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November 20, 2018

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

Re: Criminal History Background Checks of  
Unlicensed Health Care Employees  
Report 2018-F-13

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 recommendation contained in our audit report, *Criminal History Background Checks of Unlicensed Health Care Employees* (Report 2016-S-65) issued June 8, 2017.

**Background, Scope, and Objective**

The Department is responsible for conducting criminal history background checks of unlicensed persons seeking employment with Nursing Homes, Adult Care Facilities (ACF), Home Health Care (HHC) providers, Hospice, and Health Homes. The background check process is the same for all five types of facilities. Licensed professionals, such as doctors and nurses, are exempt from these requirements. Providers are allowed to provisionally hire applicants while background checks are pending, but only subject to specific direct supervision requirements if the employee is to have direct contact with either patients or their property.

The Criminal History Record Check (CHRC) system is used to process all CHRC applications for unlicensed staff with patient or patient property contact at all health care facilities subject to CHRC regulation. Providers submit an electronic background check request through the CHRC system to the Department. The Department, in turn, submits a fingerprint request on behalf of the applicant if he/she has not previously been submitted through CHRC. These fingerprint results are sent electronically to the Federal Bureau of Investigation (FBI) and the New York State Division of Criminal Justice Services (DCJS), which, in turn, send any criminal history results to the Department. If the person has been fingerprinted before, the CHRC Legal Unit reviews the

case using information from its initial request, along with any subsequent New York State arrest information. The FBI does not have the capability to send only subsequent arrests at this time.

Records indicate that, for the applicants subject to the CHRC system, about 82 percent do not have a criminal history and therefore do not require further review by the CHRC Legal Unit. In these cases, a positive employment eligibility letter is automatically generated to the employer. For the approximately 18 percent of applicants with a criminal history, the CHRC Legal Unit conducts further review, including reaching out to courts nationwide when necessary, and makes an employment eligibility determination.

Within the CHRC Legal Unit, legal assistants go through a process to “perfect” the criminal history records (i.e., “rap sheets”) received, which involves reviewing the rap sheet and conducting additional research to ensure the charges and convictions are correct and fairly represented. Once a rap sheet has been perfected, a lawyer reviews the CHRC file and makes a legal employment determination. If the employee is given a positive legal determination, the provider is sent a letter with the decision. After receiving this letter, the provider then has the choice whether to employ the individual or not. If the employee is given a negative legal determination, a pending denial letter is issued to the provider and employee. The employee must then be removed from direct care responsibilities while awaiting a final decision, and is given 30 days to show why he/she should be considered eligible for employment.

The Department monitors providers to ensure they subject unlicensed employees to background checks, as required. Each of the Department’s five divisions that oversee these services (Nursing Homes, ACF, HHC, Hospice, and Health Homes) conducts surveys and on-site inspections to ensure that CHRC and other policies are being carried out on a day-to-day basis.

Our initial audit report examined whether the Department effectively oversaw and monitored efforts by Nursing Homes, ACF, and HHC providers (Hospice and Health Homes were not required at the time of our original audit) to adequately safeguard patients through requests for required criminal history background checks when hiring unlicensed persons in direct care positions. The audit report concluded the Department generally met its obligations for conducting background checks on unlicensed employees of Nursing Homes, ACFs, and HHCs, according to State requirements. However, we identified 24 CHRC applicants whose determination letters were not completed timely and, as a result, the individuals could have been allowed to work for periods ranging from 2 months to as long as 28 months without final clearance. Of these, eight applicants (who were ultimately denied eligibility) actually worked on a provisional basis, for periods between 3 and 14 months while their background checks were pending.

The objective of our follow-up was to assess the extent of implementation, as of October 26, 2018, of the recommendation included in our initial report.

### **Summary Conclusions and Status of Audit Recommendation**

We found that the Department has made significant progress addressing the issues identified in our original audit. The Department has implemented the one recommendation

contained in our original audit report.

## **Follow-Up Observations**

### **Recommendation 1**

*Continuously monitor and analyze CHRC data to ensure determination letters are sent to applicants and employers timely for all rap sheets that staff have reviewed and perfected.*

Status - Implemented

Agency Action - From April 2017 to June 2018, the Department made several requests to the New York State Office of Information Technology Services for a report to be created to assist with monitoring and analyzing CHRC data. In July 2018, the report entitled "Legal Determinations Not Concluded" became fully functional. Department officials are able to access and run the report from their desktops at any time. This report identifies instances where a rap sheet is marked as perfected within the CHRC database, but applicants did not have a legal determination and notices were not sent to providers. The Department plans to run the report quarterly. After the report is run, the Department attorneys will check their lists of applicants and follow up as appropriate to ensure the appropriate legal determination was made and the notices were sent to providers.

Major contributors to this report were Walter Irving, Amanda Eveleth, and Michele Krill.

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

Very truly yours,

Walter Irving  
Audit Manager

cc: DOH Audit