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OFFICE OF THE STATE COMPTROLLER

June 2, 2005

Mr. Glenn S. Goord
Commissioner
NYS Department of Correctional Services
State Campus, Building 2
Albany, NY 12226

Re: Report 2004-F-36

Dear Mr. Goord:

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 followed up on the actions taken by officials of the Department of Correctional Services to implement the recommendations contained in our audit report, *Department of Correctional Services 'Administration of Workers' Compensation Leave* (Report 2002-S-35).

Background, Scope and Objective

The Department of Correctional Services (DOCS), which operates 70 correctional facilities statewide, employs about 22,000 correction officers and 10,000 civilian workers. If any of these employees are injured on the job, they may be entitled to workers' compensation benefits. These benefits have two basic components: (1) payments in lieu of lost wages made by the employer to the injured worker while the worker is unable to return to work because of the injury and (2) payments made by the employer's insurance company to medical service providers for treatment of the worker's injury.

Our report focused on the first of these two components (payments in lieu of lost wages) and did not address the second component (medical costs). All workers' compensation benefits in New York State are governed by the New York State Workers' Compensation Law, which describes how a claim for the benefits is to be filed and adjudicated. The Law also establishes a minimum level for the payments made to injured workers in lieu of lost wages. This minimum statutory level of payment may also be enhanced through collective bargaining agreements. DOCS employees are represented by a number of different collective bargaining units. Under the collective bargaining agreements that are applicable to most of the civilian employees, a worker who is injured on the job and is unable to return to work because of the injury is required to charge the first seven days of absence to accrued leave credits. If the worker is unable to return to work after seven days, the

worker is placed on workers' compensation leave at two-thirds of average weekly salary (up to \$400) until the worker is able to return to work (these terms are consistent with minimum statutory level of payment for workers' compensation benefits). Under the correction officers' collective bargaining agreement, a correction officer who is injured on the job and is unable to return to work because of the injury is immediately placed on workers' compensation leave at full pay for up to six months (182.5 calendar days). If the corrections officer is still unable to return to work after six months, the officer may charge accruals and may be granted the use of sick leave at half-pay. The combined use of workers' compensation leave, leave accruals and sick leave at half pay cannot exceed one year, cumulatively. Any employee absent from work for more than one cumulative year as a result of a work-related injury may be terminated.

A claim for workers' compensation benefits is initiated by the injured worker, who submits the claim form to his or her employer. If the employer denies the claim, its validity is adjudicated in a hearing held before an administrative law judge of the Workers' Compensation Board, which is the State agency responsible for overseeing the adjudication and payment of all workers' compensation claims. Generally, a claim should be denied if it can be determined that the injury either is not job related or is not serious enough to prevent the worker from performing his or her duties. Benefits may also be denied and a hearing may be held after a claim has been accepted as valid, if the employer and worker disagree about whether the worker has recovered from the injury and is well enough to return to work. At DOCS facilities, claims for workers' compensation benefits are submitted to the facility's personnel office, which approves or denies the claims and forwards them to the DOCS Central Office. The Central Office then reviews the actions taken by the facility to determine whether they appear to be appropriate.

DOCS' has a Workers' Compensation Investigation Unit (WCIU), which investigates certain claims to determine whether they are fraudulent or abusive. DOCS is represented at Workers' Compensation Board hearings by the State Insurance Fund (SIF), a State agency that provides workers' compensation insurance coverage to State and local government agencies, not-for-profit agencies and private companies throughout New York State. As the State's insurer, the SIF reviews all claims filed with DOCS; pays the authorized medical expenses resulting from the claims; arranges for medical examinations of claimants, when appropriate, to verify their injuries; and investigates potentially fraudulent claims and abusive practices.

Our initial audit report, which was issued on September 19, 2003, examined selected aspects of the practices and procedures used by DOCS in administering the workers' compensation leave taken by correction officers between April 1, 1997 and March 7, 2003. The objectives of our performance audit were to (1) estimate the cost of this workers' compensation leave to DOCS; (2) determine whether the amount of leave taken varied significantly at different facilities, and if so, why; and (3) identify administrative improvement opportunities for reducing the amount of workers' compensation leave taken by correction officers. Our report identified that the amount of workers' compensation leave taken by DOCS correction officers has increased significantly, mainly because the average length of the absences has increased significantly.

In particular, since correctional officers are paid full pay for six months there is no incentive for them to return to duty sooner. We concluded that, because of these and other weaknesses, absences will continue to rise until DOCS improves the negotiated process and makes better use of light duty posts.

The objective of our follow-up, which was conducted in accordance with generally accepted government auditing standards, was to assess the extent of implementation as of January 19, 2005 of the 8 recommendations included in our initial report.

Summary Conclusions and Status of Audit Recommendations

We found that DOCS officials have made some progress in correcting some of the problems we identified. However, additional improvements are needed. Of the 8 audit recommendations, 4 recommendations were implemented, 3 recommendations were partially implemented, and 1 recommendation was not implemented.

