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

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Division of State Government Accountability

# **Criminal History Background Checks of Unlicensed Health Care Employees**

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## **Department of Health**

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Report 2016-S-65

June 2017

# Executive Summary

## Purpose

To determine if the Department of Health (Department) effectively oversees and monitors efforts by Nursing Homes, Adult Care Facilities (ACF), and Home Health Care (HHC) providers to adequately safeguard patients through requests for required criminal history background checks when hiring unlicensed persons in direct care positions. Our audit covered the period of April 1, 2014 through March 3, 2017.

## Background

The Department, through its Criminal History Record Check (CHRC) Legal Unit, is responsible for conducting criminal history background checks of unlicensed persons in Nursing Homes, ACFs, and HHCs. Providers submit an electronic background check request through the CHRC system to the Department. The Department, in turn, submits a fingerprint request on behalf of the applicant if he/she has not previously been submitted through CHRC. These fingerprint results are sent electronically to the Federal Bureau of Investigation (FBI) and the New York State Division of Criminal Justice Services (DCJS), which, in turn, send any criminal history results to the Department. If the person has been fingerprinted before, the CHRC Legal Unit reviews the case using information from its initial request and any subsequent New York State arrest information. Between April 1, 2014 and December 7, 2016, the Department received 563,548 CHRC submissions. Of these, nearly 83 percent did not have a criminal history. For the approximately 17 percent with a criminal history, the CHRC Legal Unit conducted a review and made an employment eligibility determination. About 3.5 percent (19,622) of the CHRC submissions resulted in applicants being denied employment eligibility.

## Key Findings

- The Department is generally meeting its obligations for conducting background checks on unlicensed employees of Nursing Homes, ACFs, and HHCs, according to State requirements. However, we did identify 24 CHRC applicants whose determination letters were not completed timely and, as a result, the individuals could have been allowed to work for periods ranging from 2 months to as long as 28 months. Of these, eight applicants (who were ultimately denied eligibility) actually worked on a provisional basis, for periods between 3 and 14 months while their background checks were pending.
- We also found that providers were unable to provide required documentation to support that three of these applicants were adequately supervised during the period when the background checks were pending, thereby potentially placing vulnerable persons at risk.
- Department officials promptly issued determination letters as a result of us bringing the 24 instances to their attention. Going forward, Department officials stated they will utilize this same analysis as a monitoring tool to ensure determination letters are sent timely.

## Key Recommendation

- Continuously monitor and analyze CHRC data to ensure determination letters are sent to applicants and employers timely for all rap sheets that staff have reviewed and perfected.

## **Other Related Audit/Report of Interest**

[Department of Health: Nursing Home Surveillance \(2015-S-26\)](#)

**State of New York**  
**Office of the State Comptroller**

**Division of State Government Accountability**

June 8, 2017

Howard A. Zucker, M.D., J.D.  
Commissioner  
Department of Health  
Empire State Plaza  
Corning Tower  
Albany, NY 12237

Dear 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 and, by so doing, providing 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 entitled *Criminal History Background Checks of Unlicensed Health Care Employees*. This audit was performed according 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.

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 Recommendation	7
Background Check Monitoring	7
Recommendation	10
Audit Scope, Objective, and Methodology	10
Authority	11
Reporting Requirements	11
Contributors to This Report	12
Agency Comments	13
State Comptroller's Comments	18

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This report is also available on our website at: [www.osc.state.ny.us](http://www.osc.state.ny.us)

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## Background

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The Department of Health (Department) is responsible for conducting criminal history background checks of unlicensed persons seeking employment with Nursing Homes, Adult Care Facilities (ACF), and Home Health Care (HHC) providers. The background check process is the same for all three types of facilities. Licensed professionals, such as doctors and nurses, are exempt from these requirements. Providers are allowed to provisionally hire applicants while background checks are pending, but only subject to specific direct supervision requirements if the employee is to have direct contact with either patients or their property.

