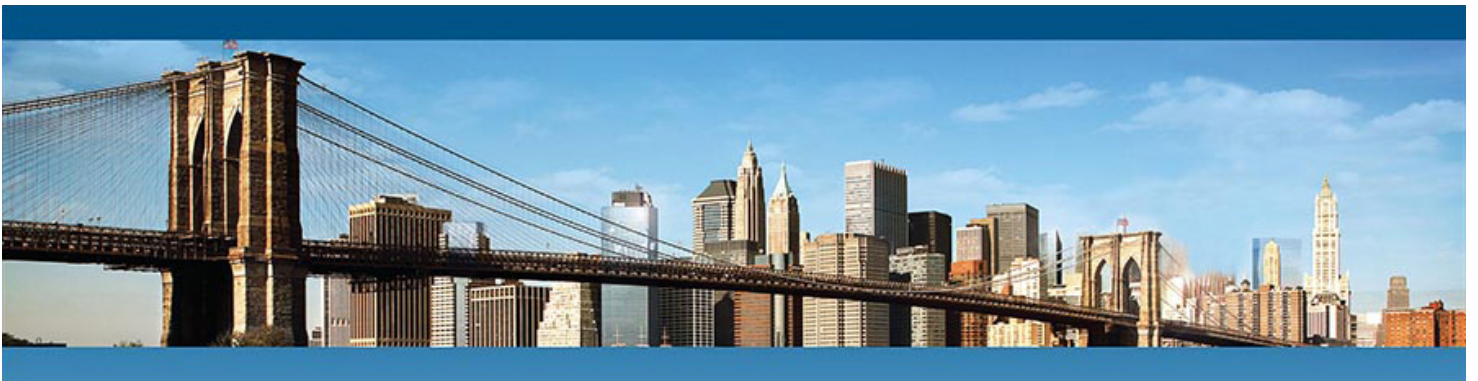


City of New York

OFFICE OF THE COMPTROLLER

Scott M. Stringer
COMPTROLLER



MANAGEMENT AUDIT

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Deputy Comptroller for Audit

Audit Report on the Department of Health and Mental Hygiene's Permitting of Child Care Centers

MJ15-054A

June 24, 2016

<http://comptroller.nyc.gov>



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OFFICE OF THE COMPTROLLER
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NEW YORK, NY 10007

SCOTT M. STRINGER
COMPTROLLER

June 24, 2016

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 maintained adequate controls to ensure that center-based Group Child/Day Care (GDC) providers that are granted permits to operate in the City have fulfilled applicable regulatory requirements. We conduct audits of City operations such as this to increase accountability and ensure that agencies adequately oversee and enforce service providers' compliance with regulatory requirements.

The audit concluded that DOHMH generally maintained adequate controls to ensure that GDCs met all applicable regulatory requirements before they were granted permits to operate. However, DOHMH did not consistently ensure that lead tests had been performed on the water at GDCs with satisfactory results before issuing permits. More than half of the sampled GDCs were issued new or renewal permits based on statements recorded in DOHMH's database indicating that reports of negative lead tests of the water had been provided, but no evidence of these reports were found in the files. In addition, DOHMH lacked a comprehensive set of policies and procedure covering all aspects of its oversight and monitoring of GDC providers. In addition, DOHMH lacked sufficient supervisory oversight of its field inspection staff.

The audit makes eight recommendations, including that DOHMH ensure that no GDC is issued a either a new or renewal permit, without submitting a report evidencing the completion of a lead water test in compliance with the City Health Code. Further, DOHMH should develop a comprehensive policies and procedures manual that addresses all functions carried out by its Bureau of Child Care with regard to monitoring compliance of GDCs. In addition, DOHMH should ensure that standard control activities and procedures are established and consistently applied by staff at all levels at the borough offices, particularly concerning supervisory oversight. Finally, DOHMH should follow up on the 70 GDCs cited in this report for not having conducted a water lead test and ensure that tests are performed as soon as is feasibly possible.

The results of the audit have been discussed with DOHMH officials and their comments have been considered in the preparation of this report. Their 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 that reads "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 Department of Health and Mental Hygiene's Permitting of Child Care Centers

MJ15-054A

EXECUTIVE SUMMARY

The objective of this audit was to determine whether the New York City (the City) Department of Health and Mental Hygiene (DOHMH) maintained adequate controls to ensure that center-based Group Child/Day Care (GDC) providers that are granted permits to operate in the City have fulfilled applicable regulatory requirements. DOHMH's Bureau of Child Care (BCC) is responsible for overseeing and monitoring approximately 2,300 GDCs that are subject to Article 47 of Title 24 of the New York City Rules of the City of New York (RCNY) (the City Health Code) and the focus of this audit. A GDC is a center-based program that provides childcare to three or more children under age 6 for five or more hours per week and more than 30 days in a 12-month period. GDCs are City-regulated, under the direct jurisdiction of DOHMH. BCC processes initial and renewal GDC permit applications, inspects GDC facilities, reviews program staffing and operations, investigates complaints, and monitors providers' compliance.

To operate, a GDC must obtain a permit from DOHMH, which is renewed every two years. To obtain an initial or renewal permit a GDC must submit an application to DOHMH along with all required documentation (e.g., a valid certificate of occupancy, written safety plan, proof of workers' compensation and disability benefits insurance). In addition, the GDC must submit information about supervision and staffing at the facility. According to Article 47 of the City Health Code, a GDC is also required to undergo a water lead test. However, the regulation does not include the test results as one of the required documents to be submitted to DOHMH in order to obtain a permit. The provider must retain certain information on site so that it is available to DOHMH inspectors at the time of an inspection, such as staff qualifications, training, and the results of criminal background checks, along with information about the children such as their immunization records and emergency contact information.

Each GDC location is required to undergo at least one inspection annually. However, BCC frequently conducts two inspections, one related to the GDC's physical premises, including sanitary facilities, storage areas, lighting, fire and electrical safety, and one related to its program operations, including staffing levels and qualifications, educational programs, health screening of staff and children, and other topics, to assess compliance with Article 47 of the City Health Code.

BCC uses the Child Care Activity Tracking System (CCATS) to track and record all related events (e.g. documentation submissions, inspections, complaints) for GDCs throughout the permit

process. CCATS serves as a data warehouse where all GDC program information, inspection results, and scanned document images are maintained. All DOHMH requirements for a GDC to obtain a permit are programmed into CCATS in an effort to ensure that permits are only issued where all the requirements for issuance have been met.

Audit Findings and Conclusion

During the period under review, DOHMH generally maintained adequate controls over its permit process to provide reasonable assurance that GDCs submitted all documents as required by law to DOHMH before being granted permits to operate. However, at the same time, we found weaknesses in DOHMH's permitting process that raised health and safety concerns. Specifically, DOHMH did not ensure that all of the GDCs had tested the water at their facilities for lead as required by Article 47 of the City Health Code. To carry out Article 47's requirement that every GDC test its water for lead, DOHMH designed its CCATS system to only issue permits to GDCs that had submitted proof that they tested the water in their facilities for lead. Yet, our audit found that BCC management overrode its own requirement and instructed staff to enter into the CCATS database a statement that a report of a water lead test with acceptable results had been received in cases where no such test had been performed, or where there was no evidence that an acceptable result had been reported.

We found that for more than half of the 119 GDCs in our sample, CCATS indicated that reports showing acceptable water tests for lead had been provided, but no evidence of these reports were found in the files. In addition, we found that although BCC had protocols for its CCATS permit process, BCC lacked a comprehensive set of policies and procedure covering all aspects of its oversight and monitoring of GDC providers and BCC lacked sufficient supervisory oversight of its field inspection staff.

Audit Recommendations

To address these issues, the audit makes eight recommendations, including the following:

- DOHMH BCC should ensure that no GDC is issued a permit, either new or renewal, without submitting a report evidencing the completion of a water lead test in compliance with Article 47 of the City Health Code.
- DOHMH BCC should follow up on the 70 GDCs cited in this report for not having conducted a water lead test and ensure that a test is performed as soon as is feasibly possible.
- DOHMH BCC should review its records and determine whether other GDCs in addition to the 70 identified through our sample have an entry in CCATS that reflects that a negative lead test was received when it had not been and ensure that a test is performed as soon as is feasibly possible.
- DOHMH BCC should develop a comprehensive policies and procedures manual that addresses all internal processes and functions carried out by BCC with regard to monitoring compliance of GDCs and distribute the manual to appropriate personnel.

Agency Response

DOHMH agreed with six of the audit's recommendations and disagreed with two—one that recommends that DOHMH require the completion of a water lead test before a new or renewal

permit is issued, and a second that recommends that DOHMH ensure that sufficient control activities are put in place to mitigate its risk exposure to fraudulent and/or corrupt activities.

