

*A REPORT BY THE NEW YORK STATE  
OFFICE OF THE STATE COMPTROLLER*

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**Alan G. Hevesi  
COMPTROLLER**



***NEW YORK CITY DEPARTMENT OF HEALTH  
AND MENTAL HYGIENE***

***WINDOW FALLS PREVENTION PROGRAM***

***2003-N-11***

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**DIVISION OF STATE SERVICES**

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110 State Street

11<sup>th</sup> Floor

Albany, NY 12236



**Alan G. Hevesi**  
**COMPTROLLER**

**Report 2003-N-11**

Thomas R. Frieden, MD, MPH  
Commissioner  
New York City Department of Health and Mental Hygiene  
125 Worth Street  
New York, NY 10013

Dear Dr. Frieden:

The following is our report addressing selected aspects of the Window Falls Prevention Program administered by the Bureau of Food Safety and Community Sanitation of the New York City Department of Health and Mental Hygiene.

We did this audit according 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. We list major contributors to this report in Appendix A.

*Office of the State Comptroller*  
*Division of State Services*

December 27, 2004

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## **EXECUTIVE SUMMARY**

### **NEW YORK CITY DEPARTMENT OF HEALTH AND MENTAL HYGIENE WINDOW FALLS PREVENTION PROGRAM**

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#### **SCOPE OF AUDIT**

The Bureau of Food Safety and Community Sanitation (Bureau) of the New York City Department of Health and Mental Hygiene (Department) administers the Window Falls Prevention Program (Program). To reduce the frequency of accidental falls from apartment buildings, the Bureau conducts inspections in response to complaints, observations, and interviews. For example, if the inspector finds a violation - e.g., a lack of window guards - the law requires the landlord to fix the condition by undertaking installation of such safety devices. If the owner does not comply, the Bureau is supposed to refer the case to the New York City Department of Housing, Preservation, and Development (HPD), which is authorized to handle the installation in place of the owner. Our audit addressed the following questions about the Program as it was administered during the period of July 1, 2002 through March 30, 2004:

- Are all window guard-related cases recorded properly and resolved on a timely basis?
- Are referrals to HPD made in a timely manner and monitored adequately?

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#### **AUDIT OBSERVATIONS AND CONCLUSIONS**

The efforts of New York City (City) to reduce the number of preventable window falls have been effective, resulting in dramatic decreases. According to the Department, 217 window falls were reported in 1976, when the Window Falls Law (Law) was enacted. Just three years after the Law was implemented, that figure was reduced to 80. The annual totals have continued to decline but they have not ceased completely; the risk still exists. According to information provided by the Department, just nine window falls occurred in fiscal 2003, and seven of those were considered "preventable" (i.e., properly-installed window guards on a multiple-dwelling window might have prevented the fall of a child ten years of age or younger).

Despite the Program's overall success, our audit found that many of the cases generated through complaints, observations, and interviews did not result in either the installation of window guards or the assurance they were unnecessary. In fact, the Bureau sometimes closed cases without determining whether window guards were

required; did not always follow up to verify that required installations had taken place; and did not confirm that HPD had actually received all of the referrals generated.

We also identified numerous instances in which the Bureau did not perform significant inspection activities - including initial inspections, the issuance of a Commissioner's Order To Abate Nuisance (ordering building owners to install the window guards), compliance inspections, and referrals to HPD - in a timely fashion. The Bureau also lacked time standards for some of these important tasks. The timeliness of such activities is particularly important, since the Bureau generally inspects dwellings where there is already a strong suspicion that children are at risk from unprotected windows.

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## ***COMMENTS OF DEPARTMENT OFFICIALS***

**D**epartment officials generally agreed with the overall conclusions and recommendations, and indicated actions taken or planned to implement them. A complete copy of the Department's response is included as Appendix B.

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# INTRODUCTION

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## Background

Each year, young children throughout the United States are injured or die as a result of falls from unguarded windows. However, New York City (City) has been more successful than most communities in reducing the frequency of such accidents. Since 1976, the City has required the installation and maintenance of safety devices on the windows of each apartment, as well as in the public hallways, of multiple dwellings occupied by children aged ten or younger. This requirement applies to buildings with three or more apartments, and assigns responsibility for compliance to the building's owner, lessee, agent, or other person who manages or controls the property (referred to in this report as the landlord). Within the first three years after the requirement was imposed, the number of "window falls" fell from 217 to 80 per year.

Following enactment of the Window Guard Law (Section 131.15 of the New York City Health Code), the New York City Department of Health and Mental Hygiene (Department) launched a Window Falls Prevention Program (Program), which is administered by the Department's Bureau of Food Safety and Community Sanitation (Bureau). Rates have continued to drop; the Department reported that just nine children suffered window falls in 2003 and seven of those were considered "preventable" (i.e., properly-installed guards on a multiple-dwelling window might have prevented the fall of a child ten years of age or younger).

According to Title 17-145 of the New York City Administrative Code (Code), failure to properly install or maintain Department-approved window guards constitutes a public nuisance and a condition dangerous to life and health. Such violations are misdemeanors punishable by a fine of up to \$500 or imprisonment for up to six months or both. Under the Window Guard Law (Law), if a Bureau inspector finds a violation, the Department orders the landlord to correct the violation by installing and maintaining window guards as specified in the order. If the landlord does not comply, the Bureau is to refer the case to the New York City Department of Housing, Preservation and Development (HPD), which is expected to arrange for the



installation and related repairs. The Law also requires landlords to send notification forms to all of their tenants once a year, giving them a fresh opportunity to report that additional windows in the building need to be protected.

