



September 21, 2011

Report Number: A-09-09-00114

Ron Chapman, M.D., M.P.H.  
Director  
California Department of Public Health  
1615 Capital Avenue, MS 0500  
Sacramento, CA 95899-7377

Dear Dr. Chapman:

Enclosed is the U.S. Department of Health and Human Services (HHS), Office of Inspector General (OIG), final report entitled *Unidentified and Unreported Federal Deficiencies in California's Complaint Surveys of Nursing Homes Participating in the Medicare and Medicaid Programs*. We will forward a copy of this report to the HHS action official noted on the following page for review and any action deemed necessary.

The HHS action official will make final determination as to actions taken on all matters reported. We request that you respond to this official within 30 days from the date of this letter. Your response should present any comments or additional information that you believe may have a bearing on the final determination.

Section 8L of the Inspector General Act, 5 U.S.C. App., requires that OIG post its publicly available reports on the OIG Web site. Accordingly, this report will be posted at <http://oig.hhs.gov>.

If you have any questions or comments about this report, please do not hesitate to call me, or contact Jessica Kim, Audit Manager, at (323) 261-7218, extension 702, or through email at [Yun.Kim@oig.hhs.gov](mailto:Yun.Kim@oig.hhs.gov). Please refer to report number A-09-09-00114 in all correspondence.

Sincerely,

/Lori A. Ahlstrand/  
Regional Inspector General  
for Audit Services

Enclosure

**Direct Reply to HHS Action Official:**

Ms. Jackie Garner  
Consortium Administrator  
Consortium for Medicaid and Children's Health Operations  
Centers for Medicare & Medicaid Services  
233 North Michigan Avenue, Suite 600  
Chicago, IL 60601

Department of Health and Human Services

**OFFICE OF  
INSPECTOR GENERAL**

**UNIDENTIFIED AND UNREPORTED  
FEDERAL DEFICIENCIES IN  
CALIFORNIA'S COMPLAINT SURVEYS  
OF NURSING HOMES PARTICIPATING  
IN THE MEDICARE AND  
MEDICAID PROGRAMS**



Daniel R. Levinson  
Inspector General

September 2011  
A-09-09-00114

# *Office of Inspector General*

<http://oig.hhs.gov>

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## **OFFICE OF AUDIT SERVICES FINDINGS AND OPINIONS**

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

## **EXECUTIVE SUMMARY**

### **BACKGROUND**

The Medicare and Medicaid programs cover care in skilled nursing and nursing facilities (nursing homes), respectively, for eligible beneficiaries. Sections 1819 and 1919 of the Social Security Act provide that nursing homes participating in the Medicare and Medicaid programs, respectively, must meet certain specified requirements (Federal participation requirements). These sections also establish requirements for the Centers for Medicare & Medicaid Services (CMS) and States to survey nursing homes to determine whether they meet Federal participation requirements.

The State survey agency must, as set forth in Federal regulations at 42 CFR § 488.308(e)(2) and in section 5300 of CMS's *State Operations Manual* (the Manual), Pub. No. 100-07, review all nursing home complaint allegations. Depending on the outcome of the review, the State survey agency may conduct a standard survey or an abbreviated standard survey (complaint survey) to investigate noncompliance with Federal participation requirements. A standard survey is an inspection to gather information about the quality of resident care furnished in a nursing home. A complaint survey normally does not cover all procedures included in a standard survey but rather concentrates on areas of concern related to the complaint allegation.

Federal regulations (42 CFR § 488.301) define a nursing home's noncompliance with Federal participation requirements as a deficiency (Federal deficiency). The State survey agency must report to the nursing home and CMS each Federal deficiency identified during a survey. The reported information includes (1) a statement describing the deficiency, (2) a citation of the specific Federal participation requirement that was not met, and (3) a rating for the seriousness of the deficiency (deficiency rating).

Section 5060 of the Manual requires the State survey agency to enter complaint survey data into the Automated Survey Processing Environment (ASPEN) system, including the ASPEN Complaints/Incident Tracking System (ACTS). CMS uses complaint survey data to manage enforcement activities and provide information to the public on its Nursing Home Compare Web site. Nursing Home Compare rates the quality of nursing homes using a five-star rating scale.

