

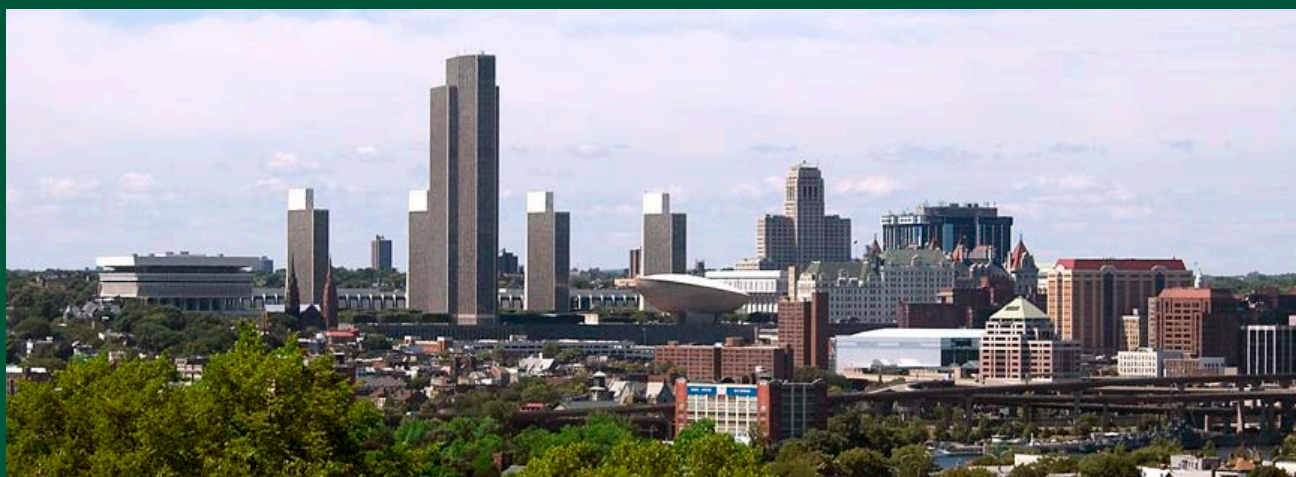


New York State Office of the State Comptroller
Thomas P. DiNapoli

Division of State Government Accountability

Oversight of Hotels and Motels Used for Homeless and Mixed- Use Temporary Residency

**Office of Temporary and
Disability Assistance
Department of Health**



Executive Summary

Purpose

To determine if the Office of Temporary and Disability Assistance (OTDA) and the Department of Health (DOH) are adequately ensuring that hotels and motels used for homeless and mixed-use temporary residency are properly permitted and adhering to public health standards as established by State regulations. Our audit scope covers the period from January 1, 2015 through December 16, 2016.

Background

According to a 2016 Department of Housing and Urban Development report, of the more than 86,000 homeless people in New York State, almost 13,000 (15 percent) are located in areas outside of New York City (NYC). Counties throughout the State utilize hotels and motels to house a substantial portion of their homeless populations. In fact, for many rural counties, hotels and motels are the only option as there are no formal shelters. Of the 57 counties outside of NYC, 24 (42 percent) do not have a dedicated shelter facility. OTDA has assigned responsibility for the inspection of hotels and motels housing the homeless to local Social Services Districts (SSDs) and to the NYC Department of Homeless Services, but remains responsible for monitoring their activities. Similarly, DOH oversees its own district offices and county health offices across the State, excluding NYC, which are responsible for permitting and inspecting temporary residences (hotels and motels).

Key Findings

- Of the 80 hotels and motels we visited, we found 24 (30 percent) to be in generally unsatisfactory condition. Specifically, we observed multiple significant problems, including mold, water damage, structural damage, exposed wiring, missing smoke detectors, missing linens, and excessive garbage in rooms. In certain instances, the problems noted might have rendered the facility in question uninhabitable. Twelve of the 24 hotels and motels were part of the same group of facilities where we also found similar significant problems during our prior review of homeless shelters conducted in early 2016.
- Since our 2016 report, OTDA has established a standard checklist that SSDs can use to guide required six-month inspections. However, practices are still not uniform across SSDs, and confusion still exists regarding the inspection process. Additionally, OTDA has not yet provided SSDs with sufficient guidance about corrective action plans to address unsatisfactory conditions.
- Material aspects of OTDA's inspection program are similar to activities performed by DOH. Improved coordination and cooperation between these agencies represents an opportunity for greater efficiency and effective use of government resources.

Key Recommendations

To OTDA:

- Provide additional guidance to local officials and establish uniform procedures that SSDs can use to ensure full understanding of the goals of the overall inspection checklist as well as the inspection function.
- Establish a process for analyzing the six-month inspection results submitted by the SSDs to

better monitor habitability standards of hotels and motels used for homeless housing.

To OTDA and DOH:

- Seek out opportunities to better communicate and collaborate at both the State and local levels where similar inspection efforts are occurring to strengthen the current inspection system and create a more efficient use of resources to inspect temporary residences to house the homeless.

Agency Comments

In responding to the draft report, both OTDA and DOH officials generally concurred with our recommendations and indicated actions that will be taken to address them. However, rather than addressing the facility deficiencies we identified through our site visits, OTDA officials detailed organizational, legal, and administrative functions that only indirectly affect long-standing problems, such exposed electrical wiring and mold. In addition, several of OTDA's comments are misleading and/or incorrect. Our rejoinders to certain OTDA comments are embedded within the text of OTDA's response.

Other Related Audits/Reports of Interest

[Homeless Shelters and Homelessness in New York State \(2016-D-3\)](#)

[Office of Temporary and Disability Assistance: Oversight of Homeless Shelters \(2015-S-23\)](#)

State of New York
Office of the State Comptroller

Division of State Government Accountability

June 27, 2017

Mr. Samuel D. Roberts
Commissioner
Office of Temporary and Disability Assistance
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Albany, NY 12243

Howard A. Zucker, M.D., J.D.
Commissioner
Department of Health
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Dear Commissioner Roberts and Dr. Zucker:

The Office of the State Comptroller is committed to helping State agencies, public authorities, and local government agencies manage government resources efficiently and effectively. By doing so, it provides accountability for tax dollars spent to support government operations. The Comptroller oversees the fiscal affairs of State agencies, public authorities, and local government agencies, as well as their compliance with relevant statutes and their observance of good business practices. This fiscal oversight is accomplished, in part, through our audits, which identify opportunities for improving operations. Audits can also identify strategies for reducing costs and strengthening controls that are intended to safeguard assets.