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## ***Audit Scope, Objectives and Methodology***

**W**e audited selected aspects of the Department's Window Falls Prevention Program for the period of July 1, 2002 to March 30, 2004. The primary objectives of our performance audit were to determine whether window guard cases were being recorded properly and resolved on a timely basis; and whether referrals to HPD were being made in a timely manner and were being monitored.

To accomplish our objectives, we interviewed Department officials and reviewed records maintained by the Department and HPD. We used computer-assisted audit techniques to analyze inspection and other window guard-related information maintained by the Department on its automated systems. We obtained downloads from these systems to identify cases that occurred at the Department during fiscal year 2003. The population we identified included 2,345 cases consisting of 134 complaints, 1,281 interviews, and 930 observations. We analyzed all cases in this population to determine whether inspections and certain other Program activities had been performed and, if so, whether they had been performed in a timely manner. As part of our audit testing, we also reviewed apartment building files, including hard copy records, to evaluate the reliability of the information contained on the automated systems. Our analysis included activities performed on these cases through October 8, 2003, the cutoff date for entries in the databases. The HPD database included information concerning cases that were handled through November 25, 2003.

As is our practice, at the outset of the audit we requested a representation letter from Department 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 their agency's 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 Department officials that all relevant information was provided to us during this audit.

We did our audit according to Generally Accepted Government Auditing Standards. Such standards require we plan and do our audit to adequately assess those operations of the Bureau within our audit scope. Further, these standards require we understand the Bureau's internal control structure and its compliance with those laws, rules and regulations relevant to the 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 our audit provides a reasonable basis for our findings, conclusions and recommendations.

In addition to being the State Auditor, the Comptroller performs certain other constitutionally and statutorily mandated duties as the chief fiscal officer of New York State, several of which are performed by the Division of State Services. These include operating the State's accounting system; preparing the State's financial statements; and approving State contracts, refunds, and other payments. In addition, the Comptroller appoints members to certain boards, commissions, and public authorities, some of who have minority voting rights. These duties may be considered management functions for the purposes of evaluating organizational independence under Generally Accepted Government Auditing Standards. In our opinion, these management functions do not affect our ability to conduct independent audits of program performance.

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## ***Response of Department Officials to Audit***

A draft copy of this report was provided to Department officials for their review and comment. Their comments were considered in preparing this report and are included as Appendix B.

Department officials generally agreed with the overall conclusions and recommendations, and indicated actions taken or plans to implement them.

Within 90 days after final release of this report, we request that the Commissioner of the Department of Health and Mental Hygiene report to the Governor, the State Comptroller and the leaders of the Legislature and fiscal committees, advising what steps were taken to implement our recommendations and where recommendations were not implemented, the reasons why.

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## FURTHER OPPORTUNITIES TO REDUCE RISK

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Even though New York City has achieved significant reductions in the rate at which young children are injured or killed because they fall through unguarded windows of apartment buildings, there is room for improvement in the implementation of the Window Guard Law (Law). A risk still exists that serious injuries could occur, and that the City could be vulnerable to higher liability costs as a result. Because new residents, landlords, and housing stocks enter the mix every year – introducing new possibilities of risk – the Department must remain vigilant.

The responsibility for administering the Program rests with the Bureau. Besides educating the public in prevention measures, Bureau officials focus on possible risks to children, conducting inspections in response to complaints from the public; observations of actual window guard violations seen by Department employees while performing other work; and interviews, usually with clients of the Office of Child Health of the City's Health and Hospitals Corporation who specify the need for window guards. When the Department receives information from these sources about a possible violation, it sends an informational package to the landlord, inspects the condition mentioned in the referral, distributes leaflets to other tenants in the building, and checks additional areas of the building for other violations of the Law. According to the Mayor's Management Report, a Notice of Violation was issued to approximately 90 percent of the buildings inspected by the Bureau during the past two fiscal years.

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### *Resolution of All Cases*

Because the objective of the Program is to protect children from window falls, it is critical the Bureau pursue all cases actively until they are resolved. When a report of a possible violation is received, Bureau personnel enter it in a computerized database. If a window guard is required and the landlord does not make the installation within five days, the Bureau may ask HPD to do so. However, in most instances, the

date of that referral to HPD is not noted in the database; it is recorded only in the Bureau's individual building records. A Bureau representative is supposed to contact HPD every 15 days after the referral to determine the status of the case and to notify the Bureau Director if it takes more than 30 days to correct the problem. But the lack of an initiating date in the database prevents Bureau officials from seeing at a glance just how long a case may have languished without resolution.

HPD documents the status of the cases it receives from the Bureau in a database of information known as the Window Guard Disposition Report. Even though each case in this database is classified according to status - e.g., Work Completed by HPD; Landlord Complied; No Access to Perform Repair; Refused Access - HPD officials advised us they take no further action on a case once it is included on this report. Before it appeared on this report, Bureau officials did not follow through on the required 15-day and 30-day monitoring intervals. Even though they acknowledged that they have access to the HPD database and sometimes refer to it, they also indicated that they consider cases closed once they have been referred to HPD. The Bureau does not maintain a summary document that lists all of the cases it has referred to HPD, something that could be produced from the computerized database in the form of a periodic summary report.

