



City of New York

OFFICE OF THE COMPTROLLER

Scott M. Stringer
COMPTROLLER



MANAGEMENT AUDIT

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Deputy Comptroller for Audit

Audit Report on the New York City
Department of Health and Mental Hygiene's
Follow-up on Violations Found at Group
Child Care Centers

MH17-056A

June 28, 2018

<http://comptroller.nyc.gov>



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SCOTT M. STRINGER

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To the Residents of the City of New York:

My office has audited the New York City Department of Health and Mental Hygiene (DOHMH) to determine whether it has adequate controls to ensure that violations found at DOHMH-permitted group child care (GCC) centers are effectively followed up. We conduct audits such as this to increase accountability and to ensure that agencies enforce applicable laws and policies relating to the health and safety of children.

The audit found that DOHMH has adequate controls to ensure that inspectors follow up on violations found at DOHMH-permitted GCC centers in a timely manner. However, DOHMH needs to strengthen its controls to provide greater assurance that inspectors ensure that the interim controls implemented to address uncorrected public health hazards adequately mitigate the violating conditions. This is of particular concern because interim controls are required in situations where violations are cited that may present an imminent threat to the health and safety of children. DOHMH also needs to strengthen its controls to better ensure that inspectors take appropriate actions when conducting their follow-up so that they do not inappropriately deem violations to be corrected.

The audit makes seven recommendations, including that DOHMH require adequate evidence be maintained in its computer system to support inspectors' determinations that violations have been corrected; that it implement a method by which documented supervisory reviews of violation corrections can be recorded in its computer system; and that it require supervisors to document their reviews of the interim controls established for public health hazard violations and ensure the controls adequately mitigate the hazardous conditions cited.

The results of the audit have been discussed with DOHMH officials and their comments have been considered in preparing this report. DOHMH's complete written response is attached to this report.

If you have any questions concerning this report, please email my Audit Bureau at audit@comptroller.nyc.gov.

Sincerely,

A handwritten signature in blue ink, appearing to read "Scott M. Stringer".

Scott M. Stringer

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THE CITY OF NEW YORK OFFICE OF THE COMPTROLLER MANAGEMENT AUDIT

Audit Report on the New York City Department of Health and Mental Hygiene's Follow-up on Violations Found at Group Child Care Centers

MH17-056A

EXECUTIVE SUMMARY

This audit was conducted to determine whether the New York City (City) Department of Health and Mental Hygiene (DOHMH) has adequate controls to ensure that it effectively follows up on violations found at DOHMH-permitted center-based group child care (GCC) centers. DOHMH is authorized by Chapter 22 of the City Charter to enforce the provisions of the City's Health Code. Article 3 of the Health Code authorizes DOHMH to conduct inspections of any premises within its jurisdiction, including child care centers, to foster compliance with the code.

GCC programs provide child care to three or more children under six years of age for five or more hours per week and for more than 30 days in a 12-month period, primarily in non-residential space. These programs are licensed by the City and regulated by Article 47 of the City Health Code. The responsibility for ensuring that child care programs comply with the Health Code falls on DOHMH's Bureau of Child Care (BCC).

BCC protocols call for GCC centers to be inspected annually for two separate purposes: one related to the GCC center's physical premises—conducted by a Public Health Sanitarian (PHS); and the other one related to the GCC center's program operations—conducted by an Early Childhood Education Consultant (ECEC).

The three types of violations that may be observed during an inspection for which a citation may be issued by either the PHS or the ECEC are:

- Public health hazards (PHHs) for those violations that may present an *imminent* threat to the health and safety of children (e.g., a missing window guard or inadequate supervision) and must be corrected by the GCC provider within 24 hours of citation or, if the violation is not corrected while the inspector is at the GCC, an "interim control" must be put in place to mitigate the risk of a PHH to stay open until the cited condition has been corrected;
- Critical violations for *serious* violations that must be corrected by the GCC provider within 14 days of citation (unless stated otherwise in this report, the term "day" refers to workday); and

- General violations for the least severe type of violations that do not pose a direct threat to children; however, they must be corrected by the GCC provider within 30 days of citation.

A GCC center found to have one or more PHHs, one or more critical violations, or six or more general violations during an inspection should be re-inspected within 45 days of the inspection to determine whether the violations have been corrected. Depending on the nature of the violation, it is acceptable for the GCC provider to submit documents that establish that cited conditions had been corrected to clear violation within this timeframe. In such cases, a re-inspection is not required.

The BCC inspection staff use handheld devices (tablets) in the field to access facility records and previous inspections information, to review notes and history, and to record investigation results. Upon completion of the inspection, the inspector “synchs” the tablet to send the inspection results back to the Child Care Application Tracking System (CCATS), an in-house system developed by DOHMH to track permit applications, but which it also uses to record inspections and violations.¹

Audit Findings and Conclusion

This audit found that DOHMH has adequate controls to ensure that inspectors follow up on violations found at DOHMH-permitted GCC centers in a timely manner. However, DOHMH needs to strengthen its controls to provide greater assurance that inspectors ensure that the interim controls implemented to address uncorrected public health hazards adequately mitigate the violating conditions. This is of particular concern because interim controls are required in situations where violations are cited that may present an *imminent* threat to the health and safety of children. DOHMH also needs to strengthen its controls to better ensure that inspectors take appropriate actions when conducting their follow-up so that they do not inappropriately deem violations to be corrected.

DOHMH has programmed CCATS to assign inspections of those providers that have outstanding citations, prioritizing those for whom DOHMH has received complaints as well as those that have citations open for 30 days or more, to help ensure that inspectors promptly follow-up on violations. DOHMH supervisors may also use reports generated by CCATS to identify those providers that fit the criteria for re-inspection and have not provided evidence that the cited violations have been corrected. CCATS data reflected that 90 percent of citations issued for PHH and critical violations during our review period that required follow-up action—either re-inspection or documentation that the violations were addressed—had undergone such action within DOHMH’s 45-day target. CCATS data also shows that 98 percent of the citations were cleared as of February 23, 2017 (the last day of the audit scope period), meaning that inspectors deemed the associated violations to be corrected.

However, although the CCATS data indicates that the vast majority of the citations issued to GCC centers for PHH and critical violations were followed up within required timeframes, DOHMH lacked evidence that it adequately monitors its inspectors to ensure that violations are satisfactorily addressed. Specifically, we found little evidence that supervisors either review the interim controls reportedly established in response to PHH violations to ensure that uncorrected conditions are adequately mitigated or that they review inspectors’ clearances to ensure that the cited violations are properly corrected.

¹ CCATS is also used to track and process permits and/or licenses for other City-regulated programs, such as School Based Child Care (i.e., preschools operated by an elementary school) and Summer Camps. CCATS is not used for the State-regulated child care programs. For those programs, DOHMH uses the State’s database, the Child Care Facility System (CCFS).

In a review of the supporting information for 28 sampled citations for PHH violations for which interim controls were reportedly implemented, we found insufficient evidence to indicate that the conditions for more than half of them were adequately mitigated. In fact, our review of CCATS for all 1,892 PHH-related citations issued between February 1, 2016 and February 23, 2017 revealed that the records for 19 percent of them—360 citations—had seemingly meaningless entries (e.g., punctuation marks with no other text, cryptic entries such as “NULL” and “N/A”) in the *Interim Control* field. Additionally, our detailed review of 73 sampled citations that were cleared found insufficient evidence that the violations relating to approximately one-fifth of them were adequately corrected.

These weaknesses undermine DOHMH management’s ability to assess whether violations, especially those deemed critical or a public health hazard, have been satisfactorily addressed. Consequently, the risk to the children cared for in the GCC centers is increased.

Audit Recommendations

Based on our findings, we make seven recommendations, including the following:

- DOHMH should require that adequate evidence is maintained in CCATS to support inspectors’ determinations that violations have been appropriately corrected.
- DOHMH should implement a method by which documented supervisory reviews of violation corrections can be recorded in CCATS.
- DOHMH should require that supervisors document their reviews of the interim controls established for PHH violations and ensure that the controls adequately mitigate the hazardous conditions cited.

Agency Response

Of the audit’s seven recommendations, DOHMH agreed with two (#1 and #3), partially agreed with one (#7), stated that two pertained to procedures already in place (#2 and #6), disagreed with one (#4), and did not directly address one (#5). DOHMH also disagreed with the audit’s findings that weaknesses identified in DOHMH’s monitoring of inspectors increase the risk that cited conditions in GCCs will not be adequately corrected. After a careful review of DOHMH’s arguments, we find no basis to change any of the audit’s findings.

AUDIT REPORT

Background

DOHMH is authorized by Chapter 22 of the City Charter to enforce the provisions of the City's Health Code. Article 3 of the Health Code authorizes DOHMH to conduct inspections of any premises within its jurisdiction, including child care centers, to foster compliance with the code. GCC programs providing child care to three or more children under six years of age for five or more hours per week and for more than 30 days in a 12-month period, primarily in non-residential space, are licensed by the City and regulated by Article 47 of the City Health Code. The responsibility for ensuring that child care programs comply with the Health Code falls on DOHMH's BCC.

