



New York State Office of the State Comptroller
Thomas P. DiNapoli

Division of State Government Accountability

Facility Structure, Safety, and Health Code Waivers

Department of Health



Report 2014-S-27

June 2015

Executive Summary

Purpose

To determine if the Department of Health's (Department) waiver practices are effectively addressing safety and risks related to physical plant standards at health care facilities. This audit covered the period April 1, 2012 to November 12, 2014.

Background

Health care facilities in New York State are required to operate in compliance with architectural codes and safety regulations issued by the Department. The Department is the State agency responsible for enforcing compliance with these codes and regulations and for granting exceptions. Regulations permit the Department to grant waivers, temporary or permanent, to a facility to allow it to continue to operate while corrections are made or alternative means of compliance are achieved.

Key Findings

- We found the Department's waiver practices do not effectively ensure that safety and structural risks related to physical plant standards at health care facilities are appropriately addressed.
- The Department's internal controls, including monitoring and internal communications efforts, were lacking and led to a backlog of at least 179 unprocessed waiver requests at the time of our audit. Some of the requests dated back to 2003.
- The Department lacked formal written policies and procedures governing the waiver process, and did not maintain sufficient collective documentation supporting waiver applications, approvals, and monitoring efforts.
- Although the Department's Nursing Homes Division appeared to properly monitor waivers granted to such facilities, the Hospitals Division had no detailed awareness of the waivers that were granted to the hospitals and clinics it oversees.

Key Recommendations

- Establish and maintain formal Department-wide waiver policies, procedures, and controls, including the assignment of responsibility for monitoring compliance and maintaining adequate documentation.
- After implementation, periodically evaluate all policies, procedures, and controls to ensure they are functioning as intended, and revise as needed.
- Maintain a complete, accurate, and timely shared waiver database to record all waiver requests, approvals, and denials and to document completion of time-limited waivers.

Other Related Audit/Report of Interest

[Department of Health: Selected Operating and Administrative Practices of the Bureau of Narcotic Enforcement \(2011-S-19\)](#)

**State of New York
Office of the State Comptroller**

Division of State Government Accountability

June 18, 2015

Howard A. Zucker, M.D., J.D.
Commissioner
Department of Health
Corning Tower
Albany, NY 12237

Dear Dr. Zucker:

The Office of the State Comptroller is committed to helping State agencies, public authorities, and local government agencies manage government resources efficiently and effectively and, by so doing, providing accountability for tax dollars spent to support government operations. The Comptroller oversees the fiscal affairs of State agencies, public authorities, and local government agencies, as well as their compliance with relevant statutes and their observance of good business practices. This fiscal oversight is accomplished, in part, through our audits, which identify opportunities for improving operations. Audits can also identify strategies for reducing costs and strengthening controls that are intended to safeguard assets.

Following is a report of our audit entitled *Facility Structure, Safety, and Health Code Waivers*. This 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.

This audit's results and recommendations are resources for you to use in effectively managing your operations and in meeting the expectations of taxpayers. If you have any questions about this report, please feel free to contact us.

Respectfully submitted,

*Office of the State Comptroller
Division of State Government Accountability*

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Background

Health care facilities in New York State are required to operate in compliance with current architectural codes and safety regulations as set forth by the Department of Health (Department). The Department is the State agency responsible for enforcing compliance with codes and regulations and for granting exceptions to compliance with those codes and regulations. The Department may grant a waiver, either temporary or permanent, to a facility to allow it to operate out of compliance with codes and regulations while corrections are made or alternative means of compliance are achieved via a Department-approved plan of correction.

Within the Department, the Office of Primary Care and Health Systems Management (Primary Care) and its subdivisions share responsibility to discover code violations, determine if waiver requests are appropriate for those violations, and monitor waiver compliance through their continuous facility inspection process. There are almost 4,000 health care facilities operating across the State, including 2,747 hospitals and other treatment centers (e.g., ambulatory care centers and health clinics), 634 nursing homes, and 563 intermediate care facilities.