Following is a report of our audit of the Office of Temporary and Disability Assistance and the Department of Health entitled *Oversight of Hotels and Motels Used for Homeless and Mixed-Use Temporary Residency*. The audit was performed 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.

This audit's results and recommendations are resources for you to use in effectively managing your operations and in meeting the expectations of taxpayers. If you have any questions about this report, please feel free to contact us.

Respectfully submitted,

Office of the State Comptroller
Division of State Government Accountability

Table of Contents

| | |
|---|----|
| Background | 5 |
| Audit Findings and Recommendations | 7 |
| Hotel/Motel Habitability Conditions | 7 |
| Monitoring and Guidance | 13 |
| Inspection Similarities | 13 |
| Recommendations | 14 |
| Audit Scope, Objective, and Methodology | 15 |
| Authority | 16 |
| Reporting Requirements | 16 |
| Contributors to This Report | 17 |
| Agency Comments - Office of Temporary and Disability Services, With State Comptroller's Comments | 18 |
| Agency Comments - Department of Health | 25 |

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Background

According to a 2016 Department of Housing and Urban Development point-in-time count, of the 86,352 homeless people in New York State, 12,829 live in areas outside of New York City (NYC). Counties throughout the State utilize hotels and motels to house a substantial portion of their homeless populations. In fact, for many rural counties, hotels and motels are the only option as there are no formal shelters. Of the 57 counties outside of the NYC area, 24 (42 percent) do not have a designated shelter facility.

The Office of Temporary and Disability Assistance (OTDA) administers the State's most important programs for its low-income residents, including emergency shelter through its Division of Shelter Oversight and Compliance. OTDA has, by regulation, authorized the local Social Services Districts (SSDs) and the NYC Department of Homeless Services (for the five boroughs of NYC) to utilize hotels and motels to provide shelter to homeless people under certain circumstances. Although OTDA has assigned responsibility for the inspection of such housing to the SSDs and the NYC Department of Homeless Services, it remains responsible for monitoring the local governments' activities.

The Department of Health (DOH) oversees its own district offices and county health offices across the State, excluding NYC. The district and county offices are responsible for permitting and inspecting temporary residences (facilities that house individuals for less than 180 consecutive days), including hotels and motels, as they are considered temporary residences under the law. Further, for hotels and motels located in a city with a population of 125,000 or more (i.e., Buffalo, Rochester, Syracuse, and Yonkers), the inspection functions are performed by city officials; DOH is not responsible for oversight of these hotels and motels.

State regulations require SSDs to inspect hotels or motels housing the homeless every six months. Further, new regulations established following the State Comptroller's risk assessment of homeless shelters in 2016 require SSDs to submit their six-month inspection reports of hotels and motels to OTDA. SSDs' inspections focus on habitability standards such as building security, cleanliness of rooms and bathrooms, adequate number of beds per room, access to clean linens and towels, and compliance with local laws and codes. Alternatively, DOH's district offices and county health offices are responsible for inspecting temporary residences once within a permit cycle, which may extend for up to three years. DOH's inspections of temporary residences, while covering some of the same aspects as the SSD inspections, primarily focus on public health hazards related to facility structure, building code, potable water supply, electrical hazards, and fire safety.

Subsequent to the State Comptroller's audit of the *Oversight of Homeless Shelters* (Report 2015-S-23) and other attention to this issue, the Executive announced a new Homeless Housing Initiative that would give the State new oversight of the homeless shelter system. The homeless plan would be aided by statewide independent homeless shelter risk assessment efforts by the State Comptroller as well as the Comptrollers of New York City and the City of Buffalo. In addition, the Governor's Office and OTDA undertook an extensive inspection program and data collection program at that time.

During February and March 2016, the State Comptroller launched a large-scale assessment of the State's homeless shelter system, encompassing 200 emergency shelters and 187 hotels and motels located across 48 different counties, exclusive of NYC and the City of Buffalo (*Homeless Shelters and Homelessness in New York State*, Report 2016-D-3). Auditors found 26 hotels and motels to be in very poor condition, confirming the State Comptroller's observations from the prior audit. While many facilities were able to provide "adequate" living conditions (i.e., basic level of habitability), risks to health, personal safety, and fire safety were pervasive. Despite our communities' best efforts, there continue to be instances of deficient – and sometimes squalid – properties that pose persistent dangers to the health and safety of this vulnerable population. Further, the shelters we visited often indicated that they face an uphill battle in terms of facility maintenance and upkeep – in some cases because of funding, but in others simply by virtue of the transient and temporary nature of the population they serve. As a result, conditions can vary considerably and change rapidly. Conditions that are deemed to be "acceptable" one day can easily change to "unacceptable" the next.

This assessment brought to light counties' significant reliance on the use of hotels and motels to house homeless individuals, particularly where more formal shelters do not exist or are operating at or above capacity. In general, the rate of poor conditions and health and safety hazards that we observed was about twice as high in facilities that were not associated with a recognized hotel/motel chain. Further, these facilities often house not only homeless individuals or families, but also other populations participating in a variety of government-funded programs. As a result, in some areas, homeless people may be housed with individuals receiving substance abuse treatment or recently released prisoners.

Given the overall division of responsibilities among governmental entities in the State, there is no one State or local agency that is solely responsible for oversight of this type of housing. From a health and safety standpoint, most of the burden is borne by local officials such as building inspectors, zoning officers, and fire officials. Other State and local agencies that may be involved in placements are often focused mainly on the services provided to their own program constituents. Because these facilities form an important link in the housing continuum for individuals in many disparate programs, there is an apparent need for greater coordination and cooperation in what is now a fragmented system of oversight. This risk was considered in the performance of this audit.

