



Department of Health

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Executive Deputy Commissioner

May 20th, 2021

Mr. Brian Reilly
Audit Director
Division of State Government Accountability
NYS Office of the State Comptroller
110 State Street, 11th Floor
Albany New York, 12236

Dear Mr. Reilly:

Pursuant to the provisions of Section 170 of New York State Executive Law, I hereby transmit to you a copy of the New York State Department of Health's comments related to the Office of the State Comptroller's final audit report 2019-S-15 entitled, "Patient Safety Center Activities and Handling of Revenues."

Please feel free to contact Michelle Newman, Assistant Commissioner, Office of Governmental and External Affairs at (518) 473-1124 with any questions.

Sincerely,

Theresa Egan
Deputy Commissioner for Administration

Enclosure

cc: Ms. Newman

**Department of Health
Comments on the
Office of the State Comptroller's
Final Audit Report 2019-S-15 entitled,
Patient Safety Center Activities and Handling of Revenues**

The following are the Department of Health's (Department) comments in response to the Office of the State Comptroller's (OSC) Final Audit Report 2019-S-15 entitled, "Patient Safety Center Activities and Handling of Revenues."

Recommendation #1

Develop procedures to ensure Revenue is informed of all Order codes that are applicable to the PSC account, both currently and as new codes develop.

Response #1

In December 2019, the Division of Legal Affairs (Legal) and Revenue Unit started to use a cover letter for Legal to communicate how STIP Order fines are to be allocated for PHL § 12. This cover letter includes all order codes and the amount that is to be allocated to each order code along with amounts for PHL § 12.

OSC Comment #1

We are pleased the Department is taking action to develop procedures in response to our audit.

Recommendation #2

Take steps to enhance accountability over PSC account activities. At a minimum, this should include:

- Finalizing and processing outstanding reclassifications to the PSC account for the eight newly identified Order codes.
- Implementing a process to improve the tracking of expected revenues and improve the process to disburse revenues to the appropriate account.
- Developing procedures to track payments and enforce Orders when respondents fail to pay according to an Order's terms.
- Improving the communication between Legal and Revenue regarding Order payment plan terms and improving enforcement efforts when payment plan terms have been violated.

Response #2

- Finalizing and processing outstanding reclassifications to the PSC account for the eight newly identified Order codes.

The Department has put together a reclassification for the order codes that should have been included from April 1, 2008 for allocation to PHL § 12. On page 14 of the Audit Findings Report OSC states that the Department did submit a reclassification to OSC. OSC returned the document to the Department calling it "incomplete and inconsistent." The Department feels this document clearly states the amounts from each order that should have been allocated to PHL § 12. The Department asked OSC for clarification on what they found to be incomplete and inconsistent but have not heard back from OSC regarding this matter.

- Implementing a process to improve the tracking of expected revenues and improve the process to disburse revenues to the appropriate account.

The Department can track expected revenues for fines of all order types through the Statewide Financial System (SFS). Each individual order is entered into the system under the category according to the cover letter submitted by the Division of Legal Affairs. If an order is related to a PHL § 12 fine, it is coded into SFS as PSC or QOCI. When the payment is received it is immediately allocated to the proper fund. If an individual STIP order designates 2 different types of fines, the account is set up in SFS to allocate the proper amounts to each fund associated with the STIP order.

- Developing procedures to track payments and enforce Orders when respondents fail to pay according to an Order's terms.

The Department is currently running an Accounts Receivable report monthly in SFS. This report details which orders were not paid and how many days past due the payment is. The Department then sends out a collection letter to the delinquent party named in the STIP order. If the order is set up in installment payments the collection letter states that the payment terms were not met on the order and the total amount of the fine is now due. If no payment is made after that, the Department sends out a second collection letter to the party demanding payment in full. If the Department still receives no payment, the Department sends the amount still owed by the party to the Tax and Finance Department for collection through the Statewide Offset Program (SWOP). The amount due will remain on the SFS system until full payment is collected.

