

GOVERNMENT OF THE DISTRICT OF COLUMBIA
Office of the Inspector General

Inspector General



December 18, 2009

The Honorable Adrian M. Fenty
Mayor
District of Columbia
Mayor's Correspondence Unit, Suite 316
1350 Pennsylvania Avenue, N.W.
Washington, D.C. 20004

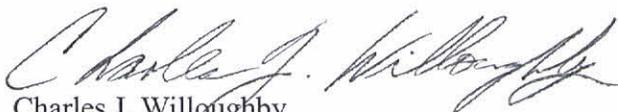
Dear Mayor Fenty:

Enclosed please find a copy of a Management Alert Report (MAR 09-I-0008) issued September 3, 2009, to the Executive Office of the Mayor, the Department of Health (DOH) and Department on Disability Services (DDS). The MAR addresses our finding that DOH has not licensed or inspected the DDS Medical Evaluation Unit and similar "free-standing" health clinics. Without inspecting these clinics, the District cannot ensure that best practices are in place and followed at all District healthcare facilities. In addition, without the monitoring provided by inspections, the health and safety of District residents may be at risk, and this deficiency may increase the risk of legal liability for the District. The DDS September 24, 2009, response to the MAR, and responses from DOH dated October 23, 2009, and December 4, 2009, are also enclosed.

Although the OIG is conducting an ongoing inspection of DDS for which a report will be completed next year, we are providing this information to you now so that you are aware of the importance of the issues addressed in the MAR and the corrective actions proposed by DDS and DOH.

If you have questions, please contact Alvin Wright, Jr., Assistant Inspector General for Inspections and Evaluations, at (202) 727-8452.

Sincerely,


Charles J. Willoughby
Inspector General

CJW/bd

Enclosures (4)

cc: See distribution list

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DISTRICT OF COLUMBIA
OFFICE OF THE INSPECTOR GENERAL
CHARLES J. WILLOUGHBY
INSPECTOR GENERAL

INSPECTIONS AND EVALUATIONS DIVISION
MANAGEMENT ALERT REPORT

OFFICE OF THE MAYOR,
DEPARTMENT OF HEALTH,
AND
DEPARTMENT ON DISABILITY SERVICES

**DDS MEDICAL EVALUATION UNIT IS NOT LICENSED
OR INSPECTED**

Inspections and Evaluations Division
Mission Statement

The Inspections and Evaluations (I&E) Division of the Office of the Inspector General is dedicated to providing District of Columbia (D.C.) government decision makers with objective, thorough, and timely evaluations and recommendations that will assist them in achieving efficiency, effectiveness, and economy in operations and programs. I&E goals are to help ensure compliance with applicable laws, regulations, and policies, to identify accountability, recognize excellence, and promote continuous improvement in the delivery of services to D.C. residents and others who have a vested interest in the success of the city.

GOVERNMENT OF THE DISTRICT OF COLUMBIA
Office of the Inspector General

Inspector General



September 3, 2009

The Honorable Adrian M. Fenty
Mayor
District of Columbia
The John A. Wilson Building
Mayor's Correspondence Unit
1350 Pennsylvania Avenue, N.W., Suite 316
Washington, D.C. 20004

Pierre Vigilance, MD, MPH
Director
Department of Health
825 North Capitol Street, N.E.
Washington, D.C. 20002

Judith E. Heumann
Director
Department on Disability Services
1125 15th Street, N.W., 9th Floor
Washington, D.C. 20005

Dear Mayor Fenty, Dr. Vigilance, and Ms. Heumann:

This is a Management Alert Report (MAR 09-I-008) to inform you that in the course of our inspection of the Department on Disability Services' (DDS) Rehabilitation Services Administration (RSA), the Office of the Inspector General (OIG) has become concerned that the RSA Medical Evaluation Unit (Medical Unit) is neither licensed nor inspected by the Department of Health (DOH). Although the D.C. Code grants DOH exclusive authority to regulate healthcare facilities in the District, it does not require that DOH license or inspect RSA's Medical Unit or similar "free-standing" health clinics. Consequently, there is no oversight entity to ensure that the RSA facility is adhering to basic healthcare regulations and best practices similar to those that are applicable to other District medical facilities (e.g., hospitals, and clinics that are affiliated with a hospital). The OIG provides these reports when it believes a matter requires the immediate attention of District government officials.