Primary Care's Bureau of Architecture and Engineering Review (Bureau) is responsible for reviewing and approving construction plans for health care facilities and for evaluating waiver requests. A waiver request can be included with the initial construction plans submitted to the Bureau or can come about mid-construction. Waiver requests in the latter instance are referred to as waivers resulting from a Certificate of Need (CON). Since 2012, facilities have had the option of paying for an expedited plan review by the Dormitory Authority of the State of New York. The Bureau is responsible for approving any waivers related to these plans as well.

The Bureau can also receive waiver requests from facilities as part of a corrective action plan in response to deficiencies discovered during facility inspections. Waivers could stem from inspections by the Division of Nursing Homes and Intermediate Care Facilities (Nursing Homes Division) and the Division of Hospital and Diagnostic and Treatment Centers (Hospitals Division), which are components of Primary Care, or by third-party accrediting organizations not affiliated with the Department. For example, of the 217 hospitals in New York State, the Department is responsible for inspecting 21; the remaining 196 are inspected by third-party accrediting organizations as part of the process to obtain certification for Medicare/Medicaid participation.

Waivers requests are common in instances when codes and standards change, and often result from new violations noted during a facility inspection. Facilities can request a time-limited waiver, which will allow a reasonable amount of time to upgrade and meet new codes, or a permanent waiver, which is common in situations where the costs of upgrades required for code compliance are prohibitive (e.g., reconstructing the dimensions of hallways in a building to meet current standards). Permanent waivers often require an alternative or equivalent action be taken if non-compliance poses a threat to safety.

Audit Findings and Recommendations

We determined the Department's waiver practices were not effective in ensuring that safety and risks related to physical plant standards at health care facilities are appropriately addressed. During our audit period, the Department lacked both a formal written process for waiver management and monitoring and adequate internal controls, which led to poor communication among the various units within Primary Care, including those with certain critical responsibilities such as monitoring. Among other findings, documentation of waiver applications, approved waivers, and monitoring of approved waivers was not sufficiently maintained. As a result, the Department cannot efficiently and effectively ascertain what waivers exist at facilities overseen by its Hospitals Division, nor can it identify the code violations that have been waived at those facilities. Also, there is limited assurance that violations were corrected or mitigated during the time frame allowed by the waivers.

At the onset of our audit, we found the Bureau had a backlog of at least 179 unprocessed waiver applications, some of which dated as far back as 2003. Delayed action on waiver applications increases the risk that known code violations have lingered and, where relevant, negates the purpose of the time-limited waiver, thereby potentially allowing lingering violations to compromise health and safety.

The Bureau initiated steps to improve its controls over waivers in February 2014, just prior to the start of our audit. In response to our preliminary findings, the Hospitals Division also took steps to improve its waiver controls in September 2014. However, these improvements have not been in place long enough to determine whether they are operating consistently and effectively. At the conclusion of our audit, Primary Care as a whole, and its Nursing Homes Division as a unit, had yet to implement any formal written policies and procedures governing waivers.

Office of Primary Care and Health Systems Management

Primary Care is inherently responsible for coordinating the efforts of, and the flow of information and communication among, its component divisions and bureaus, especially as it relates to activities in which several units are involved, like the evaluation, approval, inspection, and monitoring of facility waivers. However, we found management in this area has not yet developed written policies and procedures to manage and monitor waivers. Formalized policies and procedures could have established better coordination, communication, and accountability among the Hospitals Division, the Nursing Homes Division, and the Bureau to ensure a more effective waiver operation.

For example, formalizing the waiver process could have aided the Bureau in documenting waiver requests, waiver issuances, and waiver denials as well as improving communication about facility waivers to the Divisions. Formalized policies and procedures could have also delineated the Divisions' responsibility for monitoring approved waivers, inspecting facilities, verifying that previous violations have been corrected, and communicating waiver information back to the Bureau. We believe the lack of written policies and procedures on the part of Primary Care, which

oversees the Bureau and the Divisions, contributes to the confusion about the various units' responsibilities for evaluating requests and monitoring waivers, as well as the lack of effective communication among these groups.

