
**Thomas P. DiNapoli
COMPTROLLER**



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**OFFICE OF THE
NEW YORK STATE COMPTROLLER**

**DIVISION OF STATE
GOVERNMENT ACCOUNTABILITY**

DEPARTMENT OF HEALTH

**FOOD PROGRAM
PAYMENTS TO SELECTED
CHILD CARE CENTERS IN
NEW YORK CITY**

Report 2007-S-75

AUDIT OBJECTIVE

The objective of our audit was to determine whether food program payments by the Department of Health (Department) to selected child care centers in New York City were appropriate and adequately supported.

AUDIT RESULTS - SUMMARY

Based on the results of our audit we conclude that child care centers we previously identified as potentially defrauding the Office of Children and Family Services (OCFS) also potentially defrauded the Department.

The Department is responsible for administering the United States Department of Agriculture's (USDA) Child and Adult Care Food Program (Program) within New York State. Under the Program, Centers are reimbursed for providing meals and snacks to the children in their care. The Department is required to administer the Program in accordance with federal regulations (Regulations) which set forth requirements for Program eligibility and meal reimbursement. Centers can participate in the Program as independent Centers or through a sponsor which may represent a number of Centers.

During Program year 2007 (October 1, 2006 to September 30, 2007), up to 1,395 independent Centers and sponsors of Centers, for a total of 4,060 Centers, were enrolled in the Program. During this period, the Department received \$167 million in Program funding of which it disbursed \$160 million to participating Centers, and retained \$7 million for Department-related audits and Program administration.

In an audit of grants awarded to New York City child care centers by OCFS, we found many child care centers used grant funds in a potentially fraudulent manner (Audit Report

2006-S-33, released July 2, 2008). Based on the potential systemic fraud we found in the Child Care Grant Program, we believed there was a high risk that Centers that received a child care grant may be inappropriately obtaining and using funds from other programs the State administers. Therefore, we identified 46 child care Centers that received an OCFS child care grant between February 1, 1997 and August 15, 2006, and also received reimbursement from the Department for the Program.

To determine whether claims submitted to the Department for meal reimbursement were appropriate, we judgmentally selected 10 of the above-noted 46 centers. We reviewed certain Program claims, totaling \$169,125, submitted by these 10 centers between July 2004 and September 2007. We determined that two Centers had only minor claim errors for which USDA policies indicate a recovery is not required. For the remaining eight Centers, whose sampled claims totaled \$135,317, we determined that the Department should recover \$125,400 because the Centers could not support the reimbursements paid and used various methods to potentially defraud the State (see Exhibit A).

These methods included altering documentation, misclassifying participant income eligibility and inflating the number of meals actually served. The Centers also did not maintain sufficient evidence to show food money received was used in accordance with regulations. For example, for calendar years 2006 and 2007, we found 180 of the 231 (78 percent) income eligibility applications provided to us by Center E generally appeared fraudulent. Some had information relating to the parent's income that was altered using white out or was completed in different handwriting and/or ink than was used to complete the remainder of that section.

Similarly, for June and July 2007, Center H requested reimbursements for 1,467 meals. However, meal counts and daily sign-in records could only support 776 meals.

We attribute our findings, in part, to the Department's ineffective monitoring of the centers included in our audit. We were surprised to learn that for the eight Centers where we identified potential fraud, the Department had previously identified the same or similar problems at six of them, yet did not take sufficient action to ensure they were corrected. For example, during its regular program reviews, the Department cited Center E twice, in January 2005 and again in May 2007, for many of the same findings we identified when we visited the Center in September 2007. We believe the Center continued to receive payments from January 2005 through September 2007 that they were not entitled to.

According to Regulations, Department staff should declare a Center "seriously deficient" if it is determined to be materially noncompliant in one or more aspects of the Program (e.g., habitually claiming reimbursement for meals not served, misclassifying a significant number of applicants income, etc.). If a Center is declared seriously deficient, it is required to address the identified deficiencies within a given timeframe. If not corrected, the Department is to terminate the Center's participation in the Program.

As a result of our audit, the Department declared five of the ten Centers in our sample seriously deficient (Centers A, D, E, G and H) and has since terminated three of these from the Program (A, D, and H). However, the Department should have taken this action earlier.

In response to our draft report, Department officials note that USDA management evaluations and fiscal management reviews have repeatedly determined that the Department exceeds USDA integrity requirements. They state further that our audit is not representative of the Department's overall Program-related performance as we only reviewed a portion of its administrative responsibilities. However, they do agree to implement many of our report recommendations.

We agree that in many ways the Department adheres to the USDA regulations. However, for the centers we examined, our findings indicate that Department officials have not done enough to ensure that significant instances of Provider noncompliance are corrected once identified.

Our audit report contains 14 recommendations. In addition, we referred matters in this report to the Office of the State Comptroller's Investigations Unit for review and referral to law enforcement agencies for possible criminal prosecution.