Background

The mission of RSA is to provide comprehensive vocational rehabilitation and independent living services to persons with disabilities to promote their employability and economic self-sufficiency. Federal regulations specify that a designated state unit, such as RSA, is responsible for administering vocational rehabilitation programs¹ and for conducting assessments to determine if individuals are

¹ 34 C.F.R. § 361.5(b)(14).

eligible for services.² According to federal regulations, a basic eligibility requirement includes determinations by qualified personnel that (1) an applicant has a physical or mental impairment and (2) the applicant's impairment constitutes or results in a substantial impediment to employment.³

The Rehabilitation Act of 1973, as amended (Pub. L. 93-112) provides RSA with authority to conduct assessments to determine clients' eligibility and vocational rehabilitation needs. Specifically, this Act states that an assessment for determining eligibility and vocational rehabilitation needs means a review of existing data and to the extent necessary, the provision of appropriate assessment activities to obtain necessary additional data.⁴ The additional data may include:

an assessment of the personality, interests, interpersonal skills, intelligence and related functional capacities, educational achievements, work experience, vocational aptitudes, personal and social adjustments, and employment opportunities of the individual, and the medical, psychiatric, psychological, and other pertinent vocational, educational, cultural, social, recreational, and environmental factors, that affect the employment and rehabilitation needs of the individual[.]⁵

RSA operates its Medical Unit⁶ to assist RSA counselors in determining client eligibility by reviewing existing medical information as well as obtaining and conducting assessments that can document the existence of a mental or physical disability.

As of February 2009, the Medical Unit consisted of the following positions: chief medical officer (one), medical officers (two, one of which was vacant), nurse (vacant), secretary (one), medical support assistant (one), part-time medical consultant (one), psychiatric consultants (two), dental consultant (one), and ophthalmologist (one). A Medical Unit official explained that when a client is referred to the Medical Unit, the client completes a basic medical history form and a medical officer completes a General Basic Medical Evaluation Record (See Attachment 1).⁷ A medical officer also conducts a basic physical examination, which includes assessing a client's vital signs, reviewing the medical history forms; assessing ears, throat, and lungs; collecting blood and urine specimens for analysis; and testing for tuberculosis and diabetes. The official stated that, generally, blood specimens are collected from all clients, although the official was not certain why. The official added that the Medical Unit does not treat a client if an untreated medical problem is found; rather, they refer the client to a doctor on RSA's list of service providers. A DDS senior official explained that the physicians who provide services under a purchase order have self-purchased malpractice insurance and that the Medical Unit's doctors who are employed by RSA have malpractice insurance purchased by DDS.

D.C. Code § 7-731(a)(4)(Supp. 2008) grants DOH exclusive authority to regulate healthcare facilities and social service facilities.⁸ According to DOH's General Counsel, this authority covers facilities

² 34 C.F.R. § 361.42.

³ 34 C.F.R. § 361.42(a).

⁴ 29 U.S.C.S. § 705(2)(A) (LEXIS through Pub. L. 111-49, 2009).

⁵ 29 U.S.C. § 705(2)(B)(iii).

⁶ The Medical Unit is located at 810 First St., N.E., Washington, D.C.

⁷ This form shows the comprehensiveness of the physical evaluation.

⁸ D.C. Code § 7-731(b) defines the term "regulate" to include "licensing, certification, investigation, inspection, permitting, registration, and enforcement functions"

such as hospitals, nursing homes, maternity centers, community residence facilities, group homes, ambulatory surgical treatment facilities, renal dialysis facilities, hospices, and home care agencies.⁹ According to DOH's Health Care Facilities Division mission, it "inspects, monitors, and investigates hospitals and other health care sites in the District of Columbia."¹⁰

Observations

RSA's Medical Evaluation Unit is neither licensed nor inspected.

During the OIG inspection of RSA, the inspection team (team) visited the Medical Unit and learned that it did not have a license and had not been inspected by DOH or the Department of Consumer and Regulatory Affairs (DCRA).¹¹ An RSA senior official did not know whether DOH is aware of the Medical Unit's functions and what role DOH has, if any, in monitoring the Medical Unit's operation. An RSA manager referred to the Medical Unit as a "clinic."

The team contacted DOH to determine whether it licenses or inspects RSA's Medical Unit. A senior official stated that DOH does not license RSA's Medical Unit because it is a clinic and there are no rules or statutes that require the licensing of clinics. A DOH manager presented somewhat contradictory information, stating that DOH only inspects clinics that are affiliated with a hospital, not "free-standing clinics."¹² The manager also stated that physicians and other professionals who practice in clinics are licensed by their respective boards and that pharmaceutical¹³ and radiation equipment are inspected by DOH. A DOH manager and some DOH inspectors explained that for those clinics that DOH inspects,¹⁴ DOH ensures the health and safety of the persons served at the clinics and ensures that the clinics comply with District and federal laws. These DOH employees added that inspections include a clinical component, such as ensuring that practitioners' treatment requests for clients are implemented. The inspections also include an environmental component, such as ensuring that a building structure is in good condition; floors, walls, ceiling tiles, windows, and ventilation systems are clean; preventive maintenance is done on equipment; and food is served at correct temperatures. (See Attachment 2, DOH's form to record general observations during an inspection's environmental component.)

