT SCREENED

To protect the health and safety of the children in Day Care Centers, the Code lists requirements that Day Care Centers must meet to be licensed. Requirements include obtaining a building permit from the Department of Buildings, receiving approval from the Fire Department, and passing DOH's inspections of the facility. In addition, Day Care Centers must arrange for staff to be screened by the New York City Department of Investigations for possible criminal background, obtain clearance from the State Central Registry of Child Abuse and Maltreatment (SCR) for staff, and ensure staff members have annual medical examinations. Criminal background checks are performed to determine whether staff members have any prior criminal records. The SCR search is performed to determine if staff members have ever been involved in a child abuse case. Annual medical examinations are performed to ensure that staff do not have a communicable disease or are mentally ill. The Day Care Centers and DOH need this information to ensure that staff do not pose a danger to the children under their care.

We reviewed the folders of 32 Day Care Centers for which November 2000 complaints were received by DOH to determine whether they had met the licensing requirements outlined in the Code. We concentrated on the most current licensing period of the centers, all of which fell within the years 1999 and 2000, and checked each folder for documentation of receipt of a building permit from the Department of Buildings, approval from the Fire Department, DOH's inspections of the facility, the centers' staff background checks and annual medical examinations for the centers' staff. We found that a majority of the centers met the requirements of the Code, as outlined above. However, we identified five centers who did not properly screen a total of 12 staff members prior to hiring them. Day Care Centers allowed these 12 staff members to work with children for periods of time ranging from one month to three years without being properly screened. For example, one staff member was employed for more than three years before the center obtained the necessary criminal background clearance. A staff member at another center had been working since September 2000 with the

children. It was not until our review in June 2001 that the center requested clearance from SCR. In addition, two of the 12 staff members never had criminal background checks performed. These two employees had worked with children for about three months before they were terminated.

Although the Code specifically requires centers to screen all current and prospective personnel, the responsibility rests with DOH to ensure center compliance. However, our review found that DOH did not perform adequate follow-up with the centers to ensure that they complied with the Code. The failure to follow up on the screening of these individuals could have exposed children in day care centers to unsafe environments with caregivers who were unsuitable for their responsibilities.

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.

MAJOR CONTRIBUTORS TO THIS REPORT

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Stuart Dolgon
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THE CITY OF NEW YORK DEPARTMENT OF HEALTH

Rudolph W. Giuliani
Mayor

Neal L. Cohen, M.D.
Commissioner

December 21, 2001

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

Re: Draft Audit Report on the New York City
Department of Health Monitoring of Day
Care Providers July 1, 1998 - May 31, 2001
Report No. 2000-N-20

Dear Mr. McClune:

We have reviewed the draft audit report issued November 8, 2001 on the above-noted subject. We appreciate your consideration of our comments on the findings and recommendations.

Your audit observations and conclusions indicate the lack of a central system that accounts for all complaints received including the results of DOH's investigations. Day Care does have a central record keeping system for complaints. However, this system was in a state of transition at the time of the audit. As indicated to the auditors during the entrance conference, most of the laws and regulations associated with monitoring day care providers were being changed and as a result the forms, applications and complaint tracking and investigation procedures were in transition and undergoing major revisions. These changes were occurring at the same time a statewide computer-driven system was being implemented.

We agree that there are programmatic issues that should be addressed to improve the complaint evaluation and tracking process. However, we believe that our monitoring function is more effective than your report suggests. All complaints were responded to and all urgent complaints, whether or not they were formally rated, were appropriately handled.

*
Note
1

* See State Comptroller's Notes, Appendix C

Appendix B

We disagree with the audit findings about the screening of provider staff. Records of screening are maintained by group day care center operators and reviewed during Day Care inspections. By examining records at Day Care program offices the auditors incorrectly concluded that screening had not been performed.

*
Note
2

The concerns about your findings should not be interpreted as disagreement with your recommendations. We agree with three of your four recommendations and intend to implement them. Attached to this letter are comments on the audit report and the response to each recommendation.

We appreciate the courtesy and consideration of your audit staff in the performance of this audit. If you have any questions or need further information, please contact Charles Troob, Assistant Commissioner, Business Systems Improvement at (212) 442- 8413/ 8436.