To determine whether all of the cases the Bureau referred to HPD could be accounted for, we compared information contained on the Bureau's database with information from the Window Guard Disposition Report. Sixty-three percent (1,486) of the 2,345 cases we reviewed in the Bureau database had been coded as "Referred to HPD"; meaning window guards should have been installed. The report did not include 415 (28 percent) of the 1,486 referrals, indicating the Bureau may not actually have referred them. In another 430 cases (29 percent), it included other apartments in the same building, but did not include the specific apartment where window guards were supposed to have been installed. Of the 1,486 referrals, the report clearly identified just 641 apartments and reported completed window guard installations in just 522 of those. In 79 of the remaining 119 cases, according to the report, installers could not obtain access.

Even if Bureau officials had reviewed the report regularly, they had no procedure for resolving problems of access. The

Bureau sometimes closed cases inexplicably without determining need and did not actively monitor HPD's responses to referrals, following up to verify installation or even receipt of the referral. Notably, the Bureau neither resolved all the cases it handled in-house nor ensured that all the cases it referred to HPD had been resolved. Once the referral was made, the Bureau classified the case as closed. There was no clear policy for cases that remained in-house.

(In response to the draft audit report, Department officials stated they have taken steps to improve the timeliness and completion of data entered into this system, however, they said that the magnitude of the findings are not consistent with their internal management information. They further added that they intend to investigate this matter further.)

A consistent system of classification that indicates the status of all cases should be developed for this process. The number of unresolved cases still poses a risk that a dangerous condition has not been corrected and, as a result, a child could fall. We believe Bureau officials did not detect the unresolved cases because they did not monitor the disposition of their own referrals to HPD. If they had attempted to track progress on the cases, they would have realized many of the cases were not even in HPD's database.

(In response to the draft audit report, Department officials stated they have discussed incompatibilities between HPD's system and its own and will work with HPD to rectify this. They further stated that many of the cases allegedly not in the HPD database are in the database under a different address.)

On the other hand, the Bureau can resolve cases without referring them to HPD. If there is no violation, or if an existing violation has been corrected by the landlord, no further action is needed. When we analyzed the 859 cases that had not been referred to HPD, we found 404 (47 percent) had not been fully resolved. The Bureau had "closed" cases, indicating that no further action would be taken, even though we do not consider its investigations to be complete. Bureau policy does not include firm criteria concerning the closing of cases; the closure decision is often made by the Director. However, Bureau files often do not document the reason the case was closed or identify the person who made the decision.

(In response to the draft audit report, Department officials stated that the Bureau has clear closing criteria in place, however, it was an oversight that specific details were not written in the protocol.)

To identify unresolved cases within the 859 cases not referred to HPD, we focused on those with initial inspection codes, such as No Access, No Inspection Performed, and Incomplete that indicate the need for additional action. We sought to determine whether that action had been taken. Our review revealed the following:

- **Complaint Cases** - Half of the 50 complaint cases did not receive further investigation even though codes indicated that inspection was needed. Fourteen of these cases had been closed because the inspector could not gain access. An additional six cases were still open at the time we received the data and may have been investigated further.
- **Interview Cases** - Codes for 267 of the 626 interview cases indicated the need for further investigation. Of these, no inspection had been performed for 147, even though the codes indicated a need to reschedule. Just seven of these cases had been rescheduled, but they were not resolved because access was not available during the follow-up visit. The other 140 cases had not been rescheduled. Coding for an additional 36 cases indicated that rules and regulations had been violated and that a re-inspection was required. All 36 had been closed because access could not be obtained. Finally, another 16 cases with Violation and Re-Inspection needed classifications had not yet been re-inspected; these remained open at the time of our analysis.
- **Observation Cases** - Further investigation was needed for 112 of the 183 observation cases, but 14 of these lacked action codes to indicate that need. It is not clear why the cases were not referred to HPD; an “observation” is considered to be an inspection. We noted that there was no record that follow-up inspections had been performed for the remaining 98 action-coded cases, which remained unresolved. An additional 11 cases requiring further investigation or lacking codes

were still open at the time of our review, but may have been acted on after our analysis was completed.

### **Recommendations**

1. Record all key case data promptly in Bureau databases, listing all cases referred to HPD and the dates of referral, and updating the files by noting the actions taken on the case, and the results of that action. Generate monitoring reports from the databases on a regular schedule.
2. Monitor the status of all cases referred to HPD at 15-day and 30-day intervals, as required by Bureau procedures.
3. Continue to follow up on all cases, including those returned by HPD, until they are resolved or closed for appropriate reasons. Develop procedures to be followed when HPD reports a lack of access.
4. Develop clear criteria for closing cases and see that they are met. Include safeguards that require high-level authorization for closure when codes indicate that the case has not been resolved. Complete all investigations before closing cases.

