

Department of Health and Human Services

**OFFICE OF
INSPECTOR GENERAL**

**FLORIDA SHOULD IMPROVE ITS
OVERSIGHT OF SELECTED NURSING
HOMES' COMPLIANCE WITH FEDERAL
REQUIREMENTS FOR LIFE SAFETY AND
EMERGENCY PREPAREDNESS**

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Office of Inspector General

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Report in Brief

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U.S. DEPARTMENT OF HEALTH & HUMAN SERVICES
OFFICE OF INSPECTOR GENERAL



Why OIG Did This Audit

In 2016, the Centers for Medicare & Medicaid Services (CMS) updated its life safety and emergency preparedness regulations to improve protections for all Medicare and Medicaid beneficiaries, including residents of long-term-care facilities (commonly referred to as nursing homes). Updates included requirements that nursing homes have expanded sprinkler systems and smoke detector coverage; an emergency preparedness plan that is reviewed, trained on, tested, and updated at least annually; and provisions for sheltering in place and evacuation.

Our objective was to determine whether Florida ensured that selected nursing homes that participate in the Medicare or Medicaid programs complied with CMS and State requirements for life safety and emergency preparedness.

How OIG Did This Audit

Of the approximately 700 nursing homes in Florida that were enrolled in Medicare or Medicaid, we selected a nonstatistical sample of 20 nursing homes based on risk factors, including multiple high-risk deficiencies reported to CMS by Florida.

We conducted unannounced site visits at the 20 nursing homes from July through November 2018. During the site visits, we checked for life safety violations and reviewed the nursing homes' emergency preparedness plans.

Florida Should Improve Its Oversight of Selected Nursing Homes' Compliance With Federal Requirements for Life Safety and Emergency Preparedness

What OIG Found

Florida did not ensure that selected nursing homes that participated in the Medicare or Medicaid programs complied with CMS and State requirements for life safety and emergency preparedness. All 20 nursing homes that we visited had deficiencies in areas related to life safety or emergency preparedness. Specifically, 19 nursing homes had 100 areas of noncompliance with life safety requirements related to building exits and smoke barriers, fire detection and suppression systems, hazardous storage areas, smoking policies and fire drills, and electrical equipment. Furthermore, 16 nursing homes had 87 areas of noncompliance with emergency preparedness requirements related to written emergency plans, emergency supplies and power, plans for sheltering in place and tracking residents and staff during and after an emergency, emergency communications plans, and emergency plan training.

The instances of noncompliance occurred because of several contributing factors, specifically inadequate management oversight and staff turnover at the nursing homes. In addition, Florida did not have a standard life safety training program for all nursing home staff and generally performed life safety surveys no more frequently than once every 12 to 15 months, even at these higher risk nursing homes.

What OIG Recommends and Florida Comments

We recommend that Florida (1) follow up with the 20 nursing homes to ensure that corrective actions have been taken regarding the deficiencies we identified, (2) work with CMS on developing life safety training for nursing home staff, and (3) conduct more frequent surveys at nursing homes with a history of multiple high-risk deficiencies and follow up to ensure that corrective actions have been taken. We also made other administrative recommendations.

In written comments on our draft report, Florida agreed with our first and fifth recommendations and partially agreed with our seventh recommendation. Florida did not agree with our remaining recommendations. In addition, Florida provided general comments and concerns on our three findings and provided additional steps they have taken to address those findings. After reviewing Florida's comments, we modified our first finding to remove errors related to resident call systems and to more clearly summarize the number of deficiencies at each nursing home. We maintain that our findings and recommendations, as revised, are correct.

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INTRODUCTION

WHY WE DID THIS AUDIT

In 2016, the Centers for Medicare & Medicaid Services (CMS) updated its life safety and emergency preparedness regulations to improve protections for all Medicare and Medicaid beneficiaries, including those residing in long-term-care facilities (commonly referred to as nursing homes). The updates included requirements that nursing homes have expanded sprinkler systems and smoke detector coverage; an emergency preparedness plan that is reviewed, trained on, tested, and updated at least annually; and provisions for sheltering in place and evacuation.

As part of its oversight activities, the Office of Inspector General (OIG) is conducting a series of audits nation-wide (Appendix B) to assess compliance with these new life safety and emergency preparedness requirements. This audit focuses on selected nursing homes in Florida.

OBJECTIVE

Our objective was to determine whether the Florida Agency for Health Care Administration (State agency) ensured that selected nursing homes in Florida that participate in the Medicare or Medicaid programs complied with CMS and State requirements for life safety and emergency preparedness.

BACKGROUND

Medicare and Medicaid Coverage of Nursing Homes

The Medicare and Medicaid programs cover care in nursing homes for eligible beneficiaries. Sections 1819 and 1919 of the Social Security Act (the Act) establish requirements for CMS and States to perform surveys of nursing homes to determine whether they meet Federal participation requirements. For Medicare and Medicaid, these statutory participation and survey requirements are implemented in Federal regulations at 42 CFR part 483, subpart B, and 42 CFR part 488, subpart E, respectively.

Requirements for Life Safety and Emergency Preparedness

Nursing homes are required to comply with all Federal, State, and local laws, regulations, and codes, as well as accepted professional standards and principles (42 CFR § 483.70). Federal regulations on life safety (42 CFR § 483.90) require nursing homes to comply with standards set forth in the *Life Safety Code* (National Fire Protection Association (NFPA) 101) and *Health Care Facilities Code* (NFPA 99).¹ CMS lists applicable requirements on Form CMS-2786R, Fire Safety

¹ CMS adopted the 2012 edition of both publications in a Final Rule published in 81 Fed. Reg. 26872 (May 4, 2016).

Survey Report.² Federal regulations on emergency preparedness (42 CFR § 483.73) include specific requirements for nursing home emergency preparedness plans and reference the *Standard for Emergency and Standby Power Systems* (NFPA 110) as part of the requirements.³ CMS lists applicable requirements on its *Emergency Preparedness Surveyor Checklist*.⁴

The Fire Safety Survey Report and *Emergency Preparedness Surveyor Checklist* are used when CMS or a designated agency performs a nursing home survey. The results of each survey are reported and added to CMS's Automated Survey Processing Environment (ASPEN) system.

State Requirements for Emergency Preparedness

Florida Statute 400.23(2)(g) requires nursing homes to prepare and annually update a "comprehensive emergency management plan" (State emergency plan). The State emergency plan requirements preceded and significantly duplicate the Federal emergency preparedness requirements, but they are not identical. When preparing their State emergency plans, nursing homes must include risk assessment and planning, policies and procedures, a communication plan, and training and testing programs. The State emergency plan is subject to annual review and approval by the nursing home's county "local emergency management" (emergency management) agency. The State agency has provided guidance that the county emergency management agencies use to verify that nursing homes meet all State emergency plan requirements.

Florida Administrative Code (FAC) 59A-4.1265 mandates that each nursing home must prepare a detailed supplemental plan to its emergency plan to address emergency power in the event of the loss of primary electrical power.⁵ FAC requires all nursing homes to maintain a safe indoor air temperature, not to exceed 81 degrees Fahrenheit, for a minimum of 96 hours in the event of the loss of primary electrical power. The nursing home's emergency management agency should review and approve all supplemental plans.

² Form CMS-2786R is available online at <https://www.cms.gov/Medicare/CMS-Forms/CMS-Forms/CMS-Forms-Items/CMS009335.html>.

³ CMS adopted the 2010 edition of NFPA 110 in a Final Rule published in 81 Fed. Reg. 63860, 63929 (September 16, 2016).

⁴ CMS provides online guidance for emergency preparedness at <https://www.cms.gov/medicare/provider-enrollment-and-certification/surveycertemergprep/emergency-prep-rule.html>.

⁵ All nursing homes were required to implement their supplemental plans no later than June 1, 2018. The State agency granted an extension up to January 1, 2019, to providers who could show that necessary construction, delivery of ordered equipment, or zoning or other regulatory approval processes caused delays in implementing their plans.

Responsibilities for Life Safety and Emergency Preparedness

In Florida, the State agency oversees nursing homes and is responsible for ensuring that nursing homes comply with Federal, State, and local regulations. Under an arrangement known as a “section 1864 agreement” with CMS, the State agency is responsible for completing life safety and emergency preparedness surveys at least once every 15 months at nursing homes that participate in the Medicare or Medicaid programs.⁶ However, nursing homes with repeat deficiencies can be surveyed more frequently.⁷

Management and staff at nursing homes are ultimately responsible for ensuring the safety and well-being of nursing home residents and for complying with Federal, State, and local regulations. They are responsible for ensuring that facility systems such as furnaces, water heaters, kitchen equipment, generators, sprinkler and alarm systems, elevators, and other equipment are properly installed, tested, and maintained. They are also responsible for ensuring that the nursing home is free of hazards and for ensuring that emergency plans, including fire escape plans and disaster preparedness plans, are updated and tested on a regularly basis.