Sincerely,


Benjamin A. Mojica, M.D., M.P.H.
Deputy Commissioner for Health

Attachment

cc: Neal L. Cohen, M. D., Commissioner
Dan Still, Deputy Commissioner
Tina Mason, M.D., Associate Commissioner
Ron Bergmann, Associate Commissioner
Bob Bernstein, Mayor's Office of Operations

* See State Comptroller's Notes, Appendix C

Office of the New York State Comptroller

Draft Audit

New York City Department of Health Monitoring of Day Care Providers 2000-N-20

DOH Response

Executive Summary

As discussed below, the DOH Day Care program has a system for complaint processing, accountability and the review and follow-up of complaints.

*
Note
1

Day Care agrees with several of the auditors' findings as to the timeliness of complaint response and to inconsistent filing of complaint investigation reports. It is important to note, however, that all complaints were responded to. Any implication that the fieldwork was not done is incorrect.

To a substantial extent, the findings result from our suspension of our automated complaint tracking in preparation of transitioning to the new Child Care Facility System (CCFS) complaint system. In addition, lessened oversight by management staff was caused by the need to reassign managers to the conducting of field inspections due to the expansion of Universal Pre-K. The changes taking place in this program were discussed with the auditors at the entrance conference and during the audit.

Contrary to the statement in this section, Day Care does have a central record keeping system for complaints. It was this system which enabled the auditors to obtain the majority of the information contained in the audit. The audit did identify, however, that there were some issues with document transfer between field offices and the central office.

*
Note
1

Following are comments on specific findings in this section:

- The audit states in its Observations and Conclusions Section and on page 7 of the report that 12 of the 60 complaints received had not been rated for seriousness. Documents indicate there were actually 8 (13%). Of the remaining 4, three were forwarded to the Agency for Child Development for action, standard policy between the two agencies. The fourth was actually a Freedom of Information request and did not require a rating. It was inappropriate that the remaining 8 were not rated. It is important to note that these 8 unrated complaints were still responded to in a timely manner: 2 received follow-up within 1 day; 3 received

*
Note
3

* See State Comptroller's Notes, Appendix C

follow-up within 6 days, including weekends; 2 received follow-up within 11 days, including weekends; the eighth received a follow-up within 16 work days, an appropriate time response in the manager's judgment since the complainant wanted an early childhood review of the program's potty training.

- The auditors noted in their report that two of the unrated complaints should have been rated as "A" complaints because they presented imminent hazards to the children. Both of these complaints, though officially unrated by the central office, received an "A" response and both sites were visited within one day, as appropriate.
- The auditors stated that it took up to 100 days to respond to complaints. Our records do not substantiate this. Three of the sixty complaints reviewed had an unsatisfactory response time; one for 40 days, one for 54 days, and one for 62 days. Fortunately all three of these complaints were unfounded.
- The auditors also stated that the two rated "A" complaints took two and five days. One was a duplicate of a complaint made earlier and had already been investigated. Our records indicate the second was investigated in one day and it proved unfounded.

*
Note
4

*
Note
5

Other complaint issues raised in the Auditors' Observations and Conclusions Section are specifically addressed later in this response.

The auditors also cite that operators failed to assure clearance for 12 staff working at their locations. In each case, either the screening had been done, or a DOH inspector identified the lack of screening.

*
Note
2

The auditors came to these conclusions about the lack of screening based on reviewing files in our office. It is not a requirement for Day Care to have these documents in a case folder, as their presence is generally verified as a result of a site inspection. Steps have been taken to improve documentation of screening activities within the case folder.

*
Note
2

Day Care has continued its successful strategy of working with sites where violations have been found, while assuring the safety of children and staff, and simultaneously promoting the expansion of childcare throughout the City. Creating compliance time frames with day care operators has not only proven successful but has avoided a massive shutdown of day care operations and the loss of thousands of child care slots. The Day Care program has never hesitated to request Commissioner's Closure Orders when there was any question of child/staff safety.

*
Note
10

Day Care also requests that the audit language be modified in two ways, to avoid confusion. The audit report should distinguish between state-regulated child care operators, to be identified as providers, and city-regulated child care,

*
Note
6

* See State Comptroller's Notes, Appendix C

to be identified as day care centers or sites. The regulations for each one are very different. In addition, reference is made to a 10 day standard for inspection of "B" rated sites. The State standard is 15 working days. The 10 day criterion is an internal DOH goal which has been deliberately set as a target for improved performance.

Complaint Processing / Accountability over Complaint Process (pp 5-7)

As stated above, Day Care does currently have a complaint processing and accountability system. The audit, however, correctly found some inconsistencies in this system. While all complaints were in fact responded to and while all required documentation was available, these lapses are unacceptable.