Bureau of Architecture and Engineering Review

Waiver Process Controls

From April 2012 to April 2014, the majority of the period covered by our audit, the Bureau had few appropriate waiver process controls in place and no formalized policies and procedures. As a result, seemingly standard processes (such as documenting waiver requests, waiver approvals, and monitoring of approved waivers) were not occurring consistently and routinely. Bureau management noted that they had used directives based on State regulations as a substitute for developing formal policies and procedures. Although these regulations provide guidance on evaluating and approving waivers, they do not provide staff with guidance for day-to-day activities like recording waiver requests, documenting and communicating relevant information, or monitoring approved waivers. We concluded that internal controls over the waiver process at the Bureau were not adequate prior to the implementation of new policies and procedures in 2014, although changes in the design of internal controls made since then appear to be appropriate.

In particular, we found that prior to February 2014 the Bureau did not have a central control process for the routine maintenance of records of waiver applications, denied waivers, and approved waivers. At that time, the Bureau started recording waiver requests received into an electronic database as part of the changes implemented by the new Bureau director. The electronic information now includes data such as facility, reviewer, review status, approval or denial, and an expiration date for time-limited waivers. Simultaneously, Bureau staff also started to compile an electronic listing of all waivers found in hard-copy paper files. The compilation of this list was still in progress at the time of our audit fieldwork.

The only inventory of waivers that the Bureau was able to provide during our audit consisted of a three-column table showing the breakdown of about 1,600 known waivers processed since 2007. The data, which had been manually compiled by Bureau staff from hard-copy files in response to a Freedom of Information Law request, detailed the total number of waivers processed, broken down by those approved and disapproved. However, our cursory review found the report included mathematical errors and other inconsistencies in at least 5 percent of the data, thereby calling into question the accuracy of the information.

In April 2013, with the retirement of the Bureau's former director, the director of the Certificate of Need (CON) group (which often is the first to receive an initial waiver request as part its oversight of new facility construction) initiated a risk assessment to identify deficiencies in the operations, as well as the skill sets and talents necessary for the next director. The new Bureau director has continued this effort to assess deficiencies and has taken steps toward improvement, including:

- In May 2014, establishing formal policies and procedures for staff to follow when evaluating

- waiver requests;
- Implementing procedure changes to make the processing of waiver requests more routine and timely;
- Increasing focus on initial construction reviews to mitigate future instances of violations that could lead to waiver requests; and
- Improving communications between the Bureau and Divisions, while taking responsibility for the flow of pertinent information. This includes using an electronic database to track waiver requests and adding waiver information to the Department's CON project tracking system.

These steps resulted in an internal processing system that should improve controls if applied consistently. However, the new system has not yet been in place long enough to determine if it's functioning as intended.

Waiver Backlog

At the start of our audit, Bureau management informed us that a backlog of waiver requests existed. They reported that the backlog had occurred because, prior to April 2013, Bureau management was either unwilling or unable to process waiver requests due to conflicting perspectives between management and some of the Bureau's licensed engineers about whether certain waivers should be granted at all. In May 2014, the Bureau had at least 179 waiver requests on hand that had not been processed. These include:

- 39 (22 percent) that were received prior to 2008;
- 59 (33 percent) that were received between 2008 and 2013;
- 38 (21 percent) that were received in 2013;
- 19 (11 percent) that were received in 2014; and
- 24 (13 percent) for which we could not determine the date of receipt.

Because of the Bureau's record-keeping deficiencies, we also could not determine how many other requests may have once existed.

We judgmentally sampled 9 of the 98 unprocessed waivers that were received prior to 2013, and found that all were related to either essential electrical systems or fire suppression systems, which are vital to patients' or residents' health and safety. As a result of our audit, the Bureau has added this entire backlog of waiver requests to its current workload, and is in the process of determining whether the violations still exist and if the waivers are still needed.

Because of a lack of routine communication and follow-up about waivers between the Bureau and the Divisions that are responsible for inspections, the Bureau had little information on the current status of the issues that may have led to the need for these outstanding waiver requests. We asked whether some facilities may have proceeded with their plans of correction, or alternative proposals, without the formal waiver approval that Department policy requires. Bureau officials stated this may have, in fact, occurred. We also asked whether facilities would inquire about the status of a long-outstanding requested waiver, and Bureau officials acknowledged that they

would often take phone calls from facilities inquiring about the status of applications. Officials would then need to manually go through hard-copy files to locate the original request in order to determine its status.

