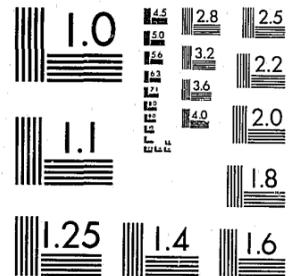


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1979
Annual Report
New York State
Medicaid Fraud
Control Unit

73069

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Fifth Annual Report

To
Hugh L. Carey, Governor
Robert Abrams, Attorney General
The Legislature of the State of New York
The People of the State of New York

NCJRS

OCT 29 1980

ACQUISITIONS

From
Charles J. Hynes
*Deputy Attorney General
for Medicaid Fraud Control*

June 30, 1980

Preface

Five years ago a nursing home scandal of unprecedented proportions broke out in New York. Allegations of patient abuse, theft and official misconduct were daily reported by the media in many parts of the State. The exposure of these scandals led to universal outrage and a demand for effective redress. In response, Hugh L. Carey, the newly elected Governor, on the 10th day of his administration established a Moreland Act Commission, headed by the distinguished lawyer, Morris B. Abram, and directed the then Attorney General, Louis J. Lefkowitz, to appoint me as Special Prosecutor, to set up a statewide office to thoroughly investigate allegations of criminality in nursing homes.

Five years after that appointment, I look back with pride on the record of this Office in nursing homes. Our work eliminated the mistreatment of patients, brought over 240 wrongdoers to justice, recovered millions of dollars in public funds and played a significant role in improving the administration of the industry.

Partially because of this success, partially because Medicaid fraud was not limited to nursing homes, our original jurisdiction was expanded to give us responsibility for monitoring the more than 4 billion dollar a year Medicaid industry in New York State.

The expansion of our office into a broad scope agency carried us far beyond the scope and tenure of a Special Prosecutor's Office. This has created a particular identity problem for this

Office. A Special Prosecutor is historically an extraordinary remedy to a unique crisis situation. In my opinion, a Special Prosecutor should remain that, a rarely used substitute for existing law enforcement when conflict of interest or a lack of resources make an impartial or effective investigation impossible. The success of Special Prosecutors depends on their public credibility, which in turn depends on being used only rarely in situations of unchallengeable necessity.

Our problem is that the health care industry required more than the temporary intense response of a Special Prosecutor. Established as one, we were not able to bow out after the traditional year or two. To do so would have been to invite a recurrence of scandal.

A lack of proper enforcement was the primary reason fraud and abuse in nursing homes became so virulent. This failure was part of a more ongoing historical pattern of scandal, public outrage, stopgap government response, return to public indifference, government neglect, and new scandal that has plagued government-funded social programs. Nursing homes are, in fact, a classic example: the scandals of the early seventies having been foretold by my precursor, Louis Kaplan, in his report on the 1960 New York City nursing home scandals.

To protect the State against reoccurrence of these terrible scandals clearly required more than dealing with past wrongdoings. A permanent law enforcement mechanism had to be put in place.

Consequently, I have sought to preserve the expertise this Office accumulated and see it institutionalized as an ongoing part of State Government. This seems to me to be the only way of permanently immunizing nursing homes and other Medicaid supported health services from a renewed outbreak of fraud.

In early 1976, I proposed to Governor Carey that he break the cycle of scandal in Medicaid programs in this state by institutionalizing my Office as an ongoing law enforcement agency. With his support I formalized the proposal in testimony before a Joint Senate/Assembly Committee of the State Legislature in early 1977. About the same time, I offered in testimony before Congress similar legislation on the Federal level to provide a nationwide basis for anti-fraud efforts.

The need for an ongoing enforcement capability in the administration of health programs has been accepted by the Federal Government. Legislation, that I am proud to say used our Office as the program model, passed Congress in 1977. It provided 90% Federal reimbursement of the costs of State enforcement programs modeled after this Office. Such units are now operating in 31 states.

My Office was formally designated as the New York State Office of Medicaid Fraud Control by Governor Carey in May 1978. With that assumption of ongoing responsibility to deter fraud, this Office in practice ceased to be an Office for Special Prosecutions.

Yet our transition to a permanent fraud control unit is not

yet completed. Our designation is only administrative. The State Legislature has not yet acted on a permanent status for this Office. As long as they fail to do so, we remain in limbo, no longer in fact a Special Prosecutor, not yet in status anything else.

This confusion should be ended. The time has come for the State to make a clear and unequivocal decision that the capability we have developed to protect it from Medicaid fraud should be officially institutionalized and the Special Prosecutor phase of this Office officially terminated. We need a permanent legislative commitment to this Office, and to the prevention of Medicaid fraud.

New York's commitment to fraud control should, of course, be built on the framework of the Federal Medicaid Fraud Control Unit Program.* This means continuing this Office as an independent entity with prosecutorial powers. The form for the establishment of such an entity I don't presume to suggest. Nor do I recommend where that entity should reside. It will be for the Governor, the Attorney General and the Legislature to make that judgment.

Critically important is the question of who will appoint the head of this Office. As Special Prosecutor I was appointed by the

*Federal legislation nearing passage would provide that once the initial 3-year 90% federal reimbursement of the costs of this Office expires in April 1981, 75% of the cost would be permanently reimbursed by the Federal Government.

Attorney General upon the recommendation of Governor Carey. The Governor's role in relation to any such office has to be clearly established and appropriately defined.

Institutionalization raises the important question of what the relationship of this Office with the local District Attorneys should be. I believe that the jurisdiction of this Office should remain as it is presently -- concurrent with the local District Attorneys. We have received the cooperation of all the District Attorneys in this State and who in general, have preferred us to handle these prosecutions. However, there may be particular District Attorneys who will want to take a more active role in the battle against Medicaid fraud and I believe this is completely consistent with their historical function, and nothing in any formalization of this Office as a permanent law enforcement body should alter their authority in any way.

The question of staffing level also needs to be resolved. Earlier this spring, the State Legislature slashed a million dollars from our budget. After a review of the facts, the Assembly restored these funds, but the State Senate has so far not acted.

These cuts were particularly difficult to understand as they slashed revenue-producing programs and were based on series of incorrect factual assumptions. And more surprisingly, for every dollar in State funds they saved, the cuts cost the State nine dollars in federal reimbursement.