The Criminal History Record Check (CHRC) system is used to process all CHRC applications for unlicensed staff with patient or patient property contact at all health care facilities subject to CHRC regulation. Providers submit an electronic background check request through the CHRC system to the Department. The Department, in turn, submits a fingerprint request on behalf of the applicant if he/she has not previously been submitted through CHRC. These fingerprint results are sent electronically to the Federal Bureau of Investigation (FBI) and the New York State Division of Criminal Justice Services (DCJS), which, in turn, send any criminal history results to the Department. If the person has been fingerprinted before, the CHRC Legal Unit reviews the case using information from its initial request along with any subsequent New York State arrest information. The FBI does not have the capability to send only subsequent arrests at this time.

Records indicate that, for the applicants subject to the CHRC system, about 83 percent do not have a criminal history and therefore do not require further review by the CHRC Legal Unit. In these cases, a positive employment eligibility letter is automatically generated to the employer. For the approximately 17 percent of applicants with a criminal history, the CHRC Legal Unit conducts further review, including reaching out to courts nationwide when necessary, and makes an employment eligibility determination.

Within the CHRC Legal Unit, legal assistants go through a process to “perfect” the criminal history records (i.e., “rap sheets”) received, which involves reviewing the rap sheet and conducting additional research to ensure the charges and convictions are correct and fairly represented. Once a rap sheet has been perfected, a lawyer reviews the CHRC file and makes a legal employment determination. If the employee is given a positive legal determination, the provider is sent a letter with the decision. After receiving this letter, the provider then has the choice whether to employ the individual or not. If the employee is given a negative legal determination, a pending denial letter is issued to the provider and employee. The employee must then be removed from direct care responsibilities while awaiting a final decision, and is given 30 days to show why he/she should be considered eligible for employment.

The Department monitors providers to ensure they subject unlicensed employees to background checks, as required. Each of the Department’s three divisions that oversee these services (Nursing Homes, ACF, and HHC) conducts surveys and on-site inspections to ensure that CHRC and other policies are being carried out on a day-to-day basis.

CHRC policies also include specific requirements for providers to supervise any temporary employees until their legal determination is made. For Nursing Homes and ACFs, on-site supervision occurs until the temporary employee's background check is cleared or the provider receives a pending denial notice to remove the temporary employee from direct care. For HHC, on-site supervision is provided for the first week of employment. After the first week, on-site and off-site supervision must be provided and documented in alternating weeks. Department officials stated that the off-site supervision is usually via a phone call by the HHC supervisor to the patient or patient's family.

The Department documents providers' compliance using a survey checklist to determine whether or not the provider is in compliance with CHRC policies and procedures. This checklist includes, but is not limited to: analyzing if the provider has appropriate CHRC policies in place, ensuring the authorized person at the provider allowed to view the criminal history is still an active employee, and sampling both new hires and negative determination letters to determine if the provider is submitting employees and responding to determinations appropriately. The Department's survey teams also review the provider's supervision logs to ensure supervision of employees is documented as required. Even though the Department verifies the logs are completed as required, Department officials stated that the responsibility of supervising temporary employees rests with each provider and not the Department.

The survey teams communicate any deficiencies to the providers while on site at the facility, as well as provide a written statement of deficiencies. Providers are required to respond to this statement and submit an appropriate plan of correction that the Department reviews and must find acceptable. The Department attempts to ensure the corrective actions will not only fix the issue found, but also prevent the same problems from occurring in the future. This helps monitor the providers to ensure the problems are resolved.

These surveys are required for Nursing Homes every 9-15 months, ACFs every 12-18 months, and HHCs at least once every three years. To ensure that the Department is complying with the required time frames for inspections, each oversight division (Nursing Homes, ACF, and HHC) has an employee responsible for monitoring the required time frames and scheduling when the inspections occur.

## Audit Findings and Recommendation

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We found that the Department generally met its obligations for conducting criminal history background checks of unlicensed employees across all three types of providers, according to State requirements. However, our analyses identified 24 CHRC applicants whose determination letters were not completed timely and, as a result, these individuals could have been allowed to work provisionally from 2 months to 28 months without final clearance. These errors occurred because the CHRC database is not currently able to track when applicants' files are returned by the Department's lawyers to the legal assistants for additional follow-up. This weakness could lead to individuals who should have been denied eligibility nonetheless having unsupervised direct care contact. Further review found that eight of these applicants, whose eligibility was ultimately denied, actually worked for periods of 3 to 14 months while their background checks were pending.