In addition to GCC centers, BCC also inspects New York State (NYS) licensed child care providers,² which include School Age Child Care, Group Family Day Care and Family Day Care that are subject to parts 414, 416, and 417 of the NYS Social Services Law. DOHMH has assumed this responsibility pursuant to a contract with the NYS Office of Children and Family Services (OCFS). DOHMH also oversees School-based Child Care and Summer Camp providers that are governed by Articles 43 and 48 of the City Health Code. (This audit focused on City-permitted GCCs only.)

BCC protocols call for GCC centers to be inspected annually for two separate purposes: one related to the GCC center's physical premises, conducted by a PHS; and one related to the GCC center's program operations—conducted by an ECEC.

Following are the three types of violations that may be observed during inspections conducted by a PHS or an ECEC for which a citation may be issued:

- PHHs are violations that may present an *imminent* threat to the health and safety of children and must be corrected by the GCC provider within 24 hours of citation. Examples of violations that would result in issuance of a PHH include: (1) a failure to maintain Statewide Central Register of Child Abuse and Maltreatment (SCR) records in staff's personnel files; and (2) inadequate supervision of children. In order for the GCC center to remain open, a mitigation plan has to be developed, implemented and documented in the inspection report before the inspector leaves the GCC center. Otherwise, depending on the severity of the hazard and the risk to the children, the BCC Central Office will determine whether the GCC center is to be issued a closure order and have its permit suspended. The closure order and suspension will not be lifted until such time as the conditions have been abated.
- Critical violations are *serious* violations and must be corrected by the GCC provider within 14 days of the citations being issued. Examples of critical violations include: (1) a failure to notify DOHMH within 24 hours upon receiving an adverse Department of Investigation (DOI) report on a member of the staff; and (2) a failure to train staff in first aid/cardiopulmonary resuscitation.
- General violations do not pose a direct threat to children; however, they must be corrected by the GCC provider within 30 days of citation. Examples of general violations include:

² The salaries of the BCC staff responsible for overseeing and monitoring the State-licensed child care providers are paid for by the State.

(1) a program's failing to maintain in its records staffs' employment references; and (2) there being no educational director or equivalent on site when the GCC is providing night child care.

According to written BCC protocols, a GCC center found to have one or more PHHs, one or more critical violations, or six or more general violations during an inspection should be re-inspected within 45 days of the inspection to determine whether the violations have been corrected.

If the BCC inspector conducting the re-inspection observes that the condition has not been corrected, the inspector is required to cite the violation again as a repeat violation, and a Notice of Violation (NOV) is to be issued to the GCC provider. The inspector can also issue an NOV if any new PHH or critical violations are observed during the re-inspection, regardless of whether previous violations have been corrected. For some PHHs, such as the failure to maintain fire extinguishers or to provide adequate supervision, the inspector may issue the GCC provider an NOV the first time the condition is observed during the initial inspection rather than waiting for a re-inspection to determine whether the condition has been corrected. The NOV directs the GCC provider to attend an administrative hearing at the City Office of Administrative Trials and Hearings' (OATH's) Health Hearings Division.

According to DOHMH officials, depending on the nature of the violation, it is acceptable for the provider to submit documents to show that the violation was cured. For example, a violation for failing to arrange an SCR review for an employee may be corrected by the GCC provider's submitting documentation showing that it made such an arrangement. According to officials, in such cases a re-inspection is not required.

DOHMH BCC has a central office located in Manhattan that oversees borough offices located in Brooklyn, the Bronx, Queens, and Manhattan (which is also responsible for Staten Island), with each office headed by a Borough Manager. Each borough office has inspectional staff consisting of field inspectors and supervisors. Their responsibilities include processing permit applications, by, among other things, performing preliminary inspections and conducting various monitoring inspections of the GCCs.

There are multiple different types of inspections conducted of the GCCs:

- Preliminary inspections are conducted as part of the permit application process to determine whether a site is viable. If upon a preliminary initial inspection the site is not up to code, the potential GCC provider is informed of the deficiencies that need to be addressed in order for it to obtain a permit. A preliminary compliance inspection is performed thereafter to determine whether the previously identified deficiencies were corrected, and, if so, a permit is issued.
- Operational inspections are conducted of permitted GCC centers to ascertain whether they are in compliance with the City Health Code. Initial inspections are conducted annually to ascertain whether any violations to the code exist. Where violations are found, compliance inspections are conducted thereafter to determine whether the programs corrected the violating conditions cited during the initial inspections.
- Complaint inspections are conducted to investigate an allegation made in a complaint.
- Monitoring inspections are conducted outside of the scope of the mandated inspections noted above. These include, but are not limited to, special inspections due to a specific request or to a closure order previously issued (i.e., the inspector visits the GCC to ensure the program is closed and not operating illegally despite the permit suspension).

BCC inspection staff use handheld devices (tablets) in the field to access facility records and previous inspection information, to review notes and history, and to record investigation results. During an inspection, a programmed list of health code sections can be accessed through the tablet, allowing the inspector to identify those the inspector finds the GCC to have violated. Upon completion of the inspection, the inspector “synchs” the tablet to send the inspection results back to CCATS. Staff can also enter information directly into CCATS from their computers.

As of January 31, 2017, there were 2,255 permits issued to GCC providers. According to DOHMH data for the period from July 1, 2014 to February 23, 2017, the agency issued 24,612 citations to GCC centers.

Objective

To determine whether DOHMH has adequate controls to ensure that it effectively follows up on violations found at DOHMH-permitted GCC centers.

Scope and Methodology Statement

We conducted this performance audit in accordance with generally accepted government auditing standards. Those standards require that we plan and perform the audit to obtain sufficient, appropriate evidence to provide a reasonable basis for our findings and conclusions based on our audit objective. We believe that the evidence obtained provides a reasonable basis for our findings and conclusions based on our audit objective. This audit was conducted in accordance with the audit responsibilities of the City Comptroller as set forth in Chapter 5, §93, of the New York City Charter.

The primary scope of this audit was July 1, 2014 through February 23, 2017. Please refer to the Detailed Scope and Methodology at the end of this report for the specific procedures and tests that were conducted.

Discussion of Audit Results with DOHMH

The matters covered in this report were discussed with DOHMH officials during and at the conclusion of this audit. A preliminary draft report was sent to DOHMH and was discussed at an exit conference held on May 30, 2018. On June 11, 2018, we submitted a draft report to DOHMH with a request for comments. We received a written response from DOHMH on June 25, 2018.

Of the audit’s seven recommendations, DOHMH agreed with two (#1 and #3), partially agreed with one (#7), stated that two pertained to procedures already in place (#2 and #6), disagreed with one (#4), and did not directly address one (#5).

DOHMH also disagreed with the audit’s findings pertaining to deficiencies in the monitoring of inspectors. DOHMH states

We strongly disagree with the auditors’ assessment that DOHMH’s monitoring of inspectors is weak. We acknowledge that CCATS does not include evidence that supervisors review the interim controls established in response to PHH violations. However, this does not undermine DOHMH’s ability to assess whether violations have been satisfactorily addressed.

Throughout its response, DOHMH acknowledges various system and operational weaknesses identified in the audit, but argues that its established procedures for monitoring inspectors are largely sufficient to address these problems. In doing so, however, DOHMH fails to differentiate between the establishment of procedures and actions that ensure that those procedures are actually being followed. In this report, we recognize DOHMH's expectations of what its staff should do (e.g., record interim controls, review inspection reports). However, as stated in the report, our detailed analysis found insufficient evidence that the violations were adequately corrected for approximately 20 percent of the sampled citations and that the hazardous conditions were adequately mitigated for more than half of the sampled citations for which interim controls were reportedly implemented. In fact, we found that seemingly meaningless entries were recorded in the *Interim Control* field for approximately 20 percent of all PHH-related citations for which interim controls were required to be entered in CCATS. These audit findings reflect weaknesses in the existing practices that should be corrected by enhanced procedures, oversight and training. DOHMH has provided no evidence to refute these audit findings or to support its contention that the *status quo* is largely adequate.

After carefully reviewing DOHMH's arguments, we find no basis to alter any of the report's findings. The full text of DOHMH's response is included as an addendum to this report.

FINDINGS AND RECOMMENDATIONS

DOHMH has adequate controls to ensure that inspectors follow up on violations found at DOHMH-permitted GCC centers in a timely manner. However, DOHMH needs to strengthen its controls to provide greater assurance that inspectors ensure that the interim controls implemented to address uncorrected public health hazards adequately mitigate the violating conditions. This is of particular concern because interim controls are required in situations where violations are cited that may present an *imminent* threat to the health and safety of children. DOHMH also needs to strengthen its controls to better ensure that inspectors take appropriate actions when conducting their follow-up so that they do not inappropriately deem violations to be corrected.

With regard to controls to ensure that inspectors follow up on violations timely, DOHMH programmed CCATS to assign inspections of those providers that have outstanding citations, prioritizing those for whom DOHMH has received complaints as well as those that have citations open for 30 days or more. DOHMH supervisors may also use reports generated by CCATS (commonly referred to as “45-day reports”) to identify those providers that fit the criteria for re-inspection and have not provided evidence that the cited violations have been corrected. Our review of data retrieved from CCATS for citations issued for PHH and critical violations during our review period (July 1, 2014 through November 25, 2016) revealed evidence of follow-up action in a high percentage of cases:

- 90 percent of the citations that required follow-up action—either re-inspection or documentation that the violations were addressed—had undergone such action within DOHMH’s 45-day target. Less than one percent had no record of follow-up as of February 23, 2017 (the ending date for the data provided by DOHMH).
- 98 percent of the citations were cleared as of February 23, 2017, indicating that inspectors deemed the associated violations to be corrected. The cleared citations had been open an average of 32 days.

