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OFFICE OF THE STATE COMPTROLLER

July 21, 2011

Mr. Brian Fischer
Commissioner
NYS Department of Corrections and Community Supervision
Building 2
1220 Washington Ave.
Albany, New York 12226-2050

Re: Report 2010-F-50

Dear Mr. Fischer:

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 Corrections and Community Supervision (Department) to implement the recommendations contained in our audit report, *Selected Aspects of the Procurement of Pharmaceuticals* (Report 2006-S-20).

Background, Scope and Objective

The Department has 66 correctional facilities and one drug treatment center. Twenty-four of the facilities have pharmacies, of which 12 are regional pharmacies that fill prescriptions for 26 other facilities that do not have pharmacies. One non-regional pharmacy also fills prescriptions for another facility. The remaining 16 correctional facilities purchase prescriptions from vendors.

The Department has a Pharmacy and Therapeutics Committee (P&T Committee), which determines the Department's official formulary of drugs (a listing of drugs that are preferred for specific situations and are stocked by Department pharmacies). The formulary contains both brand-name drugs and generic drugs.

State law requires the presence and supervision of a licensed pharmacist at any facility (including pharmacies operated by the Department) where prescription drugs are stored and dispensed. The Department operates a centralized, licensed wholesale pharmacy warehouse, known as Central Pharmacy, located at the Oneida Correctional Facility near Rome, New York. It is headed by a Pharmacy Director with a staff of 25. Central Pharmacy negotiates and awards contracts for the bulk purchase of pharmaceuticals. It also provides drugs purchased in bulk to pharmacies at correctional facilities, and provides over-the-counter items and medical supplies to all correctional facilities on request. The Department uses unit dose medications at Regional Medical Units (RMU) at Walsh and Wende correctional facilities. Walsh buys some medications in bulk and then repackages them for unit dose with its own equipment, and buys other medications prepackaged in

unit dose form. Wende buys prepackaged unit doses for use in its RMU.

The State participates in the Minnesota Multi-state Contracting Alliance for Pharmacy (MMCAP), which is administered by the State of Minnesota. MMCAP administers contracts for pharmaceuticals for state agencies and other political subdivisions in participating states. Participants include correctional facilities, regional psychiatric treatment facilities, student health services, public health services, veterans' nursing homes, public hospitals, and community health clinic pharmacies. Central Pharmacy uses MMCAP pricing as a base for reasonableness for products purchased through State contract.

According to the State's Central Accounting System, pharmaceutical costs for the Department totaled about \$75.4 million in the State fiscal year ended March 31, 2010, including Central Pharmacy purchases of about \$51.7 million. Generally, pharmaceutical drugs and supplies are purchased through two Office of General Service contracts. However, in emergency situations or when the item needed is not available through those contracts, individual facilities will procure items from other vendors outside of established contracts. When this occurs, the facility is required to obtain price quotes and purchase for the lowest price.

Our initial audit report, which was issued on December 28, 2007, found that the Central Pharmacy used competitive bidding and other means to help obtain pharmaceuticals in an economical manner. However, it also found the Central Pharmacy should take additional steps to reduce pharmaceutical costs. These steps include better oversight of purchases made by correctional facilities, a risk assessment of current purchasing practices, better response to problems and incidents that threaten inventory stocks, and better monitoring of inventory stocks and purchases of non-formulary drugs. The objective of our follow-up was to assess the extent of implementation as of March 17, 2011, of the ten recommendations included in our initial report.

Summary Conclusions and Status of Audit Recommendations

We found that Department officials have made progress in correcting the problems we identified in the initial report. Of the ten recommendations, six were implemented and four were partially implemented.

Follow-up Observations

Recommendation 1

Monitor correctional facilities to ensure they follow appropriate procedures and are purchasing pharmaceuticals at the lowest possible price.

