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

Re: Report 2002-F-15

Dear Dr. Novello:

Pursuant to the State Comptroller's authority as set forth in Article V, Section 1 of the State Constitution, and Article II, Section 8 of the State Finance Law, we have reviewed the actions taken by officials of the Department of Health (Department) as of May 31, 2002, to implement the recommendations contained in our audit report, *New York's Oversight of Adult Care Facilities* (Report 98-S-60). Our report, which was issued on November 4, 1999, addressed whether adult care facilities were effectively overseen by the Department and the Office of Children and Family Services (OCFS) through the licensing, inspection and investigation of complaints processes. The report contained a total of 20 recommendations. This follow-up review addresses the actions taken by Department officials to implement the recommendations addressed to the Department in our prior audit report. We issued a separate report (Report 2001-F-32) addressing the actions taken by OCFS officials to implement the recommendations addressed to OCFS in our prior audit.

Background

Adult care facilities provide temporary or long-term, non-medical residential care to adults who are substantially unable to live independently. Most adult care facilities throughout the State are overseen by the Department, which has responsibility for granting licenses to and inspecting these facilities. OCFS oversees smaller, family-type homes that house four or fewer adults. The Department's Bureau of Adult Care Facility Quality and Surveillance (Bureau) is responsible for conducting annual inspections of all adult care facilities and for investigating complaints made against them. The Department provides oversight through four regional offices: the Capital District Field Office, located in Troy; the Central Field Office, located in Syracuse; the Western Regional Office, located in Rochester; and, the Metropolitan Area Regional Office, with offices in New York City and Long Island.

Summary Conclusions

In our prior audit, we found Department officials did not verify the information submitted by license applicants or routinely seek independent information about applicants. In addition, the Department did not try to actively identify unlicensed homes. We also found that facilities were not always inspected as frequently as required, and that many required inspection activities were not adequately documented. We found that residents of adult care facilities did not know how to file complaints. We also found that actions against operators who violate laws and regulations are subject to considerable delays, and that improvements are needed in monitoring the enforcement process.

In our follow-up review, we determined that Department officials have made limited progress in implementing the recommendations contained in our prior report. For example, Department officials have developed policies and procedures for the adult care facility operator application process, but have not adequately addressed how related information is to be independently verified. Also, officials have not developed written procedures for identifying potential unlicensed facilities, but did initiate outreach efforts. Further, officials have not developed performance measures or a quality assurance function for the adult care facility inspection process or a system for monitoring regional office response to complaints against adult care facilities. Consequently, Department officials must take additional actions to achieve substantial compliance with our prior audit recommendations.

Summary of Status of Prior Audit Recommendations

Of the 16 recommendations (#s 1, 2, 3, 4, 5, 6, 7, 8, 9, 10, 11, 14, 15, 18, 19, and 20) addressed to the Department, officials have implemented one recommendation, have partially implemented eight recommendations and have not implemented seven recommendations.

Follow-up Observations

Recommendation 1

Verify (the Department), or take steps to determine that the local social services districts verify (OCFS), the information received from applicants and parties related to the applicants.

Status – Not Implemented

Agency Action – In their March 14, 2000 response to the prior report, submitted in accordance with Section 170 of the Executive Law, Department officials stated in response to Recommendations 1 and 2 that they were revising the application review process to be more aligned with the Certificate of Need for other entities licensed by the Department, that the review would include a more substantial background check to determine the competence of the applicant, and that financial verifications of loan commitments and assets would continue to be done. Department officials also stated they did not anticipate a change in the law to enable criminal background checks to be performed.

During our follow-up review, Department officials stated the prior audit report did not recognize the fact that the processes used by the former Department of Social Services, which focused on individuals as sole proprietors or partners, were no longer applicable as a result of statutory changes in 1996 and 1999. These changes allow business corporations and limited liability companies to operate adult care facilities. Officials stated that 99 percent of applications currently received are in these categories. They also provided copies of the applications used by these entities. These applications require applicants to submit personal history information, employment history and personal financial statements.

Since the prior audit, Department officials developed, issued and implemented procedures titled Adult Care Facility Application Process. The procedures detail the steps and components of the application review process, including the various forms of documentation that accompany the applications for operation of adult care facilities and who should review them. However, the procedures do not address how Department officials will independently verify references and personal identifying information or personal history information, employment history and personal financial statement information included on the applications.