This report, dated May 12, 2009, is available on our website at: <http://www.osc.state.ny.us>. Add or update your mailing list address by contacting us at: (518) 474-3271 or Office of the State Comptroller
Division of State Government Accountability
110 State Street, 11th Floor
Albany, NY 12236

BACKGROUND

The NYS Department of Health (Department) is responsible for administering the United States Department of Agriculture's (USDA) Child and Adult Care Food Program (Program) within New York State. Pursuant to the Program, child care providers (Providers) are reimbursed for the meals and

snacks they provide to the children in their care. Providers include family child care homes (Homes), which typically serve 3 to 14 children; and child care Centers (Centers), which typically serve more than six children. The Program sets forth requirements for the variety and serving size of food, and requires the Department to monitor Provider compliance with governing regulations.

In our prior audit of child care-related grants awarded by New York State to a sample of New York City-based child care centers (Report 2006-S-33, issued July 2, 2008), we found systematic abuse of those grant monies by Center personnel. As such, we wanted to determine whether these specific Centers were misusing other government monies as well. We identified 46 Centers that also received Program monies from the Department.

All Centers and Homes wishing to participate in the Program must file an application with the Department, be subject to a pre-approval visit performed by a Department representative, and upon approval, enter into a written agreement with the Department. Provider Homes enter the Program through Child Care Home Sponsors (usually a community-based agency); while Provider Centers may enter the Program independently or through a Child Care Center Sponsor (a person or organization representing one or more Centers). The agreements acknowledge the responsibilities and service requirements of each participating party and limit the use of Program monies by Providers to providing meals and/or enhancing meal services.

Program regulations (Regulations) require participating Providers to maintain Program-related documentation for the current Program year as well as for the immediate three previous Program years as appropriate. Required documentation includes income

eligibility applications (Providers are reimbursed at one of three rates depending on the income-status and household size of eligible families.), attendance records (documenting the specific number of children in the Provider's care each day), meal count records (documenting the number of meals served each day by category {breakfast, lunch or snacks}), receipts and invoices (documenting the cost of food procured by the Provider), menus (illustrating the specific components {types of food} of meals served to the children in their care), food production records (denoting the quantity of specific foods {e.g., pounds of potatoes} used to serve per meal), and documentation supporting associated administrative costs. Both the Department and Sponsors are responsible for ensuring that participating Providers maintain the above-noted documentation.

Each month, Sponsors and independent Centers submit their claims for Program-reimbursement to the Department. The Department does not require Sponsors and Centers to submit supporting documentation with their claims. However, Department officials perform periodic Program reviews of Sponsors and independent Centers to confirm compliance with Regulations and their respective governing agreements.

To determine the appropriate amounts to reimburse Providers, Department staff use a formula which takes into account the total number of meals served by each Provider by type of meal (e.g., breakfast, lunch, snack, etc.), and the number of children served in each reported income eligibility category. According to regulations, income eligibility applications classify participants as either "free," resulting in the highest reimbursement rate for each meal category; "reduced," resulting in a lower reimbursement rate paid per meal by the Department; or "paid,"

resulting in the lowest reimbursement rate per meal paid to the Provider by the Department.

The number of participating Providers fluctuates throughout each Program year. During Program (Federal Fiscal) year 2007 (October 1, 2006 to September 30, 2007), up to 1,395 independent Centers and sponsors of Centers, for a total of 4,060 Centers, enrolled in the Program. During this period, the Department received \$167 million in Program dollars of which \$160 million was paid to participating Providers, and \$7 million was retained by the Department for Program-related audit and administrative expenses.

Our audit covered the period July 1, 2004 through April 17, 2008, and focused on 10 of the previously noted 46 Centers. We reviewed certain food program claims these 10 centers submitted from July 2004 through September 2007 totaling \$169,125.

Based on the results of our audit, we conclude that child care centers we previously identified as potentially defrauding the Office of Children and Family Services (OCFS) also potentially defrauded the Department.

AUDIT FINDINGS AND RECOMMENDATIONS

Potentially Fraudulent Claims

To determine whether the Program-related claims submitted to the Department by the 10 centers included in our sample were appropriate and supported, we reviewed each center's available supporting documentation. Where appropriate, based on our findings, we expanded our audit scope period. We also observed the number of children in attendance and the number of meals served at the visited centers.

We determined that two of the centers had minor claim errors for which regulations indicate a recovery of funds is not required. For the remaining eight centers, whose sampled claims totaled \$135,317, we recommend the Department should recover \$125,400 because the centers could not support the reimbursements they received and used various methods to potentially defraud the State (see Exhibit A). These methods include altering Program-related documentation, misclassifying participant income eligibility, and inflating the number of meals actually served (See Exhibit B).

We attribute our findings, in part, to the Department's ineffective oversight of the centers included in our audit. We found the Department had previously identified many of the problems we identified in this report, but did not take sufficient corrective action to ensure that these practices were discontinued. As a result, we found potentially fraudulent practices continued to take place at the centers. As such, we recommend the Department improve its Program oversight practices.