In California, the Department of Public Health, Licensing and Certification Division (the Division), is the designated State survey agency. Accordingly, the Division determines whether nursing homes meet Federal participation requirements. The Division also determines whether nursing homes comply with State laws and regulations (State requirements).

### **OBJECTIVE**

Our objective was to determine whether the Division identified and reported Federal deficiencies for unmet Federal participation requirements when conducting complaint surveys of nursing homes from 2006 through 2008.

## **SUMMARY OF FINDINGS**

The Division did not always identify and report deficiencies for unmet Federal participation requirements when conducting complaint surveys from 2006 through 2008. For 24 complaint surveys at 3 nursing homes that we judgmentally selected, the Division did not (1) identify 41 deficiencies for noncompliance with the Federal participation requirements associated with the complaint surveys that cited State requirements, (2) determine the deficiency ratings for those 41 deficiencies, and (3) enter the Federal deficiencies and deficiency ratings into ACTS.

The Division's policy and procedures for investigating complaints did not require State surveyors to cite deficiencies for all unmet Federal participation requirements. Instead, the policy and procedures permitted the State surveyors to cite violations of State requirements while not citing the associated Federal requirements. As a result, the Division did not always identify Federal deficiencies, determine deficiency ratings, and report the information to CMS.

According to CMS officials, it is unable to take immediate Federal enforcement action for recurring deficiencies involving actual harm when the Division does not cite unmet Federal participation requirements and enter deficiencies and deficiency ratings into ACTS. In addition, omission of deficiencies and deficiency ratings from ACTS results in inaccurate information provided to the public on the Nursing Home Compare Web site. According to a CMS official, "If this information were available, it would present a more complete picture of the nursing home's compliance with Federal regulations."

## **RECOMMENDATION**

We recommend that the Division revise its policy and procedures for investigating complaints to require State surveyors to identify and report deficiencies for all unmet Federal participation requirements.

## **DIVISION COMMENTS**

In written comments on our draft report, the Division disagreed with our recommendations. Regarding our first recommendation, the Division stated that "... there are insufficient federal funds to use the federal process in every instance where a federal deficiency could be written." Regarding our second recommendation (included only in our draft report), the Division disagreed that it should revise its policy and procedures to require State surveyors to determine ratings for Federal deficiencies identified and enter deficiencies and deficiency ratings into ACTS. The Division stated that the policy and procedure for the Federal survey process is spelled out in the Manual, which Division staff are required to follow.

The Division's comments are included in their entirety as the Appendix.

## **OFFICE OF INSPECTOR GENERAL RESPONSE**

Although we acknowledge the Division's statement regarding insufficient Federal funds, the policy and procedures for investigating complaints must fully comply with Federal requirements.

After reviewing the Division's comments, we modified our first recommendation to emphasize that the policy and procedures require State surveyors to not only identify but also report deficiencies for all unmet Federal participation requirements. We removed our second recommendation from the report.

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## INTRODUCTION

### BACKGROUND

#### Medicare and Medicaid Coverage of Nursing Homes

The Medicare and Medicaid programs cover care in skilled nursing and nursing facilities (nursing homes), respectively, for eligible beneficiaries in need of nursing services, specialized rehabilitation services, medically related social services, pharmaceutical services, and dietary services. Sections 1819 and 1919 of the Social Security Act (the Act) provide that nursing homes participating in the Medicare and Medicaid programs, respectively, must meet certain specified requirements (Federal participation requirements). These sections also establish requirements for the Centers for Medicare & Medicaid Services (CMS) and States to survey nursing homes to determine whether they meet Federal participation requirements. These statutory participation and survey requirements are combined in Federal regulations at 42 CFR part 483, subpart B, and 42 CFR part 488, subpart E, respectively.