*
Note
1

Complaint Resolution (pp.7-9)

The majority of the critical issues here have been already addressed. It was 8, not 12, of the 60 complaints which were not rated by the Central Office and all 8 did receive appropriate response times. Also both rated "A" complaints were responded to correctly, one in one day while the second was a duplication of an already investigated report.

*
Note
3

The auditors state in this section (page 7) that one complaint was never investigated. It is not clear which complaint is addressed here. All complaints requiring investigation were responded to by an inspection. Perhaps the auditors were referring to one of the following:

*
Note
7

- complaint # 11032B : duplicate/investigated earlier
- complaint # 19011 : investigated earlier/previous complaint
- complaint # 19237 : investigated earlier/previous complaint
- complaint # 19291 : referred to Agency for Child Development
- complaint # 19758 : investigated earlier/previous complaint
- complaint # 19760 : referred to Agency for Child Development
- complaint # 19761 : referred to Agency for Child Development

There was a failure in the Central Office to review 18 of the 60 investigation reports in a timely manner. These reports, however, did receive a review from the appropriate field manager. Our plans to remedy this situation are described in the response to recommendation 2.

According to Day Care policy, the issuance of violations will depend not only on the condition found at the center but also on the operator's response. This explains the particular inconsistency found by the auditor and discussed on on page 8 of the audit report. Two centers had lack of heat. One investigator did issue a violation since the operator was not able to correct the situation immediately and had not put any contingency plans in place. The operator at a second site had made arrangements for obtaining heat and had appropriate

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Note
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* See State Comptroller's Notes, Appendix C

contingency plans. In this case, no violation was issued. Both actions were appropriate.

Day Care agrees that the contents of investigation reports vary. Investigators continue to receive training on this issue. However, investigation results will be more uniform with the CCFS system whereby each item on the complaint will be listed and must be marked founded or unfounded. As detailed earlier in this report, Day Care has taken action to assure that the Complaint Coordinator will review all investigation reports for completeness, accuracy and consistency until the new CCFS system becomes operational.

On page 8 and 9, the audit states that there were 6 follow-up inspections required and not performed. When an inspector indicated on an inspection report form that follow-up is needed, this does not automatically mean that an *inspection* is needed. Other forms of follow-up may be appropriate, depending upon the circumstances. We reviewed all 60 cases and found one instance where a follow-up inspection should have been done and was not: a center was 2 children over permit capacity, and a visit should have been made to verify correction. Other cases where the report suggested follow-up but no inspection was required involved a sewer backup in a building adjacent to a center building, a follow-up to be done by the site on its bus policy, and a complaint concerning staff at a site that was not day care. In one case there was an error in coding by our staff. Two sites where the need for follow-up was indicated did receive additional visits, both of which are now licensed sites. A FDC site was required to get registered, which they have done.

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All staff have been reinstructed to assure that follow-up is done in a timely fashion with copies of the reports being sent to central for filing. The CCFS system will allow managers at several levels to track the follow-up investigations in order to assure that all actions are taken.

Providers Allowed to Operate Without a License (pp. 9-10)

The audit correctly quotes a part of the Health Code which requires all group day care sites to have a permit, and that sites which constitute a detriment or danger to the health and safety of children or staff in a day care center are to be closed. Day Care, in fact, currently does close any programs that it determines is a detriment or danger to children and staff. However, in cases where there is no imminent danger and/or the program is in the process of getting a license, Day Care uses a compliance strategy as a matter of common practice rather than move for immediate closure. The Health Code allows alternate means of achieving compliance.

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It has never been the policy of the Day Care Program to close down day care sites with permits pending, by some fixed schedule, automatically. Recognizing the serious need for child care services in the City, Day Care uses its professional judgment to evaluate each site and situation. The judgment

* See State Comptroller's Notes, Appendix C

includes the specific areas of non-compliance, the reasons for non-compliance and the attempts by the site to correct the conditions. The operation of a day care center is very difficult for operators, given the need for approvals from multiple agencies, the limited resources available, and the turnover of staff and other challenges. Day Care's objective is to not only to assure safe environments but also to support the expansion of child care.

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Although it might seem reasonable to set strict time frames for compliance, this would require the closure of sites that are not a risk to health and safety, unless exceptions are recognized. Day Care does not believe this would be appropriate. The ability to judge each site's compliance process has been historically successful.