The team asked DOH officials if they knew why D.C. law does not require DOH to license and inspect clinics and if they had proposed amending the law to require the same. DOH did not provide

⁹ D.C. Code § 44-501(a)(2005).

¹⁰ See <http://hrla.doh.dc.gov/hrla/cwp/view,a,1384,q,572526,hrlaNav,%7C33257%7C.asp> (last visited Jul. 7, 2009).

¹¹ The authority to regulate healthcare and social services facilities in the District was transferred from DCRA to DOH in accordance with the Fiscal Year 2002 Budget Support Act of 2001, but DCRA continues to inspect the scales that dialysis clinics use to weigh patients. An RSA employee stated that DCRA inspected the scales that Medical Unit employees use to weigh their clients. The same official explained that OSHA inspected the Medical Unit's needle collection process after a nurse poked herself with a needle, but that they did not find violations of any standards. The team did not know whether the employee was referring to the U.S. Department of Labor's Occupational Safety and Health Administration, whose role is to assure safe and healthy working conditions, or the District's Office of Risk Management. The RSA employee did not specify the dates of the DCRA and OSHA inspections.

¹² **In addition, the manager explained that DOH does not inspect physicians' offices. This may be significant if the District considers expanding DOH's inspection and oversight authority in the D.C. Code.**

¹³ A DOH employee explained that pharmaceutical equipment primarily consists of refrigerators used to store medication and balances used to measure medication.

¹⁴ According to a DOH manager, DOH refers to these inspections as "surveys."

an explanation, but reiterated that current law does not include licensing of clinics. While District law apparently does not require DOH to license health clinics, D.C. Code § 7-731(a)(4)(Supp. 2008) grants DOH exclusive authority to regulate healthcare facilities and social service facilities. D.C. Code § 7-737 requires the Mayor to issue rules to implement regulation of healthcare and social services facilities. As of July 2009, rules had not been published in the D.C. Register, and we are not aware of any Mayor's Orders delegating this authority to DOH.

The team contacted a manager at DCRA who said that DCRA does not license or inspect clinics and that DOH would be responsible for this function. According to a senior official at DCRA, the only thing that DCRA would inspect at a clinic would be the building in which the clinic is housed to ensure that it complies with District building codes. According to a DCRA inspections supervisor, DCRA conducts an inspection during the initial construction of a building, during any subsequent renovations, and if DCRA receives a specific complaint about a building. However, in response to the OIG's request, DCRA was unable to produce any inspection reports for the building housing RSA's Medical Unit. The DCRA supervisor suggested that the OIG contact the Department of Real Estate Services (DRES) to determine whether it had inspected the building. The OIG contacted DRES and was provided a copy of a May 2009 Office of Risk Management (ORM) inspection report that assessed the Medical Unit's compliance with OSHA requirements.¹⁵

The team contacted DOH in an attempt to identify the number of clinics in the District. A DOH manager responded that because DOH does not regulate private or public clinics, he/she was unaware of the current number.

Conclusion

The D.C. Code grants DOH a broad mandate to oversee healthcare facilities. However, facilities classified as "free-standing" clinics are not required to be inspected by DOH. The OIG is concerned that by not inspecting these clinics, the District is not ensuring that best practices are in place and followed at all healthcare facilities, including "free-standing" clinics, and that the lack of health and safety inspections at DDS could increase the District's legal liability. More importantly, without the inspections, the health and safety of District residents may be at risk.

Recommendations

1. That the Director of DOH seek legislation to amend the DCMR so that DOH has the authority to license and inspect all healthcare facilities throughout the District, including "free standing" clinics and other facilities that provide medical care and medical assessments.
2. That the Director of DDS determine whether RSA's Medical Evaluation Unit should continue to perform its own medical procedures as part of the assessments without being licensed and inspected. While federal law allows RSA to conduct assessments, it does not require that RSA perform these services itself.

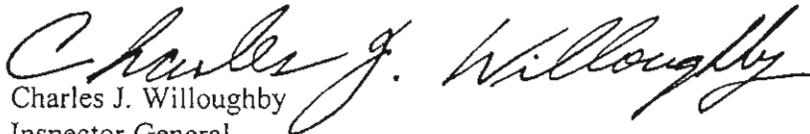
¹⁵ The only violation ORM identified in the inspection report was soiled ceiling tiles in a copier area. A DRES official told the team that he believes the violation has since been corrected.