#### Standard and Complaint Surveys of Nursing Homes

Section 1864(a) of the Act requires the Secretary of Health and Human Services to use the State health agency, or other appropriate State agency, to determine whether nursing homes meet Federal participation requirements. Further, section 1902(a)(33) of the Act requires the State to use the same State agency to determine whether nursing homes meet the requirements for participation set forth under the State Medicaid plan. Under the agreement with the Secretary and under the State plan, the State agency must, as set forth in Federal regulations at 42 CFR § 488.308(e)(2) and in section 5300 of CMS's *State Operations Manual* (the Manual), Pub. No. 100-07, review all nursing home complaint allegations.<sup>1</sup>

Depending on the outcome of the review, the State survey agency may conduct a standard survey or an abbreviated standard survey (complaint survey) to investigate noncompliance with Federal participation requirements. Examples of noncompliance include a nursing home's failure to provide necessary treatment to promote healing of a resident's pressure sore and failure to provide nutritional services. Federal regulations (42 CFR § 488.301) define noncompliance with Federal participation requirements as a deficiency (Federal deficiency).

A standard survey is a periodic nursing home inspection based on procedures specified in the Manual. These procedures focus on a sample of residents selected by the State survey agency to gather information about the quality of resident care furnished to Medicare and/or Medicaid beneficiaries in a nursing home. A complaint survey normally does not cover all procedures included in a standard survey but rather concentrates on areas of concern related to the complaint allegation. A complaint survey may be expanded to a standard survey if evidence warrants a more extensive review.

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<sup>1</sup> An allegation of improper care or treatment of beneficiaries may come from a variety of sources, including beneficiaries, family members, and health care providers.

## **Federal Deficiencies and Deficiency Ratings**

The State survey agency must report each Federal deficiency identified during a survey on the appropriate form<sup>2</sup> published by CMS and provide the forms to the nursing home and CMS. These forms include (1) a statement describing the deficiency, (2) a citation of the specific Federal participation requirement that was not met, and (3) a rating for the seriousness of the deficiency (deficiency rating).

Federal regulations (42 CFR § 488.404(b)) require the State survey agency to determine the deficiency rating using severity and scope components. Severity is the degree of or potential for resident harm and has four levels: (1) potential for minimal harm, (2) potential for more than minimal harm, (3) actual harm, and (4) immediate jeopardy. Scope is the number of residents affected or pervasiveness of the deficiency in the nursing home and has three levels: (1) isolated, (2) patterned, and (3) widespread.

Federal regulations (42 CFR § 488.408(b)) provide CMS and the State survey agency with the authority to impose one or more enforcement remedies, such as correction plans directed by the survey agency, State monitoring, denial of payment for all new Medicare and/or Medicaid admissions, and civil monetary penalties. The deficiency rating guides the selection of the appropriate remedy.

## **CMS's Management and Information Systems for Nursing Homes**

Section 5060 of the Manual requires the State survey agency to enter complaint survey data into the Automated Survey Processing Environment (ASPEN) system, including the ASPEN Complaints/Incident Tracking System (ACTS). The CMS Survey and Certification Memorandum 04-43 requires enforcement activities to be entered into the ASPEN Enforcement Manager (AEM).

- ACTS is designed to manage all complaint processing operations. Section 5060 of the Manual, page 11, states that because entry of information related to unmet Federal requirements into ACTS "... is essential to [CMS's] ... effective management of the survey and certification program, it is important that [survey agencies] complete the required fields in ACTS in a timely manner."
- According to the CMS Survey and Certification Memorandum 04-43 (August 12, 2004), AEM is an enforcement tracking system used "... to improve the national system of quality assurance in nursing homes." AEM enables CMS to manage enforcement activities to ensure that nursing homes remedy deficient practices and establish procedures that will sustain continued compliance. ACTS shares all complaint survey data with AEM.

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<sup>2</sup> Form CMS-2567, Statement of Deficiencies and Plans of Correction, is used for all deficiencies except for deficiencies determined to be isolated and with the potential for minimal harm. For these deficiencies, Form A, Statement of Isolated Deficiencies Which Cause No Harm with Only a Potential for Minimal Harm, is used.

The complaint survey data are also used in information provided to the public on CMS's Nursing Home Compare Web site. Nursing Home Compare has information on every certified Medicare and Medicaid nursing home, including information on quality-of-care deficiencies from complaint surveys. Nursing Home Compare uses a five-star rating scale to help consumers, their families, and caregivers compare nursing homes. A five-star rating represents the highest quality rating. The determination of the star rating is based in part on the nursing home's number of Federal deficiencies and deficiency ratings that were identified during the three most recent standard surveys and the most recent 36 months of complaint surveys.