Fabricated, Altered or Missing Documentation

Documentation maintained by the centers should be complete and accurate. However, we found that four centers fabricated and altered documents to support expenses and potentially defraud the State. Some centers also claimed they no longer had documentation available to support claims, even though the regulations require them to maintain it. For example:

- Center A's director confessed to creating a fraudulent license for the center to inappropriately obtain State funds, and refused to provide us with the documentation needed to support the

center's claims. As a result, the Department recovered \$16,516 from Center A and indicated that available licensure data is now used to confirm the reasonableness of center claims. However, this confirmation process is not documented; and

- Center B's owner told us she did not maintain documentation to support her July 2004 through January 2006 Program claims. Subsequently, the Department contacted the center to obtain supporting documentation. The owner told Department officials that her documentation was damaged by water and thrown away. To support this assertion, she provided Department officials with a \$350 invoice for the removal of wet boxes and carpet, snow and leaves. The invoice also indicated that a section of the roof was removed and repaired.

Although Department officials accepted her explanation and plan no further action, we questioned how a company could do all the work cited on the invoice for \$350. We tried to contact the company to confirm that the company performed the purported work. However, we found no indication the company existed. Moreover, a building permit was not issued to repair the roof as required by NYC regulations. We also found that the hand writing on the invoice appeared to match that of the owner of the center.

Since we previously found this owner fabricated documents and submitted false claims to OCFS, we suspect she intentionally withheld available program documentation fearing we would find these documents fraudulent, as well. We recommend the Department

reconsider its position and recover all funds paid to Center B that cannot be supported.

Income Eligibility Applications

Income eligibility applications for all Program participants enrolled at centers are required to be appropriately classified, collected and retained by the centers. According to the regulations, when applications are not updated timely, a center should claim and be reimbursed at the paid rate, which is the lowest reimbursement rate, until the application is updated. We found that six of the eight centers either misclassified relevant data, such as applicant income, or otherwise used income eligibility applications in a potentially fraudulent manner to obtain Program payments. For example:

- For May 2007, Center F misclassified the income status for 24 enrolled children's households. The Center classified all 43 of its enrolled children for the period as eligible for free meals warranting the highest reimbursement rate (free) from the Department. However, based on available income data, only 19 of the 43 should have been classified as "free." Twenty-four of the 43 children should have been classified as "paid." In fact, there was no evidence that one of the 24 children who should have been classified as paid ever attended Center F.

As a result of our findings, we expanded our review of Center F's Program-related claims looking back to October 2005, when the Center began participating in the Program, and found that it has always classified all of its enrolled children as "free." As such, there is a significant risk that Center F has been over-claiming Program

reimbursements throughout its participation in the Program;

- For calendar years 2006 and 2007, we found 180 of 231 (78 percent) income eligibility applications provided to us by Center E, generally appeared fraudulent. Some had information relating to the parent's income that was altered using whiteout or was completed in different handwriting and/or ink than was used to complete the remainder of that application section. We contacted ten parents listed on the altered applications. Four of them stated the income amount on the applications had been incorrectly altered by others; three said that while the correct income was noted on their applications, the forms had been filled out by someone other than themselves (which is not permitted); two parents said the applications were accurate; and one could not recall whether she made changes that appeared on the application.
- We also noted five centers had applications on file that were more than one year old and had not been updated. For example, of the 23 income eligibility applications reclassified at Center F, we determined that 16 should have been reimbursed at the paid rate since they were, in part, over one year old as of May 2007. Two of these were from 2004, and six were from 2005.

Department officials disagreed with our categorizing applications that were not updated within the past 12 months as in the "paid" reimbursement rate category even though this is required by the regulations.

We also discussed with USDA officials whether centers with outdated income

eligibility applications should be reimbursed at the paid rate. Officials stated that on their own, outdated income eligibility applications would not be sufficient to require a disallowance. However, if a review identified other Program deficiencies or fraudulent activity, all factors should be considered when calculating a disallowance.

As illustrated in Exhibit B, each of the centers included in our review were found to have multiple deficiencies. In addition, each of these centers has demonstrated a propensity to commit fraud and has been referred to District Attorneys for criminal prosecution. As a result, we factored outdated applications in our disallowance calculations.

Meal Counts and Attendance

Sponsors and independent Centers are required to submit monthly claims to the Department for meal reimbursement reporting the number of meals served to their enrolled children. To determine whether the sampled Centers served the number of meals reported on their reimbursement claims, we asked them for their meal count reports, indicating the number of meals served each day by type (e.g., breakfast, lunch, etc.), and their attendance records, denoting the specific children at their facilities each day. We found the documentation maintained by five of the Centers does not support their respective claims for our review period. For example:

- For the period December 2005 through July 2006, Center C claimed reimbursements for 2,776 meals. When we spoke with the Center's owner, she explained that some of the enrolled children attended her Center on a full-time basis, while other children attended

on a part-time basis (e.g., after school or only on school holidays). These part-time children would logically not be at the Center for breakfast and lunch on a regular school day. This Center's meal count reports and claims for reimbursement, however, indicated two meals and one snack per day were provided to all children in attendance, in effect over-reporting the number of meals actually provided during this period. Further, other available documentation showed insufficient food was available to serve the number of meals claimed; and

- For June and July 2007, Center H requested reimbursements for 1,467 meals. However, meal counts and daily sign-in records could only support 776 meals for this period.

Since these centers were reimbursed for meals they could not fully support with their meal counts and attendance records, we conclude the Department reimbursed them for more meals than were actually served.