The failure of the State Senate to act threatens our efforts to control Medicaid fraud. Important investigative and civil recovery work is suffering. The Fraud Control Unit program is based on the assumption that fraud control efforts should be funded at a level proportionate to the size of the industry under scrutiny. At a time when Medicaid expenditures in this State have passed \$4 billion, the State Senate seems content to make the largest reduction ever in our fraud control efforts. It is a decision that must be reversed if the integrity of the Medicaid program is to be preserved.

Finally, it is my recommendation that both the criminal and civil factfinding powers presently possessed by this Office under Sections 63(3) and 63(8) of the Executive Law, respectively, be preserved when this Office is institutionalized. Our ability to conduct civil factfinding investigations has led to a substantial number of improvements in health care administration, particularly in the areas of adult homes and patient care practices. The best interests of the State Medicaid recipients require our continued factfinding efforts.

Over the last five years, this Office has built a record of accomplishment in law enforcement and in health care in which I feel New York can take great pride. With the support of the

Governor and the State Legislature, we have built the most important and successful white collar crime unit in the country, monitoring over \$4 billion of annual health care spending in New York to ensure the integrity of those public funds and the well-being of their patients. In the coming year, as we continue our work, I hope New York's leaders will now address the problem of institutionalizing legislatively a commitment to ongoing protection of our Medicaid program to ensure the scandals of the past never happen again.

On May 2, 1978 Governor Hugh L. Carey designated this Office for certification as the Medicaid Fraud Control Unit of New York State* by the United States Department of Health, Education and Welfare, under Section 17 of the Medicare/Medicaid Anti-Fraud and Abuse Amendments (Public Law 95-142).

As required by the provisions of Section 17, the investigative jurisdiction of this Office expanded to include the entire health care system.

This system divides into three elements: ambulatory care, residential health care and hospitals. Our 1979 investigative activity in each area is discussed below.

*To date, Medicaid Fraud Control Units have been certified in 31 states.

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HR 3

Nursing Homes Ambulatory Care

Nursing Homes

Our investigation of the past financial dealings of New York State's profitmaking long-term care facilities was completed in 1979. Five years of investigative work documented that New York's profitmaking nursing home operators between 1969 and 1975 submitted inflated claims for Medicaid reimbursement costing the taxpayers of this State \$50 million. Of this amount, this Office is in the process of recovering \$22 million (\$2.4 million has been pledged and \$7.3 million has already been returned) and steps to collect the remaining \$28 million are being initiated in cooperation with the Office of Health Systems Management (OHSM).

To prevent reoccurrence of these abuses in the future, upon completion of its investigations, this Office in 1979 established procedures for monitoring the industry in the future. Spot checks are being made of a selection of nursing homes, procedures for review of Health Department information on nursing homes have been developed and a number of other special investigative procedures are now in place. As long as this careful watch is maintained, the nursing home industry will never again become the prey of profiteers.

At this time the main activity in the nursing home area is a continuation of civil recovery efforts.

The Civil Recovery Division has lawsuits pending against 63 nursing homes and health related facilities. Settlements amounting to over \$3 million have been reached with 53 facilities.

We are pursuing State and county claims in eight cases in the Federal Bankruptcy Courts. We are also defending the State and counties against claims being made against them in those same bankruptcy courts in two cases involving \$483,000.

Our cases have survived all motions to dismiss and many are now in the final stages of discovery after which they will be placed on the trial calendar.

CHANGED CIVIL RECOVERY POLICIES

In 1979 the Office of Health Systems Management effected a change in the State's rules and regulations which enables the State to recover overpayments by prospectively adjusting the rate of reimbursement to the facility overpaid. For the first time, the State had developed effective administrative tools for recovering Medicaid overpayments. Civil recovery practices were therefore revised. In the future, this Office will use the administrative process instead of civil recovery litigation, as in the past, to make recovery in cases of currently operating facilities.

There remain many instances when the administrative recovery method will not work. In cases where a facility closes or changes owners, it is not possible to receive Medicaid overpayments by adjusting the existing rate. In those cases the proper owners must be located and sued civilly. There are other specific instances, such as cases where punitive damages are sought, where criminality is involved, that civil recovery is a superior method. In those cases this Office will continue to proceed civilly to ensure the recovery of all the wrongfully overpaid Medicaid funds.

FALSE CLAIMS DETERRENT

New laws are needed to deter the filing of false claims for Medicaid payments. The State civil penalty laws presently do not pose much of a threat to those who would try to cheat Medicaid.

A Medicaid provider might file 100 false claims scoring a few dollars on each claim. Numerous witnesses are then required to prove only a misdemeanor and assess only one fine.

A more effective deterrent would be to enact a false claims law which would permit the State to bring civil action to collect a stated amount for each false claim filed. We suggest the amount should be \$2,000. We are preparing legislation embodying those proposals.

Ambulatory Care

1979 saw an internal reorganization designed to shift a major portion of staff resources into investigative efforts in ambulatory care. It required considerable redirection and retraining of attorneys, investigators and audit staff whose prior work had dealt with inpatient facilities, hospitals and residential health care facilities, such as nursing homes.

D.O.S.S. LIAISON - A NECESSARY PRECONDITION

In order to insure effective investigations of ambulatory care providers, it was necessary for this Office to establish a close working relationship with appropriate elements of the New York State Department of Social Services and its Fraud Unit, the data processing arm, Medicaid Management Information System (MMIS) and the computer billing intermediary, Bradford Services. The effectiveness of this relationship and the close partnership which has emerged was the basis for much of the success of our investigations into ambulatory health providers.

DIFFICULTIES

Ambulatory care investigations are complicated because

while they are not difficult conceptually - the large volume of patients seen by the providers and the resultory paper flow through the Medicaid billing system requires tedious and time-consuming staff work. Moreover, different counties have different reimbursement systems. A further problem is the MMIS program of D.O.S.S. is not designed in a manner to screen out fraud in the billings it processes.

SOME EXAMPLES OF COMPLETED
1979 AMBULATORY INVESTIGATIONS

In June 1979 an optometrist pled guilty to an indictment for stealing over \$1,700 from Ontario County and the State of New York by falsely and improperly billing Medicaid for:

- (1) the dispensing of eyeglass frames and lenses to Medicaid patients who never received such frames;
- (2) the dispensing of tri-focal and/or bifocal lenses when less expensive single lenses had been dispensed.

