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OFFICE OF THE STATE COMPTROLLER

December 8, 2016

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

Re: Facility Structure, Safety, and Health
Code Waivers
Report 2016-F-11

Dear Dr. Zucker:

Pursuant to the State Comptroller's authority as set forth in Article V, Section 1 of the State Constitution and Article II, Section 8 of the State Finance Law, we have followed up on the actions taken by officials of the Department of Health (Department) to implement the recommendations contained in our audit report, *Facility Structure, Safety, and Health Code Waivers* (Report 2014-S-27).

Background, Scope, and Objectives

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 those codes and regulations and for granting exceptions to compliance with codes and regulations. 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. 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 hospitals, nursing homes, intermediate care facilities, and other treatment centers such as ambulatory care centers and health clinics.

We issued our initial audit report on June 18, 2015. The objective of the audit was to determine if the Department's waiver practices were effectively addressing safety and risks related to physical plant standards at health care facilities. That audit covered the period April 1,

2012 to November 12, 2014.

Our initial audit found that the Department's waiver practices did not effectively ensure that safety and structural risks related to physical plant standards at health care facilities are appropriately addressed. During that audit period, the Department lacked both a formal written process for waiver management and monitoring, and adequate internal controls, which together 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 could not efficiently and effectively ascertain what waivers existed at facilities overseen by its Division of Hospital and Diagnostic and Treatment Centers (Hospitals Division), nor could it identify the code violations that had been waived at those facilities. Also, there was limited assurance that violations were corrected or mitigated during the time frame allowed by the waivers.

The objective of our follow-up was to assess the extent of implementation, as of November 3, 2016, of the four recommendations included in our initial audit report.

Summary Conclusions and Status of Audit Recommendations

Department officials made significant progress in addressing the problems we identified in the initial audit. We found the initial report's four audit recommendations have all been implemented.

Follow-Up Observations

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.

Status – Implemented

Agency Action – In our initial audit, we determined that the Department lacked formal written policies and procedures and did not maintain adequate supporting documentation for waiver applications, approvals, and monitoring efforts. During our follow-up review, we found that by May 2016 the Department had developed and finalized several policies and procedures related to waiver receipt and processing. This included construction waivers, time-limited waivers, waiver submissions, and categorical waivers. In addition to these policies and procedures, the Department also developed a reporting system that identifies the people responsible for monitoring each waiver. These staff members are responsible for ensuring that all relevant documentation is received, that the waiver progresses through the process in a timely manner, and that final decisions on the outcome of waiver requests are timely and sufficiently supported. Much of the supporting documentation

can now be scanned into the Department's certificate of need database and is available to be viewed by anyone in the Department who needs the information.

Recommendation 2

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

Status – Implemented

Agency Action – As part of the new policies and procedures, the Department requires the directors of Primary Care, the Bureau of Architecture and Engineering Review (BAER), the Hospitals Division, and the Division of Nursing Home and Intermediate Care Facilities (Nursing Home Division) to meet periodically to discuss the process for the receipt, determination, and follow-up of waiver requests. Department officials indicated that these quarterly meetings have served as an excellent vehicle to allow BAER, along with the Hospitals and Nursing Home Divisions, to continuously review their policies and communicate any necessary changes with each other, along with how those changes will be implemented. While there are no formal minutes maintained for these meetings, we note that the new policies have evolved since our initial audit, and the results of this cooperation are evident in the different iterations of the policies and procedures we reviewed.

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.

Status – Implemented

Agency Action – Our initial audit found that the Department did not have a database that included all waiver-related information such as a list of waivers requested, approved, or denied, or the expiration dates for time-limited waivers. Further, regional office staff had to gather waiver information from the facilities they were about to inspect because this data was not readily available to them.

In our follow-up review, we determined that BAER now maintains a Waivers Web Data System accessible to each regional office to guide tracking and monitoring activities. The database is now updated by BAER as waiver requests are received, processed, and closed. BAER has also summarized all of the waivers that existed prior to the development of the system and is in the process of adding that information to the database. The Department has also established a web-based application which may be accessed (but not changed) by regional offices to monitor waivers. This system is capable of retrieving waivers in several ways, including queries by facility name, county, and waiver ID. Department officials also produce a monthly report that summarizes waiver status by the employee responsible for reviewing them. Reports are also generated to alert staff about time-limited waivers that

will be expiring within 60 days. Emails are then automatically generated when milestones for waivers expire to ensure that the people responsible for monitoring the waiver are aware of the situation.

Recommendation 4

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

Status – Implemented

Agency Action – During most of our prior audit’s scope period, we found that 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. Since then, formal written policies and procedures have been developed which, when coupled with the new waiver tracking database, provides an adequate system to monitor approved waivers.

Major contributors to this report were Donald Geary, Bob Mainello, Brandon Ogden, and Jonathan Julca.

We thank the management and staff of the Department for the courtesies and cooperation extended to our auditors during this review.

Very truly yours,

John F. Buyce, CPA, CIA, CFE, CGFM
Audit Director

cc: Diane Christensen, Department of Health
Division of the Budget