Status - Partially Implemented

Agency Action - Since January 2009, the Chief Medical Officer sent two memos to all facilities instructing them on the efficient purchasing and use of pharmaceuticals. The instructions were to use formulary products first, use generic drugs when possible, reduce inventory levels, and regularly rotate stock. Central Pharmacy implemented a system for its staff to

monitor facility pharmacy purchases through its financial management system. When Central Pharmacy found purchases of brand name drugs when generic brands were available or purchases from outside vendors of items in stock at Central Pharmacy, it contacted the facilities and provided instructions to remedy the situation. Central Pharmacy kept a log of its communication with facilities regarding inefficient purchases. However, the employee performing these reviews left Central Pharmacy in March 2010 and has not been replaced. Business office staff have periodically performed this task, but not on a consistent basis. Central Pharmacy has requested approval to fill the position, but has not yet received it. Central Pharmacy also obtains, from one vendor, a list of brand name drugs that were purchased when a generic brand was available. Pharmacy staff determine if the purchases were appropriate given the circumstances and patients' needs or if the drugs should be returned and the generic drug purchased.

Recommendation 2

Perform risk assessments and other analyses to determine whether DOCS can obtain better prices for drugs, over-the-counter items, and medical supplies.

Status - Partially Implemented

Agency Action - Central Pharmacy has not done a formal risk assessment to determine if it can obtain better prices for drugs and medical supplies. However, it has taken other steps to help ensure it gets the best prices possible. Central Pharmacy purchases most pharmaceutical drugs and supplies through State contracts. For items not available through State contract, staff must obtain price quotes before the purchase. As noted in recommendation one, Central Pharmacy also provides direction to facilities on the efficient purchasing and use of pharmaceuticals. However, Central Pharmacy's monitoring of facility purchases essentially ended in March 2010. To determine if facilities had paid the lowest price for drugs, we tested prices paid for 84 individual drugs purchased between January 1, 2008 and March 1, 2011. We found all prices paid were equal to or below prices set by MMCAP.

Recommendation 3

Develop an effective plan for responding to problems or incidents involving the Central Pharmacy. The plan should include adequate training of response staff, drills, automated incidents notification to Central Pharmacy management, and holding staff accountable for compliance.

Status - Implemented

Agency Action - Oneida Correctional Facility management has developed an emergency response plan for the Central Pharmacy. The plan outlines how and when to make entry into the Pharmacy and who is notified when the alarms are activated. The pharmacy has fire, intrusion, and cooler alarms including color beacons on the building roof. Training is provided to correction officers who will respond to incidents, and a copy of the procedures to follow during an emergency are kept in the Oneida Correctional Facility Watch Commanders office. During non-working hours, the Central Pharmacy designates an "Officer of the Day"

who is on call and is notified in the event of an emergency at the Central Pharmacy. The alarms are tested monthly and documented in a log book. In addition, the back-up generator is tested every two weeks. There have not been any planned drills to test the response to emergencies at Central Pharmacy. However, on several occasions since the initial audit, incidents activated the alarms and subsequent responses. We reviewed the report for one incident that occurred in the last year and it indicated correction officers and other facility staff responded appropriately according to written procedures.

Recommendation 4

Establish minimum inventory levels for Central Pharmacy, whether or not an automated system is used, to reduce the possibility of stock outages. Follow up on negative balances for stock items in computerized inventory records.

Status - Implemented

Agency Action - The Central Pharmacy stocks 886 items. The Central Pharmacy computer system determines the minimum inventory level based on usage. It automatically calculates the inventory level necessary to maintain a four-week supply for generic drugs and a six-week supply for brand name drugs. In addition, Central Pharmacy manually reviews the inventory on hand and determines when it should be ordered. Central Pharmacy uses a Warehouse Negative Inventory report to identify items with critically-low inventory or out of stock. We reviewed the Negative Inventory report as of February 9, 2011, which listed 15 drugs or supplies. Of the 15, eight were on back order, two were being discontinued due to price increases, two required new labeling and had to be returned to Central Pharmacy (from the facilities) and then to the manufacturer, and three were awaiting a new shipment. The eight items on back order had requisition dates ranging from July 7, 2010 through February 2, 2011. These orders were not received due to reasons such as the items were recalled.

Recommendation 5

Require the P&T Committee to meet more frequently and to update the formulary as appropriate.

