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OFFICE OF THE STATE COMPTROLLER

January 3, 2024

James V. McDonald, M.D., M.P.H.  
Commissioner  
Department of Health  
Corning Tower  
Empire State Plaza  
Albany, NY 12237

Re: Patient Safety Center Activities and  
Handling of Revenues  
Report 2023-F-16

Dear Dr. McDonald:

Pursuant to the State Comptroller's authority as set forth in Article V, Section 1 of the State Constitution and Article II, Section 8 of the State Finance Law, we have followed up on the actions taken by officials of the Department of Health (Department) to implement the recommendations contained in our audit report, *Patient Safety Center Activities and Handling of Revenues* ([2019-S-15](#)).

**Background, Scope, and Objective**

The Patient Health Information and Quality Improvement Act of 2000 (Act), enacted October 6, 2000 and known as Lisa's Law, was named after Lisa Smart, a 30-year-old woman who died in 1997 as a result of a medical error introduced during surgery by a physician with a history of negligence unknown to the patient. Pursuant to the Act's amendments to the Public Health Law (PHL), a Patient Safety Center (PSC) was established within the Department for the purpose of maximizing patient safety, reducing medical errors, and improving overall quality of health care. The Department's Office of Quality and Patient Safety does this through systems of data reporting, collection, analysis, and dissemination as well as improving public access to health care information. PHL charged the PSC with developing a system for the voluntary reporting of medical errors and identified several other areas of PSC quality improvement, including safety goals, best practices, and reporting of adverse events in office-based surgery.

The Department is responsible for monitoring compliance with applicable federal and State laws and regulations and, through its Bureau of Administrative Hearings (Legal), for enforcing violations. Regulatory enforcement occurs through a formal resolution process, which may culminate in stipulated settlement agreements (Orders) with violators, including penalty amounts. Since 2018, there have been 965 nursing home fines totaling about \$5.4 million. See the following table for a breakdown of these fines by year.

## Breakdown of Fines, 2018–2023

Year	Number of Fines	Dollar Value of Fines
2018	55	\$360,020
2019	112	449,980
2020	125	966,000
2021	318	2,259,270
2022	274	967,020
2023*	81	389,950
<b>Totals</b>	<b>965</b>	<b>\$5,392,240</b>

\*Through May 4, 2023

Pursuant to PHL, a portion of the penalties imposed against facilities or individuals found to be in violation of certain sections of law are allocated to a special revenue fund created specifically to support PSC expenditures. The Department's Bureau of Accounts Management (Revenue) is responsible for overseeing the PSC special revenue account, including the collection of penalties and the allocation of funds to the account. As of July 2023, the PSC account balance totaled about \$6.3 million.

The objective of our initial audit, issued March 10, 2021 and covering the period April 1, 2015 through May 16, 2019, was to determine whether the Department was meeting the goals and objectives of the PSC and collecting and utilizing designated revenue for that purpose. We found that the Department had generally met the primary objectives of the PSC regarding data reporting, collection, and analysis and the dissemination of health care information, including public access to such information. However, we found a lack of formal guidance governing certain enforcement and record-keeping practices. Additionally, we found that the Department needed to improve its oversight of PSC revenues and related activities to ensure that the PSC account is receiving all revenue due. Specifically, we found:

- A lack of formalized policies and procedures and poor internal communications contributed to PSC revenue either not being collected or not being properly allocated to the PSC account for PSC-related activities.
- In some cases, Legal allowed payment plans for penalties but did not monitor respondents' compliance with payment terms. There was a risk that respondents who were not adhering to these legally binding payment plans were not being held accountable for the full extent of the penalty imposed for their misconduct.

The objective of our follow-up was to assess the extent of implementation, as of June 2023, of the four recommendations included in our initial audit report.

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

The Department has made significant progress in addressing the issues we identified in the initial audit report. The Department implemented all four of the initial report's audit recommendations.

### **Follow-Up Observations**

#### **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.*

Status – Implemented

Agency Action – In December 2019, the Department implemented new procedures to ensure Revenue is informed of all Order codes. Legal developed a cover letter that lists all current Order codes applicable to the PSC account and sends those cover letters to Revenue after it finalizes each Order. This cover letter includes nine new violation fine categories and, according to Department officials, will be updated as new codes are developed.

### **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 communication between Legal and Revenue regarding Order payment plan terms and improving enforcement efforts when payment plan terms have been violated.*

Status – Implemented

Agency Action – Since our initial audit, the Department has taken steps to enhance accountability over PSC account activities. Prior to our follow-up engagement, Revenue had reclassified monies from the incorrect account to the PSC account for seven of the eight newly identified Order codes. The remaining Order code was reclassified in June 2023, after the audit team brought to the Department's attention that it had not been reclassified.