Initially, this investigation was conducted by the Ontario County Commissioner of Social Services staff, who in turn forwarded their findings to us for prosecution.

In August 1979, our Office obtained an indictment of a Suffolk County dentist for stealing Medicaid money by improperly billing for and receiving payment for giving dentures to Medicaid patients which in fact had never been provided.

In October 1979, an Oneida County Grand Jury indicted a doctor for billing Medicaid for visits by Medicaid patients which had never taken place on the dates claimed.

In November 1979, a Nassau County Grand Jury indicted a Freeport pharmacist who stole over \$30,000 in Medicaid funds by falsely and improperly billing Nassau County and the State of New York for the provision of merchandise from his pharmacy to patients at a Nassau County nursing home, which in fact had never been provided. It should be noted that during the course of our investigation, the nursing home cooperated fully with us.

Also in November 1979, an optical corporation, located in Livingston County, pled guilty to filing claims for payment with the County Department of Social Services for medical services and supplies furnished to Medicaid patients. Among the certified claims were instances of:

- (1) double billing for hardening and testing of lenses by claiming as a valid reimbursable Medicaid expense the cost of hardening and testing both as part of the wholesale cost of eyeglass lenses, and as an additional and separate fee;
- (2) claims for the dispensing of standard single vision or bifocal eyeglass lenses when in fact such lenses were photogray or oversized and therefore not reimbursable by Medicaid.

In February 1980, a Greene County Grand Jury indicted two employees of the Greene County Department of Social Services

for conspiring to steal money by organizing a company to provide transportation services to Medicaid recipients in Greene County.

Their alleged scheme was to submit payment request forms to the Greene County D.O.S.S. in which they falsely claimed to have provided transportation services in a car which they had purchased to transport Greene County Medicaid recipients.

By early 1980, 28 ambulatory care providers had been indicted for Medicaid fraud.

Additional Mandate

Hospital Division
Adult Homes
Patient Abuse
Legal Issues
Special Projects

Hospital Division

The Hospital Division was established on September 30, 1977 through a two-year, 100%-funded contract from the United States Department of Health, Education and Welfare,* to carry out a model investigation of the hospital industry. That contract has been extended for a third year to carry out some special studies and a training program nationwide.

APPROACH TO HOSPITAL INVESTIGATION

At present the statewide staff is organized into three regional offices: New York City, Long Island and Pearl River. The statewide staff at full third year operations was 53 persons: 11 lawyers, 16 auditors, 10 investigators and 16 support personnel.

INDICTMENTS

During the two-and-a-half years since its inception, the Hospital division has issued a total of 48 indictments, involving 50 persons.

*As of May 1980, Health and Human Services

In a major September 1979 indictment series, grand juries in seven counties in the Greater New York Metropolitan area returned indictments against 14 individuals and a corporation. The alleged thefts from the 12 different hospitals involved Medicaid, Blue Cross and other insurance carriers totalled approximately \$240,000 and involved a variety of hospital departments.*

In February 1980, a Westchester hospital pled guilty to falsifying its business records concerning elective cosmetic surgery, which is not reimbursable under the New York State Medicaid program.

According to the Prosecutor's Information, the hospital intentionally prepared and filed certain false records which included false entries describing facelifts as removal of facial cysts; breast implants as removal of breast cysts; cosmetic nose repairs as corrections of deviated septa; and removals of abdominal fat as hernia repair.**

* As of 6/30/80, six cases are still pending, and out of nine completed cases, all have resulted in convictions.

** The hospital was sentenced to a fine of \$3,000 and made restitution of more than \$5,000 to the State of New York and to Blue Cross and Blue Shield of Greater New York.

TRAINING SEMINARS

The Hospital Division is also completing development for HHS of a training program on investigating fraud and abuse in the hospital industry.

Each training seminar will be one week in length and will use as its main component a simulated hospital audit and investigation based on our experience, incorporating various fraudulent schemes involving hospital personnel and outside vendors. The seminars will be supplemented by lectures and demonstrations.

Adult Homes

In addition to Medicaid jurisdiction, this Office is responsible for investigating Private Proprietary Homes for Adults (PPHA).

During 1979 the Adult Homes Division continued its inquiry into conditions in private proprietary facilities and the cost of providing residential care. The Division also continued its criminal investigation of certain facilities and of Medicaid providers who supply services to adult home residents.

ISSUANCE OF SECOND PPHA REPORT

In May 1979 the Division issued its second major report pursuant to Section 63 (8) of the Executive Law, summarizing our work since the issuance of the first report in 1977. The report stressed the continuing problem of former mental patients released from state institutions who for lack of other alternatives must reside in private adult homes. It gave examples of death and illnesses resulting from poor supervision and inadequate medical care. The report recommended specific legislative changes, including an amendment to the Mental Hygiene Law to require discharge planning by private and municipal hospitals and an amendment to the Public Health

Law to permit home health care agencies to provide intermittent nursing services to adult home residents.

The second report made public for the first time the results of 24 comprehensive audits that provided the first in-depth analysis of adult home costs. The audits showed that many of the homes had recorded expenses on their books and records that were not related to residential care, and that some of the homes had reported inaccurate financial information to the Department of Social Services. The audits also revealed that a majority of the homes in the sample operated profitably in the audit year (1976), notwithstanding confusing claims made by the industry that SSI rates are inadequate.

INDICTMENTS

During 1979 the Division continued its investigation of crimes committed by adult home operators. In Suffolk County the Division obtained an indictment of an adult home operator for the theft of government funds.* An employee of the home was indicted for committing perjury before the grand jury.

In Westchester County the Division obtained an indictment of an adult home operator for stealing a resident's money

* The case is pending trial.

and for forging certain documents. In Rockland County an adult home operator pled guilty to stealing government checks that had been sent to a resident who was dead. In Kings County a bookkeeper of an adult home was convicted of forging checks sent to former residents. Restitution of \$5,600 was obtained.

Patient Abuse

The work of our Patient Abuse Unit for improved patient care continues unabated. During 1979 we investigated almost 300 complaints regarding patient care in residential health care facilities. Approximately two thirds of these complaints were handled by our New York City Office, where we maintain a staff of three attorneys and six investigators. In addition, one attorney in each of our six regional offices is responsible for supervising the investigation of patient abuse cases in those areas.

