Thomas P. DiNapoli
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OFFICE OF THE
NEW YORK STATE COMPTROLLER

DIVISION OF STATE
GOVERNMENT ACCOUNTABILITY

NEW YORK CITY DEPARTMENT OF HEALTH AND MENTAL HYGIENE

CONTRACTED HEALTH CARE SERVICES FOR NEW YORK CITY PRISON INMATES

Report 2005-N-5

AUDIT OBJECTIVE

A contractor overseen by the New York City Department of Health and Mental Hygiene (Department) is responsible for providing health care services to New York City prison inmates. We audited the Department to determine whether (1) monitoring of the contractor's performance provided adequate assurance that health care services were in accordance with contract requirements, (2) award of the $359.4 million, three-year contract was done in an open and competitive manner, and (3) there was adequate written support for the $9.2 million in service enhancements negotiated after the contractor's proposal was accepted.

AUDIT RESULTS - SUMMARY

Under its contract with the Department, Prison Health Services, Inc. (PHS) provides various health services to an inmate population that averages about 14,000 daily. The Department uses performance indicators as a critical instrument to monitor whether PHS's delivery of health care services complies with the contract. When the indicators show that PHS is not delivering services as required, the Department uses corrective action plans and liquidated damages to address the need for improvement.

Nevertheless, we found that, in many instances, the Department's contract monitoring and follow up efforts have not provided adequate assurances that health care services are delivered in compliance with the contract. For example, for the 39 performance indicators that the Department established and monitored quarterly under the contract, we found PHS did not achieve required levels of service delivery in consecutive quarters for 10 (25.5 percent). [Pages 4-5]

One reason why the Department's monitoring and follow-up efforts are not as effective as they ought to be may be that the liquidated damages (penalties) are not significant enough to be an incentive for compliance. For example, PHS's administrative fee from the contract in calendar year 2005 was $4.75 million on total contract payments of $102 million. For this same period, assessed penalties totaled $250,000 or about 5 percent of the administrative fee. We recommend that the Department consider a number of strategies, including more substantial liquidated damages, when the contract expires and is either extended or rebid at the end of 2007. [Page 6]

In addition, because formal monitoring takes place quarterly and corrective action plans are only designed after this is completed, necessary improvements become delayed. We recommend ongoing performance monitoring and corrective action planning during each quarter along with the formal monitoring that is used as a basis for determining penalties at the end of each quarter. [Pages 7-10]

We found that the Department used an open and competitive process to award the contract to PHS. However, the Department did not provide us with sufficient written support and analysis for the $9.2 million of service enhancements negotiated into the contract after PHS's proposal was accepted. According to Department officials, the increase was to cover costs of services that were not identified when bids were solicited for the contract. [Page 11]

Our report contains 11 recommendations which, if implemented, will improve the Department's contract monitoring of health services provided to prison inmates. The Department agreed with several of our recommendations and disagreed with others.

This report, dated June 25, 2007, 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

New York City provides health care services to inmates at 11 City-operated prisons, ten of which are serviced by PHS. Nine of these prisons are located on Rikers Island, while the tenth is located in Manhattan. On average, about 14,000 inmates a day are housed in the prisons.

The health care services are provided by PHS under a contract with the Department. The health care services provided include routine and specialized care, dental care and pharmaceutical coverage. While some of these services are provided directly by the contractor, other services are provided by local medical service providers who are selected and reimbursed by the contractor.

Under the contract, PHS is required to fully meet up to 40 performance indicators. These indicators relate to various health care services, some of which are to be provided to all inmates (e.g., a physical examination and medical history upon admission to the New York City prison system) and others which are to be provided only when needed (e.g., prenatal care or treatment for chronic medical conditions). These indicators are a critical measure of PHS's performance under the contract. To meet the standards, PHS must satisfy criteria that are specified for each service.

The Department is required by the contract to monitor PHS's compliance with these performance indicators. Specifically, the Department performs daily reviews of the medical files for a sample of inmates and determines whether the inmates received the health care services covered by the contract in accordance with the applicable performance indicators. Each quarter, the Department is to summarize the results of these reviews and report on PHS's performance for that quarter.

The quarterly reports are used to assess PHS's performance in terms of the 40 performance indicators. For example, if 100 of the inmates whose files were sampled in that quarter should have received "HIV rapid testing at admission," to the prison system, the report would note how many of the required 100 tests were actually performed. While PHS is expected to provide the required services to fully meet each of the performance indicators, it is not assessed liquidated damages and not required to develop corrective actions unless it does not "substantially meet" a performance indicator.

To substantially meet a performance indicator, PHS must achieve a certain compliance rate for that indicator. For most indicators, the minimum required compliance rate is 95 percent. Compliance rates as low as 92 percent can be considered substantial compliance due to a statistical margin of error. If PHS does not substantially meet a performance indicator in any quarter, the Department can assess liquidated damages and require PHS to develop a corrective action plan to ensure that the indicator is met in the future. Such plans are to be reviewed and approved by the Department.

The $359.4 million contract covers the three-year period January 1, 2005 through December 31, 2007. The contract, which was awarded to PHS in a competitive process, was initially expected to cost $350.2 million. However, subsequent to the preliminary

selection of PHS, increases were made to the required staffing levels, and PHS and the Department negotiated a $9.2 million increase in the awarded contract amount.

AUDIT FINDINGS AND RECOMMENDATIONS

Monitoring Contractor Performance

We found that the Department is monitoring and assessing PHS's compliance with the performance indicators contained in the contract. We also found that these assessments can be relied on, as the assessments we tested appeared to be accurate.

However, according to the Department's assessments, PHS's performance continues to need improvement in a number of areas. We found the Department is generally requiring that corrective action plans be developed for these areas, and has imposed liquidated damages. We examined the effectiveness of these actions and found that while in certain of these areas, PHS's performance did improve, many of the indicators not met in one quarter continued not to be met in subsequent quarters even after implementation of these actions.

Delays in developing and implementing the plans may have been partly responsible for the lack of significant improvement, and we recommend actions that could reduce such delays. A lack of documentation of the discussions held by the Department with PHS for arriving at the necessary corrective actions precluded us from evaluating this process.

We also note that corrective actions might be needed even when performance indicators are substantially met, as the non-compliance in those areas could be significant enough to warrant such action.