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### ***Prompt Performance of Inspections and Installations***

**A**ny delay in the performance of inspections to identify possible violations of the Law increases the risk that a tragedy may occur. The Bureau uses a procedures manual, the Window Guard Inspection Protocol, to guide its staff in the efficient processing and investigating of window guard cases. A total of 2,345 window guard cases consisting of 134 complaints, 1,281 interviews, and 930 observation cases were received by the Bureau in fiscal year 2003; some inspection activities were performed for virtually all of these cases. However, in some instances, inspections were not conducted in a timely fashion; some were performed six months or more after the Bureau received the case. In cases where inspections were not conducted, Bureau records generally indicated they were not needed. In a few instances, cases were still being worked on after our audit ended.



Complaint cases start when the Bureau's Call Center receives a complaint from the public about missing or defective window guards, while interview cases originate at a Department clinic or similar setting when parents are asked about possible hazards in their homes. Both of these types of cases may be followed up by a call to the tenant; an initial inspection of the premises; and, if necessary, the issuance of a Commissioner's Order to Abate Nuisance (COTA), a compliance inspection, and a referral to HPD if violations have not been corrected. On the other hand, observation cases are initiated when a trained Bureau or HPD inspector actually observes window-related hazards; such an observation is considered to be the same thing as an initial inspection.

The COTA is a legal document the Bureau mails to landlords after the initial inspection, asking for verification of identifying information and ordering them to correct a particular violation in a specific location. We referred to the Bureau's database to determine how much time had elapsed between the receipt of cases between July 1, 2002, and June 30, 2003, and the COTA mailings. In many of the complaint and interview cases, more than 30 days had passed before a COTA was mailed to the landlord. Some cases took much longer; for example, COTAs were not mailed for 13 percent of the interview cases until at least 90 days had passed. We also noted that many of the COTA mailing dates were missing from the databases.

The 15-day time standard for conducting compliance inspections is based on the date the COTA is mailed. Under the Law, if the demands in the COTA are not satisfied within 5 days after service, the Bureau can refer the case to HPD. In observation cases, the COTA may be prepared and mailed even earlier, because an initial inspection has already been made.

Compliance inspections are necessary to determine whether violations identified during initial inspections or observations have been corrected. Bureau policy requires compliance inspections to be conducted within 15 days from the date the informational package, including a COTA, was mailed to the landlord.

Therefore, we recommend that the Bureau implement steps to conduct compliance inspections within the required 15-day timeframe.

To determine whether these inspections have been performed in a timely fashion, for our population of 2,345 cases, we analyzed downloaded data from the Bureau databases and compared the COTA mailing dates with the dates of the compliance inspections. We found that the Bureau rarely met the time standard; just 38 (3 percent) of the 1,344 compliance inspections we reviewed had been conducted within the required 15 days; 513 (38 percent) were conducted within 16 to 30 days; and it was more than 30 days before the remaining 793 (59 percent) were completed. In an additional 199 instances, the Bureau did not comply with its policy of mailing the COTA prior to performing the compliance inspection. We could not evaluate the timeliness for 802 of the cases we reviewed because the database lacked either a mailing date for the COTA or the date of the inspection.

(In response to the draft audit report, Department officials stated the Bureau policy shared with the auditors mistakenly stated that inspections should be conducted within 15 days of the mailing of the COTA. Officials indicated the interval between the mailing of the COTA and the compliance inspection should be as soon as possible, but no sooner than 15 days.)

Auditor's Comments: We recommend the required timeframe be clear and explicit.

Once an inspection determines that a landlord has not complied with the COTA within five days after service, the Department can refer the case to HPD. However, Bureau procedures do not specify a timeframe for such a referral. When we attempted to determine whether the Bureau's referrals to HPD were timely, we found that the referral dates were generally not entered in the database (just 141 of the 1,486 referrals had dates), making it difficult to know how long this part of the process took. Even when the referral dates were recorded, the data indicated that the 141 referrals were generally not timely; averaging 18.3 days for complaint cases, 55.8 days for observation cases, and 26.25 days for interview cases. Since referral dates were often not included on the Bureau's own databases, we also question how the Bureau can monitor the cases after 15- and 30-day periods. It is not clear when such periods begin and end.

Department officials have agreed with our overall conclusions, and have provided documentation demonstrating they had

prepared timeframe targets for the more significant inspections and related activities and were now monitoring against these time standards. The Bureau also provided us with a summary of complaint cases after correcting for database problems. These revised figures improve the statistics for complaint cases, but do not change the observations and conclusions of this report.

We found that, in many cases, key information - even though it was generally accurate - had not been entered in the appropriate database. We also noted that Bureau policy does not specify a timeframe within which the initial inspections should be performed, the COTA should be mailed to the building owner, and cases should be referred to HPD after the compliance inspection has been completed. We recommended the Bureau establish time standards for initial inspections performed in response to interviews, for the COTA mailings, and for the referral of cases to HPD; and monitor against these standards using exception reports to flag delays.

### **Recommendations**

5. Establish formal written time standards for conducting initial and compliance inspections and other key activities. Monitor against these standards, using exception reports to flag timeframes that appear to be excessive. These standards should include:
  - a time requirement for the mailing of Commissioner's Orders to Abate Nuisance and a process for monitoring compliance;
  - turnaround time between receipt of the cases and the mailing of the Commissioner's Orders to Abate Nuisance;
  - steps for enforcing the required timeframe for the completion of compliance inspections;
  - formal written procedures that specify a timeframe for referrals to HPD.