However, although inspectors cleared the vast majority of the citations issued to GCC centers for PHH and critical violations, DOHMH lacked evidence to demonstrate that it is adequately monitoring its inspectors to ensure that violations are satisfactorily addressed. Specifically, we found limited evidence that supervisors review the interim controls reportedly established in response to PHH violations to ensure that uncorrected conditions are adequately mitigated or that they review inspectors’ clearances to ensure that the cited violations are properly corrected.

- Our review of the supporting information for 28 of the sampled citations for PHH violations for which interim controls were reportedly implemented by the GCC providers found insufficient evidence to indicate that the conditions for more than half of them were adequately mitigated. In fact, our review of CCATS for all 1,892 PHH-related citations issued between February 1, 2016 and February 23, 2017 revealed that the records for 19 percent of them—360 citations—had seemingly meaningless entries (e.g., punctuation marks with no other text, cryptic entries such as “NULL” and “N/A”) in the *Interim Control* field.
- Additionally, our detailed review of 73 sampled citations that were cleared found insufficient evidence that the violations relating approximately one-fifth of them were adequately corrected.

We also found that the procedures established by DOHMH to govern inspection activities and follow-up do not provide adequate guidance to staff on documenting inspection results and ensuring that violations are corrected.

These weaknesses, if not corrected, will hinder DOHMH management in assessing whether violations, especially those deemed critical or a public health hazard, have been satisfactorily addressed. Consequently, the risk to health and welfare of the children cared for in the GCC centers is increased.

The details of our findings are discussed in the following sections of this report.

Data Recorded in CCATS Indicated That 90 Percent of Citations for PHH and Critical Violations Were Followed Up within 45-Day Target

Our review of inspection data obtained from CCATS indicated that 90 percent of the citations for PHH and critical violations that were issued by the inspectors during the period of July 1, 2014, through November 25, 2016, were reportedly followed up (documentation was purportedly provided reflecting that the citation had been cleared and/or the GCC center was inspected again) within DOHMH's 45-day re-inspection target. While a subsequent inspection in and of itself does not mean that the violation was corrected, a further review of the data revealed that inspectors cleared 98 percent of these citations as of February 23, 2017, the last day of our audit scope period. Citations remained outstanding an average of 32 days before being cleared.

As stated previously, GCC centers that receive citations for one or more PHHs, one or more critical violations, or six or more general violations during an inspection should be re-inspected or otherwise followed up within 45 days of that inspection. If a provider submits evidence indicating that the violations associated with a citation are corrected where the nature of the violation allow it, DOHMH will clear the associated citations. In such cases, a re-inspection is not required.

For any remaining open citations, CCATS is designed to schedule inspections of those GCC providers. In January 2016, BCC migrated from CCATS I to CCATS II. One of the upgrades was the auto assignment feature whereby CCATS II generates weekly inspection schedules based on programmed priorities (e.g., complaints or citations that have been outstanding for 30 days or more). Data maintained in CCATS is also used to generate what are referred to as 45-day reports,³ which list open citations for which follow-up action (such as a compliance inspection) is required. CCATS generates two types of 45-day reports:

- The first type lists citations (along with the associated GCC centers) that have been open for 45 days or more, requiring immediate follow-up.
- The second type lists all GCC centers that have outstanding citations and the open citations.

We analyzed inspection data from CCATS for the period from July 1, 2014 through November 25, 2016 and identified 11,446 citations issued by inspectors for violations identified during initial inspections for PHH or critical violations. Of those, 203 citations were reportedly cleared *before* the dates of the initial inspections and one citation had a correction date of December 31, 2018 - DOHMH provided the dataset to us on February 24, 2017. (We requested but did not receive an

³ The 45-day report made available to BCC management is produced by DOHMH's Bureau of Environmental Surveillance and Policy.

explanation from DOHMH officials for these apparent contradictions.) Another 388 citations were issued to GCC centers that were subsequently given orders to close. Of the remaining 10,854 citations, 1,211 were issued for violations that were reportedly corrected the same day as the initial inspections and did not require follow-up, leaving 9,643 citations that required follow-up within 45 days to ascertain whether the GCC providers corrected the violating conditions.

Our analysis of the CCATS data revealed that 8,722 (90.45 percent) of those 9,643 citations were followed up within the 45-day target. Of those 8,722 citations, 2,871 (32.9 percent) were cleared based on evidence submitted by the providers, and 5,851 (67.1 percent) resulted in subsequent inspections of the GCC centers. For the purposes of our analysis, we included any type of inspection for which an inspector would be expected to ascertain the status of open citations. Overall, all but 56 (0.58 percent) of the 9,643 citations were followed up as of February 23, 2017, the end of our audit scope period. Table I below shows a frequency distribution of the number of days between the date of the initial inspection and the date that the citation was cleared or a subsequent inspection of the GCC center was conducted (whichever came first) for the 9,643 citations.

Table I

Frequency Distribution Showing Number of Days to Clear Citations or Conduct Subsequent Inspections

| Range (Days) | No. of Citations | Percent | No. of Citations (Cumulative) | Percent (Cumulative) |
|--------------------------------------|------------------|---------|-------------------------------|----------------------|
| 1 - 7 | 2,065 | 21.41% | 2,065 | 21.41% |
| 8 - 14 | 2,484 | 25.76% | 4,549 | 47.17% |
| 15 - 30 | 3,390 | 35.16% | 7,939 | 82.33% |
| 31 - 45 | 783 | 8.12% | 8,722 | 90.45% |
| 46 - 90 | 630 | 6.53% | 9,352 | 96.98% |
| 91 - 180 | 223 | 2.31% | 9,575 | 99.29% |
| 181 - 300 | 12 | 0.12% | 9,587 | 99.42% |
| No activity recorded as of 2/23/2017 | 56 | 0.58% | 9,643 | 100.00% |
| Totals | 9,643 | 100% | | |

As shown in the table above, 97 percent of the citations were followed up within 90 days of the initial inspections and more than 99 percent were followed up within 180 days. A further review of the status of the 56 citations with no follow-up revealed that only 17 were issued to GCC centers with current permits as of February 23, 2017. Another five citations were issued to GCC centers whose permits had expired but were in the process of renewing them. The remaining 34 citations were issued to GCC centers that were either out of business or that had withdrawn their permit applications.

As stated previously, following up on a citation is not necessarily an indication that the associated violation was corrected. It is possible that a subsequent inspection may reveal that the violating condition had not been corrected. A further review of the CCATS data for these 9,643 citations revealed that all but 218 (2.26 percent) of them were cleared as of February 23, 2017. The

average time frame that the cleared citations remained outstanding was 32 days, ranging from one day to 497 days. Table II shows a frequency distribution of the range of days that these citations remained open.

Table II

Frequency Distribution Showing Number of Days to Clear Citations for PHH and Critical Violations

| Range of Days | No. of Citations | Percent | No. of Citations (cumulative) | Percent (Cumulative) |
|--------------------------|------------------|---------|-------------------------------|----------------------|
| 1 - 7 | 1,100 | 11.41% | 1,100 | 11.41% |
| 8 - 14 | 2,170 | 22.50% | 3,270 | 33.91% |
| 15 - 30 | 3,345 | 34.69% | 6,615 | 68.60% |
| 31 - 45 | 1,091 | 11.31% | 7,706 | 79.91% |
| 46 - 90 | 1,052 | 10.91% | 8,758 | 90.82% |
| 91 - 180 | 530 | 5.50% | 9,288 | 96.32% |
| 181 - 300 | 125 | 1.30% | 9,413 | 97.61% |
| 301 - 500 | 12 | 0.12% | 9,425 | 97.74% |
| Still open as of 2/23/17 | 218 | 2.26% | 9,643 | 100.00% |
| Totals | 9,643 | 100% | | |

As shown in the table above, 7,706 citations (79.9 percent) were cleared within 45 days of the initial inspection and 8,758 (90.8 percent) were cleared within 90 days. A further review of the status of the 218 citations that were still open as of February 23, 2017 revealed that only 43 were issued to GCC centers with current permits; another 18 were issued to GCC centers whose permits had expired but were in the process of renewing them. Another two citations were issued to a GCC center that we learned was a bogus account created for testing purposes and that DOHMH erroneously included in the dataset provided to us. The remaining 155 citations were issued to GCC centers that were either out of business, had their permit suspended or revoked, or had withdrawn their permit application.

Violations Relating to Criminal Background and Child Abuse and Maltreatment Screenings

The City Health Code requires that persons who have or may have unsupervised contact with children in a program undergo criminal justice and child abuse and maltreatment screening. Section 47.19 (c) of the Health Code states

a permittee [e.g., a GCC provider] shall arrange for (1) fingerprinting, (2) review of records of criminal convictions and pending criminal actions, and (3) inquiry of the [SCR] for all prospective employees, and other persons listed in subdivision (a), and for current employees shall repeat the inquiry to the SCR every two years.” Part (h) of that same section states, “a permittee shall not hire, retain, utilize or contract for the services of a person who: (A) has been convicted of a felony at

any time, or who has been convicted of a misdemeanor within the preceding ten years; or . . . (C) is the subject of an indicated child abuse and maltreatment report.

