



Office of Program Policy Analysis And Government Accountability



John W. Turcotte, Director

March 17, 1997

Review of the Office of Plans and Construction Within the Agency for Health Care Administration

Abstract

- **Reviews and inspections performed by the Agency for Health Care Administration overlap the scope of some local reviews and inspections, but the overlap may be a subtle and inseparable part of the process; and**
- **State regulation of some facilities may be unnecessary and the agency proposes exempting these facilities, saving the regulated industry about \$60,000 per year.**

Purpose

In response to a request from the Senate Health Care Committee, the Joint Legislative Auditing Committee requested that our Office review the activities of the Office of Plans and Construction (OPC) in the Agency for Health Care Administration. We sought to answer the following questions:

- Do OPC's reviews duplicate activities of local government building and fire code enforcement? and
- Does OPC need to regulate all the facilities it currently reviews?

A second report to be issued after the 1997 Legislative Session will examine the efficiency of the OPC.

Background

The Agency for Health Care Administration reviews construction plans and inspects alterations, additions, and new construction for all hospitals, nursing homes, and

ambulatory surgical centers in Florida. The Agency's purpose is to ensure compliance with national and state building, fire and design codes, and life safety regulations. From July 1995 through September 1996, OPC reviewed and inspected about 1,145 construction projects. Florida statutes require the Agency to approve or disapprove the plans within 60 days of submittal. If OPC's reviews are not timely, the plans are automatically approved. Although plans may be automatically approved, any deficiencies must be corrected during the construction phase.

OPC's reviews are financed by a fee paid by facilities to be reviewed and inspected. In fiscal year 1995-96, the Agency received \$2.6 million in fees and expended \$2.5 million on its operations. OPC has 41 authorized positions, including architects, mechanical and electrical engineers, and support staff. OPC has offices in Tallahassee, Orlando, and Miami.

Local governments may also review construction plans and inspect health care facilities located within their jurisdiction to ensure compliance with building and fire protection codes. Local governments performing these tasks must adopt the State Minimum Building Codes and National Fire Protection Association Life Safety Code, among other uniform fire-safety standards. Compliance with these codes must be enforced by certified plan examiners, inspectors, and fire-safety inspectors.

Findings

Do reviews and inspections by the Office of Plans and Construction duplicate local government building codes and fire protection ordinance enforcement?

Parts of OPC's reviews and inspections overlap the scope of some local reviews and inspections. However, the

overlap may be a subtle and inseparable part of the process. We interviewed building and fire officials in the state's six most populated counties to determine whether local jurisdictions perform reviews and inspections similar to OPC's. The six counties we surveyed were Dade, Broward, Palm Beach, Hillsborough, Pinellas, and Orange. These six counties account for almost 50% of the state's population and almost 45% of the state's licensed hospitals, nursing homes, and ambulatory surgical centers. OPC and the building and fire departments in the six counties we interviewed review and approve construction plans for compliance with architectural, mechanical, electrical, and civil standards contained in the State Minimum Building Code, as well as the state fire codes.

However, other parts of OPC's reviews and inspections are distinct from local government code enforcement. OPC reviews plans and specifications for compliance with design criteria specified in Florida Administrative Code. These design criteria involve engineering systems such as medical gas, lightning protection, emergency power generation, air distribution, and nurse call. To ensure that the design and performance of these engineering systems conform to local building and fire regulations, OPC must apply many of the same building and fire codes enforced by local governments.

Eliminating OPC's review functions statewide could affect the quality of some reviews and inspections because local government reviews and inspections vary around the state. According to OPC and some stakeholders, many local governments lack experience and expertise in the application of fire codes and other engineering standards that are specific to health care facilities. Also, the State Fire Marshal's office reports that many local governments do not perform any plan reviews and inspections. However, delegating OPC's review functions may be a feasible option in large counties that already perform similar functions.

Officials in all six counties reported that their staff could conduct reviews and inspections comparable to OPC's if they received more training; however, some stated they may need additional staff. Based upon an estimate of more than 14,000 hours of work performed annually by OPC in the six counties, we determined that OPC reviews and inspections cost about \$800,000 in salaries, benefits, and travel. After discussions with local officials, we estimated that local governments could perform these activities for about \$590,000. Although these activities represent additional costs to local governments, it could reduce the costs of reviews and inspections by \$210,000 per year. (See Exhibit 1.) We will study the issue of efficiency more fully in a subsequent review.