3. That, until additional inspection and licensing requirements are in place, DDS request periodic Occupational Safety and Health Assessments of RSA's Medical Evaluation Unit by the ORM's Risk Identification Analysis and Control Division.¹⁶

Please provide your comments to this MAR by September 24, 2009. Your response should include actions taken or planned, dates for completion of planned actions, and reasons for any disagreement with the concerns and recommendations presented. Please distribute this MAR only to those who will be directly involved in preparing your response.

Should you have any questions prior to preparing your response, please contact [REDACTED]
Director of Planning and Inspections on [REDACTED]

Sincerely,


Charles J. Willoughby
Inspector General

CJW/bd

Enclosures

cc: Mr. Neil O. Albert, City Administrator and Deputy Mayor, District of
Columbia
The Honorable Mary M. Cheh, Chairperson, Committee on Government Operations and
the Environment, Council of the District of Columbia
The Honorable Tommy Wells, Chairperson, Committee on Human Services,
Council of the District of Columbia
The Honorable David A. Catania, Chairperson, Committee on Health, Council of the District
of Columbia
Ms. Kelly Valentine, Director and Chief Risk Officer, Office of Risk Management

¹⁶ ORM's mission is to work with District agencies to identify and mitigate hazards posing a potential risk to employees' and the public's safety and health.

ATTACHMENT 1

General Basic Medical Evaluation Record

GOVERNMENT OF THE DISTRICT OF COLUMBIA
Department of Human Services
GENERAL BASIC MEDICAL EXAMINATION RECORD

Dear Dr:

(Client's Name)

(Client's Address)

is being sent to you for a physical examination to help us determine work limitations, appropriate types of work, and any medical treatment necessary to increase the range of employment activity. Because we recognize that superficial symptoms and complaints are not adequate to determine the above, we have sent this client to you so that you may give us the information indicated in the body of this report.

MEDICAL HISTORY: _____

PHYSICAL EXAMINATION REPORT - (To be filled out by physician. Items examined and found normal to be (checked (✓)). Deviations from normal to be noted. If items require additional description, please record on extra sheet).

Chest X-Ray Result or PPD _____

Height (without shoes) _____ ft. _____ in. Weight (without clothing) _____ pounds

Eyes: Right _____ Left _____
(Discharge: corneal scars; strabismus; ptosis; trachoma; fundi; cataract; intraocular pressure)

Distant vision: Without glasses-R. 20/_____, L. 20/_____ With glasses R. 20/_____ L. 20/_____
(If vision is too low to be recorded at 20 feet, indicate by recording as "less than 20/200")

Ears-Hearing: Right _____ Left _____ Other findings: R. _____ L. _____
20 feet 20 feet (Evidence of middle ear or mastoid disease. Drums:
Consider denominators indicated as Normal, absent, perforated, dull, retracted; discharge)
normal. Record numerators as greatest
distance heard)

Nose _____ Throat _____
(Obstruction. Evidence of chronic sinus (Tonsils: Normal, enlarged, removed, etc.)

Mouth _____ Neck _____
(Missing teeth, pyorrhea; abnormality of tongue or palate) (Thyroid enlargements, nodules, etc.)

Lymphatic System _____ Breasts _____
(Especially cervical, epitrochlear, inguinal) (Abnormal discharge, nodules, tenderness, hypoplasia)

Lungs: Right _____ Left _____
(If history or physical findings reveal active or arrested tuberculosis, recommend chest X-ray, sputum examination, and consultation with chest specialist)

Circulatory System: Heart _____
(Enlargement, thrill, murmurs, rhythm)

Blood Pressure (Systolic) _____ Pulse rate _____ Dyspnea _____ Cyanosis _____ Edema _____
(Diastolic) _____

Evidence of arteriosclerosis _____
(Type: degree, location: "cerebral" "brachial" etc.)

Abdomen

Hernia _____
(Type: Inguinal, ventral, femoral, etc. right, left, bilateral)

Genito-Urinary and _____
(Urethral discharge, varicocele, scars, epididymitis, enlarged or atrophic testicle, mass)

Gynecological _____
(Prolapse, cystocele, rectocele. Cervix): LMP

Ano-Rectal _____
(Hemorrhoids, prolapse, fissures, fistula. Prostate abnormalities (describe)

Nervous System _____
(Paralysis. Sensation. Speech. Gait. Reflexes. Pupillary, DTRs, Babinski, Rhomberg)

(Memory. Peculiar ideas or behavior, Spirits: Elated, depressed, normal)

(Neurological or psychiatric abnormalities should be described on separate sheet)

Skin _____ Feet _____ Varicose Veins _____
(Moist, dry, clear) (Congenital or traumatic defects)

Orthopedic Impairments: (Describe) _____

Laboratory: Blood serologic test for syphilis - Date _____ Other _____ Result _____

Urinalysis: Date _____ Specific Gravity _____ Reaction _____ Albumen _____ Sugar _____

DIAGNOSIS: (indicate major and minor) _____

Characteristics of Major Disability: (Check appropriate terms) Permanent _____ Temporary _____ Stable _____
Slowly progressive _____ Rapidly progressive _____ Improving _____

Can the Major Disability Be Removed By Treatment: (Yes) (No) Substantially Reduced by Treatment: (Yes) (No)

Physical Capacities: (Under "Physical activities" and "Working conditions" use symbols as follows)
(✓) No Limitations (X) Limitation. (∅) To be avoided.

