



DEPARTMENT OF HEALTH & HUMAN SERVICES
OFFICE OF INSPECTOR GENERAL
OFFICE OF AUDIT SERVICES
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PHILADELPHIA, PENNSYLVANIA 19106-3499

MAY 18 2005

Report Number: A-03-04-00214

Frank Dunion, Executive Director
Beverly Healthcare of Reading
21 Fairlane Road
Reading, Pennsylvania 19606

Dear Mr. Dunion:

Enclosed are two copies of the Department of Health and Human Services, Office of Inspector General report entitled "Review of Nursing Facility Staffing Requirements at Beverly Healthcare of Reading." This review was self-initiated and the audit objective was to determine whether Beverly Healthcare of Reading was in compliance with Federal and State staffing laws and regulations for nursing homes.

The scope and objective of this review encompassed only certain specific requirements of the Federal and State staffing regulations. This review did not assess the general requirement of 42 CFR § 483.30 that: "The facility must have sufficient nursing and related services to attain or maintain the highest practicable physical, mental, and psychosocial well-being of each resident, as determined by resident assessments and individual plans of care . . ." Rather, it assessed compliance with the staffing requirements stated in 42 CFR § 483.30 (b):

- (1) The facility must use the services of a registered nurse for at least 8 consecutive hours a day, 7 days a week.
- (2) The facility must designate a registered nurse to serve as the director of nursing on a full time basis.
- (3) The director of nursing may serve as a charge nurse only when the facility has an average occupancy of 60 or fewer residents.

Pennsylvania adds additional requirements to the Federal staffing requirements concerning hours of direct care and employee background checks.

Should you have any questions or comments concerning the matters commented on in this report, please direct them to the Department official identified below.

In accordance with the principles of the Freedom of Information Act, 5 U.S.C. 552, as amended by Public Law 104-231, Office of Inspector General reports issued to the Department's grantees and contractors are made available to members of the press and general public to the extent information contained therein is not subject to exemptions in the Act which the Department chooses to exercise. (See 45 CFR Part 5).

To facilitate identification, please refer to report number A-03-04-00214 in all correspondence relating to this report.

Sincerely,

A handwritten signature in black ink, appearing to read "Stephen Virbitsky", with a long horizontal flourish extending to the right.

Stephen Virbitsky
Regional Inspector General
for Audit Services

Enclosure

Direct Reply to HHS Action Official:

Nancy B. O'Connor, Regional Administrator
Centers for Medicare & Medicaid Services - Region III
U.S. Department of Health and Human Services
150 South Independence Mall West, Suite 216
Philadelphia, Pennsylvania 19106-3499

Department of Health and Human Services

**OFFICE OF
INSPECTOR GENERAL**

**REVIEW OF NURSING FACILITY
STAFFING REQUIREMENTS AT
BEVERLY HEALTHCARE OF READING**



**MAY 2005
A-03-04-00214**

Office of Inspector General

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OAS FINDINGS AND OPINIONS

The designation of financial or management practices as questionable or a recommendation for the disallowance of costs incurred or claimed, as well as other conclusions and recommendations in this report, represent the findings and opinions of the HHS/OIG/OAS. Authorized officials of the HHS divisions will make final determination on these matters.



EXECUTIVE SUMMARY

BACKGROUND

The Omnibus Budget Reconciliation Act of 1987 established legislative reforms to promote quality of care in nursing homes. These reforms require nursing homes to have sufficient nursing staff to provide nursing and related services to attain or maintain the highest practicable physical, mental, and psychosocial well-being of each resident. Specifically, Title 42 CFR § 483.30 requires nursing homes to provide sufficient nursing staff on a 24-hour basis. Sufficient nursing staff must consist of licensed nurses and other nursing personnel and include 1) a registered nurse for at least 8 consecutive hours a day, 7 days a week, 2) a registered nurse designated to serve as the director of nursing on a full time basis (the director of nursing may serve as a charge nurse only when the home has an average daily occupancy of 60 or fewer residents), and 3) a licensed nurse designated to serve as a charge nurse on each tour of duty.

OBJECTIVE

The objective of our review was to determine whether Beverly Healthcare of Reading, (Beverly) was in compliance with Federal and State staffing laws and regulations for nursing homes. Beverly is located in Reading, PA.

