

Department of Health and Human Services

**OFFICE OF  
INSPECTOR GENERAL**

**CMS'S RELIANCE ON CALIFORNIA'S  
LICENSING SURVEYS OF NURSING  
HOMES COULD NOT ENSURE THE  
QUALITY OF CARE PROVIDED TO  
MEDICARE AND MEDICAID  
BENEFICIARIES**



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June 2014  
A-09-12-02037

# *Office of Inspector General*

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## EXECUTIVE SUMMARY

*CMS's reliance on California's licensing surveys of nursing homes could not ensure the quality of care provided to Medicare and Medicaid beneficiaries.*

### WHY WE DID THIS REVIEW

Prior Office of Inspector General (OIG) reviews identified issues related to the oversight of quality of care in California nursing and skilled nursing facilities (nursing homes). OIG is also performing reviews in various States to determine whether health care providers, including nursing homes, met Federal and State requirements for employee qualifications and health examinations. The Centers for Medicare & Medicaid Services (CMS) relies on State licensure, including licensing surveys, as one way to ensure the quality of care provided in nursing homes.

Our objective was to determine whether CMS's reliance on the California Department of Public Health, Licensing and Certification Division's (State agency) licensing surveys of nursing homes ensured quality of care and that adequate protection was provided to Medicare and Medicaid beneficiaries.

### BACKGROUND

The Social Security Act includes requirements that are intended, in part, to ensure the quality of care provided to Medicare and Medicaid beneficiaries in nursing homes, including that nursing homes be licensed under applicable State law. CMS implemented the licensing requirement in 42 CFR part 483 as a condition of participation that nursing homes must meet before they provide services to Medicare and Medicaid beneficiaries. CMS relies on the States to license nursing homes within their jurisdictions.

In California, the State agency must perform licensing surveys of nursing homes every 2 years to determine whether they meet the licensing requirements. If a nursing home does not meet these requirements, the State agency can impose a fine, suspend or revoke the nursing home's license, or take other actions. The survey procedures include reviewing employee qualifications, employee health examination records, and units within the nursing homes providing optional services, such as physical therapy. We refer to these units as "optional service units."

Nursing home employees providing professional services, such as nursing or therapy services, are required to be licensed or certified in accordance with applicable State law. They are also required to have initial and annual health examinations to ensure that they do not have a health condition that would create a hazard for residents. An examination has three required components: a physical evaluation, medical history evaluation, and tuberculosis screening. Nursing homes must obtain State agency approval to operate optional service units that meet State requirements for adequate policies and procedures, staff, equipment, and space.

During calendar years (CYs) 2010 and 2011, California nursing homes had about 130,000 health care and non-health-care employees serving more than 13,200 Medicare and 61,800 Medicaid

beneficiaries. For our review, we randomly selected 8 of 1,117 nursing homes in California and then randomly selected 30 health care employees who worked at each of the 8 nursing homes.

## **WHAT WE FOUND**

CMS relied on the State agency's licensing surveys of nursing homes. However, we found that nursing homes did not always meet certain State requirements for employee health examinations and optional service units. The licensing surveys did not always identify these issues; therefore, CMS's reliance on these surveys could not ensure quality of care and that adequate protection was provided to Medicare and Medicaid beneficiaries.

All 240 sampled employees were licensed or certified in accordance with applicable State law. However, for 59 employees, required health examinations were not conducted, and for 73 employees, at least 1 required component of health examinations was not conducted. Using our sample results, we estimated that during CYs 2010 and 2011, health examinations were not conducted for 30 percent of employees statewide, and at least one required component of health examinations was not conducted for 26 percent of employees statewide. The sampled nursing homes did not always follow their policies and procedures for health examinations, or their policies and procedures were inadequate. Also, the State agency did not always conduct the required licensing surveys, and the State agency's procedures for reviewing health examination records did not specify all required components.

In addition, seven of the eight sampled nursing homes did not obtain State agency approval for optional service units but provided services in those units. The nursing homes and State agency district offices misunderstood the requirement to obtain approval for optional service units. Also, the State agency's licensing survey procedures for reviewing optional service units did not require surveyors to determine whether the nursing homes had approval to operate them.

The nursing homes and the State agency could not be sure that nursing home employees were free of any health conditions that might have created a hazard for Medicare and Medicaid beneficiaries. Further, they could not always demonstrate that optional service units at the nursing homes met State requirements for adequate policies and procedures, staff, equipment, and space.

## **WHAT WE RECOMMEND**

To ensure quality of care and the adequacy of the protection provided to Medicare and Medicaid beneficiaries in nursing homes, we recommend that CMS work with the State agency to ensure that:

- nursing homes (1) implement and follow adequate policies and procedures for employee health examinations and (2) request approval for optional service units,
- the State agency conducts all required licensing surveys and reviews employee health examination records during those surveys, and

- the State agency improves licensing survey procedures for (1) reviewing employee health examination records and the three required components and (2) determining whether optional service units operated by the nursing homes are approved and optional services are listed on the licenses.

## **CMS COMMENTS**

In written comments on our draft report, CMS concurred with all of our recommendations and provided information on actions that it planned to take to address our recommendations.

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## INTRODUCTION

### WHY WE DID THIS REVIEW

Prior Office of Inspector General (OIG) reviews identified issues related to the oversight of quality of care in California nursing and skilled nursing facilities (nursing homes).<sup>1</sup> OIG is also performing reviews in various States to determine whether health care providers, including nursing homes, met Federal and State requirements for employee qualifications and health examinations. The Centers for Medicare & Medicaid Services (CMS) relies on State licensure, including licensing surveys, as one way to ensure the quality of care provided in nursing homes.