When waiver requests are not processed timely, known code violations can be allowed to linger, which can potentially jeopardize the health and safety of occupants at facilities. For example, in 2011, the Sunrise Manor Center for Nursing and Rehabilitation on Long Island was cited for a deficiency in an essential electrical system. Its subsequent waiver application was neither approved nor denied, but instead added to the backlog of pending waivers. The facility was then cited again for the same deficiency two years later in 2013. Its waiver was approved on March 20, 2014 and is now set to expire November 30, 2016 – five years after the initial violation was identified.

As of November 2014, the Bureau was unaware of the status of violations at other facilities that, like Sunrise Manor, still had unprocessed waiver requests. This occurs in large part because the Bureau relies on the Divisions to monitor and verify the correction of previous code violations at health care facilities. In some cases, corrective actions plans may have been carried out and already re-examined, but this information would not have normally been communicated back to the Bureau. As a result, in addition to the waiver processing issues, it is critical that the Bureau and the Divisions improve their communication, especially in the cases where facilities have open waiver requests.

Division of Hospitals and Diagnostic and Treatment Centers

Waiver Process Controls

For most of the audit scope period, we found there were few appropriate controls in place over the waiver process and no formal written policies and procedures. Monitoring and tracking responsibilities were not effectively communicated within the Hospitals Division, resulting in inconsistent processes among its regional offices. For example, whereas the regional office management in both Albany and New York City informed us they were not responsible for monitoring waivers, staff from the Western and Central New York regional offices stated they were. We informed Division management of this discrepancy, and in September 2014 formal written policies and procedures were codified. We concluded that the internal controls over the waiver process at the Hospitals Division were not adequate prior to the implementation of these new policies and procedures. For example, the new policies specifically state the following:

- The Hospitals Division is responsible to monitor time-limited waivers.
- The Hospitals Division will survey a facility within 12 months of a waiver expiring for time-limited waivers.
- The Hospitals Division will share a database developed by the Bureau to better track existing waivers. The database includes expiration dates for time-limited waivers.

The new policies and procedures drafted by the Hospitals Division appear to improve internal

controls. However, they have not been in place long enough to allow sufficient testing to determine if they are accomplishing their desired outcomes.

Waiver Monitoring

Because of a lack of reliable information, the Department cannot efficiently and effectively identify what waivers exist at facilities overseen by the Hospitals Division, nor can it identify the code violations that have been waived at those facilities. In addition, in their present state, the waiver violations cannot be analyzed for patterns, trends, or emerging areas. The Hospitals Division does not keep a database of approved waivers for their facilities and was therefore unable to produce a list of waivers that existed at their facilities during our audit scope period. Similarly, the Bureau was unable to provide us a list of waivers that existed at all the health care facilities in the State for our audit scope period. As a result, we were unable to determine the number of waivers that existed at facilities in the Hospitals Division or the details of violations that have been waived.

The Bureau informs the Hospitals Division when they approve a waiver for one of their facilities. However, staff from both the Bureau and the Hospitals Division agreed that communication has not always been adequate. The Hospitals Division staff also stated that approved waiver documentation can easily be misplaced or lost. Similarly, regional office staff stated that at times they must contact facilities they are about to inspect to determine what waivers exist, if any.

Hospitals Division management informed us they did not view waivers as a substantial issue since, in their estimation, only five time-limited waivers exist for the 217 hospitals in the State. According to Hospitals Division management, they arrived at this number by having their regional office personnel review each hospital's historic paper files to determine whether a waiver existed. Without substantial effort on our part, we could not verify the accuracy of the Division's count. Further, there is no assurance that each facility's file was complete and contained all relevant information. Hospitals Division management was unable to provide the number of waivers at the 2,530 non-hospital facilities for which they are responsible.

We also concluded that the objectives of issuing a time-limited waiver are not being achieved. We found that waivers were typically left unmonitored; as a result, there is no assurance that violations were corrected or mitigated within the time frame allowed by the waiver, and it is likely that they could continue to exist long afterward. A formal system to monitor approved waivers did not exist in the Hospitals Division until September 2014.