HOW WE CONDUCTED THIS AUDIT

As of November 2017, nearly 700 nursing homes in Florida participated in the Medicare or Medicaid programs. We selected for our audit a nonstatistical sample of 20 of these nursing homes based on various factors, including the number of high-risk deficiencies that the State agency reported to CMS’s ASPEN system and the potential risk of environmental threat, such as hurricanes, ice, and extreme heat, taking into account the nursing homes’ locations.⁸

We conducted unannounced site visits at the 20 nursing homes from July through November 2018. During the site visits, we checked for life safety violations and reviewed the nursing homes’ emergency preparedness plans.

We conducted this performance audit in accordance with generally accepted government auditing standards. Those standards require that we plan and perform the audit to obtain sufficient, appropriate evidence to provide a reasonable basis for our findings and conclusions based on our audit objectives. We believe that the evidence obtained provides a reasonable basis for our findings and conclusions based on our audit objectives.

⁶ The Act §§ 1819(g)(2)(A)(iii) and 1919(g)(2)(A)(iii). Under the agreement, the State agency agrees to carry out the provisions of sections 1864, 1874, and related provisions of the Act.

⁷ 42 CFR § 488.308(c). The State agency generally conducts full comprehensive surveys every 12 to 15 months and will follow up on deficiencies either through a site visit or documentation submission depending on the nature and severity of the deficiency. For 8 of the 20 nursing homes we visited, the State agency conducted its 3 most recent comprehensive surveys no more frequently than every 12 to 15 months.

⁸ We defined high-risk deficiencies as those that had potential for more than minimal harm.

Appendix A contains the details of our audit scope and methodology.

FINDINGS

The State agency did not ensure that selected nursing homes in Florida that participated in the Medicare or Medicaid programs complied with CMS and State requirements for life safety and emergency preparedness. During our site visits, we identified deficiencies in areas related to life safety and emergency preparedness at all 20 nursing homes that we reviewed:

- We found 100 instances of noncompliance with life safety requirements related to building exits, smoke barriers,⁹ fire detection and suppression systems, hazardous storage areas, smoking policies and fire drills, and electrical equipment power cords.
- We found 87 instances of noncompliance with emergency preparedness requirements related to written emergency plans, emergency supplies and power, plans for sheltering in place and tracking residents and staff during and after an emergency, emergency communications plans, and emergency plan training and testing.

In addition, 4 of the 20 nursing homes had not fully complied with State requirements related to the review and approval of their State emergency plans, and 14 nursing homes had not yet met State supplemental emergency plan generator requirements. Finally, the State agency could improve its collaboration with county emergency management agencies.

As a result, nursing home residents at the 20 nursing homes were at increased risk of injury or death during a fire or other emergency.

The identified deficiencies occurred because nursing homes had inadequate management oversight and had high staff turnover. In addition, the State agency did not have a standard life safety training program for all nursing home staff (not currently required by CMS) and generally performed comprehensive life safety surveys no more frequently than once every 12 to 15 months, even at these higher risk nursing homes.

Appendix C summarizes the instances of noncompliance that we identified at each nursing home.

SELECTED NURSING HOMES DID NOT COMPLY WITH LIFE SAFETY REQUIREMENTS

CMS's *Fire Safety Survey Report*, described above, lists the Federal regulations on life safety with which nursing homes must comply and references each with an identification number referred to as a "K-Tag."

⁹ Smoke barriers restrict the movement of smoke and have a fire-resistance rating. Smoke partitions are designed to limit the movement of smoke and are not as substantial as smoke barriers. Smoke partitions may not have a fire-resistance rating.

Building Exits and Smoke Barriers

In case of fire or emergency, nursing homes are required to have unobstructed exits that must be continuously maintained free of all obstructions to full use, self-closing doors in exit passageways that do not require tools or keys to open and are not manually propped open, illuminated exit signs, and sealed smoke and fire barriers. In addition, corridor doors are required to latch and should seal the room from smoke or fire (K-Tags 211, 222, 223, 293, 363, and 372).

Of the 20 nursing homes we visited, 16 had 1 or more deficiencies related to building exits and fire barriers.¹⁰ Specifically:

- 15 nursing homes had patient sleeping room doors that were impeded from closing, would not latch, or did not fully seal;
- 7 nursing homes had self-closing doors that were propped open or missing altogether;
- 5 nursing homes had a pathway leading to exit doors that was blocked or impeded.
- 3 nursing homes had areas, such as storage rooms and electrical closets, that were inaccessible in case of a fire;
- 3 nursing homes had non-illuminated exit signs; and
- 2 nursing homes had missing or damaged smoke and fire barriers, including broken ceiling tiles and openings that could contribute to the spread of smoke and fire.

The photographs on the next page show some of the deficiencies we identified during our site visits.

¹⁰ Among the 16 nursing homes, 35 deficiencies related to building exits and fire barriers.



Photograph 1 (left): An emergency exit pathway was impeded.
Photograph 2 (center): An illuminated exit sign was covered by paper indicating that it was not an exit.
Photograph 3 (right): A missing ceiling tile resulted in no smoke or fire barrier.



Photograph 4 (left): A patient's bed blocked a room door from closing.
Photograph 5 (right): A patient's room door did not shut.

Fire Detection and Suppression Systems

Nursing homes are required to have sprinkler systems that must be installed, inspected, and maintained in accordance with NFPA requirements. Nursing homes must also evacuate or have fire watch procedures for times when the fire alarm or sprinkler system is out of service, and portable fire extinguishers must be inspected monthly. Smoke detectors are required in spaces open to corridors and other areas (K-Tags 346, 347, 351, 353–355).

Of the 20 nursing homes we visited, 14 had 1 or more deficiencies related to their fire detection and suppression systems.¹¹ Specifically:

- 10 nursing homes had sprinkler system heads that were blocked or obstructed,
- 8 nursing homes failed to inspect their portable fire extinguishers monthly (see photograph below),
- 3 nursing homes had inadequate policies and procedures for fire watches,¹²
- 2 nursing homes failed to have their sprinkler system tested and maintained, and
- 1 nursing home failed to place a battery in a smoke detector.

The photographs below show some of the deficiencies we identified during our site visits.



Photograph 6 (left): A fire extinguisher lacked documentation of any monthly inspections.
Photograph 7 (right): A laundry room smoke detector had no battery installed.

Hazardous Storage Areas

In hazardous storage areas, nursing homes must store hazardous chemicals in a safe manner. In addition, nursing homes must maintain and inspect oxygen systems, install signs or placards in rooms with oxygen cylinders that include a sign indicating that the room is used for oxygen storage, post a no-smoking sign, and separately label storage spaces for full and empty cylinders. Furthermore, nursing homes must store oxygen cylinders in a safe manner so as not

¹¹ Among the 14 nursing homes, 24 deficiencies related to fire detection and suppression systems.

¹² When fire alarms or sprinkler systems are out of service, individuals are assigned areas to patrol to watch for fire or smoke until the systems are back in service. If a fire watch is not done, the building must be evacuated.

to damage or tip over the cylinders, which could cause a dangerous pressurized oxygen release. Finally, alcohol-based hand rub dispensers must be installed in a manner that adequately protects against inappropriate access (K-Tags 321, 325, 905, and 923).

Of the 20 nursing homes we visited, 11 had 1 or more deficiencies related to hazardous storage areas.¹³ Specifically:

- seven nursing homes had oxygen cylinders stored in an unsecure manner or in rooms that were improperly placarded,
- three nursing homes had gasoline cans that were not stored in approved flammable storage cabinets,
- two nursing homes failed to lock their alcohol-based hand rub dispensers, and
- one nursing home failed to properly identify and label its gas and vacuum piped system.

The photographs below show some of the deficiencies we identified during our site visits.



Photograph 10 (left): Unsecured filled gasoline can was stored next to a generator.

Photograph 11 (center): Oxygen cylinders were not labeled and not stored safely.

Photograph 12 (right): An alcohol-based hand rub dispenser was unlocked.

¹³ Among the 11 nursing homes, 13 deficiencies related to hazardous storage.

Smoking Policies and Fire Drills

Nursing homes are required to establish smoking policies for residents and staff. Smoking is permitted only in authorized areas where ash receptacles are provided. Furthermore, signs must identify no-smoking areas. Nursing homes are also required to conduct fire drills each calendar quarter that cover each work shift. Participation by staff members is required, and the drills must be planned and conducted by a qualified individual designated by the nursing home. The drills may be announced or unannounced and must include the transmission of a fire alarm signal and simulation of emergency fire conditions (K-Tags 712 and 741).