## **California Survey Agency**

In California, the Department of Public Health, Licensing and Certification Division (the Division), is the designated State survey agency. Accordingly, the Division determines whether nursing homes meet Federal participation requirements and recommends to CMS whether nursing homes should be certified for participation in the Medicare and Medicaid programs. The Division also determines whether nursing homes comply with State laws and regulations (State requirements). According to the Division, in 2010, over 600 surveyors worked in teams at 18 district offices. The Division estimated that it performed surveys for over 1,275 nursing homes, of which approximately 68 percent were occupied by Medicaid residents, and responded to approximately 6,650 complaints.

## **OBJECTIVE, SCOPE, AND METHODOLOGY**

### **Objective**

Our objective was to determine whether the Division identified and reported Federal deficiencies for unmet Federal participation requirements when conducting complaint surveys of nursing homes from 2006 through 2008.

### **Scope**

We reviewed complaint surveys conducted from 2006 through 2008 at three nursing homes we judgmentally selected. Three different district offices had oversight jurisdiction over these nursing homes. We selected the nursing homes based on the number of residents admitted to the hospital with diagnoses of bedsores and/or infections (indicating possible quality-of-care issues at the nursing homes) and the number of beds in the nursing homes compared with other nursing homes in the State. The nursing homes included both Medicare and Medicaid beneficiaries.

We did not review the overall internal control structure of the Division. Rather, we reviewed only those internal controls related to our objective.

We performed our review from August 2009 to March 2011 and conducted fieldwork at the Division's offices in Sacramento and Chico, California, and at three district offices in Southern California.

## **Methodology**

To accomplish our objective, we

- reviewed applicable Federal laws, regulations, and guidance;
- interviewed CMS program officials regarding the Division's oversight responsibilities and CMS management information systems for nursing homes;
- interviewed Division management regarding survey operations, quality assurance, and training;
- interviewed district office supervisors and staff responsible for complaint surveys;
- reviewed Division policy and procedures for investigating complaints and training manuals for new surveyors and supervisors; and
- reviewed the results of 47 complaint surveys for the 3 nursing homes that we judgmentally selected and identified Federal regulations for deficiencies in which surveyors cited noncompliance with State requirements.

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 objective.

## **FINDINGS AND RECOMMENDATION**

The Division did not always identify and report deficiencies for unmet Federal participation requirements when conducting complaint surveys from 2006 through 2008. For 24 complaint surveys at 3 nursing homes that we judgmentally selected, the Division did not (1) identify 41 deficiencies for noncompliance with the Federal participation requirements associated with the complaint surveys that cited State requirements, (2) determine the deficiency ratings for those 41 deficiencies, and (3) enter the Federal deficiencies and deficiency ratings into ACTS.

The Division's policy and procedures for investigating complaints did not require State surveyors to cite deficiencies for all unmet Federal participation requirements. Instead, the policy and procedures permitted the State surveyors to cite violations of State requirements while not citing the associated Federal requirements. As a result, the Division did not always identify Federal deficiencies, determine deficiency ratings, and report the information to CMS.

## **FEDERAL REQUIREMENTS FOR STATE SURVEY AGENCIES**

Federal regulations (42 CFR § 488.308(e)(2)) require the State survey agency to review all complaint allegations, and, when warranted, conduct a survey to determine whether Federal

deficiencies exist. For identified Federal deficiencies, 42 CFR § 488.404(b) requires the survey agency to determine the deficiency ratings using severity and scope components.

In addition, 42 CFR §§ 488.18 and 488.26(d) require the survey agency to document deficiencies and use the survey methods, procedures, and forms prescribed by CMS.

Section 5060 of the Manual requires the State survey agency to enter complaint survey data into ACTS. Page 11 states:

At a minimum, if the intake information requires an onsite survey and the allegation may involve both Federal and State licensure requirements, a Federal onsite survey is completed and entered into ACTS. If an investigation [complaint survey] finds one or more violations of Federal [participation] requirements, the findings must be cited under the appropriate tags [regulations] and entered into the Federal system even if the information is entered into a State licensure data system.