Insufficient Menus, Receipts and Food Production Records

We compared the receipts, menus, and food production records to determine whether the meals centers reported as served contained all required food elements, and whether the centers purchased the types of foods necessary to provide the meals listed on the menu. We determined that six of the centers did not have sufficient documentation to support the meals they claimed. For example:

- For its May 2007 reimbursement claim, Center F did not have sufficient receipts to support 69 percent of the funds it received. In response to our finding, the Department reviewed the center's

supporting documentation and concluded that insufficient quantities were provided at meals and snacks on 15 days and that the receipts did not support the amounts served;

- Center D refused to provide us with documentation to support its December 2006 through June 2007 claims. It also did not use the food reimbursement monies to pay its food vendor; and
- Center G's receipts to support Program claims for May 2007 showed non-child care related items such as beer and medications were purchased. The Center's owner stated that she does the shopping for the center and her home at the same time, but did not note which purchases are for the center and which purchases are personal. Additionally, the center does not maintain required food production records and receipts did not support that all items on the menu were purchased.

Department officials said they do not reimburse centers based on the actual costs each incurs, but rather based on a formula considering the number of meals claimed and income eligibility applications. However, regulations require Providers to maintain receipts to document operating costs, and the Department has on occasion required a Center to repay funds when, in part, their receipts do not support the number of meals claimed. We believe the Department should recover Program-related payments made to centers if the centers cannot provide adequate records to support the meals claimed.

We recommend the Department recover \$84,835 (\$125,400 less \$40,565 already recovered) from the eight centers we identified in this report that received inappropriate or unsupported Program

reimbursements. We also recommend the Department review the remaining 36 centers that received grant funds from OCFS, which we did not include in this audit.

Program Oversight

We attribute our findings, in part, to the Department's ineffective oversight of the centers included in our audit. We found that for the eight Centers where we identified potential Program-related fraud, the Department had previously identified the same or similar problems at six of them, yet did not take sufficient action to ensure they were corrected.

As the Program administrator, the Department is responsible for overseeing the proper use of Program-funds. For example, the Department requires corrective action plans to be submitted by Centers when problems are identified as a result of its reviews. However, Department staff does not follow up to verify the plans were submitted, or more importantly, to confirm the identified problems were corrected. If follow-up visits are not possible, the Department should develop compensating controls. These controls should include requiring Providers to periodically submit documentation to support their claims.

According to Regulations, Department staff should declare a Center "seriously deficient" if it is determined to be materially noncompliant in one or more aspects of the Program (e.g., habitually claiming reimbursement for meals not served, misclassifying a significant number of applicants income, etc.). If a Center is declared seriously deficient, it is required to address the identified deficiencies within a given timeframe. If not corrected, the Department is to terminate the Center's participation in the Program. Based on our

observations at the sampled Centers, the Department is not effectively executing its authority to correct identified deficiencies.

For example, from September 2004 to October 2007, Center E submitted 38 claims for reimbursement totaling \$327,870. During this period, the Department reviewed two of these claims and cited serious deficiencies on each. In January 2005, the Center was cited for several instances of noncompliance including over-claiming the number of meals served, improperly classifying participants' income eligibility, and not being able to support food purchases for the number of meals claimed. In May 2007, Department staff found the same deficiencies continued to exist.

The two claims reviewed by the Department totaled \$19,942, of which the Department disallowed \$17,901 (i.e., the entire January 2005 claim of \$11,121, and \$6,780 of the \$8,821 May 2007 claim). As a result of its 2005 review, the Department required the Center to complete a corrective action plan. However, there is no evidence that the plan was prepared, or asked for upon the Department's 2007 return visit.

As noted earlier in this report, we noted similar deficiencies at Center E during our September 2007 observation. Thus, the Department's reviews and requests for an action plan, without the appropriate follow up, allowed the noted deficiencies at Center E to continue uninterrupted.

Based on Program Regulations, the Department should have declared Center E seriously deficient in 2005 when it was asked to prepare a corrective action plan. However, it was not until October 2007, when we brought the repetition of the noted deficiencies to the Department's attention, that it declared Center E seriously deficient.

Our observations identified that staff at Center E were feeding children from a communal bowl, were allowing children to share utensils, and were preparing records showing it exceeded the number of children it was licensed to care for on multiple days. Some of these serious health and safety issues were also identified by Department staff. However, required steps outlined in the Regulations were not taken to ensure these children were provided a healthy and safe environment. According to Regulations, these observations should have been reported to the proper authorities by the Department since the health and safety of children were in question. However, Department officials told us that the NYC Department of Health and Mental Hygiene (DOHMH), who licenses Centers in NYC, would not accept such referrals. As such, we ourselves made the referral and confirmed that DOHMH will accept referrals from the Department for this purpose.

We further note that Regulations require the Department to review sponsors with up to 100 centers at least once every three years, and sponsors with more than 100 centers at least once every two years. At least 15 percent of the reviews must be unannounced (surprise visits).

We found that, in general, Department staff performs their Program reviews within the required timeframes. However, Department staff focuses their unannounced reviews on Homes, while it is the Centers that receive the overwhelming amount of Program dollars and where most of the serious deficiencies have been identified.