Physical activities: Waiting _____ Standing _____ Stooping _____ Kneeling _____ Lifting _____ Reaching _____ Pushing _____
Pulling _____ Other (Specify) _____

Working conditions: Outside _____ Inside _____ Humid _____ Dry _____ Dusty _____ Sudden temporary changes _____
Other (Specify) _____

Recommendations:
Is examination by specialist advisable for completeness of diagnosis or prognosis? If so, specify which specialty _____

Refraction X-ray of chest Other diagnostic procedures (Specify) _____

Prosthetic appliances (Specify) _____

Hospitalization (Specify reason and approximate duration) _____

Treatment (Specify type and approximate duration) _____

Remarks: Please use additional sheet for remarks and expansion of any of the above items.

Date _____

(Physician)

M.D.

ATTACHMENT 2

**“General Observations of the
Facility” Form Used by DOH during an
Inspection’s Environmental Component**

GENERAL OBSERVATIONS OF THE FACILITY

Facility Name: _____ Surveyor Name: _____

Provider Number: _____ Surveyor Number: _____ Discipline: _____

Observation Dates: From _____ To _____

Instructions: Use the questions below to focus your observations of the facility. Include all locations used by residents (units, hallways, dining rooms, lounges, activity and therapy rooms, bathing areas, and resident smoking areas). Also check other areas that affect the residents, such as storage and utility areas. Initial that there are no concerns or note concerns and your follow-up in the space provided. Begin your observations as soon as possible after entering the facility and continue throughout the survey. Note, these tags are not all inclusive.

LIST ANY POTENTIAL CONCERNS FROM OFFSITE SURVEY PREPARATION. _____

1. **HANDRAILS:** Do corridors have handrails? Are handrails affixed to walls, intact, and free of splinters? (F468)
2. **ODORS:** Is the facility free of objectionable odors? Are resident areas well ventilated? Especially observe activity areas and the dining room during activities and lunch, when the residents are using them. Are nonsmoking areas smoke free? Do smoking areas provide good quality of life for residents who smoke? (F252)
3. **CLEANLINESS:** How clean is the environment (walls, floors, drapes, furniture)? (F252)
4. **PESTS:** Is the facility pest free? (F469)
5. **LINEN:** Is the linen processed, transported, stored and handled properly to prevent the spread of infection? (F445)
6. **HAZARDS:** Is the facility as free of accident hazards as possible? Are water temperatures safe and comfortable? Are housekeeping/hazards, compounds, and other chemicals stored to prevent resident access? (F252, 323)
7. **CALL SYSTEM:** Is there a functioning call system in bathing areas and resident toilets in common areas? (F463)
8. **SPACE:** Do the space and furnishings in dining and activity areas appear sufficient to accommodate all activities? (F464)
9. **FURNISHINGS:** Are dining and activity rooms adequately furnished? (F464)
10. **DRUG STORAGE:** Are drugs and biologicals stored properly (locked and at appropriate temperatures)? (F432)
11. **EQUIPMENT:** Is the resident equipment in common areas sanitary, orderly, and in good repair? (Equipment in therapy rooms, bathing rooms, activity areas, etc.) Are equipment and supplies appropriately stored and handled in clean and dirty utility areas (sterile supplies, thermometer, etc.)? (F253)
12. **EQUIPMENT CONDITION:** [Excluding the kitchen] Is essential equipment in safe and effective operating condition (e.g. boiler room equipment, nursing unit/medication room equipment, unit refrigerators, laundry equipment, therapy equipment)? (F456)
13. **SURVEY POSTED:** Are survey results readily accessible to residents? Are the survey results or a notice concerning survey results posted? (F167)
14. **INFORMATION POSTED:** Is information about Medicare, Medicaid and contacting advocacy agencies posted? (F156)
15. **POSITIONING:** Is correct posture and comfortable positioning and assistance being provided to residents who need assistance — especially check residents who are dining or participating in activities? (F246, 311, 318)
16. **EMERGENCY:** Are staff prepared for an emergency or disaster? Ask two staff and a charge nurse to describe what they do in emergencies (include staff from different shifts). Evaluate the responses to determine their correctness and preparedness. (F518)
17. **EMERGENCY POWER:** Is there emergency power? Are staff aware of outlets, if any, powered by emergency source? (F455)
18. **WASTE:** Is waste contained in properly maintained (no breaks) cans, dumpsters or compactors with covers? (F454, 371)