The ACTS *Procedure Guide* specifies how the State survey agency is to enter Federal deficiencies and deficiency ratings into ACTS.

#### **DEFICIENCIES FOR UNMET FEDERAL PARTICIPATION REQUIREMENTS NOT IDENTIFIED OR REPORTED**

Contrary to Federal requirements, the Division did not always identify and report deficiencies for unmet Federal participation requirements when conducting complaint surveys from 2006 through 2008. Of the 47 complaint surveys reviewed for 3 judgmentally selected nursing homes, 24 surveys did not cite unmet Federal participation requirements. For those 24 surveys, we identified 41 deficiencies for which the Division did not (1) identify the unmet Federal participation requirements associated with the complaint surveys that cited State requirements, (2) determine their deficiency ratings, and (3) enter the Federal deficiencies and deficiency ratings into ACTS. Instead, the district offices cited only unmet State requirements.

For example, for a complaint survey conducted at one of the three selected nursing homes, the district office did not identify the unmet Federal participation requirements and deficiency ratings and report the required data to CMS. A nursing home resident was admitted to the emergency room because of cardiac arrest. The district office received a report from the ombudsman<sup>3</sup> that the resident showed signs of suspected neglect based on evidence of multiple pressure sores and maggots coming from the resident's ears. The district office's complaint survey found that three different licensed nurses at the nursing home observed a change in condition of the resident's right ear but did not report the change to the resident's physician. The complaint survey also determined that the wound care nurse documented in the medical record that the resident's right ear was treated on April 24, 2008, when no treatment was actually provided.

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<sup>3</sup> An ombudsman is an advocate for residents of nursing homes. The Long-Term Care Ombudsman Program is administered by the Administration on Aging and exists in all States under the authority of the Older Americans Act.

Although a complaint survey was conducted, the district office did not (1) identify three unmet Federal participation requirements, (2) determine their deficiency ratings, or (3) enter the deficiencies and deficiency ratings into ACTS. Based on our review of the deficiency description in the complaint survey, unmet Federal participation requirements included the following:

- 42 CFR § 483.10(b)(11)(i)(B), which requires the nursing home to immediately consult with the resident's physician if there is a significant change in the resident's physical, mental, or psychosocial status;
- 42 CFR § 483.25(c), which requires the nursing home to provide necessary treatment for and prevention of pressure sores; and
- 42 CFR § 483.75(l)(1)(i) and (ii), which require the nursing home to maintain complete and accurate clinical records.

Instead of citing these Federal participation requirements, determining the deficiency rating for each deficiency, and entering the data into ACTS, the district office cited only the following State requirements: (1) Title 22 of the California Code of Regulations (CCR), section 72311(a)(3)(B), for not promptly notifying the resident's physician of an adverse change in medical condition; (2) 22 CCR § 72313(c), for failure to administer medications and treatments; and (3) 22 CCR § 72543(f), for failure to keep health records current based on service provided to a patient.

## **INADEQUATE POLICY AND PROCEDURES**

For the period October 2004 through September 2007, the Division's policy and procedures for investigating complaints required surveyors to cite unmet Federal participation requirements only when surveyors identified substandard quality of care,<sup>4</sup> actual harm at a patterned or widespread level, or immediate jeopardy. For other deficiencies, surveyors were required to cite only State requirements. Effective October 2007, the policy and procedures instructed surveyors to cite violation of either Federal or State requirements.

According to district office managers and supervisors, it is standard practice for the Division to cite only State requirements but not always to identify or report the associated unmet Federal participation requirements. As a result, the Division did not always determine the deficiency rating for each Federal deficiency and enter that information into ACTS.

According to Division management, it began to implement a pilot program in August 2009 to identify unmet Federal participation requirements for the most severe violations of State

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<sup>4</sup> Pursuant to 42 CFR § 488.301, substandard quality of care means one or more deficiencies for unmet Federal participation requirements under 42 CFR § 483.13 - Resident behavior and facility practices; 42 CFR § 483.15 - Quality of life; or 42 CFR § 483.25 - Quality of care, with a deficiency rating that constitutes either immediate jeopardy to resident health or safety, a pattern of or widespread actual harm that is not immediate jeopardy, or a widespread potential for more than minimal harm.

requirements that are subject to financial penalties. However, the pilot program would not fully comply with the Federal requirement for reporting unmet Federal participation requirements.