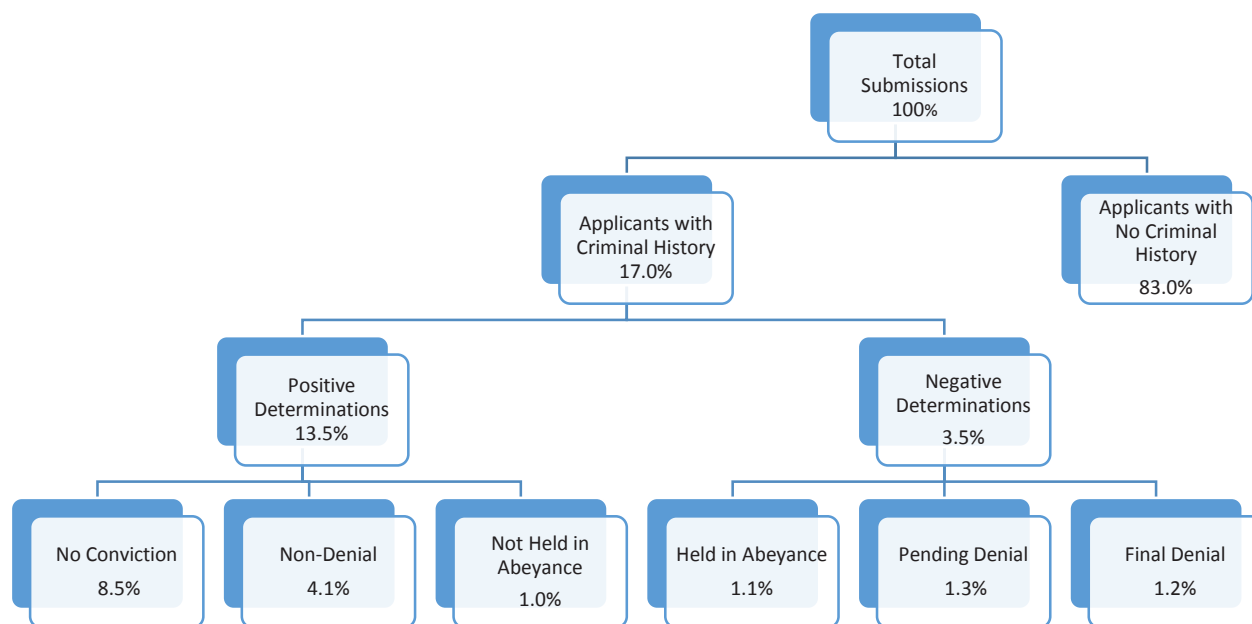
Because we brought this to the Department's attention, determination letters were sent to each facility for all 24 applicants. Subsequent investigation found that providers were unable to produce required documentation to support that 3 of the 24 applicants were properly supervised during the period while their background checks were pending, thereby potentially placing vulnerable persons at risk. Furthermore, Department officials stated that they intend to utilize this same analysis as a future monitoring tool, and that the CHRC database is expected to be upgraded by June 2017 to include additional monitoring and tracking to address this weakness.

### Background Check Monitoring

From April 1, 2014 through December 7, 2016, the Department received a total of 563,548 CHRC submissions, including 467,498 applicants with no criminal history and 96,050 applicants who did have a criminal history. For about 3.5 percent (19,622) of the total submissions, Department staff determined that the applicants should not be employed in direct care positions. Of the 96,050 applicants with a criminal history, 76,428 (80 percent) were issued a positive determination (see Table 1).