AUDIT REPORT

Background

DOHMH is mandated by the City Charter to protect and promote the health of all New Yorkers. DOHMH's BCC, organized under the Division of Environmental Health, is responsible for overseeing and monitoring approximately 11,000 licensed or permitted childcare providers that operate in the five boroughs.¹ Approximately 2,300 of these providers are classified as GDCs subject to Article 47 of Title 24 of the City Health Code. GDCs are the focus of this audit.

In addition to GDCs, BCC also licenses, oversees and inspects the New York State (NYS)-regulated child care providers, which include Group Family Day Care, Family Day Care and School Age Child Care that are subject to parts 414, 416, and 417 of the New York Codes, Rules and Regulations (NYCRR), respectively. DOHMH has assumed this responsibility pursuant to a contract with the NYS Office of Children and Family Services (OCFS). Further descriptions of the child care entities operating in the City are found in the Appendix. These child care providers are not subjects of this audit.

DOHMH also oversees School-based Child Care providers that are governed by Article 43 of the City Health Code. However, Article 43 does not specifically require that these facilities have a license or permit to operate. Because these programs primarily address Universal Pre-K and nursery school programs for children ages 3 to 5 within a school setting, for the purposes of this audit we did not include them in our definition of childcare.

A GDC is a center-based program that provides childcare to three or more children under age 6 for 5 or more hours per week and more than 30 days in a 12-month period. GDCs are City-regulated, under the direct jurisdiction of DOHMH. BCC processes initial and renewal GDC permit applications, inspects GDC facilities, reviews program staffing and operations, investigates complaints, and monitors providers' compliance.

Pursuant to Article 47, to obtain an initial or renewal permit, which must be done every two years, a GDC must submit an application to DOHMH along with all required documentation, including proof of a fire inspection, a current certificate of occupancy, written safety plan, proof of workers' compensation and disability benefits insurance covering all employees, proof that criminal justice and State Registry of Child Abuse and Maltreatment screening requests have been submitted for all employees requiring them, and email contact information. In addition, the GDC must submit information about supervision and staffing at the facility. According to Article 47 of the Code, a GDC is also required to undergo a water lead test. However, the regulation does not include the test results as one of the required documents to be submitted to DOHMH in order to obtain a permit. The provider must also retain certain information on site so that it is available to DOHMH inspectors at the time of inspection, such as staff qualifications, training and the results of criminal background checks, along with information about the children, such as their immunization records and emergency contact information.

DOHMH BCC has a central office that oversees four borough offices: one that covers Manhattan, one for the Bronx, one for Queens and one that covers both Brooklyn and Staten Island. Each borough office has a Borough Manager as well as staff dedicated to processing permit applications and overseeing the GDCs. The borough office staff include supervisors, field

¹ New York State Office of Children and Family Services, "Child Care Facts & Figures 2015"

inspectors, and administrative personnel. Additional staff are employed at each borough office who are responsible for overseeing and monitoring State-regulated and other programs.

The borough managers or supervisors prepare weekly inspection schedules and assign GDCs to the field inspectors based on zip codes. Each GDC location is required undergo at least one inspection annually.² However, BCC frequently conducts two inspections, one related to the GDC's physical premises and one related to its program operations. The field inspectors include Public Health Sanitarians and Early Childhood Education Consultants. The Public Health Sanitarians inspect the physical premises of each GDC, including sanitary facilities, storage areas, lighting, fire and electrical safety to assess the providers' compliance with related provisions of Article 47 of the City Health Code. The Early Childhood Education Consultants perform inspections of program operations, including staffing levels and qualifications, educational programs, health screening of staff and children, and other topics to assess compliance with applicable provisions of Article 47.

BCC uses CCATS to track and record all related events (e.g. documentation submissions, inspections, complaints) for GDCs throughout the permit process.³ Public Health Sanitarians and Early Childhood Education Consultants use hand-held computers that include standardized inspection questions that are completed during the on-site visits. The Access Point database, which is used to track the inspection data recorded during inspections, is synchronized to upload relevant information to CCATS. Initially implemented in 2005 and updated in 2015, CCATS was developed and is supported by DOHMH's Division of Informatics, Information Technology and Telecommunications (DIITT). It serves as a data warehouse where all GDC program information, inspection results, and scanned document images are maintained.

All GDC requirements for obtaining a permit are programmed into CCATS to help prevent a permit from being issued if any requirements are not met. These include the Article 47 requirements for permit issuance as well as DOHMH's additional requirements, which include proof that a lead test has been conducted and that the results were acceptable or, if not, that there is a corrective action plan (CAP) approved by DOHMH in place to remediate any high lead reading. Prior to a permit being approved and issued, a borough manager or supervisor can generate a deficiency list from CCATS to identify any missing documentation or information.

Objective

To determine whether DOHMH maintained adequate controls to ensure that GDCs that are granted permits to operate in the City have fulfilled applicable regulatory requirements.

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 objectives. We believe that the evidence obtained provides a reasonable basis for our findings and conclusions based on our audit objectives. This audit was conducted in accordance

² §558 (d) of the City Charter establishes that the DOHMH shall whenever possible make at least one unannounced visit of every daycare premises annually.

³ CCATS is also used to track and process permits and/or licenses for other City-regulated programs such as Universal Pre-K and Summer Day Camps. CCATS is not used for the State-regulated programs. For those programs, DOHMH uses the State's database, the Child Care Facility System (CCFS).

with the audit responsibilities of the City Comptroller as set forth in Chapter 5, §93, of the New York City Charter.

The audit scope covered initial and renewal permits issued to GDCs between August 29, 2012, and August 29, 2014. The Detailed Scope and Methodology section at the end of this report describes 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 discussed at an exit conference held on May 27, 2016. On June 7, 2016, we submitted a draft report to DOHMH with a request for comments. We received a written response from DOHMH on June 21, 2016. In its response, DOHMH agreed with six of the audit's recommendations and disagreed with two – one that recommends that DOHMH require the completion of a water lead test before a new or renewal permit is issued, and a second that recommends that DOHMH ensure that sufficient control activities are put in place to mitigate its risk exposure to fraudulent and/or corrupt activities. DOHMH states

The Department of Health and Mental Hygiene (DOHMH or Department) reviewed the draft report on the DOHMH's permitting of child care centers. . . .

We are pleased that the auditors found that DOHMH generally has adequate controls to ensure that GDCs meet all applicable regulatory requirements before they are granted permits to operate. However, while recognizing the weakness of lack of consistent enforcement of water lead protocol and oversight, we strongly disagree with the auditors' opinion that these operational issues raise health and safety concerns. NYC's drinking water is safe, clean and nationally recognized for its quality. No child care center has ever been linked with a case of lead poisoning.

We are pleased that no child care center to date has been linked to a lead poisoning case. However, the absence of such a case is not an indication, in and of itself, that weaknesses that increase the risk of such occurring do not exist. We note that in our sample, 49 centers had conducted water lead tests and 5 had results that showed a sufficient level of lead to require some type of remediation. We believe that by correcting the deficiencies identified in this report, DOHMH will help to ensure that risk from elevated levels of lead in drinking water is minimized. The full text of DOHMH's response is included as an addendum to this report.

FINDINGS AND RECOMMENDATIONS

The audit found that during the period under review, DOHMH generally maintained adequate controls over its permit process to provide reasonable assurance that GDCs submitted all documents as required by law to DOHMH before being granted permits to operate. However, at the same time, we found weaknesses in DOHMH operations that raise health and safety concerns. Specifically, during our audit period, DOHMH did not ensure that the GDCs had tested the water at their facilities for lead, as required by Article 47 of the City Health Code. This failure occurred, at least in part, because of BCC management's instruction to its staff to enter into the CCATS database a statement that a report of a water lead test with acceptable results had been received in cases where no such test had been performed, or where there was no evidence that an acceptable result had been reported. Further, we found that for more than half of the 119 GDCs in our sample, the CCATS database indicated that reports showing acceptable water tests for lead had been provided, but no evidence of these reports was found in the files.

In addition, we found that although BCC had protocols for its CCATS permit process, BCC lacked a comprehensive set of policies and procedure covering all aspects of its oversight and monitoring of GDC providers and BCC lacked sufficient supervisory oversight of its field inspection staff.

These matters are discussed in detail in the following sections of this report.