Recommendation 2

Obtain (the Department), or take steps to determine that the local social services districts obtain (OCFS), independent information (such as criminal histories, credit reports and bank confirmations) about the applicants' character, competence and financial viability.

Status – Partially Implemented

Agency Action – As noted in the Agency Action section of Recommendation 1, Department officials developed procedures titled Adult Care Facility Application Process, including the character and competence review process. The procedures include the various forms of documentation that accompany the applications for operation of adult care facilities and who should review them. The procedures state that if nothing in the personal history indicates any involvement with the health care field or residential care or caring for dependent individuals, no further Department action or interagency review for character and competence occurs except for a review of references and personal identifying information. Department officials also stated their belief that obtaining credit reports and bank confirmations of account balances would be a redundant process, since financial institutions perform a thorough review of the borrower's credit history and financial resources. In those instances where a sole proprietor or partnership files an application and individual assets are required, applicants are required to submit personal or corporate financial statements. Officials restated that they cannot perform criminal history checks, as this would require a change in legislation.

Recommendation 3

Develop written procedures describing how the character, competence and financial viability of applicants should be evaluated. OCFS should distribute these written procedures to the local districts.

Status – Not Implemented

Agency Action – In their March 14, 2000 response to the prior report, Department officials stated that revised procedures for this process were being developed, which will reflect consistency with current Department procedures or other provider categories and reflect the 1995 changes in law, which recognized business corporations as adult care facility providers.

Section 4 of the Adult Care Facility Application Process states that the applicant's financial statements will be reviewed to determine that the applicant is financially solvent. Section 5 indicates that the personal history portion of the application and letters of recommendation are reviewed to assess character and competence. While these procedures describe where documents are to be distributed within the Department for review, they do not describe how the character, competence and financial viability of the applicants will be evaluated.

Recommendation 4

Develop procedures for actively trying to identify potential unlicensed facilities, and monitor implementation of these procedures by the regional offices (the Department) or the local social services districts (OCFS).

Recommendation 5

Establish expected time frames for completing the investigations of possible unlicensed facilities and for resolving the status of facilities that are not licensed. Monitor these activities and take the actions necessary to foster adherence to these time frames.

Status – Partially Implemented

Agency Action – In their March 14, 2000 response to the prior report, Department officials stated they had developed draft procedures for review and resolution of licensed facility cases, including specific time frames for completion of investigations.

Regarding Recommendation 4, during our follow-up review, Department officials stated they have not developed formal procedures to identify potential unlicensed facilities since listings or data sources for the identification of such facilities do not exist. As a result, Department officials informed us that they attempt to identify such providers through outreach efforts that explain the Department's oversight role, the type of facilities that require licensure and how information about potentially unlicensed facilities can be reported to the Department. Officials explained that several staff members in the Central Office and regional offices are involved in such presentations or discussions on an ongoing basis. Officials provided a

listing of eight meetings in 2001 at which this topic was covered. In addition, officials provided data showing that 59 such cases involving potential unlicensed facilities have been closed since 1999, and that 32 others are at some point in the investigation process.

Regarding Recommendation 5, Department officials provided a document entitled Questionable Operations/Scofflaw Procedures. This document provides timeframes for completing the investigations of possible unlicensed facilities. However, Department officials did not supply documentation regarding the establishment of timeframes for those aspects of the process that involve the Division of Legal Affairs. In addition, Department officials did not provide any indication as to how they intend to monitor adherence to the established time frames.

Recommendation 6

Ensure that complete and accurate information is maintained about the investigations and follow-up of possible unlicensed facilities.

Status – Partially Implemented

Agency Action – In their March 14, 2000 response to the prior report, Department officials stated they updated their system for tracking investigations of unlicensed operations and had reduced the number of outstanding cases.

During our follow-up review, Department officials stated they maintain a database of such information. Officials stated they send this database to the regional offices every six months for review and updating as needed. However, Department officials have not established formal procedures for this process. In addition, although officials provided documentation that this information was sent to the regional offices, we found no evidence the information was being sent to the regional offices every six months, as indicated.

Recommendation 7

Develop a project management system that includes performance measures so that managers can readily assess the inspection status of any facility and the workload of any surveyor. Use this system to monitor regional performance in achieving mandated inspection goals, and take action to improve the performance when the goals are not met. Ensure that the information on the system is complete and accurate. Evaluate information to determine whether additional staffing is warranted.