(In its response, the Department listed other activities beyond performance indicators that it uses to monitor PHS contract compliance.)

Auditor's Comment: We focused our review on the performance indicators as they are contractually agreed to measures of PHS performance. The Department developed the performance indicators and the substantial compliance levels for each, presumably with due care, because it believed they represented required levels of service. The basic premise of the contract was that PHS would provide these services at the agreed-upon levels or be penalized. In addition, the Department expends significant resources to determine if these indicators are being met.

Assessing Contractor Performance

The Department's contract with PHS commenced on January 1, 2005, and covers the three-year period ending December 31, 2007. The contract requires that PHS meet or substantially meet each of the performance indicators in each quarter. (See Exhibit A for a list of the Performance Indicators.) At the time of our audit field work, the Department had issued three quarterly reports assessing PHS's performance under the contract. The reports, covering the period January 1, 2005 through September 30, 2005 show that PHS needs to improve in a number of areas. According to these reports, PHS:

- fully met between 7 and 9 of the 39[1] performance indicators each quarter (i.e., PHS met these performance indicators for each of the inmates sampled that quarter, and thus achieved a compliance rate of 100

[1] Although the contract lists 40 performance indicators, one ("Chronic Care Encounters - Timeliness") was not yet reportable pending development and implementation of a new Chronic Care Management Model.

percent for these performance indicators), substantially met between 19 and 22 performance indicators each quarter, and

- did not substantially meet between 10 and 12 performance indicators each quarter (i.e., did not achieve the required substantial compliance rate for these indicators).

The Department's assessments of PHS's performance are based on daily reviews of selected inmate medical files and other medical records. The number of files and records reviewed each day varies depending on the number of inmates admitted. The reviews are performed by nurses in the Service Delivery Assessment Unit (SDA Unit) of the Department's Bureau of Correctional Health Services (CHS). The nurses determine whether the selected inmates received health care services in accordance with the applicable performance indicators.

To determine whether PHS's compliance with these performance indicators was accurately assessed in these daily reviews, we tested the SDA Unit's assessments for 6 of the 39 performance indicators. We selected for our test six of the performance indicators that were found to be substantially met in the first and second quarters of 2005 (four from the first quarter and two from the second quarter).

Our selection process was judgmental, as we focused on areas where the services to be provided were critical and PHS's compliance rate was not less than 92 percent, which can be considered substantial compliance due to a statistical margin of error.

For each of the 6 selected performance indicators, we reviewed 25 of the medical files that had been assessed by the SDA Unit in that quarter. We randomly selected these 25 files from all the files in which PHS was found by the Unit to be in compliance with that performance indicator for that quarter. We then reviewed the 150 files to determine whether the Unit's assessments appeared to be accurate. We based our determination on the information in the medical files and the criteria for each performance indicator, all of which were included in an attachment to the contract.

We found that the assessments made by the SDA Unit appeared to be accurate for all 150 files we reviewed. Therefore, on the basis of our test results, we conclude the Department's assessments of PHS's performance were reliable.

The following table summarizes the Department's assessments of PHS's performance for the three quarters. It should be noted that in any given quarter, for each category, some of the performance indicators may be the same as in a prior quarter.

2005 Quarter	Fully Met	Percent Fully Met	Substantially Met	Percent Substantially Met	Not Substantially Met	Percent Not Substantially Met
1	8	20%	19	49%	12	31%
2	7	18%	22	56%	10	26%
3	9	23%	20	51%	10	26%
Total	24	21%	61	52%	32	27%

We note that it took Department officials several weeks to locate certain inmate medical records. In response to our preliminary findings, Department officials explained their efforts to improve controls over inmates' medical records and related medical documentation with the development of electronic medical records for each inmate. We recommend the Department expedite those efforts.

We also note that no one validates, even on a sample basis, the nurses' daily assessments of PHS's performance. While our test indicates that the assessments during our audit period were valid, they may not always be so in the future, especially if there are changes in the circumstances surrounding the assessments (e.g., new nurses may be hired). We therefore recommend that periodically the Department validate a sample of daily assessments. Department officials concurred with our recommendation.

Effectiveness of Corrective Action Plans

The contract requires PHS to develop a corrective action plan for each performance indicator that it does not substantially meet in any quarter. These plans are submitted to the Department for approval. We examined the effectiveness of the corrective actions plans developed by PHS, focusing on the plans that were developed in response to unmet performance indicators in the first and second quarters of 2005. We did not review plans developed in response to third-quarter performance results because, to evaluate the effectiveness of these plans, we needed to examine PHS's performance in at least one subsequent quarter and such performance statistics were not available at the time of our audit field work. We found that PHS developed corrective action plans for the unmet performance indicators, and that PHS's performance did improve in more than half of these areas after development of such plans, but often not enough to raise its performance to "Substantially Met".

According to the Department's assessments of PHS's performance, during the first and/or second quarters of 2005, PHS did not substantially meet 15 distinct performance indicators. Therefore, there was a need to improve the provision of contractually-required medical services and the maintenance of important medical-related records. A list of those indicators requiring action plans in the first and second quarter of 2005 follows:

Indicators Not Substantially Met in the First or Second Quarters of 2005	
Performance Indicator	**Quarters Not Substantially Met**
Intake History and Physical Examination	Both
Mental Health Documentation - Completeness	Both
HIV PCP and MAC Prophylaxis within 48 hours	Both
Dental Services	Both
Medical Records - Problem List	Both
Medical Records - Transfer Summary Sheet	Both
Specialty Housing	Both
Diabetic Care - Aspirin Therapy	First
Mental Health Suicide Watch Documentation	First
Radiology	First
On-Island Specialty Care	First
Mental Health Medication Orders - Timeliness	First
Off-Island Specialty Care	Second
HIV Viral Load & T-Cell Follow-Up/Treatment	Second
Medical Follow-Up Timeliness	Second

As contract administrator, the Department needs to take prompt, corrective action in response to such failures in contractor performance. The Department is authorized by the contract to take such actions, as it may assess liquidated damages and require PHS to develop a corrective action plan whenever a performance indicator is not substantially met during a quarter. The contract requires liquidated damages of $5,000 to be assessed against PHS for the first quarter in which an indicator is not met. The amount can be increased to $10,000 in subsequent quarters at the Department's discretion. We found the Department generally imposed such damages. The Department assessed damages of $250,000 in 2005, or only five percent of PHS's administrative fee of $4.75 million for that year. The Department did not collect these damages until 2006.