## **IMPACT OF UNIDENTIFIED AND UNREPORTED FEDERAL DEFICIENCIES**

The Division's failure to identify deficiencies for all unmet Federal participation requirements and enter Federal deficiencies and deficiency ratings into ACTS results in incomplete data for managing enforcement activities in the AEM. According to CMS officials, it is unable to take immediate Federal enforcement action for recurring deficiencies involving actual harm when the Division does not cite unmet Federal participation requirements and enter deficiencies and deficiency ratings into ACTS.

In addition, omission of Federal deficiencies and deficiency ratings from ACTS results in inaccurate information provided to the public on the Nursing Home Compare Web site. According to a CMS official, "If this information were available, it would present a more complete picture of the nursing home's compliance with Federal regulations." We could not determine whether any of the 3 nursing homes reviewed would have received a lower star rating if the Division had identified and reported the 41 Federal deficiencies.

## **RECOMMENDATION**

We recommend that the Division revise its policy and procedures for investigating complaints to require State surveyors to identify and report deficiencies for all unmet Federal participation requirements.

## **DIVISION COMMENTS**

In written comments on our draft report, the Division disagreed with our recommendations:

- Regarding our first recommendation, the Division stated that it instructs its surveyors to "begin the complaint investigation process from the standpoint of citing state regulations" and to also cite Federal deficiencies for the most severe violations of State requirements. According to the Division, "... there are insufficient federal funds to use the federal process in every instance where a federal deficiency could be written."
- Regarding our second recommendation (included only in our draft report), the Division disagreed that it should revise its policy and procedures to require State surveyors to determine ratings for Federal deficiencies identified and enter deficiencies and deficiency ratings into ACTS. The Division stated that the policy and procedure for the Federal survey process is spelled out in the Manual, which Division staff are required to follow.

The Division's comments are included in their entirety as the Appendix.

## **OFFICE OF INSPECTOR GENERAL RESPONSE**

Although we acknowledge the Division's statement regarding insufficient Federal funds, the policy and procedures for investigating complaints must fully comply with Federal requirements. After reviewing the Division's comments, we modified our first recommendation to emphasize that the policy and procedures require State surveyors to not only identify but also report deficiencies for all unmet Federal participation requirements. We removed our second recommendation from the report.

# **APPENDIX**

**APPENDIX: DIVISION COMMENTS**



State of California—Health and Human Services Agency  
California Department of Public Health



EDMUND G. BROWN JR.  
*Governor*

August 25, 2011

Lori A. Ahlstrand, Regional Inspector General for Audit Services  
U.S. Department of Health & Human Services, Office of Inspector General  
Office of Audit Services, Region IX  
90 – 7th Street, Suite 3-650  
San Francisco, CA 94103

Dear Ms. Ahlstrand:

The California Department of Public Health (CDPH) has prepared and enclosed its response to the Department of Health & Human Services (HHS) Office of Inspector General (OIG) draft report entitled: "Unidentified and Unreported Federal Deficiencies in California Nursing Home Complaint Surveys July 2011 Report A-09-09-00114." The CDPH appreciates the opportunity to provide the OIG with its response.

If you have any questions, please contact Karen Petruzzi, CDPH Audit Coordinator, at (916) 650-0266.

Sincerely,

Original signed by Kathleen Billingsley, Chief Deputy Director of Policy & Programs

Ron Chapman, MD, MPH  
Director

Enclosure

California Department of Public Health (CDPH) Response to the Department of Health &  
Human Services (HHS) Office of Inspector General (OIG) Draft Report Entitled:  
Unidentified and Unreported Federal Deficiencies in California  
Nursing Home Complaint Surveys  
July 2011  
Report A-09-09-00114

**RECOMMENDATION 1:**

**We recommend that the Division revise its policy and procedures for investigating complaints to require State surveyors to identify deficiencies for all unmet Federal participation requirements.**

**CDPH Response 1:**

California Department of Public Health (CDPH) disagrees with the Office of Inspector General (OIG) audit Recommendation 1 that CDPH revise its policies and procedures for investigating complaints and incidents reported by facilities known as entity reported incidents (ERIs) to require state surveyors to identify deficiencies for all unmet federal participation requirements.