Audit Findings and Recommendations

Since our initial audit report and risk assessment (issued in 2016), habitability conditions at mixed-use hotels and motels have shown some improvement. The deficiencies we observed through this audit are not as severe or numerous as they were previously; however, unacceptable conditions still exist and, importantly, can still develop very quickly. While OTDA has taken some positive steps, we concluded that continued improvement and stability of conditions can be realized through better guidance and monitoring of SSDs, with particular regard to inspecting habitability and correcting deficient conditions. Continued opportunities also exist for OTDA and DOH to achieve efficiencies by working collaboratively where their interests intersect, at both the State and local levels, regarding hotel and motel habitability.

Hotel/Motel Habitability Conditions

We judgmentally selected a statewide sample of 100 hotels and motels to inspect for habitability using an inspection checklist similar to that used by OTDA. Of these 100 hotels and motels, we could not visit 20 because either they were closed or no longer accepting homeless clients, or management was unavailable for our visit. For the 80 we were able to visit, we found 24 (30 percent) to be in unsatisfactory condition. Specifically, we observed multiple significant problems, including mold, water damage, structural damage, exposed wiring, missing smoke detectors, missing linens, and excessive garbage in rooms.

We were unable to compare our observations with the results of SSDs' inspections because OTDA has not developed a system to capture and analyze data from the inspection reports that it receives. Regardless, the SSDs' current process for inspections does not include a plan of corrective action where conditions are found to be unsatisfactory.

The following photographs depict some of the unsafe/unsanitary conditions we observed:



Flexible gas line used in an unprotected area
(Relax Inn Motel, Watertown, Jefferson County DSS)



Mold on exhaust fan
(Liberty Motel, Liberty, Sullivan County DSS)



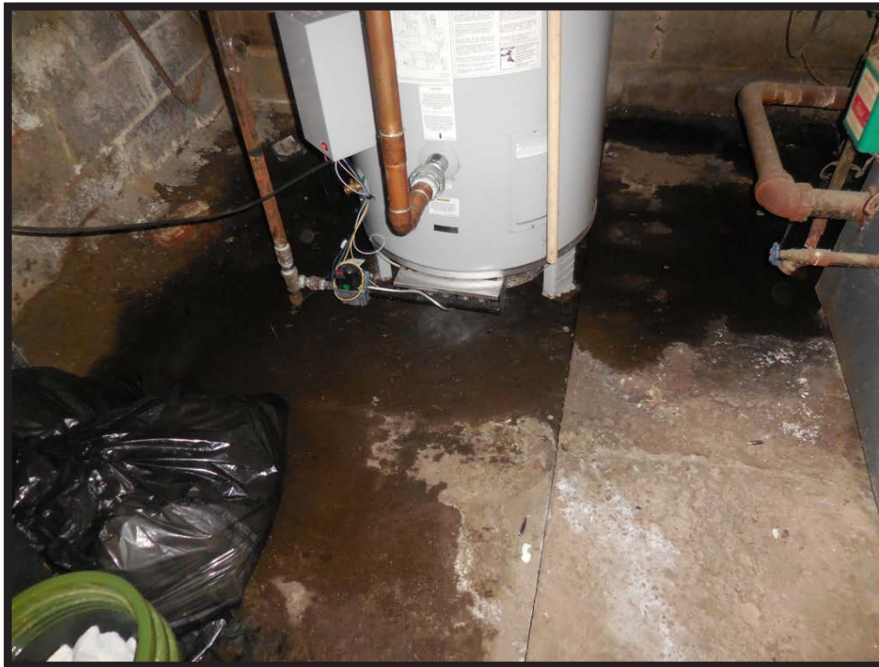
Water damage to ceiling in room with improper repair
(Plantation Motel, Island Park, Nassau County DSS)



Water-damaged ceiling
(Schuyler Inn, Menands, Albany County DSS)



Corrosive build-up on boiler pipes
(Budget Inn, Malta, Saratoga County DSS)



Leaking pressure release valve
(Community Gateway Motel, Saratoga, Saratoga County DSS)

