



# Department of Health

KATHY HOCHUL

Governor

JAMES V. McDONALD, MD, MPH

Commissioner

JOHANNE E. MORNE, MS

Executive Deputy Commissioner

January 9, 2026

Nadine Morrell  
Audit Director  
Division of State Government Accountability  
NYS Office of the State Comptroller  
110 State Street, 11<sup>th</sup> Floor  
Albany, New York 12236

Dear Nadine Morrell:

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 2023-S-34 entitled, "Oversight of Adult Care Facilities."

Please feel free to contact the Office of Governmental and External Affairs at (518) 473-1124 with any questions.

Sincerely,

A handwritten signature in black ink that reads "Johanne E. Morne". The signature is written in a cursive, flowing style.

Johanne E. Morne, M.S.  
Executive Deputy Commissioner

Enclosures

cc:     Melissa Fiore  
         DOH Audit

**Department of Health  
Comments on the  
Office of the State Comptroller's  
Final Audit Report 2023-S-34 entitled,  
“Oversight of Adult Care Facilities”**

The following are the Department of Health's (Department) comments in response to the Office of the State Comptroller's (OSC) Final Audit Report AUDIT 2023-S-34 entitled, "Oversight of Adult Care Facilities."

**General Comments:**

The following comments address specific statements made in the draft audit report.

Audit Scope, Objectivity, and Methodology, Page 22, 2<sup>nd</sup> Paragraph

*We used a non-statistical sampling approach to provide conclusions on our audit objectives and to test internal controls and compliance. We selected judgmental samples. However, because we used a non-statistical sampling approach for our tests, we cannot project the results to the respective populations.*

**Use of a Biased Sample**

A biased sample is unrepresentative of the entire universe of data, in this case, adult care facility surveys or complaints. The auditors selected a biased sample of complaints for review, in this case, complaints that were not closed timely, leading to inferences about failures but ignoring that the majority of complaints were closed timely. Because of the known bias, the auditors cannot reasonably extrapolate their findings across the universe of complaints to conclude that overall, the Department does not investigate complaints timely. Accordingly, the report is misleading and had a more representative sample been pursued, perhaps through randomization, the auditors might have reached different conclusions and made different recommendations.

**State Comptroller's Comment** – DOH has consistently tried to lessen our audit findings with the questioning of our audit sampling methods. As we have stated in our State Comptroller's Comments to other audits, consistent with auditing standards, we used judgmental (non-statistical) sampling to focus our audit resources where non-compliance with relevant laws, regulations, and program requirements was most likely. This targeted approach allowed us to obtain evidence most likely to impact the health and safety of residents. Our intent was not to extrapolate or project our findings to the entire population, as noted on page 22 of our audit report. Our goal was to identify the presence of issues, and our judgmental sampling method allowed us to confirm their existence and obtain evidence most likely to impact the well-being of New Yorkers in adult care facilities. The use of a judgmental sample was both appropriate and necessary to meet the audit's objectives in an efficient manner.

**Audit Recommendation Responses:**

**Recommendation #1**

Review current procedures, guidance, and training and implement changes to ensure full inspections are completed on time and in accordance with laws and regulations and that facilities correct all violations in a timely manner.

#### **Response #1**

The Department has reviewed surveillance procedures to ensure that timeliness objectives are procedurally achievable. Accordingly, a Microsoft List tracking platform has been integrated into daily workflow to track the status of time-based deliverables. Using Microsoft List functionality, teams are able to share resources and maintain a level of organization across regions that builds upon a foundation of consistency and timeliness, flexibility, and proactive quality control. The Department continues to strive toward verification that every violation is corrected timely and to that end, follow-up surveys are being performed on violations identified during recertification surveys. Such surveys are performed onsite or offsite, depending on the nature of the necessary correction, to verify correction status.

In addition, the Department continues to invest in education for the Adult Care Facility industry to proactively provide a foundational understanding of the surveillance and enforcement processes, as well as regulatory interpretation, that will translate into timely compliance.