PATIENT ABUSE REPORTING LAW

Since its implementation in May 1978, the Patient Abuse Reporting Law* has generated the overwhelming majority of patient abuse complaints. While the law was criticized by both management and labor in the health care industry, the evidence indicates that the law proved to be an effective mechanism for illuminating problems and abuses in residential health care facilities. With this in mind, in May 1978 Office representatives testified at public hearings sponsored by State Sen-

*Public Health Law #2803-D

ator Franz Leichter in support of his proposal to extend the law to include hospitalized patients transferred from residential health care facilities. While it would be desirable to have a reporting law which applied to all patients in hospitals, this proposal is one step toward improved patient care.

In 1979 our Syracuse office initiated an assault prosecution against a nurse who allegedly abused a patient. Our Office went on trial on a charge that a nurse's aide endangered the welfare of an incompetent person. The case resulted in a hung jury and was later dismissed by the court.

We have been instrumental in the success of a number of union arbitration hearings which have substained the discharge of abusive employees, and we have made referrals of licensed personnel to the State Education Department for appropriate disciplinary action.

QUEENS COUNTY GRAND JURY REPORT

In 1978 we conducted a full scale grand jury investigation of the illnesses and deaths of patients resulting from the failure of a nursing home's air-conditioning system during a severe heat wave. In 1979 the results of that investigation were widely publicized in a report of a Queens County Grand Jury.*

*See Special Projects Section of this Report: II. Grand Jury Report.

Perhaps the most difficult area of legislative reform will involve licensing or certification and training of nurses aides and orderlies in nursing homes. We have learned from our investigations that the vast majority of abuses are the results of the failure to properly educate and train aides and orderlies - the staff with the most responsibility for direct, on-hand care of patients. Although there is considerable opposition to such a licensing requirement, we believe that it is an idea whose time has come, particularly since similar statutes have been enacted by the States of California, Colorado and Kansas, and a Health Department regulation in New Jersey requires licensing in 1980.

PARTICIPATION IN TRAINING SESSIONS

The Deputy Attorney General has continued to make his Patient Abuse staff available for training activity. We have conducted classes for Ombudsmen in the program run by the State Office of the Aging, and classes in investigation for Health Department surveyors given at the Police Academy. Recently, we were pleased to be invited by several nursing homes to give in-service training classes for their staff. Classes have also been given to the membership of Local 144, the union which represents nurses, aides and orderlies in health facilities.

BI-MONTHLY UNANNOUNCED INSPECTIONS

Our program of bi-monthly unannounced facility inspections in conjunction with the New York State Departments of Health and Social Services has continued over the past year. In 1979 approximately 30 residential health care facilities and private proprietary homes for adults were visited. Priorities during these visits have been fire safety, food service, night coverage, medication practices, and inadequate staffing.

REFORM OF PATIENT CARE LAWS AND REGULATIONS

In recognition of the fact that real improvement in private care will only come through reform of the laws and regulations governing the industry, the Patient Abuse Unit of this Office has continued its involvement in attempts to bring about these reforms. The Deputy Attorney General for Medicaid Fraud Control is a constituent member of the Ad Hoc Coalition for a Single State Standard. This group of state agencies and consumer groups seeks the repeal of the two-tiered, mini-maxi rating standard* for residential health care facilities and the enactment of a single, higher standard governing all facilities.

* The two-tiered, mini-maxi rating standard is a double standard in which the mini in its title is defined as the minimum standard that a nursing home has to maintain in order to obtain Federal-State approval, while the maxi stands for the maximum standard that the New York State Department of Health expects that a nursing home will maintain.

PROBLEMS CONFRONTING HOSPITALS RE: GERIATRIC PATIENTS

We have begun a fact-gathering project with the Greater New York Hospital Association to determine what types of problems confront general hospitals in caring for geriatric patients and what would be appropriate remedial action. The goal is the establishment of a pilot program in hospitals for the prevention and control of patient abuse.

Lastly, we are assisting the American Arbitration Association in establishing a training program for its arbitrators to sensitize them to the problems encountered in residential health care facilities.

CONCLUSION

Our Patient Abuse program is perhaps the best example of the mutually supporting interaction of our dual jurisdictions: criminal investigation and civil fact-finding. In addition to ferreting out fraud and abuse and prosecuting those guilty of criminal conduct, we are charged to use the power of our Office to influence reform of the health care industry and to improve the quality of patient care. Without minimizing the obligation to prosecute crimes, we are convinced that equal impact over time will come from reform of the laws and regulations which affect health care facilities.

Legal Issues

Since this Office was first established five years ago, our authority to investigate, to audit, to subpoena, to seek indictments, to report and to prosecute has been challenged in court in almost every imaginable manner. Many of these challenges underscore the difficulties that characterize white collar crime investigations.

Our office won a case last year which had particular significance. On May 30, 1979, the Matter of Fink v. Lefkowitz, 47 NY 2d 567 (1979) was argued in the New York State Court of Appeals. On July 10, 1979 the Court ruled on petitioner's claim that we were required to disclose materials in our investigative manual. The Court held that those portions of our manual which concerned non-routine confidential investigative methods were exempt from disclosure, while those portions containing routine techniques were to be disclosed. However, one of the criteria used for determining whether our investigative techniques are non-routine was to be whether disclosure of those procedures would give rise to a substantial likelihood that violators could evade detection by deliberately tailoring their conduct in anticipation of avenues of inquiry to be pursued by this Office's personnel.

OTHER CASES

In a series of cases (People v. Birnbaum; People v. Deutch and People v. Klein) the Appellate Division, Second Department affirmed the defendants' convictions for receiving illegal kickbacks. The court upheld Section 12 (b) of the Public Health Law proscribing willful violations of the Department of Health regulations (regarding kickbacks), ruling it was constitutional and not an unlawful delegation of legislative power, nor should it be considered void for any vagueness in its language.

In Matter of Mann-Judd-Landau v. Hynes, 49 NY 2d 128 (1979), the petitioner, Mann Judd Jandau, argued that the Deputy Attorney General's Office lacked the authority to investigate instances of fraud and criminal conduct within the hospital industry. The New York State Court of Appeals turned aside this challenge to the basic criminal jurisdiction of this Office as New York State's Medicaid Fraud Control Unit by stating that the investigation and the power to issue subpoenas by this Office was in fact authorized under subdivision 3 of Section 63 of the Executive Law.