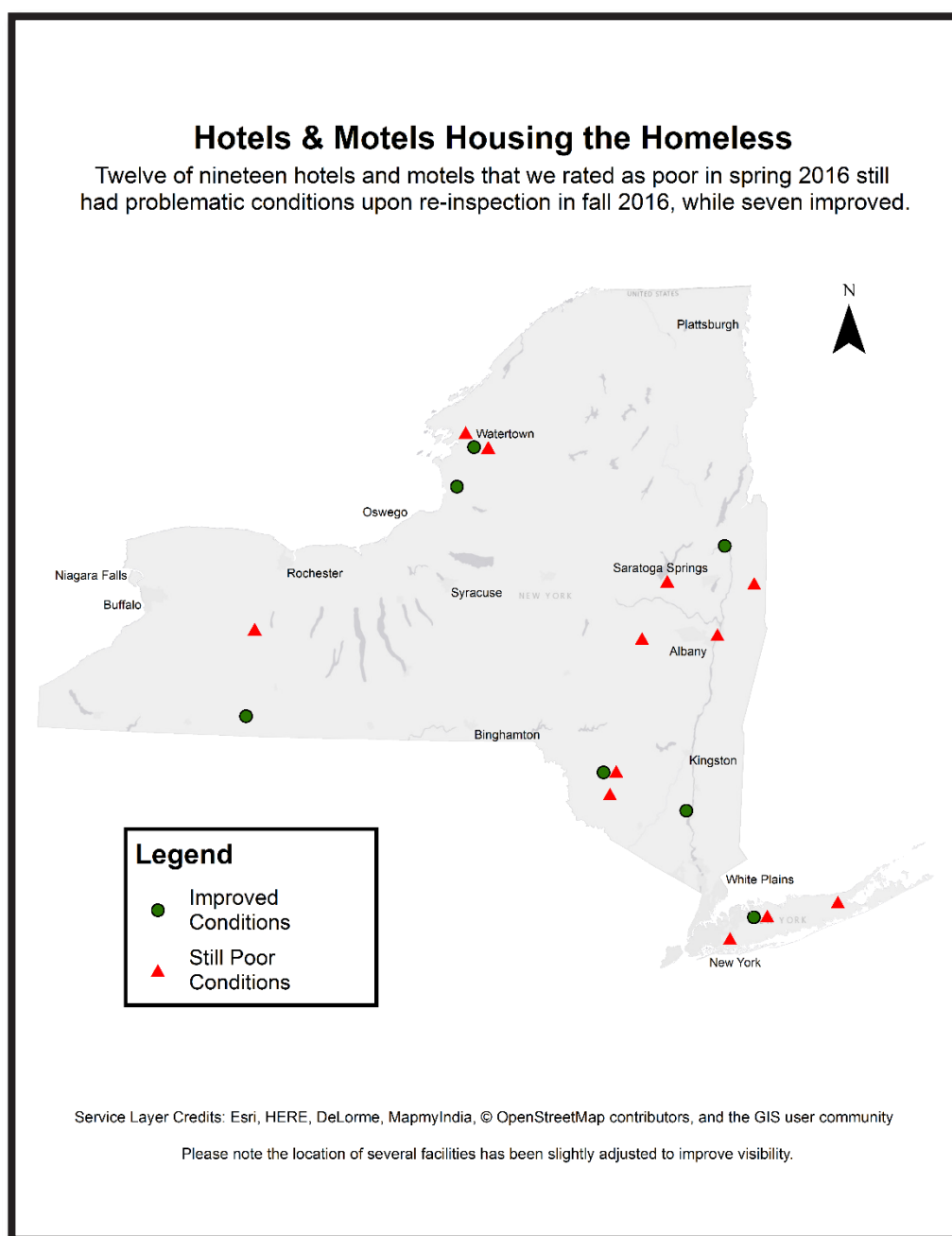


Rust in shower and mold on mat
(Budget Inn, Broadalbin, Fulton County DSS)



Mold in shower stall
(Gateway Motel, Saratoga, Saratoga County DSS)

Our site inspections also included re-visiting 19 of the 26 hotels and motels that we had rated as very poor in the 2016 homeless risk assessment. Of these 19 hotels and motels, we found 12 still had significant problems. (These 12 are included in the aforementioned 24 unsatisfactory hotels and motels with problematic conditions.) The majority of the problems we found at these 12 hotels and motels related to excess mold, water damage, and fire safety concerns, including missing smoke detectors. In certain instances, the problems noted might have rendered the facility in question uninhabitable. The following map illustrates the statewide distribution of the 19 hotels and motels re-visited.



We reviewed DOH inspection data for these 12 hotels and motels, and found that, in general, DOH's findings matched our own. For critical violations, the data shows local health offices have taken some steps to eradicate the problems by performing re-inspections at many locations where public health hazards exist. When non-critical violations are found, follow-up inspections are not always performed; rather, facility operators are directed to correct the conditions and DOH then re-evaluates all past violations as part of the next routine inspection.

Monitoring and Guidance

Although OTDA has taken steps to improve its oversight, it still needs to provide better guidance and support to the SSDs in implementing its administrative directive to perform six-month inspections of hotels and motels used to house the homeless. In cooperation with six County Comptrollers, we interviewed officials at 22 SSDs across the State, and found that 13 SSDs only recently became aware of the legal requirement to perform six-month inspections – a requirement that had been in place since 1983.

Many SSD officials expressed the need for additional guidance and expertise to adequately perform the required inspections. Although OTDA has established a standard checklist to be used by the SSDs for six-month inspections, practices are not uniform across districts, and confusion exists regarding the inspection process. Additionally, OTDA has not provided SSDs with guidance regarding corrective action plans should they find unsatisfactory conditions. Examples of confusion and lack of uniformity include:

- Uncertainty about withholding payment if unsatisfactory conditions are found;
- Lack of understanding regarding requirements to establish maintenance contracts and public transportation;
- Confusion about the requirement to provide transportation for children to and from school;
- Reluctance to inspect rooms currently occupied by clients; and
- Uncertainty about having the expertise to perform inspections.

OTDA officials have stated that they addressed the question of withholding payment as a corrective action. However, we note that OTDA's guidance on this issue was shared only with the one SSD that raised the issue, and was not addressed on a statewide basis with all SSDs.

Similarly, as of June 2016, new regulations require SSDs to submit their six-month inspections to OTDA. However, OTDA officials had not yet determined or finalized plans for using the inspections to better monitor conditions at hotels and motels used for homeless housing.

Inspection Similarities

After reviewing and analyzing both OTDA's hotel/motel inspection checklist and DOH's inspection form for temporary residences, as well as the results of their site inspections, we determined that there are several areas of similarities in inspection activity between the two programs.

Although differences do exist (e.g., DOH does not inspect occupied rooms unless responding to a complaint), and in certain instances one agency's requirements may be more stringent or specific than the other's, many of OTDA's checklist items are also addressed by DOH's inspection form to some degree. Generally, both documents focus on safe, sanitary, structurally sound facilities that are in compliance with public standards. As a result, of 11 topics covered by the OTDA checklist, several are also covered by DOH's inspection form for temporary residences. In addition, we found site visits and inspections are also done at the same facilities by both local health offices and SSDs' inspectors addressing similar issues.

Although we found several SSDs are reaching out and making appropriate inquiries to other local agencies to determine whether hotels and motels are in compliance with all applicable State and local laws, regulations, and codes, there is little evidence of collaboration and communication of monitoring efforts at the State level. OTDA has not approached or communicated with DOH regarding the inspection process for hotels and motels, nor has either agency investigated the possibility of sharing this information with the other.

Although both OTDA's and DOH's inspections are essential to ensuring safety standards are met in hotels and motels across the State, we believe an opportunity exists for OTDA and DOH to work together more collaboratively where their interests intersect regarding hotel and motel habitability. Similar opportunities also exist across both the State and local governmental levels, although in certain instances it appears to already be occurring at the local level. Not only should joint efforts and expanded coordination result in more efficient and effective use of government resources, but benefits can also be expected for the homeless housing entities, some of which currently are subject to multiple and similar inspections.