Of the 9,643 citations requiring follow-up, 2,775 involved PHH violations. Of these, more than half—1,585 (or 57 percent)—were for §47.19(c) violations (i.e., failure to arrange for criminal and/or SCR background checks). (Failure to provide constant and competent supervision for children was the next highest category of PHH-related citations requiring follow-up, accounting for only eight percent of the total.) Our analysis revealed that 1,554 (98 percent) of the 1,585 citations were cleared as of February 23, 2017. These citations remained open an average of 31 days, ranging from two days to 477 days. Table III below shows a frequency breakdown of the range of days these citations remained outstanding.

Table III

Frequency Distribution Showing Number of Days to Clear
Citations for Failing to Arrange for the Review of Criminal and
SCR Records

| Range (Days) | No. of Citations | Percent | No. of Citations (cumulative) | Percent (Cumulative) |
|--------------------------|------------------|---------|-------------------------------|----------------------|
| 1 - 7 | 231 | 14.57% | 231 | 14.57% |
| 8 - 14 | 444 | 28.01% | 675 | 42.59% |
| 15 - 30 | 439 | 27.70% | 1,114 | 70.28% |
| 31 - 45 | 187 | 11.80% | 1,301 | 82.08% |
| 46 - 90 | 151 | 9.53% | 1,452 | 91.61% |
| 91 - 180 | 75 | 4.73% | 1,527 | 96.34% |
| 181 - 300 | 22 | 1.39% | 1,549 | 97.73% |
| 301 - 500 | 5 | 0.32% | 1,554 | 98.04% |
| Still open as of 2/23/17 | 31 | 1.96% | 1,585 | 100.00% |
| Totals | 1,585 | 100% | | |

Of the 31 citations that were still open as of February 23, 2017, 7 were issued to GCC centers with current permits and 2 were issued to GCC centers whose permits had expired but were in the process of renewing them. The remaining 22 citations were issued to GCC centers that were either out of business, had their permit suspended or revoked, or had withdrawn their permit application.

It is important to note that the requirement to make arrangements for the screening is merely one of the first steps in the overall requirement that all persons actually undergo the screening. Consequently, it is essential that inspectors follow up in a timely manner to help ensure that persons who have a felony conviction or who are the subject of an indicated child abuse report do not have unsupervised contact with children. Moreover, as is discussed below, it is especially important to ensure that appropriate interim controls have been put in place in these cases.

Recommendation

1. DOHMH should investigate: (a) the 203 citations cited in this report that were reportedly cleared before the dates of the initial inspections; and (b) the citation that had a correction date set in the future in order to identify the reasons for these inconsistencies and take appropriate action to prevent future occurrences.

DOHMH Response: “(a) DOHMH will review the 203 instances and resolve any other discrepancies that may exist and make required system upgrades. (b) Regarding the citation that has a future correction date (12/31/2018), the correction date appears to be a typographical error. CCATS reflects a ‘Violation Complied with by Mail’ event for clearance of the citation and the following text in the field note: ‘All the violations cited on 12/18/2015 were corrected on 12/31/2015.’”

Auditor Comment: DOHMH does not provide an explanation for why a date set in the future was accepted by CCATS; as presented to us during the audit, this should not occur. DOHMH should therefore determine the reason that this occurred and institute controls in CCATS to prevent such occurrences.

Monitoring Weaknesses

Although DOHMH’s data indicates that citations were generally followed up in a timely manner, we found deficiencies with regard to DOHMH’s monitoring of inspectors to ensure that the interim controls implemented to address uncorrected public health hazards adequately mitigated the violating conditions and that violations associated with those citations were satisfactorily addressed before the citations were cleared. We also found that inspectors have the ability to record and approve overrides of their own inspection results.

These issues are discussed in the following sections.

Inadequate Controls to Ensure That PHH Violations Are Mitigated Pending Their Corrections

While DOHMH has controls in place to help ensure that appropriate interim controls are put in place to mitigate PHH citations issued to a GCC, we found that they were not being adequately enforced. This operational weakness increases health and safety risk to children in the GCCs.

Article 47 of the City Health Code states that public health hazards (PHHs) are

any violation, combination of violations, conditions or combination of conditions occurring in a child care service making it probable that illness, physical injury or death could occur or the continued operation of the child care service could result in injury or be otherwise detrimental to the health and safety of a child.

PHHs require the Commissioner or designee to order their immediate correction or may, based on the severity of the hazard and the risk to the children, order the child care service to cease operations immediately and institute corrective action.

In order for a GCC center to remain open when a PHH violation is identified and cannot be corrected at the time of inspection, as noted above, an interim control must be established before

the inspector leaves the premises that appropriately addresses the deficiency cited. An October 27, 2014 internal email sent to BCC staff states the need for “all PHH violations [other than those corrected the day of an inspection] to be accompanied by a brief description of the actions taken to mitigate potential risk from exposure to the identified PHH.”

However, serious weaknesses exist in DOHMH’s ability to ensure that appropriate mitigating actions have been recorded and accordingly, that they have in fact been taken. Based on interviews with several DOHMH BCC Borough Office officials, as well as on confirmations from a BCC Central Office official, we learned that there is no policy requiring inspectors to notify their supervisors of any PHH violations found or of the interim controls established to mitigate them prior to the inspectors leaving the GCC centers. According to DOHMH officials, interim controls are reviewed as part of the supervisor’s review of the inspection reports. However, DOHMH has not set any parameters regarding the extent of such reviews (e.g., a minimum number, or percentage, of reports to be reviewed) nor does DOHMH require that its supervisors document or maintain evidence of these reviews. Consequently, DOHMH is unable to ascertain the degree to which supervisory reviews of inspection reports are being conducted and, by extension, is also unable to ascertain the degree to which supervisory reviews of interim controls are being conducted.

Furthermore, according to DOHMH personnel, there is no feature in CCATS by which a user can generate a list of all PHH citations issued. CCATS is primarily a permit tracking system and DOHMH officials stress that they have no need for such a feature because supervisors review PHH citations and interim controls as part of the inspection report review. As we state above, however, DOHMH provided no evidence of these reviews so we are unable to determine the extent to which such reviews are conducted, if at all. In addition, there is no list of PHH-related citations that is recorded outside CCATS. To determine whether PHH violations were adequately mitigated, a supervisor would have to review each inspection report individually to ascertain whether an appropriate interim control was established for each PHH violation.

BCC Central Office officials emphasized that the inspectors are trained to identify PHHs and to appropriately note an interim control that would immediately address the uncorrected condition identified. In cases where inspectors are uncertain as to how particular PHH violations should be handled, the inspectors are instructed to consult with their respective supervisors.

Related to our finding, it should be noted that in an internal report prepared by DOHMH’s own Bureau of Audit Services, *A Follow-Up Review of the Bureau of Day Care (“Child Care”)*, dated January 25, 2013, it was noted that interim controls were not always documented and that for 54 percent of the sampled PHHs reviewed, “violations did not include a statement indicating that the public health hazard violation was mitigated.” When DOHMH migrated to CCATS II in January 2016, it added an *Interim Control* field. Currently, when an inspector identifies a PHH violation and enters it in CCATS, the system will not allow the inspector to proceed with the inspection unless s/he makes an entry in the *Interim Control* field.

However, in the absence of any evidence of supervisory reviews of these controls, the risk that the control entered by an inspector in the *Interim Control* field does not appropriately address the condition being cited remains. We selected a sample of 86 citations from the previously mentioned population of 11,446 citations issued for PHH and critical violations and performed a detailed review of supporting documentation to ascertain the extent of follow-up performed by DOHMH. Of the 86 citations, 28 were related to PHH violations and were issued subsequent to the CCATS II migration, meaning that the interim controls reportedly implemented by the GCC provider were recorded in CCATS. Our review of the information noted in the *Interim Control* field

found that the information for 15 (54 percent) of them did not appear to mitigate the hazardous condition cited. For instance:

- In one example, a GCC center was cited for failure to properly install window guards. The mitigation plan noted in the *Interim Control* field stated “install window guards properly.” However, the interim control does not indicate that a safety measure (e.g., locking the window, blocking access to the window) was implemented prior to the inspector leaving the GCC center.
- In another example, a GCC center was cited for a magnetically locked rear door that staff could not open should an emergency arise. The mitigation plan noted in the interim control field stated “director on phone with building to deactivate lock.” However, the interim control does not state whether the condition was corrected while the inspector was on site or what mitigating measure was implemented prior to the inspector leaving the GCC center.

According to data obtained from CCATS covering the period of February 1, 2016 (subsequent to the interim control default feature being added to CCATS) through February 23, 2017, inspectors issued 1,892 citations for PHH violations that were reportedly not corrected the day of the inspections. We found that an entry was made in the *Interim Control* field for all but seven of them. (As stated above, DOHMH officials stated that CCATS was modified to prevent an inspection from moving forward if no entry was made in the *Interim Control* field; we requested but did not receive an explanation from officials as to why the *Interim Control* field for these seven citations contained no entries.) Our review of the interim control entries for the remaining 1,885 citations found the following for 360 (19 percent) of them:

- 317 citations had an entry of “NULL”
- 26 citations had an entry of “.”
- 12 citations had an entry of “N/A” or “NA”
- 4 citations had an entry with the letter “x” repeated several times
- 1 citation had an entry of “asap”

The percentage of seemingly meaningless and questionable entries is significantly greater for violations stemming from GCC centers failing to arrange criminal and SCR background checks. Our review of the interim control entries for the 1,009 criminal- and SCR-related citations found that 338 (33 percent) of them had one of the above-mentioned questionable entries.