If a corrective action plan is needed, the plan is developed by PHS and submitted to the Department for approval. The Department's Quality Improvement Council (which includes doctors and other personnel in CHS) is responsible for helping PHS develop such plans. Council representatives meet with PHS to discuss specific aspects of the plans, and CHS must approve all such plans before they become effective.

We note that PHS is often aware of needed improvements before its performance is assessed at the end of a quarter, as it receives interim biweekly performance reports from the Department. These interim reports summarize the results of the SDA Unit's daily reviews of inmate medical files during each two-week period and can be used by PHS to devise corrective actions. However, no formal action is required on the part of PHS until it receives the formal quarterly report.

We examined whether corrective action plans were required and developed for 15 performance indicators not substantially met during the first two quarters of 2005. We found that the Department required, and PHS developed, corrective action plans for the 15 unmet performance indicators.

One other performance indicator was not substantially met during the first and second quarters. According to the performance indicator "Chronic Care Encounters - Timeliness," inmates with certain medical conditions are to have the condition examined within 14 days of their admission to the prison system or, if the condition is identified subsequent to admission, within 14 days of the identification of the condition, and are to be referred to the health care coordinator specified by the contract. PHS did not come close to meeting this indicator in either the first or second quarter, as its compliance rates in those two quarters were 39 percent and 52 percent, respectively. However, the Department did not officially report the results of this indicator, did not require a corrective action plan and did not assess liquidated damages for either quarter (PHS's compliance rate in the third quarter was better - 77 percent - but it was still well below the substantial compliance rate for this indicator).

Department officials indicated that they are working with PHS to improve the contractor's performance in this area, as a new chronic care management model is being developed. The officials also indicated they decided not to require corrective action plans and not to assess liquidated damages until the new model is in place. We recommend Department officials expedite the development of the new chronic care management model, as PHS's performance in this area has fallen significantly short of substantial compliance, and as a result, services required by the contract have not been provided.

To determine whether corrective action plans, developed for the other 15 performance indicators that were not substantially met during the first two quarters of 2005, were effective, we examined whether PHS's performance in these 15 areas subsequently improved. We found that, in most of these areas, PHS's performance did improve, but the improvement was not always significant enough to enable PHS to substantially meet the performance indicator in a subsequent quarter. We note that in no instance did the corrective action plan improve performance so that in a subsequent quarter the indicator was fully met. We also noted that it sometimes took two quarters before any improvement was shown. Our findings can be summarized as follows:

- In 7 of the 15 areas, PHS's performance improved and the improvement was significant enough to enable the contractor to substantially meet the performance indicator in a subsequent quarter or quarters.

- In 6 of the 15 areas, PHS's performance improved, but not enough to enable PHS to substantially meet the performance indicator in the subsequent quarter or quarters.

- In 2 of the 15 areas, PHS's performance did not improve at all, as both its second-quarter compliance rate and its third-quarter compliance rate were lower than its first-quarter compliance rate.

We therefore conclude improvements are needed in the processes used in developing and implementing corrective action plans so that substantial compliance is reached. For example, in the first quarter of 2005, PHS did not substantially meet the performance indicator "Mental Health Documentation - Completeness," as its compliance rate that quarter was 90 percent. PHS developed a corrective action plan for this area, but PHS continued not to substantially meet this performance indicator, as its compliance rates

in the second and third quarters were 88 percent and 87 percent, respectively. The Department imposed liquidated damages of $5,000 in the first quarter and $10,000 in the second and third quarters.

According to the initial corrective action plan for this area, "with the hiring of more clinical supervisors particularly on the weekend… compliance rate should improve because more attention will be paid to clinical oversight and the quality of documentation." However, the second corrective action plan for this area, which was prepared after performance did not improve in the second quarter, noted that one of the reasons for this failure was "the shortage of weekend supervisory clinician coverage." It thus appears the initial corrective action plan may not have been fully implemented, as there was still a need for more clinical supervisors.

Also, in the first quarter of 2005, PHS did not substantially meet the performance indicator "Intake History and Physical Examination," as its compliance rate that quarter was 65 percent. PHS developed, and CHS approved, a corrective action plan for this area, but PHS continued not to substantially meet this performance indicator, as its compliance rates were 59 percent in both the second and third quarters. The Department imposed damages of $5,000 in each of the first three quarters of 2005.

We attempted to review the process that was followed by the Department and PHS in developing the corrective action plan for this area, but were unable to evaluate the adequacy of the process because minutes of the meetings between PHS and CHS are not maintained. The absence of such minutes also prevented us from assessing the processes that were used in developing corrective action plans for other areas. We recommend such minutes be maintained and be reviewed for improvement opportunities when corrective action plans prove to be ineffective.

(In its response, Department officials stated that the corrective action plans are achieved through interaction of various clinical and professional staff, and it would not be programmatically productive to maintain minutes.)

Auditor's Comment: We reiterate our belief that meeting minutes would assist both parties in documenting the reasons behind the failure to substantially meet performance indicators, both before and after corrective action plans have been implemented. The minutes would also document the process by which the corrective action plans were constructed.

The need for a corrective action plan is identified when the Department issues a quarterly report assessing PHS's performance for the most recent quarter. Neither the contract nor Department procedures require that these quarterly reports be issued within any particular timeframe (e.g., within 30 days of the end of each quarter). Department officials told us that quarterly reports are usually issued two to three months after the end of each quarter, because the SDA Unit needs a certain amount of time to summarize the results of its daily reviews and Department officials must meet with PHS officials to resolve problems relating to certain performance indicators. As a result, there is up to a one-quarter delay before a corrective action plan can take effect. Thus, a corrective action plan developed in response to poor performance in the first quarter will not take effect until the third quarter. We believe this built-in delay is partly responsible for the ineffectiveness of some of PHS's corrective action plans in the second and third quarters of 2005.