THERE ARE NO IDENTIFIED CONCERNS FOR THESE REQUIREMENTS (Init.) _____

Document concerns and follow-up on back of page:



**Government of the
District of Columbia**

Office of the Inspector General

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Abuse, or Mismanagement to:*

**Charles J. Willoughby
Inspector General**

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or hotline.oig@dc.gov**

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717 14th Street, NW
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Washington, D.C. 20005**

Web Page: www.oig.dc.gov

GOVERNMENT OF THE DISTRICT OF COLUMBIA
DEPARTMENT ON DISABILITY SERVICES



OFFICE OF THE DIRECTOR

September 24, 2009

Mr. Charles J. Willoughby
Inspector General
D.C. Office of the Inspector General
717 14th Street, N.W.
Washington, D.C. 20005

RE: *Management Alert Report No. MAR 09-I-0008 dated September 3, 2009*

Dear Mr. Willoughby:

This letter sets forth the response of the Department on Disability Services, Rehabilitation Services Administration ("DDS/RSA") to the second and third recommendations contained in the Management Alert Report ("MAR") "MAR 09-I-0008" dated September 3, 2009. In essence, this report stated that DDS/RSA's medical evaluation unit is not licensed or inspected. Based on the request of the Office of the Inspector General ("OIG"), DDS/RSA's response to the MAR is being provided on September 24, 2009.

For ease of reference, below we have provided the full text of each of OIG's recommendations, followed by DDS/RSA's response. The recommendations appear on pages 4 and 5, of the MAR respectively and are directed to DDS/RSA's Director as follows:

- 2. That the Director of DDS determines whether RSA's Medical Evaluation Unit should continue to perform its own medical procedures as part of the assessments without being licensed and inspected. While federal law allows RSA to conduct assessments, it does not require RSA to perform these services itself.*

DDS/RSA agrees with this recommendation, insofar as DDS/RSA does not need to perform assessment services itself. Therefore, on September 25, 2009, DDS/RSA will close its Medical Evaluation Unit and cease performing assessments and/or other medical examinations prescribed by the Rehabilitation Act of 1973, as amended ("the Act"). This closure is facilitated in response to the MAR, but also because DDS/RSA will be moving from its location at 810 First Street, N.E. to 1125 15th Street, N.W. on the above-mentioned date.

Letter to Charles J. Willoughby

September 24, 2009

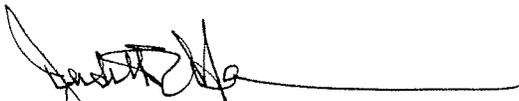
Page 2

3. *That, until additional inspection and licensing requirements are in place, DDS request periodic Occupational Safety and Health Assessments of RSA's Medical Evaluation Unit by the ORM's Risk Identification Analysis and Control Division.*

DDS/RSA agrees with this recommendation. However, since DDS/RSA will be closing its Medical Unit two days after the submission of this response, future Occupational Safety and Health Assessment inspections by the Office of Risk Management's (ORM) Risk Identification Analysis and Control Division are not warranted.

Thank you for this opportunity to respond to the Management Alert Report, MAR No. 09-I-0008, dated September 3, 2009, "DDS Medical Evaluation Unit is not Licensed or Inspected." We look forward to working with OIG in the coming months as we seek to improve DDS/RSA's operations.

Sincerely,



Judith E. Heumann
Director

Attachment: DDS/RSA Plan of Action, re: MAR 09-I-0008

cc: Mr. Neil O. Albert, City Administrator and Deputy Mayor, District of Columbia Government
The Honorable Mary M. Cheh, Chairperson, Committee on Government Operations and the Environment, Council of the District of Columbia
The Honorable Tommy Wells, Chairperson, Committee on Human Services, Council of the District of Columbia
The Honorable David A. Cantina, Chairperson, Committee on Health, Council of the District of Columbia
Ms. Kelly Valentine, Director and Chief Risk Officer, Office of Risk Management
Roy Albert, Deputy Director, DDS/RSA
Mark D. Back, Acting General Counsel, DDS
Turna R. Lewis, Deputy General Counsel, DDS

**DDS/RSA PLAN OF ACTION
IN RESPONSE TO
MANAGEMENT ALERT REPORT NO. MAR 09-I-0008 DATED SEPTEMBER 3, 2009,
DDS MEDICAL EVALUATION UNIT IS NOT LICENSED OR INSPECTED**