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As we informed the auditors, a pending Certificate of Occupancy from the Buildings Department may not constitute a detriment or danger to the health or safety of the children or staff of a child care program. There are cases in which a site will remain pending while we are working closely with the Buildings Department to determine why a final Certificate of Occupancy has not been issued.

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The two day care centers mentioned in this section were newly renovated buildings; both operators were working very closely with the Buildings Department and had C of O's in process. One of these programs is now fully licensed; the other has a letter on file from the Buildings Department dated October 2, 2001, indicating that the C of O is forthcoming. A license will be issued upon receipt. The second of these programs is located in an area with a major shortage of group child care programs. Its DOH licensing manager made almost monthly visits to assure that the site maintained compliance with all other sections of the New York City Health Code, Article 47. This is a clear example of how adherence to a strict guideline on forced closures would have a negative impact on parents and communities.

Employees Not Screened (pp.11-12)

All employees referred to in the audit report had either been screened or identified as unscreened by DOH, and this information was provided to the auditors during the audit.

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- Three of the individuals were hired from other programs we regulate or from the Board of Ed, and had their initial screenings done there. This includes the person indicated as having worked three years without screening. This person had been screened.
- As a result of one of our inspections, we identified a staff member that had not been screened; this was not someone identified by the auditors. Person had been hired September 25, we inspected October 4, and she was terminated October 13 by the program.

* See State Comptroller's Notes, Appendix C

- One program that we inspected was issued a violation for failure to properly screen employees and other regulatory violations. This deficiency on the part of the site was identified as a result of our inspection.

The auditors were not able to document that all the screenings had been completed simply by their review of files in Day Care's offices. Screening documents are maintained by the operators of each group day care. These are reviewed during site inspections. Day Care recognizes the need to improve the documentation of these reviews in each program's case folder. This has already been implemented.

<i>Note</i> 2

SPECIFIC RECOMMENDATIONS

- 1) Develop a complaint processing and accountability system capable of filing and categorizing all complaints, tracking the status of complaints so that they are investigated within the required time frames, monitoring actions taken to resolve the issues raised, and facilitating reporting of results.

DOH Response – Agree.

While Day Care presently has a comprehensive manual complaint system, it agrees that the auditors found several lapses and inconsistencies in this system.

The CCFS complaint system will make the tracking of all aspects of the complaint process readily available to appropriate supervisors and to the central office management. In addition, the new CCFS system will allow the central office to monitor on a daily basis the status, disposition, and timeliness of response to all complaints received, regardless of which office the complaint is received in.

The temporary need to forward complaints to central office for review and rating has been addressed. Until the new CCFS system is fully operational, there will be enhanced monitoring of all complaints processing.

Processing and accountability under the CCFS system will work as follows. Any staff member taking a complaint will immediately enter it into the system and the supervisor will rate it. The field managers will assign the complaint to a field inspector and indicate the appropriate response time. The results of the inspector's investigation will be entered into the system by the investigator. The appropriate field managers will review the findings and assess the appropriateness and timeliness. The Central Office Complaint Coordinator

* See State Comptroller's Notes, Appendix C

and the Deputy Director for Central Operations will monitor and track this information daily on their screens and will immediately address any concerns.

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

DOH Response – Agree.

Until the CCFS complaint system is operational whereby inspection results are entered into the system by the investigator and can be reviewed immediately, the manual log book tracking system is being reinstated to assure that all complaints are reviewed appropriately and in a timely manner. The Complaint Coordinator will review all investigation reports for completeness, accuracy, and consistency.

With CCFS the supervisor of the complaint responder will do the review, and central management will monitor this action.

- 3) Establish a firm time period within which unlicensed providers must comply with the Code. Take action to close all unlicensed providers that do not meet the code within the required time frame.

DOH Response – Not Agree As Stated.

The Health Code provides for methods other than closure, including but not limited to assessment of fines. Furthermore, it would not be consistent with the needs of children, parents or the city in general to close needed child care sites for failure to meet a schedule. Closure of sites that are a detriment or danger to the health and safety of children and staff is appropriate and already is done promptly, whether or not they have a license or other documents.

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Voluntary compliance by way of notice, warning or other educational means, as outlined within the New York City Health Code, remains our preferred method of assuring the safety at these sites. However, Day Care does take the auditors' concerns seriously and will continue to review all sites operating without a current license.

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- 4) Follow-up with providers to ensure that they comply with the requirements of the Code as they relate to the screening of provider staff.