When we questioned Hospitals Division management about permanent waivers, they asserted that it was not necessary to monitor permanent waivers issued to facilities. However, because permanent waivers often require an alternative or equivalent action to ensure safety, we believe monitoring is essential to verify continued compliance. Further, as facilities evolve over the course of years, it is possible that corrective actions taken to address violations could lose their effectiveness and/or fail to maintain code compliance. The Hospitals Division should be aware of these instances and monitor to make sure facilities stay in compliance with the Department's codes and regulations.

Division of Nursing Homes and Intermediate Care Facilities

The Nursing Homes Division is responsible for monitoring 634 nursing homes and 16 of the 563 intermediate care facilities operating across the State (the remaining 547 intermediate care facilities fall under the jurisdiction of another State agency). Overall, we concluded that the design of the Nursing Homes Division's internal controls over health and safety waivers is adequate, although they too were unable to produce formal written policies and procedures during our audit scope. They created and finalized written policies in January 2015.

The Nursing Homes Division was able to produce a list of waivers that existed at their facilities. We found the Nursing Homes Division uses a database to maintain information on waivers that exist in each nursing home, and they were able to generate a report that listed each nursing home facility and any waivers that existed during our audit period. The Division reported to us that 437 waivers for health and safety violations existed at their facilities between April 2012 and August 2014.

We also found that the Nursing Homes Division recognized and fulfilled their responsibility to monitor waivers. We tested inspection reports for 34 approved waivers and found evidence of monitoring, since past waivers as well as new violations were reported in the inspection reports. We concluded there was not a significant risk that waivers were left unmonitored in the Nursing Homes Division.

Recommendations

1. Establish and maintain formal Department-wide waiver policies, procedures, and controls, including the assignment of responsibility for monitoring compliance and maintaining adequate documentation.
2. After implementation, periodically evaluate all policies, procedures, and controls to ensure they are functioning as intended, and revise as needed.
3. Maintain a complete, accurate, and timely shared waiver database to record all waiver requests, approvals, and denials and to document completion of time-limited waivers.
4. Ensure that the Hospitals Division develops an adequate system to monitor approved waivers.

Audit Scope and Methodology

We assessed the process for issuing and monitoring safety, structure, and health code violation construction waivers at the Department of Health for the period April 1, 2012 to November 12, 2014. Our objective was to determine if the Department's waiver practices are effective at addressing safety and risks related to physical plant standards at health care facilities.

To accomplish our objective, we met with Department officials and staff at the central office

and regional offices throughout New York, and reviewed the internal controls and policies and procedures over waiver practices. We also examined waiver requests, approved waivers, and inspection reports. We selected regional offices in Albany, Long Island, and New York City for site visits because the majority of waivers exist at facilities in those areas. We assessed the existing controls using internal control guidelines established by the New York State Comptroller.

We conducted our audit in accordance with generally accepted government auditing standards. These 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 objective. We believe that the evidence obtained during the audit provides a reasonable basis for our findings and conclusions based on our audit objective.

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 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 (some of whom have minority voting rights) to certain boards, commissions, and public authorities. These duties may be considered management functions for 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.

Authority

This 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

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 attached in their entirety at the end. Officials indicated that they are continuing to take steps to implement the report's recommendations.

Within 90 days after final release of this report, as required by Section 170 of the Executive Law, the Commissioner of Health shall report to the Governor, the State Comptroller, and the leaders of the Legislature and fiscal committees, advising what steps were taken to implement the recommendations contained herein, and if the recommendations were not implemented, the reasons why.

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Vision

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Agency Comments



Department of Health

ANDREW M. CUOMO
Governor

HOWARD A. ZUCKER, M.D., J.D.
Acting Commissioner

SALLY DRESLIN, M.S., R.N.
Executive Deputy Commissioner

April 29, 2015

Mr. John F. Buyce, Audit Director
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Dear Mr. Buyce:

Enclosed are the Department of Health's comments on the Office of the State Comptroller's Draft Audit Report 2014-S-27 entitled, "Facility Structure, Safety and Health Code Waivers."