To expedite the development and implementation of corrective actions, we recommend the Department and PHS use the interim biweekly performance reports. These reports could assist in the identification of areas of concern before the end of a quarter, and when such concerns were identified, corrective action plans could be developed, approved and initiated without delay. There would be no need to wait until the end of the quarter. Subsequent interim reports could then be monitored to determine whether the corrective action plans were effective. We also recommend that actions be taken to expedite the issuance of the quarterly reports.

In some instances, corrective action plans might be needed even when performance indicators are substantially met. For example, PHS had a cumulative compliance rate of 93 percent for the performance indicator "Medical Follow-Up Timeliness." While this was considered substantial compliance, it still meant that the contract requirement was not fully met in an estimated 5,600 instances during this nine-month period. We recommend the Department routinely review all substantially met performance indicators to determine whether the number of instances of non-compliance for any standard is significant enough to warrant corrective actions.

(In its response, Department officials agreed they should review the data and performance standards and cited that, on at least two occasions, they have directed PHS to prepare corrective action plans even though the performance indicators were substantially met.)

Our audit demonstrates that the Department does attempt to enforce the contract requirements and, through its monitoring, attempts to improve PHS's performance. However, our audit also shows that the Department's actions are not resulting in sufficient improvement in PHS's performance to reach an acceptable level. We make eight recommendations to improve the oversight process. We also suggest that the Department reassess the effectiveness of the liquidated damages provision of the contract.

In addition, the Department needs a strategy for strengthening the effectiveness of the contract. This is an opportune time to establish a strategy as the contract will expire at the end of 2007. Some of the questions the Department needs to address when establishing the strategy include:

- Is 95 percent a reasonable minimal substantial compliance rate?
- Are the indicators themselves appropriate measures of effective service delivery?
- Are penalties too low?
- Should there be independent oversight of the monitoring process?
- Should Department of Correction officials be consulted when developing the Request for Proposals?
- Should the Department of Correction be involved in the development of the rating criteria and evaluation of contract proposals for the next contract award?

(In its response, Department officials stated that they will consider certain of the suggestions we cited.

Recommendations

1. Expedite efforts to develop electronic medical records.

2. Periodically validate a sample of the SDA Unit's daily assessments.

3. Recommendation Deleted.

4. Expedite the development of the new chronic care management model, and require PHS to implement this new model.

5. Expedite the development and implementation of corrective action plans by (a) reducing the delays in the issuance of the quarterly reports and (b) using the interim biweekly performance reports to officially report areas of concern before the end of a quarter.

6. Develop an ongoing process for monitoring the effectiveness of corrective action plans. In this process, use the interim biweekly performance reports to monitor PHS's performance in the areas addressed by the plans.

7. Maintain minutes of the meetings held to develop corrective action plans, and review these minutes for improvement opportunities whenever a plan proves to be ineffective.

8. Routinely review all substantially met performance indicators to determine whether the number of instances of non-compliance for any indicator is significant enough to warrant corrective actions.

9. Establish a strategy for strengthening the effectiveness of the contract for periods beyond 2007. Address the questions presented in this report when establishing the strategy.

(The Department agreed with Recommendations 1, 2 and 4, and agreed, in part, with Recommendations 8 and 9. The Department disagreed with Recommendations 3, 5, 6, and 7.)

Contract Award and Negotiated Price Increase

New York City Procurement Policy Board rules require that contracts should be awarded in an open and competitive manner to a responsive and responsible bidder. The bid documents and rating sheets we reviewed supported that the award to PHS was through an open competitive process and that PHS was a responsive and responsible bidder. In our examination, we relied on the decisions made by the Department's seven evaluators in awarding points to each of the four bidders. PHS's rating was substantially above the rating of the three other bidders.

The contract requires PHS to employ certain types of medical personnel and to provide certain levels of coverage with these personnel. After PHS was selected as the winning bidder, the Department modified some of these staffing configurations, as it determined that higher-level medical titles be substituted for certain lower-level titles and seven-day coverage be provided instead of five-day coverage for certain job titles. CHS officials told us that when they reviewed the staffing patterns in the Request for Proposal more closely, they determined that there was a need for upgraded staffing and additional coverage. They stated they decided to negotiate a price with the winning bidder for this upgraded staffing and additional coverage, and noted these negotiations would have been necessary no matter which firm was awarded the contract. After the contract was awarded, these negotiations took place and resulted in a $9.2 million increase in the awarded contract amount.

CHS was unable to provide documentation supporting its analysis for the need for the service enhancements. However, CHS officials instead provided us with cost estimates and other documents that had been prepared by PHS. In the absence of any documentation showing that CHS officials had prepared detailed analyses of the service enhancements needed by PHS to comply with contract terms, neither we nor Department executive management can be assured CHS officials properly justified the $9.2 million increased cost associated with the service enhancements. CHS officials stated that they did not believe it was necessary to keep records of the negotiation process or records showing an analysis used to formulate their opinion that the staffing reconfigurations were necessary.

Recommendations

10. Ensure that service enhancements in contracts are supported by detailed written analyses showing the additional services are needed.

11. Maintain records of all meetings in which important procurement decisions are made.

(In its response, the Department stated that the enhancement did not benefit PHS, did not compromise the integrity of the contracting process, and was approved by all participants in a close and independent review.)

Auditor's Comment: When a contract is changed after it has been awarded, we believe it is incumbent on management to document the reasons and analysis that support the changes. Such documentation adds to public accountability.

AUDIT SCOPE AND METHODOLOGY

We audited the Department to determine whether: monitoring of the contractor's performance provided adequate assurance that health care services were in accordance with contract requirements; award of the $359.4 million, three-year contract was done in an open and competitive manner; and there was adequate written support for the $9.2 million in service enhancements negotiated after the contractor's proposal was accepted. Our audit covered the period January 29, 2004 through January 6, 2006. We did our performance audit in accordance with generally accepted government auditing standards.

To accomplish our audit objectives, we interviewed Department officials to confirm and enhance our understanding of the processes used in awarding the contract to PHS and monitoring PHS's performance under the contract. We also reviewed the contract and other records relating to the contract award and contract monitoring processes. In particular, we reviewed and analyzed the Department's quarterly reports addressing PHS's compliance with the 40 performance indicators for the first three quarters of the 2005 calendar year.