Status - Implemented

Agency Action - The Pharmacy and Therapeutics Committee (P&T Committee) has met twice a year since the initial audit was issued. We reviewed the minutes for the six P&T Committee meetings held over the past three fiscal years. The meeting minutes document the decisions as to which drugs should be added, deleted, or changed on the formulary listing. The minutes show 85 updates to the formulary including 23 additions, 18 deletions, and 44 changes such as different dosages for drugs.

Recommendation 6

Monitor overall demand of non-formulary drugs and, where appropriate, amend policy to include high-demand non-formulary drugs at Central Pharmacy.

Status - Implemented

Agency Action - Non-formulary drug usage is monitored by Central Pharmacy staff, the Regional Medical Director, and the chairman of the P&T Committee. Central Pharmacy analyzes all purchases using an Excel spreadsheet, which can show weekly, monthly, or yearly use of any drug. These levels are reviewed to determine if the use of any non-formulary is high enough to be included on the formulary listing. Additions to the formulary list are discussed at the semi-annual P&T meetings and require P&T Committee approval.

Recommendation 7

Implement a system for ensuring that bills are accurate before they are paid.

Status - Partially Implemented

Agency Action - Central Pharmacy staff periodically audited invoices for direct purchases by facilities. However, this did not occur until after the invoices were already paid. Pharmacy staff selects invoices from facilities that order a higher volume of drugs than other facilities. Price checks are done for three generic and three brand name drugs costing over \$100 to determine if the correct price was charged. The audits have not identified any incorrect pricing in the last two fiscal years. Central Pharmacy officials told us they can't review the invoices before payment due to lack of resources. We sampled a total of 84 individual drugs purchased by six different facilities between January 1, 2008 and March 1, 2011 to determine if they paid the correct price for drugs. We found that all drugs were purchased at the correct price.

Recommendation 8

Implement a system whereby facility purchases can be checked against available items at Central Pharmacy.

Status - Implemented

Agency Action - Facilities can access Central Pharmacy inventory records to determine if an item they need is in stock. When items are out of stock, facilities may order formulary items from outside vendors. When requesting a purchase order for the out-of-stock items, the facility must enter an approval number on the purchase order signifying the items were out of stock when the order was placed. The steward at Central Pharmacy monitors these purchases through the Department's electronic financial management system.

Recommendation 9

Ensure that all facilities comply with the requirement to maintain master inventory records.

Status - Implemented

Agency Action - Department policies require its pharmacies to maintain perpetual inventories for prescription drugs, over-the-counter pharmaceuticals, and all federally-controlled substances. Assessments of each pharmacy are done annually. The assessments include a review of pharmacy inventory records. We reviewed the most recent assessments, which showed the inventory records were generally satisfactory at the 24 pharmacies.

Recommendation 10

Evaluate the policy on cost implications of correctional facilities purchasing individually-packaged unit dose medications, and adjust DOCS policies if needed.

Status - Partially Implemented

Agency Action - The Department has continued to use unit dosing at its Wende and Walsh Regional Medical Units. The Department believes unit dose is the best practice at the RMUs on a standard of care basis. The Department provided guidance from the New York State Department of Health and the American Society of Health-System Pharmacists (ASHP) in support of its position. The Department of Health's guidance to hospitals is that medication not manufactured or packaged in single-unit containers should be repackaged by the hospital in single-unit containers. The Department considers its Regional Medical Units the equivalent of a hospital setting. The Department amended its policies and procedures to include the administration and monitoring of unit dose medication. Central Pharmacy officials have not yet done a formal analysis but told us they estimate the cost differential of using unit dose at the two RMUs is not significant, given the relatively-small number of inpatient inmates. They plan to do an analysis once they are in the new location and will consider expanding unit dosing to four additional RMUs.

Major contributors to this report were Steve Goss, Jennifer Paperman, Brandon Ogden, Robert Horn, and Peter Carroll.

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 also thank the management and staff of the Department and Oneida Correctional Facility for the courtesies and cooperation extended to our auditors.

Very truly yours,



Carmen Maldonado
Audit Director

cc: T. Lukacs, Division of Budget