Recommendations

To OTDA:

1. Provide additional guidance and establish uniform procedures for SSDs' staff to ensure full understanding of the goals of the inspection checklist as well as the inspection function.
2. Establish clear and concise policies and procedures for recommended action to be taken by SSDs in the case of hotel and motel inspections that are found to be unsatisfactory.
3. Establish a process to capture and analyze data from the six-month inspections submitted by the SSDs to better monitor habitability standards of hotels and motels used for homeless housing.

To OTDA and DOH:

4. Improve communication and collaboration among pertinent State and local government agencies to: prevent duplication of efforts; strengthen the current inspection system; and ensure the most efficient use of public resources to inspect temporary residences used to house the homeless.

Audit Scope, Objective, and Methodology

The purpose of this audit was to determine if OTDA and DOH adequately ensured that hotels and motels used for homeless and mixed-use temporary residency were properly permitted and adhered to public health standards as established by State regulations. Our audit covered the period January 1, 2015 through December 16, 2016.

To accomplish our objective, we reviewed relevant laws, regulations, and OTDA policies related to housing the homeless in hotels and motels, as well as DOH policies related to inspection of temporary residences. We also became familiar with and assessed OTDA's and DOH's internal controls as they relate to inspections of temporary residences and hotels and motels. We held numerous meetings with both OTDA and DOH officials to gain an understanding of inspection procedures and habitability standards. We communicated our findings to OTDA and DOH management, and considered information they provided through December 16, 2016.

Also, we surveyed all counties (except those in NYC) for listings of all hotels/motels used for homeless housing within the last three years. We received responses from all 57 counties and compiled a listing of 376 hotels/motels that were used to house the homeless in the last three years. We then judgmentally selected a statewide sample of 100 hotels and motels from both large and small counties, and from a mix of urban and rural locations, for site visits. Of these 100 hotels and motels, we could not visit 20 because either they were closed or no longer accepting homeless clients, or management was unavailable for our visit. For the 80 hotels and motels we were able to visit, located in 19 counties, we examined them for habitability using a checklist similar to that used by OTDA. We also met with 16 SSDs to document their policies and procedures, and collaborated with six County Comptrollers (Albany, Dutchess, Nassau, Onondaga, Suffolk, and Ulster), who also met with their SSDs, for a total of 22 SSDs examined. In addition, we interviewed officials at two DOH district offices and three county health offices, and documented their policies and procedures.

We conducted our performance audit in accordance with generally accepted government auditing standards. Those standards require that we plan and perform the audit to obtain sufficient, appropriate evidence to provide a reasonable basis for our findings and conclusions based on our audit objective. We believe that the evidence obtained provides a reasonable basis for our findings and conclusions based on our audit objective.

In addition to being the State Auditor, the Comptroller performs certain other constitutionally and statutorily mandated duties as the chief fiscal officer of New York State. These include operating the State's accounting system; preparing the State's financial statements; and approving State contracts, refunds, and other payments. In addition, the Comptroller appoints members to certain boards, commissions, and public authorities, some of whom have minority voting rights. These duties may be considered management functions for purposes of evaluating threats to organizational independence under generally accepted government auditing standards. In our opinion, these functions do not affect our ability to conduct independent audits of program performance.

Authority

The audit was performed pursuant to the State Comptroller's authority under Article V, Section 1 of the State Constitution and Article II, Section 8 of the State Finance Law.

Reporting Requirements

We provided draft copies of this report to OTDA and DOH officials for their review and formal comment. Their responses are attached at the end of this report. In their responses, both OTDA and DOH officials generally concurred with the report's recommendations and indicated steps that will be taken to address them. OTDA officials, however, also detailed organizational, legal, and administrative functions that only indirectly affect the long-standing problems (such as exposed electrical wiring and mold) we identified through the audit's site visits. In addition, several of OTDA's comments were misleading and/or incorrect. Our rejoinders to certain OTDA comments are embedded within the text of OTDA's response as State Comptroller's Comments.

Within 90 days after final release of this report, as required by Section 170 of the Executive Law, the Commissioner of the Office of Temporary and Disability Assistance and the Commissioner of the Department of Health shall each report to the Governor, the State Comptroller, and the leaders of the Legislature and fiscal committees, advising what steps were taken to implement the recommendations contained herein, and where recommendations were not implemented, the reasons why.

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Vision

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Agency Comments - Office of Temporary and Disability Services, With State Comptroller's Comments



Office of Temporary and Disability Assistance

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April 18, 2017

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Re: Oversight of Hotels and Motels Used
for Homeless and Mixed-Use
Temporary Residences, 2016-S-49.

Dear Ms. Sutliff:

This letter responds to the Draft Report ("Draft Report") released by the Office of the State Comptroller ("OSC") regarding that agency's audit of hotels and motels used for homeless and mixed-use temporary residences (the "Audit"). In this response the Office of Temporary and Disability Assistance ("OTDA") highlights the multiple legal and factual inaccuracies in the Draft Report. Indeed, as OSC acknowledged, the habitability of mixed-use hotels and motels have improved due to OTDA's enhanced oversight. However, OTDA disagrees with many of the conclusions set forth in the Draft Report, because they are based on a fundamental misunderstanding of the controlling law and are factually without basis. Many of these fundamental errors were not corrected despite OTDA feedback to OSC's Preliminary Findings.

At the outset, please note one inaccuracy that runs throughout the Draft Report: the Draft Report states that OTDA administers its emergency shelter program through its Bureau of Shelter Services ("BSS"). Draft Rep., at 5. This is not correct. In order to enhance its oversight of homeless shelters across New York State, OTDA created the Division of Shelter Oversight and Compliance ("DSOC") in July 2016.

State Comptroller's Comment - In fact, for the majority of our audit period, OTDA referred to the unit responsible for shelter oversight as the "Bureau of Shelter Services." Further, the organization chart provided by OTDA at the time of the audit's fieldwork referenced the Bureau of Shelter Services and had not been amended to reference the new division. To improve its technical accuracy, we revised the final report to reference the Division of Shelter Oversight and Compliance. Moreover, we stand by the accuracy of the observations and conclusions presented in the report. We are disappointed that OTDA's response largely avoids the specific deficiencies identified during the audit's site visits.