### **Recommendations (Cont'd)**

6. Ensure that Bureau databases contain complete and accurate information, including inspection dates, so that they may be used as performance measurement tools in tracking the timeliness of significant activities.
7. Review the Bureau database to identify incomplete information, and fill in missing data if it is available in hard files or other sources.



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## MAJOR CONTRIBUTORS TO THIS REPORT

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David R. Hancox  
Al Kee  
Allen Cohen  
Tenneh Blamah  
Charles Johnson  
Raymond Louie  
Yamillette Ronda-Velez  
Adrian Wiseman  
Marti Madory

THE CITY OF NEW YORK  
**DEPARTMENT OF HEALTH AND MENTAL HYGIENE**  
OFFICE OF THE COMMISSIONER



125 WORTH STREET, CN-28  
NEW YORK, NY 10013  
NYC.GOV/HEALTH

THOMAS R. FRIEDEN, M.D., M.P.H.  
COMMISSIONER  
TEL (212) 788-5261  
FAX (212) 964-0472

October 15, 2004

David R. Hancox, Audit Director  
State of New York  
Office of the State Comptroller  
110 State Street  
Albany, New York 12236

Subject: Draft Audit Report on Window Falls  
Prevention Program; Report No. 2003-N-11

Dear Mr. Hancox:

We have reviewed this draft audit report and appreciate your consideration of our comments on the findings and recommendations. We are pleased that this report acknowledges the overall success of the program in preventing window falls.

In general, we accept the recommendations of this report that refer to the need to work more closely with the Department of Housing Preservation and Development (HPD) to ensure that they are able to perform their mandated function of installing and repairing window guards in cases where a building's owner has failed to comply with a Commissioner's Order to Abate (COTA) issued by this Department. The report correctly points out that this requires close attention to reports generated by HPD. We agree that we need to improve our operational coordination with HPD, including attention to differences in how the two agencies define data fields.

We also accept the recommendations concerning our clarification of operational timelines for handling window guard inspections in response to complaints, interviews, and observations.

The report accurately points out limitations in our window falls prevention data system, which was in transition at the time covered by the audit. We have taken steps to improve our database issues. However, the audit suggests that large numbers of cases were not completed and that many cases referred to HPD were not actually received by them. These findings are not consistent with our internal management information.

Attached to this letter are detailed comments on the audit report and the response to each recommendation. We appreciate the courtesy and consideration of your audit staff in the

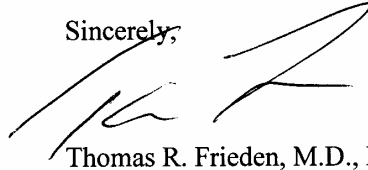
David R. Hancox

-2-

October 15, 2004

performance of this audit. If you have any questions or need further information, please contact Charles Troob, Assistant Commissioner, Business Systems Improvement at (212) 788-4757.

Sincerely,

A handwritten signature in black ink, appearing to read 'TRF', is written over a faint, larger signature that looks like 'R'. The signature is written in a cursive, fluid style.

Thomas R. Frieden, M.D., M.P.H.  
Commissioner

Encl.

TRF/ct

cc: C. Troob  
E. Marcus  
R. Edman



**NEW YORK CITY DEPARTMENT OF HEALTH AND MENTAL HYGIENE  
BUREAU OF FOOD SAFETY AND COMMUNITY SANITATION**

**STATEMENT IN RESPONSE TO COMPTROLLER'S AUDIT**

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The Audit Report issued by the City Comptroller contends that the Department of Health and Mental Hygiene (the "Department") does not effectively respond to complaints and referrals related to window guards. The following statement will address the overall responsibility of the Bureau of Food Safety and Community Sanitation (BFSCS) and discuss the Department's major concerns with the Comptroller's Draft Report: "New York City Department of Health and Mental Hygiene Window Fall Prevention Program 2003-N-11" issued on September 3, 2004.

\*  
**Note**

***Overview of Activities of BFSCS***

The New York City Department of Health and Mental Hygiene (DOHMH) promotes and protects the health and quality of life of New York City residents. The mission of the Department's Bureau of Food Safety and Community Sanitation (BFSCS) is to reduce and prevent the occurrence of environmental health hazards and resulting injuries. The BFSCS is responsible for enforcing New York City Health and New York State Sanitary Codes, and various Local Laws of the City of New York, for a broad spectrum of environmental health concerns. The BFSCS is a large, high profile, technical bureau responsible for conducting citywide inspections for the majority of regulatory programs overseen by the Department's Division of Environmental Health. These include pre-permit, routine and complaint-generated inspections of all food service establishments, mobile food carts, fish stalls, summer camps, shelters, correctional facilities, public, and non-public school cafeterias, soup kitchens and senior centers. The BFSCS also has responsibility for response to non-food enforcement areas, including compliance with window guard regulations, sanitary conditions in single-room occupancy hotels, the New York State Clean Indoor Air Act, and the New York City Smoke-Free Air Act. The BFSCS also participates on various inter-agency task forces, including the Midtown Task Force, and responds to environmental emergencies such as a widespread loss of electricity and or water. This all translates to approximately 75,000 inspections per annum.