Thank you for the opportunity to comment.

Sincerely,

Sally Dreslin, M.S., R.N.
Executive Deputy Commissioner

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**Department of Health
Comments on the
Office of the State Comptroller's
Draft Audit Report 2014-S-27 entitled,
Facility Structure, Safety, and Health Code Waivers**

The following are the Department of Health's (Department) comments in response to the Office of the State Comptroller's (OSC) Draft Audit Report 2014-S-27 entitled, "Facility Structure, Safety, and Health Code Waivers."

Comments:

The Department is pleased to respond to the draft audit report and uses audit findings to inform and improve its processes. However, many of the findings included in the draft report confirm items that the Department identified and began to address prior to the start of the audit. In this regard, those findings do not reflect the Department's current practices. The Department strongly believes that its current practices, as part of its multi-pronged oversight of health care facilities, ensures compliance with standards. The Department continues to refine its policies and procedures to ensure timely and effective processing of waiver requests, monitoring of approved waivers, and management of the waiver processing program.

The Department is committed to protecting the health and safety of everyone who receives care and services from health care providers licensed under Article 28 of the Public Health Law. The Department's Office of Primary Care and Health Systems Management (OPCHSM) is responsible for licensing, inspecting, and monitoring these health care providers to ensure that providers comply with federal and state requirements related to service delivery and quality.

The Department's practices effectively ensure compliance with current architectural codes and regulations, and protect patient safety. The OPCHSM, referred to in the draft audit report as "the Office of Primary Care", acknowledges many of the findings of the reports. In fact, OPCHSM commenced an internal review of the waiver processing program in April 2013 (as noted in the audit report), more than a year prior to the start of the audit. This review recognized opportunities for improvement. Corrective actions were commenced, accelerated in February 2014 (three months prior to the start of the audit), when new management of the waiver review program was installed.

The Department has already implemented actions to strengthen its processes, documentation, and monitoring. Additional enhancements are being put in place to optimize the effectiveness of the program going forward.

The term "structural risks" should be replaced by "physical plant standards" throughout the report. The Department's Bureau of Architecture and Engineering Review, referenced in the draft report and the Department's response as "BAER" or "The Bureau", does not review the integrity of building structural systems. It is the responsibility of local building departments. BAER reviews physical plant standards, which relate to the requirements for health care facilities to maintain safe spaces for patients, staff, and the public. It should be noted that any waiver requests reviewed by The Dormitory Authority of the State of New York (DASNY) result in a DASNY recommendation to the Department's BAER. The BAER makes a final determination.

The Department notes that the processes in place in BAER during the audit period – from April 2012 to April 2014 – were significantly different than the processes, policies, and procedures that were in effect at the start of the audit and currently guide the Bureau's review, determination, and processing of waiver requests. As the audit report accurately describes, in April 2013, the

* See State Comptroller's Comment, page 19.

* Comment 1

Department performed a comprehensive internal review of the waiver processing program. Those efforts continued with the hiring of a new Bureau Director in February 2014.

While the audit description is accurate that no central database was in place during the audit period, we disagree with the conclusion that the Bureau was not routinely maintaining records of waiver applications and denied or approved waivers. Individual Bureau staff were maintaining their own records. However, the value of a central database was recognized, and the new Bureau Director put in place an electronic database in early 2014 that has improved overall tracking and monitoring of the Bureau's activities. The improved tracking identified the backlog referenced in the report, which the Bureau is aggressively addressing. The database, and policies and procedures related to its use that have been implemented and continue to be refined, have already improved communication among the BAER, and the hospital and nursing home surveillance programs. As the audit accurately concluded, the design of the database, and other internal controls by the new leadership, which are listed in the audit report, are appropriate.

* Comment 1

As the draft audit report notes, no issues related to waiver monitoring by the Division of Nursing Homes and Intermediate Care Facilities were found, and the Division has memorialized its longstanding practice in formal policies and procedures. The Division of Hospitals and Diagnostic and Treatment Centers Surveillance has also developed formal policies and procedures. Together, the central database and the tools developed by each of the programs have already improved the waiver processing program.