The scope and objective of this review encompassed only certain specific requirements of the Federal and State staffing regulations. This review did not assess the general requirement of 42 CFR § 483.30 that: “The facility must have sufficient nursing and related services to attain or maintain the highest practicable physical, mental, and psychosocial well-being of each resident, as determined by resident assessments and individual plans of care . . .” Rather, it assessed compliance with the staffing requirements stated in 42 CFR § 483.30 (b):

- (1) The facility must use the services of a registered nurse for at least 8 consecutive hours a day, 7 days a week.
- (2) The facility must designate a registered nurse to serve as the director of nursing on a full time basis.
- (3) The director of nursing may serve as a charge nurse only when the facility has an average occupancy of 60 or fewer residents.

Pennsylvania adds additional requirements to the Federal staffing requirements concerning hours of direct care and employee background checks.

SUMMARY OF FINDINGS

Based on our review of 92 direct care employees¹, Beverly complied with Federal staffing laws and regulations that we reviewed, but did not comply with State staffing requirements. Pennsylvania regulations required nursing homes to obtain a State background check on all employees hired after July 1, 1997. Additionally, Pennsylvania regulations required nursing homes to provide 2.7 hours of direct nursing care for each resident every day. A review of the 92 direct care employees disclosed that Beverly did not:

- obtain a valid State background check for 4 direct care employees,
- obtain a State background check for 13 direct care employees within the required timeframes, and
- schedule sufficient staff to provide 2.7 hours of direct care per resident per day for 7 of the days reviewed.

Beverly did not follow its internal procedures sufficiently enough to assure that it was in compliance with State requirements. Beverly has internal procedures for obtaining background checks and scheduling employees in compliance with State requirements. However, Beverly did not obtain all of the required background checks and continued to schedule direct care employees to work directly with residents after their background checks were not received within the State required timeframes. Additionally, Beverly did not assure that it scheduled sufficient staff to meet the minimum State required direct care hours per resident per day.

RECOMMENDATIONS

We recommend that Beverly:

- restrict the four direct care employees whose background checks were not requested or were invalid from working directly with the residents until it obtains background checks that do not contain anything that would have prevented the employees from being hired,
- review and strengthen its internal controls to assure that it obtains valid background checks on all new direct care employees,
- review and strengthen its internal controls to assure that it prohibits new employees from working directly with the residents if the required background checks are not received within the timeframes specified in the Protective Services Act, and

¹ For purposes of this review, we define direct care employees as any nursing staff who are eligible to provide direct care to the residents.

- review and strengthen its internal controls to assure that it schedules direct care employees to ensure that there is enough nursing staff on duty to provide 2.7 hours of direct care per resident per day.

AUDITEE RESPONSE

In a written response to our draft report, Beverly concurred with our findings and has taken action to assure that it obtains all required background checks and schedules direct care staff in accordance with Federal and State staffing requirements. Beverly has obtained valid background checks on the four direct care employees who did not have them and has revised its procedures for obtaining background checks by implementing a tracking log that will monitor the date a background check was requested and whether or not a response has been received. Beverly has also assigned a staffing coordinator to ensure that it provides the required 2.7 hours of direct care per resident per day and has implemented a mandation policy to ensure that the appropriate staffing levels are maintained when call-offs occur. The full text of Beverly's response is included with this report as an Appendix.

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INTRODUCTION

BACKGROUND

The Omnibus Budget Reconciliation Act of 1987 established legislative reforms to promote quality of care in nursing homes. These reforms require nursing homes to have sufficient nursing staff to provide nursing and related services to attain or maintain the highest practicable physical, mental, and psychosocial well-being of each resident. Specifically, Title 42 CFR § 483.30 requires nursing homes to provide sufficient nursing staff on a 24-hour basis. Sufficient nursing staff must consist of licensed nurses and other nursing personnel and include 1) a registered nurse for at least 8 consecutive hours a day, 7 days a week, 2) a registered nurse designated to serve as the director of nursing on a full time basis (the director of nursing may serve as a charge nurse only when the home has an average daily occupancy of 60 or fewer residents), and 3) a licensed nurse designated to serve as a charge nurse on each tour of duty.

States are required to ensure that nursing homes follow these Federal staffing standards at a minimum. Each State may implement its own staffing requirements that exceed these standards. Through the State survey and certification process, the State Survey Agency in each State is required to conduct periodic standard surveys of every nursing home in the State. Through this process State Survey Agencies measure the quality of care at each nursing home by identifying deficiencies and assuring compliance with Federal and State requirements. Pennsylvania has established staffing requirements that exceed the Federal standards.

Beverly is a 124 bed Medicare and Medicaid certified nursing home owned by Beverly Healthcare.

OBJECTIVE, SCOPE, AND METHODOLOGY

Objective

The objective of our review was to determine whether Beverly was in compliance with Federal and State staffing laws and regulations for nursing homes.