In addition, we reviewed some of the inmate medical files and medical records reviewed by the Department during the first three quarters of the 2005 calendar year as part of the contract monitoring process. We reviewed the medical files to determine whether the Department's assessment of PHS's compliance with six selected performance indicators appeared to be reasonable. Additional details about our selection and review of these medical files are provided in the section of this report relating to the Department's contract monitoring process. We also reviewed the corrective

action plans developed in response to PHS's performance in the first two quarters of 2005.

In our examination of the contract award process, we did not assess the reasonableness of the criteria used by the Department in evaluating the four bids, and we did not assess the reasonableness of the decisions made by the Department's evaluators in awarding points to each of the four bidders. We also did not evaluate whether the contract complies with a New York State requirement which states that for-profit corporations providing medical services (such as PHS) must be owned and controlled by doctors. According to published reports at the time of our review, this aspect of the contract was being investigated by the State Education Department, which licenses doctors practicing in New York State.

As is our practice, we requested a representation letter from Department management. The representation letter is intended to confirm oral representations made to the auditors, and to reduce the likelihood of misunderstandings. Agency officials normally use the representation letter to assert that, to the best of their knowledge, all relevant financial and programmatic records and related data have been provided to the auditors. They affirm either that the agency has complied with all laws, rules and regulations applicable to their agency's operations that would have a significant effect on the operating practices being audited, or that any exceptions have been disclosed to the auditors. However, officials of the Mayor's Office of Operations have informed us that, as a matter of policy, Mayoral agency officials do not provide representation letters in connection with our audits. As a result, we lack assurance from Department officials that all relevant information was provided to us during this audit.

In addition to being the State Auditor, the Comptroller performs certain other constitutionally and statutorily mandated duties as the chief fiscal officer of New York State, several of which are performed by the Office of Operations. These include operating the State's accounting system; preparing the State's financial statements; and 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 management functions do not affect our ability to conduct independent audits of program performance.

AUTHORITY

The audit was done in accordance with the State Comptroller's authority as set forth in Article V, Section 1 of the State Constitution and Article III of the General Municipal 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 included as Appendix A. Appendix B contains State Comptroller's Comments which address matters of disagreement contained in the Department's response. The Department agreed with some of our conclusions and recommendations and disagreed with others. We cited those areas of disagreement throughout the body of this report and in Appendix B.

Within 90 days of the final release of this report, we request that the Commissioner of the Department of Health and Mental

Hygiene report to the State Comptroller, advising what steps were taken to implement the recommendations contained herein, and where recommendations were not implemented, the reasons therefor.

CONTRIBUTORS TO THE REPORT

Major contributors to this report include William Challice, Albert Kee, Michael Solomon, Stuart Dolgon, Robert Tabi, Raymond Louie, Joseph Giaimo, Jean Estime and Dana Newhouse.

EXHIBIT A

CONTRACTOR PERFORMANCE INDICATORS

Performance Indicator
Pap Test Screening
Pregnancy Counseling
Prenatal Exam
Pregnancy Sonogram
HIV Rapid Testing at Admission
HIV Post Rapid Test Counseling
HIV Confirmatory Testing
HIV Viral Load and T-Cell Testing
HIV Mental Health Follow-Up
HIV Viral Load & T-Cell Follow-Up/Treatment
HIV PCP and MAC Prophylaxis within 48 hours
Diabetic Care - Fundoscopic Exam
Diabetic Care - Aspirin Therapy
Asthma Care - Peak Flow
Asthma Care - Patient Education
Intake History and Physical Examination
Tuberculosis - TST Read
Sexually Transmitted Disease Testing
Sick Call
Radiology
Lab (SMA/CBC)
Medical Follow-Up Timeliness
Mental Health Referrals Timeliness
Mental Health Documentation - Timeliness
Mental Health Documentation - Completeness
Mental Health Encounter - Progress Notes
Mental Health Medication Orders - Timeliness
Mental Health Suicide Watch Documentation
Dental Services
Specialty Housing
Off-Island Specialty Care
On-Island Specialty care
Confidentiality
Sharps
Pharmacy Medications
Medical Records - Problem List
Medical Records - Transfer Summary Sheet
Medical Records - Chart Availability
Medical Record Requests
Chronic Care Encounters - Timeliness

APPENDIX A - AUDITEE RESPONSE

THE CITY OF NEW YORK
DEPARTMENT OF HEALTH AND MENTAL HYGIENE
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January 5, 2007

William P. Challice
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Re: Draft Audit Report on
Contracted Health Care Services for
New York City Prison Inmates;
Report No. 2005-N-5

Dear Mr. Challice:

We have reviewed the draft audit report and appreciate your consideration of our comments on the findings and recommendations. Attached to this letter are detailed comments on this draft audit report.

The DOHMH concurs with the Comptroller's findings that the contract was awarded with an open and competitive process and that the DOHMH effectively and accurately monitors PHS's compliance with performance indicators as outlined in the contract.

The DOHMH is committed to providing quality health care, and to a continuing performance improvement program for its contracted services. The audit does not adequately describe or review these oversight efforts. The discussion of oversight is limited to an analysis of the performance indicator monitoring process. Our oversight of vendor performance also includes: site visits by a number of health professionals; reviews of more than 50 contractually mandated management reports, and data from the medical intake system and the mental health discharge planning data base; a joint quality improvement committee; investigation of complaints; a review of individual medical charts and case histories; and monitoring of compliance with specific contractual requirements. We also review observations made by several correctional oversight boards.

Even though the discussion of performance monitoring is limited to the performance indicator process, the audit's own findings provide evidence of widespread and substantial improvement, contrary to the general statements made in the audit summary.

* Comment 1

The audit details a variety of specific recommendations for further improvement of contract monitoring activities related to performance indicators and the associated corrective action plans. DOHMH agrees with some of these recommendations. However, we disagree with several recommendations concerning the development and monitoring of corrective action plans, which appear to be based on a misunderstanding of the many ways in which we currently give feedback to the vendor, and jointly develop strategies for improving care. This part of the audit may reflect the auditors' lack of expertise in health care quality improvement.

* Comment 2

We appreciate the courtesy and consideration of your audit staff in the performance of this audit. If you have any questions or need further information, please contact Thomas Hardiman, Director for Internal and External Audits at (212) 219-5285.