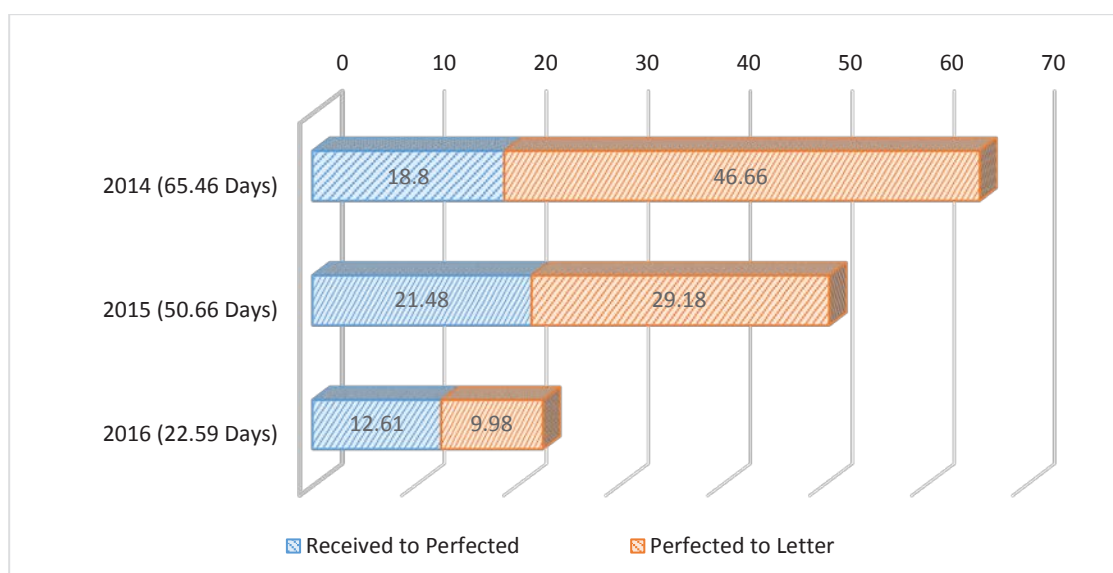
**Table 1**  
**Distribution of CHRC Applicants**  
**for the Period April 1, 2014 Through December 7, 2016**  
**(Based on 563,548 Submissions)**



Total Submissions	All applicants who are reviewed through the CHRC system, whether for the first time or subsequently and whether approved or denied.
No Conviction	Applicants who have never been convicted of any charges.
Non-Denial	Applicants who have a criminal history, but whose convictions are for crimes not serious enough to prevent them from receiving a positive CHRC determination.
Not Held in Abeyance	Applicants with open charges that do not rise to the level of severity that would result in a negative determination if convicted.
Held in Abeyance	Applicants with open charges that may result in a CHRC denial if there is a conviction. These individuals must be immediately removed from providing direct care until a final CHRC determination.
Pending Denial	Applicants with criminal convictions sufficient for CHRC to deny employment eligibility pursuant to a preliminary analysis. These individuals must be immediately removed from providing direct care and have 30 days to submit rehabilitation information to assist CHRC in making either a positive or a negative final determination.
Final Denial	Issued after CHCR has determined an applicant to be ineligible for employment either because of statutory requirements or because the applicant has not provided enough rehabilitation documentation to show that she or he should be eligible for employment.

On average, during the period March 30, 2014 through December 31, 2014, the CHRC Legal Unit made 2,846 legal decisions per month. This number increased to 3,763 per month during the period January 1, 2016 through September 30, 2016, a 32 percent increase in workload, likely caused in part by the addition of ACFs to the process in January 2015. The Department hired two additional lawyers and two additional legal assistants to help with the increased workload. The additional staff helped reduce the number of rap sheets awaiting perfection from a weekly average of 392 in 2014 to only 219 in 2016 (a 44 percent decrease). The increased workload and decreased backlog coincided with the CHRC Legal Unit's ability to reduce the number of days required to perfect the rap sheet and deliver a legal determination letter by 65 percent from an average of 65.5 days in 2014 to only 22.6 days in 2016 (see Table 2).

**Table 2**  
**Timeline of Rap Sheets and Determination Letters**  
**for the Period March 30, 2014 Through December 31, 2016**



The CHRC database contains a box within each applicant's file for the legal assistant to click when the rap sheet has been fully perfected and is available for a lawyer's review. Of 28,474 open rap sheets in process on February 7, 2017, we determined that 422 had been perfected and were awaiting final determination. As part of our analysis, we requested the Office of Information Technology Services execute a customized report listing all instances where a rap sheet had been marked as perfected within the CHRC database but no legal determination letter had been sent out. At the time of our audit work, this report was not available to the Department. After eliminating any very recent rap sheets, as well as any that were double-counted by including both the FBI and DCJS rap sheets for the same applicant, we further reviewed 59 rap sheets with Department officials to examine what appeared to be open cases with extended delays.

For 35 of these applicants, officials were able to identify specific issues causing the delays. However, there was no apparent explanation why the other 24 applicants (about 5 percent) did not have legal determinations and notices sent to providers once the rap sheets were perfected.