#### **Recommendation #2**

Establish and implement formal procedures to ensure that complaints are fully investigated and properly documented, and ensure monitoring procedures are followed so complaint investigation results are communicated to facilities within the required 30-day time period.

#### **Response #2**

The Department has reviewed complaint investigation procedures to ensure that objectives are satisfied and that the Department's existing operational procedures reflected the appropriate time-bound expectations. To support surveyors' ability to track metrics, the Department integrated a Microsoft List tracker into its daily workflow, allowing surveyors to track due dates for each step of the investigation process to ensure that complaint investigation results are communicated to facilities within a 30-day period.

In addition, during the audit period, the Department formalized its quality assurance performance improvement team to review surveillance data to confirm compliance with established procedures including that complaint investigations are properly documented and that investigation results are communicated timely to the facilities.

#### **Recommendation #3**

Ensure DOH staff collect all required information from complainants who do not specifically request anonymity and establish and document time frames for issuing investigation result letters to complainants.

#### **Response #3**

The Department has leveraged use of accessible Microsoft software applications to improve the efficiency and thoroughness of the complaint investigation and letter-generation processes. Through Microsoft List, the team tracks the status of time-sensitive benchmarks such as letter

generation. Coupled with user education and re-education for purposes of consistency, and an ongoing quality assurance performance improvement review, the Department is ensuring that investigation result letters are generated timely and whenever a complainant does not request anonymity.

#### **Recommendation #4**

Take steps to improve the accuracy, completeness, and usefulness of data used to monitor adult care facility oversight activities.

#### **Response #4**

Under a decades-old agreement with the Centers for Medicare and Medicaid Services, the Department uses the legacy federal Automated Survey Process Environment (ASPEN) software system for Adult Care Facility surveillance data. The limitations of that federal system were openly communicated to the auditors throughout the audit phase, including the system's decreased performance, incompatibility and inflexibility. For example, the system produces limited reports in pdf format. To analyze the data included in such reports, a user must convert the system report into a data analysis format, typically Microsoft Excel, but the often imperfect conversion from pdf to Excel format limits the successful analysis of program data. In addition, [technical?] support for the ASPEN system is limited, requiring the program to integrate workarounds. Most recently, when the link between the ASPEN system and electronic plan of correction failed, the program was forced to communicate survey outcomes and plan of correction requirements via a paper-based system while the State developed software patches and workarounds to navigate the broken link.

Notably, the federal Centers for Medicare and Medicaid Services has begun to transition to a replacement for the ASPEN system, but it is currently unknown whether the State-only adult care facility surveillance program will be able to use the new federal platform under its existing agreement. While a swift transition to a State-purchased replacement platform is not possible due to financial constraints, the use of existing software and expertise has resulted in dynamic and creative solutions that have been deployed to improve tracking, scheduling, and completion rates without sacrifices to quality or resources. The Department will continue to build data reports that inform policymaking, service delivery, and performance, with a focus on evidence-based regulatory compliance and strategic enhancements to improve efficiency and consistency.

#### **Recommendation #5**

Direct resources to ensure that DOH has adequate staffing levels to meet its adult care facility oversight responsibilities.

#### **Response #5**

There are 61 surveyors across the Adult Care Facility survey program and 16 vacancies; and 36 administrative staff and 4 vacancies. Historically, regional offices performed all program-related functions, requiring surveyors to perform administrative tasks in addition to their core survey tasks. The addition of cross-trained multidisciplinary administrative staff includes individuals tasked with policy analysis, quality assurance review, and background data processing to ensure efficient workflow. Such individuals are cross-trained to perform offsite complaint investigations and onsite surveillance tasks, and integrate their observations into education and

quality assurance review that holistically impacts the entire program. For example, the addition of a multidisciplinary Central Office administrative team has optimized workflow by availing backup resources and streamlining processes, developing guidance and education, and providing other invaluable programmatic support that allows a resource balance. Additionally, the investment of administrative support in regional offices has allowed surveyors to focus on survey tasks, improving overall performance and outcomes. These resource investments, coupled with technology, have allowed the Department to build upon efficiencies that balance its staffing limitations.