Further, Department officials provide Sponsors with at least four weeks prior notice when performing their unannounced Program reviews. While Sponsors are not told which of their Centers or Homes will be reviewed,

they are told when the Program reviews will occur, which month's documentation will be reviewed, and what specific documentation the Department will examine. Notifying Sponsors in advance negates the purpose of an unannounced review.

When discussing this issue with Department officials, they said they believe that if they were to visit Centers unannounced, they might find them closed or the people they need to meet with unavailable. However, we made nine unannounced visits and were able to speak with a responsible person, as well as, examine available documentation at each.

The position of Department officials is that they comply with federal regulations and they lack resources to expand reviews when they identify abusers. We agree that in many ways the Department adheres to the regulations. However, our findings indicate that since the Department found reoccurring problems at Centers, more aggressive actions were warranted, such as declaring Centers seriously deficient and terminating Program participation when corrective actions were not taken in a timely manner.

As a result of our audit, the Department declared five centers seriously deficient (Centers A, D, E, G and H) and has since terminated three of them from the Program (A, D, and H). We conclude that Department officials should continue this course of action, using the results of their own Program reviews, to help protect the further misuse of Program monies and, more importantly, protect the health and welfare of the children enrolled at participating Providers.

Recommendations

1. Recover the remaining \$84,835 in unsupported and inappropriate claims

(\$125,400 less \$40,565 already recovered) identified in this report.

2. Review remaining payments to the Centers noted in this report. If payments cannot be adequately supported in accordance with regulations, if Centers cannot produce supporting documentation, or the documentation was altered, recover funds as appropriate.
3. Document Department staff confirmations of child care center licensure information.
4. When performing Program reviews and comparing income eligibility data to the reimbursement rates claimed by the Centers, ensure that Centers are reimbursed at the "paid" rate where the data is not current or is visibly altered (unless eligibility can be independently confirmed).
5. Reinforce the requirement that Centers obtain updated income eligibility applications from parents or guardians of children on an annual basis.
6. Consider all of the documents required to be maintained by Providers (e.g., menus, production records, vendor receipts, etc.) when assessing the validity of claims. Where these records do not collectively support Provider claims, recover the appropriate amounts.
7. Reinforce the requirement that Centers maintain documentation that accounts for the Program funds they received and take disallowances in instances where Centers are unable to account for these funds.
8. Follow up with Centers when problems are cited in program reviews. If follow-

up visits are not possible, develop procedures to include compensating controls. These controls should include, but not be limited to, increased scrutiny on claims submitted including, periodically requiring the submission of additional supporting documentation.

9. When the volume and significance of identified deficiencies warrant it, declare the Provider "seriously deficient." Upon follow up, where deficiencies are not permanently addressed, terminate that Provider's participation in the Program.
10. When developing the Department's unannounced Program review schedule, plan a proportionate amount of unannounced reviews at Centers where the majority of children are served and Program funds are claimed.
11. Discontinue giving Sponsors prior notification when performing unannounced reviews.
12. Based on our findings of potential fraud, declare Centers B, C and F seriously deficient.
13. Require Department staff to promptly make the appropriate referrals when they identify health and safety issues at Providers.
14. Audit the remaining 36 of the 46 centers that also received grant funds from OCFS and which we did not audit to confirm their food program payments are appropriate.

AUDIT SCOPE AND METHODOLOGY

We audited the Department's Administration of Food Program payments to selected Child Care Centers to determine whether Program

monies were used appropriately for the period July 1, 2004 through April 17, 2008.

To accomplish our objectives, we reviewed Program Regulations, agreements with selected participating Centers, and selected Program reviews. We interviewed Department and Center officials, and conducted site visits to the selected Centers. We also contacted selected vendors from which Program food purchases were reportedly made. We obtained child care Center licensing information from OCFS and DOHMH, and reviewed income eligibility applications, attendance records, meal count reports, selected vendor receipts, invoices, and menus maintained at the Centers.

We conducted our performance audit in accordance with generally accepted government auditing standards. Those standards require that we plan and perform the audit to obtain sufficient, appropriate evidence to provide a reasonable basis for our findings and conclusions based on our audit objectives. We believe that the evidence obtained provides a reasonable basis for our findings and conclusions based on our audit objectives.

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. These duties 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 whom have minority voting rights. These duties may be considered management functions for purposes of evaluating organizational independence under generally accepted government auditing standards. In our

opinion, these functions do not affect our ability to conduct independent audits.

AUTHORITY

The audit was performed 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.

REPORTING REQUIREMENTS

We provided a draft copy of this report to Department officials for their review and comment. Their comments were considered in preparing this final report and are included in their entirety as Appendix A. Although Department officials agree to implement many of our report recommendations, they assert that they have been complying with Federal regulations, and that our audit is not indicative of its overall Program-related performance. State Comptroller's Comments to rejoin the Department's response are included as Appendix B.

Within 90 days of the issuance of this report, in accordance with Section 170 of the Executive Law, the Commissioner of the Department of Health shall report to the Governor, the State Comptroller, and the leaders of the Legislature and fiscal committees, indicating the steps taken by Department officials to implement our report recommendations, and where they have not been implemented, the reasons therefor.

CONTRIBUTORS TO THE REPORT

Major contributors to this report include William Challice, Frank Patone, Donald Geary, Randy Partridge, Vicki Wilkins, Nicholas Angel, Mark Breunig, Taryn Davila-Webster, Joseph Robilotto, Rachel Schwendinger, Nancy Shrader, Amanda Strait, and Sue Gold.