BCC Did Not Consistently Enforce Water Lead Test Requirements

Our audit found that DOHMH BCC did not consistently enforce the water lead test requirement for all GDCs during the audit scope period, nor did it have evidence from the GDCs that the tests had been performed. In addition, in accordance with instructions from senior managers, BCC staff recorded in its CCATS database that some GDCs had undergone water tests for lead and had submitted reports that reflected acceptable results when the GDCs did not actually submit water lead test reports showing that their water had been tested as required by the City Health Code.

According to §47.43 of the City Health Code, which governs GDCs,

Drinking water from faucets and fountains shall be tested for lead content and the permittee shall investigate and take remedial action if lead levels at or above 15 parts per billion (ppb) are detected.

This regulation was implemented in 2008. While it does not expressly state when a GDC must test its water for lead, or make the submission of a test a requirement for obtaining a GDC permit, BCC officials stated that by 2012, as a means to enforce Article 47's water lead test requirement, a 'flag' was created in CCATS to identify GDCs that needed to be tested and the borough offices were instructed to ask those GDCs for the water lead test upon their permit application process. BCC implemented a protocol that required that GDCs provide proof that a water lead test had been conducted and that either (1) its results were within acceptable levels; or (2) there was a DOHMH-approved CAP in place to remedy results that showed that the water tested at above acceptable levels. Alternatively, the GDC may correct the condition and submit a second water lead test report that reflects that the water tested negative for lead.

We selected a sample of 119 GDCs that received permits (24 initial permits and 95 renewals) between August 29, 2012, and August 29, 2014, to determine whether they met the water lead

test requirement embodied in the regulations and DOHMH's protocols.⁴ We found evidence of a water lead test report submitted to DOHMH for only 49 (41 percent) of the 119 sampled GDCs that received permits from DOHMH

Of the 49 GDCs that submitted test results, five were unacceptable. Three of those five GDCs submitted to DOHMH both a CAP and a follow-up acceptable water lead test result before they obtained their permits. One remediated the condition and subsequently submitted a second water lead test report that showed acceptable results prior to receiving a permit. In the case of the remaining GDC, a BCC supervisor determined that although there was a positive lead test result, the measurements were within acceptable ranges according to national standards. Therefore, it was determined that no remediation was necessary.

For the 70 (59 percent) remaining GDCs sampled, for which 67 were issued renewal permits and 3 were issued new permits, we found that DOHMH personnel had recorded in CCATS that a water lead test report reflecting acceptable results had been submitted. However, we also found that BCC did not have any water lead test reports on file, in either electronic or hardcopy form, nor was DOHMH able to provide any evidence that its personnel had received any such reports.

Rather, as reflected in emails between BCC's central office and the borough offices and meetings with BCC personnel, we found that BCC management had instructed staff to record in CCATS that DOHMH had received lead test reports that showed acceptable results for lead even where no such reports had been provided.

Described as a "work around" to the DOHMH protocol embodied in the CCATS system that prevented permits and renewals from being issued, absent proof of an acceptable water lead test or approved CAP, in an email dated December 7, 2011, BCC officials directed the borough supervisors to enter the statement "Water Lead Test Negative in CCATS in order to issue permits." In addition, they were instructed to enter the statement, "Instructed to enter water test negative until process can be developed for renewal applicants in regards to testing lead water," in the CCATS notes section of the "event."

DOHMH Response: "DOHMH strongly disagrees with the auditors' statement that the Department instructed staff to enter 'a lead report had been received'. The instruction given to staff was to enter 'a negative lead event pending the receipt of the actual report', thus, giving GDCs 60 days to submit lead test results and not delaying the permitting process for programs that were in good standing and applied for permit renewal. The lead test indication was not entered to circumvent the requirement. The Health Code allows GDCs to operate with a permit even if they have not submitted a lead water test."

Auditor Comment: DOHMH's statement that staff was instructed to enter that "a negative lead event pending the receipt of the actual report" is an acknowledgement that staff was instructed to report that a lead test revealing negative results was conducted, even when it had not been. Furthermore, as discussed below, we found that the majority of the sampled GDCs in question failed to note that a report was pending and, for those that did, BCC failed to follow up to ensure that the tests were actually conducted.

BCC officials explained the rationale for this instruction, in part, by stating that many of the providers for whom they took this action either were under contract with the Administration for Children Services (ACS) or located in a New York City Housing Authority (NYCHA) building, and ACS or NYCHA were responsible for performing the water lead tests for those facilities or buildings, respectively. However, despite our repeated requests, BCC officials provided no

⁴The 119 permits sampled were selected from a total of 2,279 permits issued during our audit scope period.

evidence or documentation to support this assertion. Furthermore, in our review of the 70 GDCs for which there was no evidence to support the CCATS “water lead test negative” entry, we found that 52 were neither ACS-affiliated facilities nor located in a NYCHA building. Of the remaining 18 GDCs, 16 were ACS-affiliated and two were situated in a NYCHA building. Notwithstanding, DOHMH had no evidence that a water lead test had been performed for any of these 18 facilities.

BCC officials further explained the rationale for instructing staff to enter that negative lead tests had been received when they had not been by noting that CCATS will not allow a user to waive a requirement so that unless the required steps in the permit process are fulfilled, CCATS will not generate a permit. They also noted that the “flag” that had been created in CCATS to identify GDCs that required lead tests had prevented existing permits from being renewed and that this result was “unintended.” Therefore, in order to allow previously permitted GDCs to operate pending the water lead test, BCC officials explained that personnel were instructed to record in CCATS that water lead test reports had been received when they had not and to enter in the comments field that the water tested negative for lead or was acceptable. However, our review revealed that BCC personnel generally did not indicate anywhere in CCATS that the lead test still needed to be conducted, nor did they follow up to ensure that lead tests were in fact ever conducted.

Finally, BCC officials stated that in 2012, BCC changed its practice of entering that negative lead test results had been received even when they had not. However, the sample we selected to test did not reflect that the policy had changed. Rather, our sample, which was for permits issued between August 29, 2012, and August 29, 2014, reflected that 70 of the 119 permits issued had no evidence that water lead tests had been conducted and that the results had been received by BCC. A breakdown of the CCATS entries for the 70 sampled GDCs with no evidence that a water lead test was performed is shown in Table I below.

Table I

Notes in CCATS for the 70 Sampled GDCs for Which Evidence of a Water Lead Test Was Missing

Comment in CCATS	# of GDCs	Outcome
“Per central instruction, instructed to enter lead water test negative”	30	No further action by DOHMH noted
No comment	15	No further action by DOHMH noted
“Program has 60 days to provide result”	13	No evidence that the GDCs provided test results before the permits were issued or renewed—no further action by DOHMH noted
“Test result pending”	9	No evidence that the GDCs provided test results before the permits were issued or renewed—no further action by DOHMH noted
“test was approved under another GDC”	1	DOHMH unable to locate the water lead test report in question
“test received via certified mail”	1	DOHMH unable to provide the water lead test report
“Renewal Application Permit (RAP) may proceed”	1	No further action by DOHMH noted
Total	70	

As shown above, notes recorded in CCATS for two GDCs state that the tests were conducted (“test was approved under another GDC” and “test received via certified mail”); however, DOHMH was unable to produce the respective reports. For only 22 GDCs (“program has 60 days to provide result” and “test results pending”) do the notes in CCATS indicate that DOHMH had not received the test results. For none of these, however, did DOHMH follow up. For the remaining 46 GDCs, the notes give no indication that the water lead testing was not conducted.

BCC management’s purpose for incorporating the water lead test into CCATS was to assist in the enforcement of the test requirement. By intentionally recording in CCATS that the tests had been performed and that the results were acceptable, DOHMH allowed the 70 sampled GDCs to obtain or renew their permits without ensuring that they did not have unacceptable levels of lead in their water or when no tests had been performed or submitted. It also created a significant risk that BCC may rely on those false representations and never ensure that the water at those GDCs is tested at all. Consequently, this increases the risk that children may be exposed to unacceptable lead levels and that such exposure will not be identified in a timely manner.

DOHMH Response: “DOHMH strongly disagrees with the auditors’ assessment that DOHMH’s ‘work around’ created a significant risk that BCC will ‘never ensure that the water at those GDC is tested at all.’ In 2012, DOHMH contacted all GDCs and informed them of the new requirement, provided guidance on how to comply, and gave program 60 days to comply. DOHMH also worked to identify programs with lead service lines and made referrals for assessment where necessary.”

Auditor Comment: Borough managers and supervisors use CCATS to identify missing documentation or information related to GDC permitting process. We continue to believe that inaccurate information recorded in CCATS indicating that lead testing was not needed may be relied upon by those managers and supervisors, increasing the risk that required lead tests may not be conducted.