Scope

The scope and objective of this review encompassed only certain specific requirements of the Federal and State staffing regulations. This review did not assess the general requirement of 42 CFR § 483.30 that: “The facility must have sufficient nursing and related services to attain or maintain the highest practicable physical, mental, and psychosocial well-being of each resident, as determined by resident assessments and individual plans of care . . .” Rather, it assessed compliance with the staffing requirements stated in 42 CFR § 483.30 (b):

- (1) The facility must use the services of a registered nurse for at least 8 consecutive hours a day, 7 days a week.

- (2) The facility must designate a registered nurse to serve as the director of nursing on a full time basis.
- (3) The director of nursing may serve as a charge nurse only when the facility has an average occupancy of 60 or fewer residents.

We also reviewed compliance with Pennsylvania regulations concerning hours of direct care and employee background checks.

We selected Beverly for review based on our analysis of data from the Centers for Medicare & Medicaid Services' (CMS) Online Survey Certification and Reporting System.

Methodology

To accomplish our objective we:

- obtained background, staffing and deficiency data for Beverly from the Online Survey Certification and Reporting System database through CMS's Nursing Home Compare website;
- reviewed Federal and Pennsylvania State laws and regulations for nursing homes to determine the staffing standards to which Beverly was required to adhere;
- obtained staffing schedules, time and attendance records, and payroll records to determine the home's direct care hours per resident per day, as well as the licensed nurse-to-resident ratio for a 2-week period from each month of June and November 2001 and May 2002;
- obtained and analyzed background checks for all direct care employees;
- conducted inquiries through Pennsylvania's on-line license and certification systems to determine if all direct care employees were currently licensed or certified;
- reviewed the results of the two most recent Beverly standard surveys conducted by the State Survey Agency; and
- obtained an understanding of Beverly's procedures for recruiting, retaining and scheduling staff through meetings and discussions with personnel at the home.

Our review of internal controls was limited to obtaining an understanding of the controls concerning the hiring and scheduling of employees. The objective of our review did not require an understanding or assessment of the complete internal control structure at Beverly.

Our review was conducted in accordance with generally accepted government auditing standards.

FINDINGS AND RECOMMENDATIONS

Beverly was in compliance with the Federal staffing laws and regulations that we reviewed, but was not in compliance with the State staffing requirements. All 92 direct care employees at Beverly were properly licensed and/or certified and were currently in good standing as determined by the State. However, Beverly did not:

- obtain a valid State background check for 4 direct care employees,
- obtain a State background check for 13 direct care employees within the required timeframes, and
- schedule sufficient staff to provide 2.7 hours of direct care per resident per day for 7 of the days reviewed.

State Criteria for Background Checks

The Pennsylvania Older Adults Protective Services Act (Protective Services Act) required nursing homes to obtain a Pennsylvania State Police background check on all employees hired after July 1, 1997. For employees hired between July 1, 1997 and June 30, 1998, nursing homes had until July 1, 1999 to obtain the background check. As of July 1, 1998, the nursing home must obtain a State background check within 30 days for any job applicant who has resided in the State within the previous 2 years. If the applicant has not resided within the State at any time during the previous 2 years, the nursing home must also obtain a Federal background check within 90 days. If the applicant provided a background check, it was required to be less than a year old. However, if the background check was not provided at the time of application, the Protective Services Act allowed the nursing home to hire the applicant on a provisional basis for no longer than the 30 or 90 day period while waiting for the background check. If the background check was not received within the required time period, the employee was not eligible to work directly with residents until the background check was received and found in good standing in accordance with the Protective Services Act requirements.

Not Requested and Invalid Background Checks

Beverly did not obtain the State required background check for two direct care employees and obtained invalid background checks for two other direct care employees. Beverly did not request the background check for two direct care employees who were hired in 1997 because it believed that the Protective Services Act only required background checks for employees hired after July 1, 1998. For a third direct care employee, Beverly accepted a background check that was conducted in another State instead of requesting one from the Pennsylvania State Police as required in the Protective Services Act. Finally, for a fourth direct care employee, Beverly accepted a background check that was 996 days old, well

over the maximum age of 1 year specified in the Protective Services Act. All of these employees continued to work directly with the residents even though their State background check results were unknown or invalid. Therefore, these four employees should have been restricted from working directly with the residents until their State background check results were received and found not to contain anything that would preclude the employees from being hired.

Untimely Background Checks

Beverly did not obtain the State background checks for 13 direct care employees within the State required 30-day timeframe. Beverly ultimately obtained the State background checks for the 13 direct care employees. However, Beverly allowed these 13 employees to work directly with residents after the 30-day maximum period had expired, but before the results were obtained. The range of time these employees continued to work directly with residents after the initial 30-day period ranged from 39 days to 3 years. Beverly requested the background checks for each employee, but did not sufficiently follow-up when the results were not received within the 30 days. Once received, the 13 background checks did not disclose anything that would preclude the employees from working directly with residents. Therefore, these 13 employees may continue to work directly with the residents.