By not requiring that supervisors maintain evidence of their reviews of interim controls, DOHMH is unable to ascertain the extent to which such reviews are conducted. When reviews are not conducted, there is an increased risk that GCC centers with PHH violations may be allowed to remain open without the cited hazardous conditions being sufficiently mitigated.

Inadequate Controls over the Clearing of Citations

Comptroller’s Directive #1 states, “[k]ey duties and responsibilities need to be divided or segregated among different staff members to reduce the risk of error or fraud. This should include separating the responsibilities for authorizing transactions, processing and recording them, reviewing the transactions, and handling any related assets.” Additionally the *Identity Management Security Policy* issued by the City’s Department of Information Technology & Telecommunications (DoITT) states, “[a]ccess permissions must be defined in accordance with a

user's actual functional work requirements." For the purpose of clearing citations, the responsibilities for recording the clearance and approving the clearance should be separated among different persons.

DOHMH's *Field Activity Protocol* (dated July 29, 2016) requires inspectors conducting compliance inspections to note the status of outstanding violations under one of the following four categories: (1) New – if violation observed was not previously present; (2) Corrected – if violation is observed as having been corrected; (3) Open – if violation is observed as not having been corrected; and (4) Deferred – if violation is not addressed (i.e., if the compliance date has not been reached or the violation category is not within the inspector's expertise). With regard to documenting that required activities are performed, Comptroller's Directive #1 states, "[a]ll transactions and significant events need to be clearly documented and the documentation readily available for use or examination."

In practice, however, inspectors have the ability to both record and approve the clearing of citations, which appears to be an inadequate segregation of duties. Additionally, DOHMH does not require that supervisors maintain evidence that they review citation clearances found in CCATS, at least periodically, to ensure that these clearances are appropriate and properly supported.

Further, DOHMH does not ensure that its inspectors maintain appropriate evidence (such as a note stating that an updated fire tag was observed as proof that the fire extinguisher was serviced, or a photo showing that a crack in a wall was repaired) to support the basis upon which they determine that violations are corrected. According to the *Field Activity Protocol*, the inspector is required to confirm that the violation was corrected by changing the violation status in CCATS to signify when it was determined that the violation was resolved. According to DOHMH officials at the exit conference, inspectors are required to upload the supporting documentation for their determinations that violations were corrected. However, the protocol only requires that inspectors upload documentation when their tablets are not functioning, requiring that they fill out hardcopy inspection reports. Even then, the protocol does not explicitly state that documentation supporting a determination that the violations were corrected be included in the materials uploaded. If such a requirement exists, we found no evidence that it is being enforced. Consequently, we found that DOHMH inspectors do not consistently maintain corroborating evidence when feasible for violations they deem to be corrected.

CCATS does not have a feature where supervisors can indicate that they reviewed and approved inspectors' determinations that violations have been corrected. Absent records of supervisory reviews of clearances, management is limited in its ability to determine whether the Borough Offices are reviewing the correction of violations to help ensure that all violations are cleared appropriately.

Of the 86 sampled citations mentioned earlier, 73 were cleared by inspectors as of February 23, 2017, signifying that the inspectors deemed the violations to be cured. Our review of CCATS and supporting documentation for these 73 citations revealed that 14 (19 percent) of them lacked sufficient evidence that the violations relating to these citations were corrected. For example, we identified one citation issued for the GCC center's failure to have a qualified educational director on site. In the field notes for the inspection report, the inspector wrote that the director was asked to fax a copy of the director's NYS teacher certification. The inspector eventually cleared the citation, but there is no evidence that the requested certification was ever submitted by the director or reviewed by the inspector.

By not ensuring that staff retain documentation submitted by the GCC provider or include a note as an attestation of what was observed by the inspector that supports the basis for deeming violations to be corrected, management is significantly hindered in its ability to confirm that violations were sufficiently corrected, increasing the risk that conditions leading to violations will not be addressed and will grow worse over time. Furthermore, the lack of supporting documentation also inhibits supervisors' ability to protect against inspectors inappropriately stating that violations were resolved without justification.

Inspectors May Override Inspection Results without Supervisory Approval

As stated previously, Comptroller's Directive #1 states that key duties should be segregated among different staff members, and DoITT's *Identity Management Security Policy* states that access permissions must be defined in accordance with a user's actual work requirements. For the purpose of overriding inspection results, the responsibilities for initiating the override in CCATS and approving the override should be separated among different persons.

In practice, however, inspectors have the ability to both initiate and approve inspection result overrides. Additionally, DOHMH does not require that supervisors maintain evidence that they review inspectors' overrides, at least periodically, to ensure that they are appropriate.

According to a number of Borough Office officials, when an inspector attempts to perform an override in CCATS (possibly due to selecting an incorrect inspection type or inspection result), s/he will receive a "prompt" requiring the inspector to select a check-off box attesting that the inspector's supervisor was contacted to obtain verbal approval in order for the override to go through. However, there is little evidence, other than attestations by the staff, to support that such approvals were given prior to the overrides being made.

Since DOHMH does not require that supervisors maintain evidence of their reviews of inspection result overrides, DOHMH is unable to ascertain the extent to which such reviews are being conducted. When reviews are not conducted, there is an increased risk that unjustified overrides, potentially involving fraudulent activity, may go undetected.

Recommendations

2. DOHMH should require that adequate evidence is maintained in CCATS to support inspectors' determinations that violations have been appropriately corrected.

DOHMH Response: "This recommendation is not needed. DOHMH already requires inspectors to document and upload evidence that violations have been appropriately corrected. DOHMH will continue to train inspectors to re-enforce the need for documentation to support clearance of citations. Also, CCATS enhancement that will be launched early in 2019 will include a field to enter the corrective action, making the information easier to document and connect to the violation."

Auditor Comment: As stated in this report, DOHMH has provided no evidence that it requires the uploading of such documentation nor did we find evidence that such a requirement is being enforced. While we commend DOHMH for acknowledging that CCATS has deficiencies that the agency plans to address

through enhancements that will be launched in 2019 to include a field to enter the corrective action, we urge DOHMH to not only develop written procedures that explicitly require inspectors to upload supporting documentation for their determinations that violations were corrected but to also enforce that requirement.

3. DOHMH should implement a method by which supervisory reviews of violation corrections can be recorded in CCATS.

DOHMH Response: “We agree with this recommendation. Supervisors already review inspection reports, including documentation of violations corrections, but the current CCATS does not record their review. In the future upgrade of CCATS this feature will be included. This upgrade will include the ability to associate the review to a specific inspection report, add comments and instructions to staff for follow up and corrections.”

4. DOHMH should require that supervisors document their reviews of the interim controls established for PHH violations and ensure that controls adequately mitigate the hazardous conditions cited.

DOHMH Response: “We disagree with this recommendation. DOHMH does not believe supervisors need to separately review documentation of interim controls. Supervisor review should be of the entire inspection report, and management reports are available to draw out issues as needed. While DOHMH concurs that some inspectors did not consistently record the corrective actions and interim controls implemented by GCCs, we believe our current inspection review process, which incorporates examining how violations were corrected and that interim controls were implemented, enables supervisors to ascertain the appropriateness of our staff’s actions. DOHMH had already begun training in documentation and maintaining evidence prior to this audit, and we agree that continued training and revisions to CCATS and the handheld application will results [sic] in improvements in those areas where the audit found lapses.”

Auditor Comment: While acknowledging the failure of some inspectors to record the corrective actions and interim controls implemented, DOHMH downplays the significance of this finding. According to DOHMH’s own protocol, interim controls are *required* in situations where violations are cited that may present an imminent threat to the health and safety of children. However, notwithstanding the acknowledged failure of inspectors to consistently document corrective actions and interim controls, DOHMH officials contend that it is unnecessary to require supervisors to document their review of those corrective actions and interim controls so as to help improve inspectors’ compliance with required practices and to ensure that the controls adequately mitigate the conditions cited. Furthermore, by tying reviews of interim controls to the reviews of inspection reports, DOHMH indicates that only those interim controls contained in selected inspection reports need to be reviewed. However, DOHMH acknowledges elsewhere in its response that it “did not establish a threshold for the number of inspection reports supervisors should review.” Additionally, the agency does not indicate that it will require that supervisors ensure that at least a portion of the inspection reports reviewed include those for which PHH violations were identified and interim controls were required. Consequently, DOHMH is unable to ascertain the degree

to which supervisory reviews of interim controls will be conducted, if at all. In consideration of the importance of interim controls, we urge DOHMH to implement this recommendation.

5. DOHMH should require that supervisors document their reviews of overrides and ensure that overrides are appropriate and authorized.