Of the 20 nursing homes we visited, 12 had 1 or more deficiencies related to smoking policies or fire drills.¹⁴ Specifically:

- 12 nursing homes were not following their smoking policies, such as banning smoking except in allowable marked areas, and
- 2 nursing homes did not ensure that fire drills were conducted each quarter covering all work shifts.

The photographs below show some of the deficiencies we identified during our site visits.



Photograph 13 (left): Cigarette butts (circled) were found in a designated no-smoking area.

Photograph 14 (right): More cigarette butts were found in a no-smoking area.

Electrical Equipment

If a nursing home uses power strips or extension cords, they must meet Underwriters Laboratories (UL) requirements and be used in a safe manner; they cannot be attached to other power strips. Extension cords can be used temporarily but must be removed immediately after use (K-Tag 920).

¹⁴ Among the 12 nursing homes, 14 deficiencies related to smoking policies and fire drills.

Of the 20 nursing homes we visited, 14 had 1 or more deficiencies related to electrical equipment power cords.¹⁵ All 14 nursing homes used power strips that did not meet UL requirements. Specifically, the power strips were unsafely connected to appliances or other power strips, or extension cords were used to replace fixed wiring.

The photographs below show some of the deficiencies we identified during our site visits.



Photograph 15 (left): One power strip was daisy-chained with another power strip.
Photograph 16 (right): A non-UL-approved extension cord was being used in an unsafe manner.

SELECTED NURSING HOMES DID NOT COMPLY WITH EMERGENCY PREPAREDNESS REQUIREMENTS

CMS's *Emergency Preparedness Surveyor Checklist*, described earlier, lists the Federal regulations on emergency preparedness that nursing homes must comply with and references each with an identification number referred to as an "E-Tag."

Emergency Plan

Nursing homes are required to have an emergency plan in place, and the plan must be easily located. Nursing homes are also required to update the plan at least annually; include a facility and community all-hazards risk assessment; address emergency events and resident population needs; include a continuity of operations plan; and address coordination with Federal, State, and local government emergency management officials (E-Tags 0001, 0004, 0006, 0007, and 0009).

¹⁵ Among the 14 nursing homes, 14 deficiencies related to electrical equipment power cords.

Of the 20 nursing homes we visited, 7 had 1 or more deficiencies related to their emergency plan.¹⁶ Specifically:

- five did not include a facility and community all-hazards risk assessment in their plans,
- five did not address emergency events,
- three did not update their emergency plans annually,
- three did not address resident population needs,
- two did not have an official plan in place,
- one did not include a succession plan, and
- one did not provide for coordination with all government emergency management officials.

Emergency Supplies and Power

Nursing homes must have an emergency plan that addresses emergency supplies and power, and nursing homes are required to have adequate supplies of emergency food, water, and pharmaceuticals readily available. (As a best practice, the Federal Emergency Management Agency (FEMA) considers 3 days of emergency supplies to be sufficient.)¹⁷ Nursing homes are also required to provide an alternate source of energy (usually a generator) to maintain temperatures to protect residents' health and safety, as well as for food storage, emergency lighting, fire protection, and sewage disposal (if applicable). Further, facilities must establish policies and procedures that determine how required heating and cooling of their facility will be maintained during an emergency situation, if there were a loss of the primary power source. Nursing homes that have generators must have them installed in a safe location and are required to perform weekly maintenance checks, monthly load tests, and annual fuel quality tests (if the generator operates on diesel fuel). Generators that operate on diesel fuel or propane gas are generally designed with a minimum fuel tank capacity to last for 3 days at half load, which factors in an emergency fuel stock and lead time for refueling with time built in for unanticipated delays. Nursing homes should also have a plan in place to keep generators

¹⁶ Among the 7 nursing homes, 20 deficiencies related to emergency plan requirements.

¹⁷ The 3-day standard is a best-practice recommendation, as CMS does not have a specific standard regarding what constitutes a sufficient amount of emergency supplies to have on hand. We did not audit compliance to this standard. Rather, our findings regarding a sufficient amount of generator fuel or other emergency supplies are based on a totality of the applicable criteria.

fueled “as necessary” and an evacuation plan if emergency power is lost (E-Tags 0015 and 0041).

Of the 20 nursing homes we visited, 7 had 1 or more deficiencies related to emergency supplies and power.¹⁸ Specifically:

- four had not properly tested and maintained their generators;
- three did not have sufficient generator fuel on hand to last 3 days, or sufficient plans to obtain emergency fuel or evacuate the nursing home when fuel levels reached a specified low level;
- one did not adequately address the availability of emergency supplies in its emergency plan; and
- one did not have sufficient water on hand (FEMA recommends 1 gallon per person, per day, for 3 days).¹⁹

Plans for Sheltering in Place and Tracking Residents and Staff During and After an Emergency

Nursing homes are required to have a plan for sheltering in place and tracking residents and staff during and after an emergency. Nursing homes must also have a plan for transferring medical records, using volunteers, and transferring residents, and procedures for waivers when providing care at alternate sites during emergencies (E-Tags 0018, 0022–0026, 0033).

Of the 20 nursing homes we visited, 9 had 1 or more deficiencies related to their emergency plans for sheltering in place and tracking residents and staff during and after emergencies.²⁰ Specifically:

- five did not address obtaining waivers when providing care at alternate sites during emergencies,
- three did not address sheltering in place,
- three did not address transferring medical records,
- three did not address using volunteers,

¹⁸ Among the 7 nursing homes, 9 deficiencies related to emergency supplies and power.

¹⁹ As noted earlier, this 3-day standard is a best-practice recommendation, as CMS does not have a specific standard regarding what constitutes a sufficient amount of water to have on hand.

²⁰ Among the 9 nursing homes, 17 deficiencies related to plans for evacuations, sheltering in place, and tracking residents and staff during an emergency.

- two did not address tracking residents and staff, and
- one did not address transferring residents during disasters.

Emergency Communications Plan

Nursing homes are required to have a communications plan that includes names and contact information for staff, entities providing services, residents' physicians, other nearby nursing homes, government emergency management offices, and the State agency, among others. The plan must be updated at least annually. Nursing homes are also required to have primary and alternate means of communication, such as cell phones or radios; a means to communicate residents' condition information and location in the event of an evacuation; and methods to share emergency plan information with residents and their families (E-Tags 0029–0032, 0034, 0035).

Of the 20 nursing homes we visited, 11 had 1 or more deficiencies related to the adequacy of the emergency communications plans.²¹ Specifically:

- 10 did not have required name and contact information,
- 4 did not have procedures for recording resident condition and location information,
- 2 did not update their plans annually,
- 2 had insufficient alternate means of communication,
- 2 did not have procedures for sharing emergency plan information with residents and their families, and
- 1 did not have an official emergency communications plan.

Emergency Plan Training

Nursing homes are required to have a training and testing program related to their emergency plan and to provide updated training annually. Initial training must be provided to new staff members, independent contractors (e.g., contracted cleaning staff), and volunteers. The training, as well as annual refresher training required for all staff, must be designed to demonstrate knowledge of emergency procedures and must be documented. Nursing homes

²¹ Among the 11 nursing homes, 21 deficiencies related to emergency communications.

must also conduct an annual community-based, full-scale testing exercise.²² In addition, a second training exercise (full-scale testing exercise, facility-based exercise, or “tabletop” exercise) must be completed annually. An analysis of all training exercises (and actual events) must be completed and documented and the emergency plan revised, if necessary (E-Tags 0036, 0037, 0039).

Of the 20 nursing homes we visited, 8 had 1 or more deficiencies related to emergency plan training.²³ Specifically:

- six did not conduct annual full-scale training exercises,
- four did not conduct a second training exercise,
- three did not conduct analyses of their training exercises,
- three did not document that they provided initial training,
- two did not have training and testing programs,
- one did not update its training plan annually, and
- one did not provide annual training.

STATE AGENCY MONITORING, OVERSIGHT, AND COLLABORATION ON STATE EMERGENCY PREPAREDNESS REQUIREMENTS

Of the 20 nursing homes in our sample, 4 did not have an approved State emergency plan. All 20 either had an emergency generator in place or were planning to install a new generator and were operating under an approved extension to their supplemental emergency plan. Furthermore, county emergency management agencies reported several challenges in meeting their responsibilities for ensuring the safety and well-being of nursing home residents.