The BFSCS's Window Fall Prevention Program (WFPP) is one of the oldest and most successful childhood injury prevention initiatives in the United States. New York City is the only major city in the U.S. with a law requiring building owners of multiple dwellings to install window guards in apartments where children eleven years old and younger reside. Despite the fact that a high proportion of New Yorkers live in multiple dwelling buildings, injury rates in the City are nearly half the national average as reported in a recent study by the Columbia University Medical Center. That study credits this to the enactment and subsequent enforcement of the New York City window guard law. Since the implementation of the law in 1976, window falls in NYC have declined dramatically. The law requires that building owners install approved window guards in the apartment of any family where a child eleven years old or younger resides. It also requires the building owner to provide every tenant with a notification form once a year,

\* This audit was performed by the New York State Comptroller.

so that any new need for a window guard may be reported. In 1976 there were 217 window falls reported to the Department. Only three years later, after the program was launched, there were only 80 falls reported. As noted in the audit, there were a total of nine falls reported to the Department in fiscal year 2003. The Department concluded that seven of these falls could have been prevented if window guards had been properly installed; the other two were categorized as non-preventable under the Law.

This significant decline clearly demonstrates the effectiveness of the 1976 legislation and the program's efforts to heighten public awareness through educational outreach. In 1986, the law was further amended to allow for the installation of window guards in any apartment where the tenant requested them.

### *Surveillance Complaints and Referrals*

The WFPP's biggest responsibility is assuring that wherever the law requires window guards, they are properly installed and maintained. It is not possible to inspect systematically the enormous number of multi-family dwellings with young children, so a program has been developed which relies on outreach and other methodologies to encourage compliance and to identify noncompliance. As identified in the audit, the primary surveillance tools are complaints from tenants and other members of the public, referrals by health care providers, and direct observation by agency staff. In 1991, the Department expanded its surveillance program and cross trained Department employees whose work takes them into the homes of young children in multi-family residences so that they could assess and report window guard violations to the WFPP. This initiative expanded to New York City operated child health clinics where staff members were trained to interview the parents about the presence or absence of window guards.

### *Enforcement*

The BFSCS addresses all complaints, observations, and referrals forwarded to the WFPP. When a complaint or interview referral is received by the WFPP, it is assigned for inspection so that the initial inspection attempt can occur within fifteen days of the WFPP receiving the case. [Referrals and complaints for New York City Housing Authority (NYCHA) and Housing Preservation and Development (HPD) properties are forwarded to their respective repair offices for remediation.] An inspector will attempt to schedule an inspection by making a telephone call with the tenant. If telephone contact is unsuccessful; an inspection attempt is made. The WFPP schedules up to three inspection attempts when access is not obtained and leaves contact information for the tenant each time.

Department employees whose assignments take them into the homes of children in multi-family dwellings observe and report window guard violations to the WFPP. WFPP initial inspections or "observation" reports that identify a window violation trigger a Commissioner's Order to Abate (COTA) that is mailed to a building's owners. It instructs the building's owner to

install or repair window guards within five days of the receipt of the COTA in the apartment in which the inspection was performed or the observation was made, all other apartments where children eleven years of age or younger reside and in all public areas

A phone call also is made to building owners to inform them of the issuance of the COTA, and instructing them to install window guards in all apartments identified in the COTA, any other apartment where children of the regulated age reside and all public areas. The case is then assigned for a compliance inspection. In order to allow for possible mail delivery delays and an appropriate response to the order from the building owner, the compliance inspection attempt of the apartment can occur no less than fifteen days after the COTA is sent. *The protocol shared with the auditors, and used as the basis for their findings concerning this issue, mistakenly states that inspections should be conducted within fifteen days of the mailing of the COTA. We apologize for any confusion which this may have caused.* In fact, inspections are now conducted within an average of 21 days.

Once in a building for an initial inspection or compliance inspection based on an "observation" report, WFPP staff canvass the building and also inspect apartments where children younger than eleven years of age reside until they find five additional apartments with window guard violations or all apartments in the building have been inspected (whichever comes first). If apartments or public areas are found to have a window guard violation, a Notice of Violation (NOV) is issued to the building's owner. Additionally, a notice and pamphlet on window guards is left at all apartments to which access was not obtained, explaining window guard requirements and informing the tenant to contact the Department's WFPP if window guards are needed. The NOV is returnable to the Department's Administrative Tribunal where monetary penalties may be assessed. Simultaneously, all inspections resulting in a NOV cause the case to be referred to the Department of Housing Preservation and Development (HPD) for remediation. HPD will install or repair window guards if the owner does not. The WFPP continues to interact with HPD to ensure that these installations and repairs take place.

Additionally, the WFPP responds to building owners who have reached out to the Department for assistance in dealing with recalcitrant tenants. Tenants are considered to be recalcitrant when they refuse to allow the building owner to install or repair a window guard. A WFPP Public Health Advisor reaches out via telephone and/or field visits to the tenant and building owner in order to educate them on the window guard regulations. WFPP staff then schedule a time convenient to both the tenant and the building owner, so that the installation or repair can be performed.

The BFSCS initially deployed a new data management system for the WFPP in late March 2002. The system is continually being enhanced to meet current and arising needs of the program and the public. During the period covered by the audit, the data system was being phased in, so that some of the data issues raised by the auditors have since been resolved. In addition, as discussed below, there are inconsistencies in data handling by this system and HPD's systems.

#### **Discussion of Findings:**

**Response to Specific Findings and Conclusion: Audit Number 2003-N-11.**

The agency was pleased to read the acknowledgement in this audit of the general success of this program in preventing window falls. Before responding to the recommendations, we would like to comment on a few audit findings.