EXHIBIT A**Summary of Recommended Recoveries**

Center	Review Period	Dollar Value of Claims Submitted For the Review Period	Recommended Recovery
A	August 2005 – September 2007	\$ 73,594	\$ 73,594
B	July 2004 – January 2006	29,633	29,633
C	December 2005 – July 2006	3,451	3,451
D	December 2006 – June 2007	7,613	7,613
E	June 2007	9,390	5,262
F	May 2007	4,639	2,668
G	May 2007	4,906	1,588
H	June & July 2007	2,091	1,591
Total		\$135,317	\$125,400

EXHIBIT B**Program Documentation Deficiencies**

Center	Fabricated, Altered or Missing Documents	Misclassified Income Eligibility Applications	Inflated Meal Counts	Insufficient Menus, Receipts and Production Records
A	X			
B	X			
C		X	X	X
D	X	X	X	X
E	X	X	X	X
F		X	X	X
G		X		X
H		X	X	X
Totals	4	6	5	6

APPENDIX A - AUDITEE RESPONSE

**Department of Health
Comments on the
Office of the State Comptroller's
Draft Audit Report 2007-S-75 on
"Food Program Payments to Selected Child
Care Centers in New York City"**

The following are the Department of Health's (Department) comments in response to the Office of the State Comptroller's (OSC) draft audit report 2007-S-75 on "Food Program Payments to Selected Child Care Centers in New York City."

General Comments:

The Department has successfully administered the 100 percent federally funded Child and Adult Care Food Program (CACFP) since 1993 in strict adherence to United States Department of Agriculture (USDA) regulations and requirements. New York State's CACFP program, the third largest in the nation, maintains a strong commitment to program integrity, internal controls and creating and maintaining systems to address issues of waste, fraud and abuse. USDA management evaluations and fiscal management reviews have repeatedly determined that the Department exceeds USDA integrity requirements.

The OSC audit is not representative of overall CACFP operations as the Department's performance was only reviewed relative to a portion of its overall administrative responsibilities. As a result, the report and its findings present a limited and skewed perception of the Department's performance and of the requirements of this complex federal program. Department responsibilities, defined by Sub-part C of CFR 7 Part 226 and USDA policy, include approval and monitoring of participating organizations; oversight and approval of meal claims and payment; nutritional oversight related to meals provided; training program participants; technical assistance; ensuring internal controls; and adhering to the prescribed "serious deficiency" process, appeal procedures and civil rights of participants.

The OSC audit scope was limited to 46 centers with known problems from which OSC judgmentally selected ten centers for the *entire* audit sample. This is not a statistically valid sample of the more than 1,500 independent centers, homes sponsors and center sponsors and over 12,000 individual homes and centers, currently enrolled in the program. As such, the findings on these selected centers cannot be extrapolated to the administration of the entire CACFP program. In addition, the \$125,400 in payments questioned by the OSC represents 0.0007 percent of the \$160 million in annual program payments. The Department conducted 568 agency reviews during the audit period, with an additional 204 center and home provider reviews performed.

The CACFP program, a federal entitlement program, is one of USDA's most complex food reimbursement and nutrition programs. The program's complexity and associated intricacies appears to have resulted in the report's repeated confusion of program terminology as well as OSC recommendations that are inconsistent with the federal rules. Statements about "providers" are included in the report that do not apply to day

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* See State Comptroller's Comments, page 22

care homes or to sponsors of day care homes. The majority of OSC's review work was focused on independent centers and sponsors of centers. Yet, OSC includes "homes", "centers" and "providers" in the same recommendations when the Federal regulations for these differing categories are not the same. To help clarify these discrepancies, the Department's response utilizes USDA regulatory and programmatic terminology.

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Comment
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Due to the use of incorrect terminology, OSC's statements regarding the size of the Department's CACFP is inaccurate. The report states in several places that "During program year 2007 (October 1, 2006 to Sept 30, 2007), up to 1,395 sponsor and 12,433 centers were enrolled in the Program". The correct numbers and terminology are 1,395 independent centers and sponsors of centers (which administer a total of 4,060 centers) and 95 sponsors of homes (which administer a total of 8,373 home providers).

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Recommendation #1:

Recover the remaining \$108,884 in unsupported and inappropriate claims (\$125,400 less \$16,516 already recovered) identified in this report.

Recommendation #2:

Review remaining payments to the centers noted in this report. If payments cannot be adequately supported in accordance with regulations, if centers cannot produce supporting documentation, or the documentation was altered, recover funds, as appropriate.

Response #1 and #2:

The Department recovers approximately \$500,000 annually from its program and claims reviews, and refers cases of nonpayment to the Office of the Attorney General as required by State Finance Law, Chapter 55 and FNS instruction 420-1.