DOHMH Has Not Established Water Lead Testing Timeframe

BCC officials asserted that a water lead test is required for all new GDC permit applicants, but not for permit renewals, so long as there is proof that the GDC renewal applicant had a water lead test performed at *any* time in the past that had acceptable (negative) results. Of the 70 GDCs in our sample where we found no evidence of a negative lead test having been conducted, 67 had applied for renewal permits and three had applied for new permits. However, as discussed above, we found no evidence that a water lead test had ever previously been conducted for any of them.

Further, BCC management has set no timeframe for how long they would consider a water test result valid before requiring that the GDC obtain a new one. Therefore, if a GDC had a water lead test performed many years earlier with acceptable results and had previously provided that report to DOHMH, another report would not be required at any time in the future when renewing its permit. According to BCC officials, only in the event that a child who is serviced by a particular GDC is found to have high levels of lead in his or her blood would that GDC be required to have a new water lead test performed. This practice is of concern because it does not take into consideration that circumstances might well change over time, such as where plumbing work is performed subsequent to the water lead test being relied upon. If that work was inappropriately performed using lead-based materials or for some other reason disrupted the water system, it is possible that lead could enter the drinking water of a building where a GDC is located.

Section 47.75 of the City Health Code provides DOHMH some flexibility to modify the strict application of provisions of Article 47 in certain instances, such as in how it chooses to handle the

GDC water lead test requirement.⁵ However, BCC has not yet identified or settled on an effective method to address and enforce the requirement, notwithstanding the fact that the requirement for lead testing has been in effect since 2008. Without ensuring that all GDCs submit reports of water lead tests being performed, DOHMH cannot be assured that all children are safe from potential threats of lead in the water they may be exposed to at GDC facilities.

Recommendations

1. DOHMH BCC should ensure that no GDC is issued a permit, either new or renewal, without submitting a report evidencing the completion of a water lead test in compliance with Article 47 of the City Health Code.

DOHMH Response: “DOHMH disagrees with the recommendation. The Department reiterates that the Health Code does not require GDC’s to submit lead water test results as a prerequisite to being issued a new permit or renewal of a permit. Out of an abundance of caution, DOHMH has submitted a proposal to NYC Board of Health to require the submission of lead water test to the Department, require retesting every five years and, new child care centers will be required to produce a lead water test within 30 days of permit issuance. If test results show elevated lead levels, the center would have to implement a corrective action plan subject to DOHMH’s approval within five days. DOHMH is adding a “date” field for lead water report that the system will use to automatically notify GDCs that lead in water test report is due and to submit it to DOHMH. BCC’s staff will receive a system automated report of GDCs that have not submitted their reports and will track and monitor GDCs’ compliance with the 30 day requirement to submit a lead in water test report.”

Auditor Comment: We believe that requiring GDCs to submit a water lead test prior to permit issuance would provide greater assurance that the water faucets and fountains at the day care facilities have been tested and any reportable conditions have been corrected. Nevertheless, we are pleased that DOHMH recognizes the need to ensure that all GDCs have water lead tests performed periodically and that newly permitted GDCs should be tested promptly.

2. DOHMH BCC should follow up on the 70 GDCs cited in this report for not having conducted a water lead test and ensure that a test is performed as soon as is feasibly possible.

DOHMH Response: “DOHMH concurs with this recommendation and has implemented it. DOHMH reviewed documents it maintained for the 70 child care cites [sic] and requested them to submit their lead water test results. For those that did not provide documentation indicating that the test has been performed, DOHMH tested their water lead levels to bring them into compliance. DOHMH has water lead test results for 61 of the 70 GDCs, the remaining nine GDCs are out of business and required no further action.”

3. DOHMH BCC should review its records and determine whether other GDCs in addition to the 70 identified through our sample have an entry in CCATS that

⁵ §47.75 of the Health Code states, “When the strict application of any provision of this article presents practical difficulties, or unusual or unreasonable hardships, the Commissioner in a specific instance may modify the application of such provision consistent with the general purpose and intent of this Code.”

reflects that a negative lead test was received where it had not been and ensure that a test is performed as soon as is feasibly possible.

DOHMH Response: “DOHMH concurs with this recommendation and has contacted every program in the Child Care system for which documentation was not up to date and obtained documentation. If a child care center was unable to provide the required documentation the Department retested the water at that GDC. The Department’s child care tracking system has been updated accordingly.”

4. DOHMH BCC should consider modifying the water lead test requirements to clarify when it is required. In addition, it should consider requiring periodic testing (e.g., every five of ten years) of GDCs’ faucets and fountains.

DOHMH Response: “DOHMH concurs with this recommendation and as stated in the response above, proposed to the Board of Health that all GDC sites be tested for lead in water every five years and all new programs provide proof of testing within 30 days of permit issuance. The Board will vote on approval of this provision in September 2016.”

Weaknesses in Supervisory Oversight of Field Inspectors

We found weaknesses in BCC supervisory oversight of its field inspection staff. Specifically, we noted that with the exception of training new field staff or providing guidance or technical assistance at the request of field staff, BCC does not require its supervisors to regularly conduct supervisory field inspections. In addition, BCC does not require supervisors to contact GDCs to get feedback regarding the conduct of field inspection staff.

Comptroller Directive 1, Section 4.5 states:

A sound internal control system must be supported by ongoing activity monitoring occurring at various organizational levels and in the course of normal operations. Such monitoring should be performed continually and be ingrained throughout an agency’s operations. It should include appropriate measurements on regular management and supervisory activities, comparisons, reconciliations, and other actions taken by employees in performing their duties. Agency management must perform continual monitoring of activities and programs.

BCC officials stated that BCC is not required to perform supervisory field observations. Further, they noted that although it may be preferable for a certain percentage of a field inspector’s GDC caseload to be inspected by a supervisor, BCC does not have enough supervisors to perform these types of visits. Notwithstanding, it is management’s responsibility to establish effective internal controls to ensure that its goals are achieved, assets are protected and services are provided.

According to the borough managers and BCC officials, the supervisors are in close contact with field staff each day and as part of their monitoring of assigned field staff, the supervisors meet with Public Health Sanitarians (PHS) and Early Childhood Education Consultants (ECEC) on an ongoing basis to discuss matters that may arise with specific GDCs as well as general oversight issues. The supervisors are also required to keep track of the status of GDCs permit applications that they assign to their field staff. According to BCC officials, as part of the permit approval process, either the Borough Manager or Supervisor will review the quality of work and completeness of documentation in CCATS and/or maintained in the GDC’s hardcopy file to

determine whether the GDC has met all requirements. In addition, each borough manager stated that s/he and the supervisors meet with PHSs and ECECs on an ongoing basis to discuss matters that may arise with specific GDCs as well as general oversight issues.

Notwithstanding, we noted inconsistencies in what the borough managers said about supervisory monitoring activities in place at the borough offices. For example, the managers of the Manhattan and Brooklyn/Staten Island borough offices stated that there is no bureau-wide policy that requires supervisors to perform supervisory inspections of PHSs and ECECs. Conversely, the managers of the Bronx and Queens Borough offices indicated that their respective office procedures call for supervisory follow-up. Specifically, the manager of the Bronx borough office stated that as part of the “Associate PHS” or supervisors’ responsibilities, they are to conduct unannounced visits of GDCs and the manager for the Queens borough office stated that supervisors in his office are to follow-up on 10 percent of the inspections performed by PHSs and ECECs, either by accompanying them on field inspections or by performing a telephone interview with the providers following an inspection to assess the quality of the inspection and satisfaction of the provider with the inspector’s visit. However, both managers conceded that the procedure was not being enforced because they lacked sufficient personnel resources to do so.

DOHMH Response: “DOHMH disagrees with the auditors’ position that supervisors’ “shadowing” of field inspectors is an effective method of oversight as it does not result in quality assurance or in identifying deficiency in staff activity. DOHMH provided shadowing of child care bureau staff at great personnel expense for a number of years resulting in the discovery of few if any issues. The activity was not effective at improving the quality of child care center inspections or the accountability of our staff. Aligned with NYC’s Center for Innovation through Data Intelligence, DOHMH uses business intelligence tools to review inspectors’ activities, evaluate productivity and identify outliers.”

Auditor Comment: We recognize that data analytics is a strong tool used today in many areas to identify problems and in evaluating productivity. However, it is only one tool and does not, alone, replace the value of periodic in-person observations by supervisory and management personnel to assess and identify issues first hand which might not otherwise become clear.