In two cases that were briefed by this Office as amicus curiae our appeals bureau argued successfully in the Appellate Division, Third Department for the reversal of lower court

decisions that had declared different sections of the Social Services Law unconstitutional. Both statutes involved were passed by the Legislature at the urging of this Office.

In Matter of Shang v. Silivan, 60 A.D. 2d 473, the Appellate Division upheld a new section contained in the Social Services Laws that established new, more strenuous standards for the housing and care of adult home residents.

In Matter of Kupferman v. Board of Social Welfare, 66 A.D. 2d 540 (3d Dept. 1979), the Appellate Division upheld as constitutional that section of the Social Services Law which provided safeguards for patient allowances received as Supplemental Security Income (SSI). The purpose of this section is to enable residents of facilities, such as Private Proprietary Homes for Adults, to pay for personal items such as clothing, transportation and other incidentals not provided by the home. It prohibits use of the personal allowance to pay for the SSI recipients' basic care.

Effective July 1, 1977, Chapter 431 of the Laws of 1977 added Section 131-0 to the Social Services Law establishing "personal allowance accounts" for SSI recipients receiving family care or residential care as defined in subdivision 3 of Section 209 of the Social Services Laws.

Special Projects

I. COMMUNICATIONS

During 1979, we were invited to speak at a number of forums across the country. We sought to emphasize the need for a proper enforcement function within the Medicaid system and for necessary reforms to improve the quality of patient care. Among the groups we addressed were:

- Women's City Club, January 1979
- New York State Mental Hygiene and Addiction Control Committee Hearing, February 1979
- Federal Bar Association, Federal Grants Section, Washington, D.C., February 1979
- New York Medical Directors Association
March 1979
- American Society for Public Administration's Conference on Fraud, Abuse and Waste
Maryland, April 1979
- National Welfare Fraud Association,
Regional Conference, Kentucky, April 1979
- United States House Committee on Aging Hearing
Washington, D.C., April 1979
- United States Finance Committee Hearing,
Washington, D.C., May 1979
- Friends and Relatives of the Institutionalized Aged
June 1979
- 1979 International Conference of the Institute of Internal Auditors, June 1979

II. GRAND JURY REPORT

In June 1979, Justice George J. Balbach of the Queens County Supreme Court filed an order making public a Queens County Grand Jury Report.

The report documented the results of the Grand Jury's intensive inquiry into the deaths of two patients, and the emergency hospitalization of 17 other patients of a Queens County nursing home during a heat wave that occurred the weekend of July 18-23, 1978.

The Grand Jury recommended:

1. The Education law should be amended to require that nurses aides and orderlies be licensed.
2. All residential health care facilities should maintain either a functioning back-up, emergency air conditioning and heating system, or an up-to-date written service contract for the repair and maintenance of the facility's air conditioning and heating system with a company approved by the Commissioner of Health.
3. The New York State Hospital Code should be amended to include a section dealing with heat emergencies.
4. Qualified personnel of the New York City Fire Department should do annual on-site inspections of the air conditioning and heating systems in all residential health care facilities within the City of New York.

III. MEDICAID FRAUD COMPLAINT TELEPHONE SYSTEM

One of the mainstays of the success of this Office has been its ability to find innovative techniques of fraud and abuse prosecution and to enlist and mobilize the support of community groups in its behalf. This Office is concerned with the need to experiment more directly with health care consumers, particularly low income, sick and elderly persons, in the day-to-day administering of health care services. It appears to us that the most promising approach is to use the techniques developed in public service advertising (PSA) to interest and educate the public about Medicare and Medicaid fraud, and the role the health care consumer can play in eliminating these problems. In the last few years, Medicaid fraud has not caught either the media's attention or the public's awareness beyond generalized tales of scandal. There is a definite need to experiment and develop new methods of giving the citizen an opportunity to identify Medicaid fraud and to know what to do to assist government in eliminating it.

As a first step, we have developed a fraud complaint telephone system. Special telephone lines have been installed in our seven regional offices to receive information about Medicaid fraud. The public service advertising and publicity for the complaint lines will have several stages. The first stage will be a carefully developed radio and television PSA campaign

describing Medicaid fraud. The second stage will be spinoffs from the normal amount of publicity which is commonly generated by any new program announcement. The third stage will be to reach out to enlist concerned community and health groups interested in good health care.

We have already contacted the 300 or so State and Federal legislators to apprise them of the complaint lines and to ask them to publicize the telephone numbers in their individual newsletters. We also have enlisted the cooperation of two major utilities in the downstate area to publish the complaint lines in their consumer newsletters that are inserted with their billing. Con Edison has already complied with this request in their June billing.

The coming year will provide an opportunity to test the effectiveness of using mass media to increase public awareness and public participation in identifying instances of Medicaid fraud.

Appendices
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Appendix A

N.Y.S. MEDICAID FRAUD CONTROL CASE STATISTICS (JUNE 30, 1980)

CRIMINAL CASES (STATEWIDE)

<u>H.R. 3 *</u>	<u>HOSPITAL DIVISION **</u>
INDICTMENTS.....257	INDICTMENTS.....48
DEFENDANTS.....275	DEFENDANTS.....50
CASES COMPLETED.....142	CASES COMPLETED.....33
CONVICTIONS.....122	CONVICTIONS.....32
DISMISSALS..... 8	DISMISSALS..... 1
ACQUITTALS..... 12	ACQUITTALS..... 0

CIVIL CASES (STATEWIDE)

CASES PENDING.....63
CASES SETTLED.....53
AMOUNT OF SETTLEMENTS PENDING.....\$22,401,244.00

TOTAL MONIES RECOVERED IN COMPLETED CRIMINAL AND CIVIL

CASES \$11,414,926.00 ***

* includes all Nursing Home, Adult Home, Ambulatory Care, Patient Abuse and Special Inquiries Cases.

** Special grant funding 100% funding (September 30, 1977 - October 1, 1980)

*** These numbers do <u>not</u> include Fines	\$979,064
N.Y.S. Income Taxes	<u>\$ 41,712</u>
Interest Earned	<u>\$650,826</u>
Total	<u>\$1,671,602</u>

Appendix B

HISTORICAL BACKGROUND

January 10, 1975

Governor Hugh L. Carey directed the formation of the Office of the Special Prosecutor for Nursing Homes, Health and Social Services

Attorney General Louis J. Lefkowitz appointed Charles Joe Hynes as Deputy Attorney General and Special Prosecutor to exercise powers under Section 63 (3) of the Executive Law to investigate and criminally prosecute Medicaid fraud, patient abuse and official misconduct in the nursing home industry.