The OSC's recommended recovery amount is inconsistent with the federal program rules. The Department initially recovered \$16,516 of the funds as recommended by OSC and in accordance with federal USDA rules. Additional follow-up with Centers C, D, E, F, G and H resulted in additional recoveries totaling \$24,049 from these agencies, representing the final recoverable amount under the established federal rules. The difference between the OSC recommended amounts of recovery and the amounts recovered by the Department are due to several considerations, which are summarized below:

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- There is no USDA basis to disallow reimbursement due to a center's failure to pay vendor invoices;
- Centers are allowed to remedy situations of incomplete and outdated applications by obtaining the needed information from parents;
- USDA regulations prohibit the recovery of funds based on the amount spent on food at a center location. CACFP reimbursement for meals is based on the

* See State Comptroller's Comments, page 22

meals served and federally established rates based on income status, not the actual cost of food;

- USDA memo CNP 115-04 allows for the disregard of overclaim recoupments in cases where the overpayment does not exceed \$600. Additionally, a specific waiver approved for New York State allows for the recovery of funds in cases where the disallowance is less than \$600 but constitutes more than 10 percent of the claim; and
- USDA regulations permits disregard of menu sufficiency if a center has shown subsequent improvement.

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Recommendation #3:

Document: Department staff confirmations of child care center licensure information.

Response #3:

The Department understands that USDA has provided OSC with written confirmation that it does not require verification of licensing documentation. However, as an internal control improvement, the Department has already implemented a process to determine if a valid license exists with the licensing agency. As demonstrated to the OSC, the Department now has electronic access to the data in the State Office of Children and Family Services licensure record database. The Department has additionally implemented procedures to ensure that payments are based on the current licensure data on file with the program, utilizing electronic tracking of license dates and capacities.

Recommendation #4:

When performing Program reviews and comparing income eligibility data to the reimbursement rates claimed by the Centers, ensure that Centers are reimbursed at the "paid" rate where the data is not current or is visibly altered (unless eligibility can be independently confirmed).

Response #4:

Department staff will review income eligibility applications while performing routine program reviews. The Department will intensify the scrutiny of applications when alerted to potential fraud or if alterations are detected. The Department has and will continue to follow a standard procedure to handle applications identified as "altered" applications. Reimbursement will be recalculated at the paid rate and the center will be named seriously deficient and/or required to submit records to support future claims.

The Department will take a more environmental approach to implementing corrections in a center when staff identify income applications that have not been renewed on a yearly basis. Based on the Department's extensive experience in administering the program, it believes that updating individual income statements would have an insignificant impact on the reimbursement rate and ineffective in correcting the core

* See State Comptroller's Comments, page 22

problem. The Department considers this a systemic issue requiring systemic correction. The preferred outcome in all cases is for the center to have the appropriate systems in place to routinely obtain updated application(s). The Department will work with centers to ensure that appropriate systems are available and in place, and staff will monitor progress during reviews. Centers that repeatedly fail to adhere to established procedures may be subjected to re-categorization of applications that have not been updated as paid, named seriously deficient and/or required to submit records to support future claims.

Recommendation #5:

Reinforce the requirement that centers and homes obtain updated income eligibility applications from parent or guardians of children on an annual basis.

Response #5:

The Department adheres to the USDA regulations requiring centers to obtain updated income eligibility applications annually. Department staff will continue to reinforce the requirement to obtain updated income applications at all trainings and site visits.

Neither home providers nor home sponsors are required to obtain updated income applications for households of children in care except in the few cases where the provider is Tier 2 eligible and has elected to have the sponsoring organization collect income applications. In these instances, only the sponsor can obtain the income applications directly from the households in accordance with USDA regulation.

Recommendation #6:

Consider all of the documents required to be maintained by Providers (e.g., menus, production records, vendor receipts, etc) when assessing the validity of claims. Where these records do not collectively support provider claims, recover the appropriate amounts.

Recommendation #7:

Reinforce the requirement that centers and homes maintain documentation that accounts for the program funds they received and take disallowances in instances where centers and homes are unable to account for these funds.

Response #6 and #7:

The Department will continue to consider all of the documents required to be maintained when assessing the validity of claims. The Department will calculate monetary recoveries in accordance with USDA regulations. Meals are reimbursed based on meal counts, and federally established rates based on income status, not on what the meal cost the provider. The Department will continue to reinforce in training for centers and center sponsors, the requirement to maintain all records to support the claim and allowable expenses.

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* See State Comptroller's Comments, page 22

For clarification, home providers and their sponsor are not required to maintain food production records; and home providers are not required to maintain any receipts for CACFP (they are required to keep daily records of menus and attendance).

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Recommendation #8:

Follow up with centers and homes when problems are cited in program reviews. If follow-up visits are not possible, develop procedures to include compensating controls. These controls should include, but not be limited to, increased scrutiny on claims submitted including, periodically requiring the submission of additional support documentation.

Response #8:

The Department does follow up and will continue to increase scrutiny of claims and require additional documentation when problems are cited in program reviews. This will be done within the confines of available administrative funding and staffing and in compliance with USDA requirements. The Department recognizes the merit of this OSC recommendation in improving internal controls and will increase the review of documents to support claims, within the constraints of available resources.

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In reference to "homes", Department staff are responsible for following up on problems cited relating to the operations of the day care home sponsors. The sponsors are required to follow-up and address problems identified in day care homes.

Recommendation #9:

When the volume and significance of identified deficiencies warrant it, declare the Provider "seriously deficient". Upon follow up, where deficiencies are not permanently addressed, terminate that Provider's participation in the program.