Sincerely,

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

TRF/mc

* See State Comptroller Comments, page 26.

DOHMH Response to Draft Audit Report by NYS Office of the State Comptroller
Contracted Health Services for New York City Prison Inmates
Report 2005-N-5

The New York State Comptroller audited the New York City Department of Health and Mental Hygiene's ("DOHMH" or "Department") contract monitoring activities in regard to a Prison Health Services (PHS) contract to provide health care services to people incarcerated in New York City jails. The DOHMH concurs with the Comptroller's findings that the contract was awarded with an open and competitive process and that the DOHMH effectively and accurately monitors PHS's compliance with performance indicators as outlined in the contract.

The DOHMH is committed to providing quality health care, and to a continuing performance improvement program for its contracted services. While quality improvement is fundamental to improving care, performance indicators are only one of many contractual requirements which lead to over all vendor performance.

The Comptroller's audit details a variety of specific recommendations for further improvement of the DOHMH's contract monitoring activities, most of which relate not to the procurement or administrative oversight of the contract, but speak to issues of quality improvement. The DOHMH agrees with some of these recommendations. However, a number of these recommendations are based on faulty assumptions, which stem from the auditors' lack of expertise in health care quality improvement.

* Comment 2

A. Effectiveness of DOHMH Contract Monitoring and Oversight

The stated purpose of this audit by the NYS Office of the State Comptroller "Comptroller") was to determine whether the DOHMH was monitoring the performance of its primary correctional health service vendor [1] in a manner which provides "adequate assurance health care services are being provided in accordance with contract requirements." The draft report, issued after months of medical chart reviews by the Comptroller's audit team, confirmed that DOHMH is actively monitoring and assessing the contractual performance indicators ("PIs"). The auditors reviewed 150 medical charts with respect to six designated PIs, and found no errors in the Department's assessment. Based on the Comptroller's sample audit, DOHMH is clearly performing its PI assessments in an accurate and reliable manner

As confirmed by the report, the Department expends significant resources on its PI process. A staff of six FTE nurses, a nurse- supervisor, and nurse-director in its Service Delivery Assessment Unit (SDAU) review approximately 3,000 medical charts every month and derive data to assess 39 performance indicators and 25 performance measures.

[1] This vendor is Prison Health Services, Inc. and its medical subcontractors, PHS Medical Services, PC and PHS Dental Services. PC. (collectively referred to as "PHS") One of the City jails is not served by PHS.

* See State Comptroller's Comments, page 26.

While it accurately describes the PI process, the draft audit reflects a number of misunderstandings as to the purpose and meaning of the PIs. It therefore provides no basis for its conclusion that "the Department's contract monitoring and follow up efforts have not provided adequate assurances that health care services are delivered as required." We believe this language should be modified.

* Comment 3

These are some of the misunderstandings which most concern us:

1. The PIs were not designed as a comprehensive tool to assess the vendor's overall contract compliance. DOHMH maintains a Correctional Health Services Program ("CHS") staffed with more than 75 employees to supervise health care in the city jails. Among other activities, CHS monitors its vendor through:

- Regular on-site observations of health care delivery by the Agency's Correctional Health medical director, mental health director, nursing director, public health medical director, director of clinic operations and their staff
- Review of more than 50 contractually required reports, covering all aspects of contractual performance
- Targeted medical chart reviews on specific issues
- Review of data from the electronic medical intake system
- Review of data from mental health/discharge planning database
- Review and approval of vendor credentialing packages for all physicians, nurse practitioners, dentists, physician assistants and licensed PHD psychologists
- Participation in joint DOHMH/vendor quality improvement committee and oversight of vendor quality improvement projects
- Reviews of individual charts
- Review of patient and third party complaints
- Review of observations by NYC Department of Correction, NYC Board of Correction and observations and reports of NYS Commission of Correction

PIs provide one method of assessing and improving quality, but are only one element of a comprehensive process to monitor and assess vendor contractual performance.

2. Non-achievement of a PI target does not mean that medical care was substandard or that patients lacked medical services. Many PIs contain a time-benchmark component; they measure whether a particular service was performed within a designated timeframe. Failure to meet one of these benchmarks does not mean that the service was not performed—it may have occurred subsequent to the benchmark and performance may still fall within a community standard of care. Illustrative of this is PI 6a, which measures not only whether intake exams were performed, but also whether they occurred within a 4-hour window set to promote efficiency in service delivery and inmate processing. Despite historic underperformance on this PI, all intake exams have been performed, no patient has been denied an initial assessment, and minor delays beyond this time clock do not demonstrate substandard medical care. Of the 15 PIs cited by the

* Comment 4

* See State Comptroller's Comments, page 26.

Comptroller for "not substantially met", the vast majority (73 %) include a similar time standard component. These time frames are often more stringent than accepted community standards.

3. The PIs are in the nature of a quality improvement effort and must be viewed within the context of medical service delivery and clinical performance measurement. In most health care delivery systems, clinical performance indicators are not considered to be a "contract compliance" issue but rather an element of the quality improvement process. Viewed in this context, performance thresholds of 95% are significantly higher than community standards. In fact, most standard setting organizations such as the National Committee for Quality Assurance, IPRO, and the National Quality Forum do not set specific performance thresholds, but measure improvement and compare across health providers and health plans.

* Comment 5

4. The nature of certain PIs and the various impediments to a higher rate of performance make it unrealistic to expect that a "substantially met" level of performance will be achieved within one or two calendar quarters in all instances. Rikers Island is a complex health care environment with many impediments to time-measured performance. It experiences frequent transfers of patients between different jails and housing areas, interruptions because of court appearances and off island specialty clinics, security-related issues such as lock-downs and reliance on officer escort, challenging physical plant issues, sudden fluctuations in patient volume, and patient-related challenges such as mental illness or substance abuse. CHS has in some instances selected PIs for long-standing, seemingly intractable issues, which are not easy to address, and understands that improvement may sometimes occur gradually. For example:

* Comments 5, 6

- PI 3g (HIV care: PCP/MAC Prophylaxis). Our data shows that this task is being done at "substantial compliance" levels, but not within the time frame that was originally built into the indicator. While the task is essential, it is important to note that a short delay is exceedingly unlikely to result in any adverse medical outcome. This PI is currently being revised to reflect a more appropriate and clinically relevant time frame.
- PI6a (Intake History and Physical). This PI requires that newly admitted inmates receive an intake history and physical exam within four hours of the time that they are brought to the clinic by DOC. Our data shows that **all inmates** receive this service, however, some do not receive it during the time frame. This has been an ongoing problem over many years, and varies by facility and time of day, along with volume of patients. Corrective action plans over the years have addressed different elements of this concern and some progress has been made. However, the real corrective action, which is not in the vendor's control, will be to have an electronic health record with previous medical history as well as real-time alerts and messages to ensure that the vendor's medical providers and managers are able to track and identify problems as they are occurring, and to make sure that patients move smoothly and efficiently through the intake system.