The database is a comprehensive central repository of all waiver processing and monitoring information that is used by all three programs. It allows both Central Office managers and Regional Office staff to review the current status of each waiver request and determination, and is a tool to guide the scheduling of field reviews. The database serves as the information source for ongoing meetings among the programs, and within programs, to effectively monitor waiver processing.

The steps implemented by the Department have already improved its processes. The Department will use the draft audit report recommendations to build on these actions.

Recommendation #1

Establish and maintain formal Department-wide waiver policies, procedures, and controls including the assignment of responsibility for monitoring compliance and maintaining adequate documentation.

Response #1

As noted in the draft report, the OPCHSM has already developed and implemented written policies and procedures that govern the waiver process. These policies and procedures document the practices in place to ensure effective receipt, review, determination, and monitoring of waiver requests. Many of the practices have been in place for some time; others have been modified and strengthened.

BAER developed and implemented written policies and procedures effective May, 2014. The Hospital Division modified and strengthened its process, and documented those in updated policies and procedures in September 2014. The Nursing Home Division formalized its

longstanding effective processes in written policies and procedures that were finalized on January 2, 2015. All have been shared with OSC.

Under the direction of the OPCHSM Deputy Director, these policies and procedures were integrated into a comprehensive policy governing the waiver process. This policy was distributed to all staff on May 1, 2015. In addition, OPCHSM and its responsible units will continually monitor compliance and maintain adequate documentation to ensure timely and consistent waiver processing and monitoring.

Recommendation #2

After implementation, periodically evaluate all policies, procedures, and controls to ensure they are functioning as intended, and revise as needed.

Response #2

The written policies and procedures developed and implemented by BAER, the Hospital Division, the Nursing Home Division, and OPCHSM will be continually reviewed and modified as needed. The review and evaluation process will be incorporated into each Division's internal control program. To ensure consistency and integration, the OPCHSM Deputy Director oversees the process. The OPCHSM Deputy Director and the individual program directors will meet no less frequently than quarterly to review the status of all waiver requests, compliance with policies and procedures, and will take action as necessary to modify processes and improve compliance to ensure effectiveness and efficiency.

Recommendation #3

Maintain a complete, accurate, and timely shared waiver database to record all waiver requests, approvals, and denials and to document completion of time-limited waivers.

Response #3

In February 2014, the newly-appointed BAER Director implemented a tracking database for waiver requests. The database includes all waiver requests and DOH actions related to the waiver, including information for time-limited waivers. The database is posted on the Department Intranet, so that all OPCHSM staff with waiver-related responsibilities have access to the data. The database will also record any non-compliance by the operator in addressing time-limited waivers, subjecting them to the potential for citation if the violations remain uncorrected. Regional office staff will notify BAER of the results; BAER staff will record the data in the database to maintain appropriate controls of the data. The database currently includes all waivers received since 2012. Data related to prior year waiver requests are being added, so that data related to waiver requests for at least the past ten years will be electronically available. The database can be searched by facility, to assist tracking and analysis of the data. Hospital and nursing home surveillance staff in all of the regional offices, as well as in central office, have been given view access to this master database.

Recommendation #4

Ensure that the Hospitals Division develops an adequate system to monitor approved waivers.

Response #4

The Hospital Division revised policy “14-9 Waiver Follow-up”, establishing a monitoring function for waiver requests submitted by hospitals. Each of the Department’s Regional Office Hospital Program Director is responsible for monitoring, through monthly review of the waiver tracking database, the assignment, review, and closure of waiver requests in their respective regions. In addition, the Hospital Division Director, or his/her designee, will monitor the waiver process throughout the program and report to the OPCHSM Deputy Director.

Summary

In summary, the Department recognized many of the findings prior to the commencement of the audit, took steps to address them, and continues to review and refine those actions to improve its processing and monitoring of waiver requests. The audit recommendations will assist the Department to further improve its waiver processing and monitoring, ensuring effective compliance monitoring by health care facilities throughout the state.

State Comptroller's Comment

1. We have modified the final report to correct and clarify certain issues raised in the Department's response.