Nursing homes are required to comply with all applicable Federal, State, and local emergency preparedness requirements (42 CFR § 483.73). Florida’s State emergency plan and supplemental emergency plan requirements, described earlier, list the State requirements on emergency preparedness and emergency power with which nursing homes must comply. The State agency requires county emergency management agencies to review and approve a

²² The exercise can be facility-based if a community-based exercise is not possible. Furthermore, nursing homes are exempt from this requirement if they activated their emergency plan during the year.

²³ Among the 8 nursing homes, 20 deficiencies related to emergency plan training.

nursing home's State emergency plan and supplemental emergency plan.²⁴ In addition, county emergency management agencies are responsible for performing emergency management functions within their county,²⁵ including the coordination and execution of a nursing home's State emergency plan in an actual emergency or natural disaster.

State Emergency Plan Monitoring

Four nursing homes did not have an approved State emergency plan because they failed to submit their State emergency plan to their county emergency management agency for review and approval before their previous plan expired. The nursing homes are responsible for providing their updated State emergency plans to their county emergency management agencies for review and approval before their current plan expires. Although the State agency verifies during its annual survey whether the State emergency plan is current and has been approved by the county emergency management agency, it does not track when a nursing home's State emergency plan is expiring or whether the State emergency plan has been reviewed by the county emergency management agency. Without a current State emergency plan, these nursing homes are exposing patients to increased risk of injury or death during an emergency or natural disaster.

State Supplemental Emergency Plan Oversight

All 20 of the nursing homes in our sample either had an emergency generator in place or were planning to install a new one, in accordance with their supplemental emergency plan. However, staff at 14 nursing homes indicated that a shortage of available generators combined with the engineering requirements to install a new generator to power the entire heating and cooling system required significant lead time. According to nursing home staff, shortages and engineering requirements have led to delays in receiving and installing generators to satisfy Florida supplemental emergency plan requirements. These 14 nursing homes were aware of the deadlines for their supplemental emergency plans and have been in contact with the State. After our fieldwork, the State agency granted each of these nursing homes a variance that allowed more time to comply with the supplemental emergency plan requirements. Until these 14 nursing homes install new generators, their residents will remain at increased risk in the event of a power failure.

State and County Emergency Management Collaboration

The State agency requires all nursing homes to submit and obtain approval of their State emergency plans and supplemental emergency plans through their county emergency

²⁴ Florida Statute 400.23(2)(g) and Florida Administrative Code 59A-4.1265.

²⁵ Florida Statute 252.38(1)(c).

management agencies.²⁶ These county emergency management agencies described several challenges to ensuring that the emergency plans are reviewed and approved without unnecessary delay.²⁷ Specifically, county emergency management agencies said that the State agency:

- did not provide the county any additional resources to review and approve every nursing home's State emergency plan yearly when the statute requiring approval by county emergency management agencies went into effect;
- had not developed an effective tracking system to assist in identifying delinquent or nonexistent submissions;
- had not provided enough guidance on completing its review of the nursing homes' State emergency plans;
- provided guidance that requires the county emergency management agency to verify only State emergency plan requirements, which did not include all Federal requirements detailed in the Federal regulations on emergency preparedness (42 CFR § 483.73);
- did not provide to nursing homes the results of surveyors' work on their emergency management plans to make them aware of vulnerabilities; and
- had granted new licenses to nursing homes before the county emergency management agency completed its review and approval of their supplemental emergency plans.

In addition to the challenges of reviewing and approving emergency plans, county emergency management agencies discussed broader concerns regarding the extent of their responsibility. For example, various county emergency management agencies stated the following:

- One agency did not have the engineering and electrical expertise or resources to properly validate a supplemental emergency plan. The agency stated that it did not know what the county emergency management agency's responsibility was for obtaining this expertise.
- One agency indicated that all nursing homes were using the same transportation company. If these nursing homes needed to be evacuated at the same time, the transportation company would not be able to meet the combined demand. The agency

²⁶ We visited 20 nursing homes in 7 counties.

²⁷ The emergency management agency shall complete its emergency plan review within 60 days and either approve the plan or advise the facility of necessary revisions (Florida Statute 400.23(2)(g)). Nursing homes licensed prior to the effective date of the supplemental emergency plan rules must submit their supplemental emergency plans within 30 days of the effective date of the rule (June 1, 2018). All newly licensed nursing homes must submit their plans for review and approval prior to obtaining a license (FAC 59A-4.1265(2)(a) and (b)).

stated that it did not know what the county emergency management agency's responsibility was for resolving this potential risk or for notifying the State agency.

- One county agency said that several nursing homes planned to evacuate to the same location. If these nursing homes all evacuated at the same time to the same nursing home, the receiving nursing home would not have the capacity to accommodate every evacuated resident. The agency stated that it did not know what the county emergency management agency's responsibility was for ensuring that the receiving nursing home can accommodate these patients or for notifying the State agency of this concern.

CONCLUSION

At the conclusion of our inspections, we shared the deficiencies we identified with nursing home management and staff so that they could take immediate corrective action. We also immediately shared the identified deficiencies with the State agency and CMS for followup, as appropriate. In addition, we discussed with the State agency the issues identified by the county emergency management agencies involving emergency preparedness oversight.

Although nursing home management and staff are ultimately responsible for ensuring resident safety, we maintain that the State agency can reduce the risk of resident injury or death by improving its oversight. For example, the State agency could conduct more frequent site surveys at nursing homes to follow up on deficiencies previously cited.

While conducting our onsite inspections, we found that there was frequent turnover of nursing home management and staff. In addition, although not required by CMS, the State agency did not have a standard life safety training program for all nursing home staff that management could use to educate newly hired staff on how to comply with CMS requirements for life safety. For example, there was no standardized training program to teach newly hired maintenance staff about fire extinguisher inspections, fire alarm and sprinkler maintenance, the proper way to conduct and document fire drills, or how to test and maintain electrical equipment. The State agency could explain CMS requirements for life safety and emergency preparedness to nursing homes by providing standardized life safety training.²⁸

Furthermore, the State agency could improve its coordination with county emergency management agencies so that the State agency is in a better position to ensure nursing home compliance with both CMS and State requirements. We are also concerned that the State

²⁸ Although CMS does not specifically require this type of comprehensive life safety training, under the State agency's section 1864 agreement with CMS (described on page 3), the State agency agreed to perform certain functions, including explaining Federal requirements to providers to enable them to maintain standards of healthcare consistent with Medicare and Medicaid participation requirements (*CMS State Operations Manual* § 1010). Also, as mandated by §§ 1819(g)(1)(B) and 1919(g)(1)(B) of the Act, States must conduct periodic educational programs for the staff and residents of nursing homes to present current regulations, procedures, and policies.

agency is not providing enough oversight or resources to ensure that nursing home residents are protected to the extent possible.

RECOMMENDATIONS

We recommend that the Florida Agency for Health Care Administration:

- follow up with the 20 nursing homes to ensure corrective actions have been taken regarding the life safety and emergency preparedness deficiencies identified in this report;
- work with CMS to develop standardized life safety training for nursing home staff;
- conduct more frequent surveys at nursing homes with a history of multiple high-risk deficiencies and follow up to ensure that corrective actions have been taken;
- provide additional training to nursing homes to ensure that their State emergency plan is submitted and approved without delay;
- continue to follow up with nursing homes to ensure that they implement their supplemental emergency plans;
- work with county emergency management agencies to develop a process to monitor the submission and approval of State emergency plans and supplemental emergency plans;
- expand State agency guidance to include all Federal emergency preparedness requirements in addition to the State emergency plan requirements; and
- increase communication and collaboration with the county emergency management agencies to:
 - clarify roles and responsibilities;
 - make them aware of pending, or newly licensed, nursing homes in their counties;
 - identify areas where additional expertise may be needed to ensure that nursing homes meet CMS and State requirements and to ensure the safety of nursing home residents; and
 - provide county emergency management agencies with survey results, to the extent possible, from individual nursing homes to identify specific vulnerabilities.

STATE AGENCY COMMENTS AND OFFICE OF INSPECTOR GENERAL RESPONSE

STATE AGENCY COMMENTS

In written comments on our draft report, the State agency agreed with our first and fifth recommendations and partially agreed with our seventh recommendation. The State agency did not agree with our remaining recommendations. In addition, the State agency provided general comments and expressed concerns about our three findings and outlined additional steps it has taken.