5. Significant improvements are occurring within the PIs. Of the 15 PIs which were not substantially met in the first two quarters of 2005, the auditors acknowledge that 13 of

* See State Comptroller's Comments, page 26.

them improved (87%), and 47% improved sufficiently to achieve the high performance target of "substantially met" in the next calendar quarter. For example,

- PI#4b: Diabetes: Aspirin therapy – improved from 72.3% in 1Q2005 to 92.6% and 94.8% in 2Q2005 and 3Q2005, respectively
- PI#10a – Radiology – improved from 88.8% in 1Q2005 to 94.4% and 96% in 2Q2005 and 2Q2005, respectively
- PI#13f – Mental Health: Suicide Watch Documentation – improved from 71.2% in 1Q2005 to 94.9% and 92.7% in 2Q2005 and 3Q2005, respectively.

Thus, the vendor and DOHMH are succeeding in achieving performance improvements. The statement on page 8 that "improvements are needed in the processes used in developing and implementing corrective action plans" is contradicted by this fact, and by the previous point. A similar unwarranted statement is made on page 10 that "the Department's actions are not resulting in substantial improvement in PHS's performance."

* Comments 1, 6

6. There are no undue delays in implementing corrective actions. Contrary to assertions in the draft report, PI deficiency information is promptly communicated to the vendor and corrective actions are implemented long before the issuance of DOHMH's formal quarterly reports and the initiation of a formal, written corrective action plan. It is true that it takes a certain period of time after the end of each calendar quarter to finalize these reports: there must be sufficient time to for the vendor to complete documentation in the medical record and for CHS to collect, analyze and verify all data. It would be counter-productive to the goal of monitoring performance on the basis of accurate data to unduly rush this process. On the other hand, in virtually all instances, the vendor is given sufficient notice of interim data, and the general trend of PI data, so that corrective action plans are devised, approved, and implemented in a timely manner.

* Comment 7

B. Documentation of Medical Service Enhancements

The draft audit report criticized DOHMH for not providing the audit team with "written support and analysis supporting the $9.2 million of service enhancements negotiated into the contract after PHS's proposal was accepted." This enhancement, 2.6% of the total contract amount, did not benefit PHS, did not compromise the integrity of the contracting process, did not reflect a significant change in the contractual requirements, and was approved by all participants in a close and independent review

The enhancements were virtually all the result of increased medical staffing on weekends and upgrades to higher levels of medical titles for certain positions, based on recommendations by senior DOHMH health care professionals.[2] This revision was appropriate because the staffing matrix included in the procurement document and required of all proposers was created many months before the finalization of the contract

[2] The correctional health services program within the DOHMH employs a full-time medical director, medical director for public health, mental health director, nursing director, pharmacy director, in addition to experienced clinic management and operations personnel.

* See State Comptroller's Comments, page 26.

and was out of date. The vendor did not profit by these service enhancements, since the vendor fee was fixed. Similar changes would have been required of any other vendor selected by the City. Ultimately, the service enhancement was disclosed to and approved by the Department's Agency Chief Contracting Officer, the Mayor's Office of Contracts, and the contract was registered by the New York City Comptroller. This process is acceptable under the City's procurement (PPB) rules.

The auditors were informed of the process which led to the modification of the staffing requirements. However, they have defined "documentation and support" for the upgrades as a line-by-line comparison of the original PHS staff proposal against the final contract matrix, with a justification for each change. Such a process is not required pursuant to City rules, and would have served no constructive purpose.

C. Response to Comptroller Recommendations

1. *Expedite efforts to develop electronic medical records.*

DOHMH is finalizing its contract with a selected vendor to implement a comprehensive electronic medical record for its correctional facilities, and is moving as quickly as prudent to complete and implement this system.

The City will be at the forefront of the medical community in its adoption of an electronic record. Only about 5% of ambulatory care providers on a national basis use such records, and accrediting organizations such as the National Commission on Correctional Health Care have not yet adopted a recommendation to adopt an electronic record.

2. *Periodically validate a sample of the SDA Unit's daily assessments which are selected based on risk.*

DOHMH concurs with the suggestion for a periodic review of the Unit's assessments, even though the audit found no errors in the SDAU's work, and has initiated this process.[3]

3. *Work with PHS to develop a process whereby prison authorities are notified of inmates for whom filled prescriptions are available.*

We believe that the auditors misunderstand the purpose of the PI related to this issue, and the process by which inmates are informed of and receive their medications. In most of the jails, inmates are free to go to a pharmacy window or pharmacy cart to pick up their medications. They are informed that the medication will be made available to them in their encounter with the prescribing clinician. The purpose of the PI is to measure PHS's

* Comment 8

[3] Its unclear what the Comptroller means by the phrase "which are selected based on risk".

* See State Comptroller's Comments, page 26.

performance in making the prescribed medicine available to the patient within 24 hours of the script being written. This PI achieves its targeted and intended purpose of measuring whether pharmacists are taking the necessary and appropriate actions to ensure that patients are able to obtain their medications.

4. *Expedite the development of the new chronic care management model and require PHS to implement this new model.*

DOHMH's ongoing chronic care initiative is currently being implemented.

5. *Expedite the development of and implementation of corrective action plans by reducing the delays in quarterly reports and using interim biweekly performance reports to officially report areas of concern before the end of a quarter.*

We disagree with this recommendation. There is no "delay" in implementing corrective actions. The lag time in producing a final PI quarterly report cannot be significantly altered without adversely affecting the accuracy and reliability of the report.

