

SUSPENSION



COUNTY OF ERIE

MARK C. POLONCARZ

COUNTY EXECUTIVE

GALE R. BURSTEIN, MD, MPH
COMMISSIONER OF HEALTH

January 6, 2015

Honorable Members
Erie County Legislature
92 Franklin Street, Fourth Floor
Buffalo, New York 14202

Re: Comptroller's Audit Concerning Correctional Health Services

Dear Honorable Members:

This letter serves as the Erie County Department of Health's ("ECDoH") official response to the Erie County Comptroller's Office Audit of Correctional Health Services and Inmate Medical Costs for the period January 1, 2011-December 31, 2013 ("Audit"). Please be aware that the Audit also examined operations and issues under the authority and control of the Erie County Sheriff's Office, and this response does not address findings related to the Sheriff's Office.

"Clean Audit" Reported

I am pleased to note that the Audit was "clean" and found that internal controls over the processing of inmate medical costs are adequate. These findings validate the recent and ongoing efforts by ECDoH to address a myriad of issues and problems in the past in Correctional Health, including workplace, management, pharmacy and medical concerns and overall costs.

Comptroller Delays and Silence

The Comptroller's Office began the Audit with an entrance conference on February 13, 2014 and concluded the process with an exit conference on December 18, 2014. Following the Comptroller's issuance to ECDoH of an "interim audit memorandum" ("IAM") on April 28, 2014, no communications were received from the Comptroller's Office until they issued a draft audit report on December 10, 2014 and requested an exit conference.

ECDoH was pleased to cooperate with the Comptroller's audit staff but we were perplexed by the delay in issuing the Audit and the complete lack of communication by the Comptroller's Office for more than seven (7) months. While this lack of timeliness would appear to be a violation of Generally Accepted Government Audit Standards ("GAGAS") A.702 and A.702 (g), from a practical standpoint, we were more concerned with the lack of contact or a final report being issued during this lengthy period. We were never provided with an explanation for the seven month delay in issuing the Audit or the lack of contact during this time.

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Misleading and Incorrect Auditor Comments

In the auditor comment section, where auditors are traditionally allowed more flexibility to “opine” on certain items, the Comptroller’s Office commented on two items that need clarification and for which we take issue.

First, they (favorably) commented on the Affordable Healthcare Act’s extension of Medicaid eligibility for prison populations and recommended that ECDoH and the Sheriff’s Office work “to explore the feasibility of enrolling inmates for health insurance.” This comment was disconcerting because the auditors were well aware that ECDoH and the Sheriff have been working for more than one year on a process to enroll eligible inmates on Medicaid using health navigators. So far, eligible entities that would enter the Erie County Holding Center or Correctional Facility to interact with prisoners and inmates and conduct eligibility and enrollment have declined to do so for a variety of reasons, all of which we conveyed to the auditors. ECDoH is currently engaged in dialogue with a major healthcare provider concerning this process – a fact the auditors are also aware of, but chose not to mention. To the average reader, one would read the Audit with the impression ECDoH and the Sheriff’s Office has done nothing to address this issue, when in fact we have engaged in extensive efforts.

Second, the auditors wrote a full page comment (arguably – the largest narrative section in the report) recommending that the County “implement inmate co-payments for medical services.” As the auditors well know as they briefly referenced so at the end of the report, New York State law currently prohibits the County from charging prisoners and inmates for the costs of their medical care while incarcerated. The County cannot legally charge detainees any amount for the costs of their healthcare while incarcerated. As a result, the Audit recommendation that the “County Legislature and (Department of) Health research the advantages and disadvantages of implementing an inmate co-pay system and explore the legislation necessary to initiate such a program” seems disingenuous when in fact, any changes would occur at the State Legislature level. This auditor comment seems designed to attract local media attention (as occurred in May 2013) rather than serve a legislative audit purpose and constructive observations for ECDoH, as expected under GAGAS.

Audit Finding on ECMCC Invoices

Arguably, the only finding pertaining to ECDoH in the Audit was the observation that invoices for hospital services provided by Erie County Medical Center Corporation (“ECMCC”) are not detailed to an extent that the auditors would prefer. The auditors observed that many ECMCC invoices feature charges to the County for services rendered under a general code – “99999.” What the auditors did not disclose, but were well informed, was that there are a variety of non-specialized in-patient non-clinical services provided by ECMCC (such as, bed pans, saline, food service, gowns, cleaning, security, etc.), that are charged under the 99999 code. As we pointed out in the exit conference, this coding and invoicing is a standard industry practice that exists throughout the hospital sector nationally. At the end of the process, while the auditors wanted ECDoH to conduct their work for them and provide a detailed spreadsheet (“comprehensive listing”) pertaining to such charges, the auditors were able to determine the information on their own from the provided invoices.

The auditors also made the allegation that they had noted this coding issue in their lone IAM issued to ECDoH and that our response “did not sufficiently address our (Comptroller’s) concerns raised during the Audit.” To correct the record, I would note that the auditors sought clarification in the IAM issued on April 28th, with our response provided on May 7th. If our response was not appropriately detailed or “sufficient” to address their questions and concerns, why did the auditors fail to reply to ECDoH and request further clarification during the next seven months? If ECDoH’s May 7th response was not sufficient, the Comptroller’s Office could have sought clarification and amplification, but they did not. Instead, they chose to make an opinion statement in the final Audit report which is disappointing.

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In conclusion, I am pleased that the Audit reported no problems or issues with the Division of Correctional Health's internal controls over inmate medical costs and services. ECDoH has expended significant time and effort remediating inmate medical issues and complying with US Department of Justice and New York State Commission of Correction requirements since January 2012.

Thank you for the opportunity to comment on the Audit.

Sincerely yours,



Gale Burstein, MD, MPH, FAAP
Commissioner of Health

cc: Comptroller Stefan Mychajliw
County Executive Mark C. Poloncarz
Robert W. Keating, Director of Budget and Management