DOHMH Response: DOHMH does not directly address this recommendation, stating “[s]upervisors are aware of the system’s inspection default options and alternative outcomes. In their inspection report reviews, supervisors identify when a result is different from the default option and can take action if appropriate. Also, the upgrade noted in recommendation 3 will include a comment tool allowing supervisors to identify when an inspection result was inappropriate or not approved.”

Auditor Comment: DOHMH acknowledges elsewhere in its response that supervisory reviews of inspection reports are not recorded, so we are unable to substantiate DOHMH’s claim of what supervisors do, or should do, as part of such reviews. Nevertheless, DOHMH appears to indicate that the upgrade noted in recommendation 3 will, in essence, allow supervisors to document such reviews.

DOHMH Has Not Developed Adequate Written Procedures

Comptroller’s Directive #1 states that “[i]nternal control activities . . . are, basically, the policies, procedures, techniques, and mechanisms used to enforce management’s direction. They must be an integral part of an agency’s planning, implementing, review and accountability for stewardship of its resources and are vital to its achieving the desired results.” The directive also states that internal controls should be documented in management’s administrative policies or operating manuals.

However, we found that DOHMH has not developed adequate written policies and procedures that address management’s requirements for the DOHMH BCC staff involved in the operation and oversight of the GCC inspection program.

DOHMH’S BCC protocols, *CCATS Auto Assignment Protocol* (dated March 19, 2015) and *Field Activity Protocol*, address how certain activities should be recorded in CCATS. Officials point to these protocols as the policies that govern how personnel—at the BCC Central Office and Borough Offices—carry out their responsibilities. However, these protocols do not provide adequate guidance on a number of key aspects of the inspection process, such as the details that should be included in inspection reports and the types of documentation that are acceptable for clearing citations. For example, there are no written guidelines pertaining to the following:

- The retention of documents sent to DOHMH or the requirement that a note be entered in CCATS attesting to the evidence observed that formed the basis for clearing a violation.
- The steps that should be taken prior to assigning an *Out of Business* status to a GCC center in CCATS.

By not maintaining comprehensive written policies and procedures, DOHMH BCC management has limited assurance that its goals and requirements are properly communicated and consistently followed. The deficiencies found are discussed below.

Inadequate Procedures Relating to Recording and Resolving Violations

Under the control standard entitled “Information and Communications,” Comptroller’s Directive #1 states that operating information is needed “to determine whether the agency is achieving its compliance requirements under pertinent laws and regulations.” It further states that “effective information technology management is critical to achieving the useful, reliable, and continuous recording and communication of information.”

The degree to which performance data is reliable and functional is based largely on the effectiveness of controls to ensure that data is being entered in a consistent manner to facilitate analysis.

However, we found that DOHMH has not developed written policies and procedures that adequately guide staff on how inspection results and follow-up actions are to be entered in CCATS. We found inconsistencies with the way in which violations are recorded. For example, one inspector may include identifying information when recording the citation in the inspection report (e.g., staff member’s name or the specific room number where the violation was observed), while another inspector fails to include this information. We also found that DOHMH does not require its inspectors to note, in CCATS, the basis upon which violations are resolved. For a number of violations placed in the Violation Complied with By Mail (VCW-BM) category, CCATS lacks sufficient information (e.g., attachments or notes) showing how and when the violations were resolved.

As a result, DOHMH’s ability to effectively utilize CCATS as a tool to aid in monitoring whether violations and the correction of those violations are accurately recorded and resolved is limited.

Inadequate Procedures for Supervising Inspectors

DOHMH has not established sufficient guidelines on how management at the BCC Borough Offices should be supervising the inspectors. For example, its guidelines do not state how frequently management should be reviewing inspection reports (e.g., review all or a percentage of the reports) or what should be reviewed (e.g., certain key aspects of the report or the entire report).

The supervisors we interviewed at the various Borough Offices stated that they (and the borough managers) review inspection reports prepared by the inspectors on a consistent basis. However, these reviews are reportedly done on-screen and CCATS does not have a feature whereby supervisors can document that an inspection report was reviewed, nor does DOHMH require that supervisors document such reviews outside of CCATS. Consequently, DOHMH management is hindered in reasonably assessing the extent to which such reviews are occurring.

Our review of the 86 sampled citations revealed that 72 of them contained one or more significant inconsistencies and deficiencies that bring into question the extent to which supervisors are reviewing the inspection reports prepared by inspectors. Some of the more common inconsistencies and deficiencies included: (1) citing incorrect code sections; (2) not providing critical information, such as the names of the relevant employees cited or the circumstances supporting the issuance (or non-issuance) of an NOV; and (3) failing to document an adequate interim control. For instance:

- In one example, a GCC center was cited for one of its four classrooms not having an NYS certified teacher. Instead of citing Health Code §47.13(d), which relates to certifications for a group teacher, the inspector cited §47.23(a)(b), which relates to supervision and staff-to-child ratios. Due to this error, the NOV was dismissed by OATH.
- In another example, the inspection report lists a total of nine citations for violating Health Code §47.19(c), which relates to arranging for criminal and SCR screening for workers at the GCC center. However, the inspector recorded the names for only seven of the nine workers in CCATS, hindering the ability of supervisors (and others) to follow up on the status of the remaining two workers cited.

The development of standard supervisory protocols enhances management's ability to ensure that staff are supervised in a consistent and appropriate manner. Given the wide latitude that DOHMH affords its inspectors in the field, a failure to provide adequate supervisory oversight to inspectors increases the risk that inspections may be performed in a deficient manner and that conditions needing correction may continue undetected.

Recommendations

6. DOHMH should develop and distribute a comprehensive policies and procedures manual that addresses all aspects of the inspection process.

DOHMH Response: "DOHMH already provides comprehensive policies and procedure manuals, including the maintenance of all documents on the BCC Sharedrive. Although we disagree with the auditors that our distribution of policies and procedures is inadequate, we recognize that policies and procedures are 'living' documents that should be reviewed and updated when the Health Code changes or the CCATS and handheld applications are updated. We will do so when we roll-out the next upgrade of CCATS and the handheld application."

Auditor Comment: DOHMH provided no evidence that it has a comprehensive policies and procedure manual that addresses all aspects of the inspection process. Nevertheless, based on DOHMH's response, we are pleased that DOHMH apparently intends to implement this recommendation when they roll-out the next upgrade of CCATS and the handheld application.

7. DOHMH should establish clear guidelines as to how supervisors are to monitor inspectors' work activities, such as by requiring full or sample reviews of inspection reports to ensure accuracy and completeness.

DOHMH Response: DOHMH partially agrees with this recommendation, stating "[a]lthough we disagree with the auditors that our procedures for supervising inspectors are inadequate, we agree that we did not establish a threshold for the number of inspection reports supervisors should review. We will consider establishing a threshold for conducting supervisory reviews."

Auditor Comment: We urge DOHMH to not only establish, in writing, a threshold for the number of inspection reports to be reviewed, but to also establish the areas that such reviews should include and how such reviews should be documented.

DETAILED SCOPE AND METHODOLOGY

We conducted this performance audit in accordance with generally accepted government auditing standards. Those standards require that we plan and perform the audit to obtain sufficient, appropriate evidence to provide a reasonable basis for our findings and conclusions based on our audit objective. We believe that the evidence obtained provides a reasonable basis for our findings and conclusions based on our audit objective. This audit was conducted in accordance with the audit responsibilities of the City Comptroller as set forth in Chapter 5, §93, of the New York City Charter.

The scope of this audit covered the period from July 1, 2014, to February 23, 2017.

To achieve our audit objective and gain an understanding of the internal controls governing DOHMH's responsibilities regarding the inspection of the GCC centers, we reviewed and where applicable used the following as criteria:

- Chapter 22 of the New York City Charter;
- Articles 3 and 47 of the New York City Health Code;
- Comptroller's Directive #1, *Principles of Internal Control*;
- *Audit Report on the Department of Health and Mental Hygiene's Permitting of Child Care Centers* (Audit #MJ15-054A), issued June 24, 2016;
- DOHMH's Bureau of Audit Services *Follow-Up Review of the Bureau of Day Care* ("Child Care") – Report # AS2012-19, dated January 25, 2013;
- *CCATS Auto Assignment Protocol* (dated March 19, 2015);
- *Field Activity Protocol* (dated July 29, 2016);
- *Handheld Automated Inspection Type and Result Logic* (dated February 25, 2016); and
- Various internal policy memos issued to the borough office staff.

To gain an understanding of DOHMH's GCC inspection process, we interviewed the Assistant Commissioner for the Bureau of Child Care, the Director of Field Operations and Regulatory Enforcement, the Director of Performance Improvement Initiative Unit, the Managers at each borough office (Brooklyn, Manhattan/Staten Island, Queens, and the Bronx), as well as PHS and/or ECEC Supervisors and three inspectors.

To familiarize ourselves with the CCATS database, we interviewed an Information Technology Consultant and a Project Manager involved with the development of the system, obtained read-only remote access to the database, and reviewed the CCATS User Manuals, the Data Dictionary and the CCATS blueprint of all inspection codes.

DOHMH provided us with two datasets—an electronic Excel spreadsheet of 24,612 citations issued to GCC centers between July 1, 2014 and February 23, 2017, and a second electronic Excel spreadsheet containing 212,875 activities records corresponding to the GCC centers for the same period. To determine the reliability and completeness of the datasets, using the Audit Command Language (ACL), we performed a limited analysis of various fields to determine the integrity of the data by searching for gaps and duplicates. However, due to limitations with the dataset (e.g., the absence of a unique identifier), we were not able to perform a complete analysis. We were however able to check for any blanks and other anomalies appearing in the dataset.