* Comment 7

6. *Develop ongoing process to monitor effectiveness of corrective action plans.*

Use interim biweekly performance reports to monitor PHS performance in areas addressed by the plans.

This recommendation erroneously implies that there is no process to monitor such effectiveness. Further, DOHMH does use interim performance reports to a certain extent, but this is not quite the panacea envisioned by the auditors. Day-to-day results vary, and results from a small sample, or short period of time are not necessarily reflective of overall performance. Certain of the PIs are not reviewed on a daily basis, but rather a sample or entire universe may be pulled on a monthly or quarterly. In short, the Department uses these reports to the extent that they are useful and productive.

* Comment 9

7. *Maintain minutes of meetings to develop corrective action plans*

We disagree with this recommendation. PHS and DOHMH share a united goal in achieving higher performance on the PIs. The corrective action plans are achieved through interaction of various clinical and professional staff; the results are reflected in the final approved corrective action plan. The Department would not find it programmatically productive to maintain minutes.

8. *Routinely review all substantially met PIs to determine whether the number of instances of non-compliance for any standard is significant enough to warrant the development of corrective actions*.

DOHMH agrees in part that the agency should review the data and performance standards. On at least two occasions, DOHMH has directed the vendor to prepare

* Comment 10

* See State Comptroller's Comments, page 26.

corrective action plans even though the PIs at issue were substantially met. Such actions are not required by the contract, nor do we agree that this should be done routinely for all PIs.

* Comment 10

9. Establish a strategy for strengthening the effectiveness of the contract when it is rebid in 2007. Address the questions presented in this report when establishing the strategy.

It is not a certainty that the City will rebid its vendor contract in 2007; DOHMH has a three-year option to renew. DOHMH will carefully consider enhancements to its contract in the next reiteration. With respect to specific questions raised by the Comptroller, we have three general responses:

- The Department will reassess the contractual PI thresholds, the PI measures, and liquidated damage levels, and modify as appropriate in its next contract.
- DOHMH sees no reason to add an additional layer of contract oversight.
- DOHMH consulted with the NYC Department of Correction in developing the last RFP and DOC personnel participated in its evaluation team. We anticipate that this practice would continue in the next procurement. It should be remembered, however, that DOHMH holds independent responsibility under the New York City Charter for provision of health care services in the correctional facilities.

* See State Comptroller's Comments, page 26.

Appendix A

Factual Corrections to Draft Report

Calculation of Profit (p. 2). PHS does not receive $4.75 million nor 5 per cent per year in "profit" from its DOHMH contract. It receives an administrative fee in this amount which must cover all indirect costs of its Tennessee-based central office such as personnel costs for corporate attorneys and officers, and OTPS costs of the Tennessee office. There is clearly a profit figure built into the administrative fee, but it inaccurate and misleading to characterize the entire amount as "profit."

* Comment 11

Penalties, as Percentage of Profit (p. 2). It is erroneous to characterize the amount of liquidated damages as "5 percent of profit." This calculation wrongly states $4.75 million to be the profit figure.

* Comment 11

Rebidding of Contract (p. 2). The PHS contract will not necessarily be rebid in 2007. The existing term will expire in December, 2007; however, there is a three-year option to renew by the City.

* Comment 12

Audit Objective (p. 2) The Comptroller's draft report has recharacterized one of the original audit objectives. It was described in the preliminary report as whether "a $9.2 million negotiated price increase was necessary." Now that the audit is completed, it has described the objective as determine whether "there was adequate written support for the $9.2 million in service enhancements negotiated after the contractor's proposal was accepted."

Number of Jails (p. 3) There are eleven city-operated jails. In addition to those mentioned in the report, the eleventh facility is in the Bronx, and is not serviced by PHS.

* Comment 11

Number of Performance Indicators (p. 3). The number of performance indicators may vary, at the discretion of DOHMH, up to a maximum of 40 indicators.

HIV Rapid Tests (p. 3) The discussion could give an incorrect impression that HIV tests are required for inmates. To the contrary, the vendors are required to offer the test to inmates, but they have a right to decline the test.

SDAU (p. 5) CHS is not a Division of DOHMH. It is a bureau within the Division of Health Care Access and Improvement.

* Comment 11

* See State Comptroller's Comments, page 26.

APPENDIX B - STATE COMPTROLLER'S COMMENTS ON AUDITEE RESPONSE

1. While our audit did find some degree of improvement, it also found that many performance indicators continue to be either not fully met or not substantially met, even after implementation of corrective actions. For example, the chart on page 6 of our report shows that 27 percent of such indicators were not substantially met during our review period.

2. Performance indicators are an instrumental part of the contract and are integral to assuring health care quality improvement. Our audit staff was sufficiently capable to assess compliance with the measures.

3. While we recognize that the Department employs other means to monitor PHS, the performance indicators are the heart of its monitoring system. They are also the only ones required by the contract for which penalties for nonperformance are assessed. Further, the Department devotes nine nurses to verify, on a daily basis, PHS' provision of these services. These nurses statistically sample, more than 30,000 medical records every quarter to perform this verification. These reviews drive the improvements to the health care provided to inmates.

4. Our report does not generalize that services were substandard or that patients lacked medical services because of lack of achievement of a performance measure.

5. The 95 percent criteria was established by the Department and agreed to by PHS, therefore, we measured PHS' performance against that standard. As our report points out, the Department, going forward, needs to consider if 95 percent is a reasonable minimal substantial compliance rate.

6. Our audit shows that 8 of 15 indicators were still not met two quarters later.

7. We saw no indication that corrective actions were initiated prior to the issuance of final quarterly reports, which were often issued three or four months after the quarter reported on.

8. We did not misunderstand the performance indicator but were suggesting that, separate and apart from the indicator, the Department assure that the inmate actually receives his or her prescribed medications. Since the Department believes this to be the case, we have deleted this concern and recommendation from our final report.

9. The results of the audit clearly demonstrate that the Department's existing monitoring systems need to be improved.

10. The Department misunderstood our recommendation. It says to routinely review the results, and then make a determination as to whether or not corrective actions are needed.

11. We revised our report, as appropriate, to reflect the information provided by the Department.

12. The Department is correct. When we learned that there was insufficient documentation to reach a conclusion on the original objective, we reworded the objective to permit us to comment to the extent that we could on this matter.