As a result, these 24 applicants, who all had criminal records, could have potentially been allowed to work in direct care from 2 months to 28 months while their review was delayed.

After we brought this matter to the Department's attention, determination letters were promptly sent to all 24 applicants and their respective employers. Fourteen applicants were issued negative determinations, and the remaining ten were issued positive determinations. Subsequent review showed that 8 of 14 applicants deemed ineligible were employed in direct care positions by a facility while the background check was pending and prior to the negative legal determinations and corresponding notices to employers. These eight applicants worked for periods ranging from 3 months to 14 months. Furthermore, Department officials stated that they intend to utilize this same analysis going forward as a monitoring tool. Department officials also stated that CHRC has always maintained a hotline for applicants and providers to call if there is any delay in processing time. The CHRC database is currently undergoing an upgrade, which is expected to be operational in June 2017, and will include additional monitoring and tracking functionality that is not available with the current system.

As a result of our discussions, the CHRC Legal Unit also alerted the Nursing Home, ACF, and HHC program staff and asked them to review these 24 employees' records during their next inspections to ensure that the employees were supervised, as required. Program staff subsequently reported that nine employees had full supervision documentation, three employees had insufficient or no documentation, and the remaining 12 employees were not required to have supervision documentation because they did not work during the period when their background checks were pending. Further, Department officials indicate they have cited two of the respective providers for inadequate supervision documentation.

## **Recommendation**

1. Continuously monitor and analyze CHRC data to ensure determination letters are sent to applicants and employers timely for all rap sheets that staff have reviewed and perfected.

## **Audit Scope, Objective, and Methodology**

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Our audit objective was to determine if the Department effectively oversees and monitors efforts by Nursing Homes, ACF, and HHC providers to adequately safeguard patients through requests for required criminal history background checks when hiring unlicensed persons in direct care positions. Our audit covered the period April 1, 2014 through March 3, 2017.

To accomplish our audit objective and assess related internal controls, we interviewed Department and Office of Information Technology Services officials responsible for CHRC. We reviewed pertinent laws, regulations, policies, and procedures. We also reviewed rap sheets received for the period March 30, 2014 through December 31, 2016 and determination letters issued for the period March 30, 2014 through September 30, 2016. We analyzed the CHRC database to determine whether or not the data was reliable by observing Department employees working within the CHRC database for key data fields related to our audit objective. To determine if the

Department was following its procedures for monitoring providers' compliance with CHRC policies and procedures, we judgmentally selected a sample of 30 facilities (ten each) out of a population of 237 Nursing Homes, ACFs, and HHCs located in the Capital District Region as of January 18, 2017. We then examined one CHRC checklist from each facility for a total of 30 checklists.

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 we 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

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This 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

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We provided a draft copy of this report to Department officials for their review and formal comment. Their comments were considered in preparing this final report and are attached in their entirety to it. In their response, Department officials concurred with the report's recommendation. Also, our rejoinders to certain Department comments are included in the report's State Comptroller's Comments.

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

## Contributors to This Report

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**John F. Buyce**, CPA, CIA, CFE, CGFM, Audit Director  
**Walter Irving**, Audit Manager  
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## Division of State Government Accountability

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### Vision

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### Mission

To improve government operations by conducting independent audits, reviews and evaluations of New York State and New York City taxpayer financed programs.

# Agency Comments



## Department of Health

ANDREW M. CUOMO  
Governor

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

SALLY DRESLIN, M.S., R.N.  
Executive Deputy Commissioner

April 28, 2017

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

Dear Mr. Buyce:

Enclosed are the Department of Health's comments on the Office of the State Comptroller's Draft Audit Report 2016-S-65 entitled, "Criminal History Background Checks Of Unlicensed Healthcare Employees."

Thank you for the opportunity to comment.

Sincerely,

A handwritten signature in black ink, appearing to read "Sally Dreslin".

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

Enclosure

cc: Marybeth Hefner  
Dan Sheppard  
Keith Servis  
Mark Hennessey  
Shelly Glock  
Paula Grogin  
Daryl Barra  
Sheila McGarvey  
Jeffrey Hammond  
Jill Montag  
Diane Christensen  
Lori Conway

**Department of Health  
Comments on the  
Office of the State Comptroller's  
Draft Audit Report 2016-S-65 entitled,  
Criminal History Background  
Checks of Unlicensed Healthcare  
Employees**

The following are the Department of Health's (Department) comments in response to the Office of the State Comptroller's (OSC) Draft Audit Report 2016-S-65 entitled, "Criminal History Background Checks of Unlicensed Healthcare Employees."