On page 12 the audit states: "The Bureau does not maintain a summary document that lists all of the cases it has referred to HPD, something that could be produced from the computerized database in the form of a periodic summary report."

The Bureau sees no need to maintain such a summary document. A report can be produced from the data management system whenever it is required.

On page 13 the audit states: "The Bureau neither resolved all the cases it handled in-house nor ensured that all the cases it referred to HPD had been resolved...Bureau officials did not detect the unresolved cases because they did not monitor the disposition of their own referrals to HPD..."

The report accurately points out limitations in our window fall prevention data system, which was in transition at the time covered by the audit. We have taken steps to improve the timeliness and completeness of data entered into this system. However, the audit suggests that large numbers of cases were not completed and that many cases referred to HPD were not actually received by them. These findings are not consistent with our internal management information. We intend to investigate this matter further.

On page 13 the audit states: "If they [BFSCS] had attempted to track progress on the cases, they would have realized many of the cases were not even in HPD's database."

DOHMH has reviewed HPD's disposition reports and has discovered incompatibilities between HPD's system and its own and will work with HPD to rectify this. Many of the cases allegedly not in the HPD database are in fact in that database under a different address. This is attributable to HPD's use of the City's "GeoSupport" utility, a database that makes use of a building identification number (BIN) so that buildings known by various street addresses can be uniquely identified. A building with multiple addresses is returned with the primary address to the HPD database from GeoSupport. For these buildings, the address stored by HPD may be different from the address sent by DOHMH, making direct comparison difficult.

The following are samples of discrepancies between HPD's database and WFPP's database for which the buildings are in fact the same:

Address Referred by DOHMH

510 East 82 Street, Brooklyn  
 2304 7 Avenue, N.Y.  
 270 West 153 Street, N.Y.  
 1925 7 Avenue, N.Y.

Address Returned by Geosupport

8201 5 Avenue, Brooklyn  
 2304 Adam C Powell Boulevard, N. Y.  
 2866 Frederick Douglas Boulevard, N.Y.  
 1921 Adam C Powell Boulevard, N.Y.

Another discrepancy is in date information. The date WFPP sends HPD a referral is not the same as the date HPD enters it into its database. The Department meets with HPD periodically to continue work on issues like the ones discussed and understands that ongoing communication and clarification with HPD is necessary.

On page 13 the audit reads: "Bureau policy does not include firm criteria concerning the closing of cases; the closure decision is often made by the Director."

The Bureau has clear closing criteria in place. However, it is an oversight that specific details were not written in the protocol.

Prior to 2002, two no accesses closed a case. In 2002, the Bureau decided to expand this number to three no accesses. Three attempts are made to access an apartment before a complaint or interview is closed by WFPP. The inspector schedules an appointment to inspect the complainant's apartment in advance of each attempted access. After each no access visit, a form translated in Mandarin, Creole, Spanish and Russian is left for the tenant informing him to call to schedule an inspection. Additionally, the remaining apartments of the building are provided with window guard educational materials on the proper window guard installation and instructions on how to request window guards. WFPP inspectors are trained to follow the three no access rule and sequential no access attempt codes were created in the window guard database to describe each attempt. The system knows to close a case automatically when the third no access attempt is entered. As the Bureau is in the process of amending the WFPP protocol, it will add the three no access rule.

The Bureau also may close the case if the dwelling in question is a private house, which is not covered by window guard laws, or if it receives incomplete information, such as an incomplete address.

Additionally, it is written in the Window Guard Inspection Protocol that the Director of the Window Fall Prevention Program (WFPP) or her designee can: "...close the complaint on the complaint database if the complaint is related to a window fall report or previously filed complaint and has been investigated..."

We agree with the audit's findings regarding the need to coordinate with HPD and to continue to enhance our database. With a view to strengthening the overall performance in order to better monitor BFSCS performance, particularly in the area of responding to public window guard complaints, the Department proposes to:

- Coordinate with HPD to resolve database compatibility issues
- Improve its database to enhance query capability

Please note, however, that the Comptroller's report fails to recognize that the BFSCS is responsible for the inspection side of the Window Guard Law. HPD is a different mayoral agency charged with the installation of window guards. The BFSCS recognizes the need to work closely with HPD, but this is not a legal mandate; it is an internal policy. The DOHMH agrees that additional follow-up with HPD would better protect children by assuring that all steps are taken to correct violations.

The BFSCS also is planning to revamp the Window Fall Prevention Program website to make it more user-friendly to its targeted audience: building owners, parents and caregivers.

The Department appreciates the Comptroller's investment in time and energy in reviewing the BFSCS' WFPP and concluding on the effectiveness of its Complaint Inspection Program for Window Guards and looks forward to the final report. Thank you for giving the Department the opportunity to address BFSCS concerns. We are pleased that the records show that our Window Guards program is effective and efficient. And, although we believe our program is much more effective than your report suggests, we do agree with some recommendations, as mentioned, and will make changes as we see fit.

**Recommendations**

**1. Recommendation #1 states that the Department should “Record all key case data promptly in Bureau databases, listing all cases referred to HPD and dates of referral, and updating the files by noting the actions taken on the case and the results of that action. Generate monitoring reports from the database on a regular schedule.”**

The Department agrees with this recommendation but affirms that it is already performing these activities. The auditors knew the Bureau’s procedures and samples of reports were given to the auditors during the exit conference. Nonetheless, the Bureau will continue to update its files to reflect HPD actions and to generate monitoring reports, which the system can do.