The Department has also developed a new process to better track expected revenues and to improve the process of disbursing revenues to the appropriate accounts. When Legal finalizes an order, it now uses the newly developed cover letter to communicate with Revenue how Order fines are to be dispersed to various accounts, including to the PSC special revenue account. Revenue staff then review Orders for completeness, and if they receive an Order without a memo or the memo is unclear, they should contact Legal for clarification before processing the Order. Once Revenue staff receive all the necessary information, Revenue should promptly set up the Statewide Financial System (SFS) for billing and invoicing using the information on the cover letter. When the payment is received, it is then automatically allocated to the proper accounts in SFS.

The Department has also implemented new procedures to track payments and hold respondents accountable for making payments in accordance with Order terms. Under the new procedures, Revenue should obtain an accounts receivable report from SFS each month to identify respondents who have missed payments and then send collection letters to all delinquent parties. When appropriate, Revenue should also refer parties with missed payments over 99 days past due to the Department of Taxation and Finance

for collection. The amount due should remain in SFS until payment is collected in full. In addition, Revenue should now send monthly tax reports for Legal to review and determine the actions to be taken against delinquent parties.

In addition, the Department updated its policy manual in September 2022 to improve communications between Legal and Revenue. The updated policies now specify that Legal and Revenue communicate at key points. In addition, Legal should now include a penalty breakdown memo and installment payment memo (if applicable) along with Orders sent to Revenue. If a respondent defaults on a payment agreement or violates a sanction, Legal should notify Revenue of any fines or sanctions.

During our follow-up, we reviewed a random sample of 12 recent Orders to determine if the new processes were being followed and whether funds were allocated to the proper account. While we found that all 12 Orders had cover letters indicating how the funds should be allocated, four letters were inaccurate or incomplete. While this recommendation has been implemented, the Department should ensure the new process for tracking and disbursing revenues is working as planned. Additionally, we reviewed a random sample of 12 late payments to determine whether the Department took the appropriate actions to enforce payment plan violations. We determined the Department took the appropriate action in all 12 cases.

### **Recommendation 3**

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

Status – Implemented

Agency Action – Since our initial audit, Legal has developed comprehensive written manuals relating to all aspects of its enforcement responsibilities, including its approval process, developing terms of settlement, and referrals to licensing authorities. The written manuals include methodology for determining appropriate settlement amounts and require that Legal retain documentation to explain the basis for the settlement amount. The manuals also discourage the use of payment plans and limit the number of installments when payment plans are used. In addition, all Order terms must be reviewed and approved by the Director of Legal. Legal also requires referrals to licensing authorities, when appropriate, and has updated the internal distribution form to identify representatives of relevant licensing authorities who should receive a copy of an Order. The Department has demonstrated that the new manuals are being followed or are working as intended. In our review of the sample of 12 Orders, seven were repeat offenders and we found that they were properly handled through internal Department referral. The remaining five cases in the sample, which were not repeat offenders, were also properly handled. Furthermore, all 12 cases were directly related to violations of a health care business. Department officials stated that most respondents (other than retail businesses) are licensed by the Department and that they would not report to any other authorities for violations. Additionally, the Department provided examples of four nursing cases and demonstrated their referral to the appropriate licensing authority (State Education Department).

#### **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.*

Status – Implemented

Agency Action – After determining it was not feasible to modify its existing database, Legal decided to procure a new system to ensure that the Nurse Aide Registry was formally notified of patient rights violations, when appropriate, and to enhance tracking and accountability for individuals with a history of repeat patient rights incidents.

While it was still in the process of procuring the new system at the time of our follow-up, Legal developed a new process to identify past offenders when Orders are entered into the current database, and its manuals include written instructions on how to use this information. The new process requires administrative staff to manually search the Bureau of Administrative Hearings database for previous violations associated with each individual and add hard-copy information on those past violations to the new case file. The Department demonstrated that administrative staff were being made aware of and following the process for each case.

The Department also provided database search results that illustrated how repeat offenders are identified. When a repeat offender is identified, the attorney assigned to work on the case manually retrieves the case history and determines a plan of action. The internal distribution form has also been updated to include the Nurse Aide Registry.

Major contributors to this report were Raymond Barnes, Robert Horn, and Nancy Hobbs.

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

Very truly yours,

Andrea LaBarge, CFE  
Audit Manager

cc: Melissa Fiore, Department of Health