- Improving the communication between Legal and Revenue regarding Order payment plan terms and improving enforcement efforts when payment plan terms have been violated.

The Division of Legal Affairs now sends a cover letter detailing the fine types on the STIP order for the Revenue Unit. If the order has installment payments it is clearly designated in the STIP order. Also now stated in the STIP orders are: 1) does the entire fine become due if an installment payment is missed? 2) does the suspended amount (if any) become due when an installment payment is missed? If the Revenue Unit has any questions regarding a STIP order, Revenue will ask Legal for clarification.

The Revenue unit also will send a copy of the Accounts Receivables analysis to the Legal department monthly for their review. This report will notify Legal which STIP orders are past due and how many days past due the party is.

OSC Comment #1

We have no record of the Department requesting clarification on the inconsistencies and incomplete information found. The intent of our review was to determine if reclassifications were being undertaken. As stated in the report, during our review, we noted flaws in the Department's proposed reclassification and informed them of these issues.

Department's Response to OSC Comment #2:

The Department shared with OSC a sample reclassification for their input before proceeding with the identified adjustments. To date, the Department does not have any record of OSC's feedback on the nature of the flaws mentioned above and, despite the Department's preliminary response to the audit finding stating the same, OSC still did not forward what is said to have previously been communicated to the Department. As such, the Department will process the remaining reclassification as originally planned, which should satisfy OSC's stated review scope on this topic.

State Comptroller's Comment – As noted previously, the intent of our review was to determine if reclassifications were being undertaken. We provided Department officials with our analysis of prior reclassifications, and they agreed with the analysis. We subsequently began a review of the Department's future reclassifications and identified flaws. In February 2020, we informed Department officials of the flaws and stated that, because we were unable to rely on the Department's information, we would not conduct any further analysis. Furthermore, we met with Department officials in March 2020 to discuss the Department's preliminary response to the audit findings. We reiterated that we had provided Department officials with the analysis of the prior reclassifications and of the flaws we found within the future reclassifications, and that we would not be conducting any further analysis.

Recommendation #3

Develop formalized policies and procedures documenting the basis for approving Order terms including fine amounts, payment plans, and referrals to licensing authorities.

Response #3

- Several months ago, Division of Legal Affairs developed and implemented comprehensive written policies relating to all aspects of its enforcement responsibilities, including approval process, terms of settlement, and referrals to licensing authority.
- The written policies include a settlement matrix that sets forth the methodology for determining appropriate settlement amount and requires documentation to explain the basis for the settlement amount, and also requires managerial review and approval.
- The policy discourages the use of payment plans and limits the number of installments and length of payment period.
- The policy requires that appropriate referrals be made to licensing authorities. In addition, the internal distribution forms that are used to identify individuals who should receive a copy of Orders have been updated to include representatives of the licensing authorities.

OSC Comment #3

Our audit found the Department had not been consistently tracking expected revenues and developing procedures to track payments and enforce Orders. Thus, we are pleased the Department is implementing processes to improve these activities. Further, as a result of our audit, the Department has now improved communication between Legal and Revenue.

Recommendation #4

Institute a process whereby the Nurse Aide Registry is formally notified about Orders that contain qualified findings of sufficient and credible evidence of patient rights violations and enhance the tracking and accountability efforts for those individuals who have a history of repeat patient rights incidents.

Response #4

- Division of Legal Affairs had, prior to the audit, implemented a process whereby all Stipulations and Orders, including those based on findings of patient right's violations were sent to the Nurse Aid Registry.
- Division of Legal Affairs, as part of its new written formal settlement policies, implemented a requirement that Stipulations and Order include a provision that requires that future findings against the same Aide will result in automatic referral to the State Nurse's Aide Registry, and that the Aide is ineligible to challenge said finding in a hearing or lawsuit.
- Division of Legal Affairs is in process of identifying ways to modify its existing database to add unique qualifiers to better identify and track subjects of enforcement to ensure that referrals against prior offenders can be readily identified and handled appropriately.

OSC Comment #4

We are pleased the Department is taking action to develop policies based on the audit's findings.