State Agency Comments on Recommendations

The State agency did not concur with the following recommendations:

- For the second recommendation, the State agency indicated that there was an abundant amount of training in the public domain for providers regarding the Federal requirements.
- For the third recommendation, the State agency indicated it is funded and takes direction from CMS, and if OIG believes there is an opportunity for improvement with funding allocation and the survey prioritization process, this recommendation should be directed at the Federal Government.
- For the fourth recommendation, the State agency indicated that the State emergency plan was approved by the local authority having jurisdiction, and each local authority had its own perspective on plan approval.
- For the sixth recommendation, the State agency indicated training has already been provided.
- For the eighth recommendation, the State agency indicated the roles of the State agency and the counties are clearly defined, and the county emergency management offices have no authority related to CMS requirements. In addition, according to State agency officials, the State agency has had extensive communication and collaboration with county emergency management agencies through State-provided training, conferences, or actual emergency events. Lastly, the State agency said that it was unfair to allege that it was deficient on the basis of discussions held with county emergency agency staff when no representative of the State agency was present for those discussions.

State Agency Comments on Findings

The State agency provided general comments on each of our three findings and raised the following concerns:

- The title of our report suggests that either the State agency should conduct more frequent reviews, or its current oversight is lacking.
- The audit team did not have the same qualifications as the State agency staff who conduct nursing home life safety surveys.
- The audit team did not necessarily obtain the same level of evidence during its site visits as qualified life safety surveyors use to determine facility compliance, provide enough detail on the deficiencies identified, or accurately report the number of deficiencies identified.
- The audit team inaccurately reported deficiencies related to self-closing doors, sprinkler heads, resident call systems, gas storage cans, and gas and vacuum piped systems.

State Agency Actions Taken

In its comments, the State agency described steps it has taken or plans to take to address our findings and recommendations, including:

- the continued monitoring of the efficacy of the State's survey processes and the provision of ongoing training and feedback to staff to ensure appropriate review of the implementation of Federal regulations related to emergency preparedness;
- the implementation of a new Quality Assurance plan, related to survey results, that includes requirements that certain staff will review Federal Emergency Preparedness findings and that training will address any concerns with trends; and
- proposing amendments to the Florida Administrative Code Rule regarding emergency plans to update the State emergency preparedness requirements to better align with the new Federal regulations, thereby providing better guidance to county emergency management officials.

OFFICE OF INSPECTOR GENERAL RESPONSE

After reviewing the State agency's comments, we modified our first finding to remove deficiencies related to resident call systems and to more clearly summarize the number of deficiencies at each nursing home. We maintain that our findings and recommendations, as revised, are correct.

OIG Response to State Agency Comments on Recommendations

Regarding the development of life safety and State emergency plan training for nursing home staff,²⁹ we understand that training on Federal requirements is available for providers in the public domain. However, the State agency has not developed Florida-specific training that is required for nursing home staff. In addition, although joint training sessions, life safety presentations, and conferences have been provided throughout the State, attendance is not mandatory or tracked. Our audit found that many staff members have never been to a training session or conference related to life safety or emergency preparedness requirements.

As we stated in our third recommendation, the State agency should conduct more frequent surveys at high-risk facilities. The State agency acknowledges that it had not yet reviewed compliance for emergency preparedness at most of the nursing homes because the regulations only recently went into effect. The emergency preparedness rules were effective November 16, 2016, with an implementation date of November 17, 2017. We performed our site visits from July through November 2018, which was 8 months to a year after the rule was implemented. These regulations had been in effect for over 20 months at the start of our audit.

Our fourth recommendation is intended to encourage the State agency to take affirmative steps to ensure nursing home staff are knowledgeable about their life safety and emergency preparedness responsibilities.³⁰ We believe it is the State agency's responsibility to provide training throughout Florida to ensure compliance with Federal and State requirements and not to rely on local authorities to provide that training. Therefore, we maintain this recommendation is accurate.

Our sixth recommendation encourages the State agency to develop a process to monitor the submission and approval of State emergency plans and supplemental emergency plans. The State agency did not directly respond to this recommendation, but instead described training efforts previously undertaken. We reiterate that a process to monitor the submission and approval of emergency plans would potentially detect instances of delinquent or nonexistent plans and ensure that nursing home residents are protected to the greatest extent possible.

Our eighth recommendation is for increased communication and collaboration among all parties that play a crucial role in emergency planning and response. As we discussed with the State agency, one of the reasons for this audit was to address Congressional interest in the effectiveness of communication among county, State, and Federal authorities. Accordingly, our audit steps included discussions with all parties critical to emergency planning and response to identify potential weaknesses and areas for improvement. As reflected in our report, county

²⁹ Recommendations 2 and 4.

³⁰ Although the State agency did not concur with our fourth recommendation, it did note significant steps it is taking to amend the Florida Administrative Code. This was initiated to update the State emergency preparedness requirements to better align with the new Federal regulations, thereby providing better guidance to county emergency management officials in their reviews of the plans.

emergency management agencies expressed concerns about some areas of communication related to their roles and responsibilities, or suggested areas for improvement. Although we are not suggesting a compliance failure on the part of the State agency with this recommendation, we maintain that the State agency could improve the effectiveness of its oversight, and this remains a valid recommendation.

OIG Response to State Agency Concerns and Comments on Findings

The title of our report accurately summarizes our opinion based on the evidence obtained during our audit. Specifically, we believe Florida should improve its oversight of selected nursing homes' compliance with Federal requirements for life safety and emergency preparedness.

Regarding the qualifications of the auditors performing the survey work, we conducted a performance audit in accordance with generally accepted government auditing standards. Such audits cover a wide range of topics and require the audit team to have a "general knowledge of the environment in which the audited entity operates and the subject matter." The audit team met the requirements as set forth in the auditing standards. In addition, the lead auditor, who designed these audits, is certified by the National Board on Fire Service Professional Qualifications as a Fire Fighter, Fire Instructor, Fire Officer, and Safety Officer. While this individual did not perform the audit in Florida, he developed our audit guide and provided guidance when needed. Finally, we were escorted during our first review by the State's life safety lead. This individual escorted us through our life safety review and noted what the State would observe for the various tags we were reviewing. Our reviews were not intended to be a replacement for State agency surveys, or a complete survey of each facility under State survey standards. Rather, we reviewed a limited number of K- and E-Tags for compliance with Federal regulations. Therefore, we maintain that the audit team was well qualified to conduct this audit.

Regarding the conduct of our review:

- As noted in the "Methodology" section of our report, as part of our audit we met with CMS program officials, State survey agency officials, and key personnel at each nursing home surveyed. For life safety violations, we obtained photographic evidence and concurrence from the nursing home administrators and facility managers who accompanied us during all site visits. At the conclusion of each site visit, we discussed our findings with the nursing home staff and offered them the opportunity to agree with or dispute our findings. We believe the evidence obtained provides a reasonable basis for our findings and recommendations as stated.
- Regarding the detail contained in our checklists, we provided all checklists to the State agency after we completed a site visit. In addition, we held multiple meetings with the State agency to discuss all documented findings and to provide any additional evidence

needed to verify our findings. At no point during these meetings were any of our findings disputed.

- The State agency is correct in its comments that the number of deficiencies reported in our draft report did not clearly summarize the count of deficiencies. We revised our count of deficiencies at each nursing home to count numerous occurrences of a single instance of noncompliance as one deficiency rather than counting each instance separately. We updated our findings accordingly.

In response to the State agency's comments about inaccurately reported deficiencies, we have revised our findings related to self-closing doors where applicable and removed findings related to resident call systems. In addition, we have revised our language regarding sprinkler heads, gas storage cans, and gas and vacuum piped systems to clearly indicate the deficiencies identified. Regarding the remaining deficiencies, we met with the State agency on numerous occasions to discuss these items as well as to provide any photographic evidence needed to verify our findings. In addition, on the basis of our exit conferences with responsible staff at all nursing homes we visited, no findings were ever disputed as inaccurate. We maintain that our findings, as revised, are correct.

The State agency's comments are included in their entirety as Appendix D.

APPENDIX A: AUDIT SCOPE AND METHODOLOGY

SCOPE

As of November 2017, approximately 700 nursing homes in Florida participated in the Medicare or Medicaid programs. Of these 700 nursing homes, we selected a nonstatistical sample of 20 nursing homes for our audit based on risk factors, including multiple high-risk deficiencies the State agency reported to CMS's ASPEN system.

We did not assess the State agency's or nursing homes' overall internal control structures. Rather, we limited our audit of internal controls to those applicable to our audit objective.

We performed our fieldwork at the State agency's offices in Tallahassee, Florida, and conducted unannounced site visits at the 20 nursing homes throughout Florida from July through November 2018.