2. *That the Director of DDS determines whether RSA's Medical Evaluation Unit should continue to perform its own medical procedures as part of the assessments without being licensed and inspected. While federal law allows RSA to conduct assessments, it does not require RSA to perform these services itself.*

Action taken or planned: No later than September 25, 2009, DDS/RSA will complete the following:

1. Dispose of all existing medical and examination equipment prior to its relocation date;
2. Cancel future assessments and examinations scheduled to occur within the Medical Evaluation Unit;
3. Provide all DDS/RSA consumers affected by the closure of the Medical Unit with a listing of approved vendors (i.e., physicians) so that (1) they can complete their assessments / examinations in a timely manner; and (2) they have informed choice with selecting an approved physician;
4. Revise the job descriptions and functions of DDS/RSA full-time and/or part-time medical personnel (i.e., two medical doctors). The revised job descriptions will state that such medical personnel can only perform duties as a medical consultant. In this role, the medical consultant will: (a) review medical documentation submitted in support of determining eligibility under the Act; and (b) advise DDS/RSA vocational rehabilitation counselors in interpretation of medical opinions and needed services.

Current Status: Nos. 1 through 3 have been completed.

3. *That, until additional inspection and licensing requirements are in place, DDS request periodic Occupational Safety and Health Assessments of RSA's Medical Evaluation Unit by the ORM's Risk Identification Analysis and Control Division.*

Action taken or planned: Since DDS/RSA will be closing its Medical Unit two days after the submission of this response, future Occupational Safety and Health Assessment inspections by the Office of Risk Management's (ORM) Risk Identification Analysis and Control Division are not warranted.

Current status: Completed.

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GOVERNMENT OF THE DISTRICT OF COLUMBIA
Department of Health

2009 OCT 26 PM 3: 54



Office of the Director

MEMORANDUM

TO: Charles J. Willoughby
Inspector General

FROM: Pierre N.D. Vigilance, MD, MPH
Director, Department Of Health

SUBJECT: OIG Management Report

DATE: October 23, 2009

A handwritten signature in black ink, appearing to read 'P. Vigilance', is written over the 'FROM' line of the memorandum.

The Office of the Inspector General (OIG), in a Management Alert Report dated September 4, 2009, states that the OIG inspected the Department of Disability Services (DDS), Rehabilitation Services Administration (RSA) and determined that its Medical Unit, a clinic, is not licensed. The OIG poses the question, why is it that "[a]lthough the D.C. Code grants DOH exclusive authority to regulate health care facilities in the District, it does not require that DOH license or inspect RSA's Medical Unit or similar 'free-standing' health clinics."

According to the OIG the Medical Unit assists RSA counselors in making assessments of clients' eligibility and vocational rehabilitation needs. The Medical Unit reviews existing medical information and documents mental and physical disabilities. The Medical Unit is staffed, or should be staffed, with physicians, nurses and other medical consultants in order to make certain medical determinations. According to RSA they are not licensed or inspected by the Department of Health and are likewise not under the regulatory jurisdiction of the Department of Consumer and Regulatory Affairs.

The Legal Status of the Licensing of Clinics

The Health Regulation and Licensing Administration (HRLA) agrees that the Department of Health (DOH) is the agency that is authorized to regulate health-care facilities in the District. The OIG refers to D.C. Official Code 7-731 as the source of DOH's "exclusive" authority to regulate healthcare facilities and social service facilities. D.C. Official Code 7-731 was written in accordance with Reorganization Plan No. 4 of 1996, effective July 17, 1996 (part A of subchapter XIV of Chapter 15 of Title 1), which established the Department of Health.

When DOH was organized it inherited the responsibility of regulating health-care facilities in accordance with D.C. Law 5-48 or the Health-Care, Community Residence Facility, Hospice and Home Care Licensure Act of 1983 (D.C. Official Code § 44-501 *et seq.*) (the Act). The Act states that any facility or agency defined as such is not to operate without a license and must function in accordance with applicable regulations on operating standards, inspections, etc. See D.C. Official Code § 44-502(a) and 44-501(c). In turn, the Act defines agency and facility as either a hospital, community residence facility, maternity center, nursing home, group home, hospice, home care agency, ambulatory surgical facility or a renal dialysis facility. HRLA, in fact, licenses each of these types of health-care facilities or, as permitted by D.C. Official Code § 44-505(b), certifies them under federal standards for participation in the Medicare and/or Medicaid programs.