To assess the reliability and accuracy of CCATS for audit testing purposes, we selected a random sample of 86 citations from our population of 11,446 issued to GCC centers during initial inspections conducted during the period of July 1, 2014 through November 25, 2016 for PHH and critical violations. For the sampled citations, we obtained the hardcopy inspection reports and the associated attachments explaining how the citation was resolved. We then compared the information noted in the inspection reports to the information in the datasets provided to us, as well as accessing DOHMH's CCATS, and meeting with BCC supervisory staff, to identify the activities recorded for the GCC center. Through these comparisons, we were then able to determine whether the cited violations were being followed up on and eventually cleared.

To determine whether DOHMH met its 45-day mandate during which GCC centers cited for violating a health code(s) are to be re-inspected, we selected the PHH and critical violations, since they are the more severe violation types, and used ACL to conduct an analysis for the period of July 1, 2014 to November 25, 2016. We determined whether attempts were made by an inspector to visit the program within the allotted time frame DOHMH gives itself to re-inspect. We went further to determine whether violations that were issued were actually resolved within the 45-day time frame. In addition, we conducted analysis for the period of July 1, 2014 to November 25, 2016, to assess whether violations relating to the review of criminal and SCR checks were being resolved and the length of time it took for such violations to be cleared by the inspector.

PHH violations require that an interim control be entered into the CCATS in order for a GCC center to remain open. Through the use of ACL, we conducted an analysis of the dataset for the period of February 1, 2016 to February 23, 2017—a period of time for which the interim control feature was in place in CCATS—to determine the number of PHH violations that were not corrected the same day of an inspection and for which an interim control was required to be noted in the applicable field. We then determined whether an entry was made to this field and whether the entries were not clearly inappropriate, for example a “.” or “N/A” was entered.

For the 86 random sample selected and for which we were provided with the inspection reports, we conducted further reviews of the 80 PHH citations included in the random sample to see whether the interim controls noted in them immediately addressed the violation and reduced exposure to the risk that was identified.

To see whether DOHMH had adequate controls in place to ensure that it followed up on citations issued to GCC centers, we reviewed multiple inspection reports associated with the 86 citations in our sample and accessed additional records in CCATS to determine whether:

- the inspection reports and the associated attachments explaining how the citations were resolved were reviewed in CCATS to ensure the satisfactory resolution of the violations cited;
- the documents submitted to the borough office were maintained in the system and were used to substantiate the violation resolution for those deemed as being resolved;
- citations were followed up on within the 45-day time frame DOHMH gives itself to re-inspect a GCC program; and
- NOVs should have been issued to some GCC programs based on the criteria established by BCC Central.

To assess whether adequate controls were in place to prevent unauthorized override entries in CCATS, we made inquiries as to what record(s) is maintained by management that would provide

it with the ability to review and verify that overrides were properly authorized and that the justifications entered were sufficient.

With regard to the roles, responsibilities, and oversight of the borough managers and supervisors, in the absence of comprehensive written policies and procedures, we reviewed the above-mentioned protocols and several internal policy memos from the Director of Field Operations to the borough staff. We also interviewed several borough office supervisors to obtain an understanding of their and the inspectors' responsibilities as they relate to inspecting the GCC centers.

While the results of our sampling tests were not projected to the respective populations, these results, together with the results of our other audit procedures and tests, which in some instances reviewed an entire population, provided sufficient, competent evidence to support our findings and conclusions about DOHMH's controls over the follow-up of violations found at GCCs.



NEW YORK CITY DEPARTMENT OF
HEALTH AND MENTAL HYGIENE

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June 25, 2018

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Re: Audit Report on the NYC Department of Health and Mental Hygiene's
Group Child Care Centers, Audit Number MH17-056A

Dear Deputy Comptroller Landa:

The Department of Health and Mental Hygiene (DOHMH) reviewed the draft report on its follow-up on violations found at group child care centers (GCCs). The stated objective of the audit was to determine whether DOHMH has adequate controls to ensure that it effectively follows up on violations found at DOHMH-permitted GCCs. The scope of the audit included GCCs that are subject to Article 47 of the NYC Health Code.

The attached response details DOHMH's position in regards to the auditors' findings and recommendations. We appreciate the efforts and professionalism of your staff during the audits. If you have any question, please contact Sara Packman, Assistant Commissioner for Audit Services at (347) 396-6679.

Sincerely,

Oxiris Barbot, M.D.

cc:

Mary T. Bassett, MD, MPH, Commissioner, DOHMH
Corinne Schiff, Deputy Commissioner, Environmental Health, DOHMH
Monica Pollock, Assistant Commissioner, Bureau of Child Care, DOHMH
Sara Packman, Assistant Commissioner, Audit Services, DOHMH
George Davis, Director, Mayor's Office of Operations

Attachments:

RESPONSE TO THE NEW YORK CITY COMPTROLLER'S AUDIT ON
THE DEPARTMENT OF HEALTH AND MENTAL HYGIENE'S FOLLOW-UP ON
CITATIONS AND VIOLATIONS FOUND AT GROUP CHILD CARE CENTERS

AUDIT NUMBER MH17-056A

The Department of Health and Mental Hygiene (DOHMH or Department) reviewed the draft report on its follow-up on violations found at group child care centers (GCCs). The stated objective of the audit was to determine whether DOHMH has adequate controls to ensure that it effectively follows up on violations found at DOHMH-permitted GCCs. The scope of the audit was July 1, 2014 through February 23, 2017 and included GCCs that are subject to Article 47 of the NYC Health Code.

The audit concludes that DOHMH has adequate controls to ensure that inspectors follow up on violations found at DOHMH-permitted GCC in a timely manner. The auditors also conclude that DOHMH needs to strengthen its controls to provide greater assurance that (i) inspectors ensure that GCC implement interim controls to address public health hazard violations and (ii) inspectors take appropriate actions when conducting follow-up inspections so that they do not inappropriately deem violations to be corrected. The auditors assess that these operational weaknesses “undermine DOHMH management’s ability to assess whether violations, especially those deemed critical or a public health hazard, have been satisfactorily addressed”.

We appreciate the auditors’ overall assessment that DOHMH has adequate controls to ensure that inspectors follow up on violations found at DOHMH-permitted GCC centers in a timely manner. We also appreciate the recognition that DOHMH has automated system controls and has developed separate reports to help ensure that inspectors promptly follow up on violations. We strongly disagree with the auditors’ assessment that DOHMH’s monitoring of inspectors is weak. We acknowledge that CCATS does not include evidence that supervisors review the interim controls established in response to PHH violations. However, this does not undermine DOHMH’s ability to assess whether violations have been satisfactorily addressed. The following is DOHMH’s response to the audit issues and seven recommendations.

Issue 1: Data Recorded in CCATS Indicated that 90 Percent of Citations for PHH and Critical Violations Were Followed Up within 45-Day Target

The auditors analyzed CCATS inspections data of 11,446 citations issued by inspectors for PHH and critical violations identified during initial inspections and noted that 203 had clearance dates before the initial inspections and one citation had a correction date of December 31, 2018.

During the August 5, 2016 entrance conference, a DOHMH official explained to the auditors that CCATS was upgraded and the upgraded version was implemented in January 2016. The new version of CCATS was carrying forward previous citations that were already corrected. This resulted in the possibility that a correction date would be reflected before a violation’s issuance date. DOHMH has addressed this system “bug” and continues to work on system upgrades to enable tracking violations that exist over multiple inspections.

Auditors' Recommendation:

1. *DOHMH should investigate: (a) the 203 citations cited in this report that were reportedly cleared before the dates of the initial inspections; and (b) the citation that had a correction date set in the future in order to identify the reasons for these inconsistencies and take appropriate action to prevent future occurrences.*

DOHMH's Response: (a) DOHMH will review the 203 instances and resolve any other discrepancies that may exist and make required system upgrades. (b) Regarding the citation that has a future correction date (12/31/2018), the correction date appears to be a typographical error. CCATS reflects a "Violation Complied with by Mail" event for clearance of the citation and the following text in the field note: "All the violations cited on 12/18/2015 were corrected on 12/31/2015".

Issue 2: Monitoring Weaknesses

2A) Inadequate Controls to Ensure that PHH Violations Are Mitigated Pending Their Correction

The auditors cite Article 47 of the City Health Code regarding what is a PHH. The auditors then continue to state that in order for a GCC center to remain open when a PHH violation is identified and cannot be corrected at the time of inspection "an interim control must be established before the inspector leaves the premises that appropriately addresses the deficiency cited".

DOHMH strongly disagrees with the auditors' implication that there is a risk of closure whenever a PHH is cited. The designation of a violation as a PHH serves two primary purposes 1) to identify risk and 2) to designate for the system a means to set the desired compliance date. During the audit, the DOHMH's Bureau of Child Care (BCC) officials informed the auditors that not all public health hazards are imminently dangerous so as to warrant closure. BCC inspectors have been trained to identify true dangers and are instructed to contact supervisors in those cases that rise to the level where closure is required.