METHODOLOGY

To accomplish our objective, we:

- reviewed applicable Federal and State requirements;
- held discussions with CMS and State agency officials to gain an understanding of the process for conducting nursing home life safety and emergency preparedness surveys;
- obtained from CMS a list of all 700 active nursing homes in Florida that participated in the Medicare or Medicaid programs as of November 2017;
- compared the list provided by CMS with the State agency *Directory of Nursing Homes* to verify completeness and accuracy;
- obtained from CMS's ASPEN system a list of 187 nursing homes that had more than 1 deficiency in the previous 3 years that were considered high risk as follows:
(1) widespread and had the potential for more than minimal harm, (2) potential for actual harm, or (3) immediate jeopardy to resident life and safety;
- from the 187 nursing homes identified in ASPEN, selected 20 nursing homes for onsite inspection (all nursing homes had multiple high-risk deficiencies, and 13 had deficiencies related to sprinkler system coverage) and, for each:
 - reviewed the deficiency reports prepared by the State agency for the nursing home's 3 most recent surveys and

- conducted unannounced onsite inspections to check for life safety violations and review the emergency preparedness plans;
- held discussions with the county emergency management agencies with oversight responsibilities over the 20 nursing homes in our sample; and
- discussed the results of our inspections with nursing home, State agency, and CMS officials.

We conducted this performance audit in accordance with generally accepted government auditing standards. Those standards require that we plan and perform the audit to obtain sufficient, appropriate evidence to provide a reasonable basis for our findings and conclusions based on our audit objectives. We believe that the evidence obtained provides a reasonable basis for our findings and conclusions based on our audit objectives.

APPENDIX B: RELATED OFFICE OF INSPECTOR GENERAL REPORTS

Report Title	Report Number	Date Issued
<i>Life Safety and Emergency Preparedness Deficiencies Found at 18 of 20 Texas Nursing Homes</i>	<u>A-06-19-08001</u>	2/6/2020
<i>California Should Improve Its Oversight of Selected Nursing Homes' Compliance With Federal Requirements for Life Safety and Emergency Preparedness</i>	<u>A-09-18-02009</u>	11/13/2019
<i>New York Should Improve Its Oversight of Selected Nursing Homes' Compliance With Federal Requirements for Life Safety and Emergency Preparedness</i>	<u>A-02-17-01027</u>	8/20/2019

APPENDIX C: INSTANCES OF NONCOMPLIANCE AT EACH NURSING HOME

Life Safety Deficiencies

Nursing Home	Building Exits and Smoke Barriers	Fire Detection and Suppression Systems	Hazardous Storage	Smoking Policies and Fire Drills	Electrical Equipment	Total
1	3	2	1	1	1	8
2	2	3	1	1	1	8
3	5	4	2	1	1	13
4	3	1	0	0	1	5
5	1	1	0	0	0	2
6	2	2	1	2	1	8
7	1	3	1	1	0	6
8	1	0	0	0	1	2
9	0	0	0	1	1	2
10	4	2	1	1	1	9
11	1	1	0	1	0	3
12	0	0	0	0	1	1
13	2	1	1	1	1	6
14	2	0	1	1	1	5
15	1	1	1	1	1	5
16	2	0	0	0	0	2
17	2	1	0	2	1	6
18	0	0	0	0	0	0
19	3	1	2	0	1	7
20	0	1	1	0	0	2
Total	35	24	13	14	14	100

Emergency Preparedness Deficiencies

Nursing Home	Emergency Plan	Emergency Supplies and Power	Plans for Sheltering in Place and Tracking Residents and Staff During and After an Emergency	Emergency Communications Plan	Emergency Plan Training and Testing	Total
1	6	3	4	6	6	25
2	2	1	3	3	5	14
3	0	1	1	2	1	5
4	0	0	1	0	0	1
5	0	0	0	0	0	0
6	2	1	3	1	2	9
7	3	0	2	3	1	9
8	0	0	0	1	0	1
9	0	0	0	1	0	1
10	2	1	0	1	0	4
11	0	0	1	0	0	1
12	0	1	0	1	0	2
13	0	0	0	1	0	1
14	0	0	0	0	1	1
15	0	0	0	0	0	0
16	0	0	0	0	0	0
17	2	0	0	0	2	4
18	0	0	1	0	0	1
19	0	0	0	0	0	0
20	3	1	1	1	2	8
Total	20	9	17	21	20	87

Notice: Under separate cover, we provided to the State agency and CMS the detailed inspection worksheets for each of the nursing homes we reviewed.

APPENDIX D: STATE AGENCY COMMENTS



RON DESANTIS
GOVERNOR

MARY C. MAYHEW
SECRETARY

September 30, 2019

Lori S. Pilcher
Regional Inspector General for Audit Services
Office of Audit Services, Region IV
61 Forsyth Street, SW, Suite 3T41
Atlanta, Georgia 30303

Re: Report Number: A-04-18-08065

Dear Ms. Pilcher:

Enclosed is the Florida State Survey Agency's comments on the Department of Health and Human Services, Office of Inspector General (OIG), draft report, *Florida Should Improve Its Oversight of Selected Nursing Homes' Compliance with Federal Requirements for Life Safety and Emergency Preparedness*.

Thank you for the opportunity to comment.

Sincerely,

A handwritten signature in blue ink, reading "Mary C. Mayhew".

Mary C. Mayhew
Secretary

MCM/mm

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**Agency for Health Care Administration
Response to HHS/OIG Draft Report A-04-18-08065 dated August 2019
Florida Should Improve Its Oversight of Selected Nursing Homes' Compliance
With Federal Requirements for Life Safety and Emergency Preparedness**

Summary of Findings

Florida did not ensure that selected nursing homes that participated in the Medicare or Medicaid programs complied with CMS and State requirements for life safety and emergency preparedness. All 20 nursing homes that we visited had deficiencies in areas related to life safety and emergency preparedness.

State Agency (SSA) response

Staff of the Florida State Survey Agency (SSA) have reviewed the draft report entitled "Florida Should Improve its Oversight of Selected Nursing Homes' Compliance with Federal Requirements for Life Safety and Emergency Preparedness". Although we appreciate the professionalism of the staff of the Office of the Inspector General, we have concerns regarding the title of the report, and the qualifications of the auditors to evaluate the nursing home life safety survey process given their limited knowledge of the survey process.

Title of Document

The title "Florida Should Improve its Oversight of Selected Nursing Homes' Compliance with Federal Requirements for Life Safety and Emergency Preparedness" suggests that either the SSA should conduct more frequent reviews which would require federal direction and funding, or the current oversight is lacking. Based on the points made in our responses, we do not believe the SSA missed significant findings during its review of these nursing homes. Rather, many of the findings could happen at any time after a satisfactory review. In other cases, the SSA had not yet reviewed compliance at most of the nursing homes for emergency preparedness since the regulations only recently went into effect.

Qualifications

SSA life safety surveyors are required to have related experience prior to hire and are certified fire inspectors. To be certified as a Fire Safety Inspector I in the State of Florida, an individual must successfully complete a minimum of 200 hours of basic certification training for Fire Safety Inspectors, or have received equivalent training in another state, and pass a state written examination.

CMS requires all Fire Safety Inspectors to complete the NFPA 99 Health Care Facilities Code Course within 12 months of being hired. Our life safety surveyors must also complete the following courses prior to independently completing a nursing home life safety inspection:

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1. Basic Life Safety Code Training Online Course which provides basic knowledge of the LSC and associated CMS regulations, policy and knowledge on evaluating facilities for LSC compliance.
2. Basic Life Safety Code: The Survey Process.
3. Life Safety Code Transition Course which takes approximately 20 hours to complete. The course begins with a pre-test and concludes with a post-test that requires a passing score of 85 percent.
4. Orientation to Basic Life Safety Code.
5. Training on compliance with the Principles of Documentation for Life Safety Code.

Additionally, prior to independently completing a Federal Emergency Preparedness survey, SSA staff must complete the 16-hour Emergency Preparedness Basic Surveyor Training Course.

These courses are in addition to the extensive orientation program provided in Florida, including one on one coaching and classroom coursework. This coursework provides a unique skill set, including in-depth knowledge of the requirements and processes on critical thinking skills related to the life safety.

When we inquired about the qualifications of the auditors to conduct onsite compliance review, we learned the auditors did not have any of the education, experience, or training as the SSA staff who conduct nursing home life safety surveys and were working from a check list of criteria after reviewing the federal regulations.

Conduct of the Review

Although the report indicates "evidence obtained provides a reasonable basis" for findings, this is not necessarily the same level of evidence used to determine facility compliance, when assessed by qualified life safety surveyors, following guidance from the Centers for Medicare and Medicaid Services (CMS).

Comments within the report that certain requirements were not met, did not provide any detail of how the determination was made. The auditors also counted every occurrence and called it an area of non-compliance. For the purposes of CMS reporting, in a single facility, numerous occurrences of a single area of non-compliance (such as doors not latching) would be counted as findings for one deficiency rather than counting each separate instance observed separately. Thus, the results of the audit appear artificially inflated.