**General Comments**

OSC's stated objective for the audit was to determine if the Department is monitoring whether nursing homes, home health care agencies and adult care facilities are performing required background checks of unlicensed persons to adequately safeguard patients. We were pleased to see that your review of Department activities showed greater than 99.92% compliance rate, out of 28,474 rap sheets audited over a nearly three-year period.

The Department of Health is committed to protecting the safety and well-being of elderly and vulnerable populations served by a Residential Health Care Facility, Adult Care Facility, Licensed Home Care Agency, Certified Home Health Agency or Long Term Care Program. Any persons employed or used by such facilities and agencies must be fingerprinted and have a criminal history record check performed by Criminal History Record Check (CHRC), if such persons provide direct care or supervision to a patient or resident.

CHRC has grown significantly over the past decade and has performed more than 1.7 million eligibility determinations since 2006. Today, CHRC requests more criminal history information from the NYS Division of Criminal Justice Services (DCJS) than any other agency. CHRC has adopted new technologies and system improvements to accommodate the increasing numbers of reviews and to reduce response times. For example, in 2009, CHRC transitioned from conventional "ink and roll" fingerprint impressions, which often resulted in a high rejection rate from DCJS and the FBI, to the use of live-scan technology. Employee's fingerprints are now scanned and electronically sent to DCJS for processing, resulting in dramatically faster and more accurate reviews. In addition, whenever possible, CHRC has adopted electronic communication systems, thereby reducing mailing costs and delays.

**Requested Clarifications**

**1. The 24 rap sheets that were not timely reviewed represent only 0.08% of rap sheets audited and should be placed in statistical context.**

OSC observed that 24 rap sheets were not timely reviewed. However, the Draft Report does not mention that this was out of a total of 28,474 rap sheets reviewed, from April 1, 2014 to December 31, 2016. This represents an error rate of 0.08% or, conversely, an efficiency rate of 99.92%, over the course of nearly three years.

The Department acknowledges that the error rate goal is 0.00%, and it is updating its tracking systems to achieve this, as noted in the Draft Report. That said, the public deserves to have a more complete picture of the Department's performance, which demonstrates that 99.92% of rap sheets are reviewed and a letter sent to the provider in a timely fashion. Accordingly, the Department respectfully requests the following edits:

\*See State Comptroller's Comments, Page 18.

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Comment

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a. **Key Findings**

The Department is generally meeting its obligations for conducting background checks on unlicensed employees of Nursing Homes, ACFs, and HHCs, according to State requirements. However, we did identify 24 of the 28,474 CHRC applicants (or 0.08%) whose determination letters were not completed timely and, as a result, the individuals could have been allowed to work for periods ranging from 2 months to as long as 28 months.

Draft Report, p1.

b. **Audit Findings and Recommendation**

We found that the Department generally met its obligations for conducting criminal history background checks of unlicensed employees across all three types of providers, according to State requirements. However, our analysis identified 24 of the 28,474 CHRC applicants (or 0.08%) whose determination letters were not completed timely and, as a result, these individuals could have been allowed to work provisionally from 2 months to 28 months without a final clearance.

Draft Report, p7, first paragraph.

- c. Based on our review, we determined that 24 of the 28,474 rap sheets (or 0.08%), received from April 1, 2014 through December 31, 2016 did not have legal determinations, and consequently notices were not sent to providers once the rap sheets were perfected.

Draft Report, p9, last paragraph.

**2. The meaning of “Held in Abeyance” should be clarified.**

Table 1 in the Draft Report defines “Held in Abeyance” as “Applicants with open charges that will result in a CHRC denial if there is a conviction. These individuals must be immediately removed from direct care until a final determination.” Draft Report, p8, Table 1. Please note that applicants with open felonies must be issued a negative determination. However, applicants with open charges for non-felony crimes may be issued a negative determination if appropriate pursuant to a NYS Correction Law Article 23-A analysis. See NYS Executive Law § 845-b(5)(c).