At the time D.C. Law 5-48 was enacted "clinics" were not defined as a health-care facility and, therefore, are not licensed or inspected. It is true, however, that facilities that provide outpatient services and are adjuncts to licensed hospitals are inspected and operated under the umbrella of the hospital license. "Freestanding" clinics that do not operate as part of a licensed hospital are not licensed, though DOH licenses and regulates the professionals who are employed there as well as the management of pharmaceuticals and radiological equipment.

The Act, at D.C. Official Code § 44-501(b), provides:

The Mayor shall have the authority to define variant types of facilities and agencies reasonably classified within the broader categories defined in subsection (a) of this section, and may issue rules under § 44-504 with respect to these subtypes.

The Mayor, or the Director to whom he delegates his authority, may create and define an additional category of health-care facility, i.e. a clinic, based on the above provision. However, to date no such category of health-care facility has been defined for the purpose of licensure.

Clinics in the Area

As referred to above, DOH does license ambulatory surgical facilities or free standing clinics in which surgical procedures are conducted. DOH is now in the process of developing new regulatory standards for these facilities and is meeting with providers to obtain needed input. The regulation will be published as proposed in November. There are also District-sponsored clinics that address mental health issues and substance abuse issues.

Maryland does not license entities such as the ones the OIG questions. Maryland has a license category called freestanding medical facility that provides health-care services on an outpatient basis. However, these facilities must operate under the control of an affiliated hospital which must provide administrative and clinical oversight. These facilities are like the outpatient services that operate under the licensure of hospitals in the District.

Virginia has county-operated free clinics that provide health-care services for the indigent and to those without medical insurance. The Virginia Office of Licensure and Certification licenses hospital, home care and hospice programs as well as monitors managed care insurance plans and issues CLIA certifications for clinical laboratories; however, there is no evidence in Virginia's law or conveyed by Virginia health-care staff that Virginia licenses freestanding clinics.

In the District of Columbia, clinics are required to go through the Certificate of Need process as a health-care facility.

Can DOH License Clinics

The District can create a license category for clinics under the Act, define it and develop operating standards through regulations. At this point the authority to promulgate regulations for the licensure of clinics lies with the Director of DOH as that authority has been so delegated by the Mayor.

DOH's General Regulatory Authority

While DOH has exclusive authority to regulate health-care facilities, recent issues have raised questions about trends in regulating facilities for persons with disabilities in particular. Many of these facilities have moved away from DOH's licensure jurisdiction because D.C. Law 5-48 provides that group homes must have a minimum of four residents; persons with mental retardation are now being placed in living situations in which there are three or less

residents. As a result, DOH is not authorized to regulate these residences even though, for all intents and purposes, the residents are receiving health-care services.

The question becomes then should these residences be granted the same regulatory protections by DOH that the residents were entitled to when they were in homes with 4 to 8 residents? HRLA believes that DOH should continue to license these residences as it is so authorized.

GOVERNMENT OF THE DISTRICT OF COLUMBIA
Department of Health

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Office of the Director



MEMORANDUM

TO: Charles Willoughby
Inspector General

FROM: Pierre Vigilance, MD, MPH
Director 

DATE: December 4, 2009

SUBJECT: Response to OIG Management Alert Report re Clinics

The Health Regulation and Licensing Administration recognizes clinics are not an entity covered in the Health-Care, Community Residence Facility, Hospice and Home Care Licensing Act of 1983 (D.C. Law 5-48, D.C. Official Code § 44-501).

After reviewing your Management Alert Report, entitled *DDS Medical Evaluation Unit is Not Licensed or Inspected*, the Department of Health agrees that licensing standards for freestanding clinics are needed and will improve the quality of service provided in those locations. We have assigned this task and anticipate that draft legislation designating this new category of health-care facility and regulations outlining licensing requirements will be complete in January, 2010. Please understand that all drafts must then undergo policy review and must be approved for legal sufficiency.

For your information, the Department of Health currently licenses all health care facilities as they are defined in the Health-Care, Community Residence Facility, Hospice and Home Care Licensing Act of 1983 (D.C. Law 5-48, D.C. Official Code § 44-501) (hereinafter "the Act"). The Act defines agency and facility as a hospital, community residence facility, maternity center, nursing home, group home, hospice, home care agency, ambulatory surgical facility or a renal dialysis facility. To date, the Department of Health has not designated another license category outside those currently defined.

Also note that in Mayor's Order 2009-120, the Mayor delegated to the Department of Disability Services the authority to define and make final determinations about variant types of facilities related to the D.C. Medicaid Home and Community-Based Services Waiver to Persons with Intellectual and Development Disabilities. The delegated authority is from section 2(b) of the Act (D.C. Official Code § 44-501(b)).

The Department of Health, Health Regulation and Licensing Administration will continue with its authority to inspect health care facilities to ensure regulatory compliance with all applicable laws.