Exhibit 1 Some Local Governments Could Perform Reviews and Inspections for Less Cost

County	Project Hours in County ¹	Current OPC Costs ²	Local Government Costs ²	Cost Savings
Dade	3,997	\$210,000	\$185,000	\$ 25,000
Broward	2,139	115,000	110,000	5,000
Palm Beach	1,662	90,000	70,000	20,000
Orange	2,298	115,000	80,000	35,000
Hillsborough	1,685	110,000	45,000	65,000
Pinellas	2,485	160,000	100,000	60,000
Total	14,266	\$800,000	\$590,000	\$210,000

¹ These figures are annualized based on a 15-month period from July 1995 through September 1996.

² Based on estimates of salaries, benefits, and travel as necessary.

Source: Office of Program Policy Analysis and Governmental Accountability.

Is it necessary for the Office of Plans and Construction to regulate health care facility construction to the extent that it does?

It may be feasible for OPC to deregulate certain aspects of health care facility construction. Specifically, OPC may not need to regulate all state licensed health care facilities, and some of the regulations it uses to regulate the industry may not be necessary.

Potential for Deregulation. All facilities currently regulated by OPC may not need to be included in OPC's reviews and inspections. OPC reviews and inspects construction related to hospitals, nursing homes, ambulatory surgical centers, and detached outpatient facilities operating under a hospital's license.

OPC is considering exempting some detached outpatient facilities from construction regulation because most do not provide invasive procedures.¹ In addition, physicians' offices provide many of the same procedures provided in these detached outpatient facilities but are not subject to the same degree of regulation. OPC proposes exempting medical walk-in clinics, cardiac rehabilitation clinics, sports medicine facilities, physical and occupational rehabilitation facilities, MRI facilities, radiographic facilities, outpatient psychiatric facilities, renal dialyses facilities, senior health centers, and workers'

¹ State regulation is necessary for facilities that provide invasive procedures because invasive procedures render patients unconscious, immobile, or otherwise incapable of saving themselves in time of an emergency.

compensation centers. Statewide deregulation of these non-invasive and partially invasive outpatient facilities would save an estimated \$60,000 per year.

OPC is planning to retain jurisdiction over some ambulatory surgical centers that also do not provide invasive procedures. Some ambulatory surgical centers provide mainly endoscopy or cataract surgery which OPC does not consider invasive in nature. However, ambulatory surgical centers licensing regulation does not distinguish the type of ambulatory surgical center that provides invasive from partially invasive procedures. As a result, OPC cannot deregulate ambulatory surgical centers that provide only partially invasive procedures. We will study the issue more closely of exempting certain ambulatory surgical centers in our subsequent review of OPC.

Potential Regulations for Streamlining. OPC may have adopted more regulations than necessary to ensure the safety of health care facilities. During the course of our interviews, representatives from the industry and an affiliated association told us that they consider Florida along with California to be the two most stringently regulated states in the country. Our limited review of OPC's regulations indicate that some of Florida's regulations go beyond federal certification requirements for facilities participating in Medicaid or Medicare. Also, some of OPC's regulations go beyond the national accreditation standards established by the Joint Commission on Accreditation of Healthcare Organizations. Finally, a significant number of national standards detailing minimum design and construction practices for health care facilities have been published. There may also be less need to develop extensive governmental regulations than there would be if no such industry standards existed. We will study this issue closely in our subsequent review of OPC.

Options for Legislative Consideration

We identified four options the Legislature could consider regarding OPC's regulation of health care facilities. The Legislature could (1) take no action, (2) pre-empt local governments' reviews and inspections, (3) delegate to local governments, or (4) limit the scope of OPC's reviews and inspections.

Take No Action. Under this option, the Legislature could leave intact the current regulatory system, allowing OPC and the local jurisdictions to duplicate some parts of their reviews and inspections. We estimate that this overlap costs about \$210,000 in additional regulatory fees. Under

this option, OPC would continue to review construction plans and inspect alterations, additions, and new construction of health care facilities. While this option would continue the current overlap of code enforcement, it would ensure the uniform application of design and safety requirements throughout the state. Furthermore, some stakeholders and local officials believe that the overlap between OPC and local governments serves a useful public purpose by providing additional assurances that health care facilities will meet safety standards.

Pre-empt Local Governments' Reviews and Inspections. One variation under this option is that the state would pre-empt local government reviews and inspections of health care facilities. Responsibility for reviewing and inspecting all health care facilities in the state would rest with OPC. In addition to its current reviews, OPC would also perform the structural reviews, planning, and other responsibilities that local governments now have with respect to the construction of health care facilities.