Beverly had internal procedures for obtaining background checks, but did not assure that these procedures followed the guidelines in the Protective Services Act. As a result, Beverly was at risk of hiring direct care staff with a criminal history that would preclude them from working in a nursing home, and possibly endangering the residents.

Deficient Staffing Levels

Pennsylvania State Code, title 28, part IV, subpart C, chapter 211.12, required nursing homes to provide 2.7 hours of direct nursing care to each resident every day. The nursing homes were also required to provide a ratio of licensed nurses based on the number of residents. For example, a nursing home with between 60 and 150 residents was required to have 1 registered nurse on each shift for 24 hours a day.

Beverly did not comply with State staffing requirements for 7 of the 42 days (17 percent) reviewed. Beverly did not schedule enough direct care staff to provide the 2.7 hours of direct care per resident for each of the 7 days.

Beverly did not follow its internal procedures sufficiently enough to assure that it was in compliance with State staffing requirements. Beverly had internal procedures to schedule employees in compliance with State requirements. However, Beverly failed to schedule direct care employees in a way that would assure there was enough staff on duty to provide 2.7 hours of direct care per resident per day for 7 of the days reviewed.

RECOMMENDATIONS

We recommend that Beverly:

- restrict the four direct care employees whose background checks were not requested or were invalid from working directly with the residents until it obtains background checks that do not contain anything that would have prevented the employees from being hired,
- review and strengthen its internal controls to assure that it obtains valid background checks on all new direct care employees,
- review and strengthen its internal controls to assure that it prohibits new employees from working directly with the residents if the required background checks are not received within the timeframes specified in the Protective Services Act, and
- review and strengthen its internal controls to assure that it schedules direct care employees to ensure that there is enough nursing staff on duty to provide 2.7 hours of direct care per resident per day.

AUDITEE RESPONSE

In a written response to our draft report, Beverly concurred with our findings and has taken action to assure that it obtains all required background checks and schedules direct care staff in accordance with Federal and State staffing requirements. Beverly has obtained valid background checks on the four direct care employees who did not have them and has revised its procedures for obtaining background checks by implementing a tracking log that will monitor the date a background check was requested and whether or not a response has been received. Beverly has also assigned a staffing coordinator to ensure that it provides the required 2.7 hours of direct care per resident per day and has implemented a mandation policy to ensure that the appropriate staffing levels are maintained when call-offs occur. The full text of Beverly's response is included with this report as an Appendix.

APPENDIX



March 3, 2005

Mr. Stephen Virbitsky, Regional Inspector General For Audit Services
Dept. of Health & Human Services, Office of Inspector General
Office of Audit Services
150 S. Independence Mall West
Suite 316
Philadelphia, PA 19106-3499

Dear Mr. Virbitsky:

The following is Beverly Healthcare-Reading's response to the recommendations made:

- A) The four direct care givers have current and valid background checks. The four caregivers have current and valid background checks. The four care givers have no restrictions to prevent them from performing their duties at the facility. The following is the facility's policy and procedure pertaining to background checks.
- 1) All applicants must provide at least 5 years of prior addresses.
 - 2) Information is faxed to Beverly Corp. who in turn requests the background checks.
 - 3) Facility maintains a tracking log of applicant's name, date that background information was sent to corporate and if a response was received.
 - 4) If information received prohibits an individual from working in a Beverly facility, then the individual is terminated.
- B) Beverly Healthcare of Reading maintains a staffing level of 2.7 hours of direct Care per resident day.
- 1) A staffing coordinator is in place to ensure that staffing levels are maintained.
 - 2) A mandation policy is in effect to ensure that when call-offs occur the facility maintains an appropriate staffing level.
 - 3) Department of Health reviews staffing levels during their annual survey process.

Please feel free to contact me if additional information is needed.

Sincerely,

A handwritten signature in cursive script that reads "Frank Dunion".

Frank Dunion
Executive Director
Beverly Manor of Reading
21 Fairlane Road • Reading, PA 19606
(610) 779-8522 • FAX (610) 779-8315

YOUR
PATHWAY
HOME

ACKNOWLEDGMENTS

This report was prepared under the direction of Stephen Virbitsky, Regional Inspector General for Audit Services. Other principal Office of Audit Services staff who contributed include:

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For information or copies of this report, please contact the Office of Inspector General's Public Affairs office at (202) 619-1343.