Also of note, is the audit timing. Many deficiencies observed may not have been present at the time of the most recent SSA survey. In 18 of the 20 cases, the facility life safety

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certification survey had been done months prior to the OIG audit, which explains the dissimilarities in observations.

Finding #1

Selected Nursing Homes Did Not Comply with Life Safety Requirements

Agency Response and Corrective Action Plan

A number of the areas of concern identified by the auditors may have been a result of timing. As noted, there was a significant time span between the SSA survey and the audit in 18 of the 20 facilities. The auditors used an abbreviated version of the fire safety survey report form to record their findings during a facility audit. Worksheets and procedures are designed to assist in the gathering information about the level of fire safety provided by the facility. The K-tags on the report form are referred to as data tags on the Fire Safety Survey Report form. For each item on the report form page indicates "Met" or "Not Met" or "Not Applicable." For each item marked "Not Met," you must enter the appropriate documentation in the Explanatory Remarks section explaining the nature of the deficiency and the degree of hazard it presents.

It appears the auditors did not follow the same procedures as the state agency is required to follow. The auditors counted each finding as a deficiency which inflated the number deficiencies they reported as noncompliance. An example is specific to K-221, the auditors identified 57 deficiencies in 15 facilities, however; the correct way would be 15 facilities were identified to be out of compliance with K-221. Had the auditors followed the correct process for identification of non-compliance and principles of documentation as the SSA is required to follow the correct areas of non-compliance would have been 111-K-Tags and 69-E-Tags. However; per the draft report the auditors had 249 K-Tags and 106-E-Tags. This shows the auditors inflated their findings, which also supports the SSA's statement the auditors were not qualified.

Many of the observations have the potential to change at any time, even within a day. These would include patient sleeping doors (K0221), door self-closing devices (K0223), alcohol based hand rub dispensers (K0325), missing battery for smoke detector (K0347), smoking areas (K0741), clearance between storage and sprinkler heads (K351) and power cords (K0920).

Also of note, the auditor cited at least one double door with a self-closing device for not latching (K0223); the correct K Tag is K0222 for smoke doors that require latching. Double cross corridor doors are not required to latch. Also, there are exceptions in National Fire Protection Association (NFPA 13) Chapter 8 that will allow wall storage to be higher in relation to sprinkler heads. It is not clear how the auditors determined the distance. (Examples are in NFPA 13 section A.8.5.5.1.) OIG staff did not provide any

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photographic evidence or examples. The review cites items being 18 inches from ceiling but in the code the requirement is 18 inches from sprinkler deflector.

Furthermore, it was previously noted to the auditors that Per Appendix I (Survey Procedures for Life Safety Code Surveys) and CMS 2786R (Fire Safety Survey Report) do not address nurse call systems. In NFPA 99 Chapter 7 there are requirements for the nurse call system. CMS did not adopt this chapter for Life Safety (per Survey & Certification Letter 16-28-LSC). It seems inappropriate and invalid to note a SSA failed to inspect for a regulatory area under life safety when it is not a part of the life safety survey process, as adopted by the federal government. As with many of the findings, issues with a nurse call system can happen at any time after a satisfactory survey.

The auditors cited inappropriate gas storage for the cans outside of the facility near the generator. Auditors did not state if the cans contained fuel, which would pose a hazard. Gas may be stored outside in an approved dispensing container (gas can).

The auditors also cited one nursing home related to gas and vacuum piped systems. There was no documentation available to sufficiently explain the citation. The tag cited by the auditor is for a med-gas system; this facility does not have such a system. This observation appears to be related to the city gas line for the kitchen, which is not addressed in federal requirements, nor was it noted as a compliance issue for the city.

The SSA will review findings of the audit with field office managers, life safety staff and their supervisors. This will occur during the life safety staff and managers' meeting in October 2019, field office managers' meeting in December 2019, state life safety survey training meeting in March 2020, and upcoming routine life safety surveyor/ supervisor calls. The focus of the meetings will be the requirements identified as out of compliance.

Agency Contact

Kimberly Smoak, Chief of Field Operations/State Survey Agency Director
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850-412-4516

Finding #2

Selected Nursing Homes Did Not Comply with Emergency Preparedness Requirements

Agency Response and Corrective Action Plan

Effective date of the Federal Emergency Preparedness Rule was November 16, 2016, with implementation date of November 17, 2017. A number of surveys were completed by the auditors prior to SSA review of compliance with Federal Emergency Preparedness. Therefore, our staff did not have an opportunity to review compliance with these regulations at the following facilities:

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1. Consulate Health Care of Tallahassee
2. Baya Pointe Nursing and Rehabilitation Center
3. Springs at Boca Ciega Bay
4. East Bay Rehabilitation Center
5. Coral Bay Healthcare and Rehabilitation Center
6. Jupiter Medical Center Pavilion Inc.
7. Laurellwood Nursing Center
8. Freedom Square Rehabilitation & Nursing Services
9. Manorcare Health Services of Dunedin

There were also facilities that had the SSA Federal Emergency Preparedness survey early on in the process, before a March 2018 life safety meeting wherein SSA quality assurance staff had already identified concerns with the survey process and completed additional training. These include:

1. Gardens of Port St. Lucie, The (11/15/2017)
2. Finnish-American Village (12/19/2017)
3. South Campus Care Center (1/26/2018)
4. Bay Center (2/22/2018)
5. Harbor Beach Nursing and Rehabilitation Center (2/28/2018)

The SSA will continue to monitor the efficacy of our survey processes and provide ongoing training and feedback to staff to ensure appropriate review of the implementation of federal regulations. The SSA will review findings of the audit with field office managers, life safety staff and their supervisors. This will occur during our meetings with life safety staff and managers in October 2019, all field office managers in a meeting December 2019 and upcoming routine life safety surveyor/supervisor calls. The focus of the meetings will be the requirements identified as out of compliance.

In addition, in July 2019 the Bureau of Field Operations implemented a new Quality Assurance (QA) plan related to survey results. This includes a requirement that quarterly designated staff will review Federal Emergency Preparedness findings. As needed, training will address any concerns with trends.

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Finding #3

State Agency Monitoring, Oversight, and Collaboration on State Emergency Preparedness Requirements

Agency Response and Corrective Action Plan

Regarding the OIG findings that four nursing homes did not have an approved State Emergency Management Plan, one of those noted by OIG had a plan, which expired after the SSA survey (Finnish-American) and another (Stratford Court of Palm Harbor) was cited by the SSA for that issue prior to the OIG audit. The two additional nursing homes, (Avante at Leesburg, and Jacaranda Manor) had submitted their State Emergency Management Plans prior to the SSA recertification surveys. Although the plans were submitted for local approval the plans were not approved at the time of the SSA survey. The SSA has verified that both these nursing homes have approved State Emergency Management Plans.

The SSA will continue to monitor the efficacy of our survey processes and provide ongoing training and feedback to staff to ensure appropriate implementation of federal regulations. The SSA will review findings of the audit with field office managers, life safety staff and their supervisors. This will occur during our meetings with life safety staff and managers in October 2019, all field office managers in a meeting December 2019 and upcoming routine life safety surveyor/ supervisor calls. The focus of the meetings will be the requirements identified as out of compliance.

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Recommendation #1

Follow up with the 20 nursing homes in our sample to ensure that corrective actions have been taken regarding the life safety and emergency preparedness deficiencies identified in this report.

Agency Response and Corrective Action Plan

We concur with this recommendation. As of the date of this report, 16 of the facilities have had recertification surveys, which encompasses all life safety and emergency management requirements. The other four had monitoring surveys conducted which focused on the OIG findings, after receipt of this report. The SSA has verified correction of all issues identified in the report.

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Recommendation #2

Work with CMS to develop life safety training for nursing home staff;

Agency Response and Corrective Action Plan

We do not concur with this recommendation. Regarding comments the SSA should enhance provider training, please note there is already an abundant amount of training in the public domain for providers regarding the federal requirements.

All of the above noted courses for surveyors are available for providers at the Centers for Medicare & Medicaid Services (CMS) Integrated Surveyor Training Website (ITSW) <https://surveyortraining.cms.hhs.gov/index.aspx> free of charge.

Additionally, CMS provides on ISTW *Emergency Preparedness: Provider Readiness* which provides an overview of the Emergency Preparedness Final Rule as well as an overview of the 1135 Waiver Process.

The US Department of Health & Human Services sponsors the website for ASPR (Assistant Secretary for Preparedness & Response) Tracie (Technical Resources, Assistance Center, and Information Exchange) <https://asprtracie.hhs.gov/technical-resources> which provides free training and technical resources regarding emergency preparedness and the Federal Emergency Preparedness requirements.