However, pre-empting reviews by local governments has significant limitations. This option raises the issue of home rule powers because it would interfere with local governments' enforcement of their ordinances. Another limitation is that building code enforcement encompasses other local issues, including zoning, drainage, and planning that are normally outside the scope of OPC's functions. To pre-empt local government structural reviews alone, OPC estimates that it would need an additional \$950,000 per year to hire more staff and obtain the necessary certification to perform the additional reviews and inspections. To fund these additional costs, OPC may have to increase its fees.

Delegate Regulation to Local Governments. Under this option, the Legislature could enact a law allowing OPC to delegate its authority to local governments that are willing and are qualified to make comparable OPC plan reviews and inspections. This option is similar to what the Governor's Building Code Study Commission is currently studying in an effort to reduce the overlapping of codes and enforcement.

Delegating authority to local jurisdictions could eliminate overlap of code enforcement, but could also create other costs. Local governments that choose to undertake these reviews would have to enact additional ordinances, adopting the relevant provisions of Florida Administrative Code enforced by OPC. Further, counties indicated that additional training and possible additional staff may be necessary. However, these additional local costs would likely be offset by savings from OPC reducing its fees and workload. We estimate that delegating would reduce costs by about \$210,000 in the six counties that contain the largest number of regulated facilities.

However, delegating to local governments may also involve additional costs for OPC. OPC would need to develop a system to monitor the effectiveness of its delegation, evaluate the quality of local government reviews and inspections, and train and assist local government reviewers and inspectors. We estimated initial costs of training local governments' staff could be about \$20,000 in the six counties where delegation may be feasible. In addition, OPC estimates that it would need to dedicate three positions, costing about \$100,000 to \$150,000, to provide ongoing training to local staff and to monitor and evaluate projects they review and inspect. However, this seems excessive to us considering that only six counties are involved.

Limit Scope of OPC Reviews and Inspections. Under this option, the Legislature could limit the scope of OPC's reviews and inspections in local jurisdictions who choose to undertake the reviews. This could be done in two ways. First, in those jurisdictions where overlap of code enforcement currently exists, OPC could concentrate its reviews and inspections on design standards rather than the State Minimum Building Codes and the uniform fire-safety standards. However, limiting the scope of OPC's reviews by this method is not likely to be effective in eliminating overlap as it is difficult to separate the review of design standards from building codes and fire-safety standards.

An alternative approach to limiting the scope of OPC's reviews is to set thresholds. Using this approach, health care facilities would not require an OPC plan review and inspection unless they exceeded a specified threshold, such as number of beds, square footage, or project costs. Facilities below these thresholds would be exempt from OPC's reviews and inspections. This approach could restrict overlap to larger construction projects. However, this approach may not be an efficient or effective way to judge whether proposed projects affect patient safety.

Conclusions and Recommendations

Construction plan reviews and inspections made by the Office of Plans and Construction (OPC) may overlap some

local code enforcement efforts, but this overlap may be hard to avoid. In six counties, this overlap could cost as much \$210,000 per year. However, regulation of detached outpatient facilities for all counties could unnecessarily cost an estimated \$60,000 annually.

We recommend that the Legislature consider exempting detached outpatient facilities from OPC's construction reviews. We also recommend that the Legislature take no action to deal with the overlap of reviews until we conclude our next study. In the next study, we plan to develop more information about the potential impact of delegating reviews and inspections to local governments and setting construction thresholds for OPC's reviews.

Agency Response

The Director of the Agency for Health Care Administration provided the following written comments to this report.

“The Agency for Health Care Administration supports deregulation of state licensed health care facilities where it is determined to be appropriate and when the citizens of Florida are assured that a minimum and consistent fire, life, safety and health standard is being met in all health care environments. In fact, enclosed is a copy of the Agency's proposal to deregulate certain hospital outpatient facilities from the Office of Plans Construction review.

“We feel the issue of deregulation should be studied closely and carefully in your subsequent review of the Office of Plans and Construction to ensure consistent standards are enforced throughout Florida to protect and enhance the health of patients. Without consistent standards, the citizens of Florida cannot be assured of a uniform safety and health standard. Also, without state review, the consistent quality of design and construction of these facilities will be seriously jeopardized.”

Copies of the Agency's complete written comments, including attachments, are available by request from OPPAGA.

This project was conducted in accordance with applicable evaluation standards. Copies of this report may be obtained by telephone (904/488-1023 or 800/531-2477), by FAX (904/487-3804), in person (Claude Pepper Building, Room 312, 111 W. Madison St.), or by mail (OPPAGA Report Production, P.O. Box 1735, Tallahassee, FL 32302).

Web site: <http://www.state.fl.us/oppaga/>

Project Supervised by: Curtis Baynes (904/487-9240)

Project Conducted by: Amy Wohl McKee (904/487-9212)