Status – Not Implemented

Agency Action – In their March 14, 2000 response to the prior report, Department officials stated they had begun to implement processes to monitor regional office inspection performance. According to the officials, training was conducted in the use of ASPEN (Automated Survey Processing Environment), an automated system to replace the automated facility inspection system in use. Additionally, Department officials stated inspectors would complete standardized time and activity forms to document hours associated with the inspection

process, and data would be aggregated and analyzed. Further, according to Department officials, inspection visit types were established, notification letters were created and a database established to enable analysis of information collected in the correspondence.

At the time of our follow-up review, Department officials were using ASPEN to record the date facilities were inspected, the type of inspection conducted and the results of that inspection. However, performance measures have not been established, ASPEN is not being used to monitor regional office performance, and the Department has not established controls or procedures to provide assurance that ASPEN contains complete and accurate information.

Recommendation 8

Take steps to determine that inspection activities are documented in adequate detail and inspection records are maintained in a standard organized format.

Status – Not Implemented

Agency Action – In their March 14, 2000 response to the prior report, Department officials stated steps were being taken to review and make required changes to the inspection process. The officials stated they expected to implement revised inspection procedures by October 1, 2000.

During site visits to the Department's regional offices and interviews with Central Office staff, we found the Department has not established formal procedures for conducting inspections. Department officials provided us with a document entitled Inspection Process Procedure, which, according to officials, was sent to all regional offices on May 10, 2002. This document does not provide any direction to the regional offices in regards to documenting inspection records or maintaining such records in a standard organized format.

In addition, based on our review of a sample of inspection files in each regional office, we found little consistency in the forms used and in the type of supporting documentation maintained for each facility inspection.

Recommendation 9

Develop and implement a quality assurance function to help ensure inspections are performed in accordance with requirements.

Status – Not Implemented

Agency Action – In their March 14, 2000 response to the prior report, Department officials stated they determined the need to develop and implement a quality assurance function, and that one would be phased in by July 1, 2000. Officials stated the components of the system would include parameters to proactively review some inspection reports prior to issuance and others retrospectively, an onsite visit component in each region to participate in or observe inspections, and routine review of monthly inspection schedules for timeliness and quarterly examination of the timeliness of data entered into ASPEN.

During our follow-up review, in interviews with Central Office and regional office staff, officials stated they have not established a quality assurance function to provide assurance that inspections are performed in accordance with requirements.

Recommendation 10

Distribute the Operating Manual to the regional offices (the Department) or to the local social services districts (OCFS).

Status – Partially Implemented

Agency Action – In their March 14, 2000 response to the prior report, Department officials stated the operating manual would be revised, shared with staff and training would take place by July 1, 2000.

Department officials provided us with a document entitled Inspection Process Procedure on May 13, 2002 and stated this document had been sent to the regional offices on May 10, 2002. As indicated in the Agency Action section of Recommendation 8, the document does not contain procedures relative to inspection documentation or maintenance of inspection records in a standard organized format. In addition, the document does not provide criteria for determining inspection frequency or the time interval when a facility's next inspection is to be scheduled.

Recommendation 11

Conduct frequent inspections at facilities that change ownership as a result of operating violations, and continue the frequent inspections until the conditions at the facilities significantly improve.

Status – Not Implemented

Agency Action – In their March 14, 2000 response to the prior report, Department officials stated facilities are required to correct violations as described in their plans of correction. New owners are given time to correct violations that existed prior to the takeover of the facility and regional office staff conduct inspections to make certain that violations are corrected.

During our follow-up review, Department officials stated that only six facilities changed ownership as a result of operating violations since our prior audit. Data provided by Department officials indicates that only two of these six facilities received more frequent inspections. In addition, Department officials have not developed formal policies or procedures that require regional office staff to conduct more frequent inspections of such facilities.

Recommendation 14

Develop a system for monitoring the actions taken by the regional offices in response to complaints, use this system to actively monitor how complaints are addressed, and take action to improve compliance when complaints are not addressed in accordance with requirements.

Status – Not Implemented

Agency Action – In their March 14, 2000 response to the prior report, Department officials stated a workgroup was developing protocols to determine how complaints are to be resolved in the nursing home program, and these protocols would be used to train adult home inspectors to investigate and resolve complaints. Also, Department officials stated that form letters used to acknowledge nursing home complaints would be tailored to address adult home complaints. Further, according to Department officials, they were examining incorporating adult home complaint information into the Department's Uniform Complaint Tracking System (UCTS). Officials expected implementation by July 1, 2000.