DOH Response – Agree With The Substance Of The Recommendation.

* See State Comptroller's Notes, Appendix C

Day Care currently does assure that all employees are screened, by reviewing these screenings during site inspections. Day Care has already taken action to assure that these reviews are documented in each site's case folder.

State Comptroller's Notes

1. While DOH officials assert that the DOH Day Care program has a central record keeping system for complaints, they also acknowledge that the system was in a state of transition at the time of our audit, there were issues with document transfer between field offices and the central office, and there were lapses and inconsistencies in the system. In our judgment, there was not an operative central record keeping system for day care complaints at the time of our audit. As detailed in our report, among other deficiencies, we encountered batches of complaints that were neither recorded nor filed in an orderly fashion. In response to our recommendation to develop a complaint processing and accountability system, officials agreed and stated that a new Child Care Facility System complaint system will make the tracking of all aspects of the complaint process readily available to appropriate supervisors and to central office management.
2. Contrary to the assertion by DOH officials, we concluded that Day Care Centers had not properly screened 12 employees prior to hiring them based on a review of DOH's and the day care centers' files, which DOH officials obtained for us. In response to our report, officials stated they have taken action to improve documentation of screening activities within the Department's case folder.
3. According to DOH's policy, all complaints should be immediately rated and a decision made regarding jurisdiction for investigation. Consequently, we maintain that all 12 complaints should have been rated for seriousness. Of the four complaints that DOH officials state should not have been rated for seriousness, two were complaints regarding Agency for Child Development (ACD) day care centers and were investigated by DOH. There was no documentation that a third complaint was investigated or forwarded to ACD. Since none of the 12 complaints was a freedom of information request, the fourth complaint in question should have been rated for seriousness.
4. As stated in our report, 31 "B" rated complaints took from 11 to 100 days to resolve. On average, these complaints took 24.5 days to resolve. Four complaints took more than 30 days to resolve, requiring 39, 52, 57 and 100 days, respectively.
5. Contrary to the assertion by DOH officials, we maintain that DOH took two and five business days to investigate the two "A" rated complaints. Neither of these complaints was a duplicate complaint. In one case, the center was a repeat violator of the Health Code and, as a result, had been the object of numerous complaints. These complaints related to various violations, including operating without a license, attempting to serve too many children and providing inadequate supervision.
6. We modified our report accordingly.

7. During the course of our audit, we discussed our findings with DOH officials and provided them with specific information regarding which complaint was not investigated. DOH officials never provided us with documentation that an investigation was performed.
8. In our judgment, the inconsistencies we identified in DOH's investigations were not appropriate. As reported, two centers did not have heat, when the outdoor temperature was about 40 degrees. An inspector investigated one center on the same day the complaint was received, and issued a violation, even though the inspector observed a fuel oil repair person on site. In contrast, the other center, operated by ACD, was investigated 20 days after a similar complaint was received. In this case, the inspector observed an electrician on site installing heaters, but no violation was issued. Instead, the inspector revisited the center the following day.
9. In each of these six cases, the program inspector specifically noted in the inspection report that a follow-up inspection was needed.
10. We saw no documentation that DOH used a compliance strategy as an alternative to closure. In fact, no such strategy is mentioned in DOH's guidelines. The Health Code sets standards that providers must meet to provide for the safety and well being of children in their care. DOH's response states the difficulties day care operators experience, including obtaining approvals to operate. However, every business requiring a permit in the City faces similar challenges. Many providers have met these challenges and are operating according to the requirements of the Code. Requiring that providers abide by the Code is the mission of the DOH. According to DOH officials "Creating compliance time frames with day care operators has not only proven successful but has avoided a massive shutdown of day care operations and loss of thousands of day care slots." We saw no evidence that DOH sets compliance time frames. Not only did the two cited centers operate without approved Certificates of Occupancy, but some center staff members and children at these centers had not had medical examinations. Moreover, some of the staff had not been screened or were unqualified and inspectors found that these two centers, which cared for 36 and 72 children, respectively, did not have window guards, lead test reports, food handler's certificates, emergency medical plans, fire evacuation plans and adequate sprinkler systems. In our judgment, the absence of such safeguards constitutes a detriment and danger to the health and safety of the children and the staff of these child care programs. In response to DOH's comments on these matters, we have modified our report and recommendation, to state that compliance time frames should be established to bring unlicensed centers into compliance with the Code. Further, we recommend that DOH take action to close unlicensed centers whose operations present health and safety concerns.