1. OTDA Has Already Addressed the Specific Hotel/Motel Habitability Conditions Observed by OSC.

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Over the past two years, OTDA has successfully enhanced its oversight of Social Services Districts (SSDs) in order to improve habitability conditions at all hotels and motels used to house the homeless. As OSC acknowledges, OTDA's work has improved the system. Draft Rep. at 7. Building on our past success, OTDA will continue to require regular inspections of hotels/motels, and will also continue to aggressively monitor the SSDs to ensure that deficient conditions are detected, corrected, and the facilities used to house homeless persons remain as safe, secure, and as habitable as possible.

From OTDA's perspective, OSC failed to fully respond with sufficient detail on several purportedly specific examples of problems in hotel/motels. For example, on pages 7-13 of the Draft Report, OSC noted several deficiencies at hotel/motels being utilized as shelters. Immediately after OSC's Preliminary Findings were released, OTDA requested (i) that OSC identify the locations within the respective hotel/motel facilities where the unsatisfactory conditions were observed; (ii) that OSC identify specific deficient hotel/motel rooms by number; and (iii) that OSC inform it of the dates when the conditions were observed. OSC did not provide this data to OTDA. Despite the fact that OSC could not provide sufficiently detailed information to OTDA, OTDA worked with the relevant SSDs to ensure that each issue cited by OSC was being appropriately remediated.

State Comptroller's Comment - OTDA's assertion is incorrect. In fact, on December 23, 2016, we issued a preliminary finding to OTDA that contained a listing of each site visited, including the site's name, its full address, and the nature of the issue(s) auditors observed. Further, OTDA contacted us on January 10, 2017 requesting more detailed information, and we provided the requested data on January 12, 2017, including the room number(s) at each hotel and motel. We also note that, prior to our site visits, we invited OTDA officials to accompany us on those visits. However, OTDA officials responded that they only wanted to be informed prior to us contacting any SSDs or providers for site visits. Further, OTDA officials elected to not accompany OSC staff on the site visits.

2. OSC mischaracterizes and misunderstands OTDA's oversight role over the New York State shelter system.

At earlier points in this audit process, OTDA clarified its role, in contrast to the roles of New York State's 58 SSDs, multiple times. To clarify again: OTDA, as a matter of law, does not operate homeless shelters, but instead oversees the New York State Homeless Shelter System. This oversight role is specifically articulated in law. It is not a role chosen by OTDA, but rather it is a division of labor determined by the legislature that passed the relevant statute.

Despite patient and diligent efforts to demystify this point, OSC persists in its misunderstanding and continues to incorrectly assert that "OTDA has delegated authority for oversight and inspection of hotels and motels housing the homeless ... to [the SSDs]." Draft Rep., at 5.

Again, as mentioned above, the Legislature made each SSD responsible for "the assistance and care of any person who resides or is found in its territory and who is in need of public assistance and care which he is unable to provide for himself" by enacting Social Services Law ("SSL") §62(1). OTDA did not delegate authority for oversight and inspection of hotels and motels. Instead, the law requires SSDs to provide assistance and care to homeless families and individuals and in doing so squarely places the burden of inspections on those SSDs. The Legislature merely authorized OTDA to supervise the State's 58 SSDs. SSL § 20(3). While OTDA will be inspecting hotels/motels as the need arises, the primary responsibility for performing inspections continues to fall with the SSDs, as it has since 1983.

For over three decades OTDA has required SSDs utilizing hotels/motels as part of their shelter system to pass a fairly high bar to begin using those locations, and to continue utilizing those locations. For example, in 1983, OTDA promulgated 18 NYCRR § 352.3, which clarifies that when no other suitable housing is available, SSDs may use commercial hotels and motels to fulfill their statutory obligation to house those in need of public assistance and care. If an SSD elects to use commercial hotel/motels to fulfill its statutory obligation, however, it must (a) reassess its need to continue using hotels/motels on a monthly basis (§ 352.3(e)(3)), and (b) inspect the hotels/motels it uses every six months to confirm that those facilities comply with the detailed standards explicitly and unambiguously detailed in § 352.3(g) (§ 352.3(h)). As OSC acknowledges, both the regulatory requirement that the SSDs inspect the hotels/motels they use to place homeless families and individuals and the standards applicable to those hotels/motels have been in place **since 1983**. Indeed, thirty years ago, the New York State Court of Appeals held:

[w]ith the adoption of the departmental regulations (18 NYCRR 352.3[g], [h]), there can be no question about the minimum level of habitability which [SSDs] now must meet when they undertake to provide emergency housing. These regulations ... are, by their terms, binding on local social services districts (18 NYCRR 352.3[h]).

McCain v. Koch, 70 N.Y. 2d 109, 120 (1987). The promulgation of these regulations was a key part of OTDA exercising its *supervisory* role over the homeless shelter system. Consequently, and as OTDA previously pointed out in response to OSC's Preliminary Findings, because the statute requires OTDA to supervise and the SSD's to implement, it is the SSDs that have the primary responsibility for ensuring that the hotels/motels they use to house the homeless are habitable.

State Comptroller's Comment - We amended the report's wording to address OTDA's concerns. According to State law, each SSD is responsible for the assistance and care of any person who resides or is found in its territory and who is in need of public assistance. Under its general powers and duties, OTDA is required to: establish regulations for the administration of public assistance and care by State and local government units; enforce the provisions of the Social Services Law and its regulations within the State and in the local government units; and exercise general supervision over the work of all local welfare authorities. Accordingly, OTDA has, through its regulations, specifically authorized the SSDs to use hotels and motels for housing, and it has assigned the responsibility for the inspection of these facilities to the SSDs. Under its general powers, OTDA has the duty to supervise the work of all SSDs and to enforce its regulations. With respect to the inspections of these facilities, OTDA has specifically required that inspection reports be filed with OTDA, which is a clear indication of its oversight function.

3. OTDA Has Provided Detailed Guidance to the SSDs Regarding Hotel/Motel Inspections.

While OSC acknowledges that OTDA has taken steps to improve its oversight of hotels and motels, it nevertheless insists that OTDA "needs to provide better guidance and support to the SSDs in implementing its administrative directive to perform six-month inspections of hotels and motels used to house the homeless." Draft Rep., at 13. As OTDA previously stated in its response to OSC's Preliminary Findings, this conclusion is unfounded and fails to take into account the robust and thoughtful guidance that OTDA has provided to SSDs regarding the performance of six month inspections of those facilities.