BCC’s lack of supervisory inspections as part of the monitoring of field staff raises concerns about the effectiveness of its overall supervisory monitoring, especially considering that BCC does not rotate PHS and ECEC zip code/area assignments or rotate the field staff among the borough offices and has essentially dismantled controls measure set in place to mitigate the risk of fraud and corrupt activities among its inspection personnel. The rotation of staff serves as a strong deterrent to fraud and inappropriate behavior because the risk of discovery is much greater than it is if an individual or group of individuals are in the same position. In the latter case, individuals may collude, among other things, to cover up deficiencies, overlook violations, misrepresent the severity of violations and/or process incomplete permit applications. The prior internal audit report issued by DOHMH’s Bureau of Audit Services also noted the lack of assignment rotations.

According to BCC officials, CCATS now automatically performs many of the functions that had been manually performed by BCC’s former Systematic Risk Assessment Unit (SRAU) including, among other things, identifying potential areas where fraud could exist. In place of the SRAU, BCC officials stated that the agency intended to rely more heavily on automated data assessment in CCATS and to create another unit, the Performance Improvement Initiative (PII) unit. At the time of the audit scope period, the PII unit was not yet operational and only in a planning stage. BCC management officials stated that in addition to the automated controls built into CCATS to prevent a permit from being issued until all required documents are submitted, BCC in conjunction with the DOHMH Environmental Division’s Data and Program Evaluation Unit had created

multiple automated reports to assist management in monitoring inspectors and GDCs. According to management, these reports would alert them to red flags that required further attention.

However, during our audit scope period, the automated reports, which are intended to help alert officials about potential red flags, were not used on any regular basis. Instead, according to BCC officials, they were used on an “as needed” basis. Officials, however, did not elaborate as to what factors would prompt them to need these reports. As for the PII unit, at the audit exit conference BCC officials stated that the unit was eventually implemented sometime in March 2015 with a staff of approximately 15 members. Its purpose is to monitor those GDCs identified through statistical analysis as having a disproportionate number of complaints, continuous uncorrected and repeated violations, and/or continuous noncompliance to help them correct their deficiencies. As no evidence was provided for us to confirm that the unit functioned as explained, and as the implementation of the unit occurred after the audit scope period, we make no conclusions about the PII unit and its operation.

The inconsistent use of reports meant to alert BCC management to potential problems, in tandem with the weaknesses previously discussed, undermines management’s system of controls. Moreover, it leaves the whole permit process vulnerable to manipulation and abuse. Without more effective supervisory controls, such as supervisory field inspections and follow-up procedures, DOHMH not only foregoes a strong control and fraud deterrent but also limits its ability to ensure that its inspectors conduct inspections in an appropriate and consistent manner.

Recommendations

5. DOHMH BCC should ensure that standard control activities and procedures are established and consistently applied by staff at all levels at the borough offices, particularly concerning supervisory oversight.

DOHMH Response: “DOHMH has a number of protocols supported by its use of technology that results in consistent operating procedures and standardization of its inspectional platform. However, improvement is an ongoing effort which evolves over time. DOHMH agrees with this recommendation, has reviewed all its relevant protocols and will issue new protocols and implement new training for staff going forward.

In addition, the Bureau is developing an automated weekly report of newly registered GDCs or those that are in permit renewal process that have not submitted their lead water test results within 30 days of being permitted. Borough managers will review the weekly automated report with follow up with the GDCs.”

6. DOHMH BCC management must ensure that sufficient control activities are in place to mitigate its risk exposure to fraudulent and/or corrupt activities. Such control activities should also provide management with reasonable level of assurance that fraud and/or corruption are prevented and/or detected, in the normal course of business.

DOHMH Response: “DOHMH disagrees with this recommendation. The Bureau of Child Care has adequate controls to prevent and identify potential fraudulent activity within the Bureau of Child Care. In addition to the performance reports mentioned above, the Bureau works closely with the City’s Department of Investigation if it suspects staff may be engaging in such activity.”

Auditor Comment: As discussed in the report, BCC provided no evidence that the PII unit functioned as explained. Additionally, other than the automated

reports that were used on an inconsistent basis, BCC management identified no other controls in place that were designed to reduce the risk of fraudulent and/or corrupt activities occurring. We therefore urge DOHMH to reconsider its response and implement the recommendation as stated.

BCC Protocols Do Not Address All Aspects of the Permit Process and Oversight of GDCs

Our review of the protocols provided by BCC officials found that although they address and outline the automated CCATS permit procedures and the handling/tracking of complaints, taken collectively these documents do not adequately address management's requirements for personnel involved in the permitting and oversight of GDCs.

Comptroller's Directive #1 states that: "[in]ternal 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 is vital to its achieving the desired results." The directive also requires that internal controls be documented in management administrative policies or operating manuals that are communicated to appropriate personnel.

BCC provided us with its "CCATS Auto Issuance of Permit Protocol," dated November 15, 2011, and an updated version, dated December 20, 2012. In addition, BCC provided us with its "CCATS Generated Permit Renewal and Expiring Temporary Certificate of Occupancy/Letter of No Objection Notification Protocol", dated January 16, 2014, and the "Complaint Tracking Procedures," dated January 25, 2006. While each of these protocols provides an in-depth outline of the steps to be taken relative to their respective topics, collectively, they fail to address essential aspects of BCC's permitting and oversight of GDCs. For example, they do not specify the responsibilities of field inspection staff outside of the automated CCATS processes, address the maintenance and handling of hardcopy records relative to GDC permit issuance, or provide for the training of new staff. Moreover, the protocols do not establish expectations of supervisors and borough managers.

In addition to the protocols noted above, BCC provided us with Article 47 of the City Health Code, which specifically governs GDCs. BCC officials asserted that Article 47 is used in place of formal written procedures, since the Article addresses all of the particulars that GDCs must comply with and is primarily referenced by BCC field inspectors when monitoring their assigned GDC facilities.

DOHMH's referencing of Article 47 as being a part of or a substitute for its written procedures reveals a fundamental misunderstanding of the regulation's intent. Article 47 merely lays out the provisions that must be complied with by GDCs; it does not contain the specific policies and procedures that should be instituted by BCC to ensure the effective implementation of the regulation. That is the responsibility of management—in this case, DOHMH.

Chapter 16 ("Heads of Mayoral Agencies"), section 389(a) of the New York City Charter requires,

In accordance with the policies and procedures established by the mayor for this purpose, heads of mayoral agencies shall maintain an internal control environment and system which is intended to maximize the effectiveness and integrity of agency operations and to reduce the vulnerability of the agency to fraud, waste, abuse, error, conflict of interest, and corruption.

Article 47 does not establish, nor is it intended to establish, the internal tasks, mechanisms, or processes followed by DOHMH personnel in performing their jobs, especially those involved in the monitoring and oversight of GDC facilities and operators. The limitations of BCC's existing protocols or procedures increases the risk that personnel will not be aware of their respective responsibilities and will not carry out their duties in a consistent and appropriate manner. This in turn will result in a lack of consistency in how the borough offices carry out their operations. For example, as discussed previously, the audit found that each borough manager expressed having different requirements or a different understanding of what should be done regarding the supervisory oversight of field personnel.

At the beginning of the audit, we asked BCC to provide us with its policies and procedures and were provided with the protocols and other documentation discussed above. BCC officials asserted that this information comprised all applicable policies and procedures relevant to our audit objective. However, upon advising BCC officials of our findings, they asserted that additional protocols exist that they had chosen not to give to the audit team because the officials considered them to be outside the scope of our audit. To date, they have never provided us with these additional protocols.

Based on representations made by BCC officials throughout the audit, we believe that sufficient evidence exists to support our conclusion that BCC has only limited and inadequate policies and procedures. We note that similar findings were cited in previous internal audit reports by DOHMH's Bureau of Audit Services issued in September 2010 and January 2013. Moreover, in the agency's self-assessment of its internal controls for Calendar Years 2013, 2014, and 2015 submitted to the Comptroller's Office, pursuant to Comptroller's Directive #1, DOHMH acknowledged that it was only partially compliant in having developed formal written policies.

Written policies and procedures are integral in establishing a strong internal control framework and communicating management's requirements across the agency, division or a specific unit. They provide an organization with assurance that every person involved in a process within the organization understands the mission of the organization, his/her duties and responsibilities, the tasks that are to be accomplished, and the acceptable methods to be used in performing those tasks. They also provide an effective mechanism for training and evaluating the performance of staff in their duties.

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.

Recommendations

7. DOHMH BCC should develop a comprehensive policies and procedures manual that addresses all internal processes and functions carried out by BCC with regard to monitoring compliance of GDCs and distribute the manual to appropriate personnel.

DOHMH Response: "We agree with this recommendation and have reviewed all protocols and procedures and are implementing an automated weekly exception report described in the response to recommendation #6 above. We are also implementing a follow-up procedure for all borough office managers to make sure that GDCs are compliant with the lead in water testing as required by the Health Code."