Follow-up Observations

Recommendation 1

Consider working with the Governor's Office of Employee Relations, which is responsible for negotiating labor contracts with correction officers, to modify the workers' compensation benefits provided to the officers. Through negotiation, determine if a reasonable distinction can be drawn between injuries sustained due to the risks inherent in corrections facility work versus those common for all public employees. Seek to modify the benefits so that correction officers have to charge their own accrued leave in certain circumstances and are not able to receive a full six months of leave at full pay for every job related injury, regardless of the circumstances.

Status - Implemented

Agency Action - DOCS officials referred the recommendation to the chief negotiator of the Governor's Office of Employee Relations (GOER). However, GOER advised DOCS that given the advanced stage of negotiations, it would likely have been an improper practice to introduce such a demand. GOER decided not to introduce the modification of benefits after the agreed upon cut off date for the submission of new proposals. DOCS' officials advised they will consider this for future negotiations.

Recommendation 2

Monitor correctional facility practices in requesting medical examinations from the SIF, and take corrective action when facilities do not follow the guidelines contained in the Department of Civil Service's Policy Bulletin 93-02, Section 21.8.

Status - Implemented

Agency Action - In July 2003, DOCS began requiring correctional facilities to fax Security Medical Exam logs to central office for monitoring to ensure compliance with changes to the Workers' Compensation Law in the amount of time notices for medical examinations must be received. Changes to the Workers' Compensation Law require employees receive notice by mail 12 days prior to the date of the scheduled exam. Central office continues to monitor compliance.

Recommendation 3

Work with the SIF to expedite the scheduling of medical examinations and to improve the usefulness of the diagnoses made by the SIF doctors performing the examinations.

Status - Partially Implemented

Agency Action - DOCS has made an attempt to expedite Security Medical Exams (SMEs) by designating funds to be used for expedited SMEs. DOCS has received the support of DOB but not the SIF. In addition, DOCS has provided no documentation for improvement of diagnoses.

Recommendation 4

Identify the practices used by the facilities that have been successful in assigning correction officers to light duty assignments, and adopt these practices at other facilities to the extent possible.

Status - Partially Implemented

Agency Action - DOCS issued a memorandum requesting facilities to identify posts used for light duty assignments however, facilities have not been instructed to track the assignments to identify changes in the posts used for light duty. As a result, DOCS could not document that facilities had adopted each others practices to capture the assignments used by officers on light duty assignments.

Recommendation 5

Work with the SIF to train facility officials in the actions that should be taken in the investigation of workers' compensation claims and the monitoring of employees on workers' compensation leave.

Status - Implemented

Agency Action - DOCS has required training for facility officials in the areas mentioned in the recommendation. This training started on February 24, 2004, and additional training sessions are planned.

Recommendation 6

Determine whether additional resources should be provided to the WCIU.

Status - Partially Implemented

Agency Action - DOCS provided information that shows that in November 2003, WCIU requested that two part-time WCIU employees become full-time employees. Since then there were no documents to support that a determination was made about additional resources for WCIU. During our follow-up, we were provided a memorandum stating that there would be no request for additional resources due to the funding. However, there are no documents to support that an assessment was done to determine whether additional resources are needed.

Recommendation 7

Publicize the presence and activities of the WCIU to correction officers.

Status - Not Implemented

Agency Action - DOCS' officials replied to our initial report that they would take this recommendation under advisement. DOCS officials now feel that advertising the presence of its investigators would defeat the purpose of the unit. Instead, DOCS officials stated that they shared the results of WCIU findings with the superintendent at each correctional facility. However, neither DOCS/WCIU officials nor the superintendents at the three correctional facilities we visited could provide evidence that the results have been shared with the employees.

Recommendation 8

Systematically review the types of injuries by facility to identify opportunities to address environmental or safety factors affecting workers' compensation claims.

Status - Implemented

Agency Action - We were advised by the Fire and Safety Coordinator at central office that each correctional facility does a review of environmental or safety factors. The Coordinator advised us that each facility's safety officer investigates the factors leading to injuries by employees. A repair is made if needed. All facilities record reviews. We obtained copies of meetings held at Oneida, Mohawk and Coxsackie correctional facilities. In addition, we visited Greene Correctional facility and obtained a copy of the environmental meeting minutes dated October 6, 2004.

Major contributors to this report were Robert Mehrhoff and Marianne Boyer.

We would appreciate your response to this report within 30 days, indicating any actions planned to address the unresolved issues discussed in this report. We would like to thank the management and staff of the Department of Correctional Services for the courtesies and cooperation extended to our auditors during this audit.

Very truly yours,

Carmen Maldonado
Audit Director

cc: Deborah Coons, DOCS
Robert Barnes, Division of the Budget