Licensing and Certification (L&C) takes direction from the Centers for Medicare and Medicaid Services (CMS) as well as the California State Legislature. CDPH continually strives to balance its activities in order to be responsive to both entities: CMS, who directs us to use the federal complaint process, and state law which requires us to issue citations under state mandates.

Surveyors are instructed in our Training Academy to begin the complaint investigation process from the standpoint of citing state regulations unless the deficient practice rises to the level of a state citation (either B, A, or AA). For those deficiencies where a B citation will be issued, surveyors may cite either state or federal regulations, whichever is more appropriate. For those investigations where an A or AA state citation will be issued, surveyors have been instructed to cite federal regulations and also issue a state citation. The reason for this direction is that there are insufficient federal funds to use the federal process in every instance where a federal deficiency could be written.

- Table 1 displays the amount of funds awarded to California and the final expenditure amounts for the three previous federal grant applications for the workload presented in CMS' Mission and Priorities call letter. This analysis demonstrates that California fully expended the amount of the award granted for Title 18 Medicare activities for each of these years.
- Table 2 reflects the amount of complaint and ERIs, proposed to be investigated using the federal process, that California built into the planned federal grant workload for each year and the amount of workload actually completed. (California did not build in any complaint or ERI investigations for Federal Fiscal Year 2010.)
- Table 3 reports the total number of complaints and ERIs received in each of the previous five years for which the expectation is that the majority of these will be investigated using the federal complaint process.

Historically over the last three years, CDPH has investigated approximately twenty-two percent of complaints/ERIs received using the federal process due to the limited funds awarded to California under the grant.

CDPH contends that use of the state complaint process to investigate complaints essentially meets the intent of the Mission and Priority document in that complaints and ERIs are investigated timely, facilities are held accountable, and the health and safety of residents are protected.

The federal and state complaint process parallel one another, in that the intake process begins in the same manner, with a complaint allegation being received by the District Office, information collected, and a process followed which systematically prioritizes the complaint workload. However, California statutes require long-term care (LTC) complaint investigations that are prioritized as Immediate Jeopardy to be initiated within twenty-four hours of receipt. California's process is more stringent than the federal requirement which requires these complaints to be initiated within two working days. LTC complaints not fitting that description are investigated within ten working days under both federal and state complaint survey processes.

As with the federal process outlined in the State Operations Manual (SOM), Chapter 5, "Complaint Procedures," the state complaint process includes developing a plan to address each allegation. The investigation of complaints includes the use of observation, interview and record review.

Depending on other enforcement actions and survey timelines for a facility, the federal complaint enforcement action may require multiple revisits to put the provider back into compliance before a termination action is imposed.

California cannot investigate additional complaints/ERIs using the federal process without jeopardizing other federal workload given the current federal funding approved in the grant. California has analyzed the time differential for conducting substantiated state and federal complaints. Based on data obtained from the Aspen Central Office data base, and California's surveyor timekeeping data base, this analysis shows that federal complaint investigations average twenty-three and one half (23.5) hours, as compared to an average of thirteen and seven tenths (13.7) hours for substantiated complaints using the state complaint survey process. This time differential is substantial when compared to the number of complaint and ERIs received each year.

**RECOMMENDATION 2:\***

**Further, for Federal deficiencies identified, we recommend that the policy and procedures require State surveyors to determine ratings for the deficiencies and enter the deficiencies and deficiency ratings into ASPEN (Automated Survey Processing Environment) Complaints/Incident Tracking System (ACTS).**

**CDPH Response 2:**

CDPH disagrees with the OIG audit Recommendation 2 that when federal deficiencies will be written, CDPH's policies and procedures will be amended to reference how to:

- determine ratings for the deficiencies, and
- enter the deficiencies into ACTS, and
- enter deficiency ratings into ACTS.