8. The manual should be updated periodically to address newly implemented or revised procedures.

DOHMH Response: “We agree with this recommendation and will include a process and owner to update the manual periodically and when there are Health Code changes.”

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 objectives. We believe that the evidence obtained provides a reasonable basis for our findings and conclusions based on our audit objectives. 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 audit scope covered initial and renewal permits issued to GDCs between August 29, 2012 and August 29, 2014. To accomplish our objectives we performed the audit procedures discussed below.

To familiarize ourselves with DOHMH's responsibilities and providers' requirements regarding the processing of GDC permits, we reviewed Article 47 of the City Health Code. To supplement our understanding, we reviewed the Mayor's Management Report for Fiscal Years 2013 and 2014 and other relevant information posted on DOHMH's website.

To gain an understanding of DOHMH's controls over its processing of permits for GDC providers, we requested for review a copy of the BCC's policies and procedures manual. In the absence of a formal, comprehensive policies and procedures manual, we reviewed documents governing CCATS protocol for BCC's permit processing, along with training materials for the hand-held computer systems used by field staff during inspections.

With regard to the roles and responsibilities and oversight of BCC staff, supervisors, and borough managers, in the absence of formal policies and procedures, BCC provided various alternative documents, including "Complaint Intake Protocol," various checklists used by field inspection staff, employee performance evaluation forms, e-mails from the BCC Director of Field Operations, and other documentation meant for GDCs. In addition to Article 47 of the City Health Code, where applicable, we used these materials as audit criteria. We also reviewed internal audit reports of BCC's processes conducted by DOHMH's Bureau of Audit Services in 2010 and 2012.

We interviewed officials at BCC's central office, including the Associate Commissioner, Assistant Commissioner, and Director of Field Operations. In addition, we conducted walk-throughs of BCC's four borough offices, interviewed the borough managers, supervisors, field inspectors (ECECs and PHSs), and reviewed relevant documentation and reports. We performed tests of controls and confirmed our understanding of those controls with BCC officials.

To familiarize ourselves with the CCATS database, we interviewed appropriate personnel, read the CCATS user manual, obtained read-only access to the database, and reviewed its various reporting functions. We reviewed all the permit requirements (referred to as "events") programmed into CCATS and compared them to Article 47 of the City Health Code.

DOHMH provided an electronic spreadsheet listing 2,279 GDCs that were issued permits between August 29, 2012, and August 29, 2014. To obtain assurance that this list was complete, we retrieved the hardcopy case files for 20 judgmentally selected GDC providers, determined which ones had been issued a permit between August 29, 2012, and August 29, 2014, and compared these results to DOHMH's listing of GDCs permitted for the same period.

To assess the reliability and accuracy of CCATS for audit testing purposes, using the same 20 judgmentally selected GDCs, we selected seven documents necessary for the processing of a permit and compared the information on those hard copy documents from the files to CCATS to determine whether the information recorded in the system mirrored what was printed on the hard copy documents.

The population of 2,279 GDCs that were issued permits between August 29, 2012, and August 29, 2014, consisted of approximately 80 percent renewal permits and 20 percent initial or new permits issued to GDCs during the stated period. Based on this population and the portion of new and renewal permits, we randomly selected a sample of 120 GDCs, consisting of 96 GDCs that were issued renewal permits and 24 GDCs that were issued new permits. After selecting our sample, we found that one of the sampled GDCs was issued a temporary permit to reflect its temporary location; therefore, we omitted this single provider from our sample and used the remaining 119 in our audit tests.

We accessed the records in CCATS for each of the 119 GDCs in our sample to determine whether all necessary steps were taken and requirements were met and recorded prior to a new or renewal permit being granted. We determined whether: (1) an application was received and attached in CCATS; (2) an initial inspection was conducted; (3) architectural and floor plans were received; (4) a certificate of occupancy was received; (5) FDNY inspection was conducted and approved; (6) safety/health/emergency plan was received and approved; (7) proof of insurance was received; (8) lead paint and water lead tests results were received, (9) if the results from item 8 were unacceptable (the water tested positive for lead at or above 15 parts per billion), whether the GDC submitted a corrective action plan; and (10) was proper sign-off performed by the supervisor or borough manager.

For the information that GDCs are required to maintain and make available for inspection, we judgmentally selected 26 sampled GDCs throughout five boroughs and conducted visits to each. During our visits to these GDCs, we interviewed the key officials, reviewed training and credential information for the group teacher(s) and/or education directors, and performed a general walkthrough of the facility to view credentials, background checks, fingerprinting, and proof of qualifications, CPR certification, and accident/injury log.

The results of these tests, while not projectable to the entire population of GDSs in Fiscal Years 2013 and 2014, provided sufficient, competent evidence to support our findings and conclusions about DOHMH's controls over the permitting of GDCs.

APPENDIX

Types of Child Care Entities in New York City*

Type of Facility	Primary Oversight Agency	Specifications
Center-Based (Group) Child Care	<ul style="list-style-type: none"> NYC DOHMH 	<ul style="list-style-type: none"> Regulated by NYC Health Code Article 47 Is not located in a home (center-based) For children from birth to six (6) years old Three (3) or more children allowed Must have an educational director Teachers must have a degree in early childhood education or related studies, or the required minimum child care training.
School-Based Child Care	<ul style="list-style-type: none"> NYC DOHMH 	<ul style="list-style-type: none"> Regulated by NYC Health Code Article 43 Located in or associated with an established school. For children ages 3 through 5 Six (6) or more children allowed Note: This applies to pre-kindergarten and kindergarten programs of instruction provided for children ages three through five that are located within a school, or that are part of a school, and shall be in addition to requirements of other provisions of this Code applicable to schools. For the purposes of this Article, being "part of a school" shall mean that there is identical ownership, operation, management and control of kindergarten and pre-kindergarten classes for children ages three through five and all other classes provided by the school.
Family Day Care	<ul style="list-style-type: none"> NYS OCFS <p><i>**DOHMH acting as an agent for the NYS OCFS</i></p>	<ul style="list-style-type: none"> Regulated by NYCRR Title 18, part 417 Located in the home (home-based) For children ages six (6) weeks to 12 years old Three (3) to eight (8) children allowed Must have at least two (2) years' experience caring for children under 6 years old, OR one (1) year experience plus six (6) hours of training in early childhood development.
Group-Family Day Care	<ul style="list-style-type: none"> NYS OCFS <p><i>**DOHMH acting as an agent for the NYS OCFS</i></p>	<ul style="list-style-type: none"> Regulated by NYCRR Title 18, part 416 Located in the home (home-based) For children ages six (6) weeks to 12 years old Seven (7) to sixteen (16) children allowed Must have at least two (2) years' experience caring for children under 6 years old, OR one (1) year experience plus six (6) hours of training in early childhood development. Must have an assistant present with the same qualifications stated above.
School-Age Child Care (After-School)	<ul style="list-style-type: none"> NYS OCFS <p><i>**DOHMH acting as an agent for the NYS OCFS</i></p>	<ul style="list-style-type: none"> Regulated by NYCRR Title 18, part 414 Located in a school or commercial facility (center-based) For children from Kindergarten through 12 years old Seven (7) or more children allowed Must have a director and staff with at least a high school diploma and two (2) years experience working with children under 13 years old.

* Source: <http://www1.nyc.gov/site/doh/business/permits-and-licenses/childcare-types-of-childcare>.

** DOHMH BCC also licenses, oversees and inspects the State-regulated child care providers in accordance with its contract with the NYS Office of Children and Family Services.