State Comptroller's Comment - OTDA's assertion is incorrect. In fact, auditors did not fail to take into account OTDA's efforts to improve program guidance and oversight. Nonetheless, despite such efforts, multiple SSD officials expressed the need for additional guidance and support to address the multiple concerns they have. Further, our conclusions are supported by the fact that 12 hotels and motels that were in unsatisfactory condition during this audit were also in unsatisfactory condition

during the risk assessment (and related site visits) we conducted in February and March 2016. Thus, there is material risk that deficiencies went several months or longer without being adequately addressed.

This guidance has been written, telephonic, in person, informal, and formal, and has included:

- **Administrative guidance in the form of General Information Statement ("GIS") 16 TA/DC 049, which was issued on August 8, 2016.** That GIS was issued "to facilitate the inspection process and ensure the consistent application of standards across the state." Along with the GIS, OTDA published a Habitability Standards for Temporary Hotel/Motel Accommodation Inspection Checklist (the "Checklist") to be used by SSDs in completing their inspections of the commercial hotels/motels in which they place THA recipients;
- **Conference calls with SSD Commissioners** were held to discuss the requirement that SSDs inspect commercial hotels/motels used to place THA recipients, and the use of commercial hotels/motels pursuant to 18 NYCRR 352.3(e) has been addressed at conferences hosted by the New York Public Welfare Association (NYPWA); and
- **On-going written (email, verbal, (telephonic) and in person communications/meetings with individual SSDs to discuss inspection procedures and results and to address other concerns and questions.** A number of districts have requested, and OTDA has provided, on-site technical assistance. Among other things, DSOC staff has accompanied SSD staff on walkthroughs of hotels or motels so the SSD staff could gain a better understanding of how to conduct hotel/motel inspections. Inspection procedures were also discussed with the SSDs at multiple NYPWA conferences over the past two years.

Notwithstanding the fact that OTDA issued voluminous and robust guidance (which were all shared with OSC), OSC concluded that SSDs are not clear about recourse available to rectify hotels/motels in substandard condition. In reaching this conclusion, OSC completely overlooks 18 NYCRR § 352.3(g), which is not ambiguous: "[n]o family shall be referred to a hotel/motel, nor shall any reimbursement be made for costs incurred from such referral unless all of the requirements set forth [in that subsection] are met." Pursuant to this very clear regulation, if an SSD inspects a hotel/motel and finds conditions unsatisfactory, the SSD can, and should, direct the hotel/motel operator to address any deficiencies. The SSD also can stop using the hotel/motel if the substandard conditions are not properly remediated. Moreover, and as also explained in response to the Preliminary Findings, the SSDs enter into contracts with hotels/motels used to house homeless persons. It is the SSDs prerogative to include a provision requiring that the facilities be safe, clean, properly maintained and equipped, and in compliance with the standards set forth in § 352.3(g) as a precondition of payment in such contract. Because the guidance OTDA has issued is clear, and the tools available to SSD's to remedy deficiencies are robust, OSC's conclusions on this issue are confounding at best.

OSC further contends that "confusion and a lack of uniformity" remain regarding how to conduct inspections of hotel/motel rooms. OSC's conclusion is baseless and belied by published documents. In fact, OTDA's published GIS 16 TA/DC 049 on August 8, 2016 particularly to address such concerns. As noted by OTDA in its response to OSC's preliminary findings, the GIS provided detailed instructions about how to perform hotel/motel inspections and provides, among other things, that:

[w]hen conducting inspections the SSD should inspect each room being used for temporary housing assistance on the day of the inspection. In instances where there are no or very few units in use to provide temporary housing assistance, the SSD should inspect at least one unit in each section of the building, on each floor of the building. . . . The SSD should conduct inspections on an unannounced basis and should randomly choose which units to inspect.

(Emphasis added).

OSC also alleges "confusion and a lack of uniformity" as to whether SSDs have the expertise to perform such inspections. OSC's conclusion is once again baseless and contradicted by the facts. In fact, along with the GIS, OTDA also published a Habitability Standards for Temporary Hotel/Motel Accommodations Inspection Checklist. Even a rudimentary review of that Checklist confirms that OTDA has issued clear guidance as to what uniform steps SSDs should take during inspections, and that SSDs have the necessary level of expertise necessary to perform the required inspections of hotels/motels. For example, this guidance requires, among other things, that hotel rooms and bathrooms be clean and properly maintained, that rooms be properly heated and furnished, that there be sufficient beds, or cribs for children under age two staying in the room, that the doors and windows lock, that there is a private bathroom and that garbage is being removed from the room. These are not difficult tasks to perform and if a SSD must turn to using hotel/motels for shelter for homeless individuals, it is entirely reasonable to expect the SSD to have personnel who can perform these tasks.

State Comptroller's Comment - As previously stated, our conclusions are based on statements from directors, legal staff, and support staff (who actually performed inspections) from multiple SSDs expressing the need for additional guidance and support.

OSC also erroneously contends that OTDA has not provided sufficient guidance to the SSDs regarding providing transportation for children to and from school. In fact, adequate guidance on governing law (federal and state law) is already provided by both OTDA and local school districts. As OTDA explained previously, the McKinney-Vento Homeless Assistance Act, 42 U.S.C. § 11301, *et seq.*, and New York Education Law § 3209 are the primary federal and State laws dealing with the education of children and youth in homeless situations. The McKinney-Vento Act protects the right of homeless youth to, among other things, maintain school access. The law requires students be provided with transportation to school. Every school district is required by the law to designate a "liaison," whose duties include ensuring that transportation is available to homeless students, and OTDA has issued extensive guidance to the SSDs clarifying their responsibilities with respect to transporting homeless students to and from school. See 06-ADM-15 (<https://otda.ny.gov/policy/directives/2006/ADM/06-ADM-15.pdf>).

State Comptroller's Comment - We reiterate that SSD officials (and not OSC) cited confusion about the requirement to provide transportation for children to and from school and expressed the need for additional guidance and support from OTDA.