February 13, 1975

Attorney General Lefkowitz designated Deputy Attorney General Hynes to exercise Section 63 (8) powers to carry out a civil factfinding inquiry into the management and administration of the nursing home industry and report to the Governor on needed changes.

October 6, 1975

The Attorney General authorized C.J. Hynes to prosecute nursing home operators for the violation of State tax laws uncovered in the course of his investigations.

January 10, 1976

We submitted our first annual report to Governor Hugh L. Carey

June 28, 1976

The Attorney General gave us the additional authority to undertake an investigation under Section 63 (3) of the Executive Law of Private Proprietary Homes for Adults (PPHAs), commonly known as adult homes.

August 26, 1976 The Attorney General further authorized us to conduct a civil fact-finding inquiry under Section 63 (8) of the Executive Law into the conduct of Private Proprietary Homes for Adults.

January 14, 1977 We submitted our second annual report to Governor Hugh L. Carey.

February 9, 1977 The Attorney General authorized us to investigate and prosecute any violation of the State tax laws uncovered in his investigation of PPHAs.

March 31, 1977 We submitted "Private Proprietary Homes for Adults - An Interim Report" to the Governor.

May 2, 1977 We submitted our report, "Protecting Patients' Personal Funds: Failures and Needed Improvements" to the Governor.

September 15, 1977 The Attorney General authorized us to establish a Civil Recovery Division to prepare, file and prosecute civil lawsuits against nursing home operators for the return of Medicaid funds to which they were not entitled.

(Prior to the establishment of this new unit, this office had the capacity to obtain restitution only in connection with criminal cases.)

September 30, 1977 Upon the signing of an understanding between New York State and the U.S. Department of Health and Human Services, our office was authorized to investigate frauds and abuses in hospitals serving New York's Medicare and Medicaid patients.

(HHS provided special grant funds to carry out this investigation.)

October 6, 1977 The Attorney General authorized us to conduct an investigation of the hospital industry under Section 63 (3) of the Executive Law,

January 10, 1978 We submitted our third annual report to Governor Hugh L. Carey.

March 20, 1978 We submitted our report, "The Willowpoint Nursing Home and Health Related Facility" to the Governor.

May 2, 1978 Governor Hugh L. Carey authorized the certification of the Office of the Special Prosecutor under C.J. Hynes as the Medicaid Fraud Control Unit for New York State by the U.S. Department of Health and Human Services under Section 17 of P.L. 95-142, providing 90% Federal reimbursement of the cost of the office.

December 1, 1978 We submitted our report, "Analysis of New York's Profit-Making Long-Term Care Facilities" to the Governor.

December 12, 1978 C.J. Hynes is elected first President of the National Association of Medicaid Fraud Control Units.

March 31, 1979 We submitted "Private Proprietary Homes for Adults - A Second Investigative Report" to the Governor.

May 10, 1979 We submitted our fourth annual report to Governor Hugh L. Carey.

October 6, 1979 The Hospital Project's two year, 100% funded contract from HHS is completed.

(Note: HHS contract has been extended for a third year in order to carry out special studies and training.)

Appendix C

NEW YORK STATE MEDICAID FRAUD CONTROL UNIT

- 1979 -

CHARLES JOE HYNES
Deputy Attorney General

EXECUTIVE STAFF

EDWARD J. KURIANSKY
Chief Assistant

JOSEPH E. SPINNATO
First Assistant

ROBERT R. MEEHAN
Assistant Chief Assistant

ALBERT F. APPLETON
Executive Assistant

DAVID E. RUCK
Chief of Prosecution

SPECIAL ASSISTANT ATTORNEYS GENERAL

Bacon, Valarie L.	DiPalma, Joseph W.
Barone, Frank P.	Dolan, James
Berlowitz, Michael R.	Driscoll, Peter*
Berne, Michael	Dublirer, Robert
Bevilacqua, Jon M.	Fiorella, Charles*
Bliss, Mary Ellen	Friedman, Arthur*
Bly, Alan	Friedman, Barry M.
Bogren, Elizabeth T.	Goldsmith, Christopher*
Bryan, T. James	Golomb, David B.
Buckley, Terrence P.	Graham, Joel*
Calvacca, Stephen J.	Grant, Cary*
Carruthers, Richard D.	Gray, Lawrence
Ciaffone, John	Greenberg, Matthew S.
Clarke, James	Hannibal, Jon M.
Cleary, Thomas*	Hawkins, Dennis R.
Close, Beatrice A.	Hester, John W.
Cox, Ralph W.	Hochberg, Joshua R.
Daw, James J.	Hoffman, Hillel J.
Dembin, Nathan L.	

* Resigned in 1979

Iacueo, Laurence J.
Johnson, Francis
Jones, Abigail A.
Jordan, Phillip
Kave, Howard A.
Klapper, Harold
Kline, Steven B.
Kohler, James E.
Levi, Barbara
Marshall, Philip M.
Mazur, Marilyn*
Meekins, John M.
Miller, Richard*
Mincho, Allen D.
Morgenstern, Beth R.
Naclerio, Gregory
Norling, Peter A.
Norris, Shirley F.
Pivar, Jack*
Powers, Susan A.
Primerano, William A.
Rand, Marjorie

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Rice, Michael L.
Rosenberg, Ruth*
Rosenbloom, Jonathan B.
Rothman, Edward
Rudolph, Nancy
Ryan, Joseph P.
Ryan, Paula*
Saqqal, Paul T.
Schlieman, Rhona*
Shields, William B.
Silverstein, Mark L.
Singer, Lea S.
Spahr, Stephen M.
Steckler, David*
Stern, Philip H.
Tinsley, Peter R.
Tona, Angelo F.
Trager, Leslie
Tritz, Jerry*
Usdin, Steven
Weinbaum, George
Weinstein, Arthur G.

Werblowsky, Harvey*
Wildridge, Robert*

Zoffer, David*
Zugibe, Thomas P.