The auditors assess that "serious weaknesses exist in DOHMH's ability to ensure that appropriate mitigating actions have been recorded and accordingly, that [mitigating actions-interim controls] have in fact been taken". The auditors support this assessment by stating that BCC does not have a policy requiring inspectors to notify their supervisors of any PHH violations found or of the interim controls established to mitigate them prior to the inspectors leaving the GCC. Also, the auditors state that although supervisors review interim controls as part of their review of the inspection reports, supervisors do not document their reviews. The auditors also state that CCATS cannot generate a list of all PHH citations to allow for supervisory review. The auditors conclude that "By not requiring that supervisors maintain evidence of their reviews of interim controls, DOHMH is unable to ascertain the extent to which such reviews are conducted."

DOHMH strongly disagrees with the auditors' assessment that DOHMH does not adequately record that the GCC has taken appropriate mitigating actions. BCC requires inspectors to

document and upload evidence that violations had been appropriately corrected. In addition, since 2016, the “interim control” field was designated as a required field in the handheld computer. Inspectors must document the interim controls to address PHH violations that could not be immediately remedied, otherwise the inspection cannot be concluded.

Since mid-year 2016, DOHMH has increased training regarding recording of interim control measures. Staff and supervisors were retrained on inspection documentation requirements and supervisors were reminded to include reviews of interim controls when reviewing staff inspection reports. BCC requires supervisors to review documentation of interim controls, as part of reviewing the entire inspection report. In addition, management reports are available to help managers review specific issues.

While DOHMH concurs that some inspectors did not consistently record the corrective actions and interim controls implemented by the GCC we believe the current inspection review process that incorporates examining how violations were corrected and interim controls that were implemented, enables supervisors to ascertain the appropriateness of our staff’s actions.

Further, as we explained to the auditors, CCATS is not intended to produce management reports such as a list of PHH citations for supervisors to review. Reports used for managerial oversight are generated using a data warehouse that draws from information in CCATS. Data warehouse reports show a variety of indicators that allow BCC managers to monitor and follow up on GCC programs, including those with high citations rates. We have also created reports to track violation histories by program over a given time period, open violations less than 30 days and violations open over 45 days. The analysis of indicators and review of the reports allows DOHMH’s leadership to determine that staff have taken appropriate actions and to improve the inspection process and findings.

2B) Inadequate Controls Over the Clearing of Citations

The auditors assess that “DOHMH does not ensure that its inspectors maintain appropriate evidence...to support the basis upon which [inspectors] determine that violations are corrected.” The auditors state that “DOHMH inspectors do not consistently maintain corroborating evidence when feasible for violations they deem to be corrected.”

The auditors also state that inspectors “have the ability to both record and approve the clearing of citations, which appears to be an inadequate segregation of duties”.

The auditors conclude that management is significantly hindered in its ability to confirm that violations are sufficiently corrected, increasing the risk that conditions leading to violations will not be addressed.

We strongly disagree with the auditors’ statements and conclusion. Regarding segregation of duties, DOHMH’s inspectors are trained to identify violations and to record the non-compliance. The inspectors, who observe and record the violations are in the best position to verify the violations were corrected and thus, to clear the violations.

Regarding ensuring the evidence to support clearing of citations, DOHMH demonstrated to the auditors that its Field Activity Protocol instructs staff to upload into their handheld computer (inspection system) documents and photographs showing that a correction was made.

DOHMH acknowledges that some inspectors did not always follow this protocol, and that it can be difficult to link the noted correction to the violation because of a limitation in the CCATS application design. DOHMH continues to enhance this application and is launching an upgrade to the inspector handheld application in fall 2018. A subsequent upgrade will enable staff to enter observed corrective actions in a new Corrective Action field, including describing how they ascertained compliance. In re-training inspectors, DOHMH continues to re-enforce the need for documentation to support clearance of citations through additional training.

2C) Inspectors May Override Inspection Results without Supervisory Approval

The auditors conclude that since inspectors may “override” inspection results without supervisory approval, there is “an increased risk that unjustified overrides potentially involving fraudulent activity, may go undetected.”

We strongly disagree with the auditors’ conclusion and implication of increased risk of fraudulent activity. CCATS is designed to generate a default option, which is an inspection result recommendation, based on the inspector’s entries or information that was carried forward from the last inspection. The system intentionally allows inspectors to change this default inspection result (called an “override” in CCATS), and select an alternative option from a “drop-down” list of alternative outcomes, to account for different circumstances that make the default option inapplicable. Both the default option and the alternative options have auto-generated text. As we explained to the auditors during the audit and at the exit conference, not every “override” requires supervisory approval. Inspectors are required to call or email their supervisors for approval before selecting an option from the “drop-down” menu only when the default choice involves a penalty or forfeiture but the inspection specifics indicate a less “severe” action is appropriate. Supervisors, who have been provided with the rules for expected inspection results, will accordingly be able to verify, when conducting their mandatory inspection report reviews, whenever “overrides” are made without authorization. This automated system, which provides a list of appropriate actions, and sets as a default the most common result, is a marked improvement over earlier protocols that allowed inspectors to decide the inspection result independently, without a system trigger with recommendations that promote active consideration.

Regarding supervisory approval, the system already requires the inspector to certify that they have obtained supervisory approval. To complete the inspection, the inspector must check a system checkbox indicating that the inspector received a supervisory approval to change the recommended inspection result. Inspectors have been trained that certain system “overrides” do not require supervisor review, including the override for “No Access” or “Hold for Further Observation.” Furthermore, inspectors are informed about the New York City Administrative Code §10-154 that makes it an offense punishable by fines or imprisonment for making a false statement or falsifying a signed statement or report.

Auditors' Recommendations:

2. *DOHMH should require that adequate evidence is maintained in CCATS to support inspectors' determinations that violations have been appropriately corrected.*

DOHMH's Response: This recommendation is not needed. DOHMH already requires inspectors to document and upload evidence that violations have been appropriately corrected. DOHMH will continue to train inspectors to re-enforce the need for documentation to support clearance of citations. Also, CCATS enhancement that will be launched early in 2019 will include a field to enter the corrective action, making the information easier to document and connect to the violation.

3. *DOHMH should implement a method by which supervisory reviews of violations corrections can be recorded in CCATS.*

DOHMH's Response: We agree with this recommendation. Supervisors already review inspection reports, including documentation of violations corrections, but the current CCATS does not record their review. In the future upgrade of CCATS this feature will be included. This upgrade will include the ability to associate the review to a specific inspection report, add comments and instructions to staff for follow up and corrections.

4. *DOHMH should require that supervisors document their reviews of interim controls established for PHH violations and ensure that controls adequately mitigate the hazardous conditions cited.*

DOHMH's Response: We disagree with this recommendation. DOHMH does not believe supervisors need to separately review documentation of interim controls. Supervisor review should be of the entire inspection report, and management reports are available to draw out issues as needed. While DOHMH concurs that some inspectors did not consistently record the corrective actions and interim controls implemented by GCCs, we believe our current inspection review process, which incorporates examining how violations were corrected and that interim controls were implemented, enables supervisors to ascertain the appropriateness of our staff's actions. DOHMH had already begun training in documentation and maintaining evidence prior to this audit, and we agree that continued training and revisions to CCATS and the handheld application will result in improvements in those areas where the audit found lapses.

5. *DOHMH should require that supervisors document their reviews of overrides and ensure that overrides are appropriate and authorized.*

DOHMH's Response: Supervisors are aware of the system's inspection default options and alternative outcomes. In their inspection report reviews, supervisors identify when a result is different from the default option and can take action if appropriate. Also, the upgrade noted in recommendation 3 will include a comment tool allowing supervisors to identify when an inspection result was inappropriate or not approved.

Issue 3: DOHMH Has Not Developed Adequate Written Procedures

3A) Inadequacies Procedures Relating to Recording and Resolving Violations

The auditors state that “DOHMH has not developed written policies and procedures that adequately guide staff on how inspection results and follow-up actions are to be entered in CCATS.” The auditors’ assessment is based on the inconsistencies with the way in which violations are recorded.

3B) Inadequate Procedures for Supervising Inspectors

The auditors state that “DOHMH has not established sufficient guidelines on how management at the BCC Borough Offices should be supervising the inspectors. The auditors support the assessment on interviews and inconsistencies and deficiencies in inspection reports.

Auditors’ Recommendations:

6. *DOHMH should develop and distribute a comprehensive policies and procedures manual that addresses all aspects of the inspection process.*

DOHMH’s Response: DOHMH already provides comprehensive policies and procedure manuals, including the maintenance of all documents on the BCC Sharedrive. Although we disagree with the auditors that our distribution of policies and procedures is inadequate, we recognize that policies and procedures are “living” documents that should be reviewed and updated when the Health Code changes or the CCATS and handheld applications are updated. We will do so when we roll-out the next upgrade of CCATS and the handheld application.

7. *DOHMH should establish clear guidelines as to how supervisors are to monitor inspectors’ work activities, such as by requiring full or sample reviews of inspection reports to ensure accuracy and completeness.*

DOHMH’s Response: Although we disagree with the auditors that our procedures for supervising inspectors are inadequate, we agree that we did not establish a threshold for the number of inspection reports supervisors should review. We will consider establishing a threshold for conducting supervisory reviews.