During our follow-up review, we found Department officials have not established a system for monitoring regional office response to complaints. Only one of the Department's four regional offices (Central Field Office) enters adult care facility complaints on UCTS. The Western Regional Office maintains an electronic complaint log. The Metropolitan Area Regional Office and Capital District Field Office maintain manual logs. While the Department's Central Office receives periodic reports from the regional offices regarding complaints, these reports provide only raw data on the number of complaints received, open and closed. The Central Office cannot use these reports to determine if complaints have been investigated in a timely and thorough manner.

Recommendation 15

Ensure that up-to-date residents' rights posters are posted in all adult care facilities.

Status – Implemented

Agency Action – In their March 14, 2000 response to the prior report, Department officials stated revised resident rights posters would be printed and disseminated to providers and regional offices by April 15, 2000.

During our follow-up review, Department officials provided a memo dated May 24, 2000, in which all Adult Care Facility Operators/Administrators were notified of the revised poster and residents' rights pamphlet. This memo instructs the operator/administrator to replace the old pamphlets and poster, and notifies them that inspectors have been asked to verify that the revised poster is placed in a conspicuous location in a public area of the facility.

Regional office staff members use checklists in conducting inspections of adult care facilities. The checklists include a step requiring inspectors to verify that an up-to-date residents' rights poster is posted in the facility.

Recommendation 18

Take steps to determine that all residents know how to file a complaint with the appropriate State or local government agency.

Status – Partially Implemented

Agency Action – In their March 14, 2000 response to the prior report, Department officials stated that the residents' rights posters and brochures include a statement that informs residents how to file a complaint with the regional office and identify a Department telephone number in each region. As indicated in the Agency Action section of Recommendation 15, Department officials issued a memo in May 2000 regarding the revised residents' rights poster and residents' rights pamphlets.

During our follow-up review, Department officials informed us that, during inspections, residents are asked if they know how to file a complaint. However, we found that the Resident Interview form, used in conducting inspections by Department officials, does not contain a question asking residents if they know how to file a complaint.

Recommendation 19

Establish guidelines for the amount of time that should be taken at each stage of the enforcement process, and actively monitor the timeliness of the process against these guidelines.

Status – Partially Implemented

Agency Action – In their March 14, 2000 response to the prior report, Department officials stated discussions had taken place to convert the current adult home enforcement tracking system to the model in use for nursing homes. Officials also stated that regular meetings occur between staff of the Bureau of Surveillance and Quality Assurance and the Division of Legal Affairs to obtain status reports on the enforcement process.

During our follow-up review, officials provided a document entitled Enforcement Procedures and stated this document was sent to all regional offices on May 10, 2002. These procedures specify that the regional offices have 45 days from the date of the inspection report to forward a referral to the Department's Bureau of Adult Care Facility Quality and Surveillance (Bureau). The Bureau then has 60 days from receipt of a completed referral to prepare the summary information and forward it to the Division of Legal Affairs. Department officials did not provide any procedures to document that timelines were established for the Division of Legal Affairs. Also, the procedures do not specify how the Department will monitor the timeliness of the process against the guidelines.

Recommendation 20

Develop formal procedures describing the enforcement process and the duties of all the parties involved in the process, and actively monitor the process to help ensure that the requirements of hearings and settlements are fulfilled.

Status – Partially Implemented

Agency Action – In their March 14, 2000 response to the prior report, Department officials stated an enforcement manual identifying procedural steps and their time frames would be developed. Officials also stated that regional office staff members monitor any obligations resulting from settlements and the Bureau of Accounts Management tracks monetary penalties.

As noted in the Agency Action section of Recommendation 19, during our follow-up review, Department officials provided a document entitled Enforcement Procedures. This document provides a description of the responsibilities of all parties involved in the enforcement process. The procedures indicate there will be monthly meetings with Division of Legal Affairs staff to discuss the status of cases and other enforcement issues. However, the procedures do not indicate how Department staff will actively monitor the process to provide reasonable assurance that the requirements of hearings and settlements are fulfilled.

Major contributors to this report were Stuart Dolgon, Tom Kulzer and Laura Wands.

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 Department management and staff for the courtesies and cooperation they extended to us during this review.

Very truly yours,

Kevin M. McClune
Audit Director

cc: Deirdre A. Taylor