Response #9:

Based on Federal regulations, USDA guidance and in consultation with the Department's Division of Legal Affairs, the Department reviews all of the evidence and determines whether the volume and significance of deficiencies is sufficient to declare independent centers and sponsors of day care homes and centers seriously deficient. Sponsors of day care homes are responsible for applying the serious deficiency process to the day care home provider. Seriously deficient determinations must show intent, disregard for the rules by the agencies, and take into account the risk and nature of the offense. The Department provides technical assistance to seek correction before and after a determination of seriously deficient. USDA requires that the Department work with the centers, center sponsors and home sponsors towards correction, and to use termination only as the last resort when corrective action has not been implemented.

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The OSC report inappropriately faults the Department for adhering to USDA requirements where it addresses the Department's timeliness in naming some institutions seriously deficient. The Department exercises due diligence in making

* See State Comptroller's Comments, page 22

serious deficiency determinations, which has successfully resulted in withstanding legal appeals and maximizing the use of limited program and legal staff resources.

Recommendation #10:

When developing the Department's unannounced program review schedule, plan a proportionate amount of unannounced reviews at Centers where the majority of children are served and Program funds are claimed.

Response #10:

The Department will increase the number of unannounced center reviews, as warranted, although it already adheres to the Federal regulations for performing unannounced reviews.

USDA established the unannounced visit threshold specifically for home providers, which it considers the population most susceptible to fraud. The Department conducts its unannounced reviews consistent with USDA requirements developed when the regulations were modified to increase integrity; and actually conducted double the federally required number of unannounced visits (119 required, 254 conducted).

Recommendation #11:

Discontinue giving Sponsors prior notification when performing unannounced reviews.

Response #11:

There is no federal regulatory requirement for unannounced sponsor reviews; therefore the majority of home sponsor and center sponsor reviews are provided with advance notification of the Department's visit.

The Department will conduct unannounced home provider reviews. The sponsor is not given advance notice of which of their home providers will be reviewed. The sponsor learns of the location on the way to the provider's home.

When the Department plans unannounced visits to independent centers, home or center sponsor, no advance notification has ever been provided.

Recommendation #12:

Based on our findings of potential fraud, declare centers B, C and F seriously deficient.

Response #12:

Center B furnished documentation to support its loss of records. There is therefore no basis to determine it seriously deficient. They have not participated in CACFP since January 2006.

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* See State Comptroller's Comments, page 22

As agreed with OSC, the Department suspended action on Center C pending completion of OSC's criminal investigation. At this time, Center C is not actively participating in CACFP and has not done so since July 2006. At this point, they will be closed on CACFP.

Center F's corrective action plan was approved by the Department so there is no basis to declare it seriously deficient. The center will not be given advance notification of the next Department review.

Recommendation #13:

Require Department staff to promptly make the appropriate referrals when they identify health and safety issues at Providers.

Response #13:

The Department will continue to make appropriate and prompt referrals to agencies when health and safety issues are identified. Department staff will work closely with the licensing authorities and communicate frequently to ensure the health and safety of children.

Recommendation #14:

Audit the remaining 36 of the 46 centers that also received grant funds from OCFS and which we did not audit to confirm their food program payments are appropriate.

Response #14:

The Department has conducted program reviews on eight of the 36 centers during the past year. In addition, and in accordance with USDA requirements, twelve reviews will be conducted within the next six months, and eight will be conducted during the next fiscal year. The remaining eight centers have been closed or terminated for several years.

APPENDIX B - STATE COMPTROLLER COMMENTS ON AUDITEE RESPONSE

1. Department officials assert that our audit is not indicative of its overall Program-related performance since the audit focused on only 46 of the 1,500 Centers receiving Program monies. Our report clearly states that our audit focus was on those Centers where audit risks and potential fraud had been previously identified as a result of a prior audit.
2. Department officials state that our report inappropriately includes Homes and Sponsors of Homes in our recommendations pertaining to Centers and Sponsors of Centers. We have revised Recommendations 5, 7 and 8 accordingly.
3. We revised pages 2 and 5 of our report to incorporate the numbers Department officials provided to us in their response.
4. Department officials note that in addition to the \$16,516 already recovered, they collected an additional \$24,049 from the Centers we audited representing the final recovery amount under the established Federal rules. As support for their assertion, they list several situations where the Department has room to decide whether a recovery is warranted.

We note that the Federal rules (Regulations) are also quite clear that when several of the noted deficiencies are found together at a Center, the Program monies paid to that Center are recoverable. As noted in our report, the Department should be taking action to correct inappropriate Center performance. We have revised report page 8 and Recommendation 1 to adjust for the additional \$24,049 recovered.

5. Department officials state that our report inappropriately faults the Department for not declaring the noted Centers “seriously deficient” in a timely manner. They note that the Department’s past diligence is in compliance with Regulations and has proven to be successful when challenged.

We acknowledge Department actions to declare centers seriously deficient, and in some cases to terminate them from the Program. We urge the Department to continue these practices on a timely basis where warranted.

6. Prior notice of a review negates the benefits derived from a surprise visit and should not be given in any situation where a surprise review is planned.