* Resigned in 1979

WARREN J. DONOVAN
Chief Investigator

WILLIAM A. VERICKER
Deputy Chief Investigator

INVESTIGATIVE STAFF

Anderson, James M.
Andrews, Robert A.
Arkeilpane, Robert J.
Baumann, Kevin P.
Barry, William G.
Beaver, Authur R.
Becker, Frank E.
Blackford, William F.*
Brady, Michael J.
Brirbage, Edward*
Burke, Kenneth J.
Bussy, Francis
Calo, Nancy

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Callahan, Gerard R.
Cassidy, Thomas
Cessaro, Frank
Chambers, Gregory D.
Christie, William F.
Colban, George E.
Cole, Robert L.
Coleman, James J.
Comfort, James A.
Corcoran, Joseph R.
Creelman, Thomas C.
Cruz, Joseph J.
Cruz, Ramon

Cunningham, Joseph F.
Dais, Alfred J.
Danahy, David M.
DeGroot, Stephen J.
Demarest, Harry E.
Dinegar, Thomas*
Dolan, Michael F.
Donnelly, Thomas
Dougherty, Charles R.
Duffy, Roger*
Dunne, Brian
Dwyer, Cornelius*
Edwards, Benjamin
Eiger, Arthur*
Faller, Bernadette F.
Ferguson, Jeffrey L.
Fiolek, Robert J.
Fitzpatrick, Eugene F.
Fitzpatrick, John B.
Foley, William J.
Fusco, Bernard I.
Geraci, Fred M.

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Gleason, Raymond M.
Goldrick, Thomas J.
Gowrie, John J.
Grottan, Walter
Grasso, Joseph A.
Grealy, Martin R.
Greene, Granville M.
Greene, Reginald B.
Grey, C. William
Grogan, Eugene T.
Guglielmo, Anthony F.
Hardwick, David A.
Harmon, Donald L.
Healy, Francis K.
Hogan, John J.
Holland, Daniel J.
Hoy, William H.
Hurley, John V.
Iannuccilli, Philip D.
Jackolski, Thomas*
Johnson, James S.
Johnson, Sandy L.

Karcz, Stanley
Keenan, Francis
Kelly, Chris*
Kelly, Kevin*
Kennedy, Robert W.
Keogh, John
Kirk, Edward J.
Klaskin, Donald*
Kocienda, Edmund V.
Kruger, Raymond C.
Kuhlman, Donald M.
LaFond, Edward R.
Lantry, H. Terrence
LaPerch, Thomas R.
Largo, Alfred E.
Larsen, Henry C.
Leicht, John P.
Lonergan, Fred J.
Lopez, Richard
Lydon, John W.
Lynch, James F.
Mahoney, James T.
McBride, Gerald J.

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McCormick, Thomas*
McGinn, Gregory R.
McInnis, Neil G.
McKenna, Katherine*
McLaughlin, Michael B.
McManus, Frank*
McQuade, Walter
Meehan, John Thomas, Jr.
Milanese, Steven D. *
Miller, Joseph*
Molloy, James T.
Monahan, John J.
Morrissey, Richard J.
Mulligan, William
Mullins, Thomas F.
Nappi, Andrew*
Nulty, John W.
O'Connell, Brian L.
O'Donnell, Kevin M.
O'Hara, Thomas J.
O'Reilly, John P.
Parry, George M.
Pudup, Gary*

Radke, Henry*
Reilly, Jean E.
Ricchio, Joseph P.
Ryan, Dennis*
Ryan, Patrick J.
Rynne, Thomas M.*
Savino, Nicholas
Sedefian, Dickron
Scaringe, James A.
Schaller, Richard F.
Schneider, Robert H.
Scuderi, Anthony J.
Seubert, Anthony*
Smith, Christopher J.
Smith, Kenneth G. II

Stahl, August
Starno, John J.
Stephen, James M.
Stern, Mark*
Strom, Robert T.
Strong, John*
Tolan, Matthew T.
Troini, Mary V.
Wagner, Ferdinand M.
Warlan, Timothy M.
White, Joseph A.
Williams, Betty J.
Winfree, Kevelin A
Yoos, Robert

* Resigned in 1979

MARTHA KLASS
Chief Auditor

MICHAEL C. JAEGER
Deputy Chief Auditor

STANLEY L. BILESCHI
Deputy Chief Auditor

AUDIT STAFF

Alicandri, Joseph*
Asnis, Daniel
Avin, Christine
Bagley, Brian
Bauman, Wesley
Bermel, Paul A.
Bender, Richard
Bieber, Martin A.
Bohan, Edward*
Brenner, Edward J.
Bressant, James E.*
Britt, Andrew F., Jr.*
Buhowski, Richard
Burns, Richard*
Calissi, Thomas

Candal, Isabel*
Caramanna, Kathryn A.
Carroll, Gregory T.
Cecero, David M.
Chandra, Anil B.
Chang, Ivy*
Ciraulo, Thomas*
Citera, Pat
Cohen, Daniel*
Connor, Marlene
D'Amaro, Richard*
Davis, John
DelRio, Tomas*
DeMartino, Paul V.
DeToledo, Edward

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Domaleski, John
Dorgan, Thomas
D'Ottavio, Edmund*
Duffy, Donald O.
Duffy, James*
Einbinder, Stuart C.
Farrell, John*
Fawcett, John C.
Feeney, Dennis E.
Feldman, Jerome*
Foster, Lynn V.
Frascella, Louis J.
Gardner, Joanne G.
Gibbs, Diane*
Giervold, Stephen
Goodman, Thomas J.
Gossin, Leon
Green, Harvey J.
Harrison, Gina P.
Hurt, Richard*
Hynes, Robert*
Jaffa, Thomas

*Resigned in 1979

Jazwinski, Jean M.
Jolly, David S.*
Jovanelly, Michael W.
Kasavana, Toby S.
Katz, Bennett*
Kaufman, Louis
Kessler, Michael G.
King, Jerry
Klycek, Alfred T.
Kovacs, Frank W.
Kowtna, Mary Gail M.
Krupp, Peter A.
Kuo, Kwang-lin
La Bounty, Edward S.
La Casse, Michael P.
Larkin, William H.
Law, Linda G.
Lazarus, Maya
Lee, Elaine*
Lew, Richard G.
Lipstein, Arthur
Lombardi, Mary C.