**2. Recommendation #2 states that the BFSCS should: “Monitor the status of all cases referred to HPD at 15-day and 30-day intervals, as required by Bureau procedures.”**

The Department partially agrees with this recommendation. The specific time frames for case monitoring require reassessment. The BFSCS will establish new formal in-house procedures in conjunction with HPD. The Department intends to review its referral records and ensure that it follows up with HPD within the new, agreed upon time frames.

**3. Recommendation #3 states that BFSCS should “Continue to follow up on all cases, including those returned by HPD, until they are resolved or closed for appropriate reasons. Develop procedures to be followed when HPD reports a lack of access.”**

The Department agrees with this recommendation as it will further protect children and will assume this responsibility even though it is not charged with HPD oversight. The BFSCS will endeavor to clearly understand HPD processes and classifications of findings so that it may effect additional follow-up.

The Department has noted that HPD has encountered access difficulties. The WFPP has agreed to meet with HPD to provide assistance with HPD’s instances of no access to install window guards. As the WFPP gained access to the apartment to assess the need for window guards and also referred the name and telephone number of the tenant to HPD, the WFPP needs to understand HPD’s procedures and definitions of a no access attempt so that it can help determine a plan to help resolve no access issues.

**4. Recommendation #4 states that BFSCS should “Develop clear criteria for closing cases and see that they are met. Include safeguards that require high-level authorization for closure when codes indicate that the case has not been resolved. Complete all investigations before closing cases.”**

Again, as previously mentioned, the Department agrees with this recommendation but notes that the WFPP already has clear case closing criteria that will be documented in the protocol now.

We do not agree that the automated system needs to be modified to include a code for case closure reasons because the major reasons for closure are included in other data fields (e.g. multiple no accesses, private home, unfounded). In cases closed for unusual reasons, the comments field is used to record the reason. The auditors' suggestion that the reason be entered explicitly is a constructive one, but it would require more data entry and it does not seem essential at this time.

**5. Recommendation #5 states that the BFSCS should: "Establish formal written time standards for conducting initial and compliance inspections and other key activities. Monitor against these standards, using exception reports to flag timeframes that appear to be excessive. These standards should include:**

- **a time requirement for the mailing of Commissioner's Orders to Abate Nuisance and a process for monitoring compliance;**
- **turnaround time between receipt of the cases and the mailing of the Commissioner's Orders to Abate Nuisance;**
- **steps for enforcing the required 15-day timeframe for the completion of compliance inspections;**
- **formal written procedures that specify a timeframe for referrals to HPD."**

DOHMH agrees that standards are necessary, but argues that the BFSCS has developed a comprehensive management tool that was given to the auditors at the time of the exit conference. The Bureau is currently enhancing the development of time frames and monitoring against those timeframes with the use of exception reports. The Director of the WFPP is charged with monitoring performance against these standards and to provide BFSCS administration with explanations for goals that are not met.

BFSCS timeframes for responding take into account the fact that inspectors are in the field Monday through Friday afternoons, when they return to the office to receive an assignment. Therefore, a complaint or referral received on a Monday, may not be assigned to an inspector until Friday and the report for that inspection may not be returned to the office until the following Friday, ten days later. The BFSCS intends to investigate new technologies that would enable remote electronic transmission of reports to the office and as resources permit, develop that capacity. The current procedures are intended to maximize efficiency and productivity.

As such, the BFSCS has an internal target of fifteen days for a first inspection attempt. If the fifteen days are exceeded by two days, the Director of the program must provide an explanation to the Executive Deputy Director. The turnaround time between receipt of cases and mailing of the Commissioner's Orders to Abate Nuisance is ten days. Again, if the ten days are exceeded by two days, the Director of the program must provide an explanation to the Executive Deputy Director. The Bureau also has internal targets that specify a timeframe for referrals to HPD; currently its timeframe from receiving an initial window guard complaint or referral to a referral to HPD is sixty days, allowing time for an inspection, the issuance of an Order to Abate, a compliance inspection and the referral.



As mentioned earlier, the interval between the mailing of the COTA and the compliance inspection should be as soon as possible, but no sooner than 15 days.

**6. Recommendation # 6 states that the BFSCS should: “Ensure that Bureau databases contain complete and accurate information, including inspection dates, so that they may be used as performance measurement tools in tracking the timeliness of significant activities.”**

DOHMH agrees with this recommendation. The Bureau’s database is under constant review and with these added enhancements will be working more effectively. The BFSCS currently has a complaint processing and accountability system. All complaints were responded to and required documentation is available. While DOH officials assert that BFSCS has a central record keeping system for complaints, they also acknowledge that the system was in a state of transition at the time of the audit.

**7. Recommendation # 7 reads: “Review the Bureau database to identify incomplete information, and fill in missing data if it is available in hard files or other sources.”**

The Department agrees with this recommendation but cannot implement it retrospectively using existing resources. Front-end edit checks have been incorporated into the system and records are routinely reviewed to ensure that all the information required to manage the program is correctly and completely entered. We intend to continue this process to assure complete information for all open cases, as well as all future cases.