The policy and procedure for the federal survey process is spelled out in the State Operation Manual (SOM – the manual provided to all states by the federal government on how to conduct

\* Office of Inspector General Note: We removed the second recommendation from the final report.

federal work). The deficiency rating (called severity and scope) is inherent in the federal survey process and the SOM has specific procedures and guidance for determining the severity and scope for deficiencies. All staff have a copy of the SOM for reference. For complaints/ERIs where federal regulations will be cited, staff are required to follow the process in the SOM to assign the appropriate severity and scope. All staff receive instruction during their training and on-the-job mentoring on how to properly assign severity and scope for each deficiency cited, following the procedures outlined in the SOM. The Department also has Quality Assurance (QA) staff who provide review and analysis of the survey work product. The Department actively works with the QA staff and the training staff to provide feedback and additional training to survey staff on following the federal policies and procedures in the SOM.

In addition, the federal database is hardwired to require the rating and deficiencies to be entered into the system in order for the finding to be accepted, uploaded to the federal database and closed. If the severity and scope are not entered into the database the survey cannot be uploaded and closed, thus forcing staff to ensure severity and scope are entered into the database.

No modifications to our policies are necessary.

TABLE 1

Table 1  
 L&C Federal Fiscal & Workload Comparison  
 Grant Federal Award and Final Expenditure  
 August 5, 2011

Federal Fiscal Year	*Total Title 18 Cumulative Expenditures	Title 18 Budgeted	Balance	*Total Title 19 Cumulative Expenditures	Title 19 Budgeted	Balance	*Total Title 19 State Match Expenditures	Title 19 State Match Budgeted	Balance	Total Grant Award	TOTAL Expenditures	TOTAL Balance
2010	\$ 37,826,605	\$ 37,734,359	\$ (92,246)	\$ 25,638,061	\$ 27,758,330	\$ 2,120,269	\$ 8,546,384	\$ 9,261,703	\$ 715,319	\$ 74,754,392	\$ 72,011,050	\$ 2,743,342
2009	\$ 34,773,783	\$ 32,711,953	\$ (2,061,830)	\$ 27,494,650	\$ 26,102,841	\$ (1,391,809)	\$ 9,188,723	\$ 8,710,560	\$ (478,163)	\$ 67,525,354	\$ 71,457,156	\$ (3,931,802)
2008	\$ 31,033,713	\$ 30,858,995	\$ (174,718)	\$ 26,438,536	\$ 26,017,659	\$ (420,877)	\$ 8,812,845	\$ 8,651,744	\$ (161,101)	\$ 65,528,398	\$ 66,285,094	\$ (756,696)

\*Expenditures are still being posted to FY 2009 and FY 2010 and are subject to revision at a later date.

Table 2

Budgeted Complaint Workload from Previous Grant Applications

Federal Fiscal Year	Provider Type	Planned Workload	*Accomplished Workload	Federal Fiscal Year	Provider Type	Planned Workload	*Accomplished Workload	Federal Fiscal Year	Provider Type	Planned Workload	*Accomplished Workload
	2008	Nursing Facility XIX	596		246	2009	Nursing Facility XIX		137	115	2010
	Skilled Nursing Facility XVIII	571	73		Skilled Nursing Facility XVIII	137	22		Skilled Nursing Facility XVIII	0	79
	Skilled Nursing Facility XVIII/XIX	9,530	3,375		Skilled Nursing Facility XVIII/XIX	2,012	1,774		Skilled Nursing Facility XVIII/XIX	0	2,839
<b>Total</b>		<b>10,697</b>	<b>3,694</b>	<b>Total</b>		<b>2,286</b>	<b>1,911</b>	<b>Total</b>		<b>0</b>	<b>3,195</b>

\*Accomplished complaints may include State Investigations.

TABLE 3

Number of Complaints and Entity Reported Incidents for  
Skilled Nursing Facilities/Nursing Facilities  
Received by Calendar Year

Year	Number of Complaints Received	Number of Entity Reported Incidents Received	Total Complaints and Entity Reported Incidents
1/1/2010-12/31/2010	5379	14130	19,509
1/1/2009-12/31/2009	5388	13543	18,931
1/1/2008-12/31/2008	5829	13187	19,016
1/1/2007-12/31/2007	5615	13228	18,843
1/1/2006-12/31/2006	5405	12763	18,168