Accordingly, the Department respectfully requests the following clarification to the text: “Applicants with an open felony charge must be immediately removed from direct care until a final determination. Applicants with open non-felony charges may be issued a Hold in Abeyance determination, after which they must be removed from direct care until a final determination, after appropriate legal review.”

**3. The meaning of “Pending Denial” should be clarified.**

Table 1 in the Draft Report defines “Pending Denial” as: “Applicants with criminal convictions sufficient for CHRC to deny employment eligibility. These individuals must be immediately

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removed from providing direct care and have 30 days to submit rehabilitation information to assist CHRC in making a final determination.” Draft Report, p8, Table 1.

CHRC reviews all applications involving criminal convictions pursuant to Article 23-A of the Correction Law before denying employment eligibility. Accordingly, the Department respectfully requests the following change to the text: “Applicants with criminal convictions sufficient for CHRC to deny employment eligibility, pursuant to a preliminary Correction Law analysis. These individuals must be immediately removed from providing direct care and have 30 days to submit rehabilitation information to assist CHRC in making a final determination.”

Additionally, the Department observes that the chart in Table 1 does not indicate what happens to Pending Denials with respect to final determinations. All Pending Denials ultimately receive a final determination, after CHRC performs the required Correction Law analysis. This can either be a Final Approval or a Final Denial. The table does not clearly indicate this, which raises concerns with respect to the meaning and accuracy of the percentage and definition for “Final Denial,” as discussed further below.

#### **4. The meaning of “Final Denial” should be clarified.**

Table 1 defines “Final Denial” as: “Issued after a pending denial if the applicant has not provided enough rehabilitation documentation to show that she or he should be eligible for employment.” Draft Report, p8, Table 1. At the same time, the chart in Table 1 shows separate percentages for Pending Denials and Final Denials. Thus, the meaning of the respective percentages is unclear, but it appears that the Final Denial category is either statistically under- or over-inclusive.

Relatedly, Table 1’s definition of Final Denial suggests that it is the only possible outcome of a Pending Denial. However, as discussed above, applicants can also receive a Final Approval determination. Review of any rehabilitation documentation that an applicant submits is only one factor that CHRC analyzes, and other factors must be considered, consistent with Article 23-A of the Correction Law. It is also unclear whether final approval determinations of Pending Denials are included in the Non-Denial (4.1%) as a global statistic.

To address these concerns, at least in part, the Department respectfully requests the following change to the definition of Final Denial: “Issued after a pending denial and the performance of a Correction Law analysis that includes review of any rehabilitation documentation that the applicant submits.” If you also wish to also revise the chart in response to these concerns, the Department would be happy to work with you to do so.

#### **Recommendation**

Continuously monitor and analyze CHRC data to ensure determination letters are sent to applicants and employers timely for all rap sheets that staff have reviewed and perfected.

#### **Response**

The Department agrees with OSC’s recommendation regarding the creation of a new customized report to assist CHRC in tracking and handling those instances where a rap sheet is marked as perfected within the CHRC database, but no legal determination letter is sent out. As referenced in the Audit Report, the NYS Office of Information Technology Services (ITS) is already upgrading CHRC’s tracking system to address this issue and further increase productivity. Additionally,

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CHRC maintains a hotline for applicants and providers to call if there is any delay in processing time.

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## State Comptroller's Comments

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1. We acknowledge that the error rate is not large. Nonetheless, the problem in question actually impacted a greater proportion of the applications we analyzed than the Department indicates. Of more than 28,000 open rap sheets in process on February 7, 2017, we determined that 422 rap sheets had been perfected by legal assistants and were awaiting final determination. Of these, 248 had been awaiting further legal review for more than 30 days, although 150 (of the 248) were for persons whose histories were already reviewed at least once, as part of previous applications. After eliminating these, and duplicate records from the FBI and DCJS, we identified 59 applicants whose final determinations appeared to be significantly delayed. We found reasonable explanations for delays in 35 of the cases; however, it appeared that 24 cases had not been worked on for an inordinate amount of time. This represented slightly more than 5 percent of the 422 perfected rap sheets awaiting action at the time of our review.
2. We revised our report, as appropriate, to enhance the technical presentation of certain matters based on the information provided by the Department.