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June 20, 2016

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Marjorie Landa

Deputy Comptroller for Audit

Office of the New York City Comptroller

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Re: Audit Report on the NYC Department of Health and Mental Hygiene's
Permitting of Child Care Centers, Audit Number MJ15-054A

Dear Deputy Comptroller Landa:

The NYC Department of Health and Mental Hygiene (DOHMH) reviewed the draft report on DOHMH's permitting of child care centers that was issued on June 7, 2016. The objective of the audit was to determine whether DOHMH maintained adequate controls to ensure that center-based Group Day Care Centers (GDCs) that are granted permits to operate in the City have fulfilled applicable regulatory requirements. The scope of the audit included GDCs 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

Daniel Kass, MSPH, Deputy Commissioner, Environmental Health, DOHMH

Frank Cresciullo Assistant Commissioner, Bureau of Child Care, DOHMH

Sara Packman, Assistant Commissioner, Audit Services, DOHMH

George Davis, Director, Mayor's Office of Operations

Attachments:

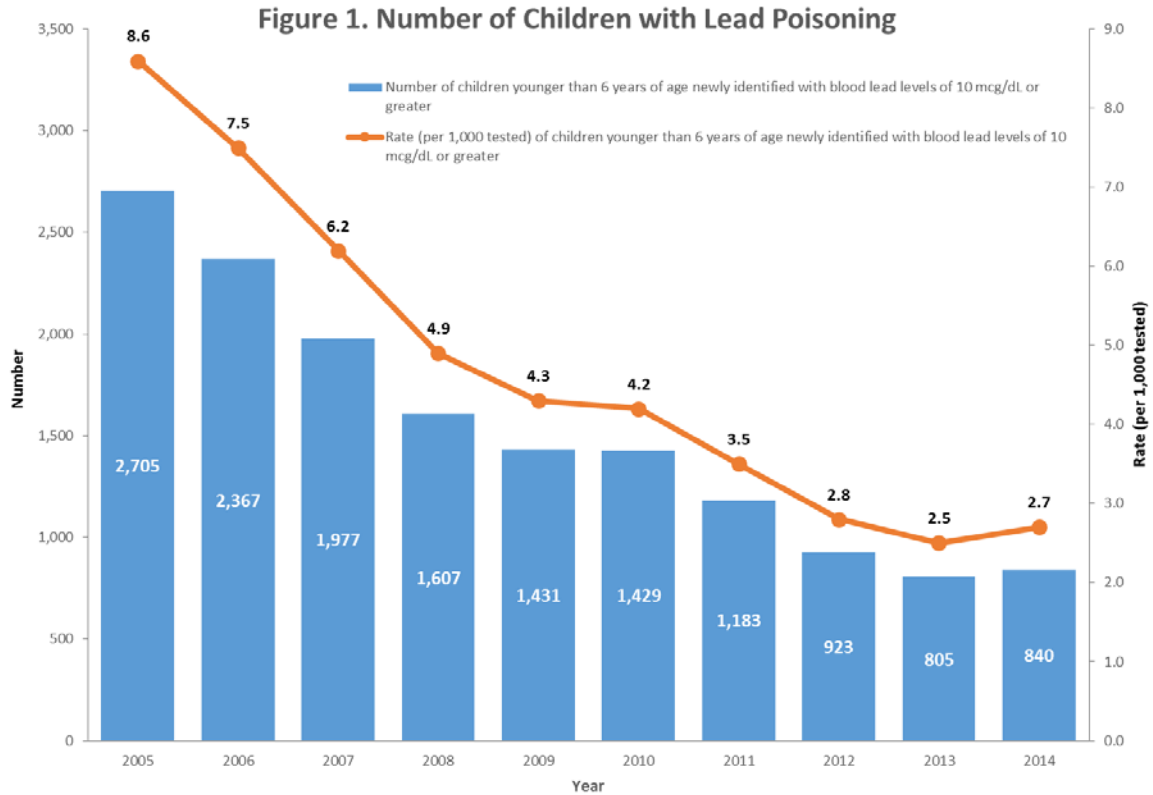
RESPONSE TO THE NEW YORK CITY COMPTROLLER'S AUDIT ON
THE DEPARTMENT OF HEALTH AND MENTAL HYGIENE'S PERMITTING OF CHILD CARE
CENTERS

AUDIT NUMBER MJ15-054A

The Department of Health and Mental Hygiene (DOHMH or Department) reviewed the draft report on the DOHMH's permitting of child care centers. The stated objective of the audit was to determine whether DOHMH maintained adequate controls to ensure that center-based Group Day Care Centers (GDCs) that are granted permits to operate in the City have fulfilled applicable regulatory requirements. The scope of the audit included GDCs that are subject to Article 47 of the NYC Health Code. The audit covered initial and renewal permits issued to GDCs between August 2012 and August 2014.

The audit concludes that DOHMH generally maintained adequate controls to ensure that GDCs submitted all documents as required by law to DOHMH before they are granted permits to operate. The audit report also cites three issues that, in the auditors' opinion, raise health and safety concerns. The three reported issues are (i) DOHMH did not ensure that all the GDCs tested the water at their facilities for lead as required by the Health Code, (ii) the Bureau of Child Care lacked sufficient supervisory oversight of its field inspection staff and (iii) the Bureau of Child Care lacked a comprehensive set of policies and procedure covering all aspects of its oversight and monitoring of GDC providers.

We are pleased that the auditors found that DOHMH generally has adequate controls to ensure that GDCs meet all applicable regulatory requirements before they are granted permits to operate. However, while recognizing the weakness of lack of consistent enforcement of water lead protocol and oversight, we strongly disagree with the auditors' opinion that these operational issues raise health and safety concerns. NYC's drinking water is safe, clean and nationally recognized for its quality. No child care center has ever been linked with a case of lead poisoning. The most common cause of lead poisoning is related to paint, not water. Per DOHMH's annual report to the New York City Council on the progress toward reducing childhood lead poisoning, during 2012 through 2014, the period under audit, an average per year of 856 children under 6 years of age were identified with elevated blood lead levels. DOHMH's inspection and investigation of the children's homes and assessment of potential environmental sources identified that not one case was attributed to lead in water. Rather, lead paint and resultant dust was the primary source of elevated levels of lead in blood. DOHMH has made great progress in reducing childhood lead poisoning in the City and the number of children with elevated lead levels has dramatically declined, 69 percent reduction since 2005 and 95 percent reduction in the past 15 years. The graph below depicts the reduction in the number of children under 6 years of age with lead poisoning and the rate of new cases of childhood lead poisoning per 1,000 children tested for lead.



Source: New York City Department of Health and Mental Hygiene Childhood Blood Lead Registry, 2005-2014.

NYC’s drinking water is safe, clean and nationally recognized for its quality. According to NYC’s Department of Environmental Protection (DEP), the City water is virtually lead-free when it is delivered from the City’s reservoir systems. DEP tests and monitors the quality of water more extensively than is required by the U.S. Environmental Protection Agency (EPA) and NYS Department of Health to ensure that the City’s drinking water is of the highest quality, meeting or exceeding all health-related federal and State standards. DOHMH is committed to ensuring that nothing alters that high quality.

To build on existing efforts to make the system more transparent for parents and safer for children in child care centers DOHMH has proposed that the NYC Board of Health amend Article 47 of the Health Code. The proposed amendment requires child care permittees to test water for lead every five years and to require that test results be sent to DOHMH within 30 days of permitting for all new child care applicants. Elevated test results would have to be accompanied by a plan for remediation and until remediation is completed alternate sources of potable water provided.

DOHMH has also reviewed all 70 child care sites identified by the auditors as missing the results of water lead tests. DOHMH’s review and actions are summarized in the below table.

DOHMH's Activity	Number of GDCs
Located lead in water test report on file	22
Retested lead in water since original result was not provided	22
Requested and received lead test results from GDC	17
Confirmed GDCs went "out of business"	9
Total GDCs	70

Further, since the completion of the audit, DOHMH conducted a thorough review of its entire database and obtained GDCs' lead test results. Those that could not provide lead in water test results were retested. As of the date of this response, 96 percent of all child care centers have confirmed compliance with the lead water testing requirement.

The following is DOHMH's response to the audit issues and eight recommendations.

Issue 1: DOHMH did not consistently enforce or require the submission of lead water test reports

DOHMH acknowledges that the staff did not consistently follow the protocol related to obtaining documentation of lead water test results. However, while the Health Code does not stipulate the need of a lead in water test for permitting a child care facility, the requirement was included as an additional safeguard in the permitting process and entered into the system database to provide inspectors with a way to assess child care centers' compliance. By creating a business rule in the database system that requires existence of a water lead test report to issue a permit, the requisite delayed the issuance of permits for programs that were otherwise in good standing. Thus, a "work around" was created so as to make the permitting process for programs in good standing as efficient as possible.

DOHMH strongly disagrees with the auditors' statement that the Department instructed staff to enter "a lead report had been received". The instruction given to staff was to enter "a negative lead event pending the receipt of the actual report", thus, giving GDCs 60 days to submit lead test results and not delaying the permitting process for programs that were in good standing and applied for permit renewal. The lead test indication was not entered to circumvent the requirement. The Health Code allows GDCs to operate with a permit even if they have not submitted a lead water test.

DOHMH strongly disagrees with the auditors' assessment that DOHMH's "work around" created a significant risk that BCC will "never ensure that the water at those GDC is tested at all." In 2012, DOHMH contacted all GDCs and informed them of the new requirement, provided guidance on how to comply, and gave program 60 days to comply. DOHMH also worked to identify programs with lead service lines and made referrals for assessment where necessary.