Lombardo, Joseph
Long, Helen
Louie, Teddy
Luffman, Debra A.
Lundberg, John C.
Maher, Martin F.
Mangini, Anthony R.
Marshall, Richard
Master, Suresh P.
McCallion, Patrick S.
McDermott, Maureen A.
Mehta, Krishna K.
Melendez, Lydia E.
Murray, James R.
Mastasi, Joseph
Nelson, Eileen
Newman, Robert*
Oehling Dieter*
O'Hagen, George
Ontiveros, Raymond A.
Ortiz, Luis R.
O'Shea, Richard M.

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Osinski, Raymond J.
Owens, Bernard A.
Patel, Ishvarbhai*
Payne, John T.
Pelliccio, John*
Penn, Thomas Jr.
Perino, Richard M.
Pignataro, Ralph F.
Plonski, Joseph D.
Pope, Richard T.*
Porto, Richard A.
Pouch, Ronald
Preston, James F.*
Putterman, Marvin
Radler, Irving
Rahm, William G.
Richard, Henri*
Rohling, Michael
Rooney, Thomas J.
Rosen, Neal
Roth, Michael M.
Samith, Eva R.

Samuels, Isaac
Sans, Gregory B.
Santini, Joseph F.
Saxe, Emmett, I.
Scanlon, George G.
Schwartz, Simon
Scudder, Robert*
See, Philip D.
Sencer, Ali H.
Shapiro, George L.
Siegmund, Harold
Sienkiewicz, Ronald H.
Simeti, Christopher
Slattery, John J.
Smith, Annette R.
Spadanuta, Theresa
Spritzer, Samuel L.
Stephens, Peter G.
Stetter, Leo

Swan, Kenneth*
Taylor, Stephen*
Teitelbaum, Ezra*
Tierney, Terry
Tierno, Dominick*
Troiano, Richard*
Tysowski, Ronald
Vernon, Michael
Vignola, Rocco*
Wagner, Leonard B.
Watchorn, Michael S.
Weiss, Lewis*
Wellstead, Joan S.
Wicks, James*
Winkler, Dale G.
Wolfson, Brian*
Yenesa, Alex*
Yensan, Oscar H.
Zaman, Syed N.

* Resigned in 1979

OTHER PROFESSIONALS

BERSON, ANN
Director of Research and Special Planning

GODEK, CHRISTINE *
Director of Communications & Special Projects

HOOVER, SONYA M.
Director of Communications & Special Projects

RYAN, KEVIN R.
Deputy Director for Communications

SUGHRUE, MARY E.
Special Assistant

*Resigned in 1979.

FRANK P. COSTA ***
Administrative Officer

LINDA ANN GUILIANO
Personnel Administrator

CLERICAL/SUPPORT STAFF

Agioni, Maryanna	Callahan, Dolores K.
Anthony, Geraldine	Camba, Amelia
Asaro, Patricia*	Carolon, Kathleen, F.
Azzara, Marilyn*	Carswell, Christine
Bacchi, Pamela J.	Cartelli, Helen J.
Baron, Nancy*	Carter, Yvonne
Binder, Anne T.	Cates, Denise S.
Bishop, Gail	Cates, Dennis M.
Bowden, Nancy J.	Cenci, LuAnne
Brosnan, Mary*	Cornell, Dorothy**
Brown, Ozell*	Costello, Ita T.
Burke, Michael A.	Criscuolo, Suzanne
Calderone, Marlene L.	Cruz, Maria

* Resigned in 1979

** On loan from DCJS

*** Ann M. Shea resigned in 1979

Cruz, Shirley
D'Agostino, Catherine R.
D'Amaro, Kim*
De Bartolo, Elizabeth M.
De Francesco, Shelly
Delia, Ann Marie
Demarest, Suzanne*
Dolan, Eileen Ann
Domino, Valentina*
Fausone, Loretta*
Flood, Patrick*
Gannon, Patricia M.
Garcia, Madeline
Giambrone, Suzanne
Gains, Agnes
Gorman, Diane*
Greco, Charlotte E.
Greene, Patricia*
Hale, Michelle, M.
Harris, Violet*
Harvey, Brenda Lee

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Hawkins, Noel W.
Hetspeth, Evelyn S.
Hickey, Ann C.
Hill, Philip P.
Iacone, Eleanor*
Ingram, Heather*
Ippolito, Geraldine
Irrardy, Henry E.
Kalle, Ruth H.
Kaminski, Marie T.
Karmazyn, Gloria**
Keaveny, Mary P.
Kennedy, Mary L.
Kingsland, Kathy**
Kleiman, Mollie R.
Kovats, Katherine
Krieg, Dorothy
Kriner, Christine
Lamberth, Kaida L.
Lewis, Jeanette
Linden, Maura*

Lombardi, Donna M.
Lonergan, Bernadette J.
Lopez, Marlene E.R.
Lynch, Eileen J.
Macias, Frances V.
McArow, Mary B.
McDermott, Edna*
McGarry, Bernice V.
McQuillan, Jean*
Memmer, Kathleen M.
Merola, Regina V.
Miles, Gloria N.
Minasian, Kathleen A.
Monte, Jean*
Moskowitz, Cheryl*
Mulvey, Patricia
Muro, Kathryn M.
Pacinello, LuAnn
Papa, JoAnn*
Paster, Michelle H.*
Pastore, Rose M.

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Perez, Edmee*
Peterson, Valeria
Pettinato, Linda M.
Pino, Julio F.
Poliseno, Maria T.
Post, Carol A.
Ragaglia, Loretta
Rand, Martha*
Repenning, Christel*
Richter, Paul J.
Roberson, Regina M.
Rubin, Barry S.
Russell, Cynthia M.
Russell, Pasqua (Esther)
Saltzman, Pearl
Schwinn, Helen C.
Searcy, Marilyn
Sheehan, Adrienne H.
Sherman, Joyce*
Singer, Dorita E.
Smelzer, Barbara A.

Smith, Michele A.
Snyder, Donald R.
Stoliker, John**
Stone, Barbara*
Sussingham, Margaret M.
Sust, Celestino, Jr.
Sweeney, Michele F.
Taibi, Janice
Terranova, Patricia*
Tesoro, Fe D.
Thomas, Lorene

* Resigned in 1979

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Tobin, Bridget A.
Trapani, Antonia
Twomey, Caroline M.
Vanella Lorraine*
Varner, Thelma P.
Wildermuth, John C.
Wildridge, Kathryn E.
Wirth, Barbara
Wynne, Helene*
Zachofsky, Adele
Ziemer, Darlene M.

END