OSC also erroneously concludes that OTDA has failed to finalize plans for ongoing monitoring inspections and remediation of hotel/motels. Draft Rep., at 13. As OTDA previously explained in response to the Preliminary Findings, OTDA has put in place several oversight and recourse mechanisms for chronically out of compliance hotel/motels. First, pursuant to § 352.3(h) SSDs will be required to submit to OTDA inspection reports documenting the six-month inspections of all hotel/motels. Second, when an inspection report submitted to OTDA by an SSD indicates that health, safety, or other problems exist at a hotel/motel used by the SSD to provide shelter to the homeless, OTDA can direct the SSD to undertake remedial actions or ensure that the property operator has taken appropriate measures to address the deficiencies. OTDA also can direct that an SSD cease using a hotel/motel that is out of compliance. In fact, OTDA has already directed SSDs to stop using certain hotels/motels with serious deficiencies. OTDA also may withhold reimbursement to an SSD if it learns that the SSD has placed a recipient of temporary housing assistance in a hotel/motel that fails to comply with § 352.3(g). Again, § 352.3(g) itself explicitly provides that reimbursement cannot be made for costs incurred from a referral to a hotel/motel unless all of the requirements set forth in that subsection are met.

State Comptroller's Comment - As stated in the audit report, OTDA officials have yet to finalize formal plans (including pertinent policies and procedures) for using inspection reports to better monitor conditions at hotels and motels.

4. OTDA and the Department of Health Already Are Collaborating.

OSC is wrong when it states that "OTDA has not approached or communicated with the Department of Health ("DOH") regarding the inspection process for hotels and motels, nor has either agency investigated the possibility of sharing information with the other. Draft Rep., at 14. As OSC previously was informed, OTDA and DOH have engaged in discussions about how information can be shared to enhance oversight and more efficiently address conditions at commercial hotels and motels used to house homeless families and individuals. Nevertheless, OTDA will continue to meet with DOH to discuss each agency's program requirements, and to determine if there are ways to assist each other in meeting these goals. OTDA will incorporate improvements identified into policies that it will implement.

State Comptroller's Comment - Throughout the audit's fieldwork, both OTDA and DOH officials advised us that no formal communication and coordination existed at the State level. Neither during the audit's fieldwork nor with their responses to the draft report did OTDA or DOH officials provide evidence of formal communication and coordination. We did identify communication between SSDs and county health departments, which we described in the report.

5. Irrespective of OSC's Recommendations, OTDA Will Continue to Enhance Its Oversight Over Hotels and Motels Used to Place Homeless Families or Individuals.

Irrespective of OSC's recommendations, OTDA fully intends to (1) provide additional guidance to the SSD's regarding the SSD's inspection function as necessary, (2) continue to establish policies and procedures to clarify how SSDs should address unsatisfactory conditions they observe while performing inspections; and (3) continue collecting and analyzing data from the six-month inspections. OTDA also will continue to communicate and collaborate with DOH and the SSDs to prevent duplication of efforts, strengthen the current inspection system, and ensure the most efficient use of public resources to inspect temporary residences used to house the homeless.

State Comptroller's Comment - We are pleased that OTDA officials tacitly concur with the report's recommendations and indicate that certain steps will be taken to address them.

If you have any questions concerning our response to the Draft Report, please contact me at (518) 473-6035 or Kevin.Kehmna@otda.ny.gov.

Sincerely,

Kevin Kehmna

Kevin Kehmna, Director
Audit and Quality Improvement

cc: Bob Mainello
Barbara Guinn
Krista Rock
Cheryl Contento
Tim Ruffinen
Kevin Hickey
Kathleen Murphy

Agency Comments - Department of Health



Department of Health

ANDREW M. CUOMO
Governor

HOWARD A. ZUCKER, M.D., J.D.
Commissioner

SALLY DR
Executive I

April 12, 2017

Mr. John Buyce, Audit Director
Office of the State Comptroller
Division of State Government Accountability
110 State Street – 11th Floor
Albany, New York 12236-0001

Dear Mr. Buyce:

Enclosed are the New York State Department of Health's comments on the State Comptroller's Draft Audit Report 2016-S-49 entitled, "Oversight of Hotels and for Homeless and Mixed-Use Temporary Residency."

Thank you for the opportunity to comment.

Sincerely,

Sally Dreslin, M.S., R.N.
Executive Deputy Commissioner

Enclosure

cc: Marybeth Hefner
Brad Hutton
Ellen Anderson
Michael Cambridge
Brian Miner
Tim Shay
Diane Christensen
Lori Conway

**Department of Health
Comments on the
Office of the State Comptroller's
Draft Audit Report 2016-S-49 entitled,
Oversight of Hotels and Motels Used for Homeless and Mixed-Use
Temporary Residences**

The following are the Department of Health's (DOH) comments in response to the Office of the State Comptroller's (OSC) Draft Audit Report 2016-S-49 entitled, "Oversight of Hotels and Motels Used for Homeless and Mixed-Use Temporary Residences."

General

- It is not clear in the report that the portions of the 24 unsatisfactory hotels and motels that were used to house the homeless are, in fact, regulated by DOH. The report acknowledges that Temporary Residences regulated by DOH are facilities that house individuals for less than 180 consecutive days; however, the report does not identify the length of stay for the residents at the facilities in question. Portions of a Temporary Residence that are occupied by the same persons in excess of 180 days are excluded from DOH oversight.
- The report acknowledges differences between the Office of Temporary and Disability Assistance (OTDA) and DOH inspection protocol, but does not identify which agency's standards were violated causing a facility to be considered in an unsatisfactory condition.

OSC Recommendation to OTDA and DOH

Improve communication and collaboration among pertinent State and local government agencies to: prevent duplication of efforts; strengthen the current inspection system; and ensure the most efficient use of public resources to inspect temporary residences used to house the homeless.

DOH Response

The DOH will meet with OTDA to discuss each agency's program requirements, and to determine if there are ways to assist each other in meeting these goals. The DOH will incorporate any improvements identified into policies that will be implemented by the state and local departments of health.