Further, DOHMH strongly disagrees with the auditors' assessment that the "workaround" increased the risk that children may have been exposed to "unacceptable lead levels and that such exposure will not be identified in a timely manner". Under the Health Code, when a child has an elevated lead level in blood, DOHMH is required to inspect a child's home and assess potential environmental sources of lead exposure such as child care centers, where applicable. DOHMH's

investigation of reported cases identified that no child care center has ever been found to be the source of elevated lead levels in a child.

When a child care center tests positive for lead in its water, the Department requires the program to submit a plan of corrective action that requires immediate action to reduce the lead content to acceptable levels.

The auditors also cite DOHMH for not setting a timeframe for how long a water test result is considered valid before requiring that the GDC obtain a new one. The NYC Health code requires a one-time test. As already noted, the Department has proposed to the Board of Health a five year retesting requirement for lead in water.

DOHMH Response to the Auditors' Recommendations

1. *DOHMH BCC should ensure that no GDC is issued a permit, either new or renewal, without submitting a report evidencing the completion of a lead water test in compliance with Article 47 of the City Health Code.*

DOHMH's response: DOHMH disagrees with the recommendation. The Department reiterates that the Health Code does not require GDC's to submit lead water test results as a prerequisite to being issued a new permit or renewal of a permit. Out of an abundance of caution, DOHMH has submitted a proposal to NYC Board of Health to require the submission of lead water test to the Department, require retesting every five years and, new child care centers will be required to produce a lead water test within 30 days of permit issuance. If test results show elevated lead levels, the center would have to implement a corrective action plan subject to DOHMH's approval within five days. DOHMH is adding a "date" field for lead water report that the system will use to automatically notify GDCs that lead in water test report is due and to submit it to DOHMH. BCC's staff will receive a system automated report of GDCs that have not submitted their reports and will track and monitor GDCs' compliance with the 30 day requirement to submit a lead in water test report.

2. *DOHMH BCC should follow up on the 70 GDC cited in this report for not having conducted a lead water test and ensure that a test is performed as soon as is feasibly possible.*

DOHMH's response: DOHMH concurs with this recommendation and has implemented it. DOHMH reviewed documents it maintained for the 70 child care cites and requested them to submit their lead water test results. For those that did not provide documentation indicating that the test has been performed, DOHMH tested their water lead levels to bring them into compliance. DOHMH has water lead test results for 61 of the 70 GDCs, the remaining nine GDCs are out of business and required no further action.

3. *DOHMH BCC should review its records and determine if additional GDCs in addition to the 70 identified through our sample have an entry in CCATS that reflects that a negative*

lead test was received where it had not been and ensure that a test is performed as soon as is feasibly possible.

DOHMH's response: DOHMH concurs with this recommendation and has contacted every program in the Child Care system for which documentation was not up to date and obtained documentation. If a child care center was unable to provide the required documentation the Department retested the water at that GDC. The Department's child care tracking system has been updated accordingly.

4. *DOHMH BCC should consider modifying the water lead test requirements to clarify when it is required. In addition, it should consider requiring periodic testing (i.e., every five of ten years) of GDCs' faucets and fountains.*

DOHMH's response: DOHMH concurs with this recommendation and as stated in the response above, proposed to the Board of Health that all GDC sites be tested for lead in water every five years and all new programs provide proof of testing within 30 days of permit issuance. The Board will vote on approval of this provision in September 2016.

Issue # 2: Weakness in supervisory oversight of field inspections

The auditors found weakness in the Bureau of Child Care's supervisory oversight. The auditors cite that supervisors are not required to (i) regularly conduct supervisory inspections or (ii) contact GDCs for feedback regarding field inspection staff and (iii) that there were inconsistencies in what the borough managers said about supervisory monitoring activities. The auditors also raise concerns about the effectiveness of the Bureau's overall supervisory monitoring considering that BCC does not "rotate PHS [Public Health Sanitarian] and ECEC [Early Childhood Education Consultants] zip code/area assignment or rotate the field staff among borough offices..."

DOHMH recognizes the importance of supervisory oversight related to field operations and control measures to deter and detect fraud and inappropriate behavior. To this end, the Bureau of Child Care has developed a set of inspectional criteria that provides a profile of the average staff's field activities and identifies outliers specific to individual staff and borough offices that require further scrutiny. Inspectional criteria are also used in evaluation reports that measure individual staff performance. Baseline measures/indicators used to identify potential problem areas include:

- Time on site per inspection
- Number of inspections conducted
- Citation rates associated with type of inspection
- Attempt rates (incomplete inspections due to no access)

The analysis of indicators allows the bureau leadership to compare individual performance to the performance of all field staff and to take appropriate action with staff who are inconsistent with average performance for the indicator. This is driven by business intelligence tools without having to rotate field staff among boroughs.

In addition, the Bureau has standardized its inspection program to improve the overall quality of the inspection process and findings and to remove variations resulting from differing levels of staff's experience.

DOHMH disagrees with the auditors' position that supervisors' "shadowing" of field inspectors is an effective method of oversight as it does not result in quality assurance or in identifying deficiency in staff activity. DOHMH provided shadowing of child care bureau staff at great personnel expense for a number of years resulting in the discovery of few if any issues. The activity was not effective at improving the quality of child care center inspections or the accountability of our staff. Aligned with NYC's Center for Innovation through Data Intelligence, DOHMH uses business intelligence tools to review inspectors' activities, evaluate productivity and identify outliers.

DOHMH agrees that written protocols and re-training of staff are warranted. The Department is developing new training protocols for staff and will formalize its training delivery systems by the 4th quarter of 2016.

As was told to the auditors, during the audit period the bureau did not have a sufficient number of supervisory staff, but has since hired additional staff to further strengthen supervisory oversight.

DOHMH's Performance Improvement Initiative (PII) is an important element of supervisory oversight that was established in March 2015 and replaced the Systematic Risk Assessment Unit. The PII's goal is to improve the child care centers' performance by identifying those centers that:

- Historically have a high citation rate
- Received a disproportionate number of complaint allegations to the number of years in operation
- Are recalcitrant and continue to not comply with the Health Code.
- Continue to have uncorrected and repeated violations.

PII's in-depth analysis of the GDCs' inspectional history further enhances supervisory oversight and the Department quality improvement efforts. The PII unit has been fully operational since March of 2015.

DOHMH Response to the Auditors' Recommendations

5. *DOHMH BCC should ensure that standard control activities and procedures are established and consistently applied by staff at all levels at the borough offices, particularly concerning supervisory oversight.*

DOHMH's response: DOHMH has a number of protocols supported by its use of technology that results in consistent operating procedures and standardization of its inspectional platform. However, improvement is an ongoing effort which evolves over time. DOHMH agrees with this recommendation, has reviewed all its relevant protocols and will issue new protocols and implement new training for staff going forward.

In addition, the Bureau is developing an automated weekly report of newly registered GDCs or those that are in permit renewal process that have not submitted their lead water test results within 30 days of being permitted. Borough managers will review the weekly automated report with follow up with the GDCs.

6. *DOHMH BCC management must ensure that sufficient control activities are in place to mitigate its risk exposure to fraudulent and/or corrupt activities. Such control activities should also provide management with reasonable level of assurance that fraud and/or corruption are prevented and/or detected, in the normal course of business.*

DOHMH's response: DOHMH disagrees with this recommendation. The Bureau of Child Care has adequate controls to prevent and identify potential fraudulent activity within the Bureau of Child Care. In addition to the performance reports mentioned above, the Bureau works closely with the City's Department of Investigation if it suspects staff may be engaging in such activity.

Issue #3: BCC protocols do not address all aspects of the permit process and oversight of GDCs

DOHMH provided the protocols requested by the auditors, however, DOHMH recognizes that the protocols are not an operational manual. To this end, the Bureau of Child Care has reviewed and strengthened its protocols and automated system reporting and is in the process of developing an operational manual which will also include the auditors' recommendations.

DOHMH Response to the Auditors' Recommendations

7. *DOHMH BCC should develop a comprehensive policies and procedures manual that addresses all internal processes and functions carried out by BCC with regard to monitoring compliance of GDCs and distribute the manual to appropriate personnel.*

DOHMH's response: We agree with this recommendation and have reviewed all protocols and procedures and are implementing an automated weekly exception report described in the response to recommendation #6 above. We are also implementing a follow-up procedure for all borough office managers to make sure that GDCs are compliant with the lead in water testing as required by the Health Code.

8. *The manual should be updated periodically to address newly implemented or revised procedures.*

DOHMH's response: We agree with this recommendation and will include a process and owner to update the manual periodically and when there are Health Code changes.