Additionally, staff of the Florida SSA provided four Joint Training sessions (open to providers, state emergency management staff and survey staff) in 2018 which addressed the top ten life safety deficiencies cited in Florida, State Emergency Management Plans, Federal Emergency Preparedness (two sessions were presented by staff of the CMS Regional Office-IV).

Florida SSA staff also offered two (day-long) life safety presentations for providers; one in November 2018 and one in December 2018. In May 2019, Florida SSA staff also participated in an (all day) training offered to providers in Orlando related to life safety and emergency preparation. Previously, our staff also offered Joint Training to providers throughout the entire state in 2014 related to the Top Ten Life Safety Deficiencies, Survey Issues, CMS Survey & Certification Memos and the Life Safety Waiver Process.

Staff of the SSA also provided training at the Governor's Hurricane Conference (which is a national meeting) on emergency preparedness in May 2018 and May 2019

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including participation in a focused May 2018 focused session of nursing home providers, associations and emergency managers from Florida counties. This conference was attended by Florida emergency management officials, including county emergency operations staff and provider representatives. In November 2019, our life safety staff will be conducting training at a six hour workshop for nursing home maintenance staff and training at a Fire Fighter and Fire Inspector workshop.

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Recommendation #3

Conduct more frequent surveys at nursing homes with a history of multiple high-risk deficiencies;

Agency Response and Corrective Action Plan

We do not concur with this recommendation. Although there is an appreciation of the recommendation, the SSA is funded through the federal government to do work as outlined in the Mission & Priority Document, which is updated annually with SSA contractual obligations. If the auditors believe this is an opportunity for improvement with the CMS funding allocation and survey prioritization process, this recommendation should be directed at the federal government, from which the SSA takes its direction.

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Recommendation #4

Provide additional training to nursing homes to ensure that their State emergency plan is submitted and approved without delay;

Agency Response and Corrective Action Plan

We do not concur with this recommendation. The state emergency plan is approved by the local authority having jurisdiction. Since there are 67 counties in Florida, there are 67 local authorities, all of whom may have their own perspective on plan approval. The nursing homes may not be licensed initially without an approved plan.

It is incumbent for the providers to work with their local authority to ensure they are in compliance with these requirements. The SSA staff are actively working on amending the Florida Administrative Code Rule regarding emergency plans. This was initiated to

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update the state emergency preparedness requirements to better align with the new federal regulations which will provide better guidance to county emergency management officials in their reviews of the plans.

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Recommendation #5

Continue to follow up with nursing homes to ensure that they implement their supplemental emergency plans;

Agency Response and Corrective Action Plan

We concur with this recommendation. The SSA has knowledge of the status of each nursing home in Florida and will continue to enforce these requirements within our legal authority. Of the 688 nursing homes with a current license as of September 30, 2019; 294 have a fully implemented permanent generator; 261 have a temporary generator onsite; 131 have a plan to have a temporary generator delivered in the event of an emergency, and 2 plan to evacuate for any power outage. The SSA will continue to monitor state rule requirements regarding nursing homes compliance with supplemental emergency plans.

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Recommendation #6

Work with county emergency management agencies to develop a process to monitor the submission and approval of State emergency plans and supplemental emergency plans;

Agency Response and Corrective Action Plan

We do not concur with this recommendation. Staff of the SSA provided training at the Governor's Hurricane Conference (which is a national meeting) on emergency preparedness in May 2018 and May 2019. This conference was attended by Florida emergency management officials, including county emergency operations staff. In addition, emergency operations staff were invited to attend our Joint Training in four locations throughout Florida in 2018. This training included emergency preparedness for nursing homes. Thirty four emergency operations staff from throughout the state

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were in attendance. Additionally in 2018 key management staff in the SSA attended the Florida Emergency Preparedness Association conference. The SSA has been, and will continue to be available to work with county emergency management agencies to improve the process for submitting, and approval of each nursing homes' Comprehensive Emergency Management Plan.

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Recommendation #7

Expand State agency guidance to include all Federal emergency preparedness requirements in addition to the State emergency plan requirements; and

Agency Response and Corrective Action Plan

We partially concur with this recommendation. Since the State emergency plan requirements are based on state law, we are required to develop rules in accordance with, and under our state authority. There are some requirements that are similar between state and federal, however; there are not point by point. The SSA has recommended in the proposed rule amendments alignment of state criteria with much of the Federal emergency preparedness requirements.

As stated previously the SSA staff are actively working on amending the Florida Administrative Code Rule regarding emergency plans. This was initiated prior to the audit results and the intent is to develop more consistent and concise language, which will provide better guidance to county emergency management officials in their reviews of the plans. The SSA anticipates scheduling a rule workshop within the next six months to update state emergency plan requirements.

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Recommendation #8

Increase communication and collaboration with the county emergency management agencies to:

- clarify roles and responsibilities;
- make them aware of pending, or newly licensed, nursing homes in their counties;
- identify areas where additional expertise may be needed to ensure that nursing homes meet CMS and State requirements and to ensure the safety of nursing home residents; and
- provide county emergency management agencies with survey results, to the extent possible, from individual nursing homes to identify specific vulnerabilities.

Agency Response and Corrective Action Plan

We do not concur with this recommendation. The role of the Agency for Health Care Administration (AHCA) is clearly defined, as is the role of the County Emergency Management offices. Additionally, the county emergency management offices have no authority related to the CMS requirements, although, as stated above for providers, they are afforded the same training resources on both the ISTW and ASPR Tracie websites.

County emergency management offices are notified of new providers, in that nursing homes are required to have an approved comprehensive emergency management plan as a condition of licensure from the SSA. The SSA's website, Florida Health Finder, includes posting of newly licensed facilities created specifically for emergency managers, in addition to the online posting of survey results. This information is available to the county emergency management agencies, in addition to the public.

As previously stated staff of the SSA provided training at the Governor's Hurricane Conference (which is a national meeting) on emergency preparedness in May 2018 and May 2019. This conference was attended by Florida emergency management officials, including county emergency operations staff. In addition, emergency operations staff were invited to attend our Joint Training health in four locations throughout Florida in 2018. This training included emergency preparedness for nursing homes. Thirty four emergency operations staff from throughout the state were in attendance. Additionally in 2018 key management staff in the SSA attended the Florida Emergency Preparedness Association conference.

The SSA has had extensive communication, and collaboration with county emergency management agencies through the entire state. All eight field offices meet, as

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requested, with the county emergency management agencies, which encompasses all 67 counties. SSA staff attend the Health Care Coalition meetings, which are typically conducted on a quarterly basis. In addition to meetings, management in the eight SSA field offices communicate via email and phone calls with county emergency management agencies regarding comprehensive emergency management plan reviews and approvals.

During this past year, SSA staff conducted training on the SSA's Emergency Management System (ESS) to the following Health Care Coalition's, and/or county emergency management agencies:

- Emerald Coast Health Care Coalition-Escambia, Santa Rosa, Okaloosa, Walton, Holmes, Washington, Bay, Jackson, Calhoun, Liberty counties.
- Palm Beach County Healthcare Emergency Response Coalition.
- Palm Beach County Coalition for Health and Medical Preparedness.
- Marion county Central Florida Disaster Medical Coalition.
- Volusia, Lake Seminole, Orange, Brevard, Osceola, Indian River, St. Lucie, Martin counties.
- Big Bend Health Care Coalition-Gulf, Franklin, Wakulla, Leon, Gadsden, Jefferson, Madison, Taylor counties.
- Volusia County ESF8 Community Partners Meeting-Volusia county and other surrounding and Region 5 counties.
- FDEM Region 3 Quarterly Meeting; Northeast Florida Regional Council-Nassau, Duval, Baker, Clay St. Johns, Flagler, Putnam, Bradford, Union, Alachua, Gilchrist, Levy, Marion counties.
- St. Johns County Healthcare Facility Meeting; Northeast Florida Healthcare Coalition- Nassau, Baker, Duval, Clay, St. Johns, Flagler counties.
- ESF8 Staff Boot Camp- Region 1-Escambia, Santa Rosa, Okaloosa, Walton, Holmes, Jackson, Washington, Bay, Calhoun, Gulf counties.

During the recent declared emergency event, Hurricane Dorian, staff of the SSA field offices staffed the following county Emergency Operation Centers; Volusia, Brevard,

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Palm Beach, Broward and Miami-Dade. Additionally, in two counties, Brevard and Palm Beach, staff were asked to stay overnight.

Lastly, as noted in the draft report, the auditors only held discussions with eight county emergency management agencies. It is unfair to allege that the SSA is deficient based on discussions held with county emergency agency staff when the SSA was not present for those discussions.

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