### OBJECTIVE

Our objective was to determine whether CMS's reliance on the California Department of Public Health, Licensing and Certification Division's (State agency) licensing surveys of nursing homes ensured quality of care and that adequate protection was provided to Medicare and Medicaid beneficiaries.

### BACKGROUND

#### **Federal Licensing Requirements for Nursing Homes Under Medicare and Medicaid**

The Medicare and Medicaid programs cover care in nursing homes for eligible beneficiaries who need services, such as nursing, specialized rehabilitation, and medically related social services. The Social Security Act (the Act) includes requirements that are intended, in part, to ensure the quality of care in nursing homes. One requirement is that nursing homes be licensed under applicable State law (the Act, §§ 1819(d)(2) and 1919(d)(2)). CMS implemented the licensing requirement in 42 CFR part 483 as a condition of participation that nursing homes must meet before they provide services to Medicare and Medicaid beneficiaries. CMS relies on the States to license nursing homes within their jurisdictions. Title 22 of the California Code of Regulations (CCR), division 5, chapter 3, lists licensing requirements for California nursing homes.

#### **Licensing Surveys of Nursing Homes in California**

In California, the State agency must perform licensing surveys of nursing homes at least every 2 years to determine whether they meet the licensing requirements; this is intended to ensure the quality of care being provided (Health and Safety Code §§ 1422(b)(1)(A) and 1279(b)).<sup>2</sup>

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<sup>1</sup> *Unidentified and Unreported Federal Deficiencies in California's Complaint Surveys of Nursing Homes Participating in the Medicare and Medicaid Programs* (A-09-09-00114), issued September 21, 2011, and *Federal Survey Requirements Not Always Met for Three California Nursing Homes Participating in the Medicare and Medicaid Programs* (A-09-11-02019), issued February 27, 2012.

<sup>2</sup> The State agency also performs certification surveys on behalf of CMS to determine the nursing homes' compliance with Federal conditions of participation in 42 CFR part 483. This review did not examine the Federal conditions of participation or the State agency's procedures for surveying compliance with those requirements.

California law further states: “[Surveys] and investigations of long term health care facilities that are certified by the Medicare Program or the Medicaid Program shall determine compliance with federal standards and California statutes and regulations to the extent that California statutes and regulations provide greater protection to residents” (Health and Safety Code § 1422(b)(1)(B)). If a nursing home does not meet the licensing requirements, the State agency can impose a fine, suspend or revoke the nursing home’s license, or take other actions.

The State agency’s licensing survey procedures include the review of (1) employee licenses or certifications, (2) employee health examination records, and (3) units within the nursing homes providing specific types of services (optional services such as physical, occupational, and speech therapy) to residents. We refer to these units as “optional service units.”

During calendar years (CYs) 2010 and 2011, more than 600 surveyors worked in teams at the State agency’s 18 district offices to survey nursing homes. The nursing homes employed about 130,000 health care and non-health-care providers<sup>3</sup> who served more than 13,200 Medicare and 61,800 Medicaid beneficiaries.

### **State Requirements for Employee Qualifications, Health Examinations, and Optional Service Units in Nursing Homes**

The State requirements for employee qualifications, health examinations, and optional service units in nursing homes are listed in Title 22 of the CCR.

#### *Employee Qualifications*

Nursing home employees providing professional services, such as nursing or therapy services, are required to be licensed or certified. Nursing homes must employ qualified personnel to carry out the functions of the nursing home.

#### *Employee Health Examinations*

Nursing homes are required to ensure that all of their employees have initial and annual health examinations. A health examination has three required components: a physical evaluation, medical history evaluation, and tuberculosis screening.

#### *Optional Service Units*

Optional service units are units within a nursing home that are organized, staffed, and equipped to provide specific types of patient care. Nursing homes must obtain approval from the State agency for each optional service unit that provides optional services. Nursing homes that operate optional service units are required to meet State regulations for adequate policies and procedures, staff, equipment, and space. The approved optional services are required to be listed on the nursing home’s license.

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<sup>3</sup> California’s Office of Statewide Health Planning and Development provided the employee data, which included employees who were not health care providers, such as housekeeping, maintenance, and administrative employees.

## **HOW WE CONDUCTED THIS REVIEW**

We randomly selected 8 of 1,117 nursing homes in California. For each of the eight nursing homes, we developed a list of employees who were required to have a license or certification to provide health care services to nursing home residents during CYs 2010 and 2011. We then randomly selected 30 employees who worked at each of the 8 nursing homes. For the 240 total employees sampled, we reviewed their licenses or certifications and available health examination records. We also reviewed the results of the available licensing surveys, licensing survey documentation, and the nursing home licenses for CYs 2010 and 2011.

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 A contains the details of our audit scope and methodology, Appendix B contains the details of our statistical sampling methodology, and Appendix C contains our sample results and estimates.

## **FINDINGS**

CMS relied on the State agency's licensing surveys of nursing homes. However, we found that nursing homes did not always meet certain State requirements for employee health examinations and optional service units. The licensing surveys did not always identify these issues; therefore, CMS's reliance on these surveys could not ensure quality of care and that adequate protection was provided to Medicare and Medicaid beneficiaries.

All 240 sampled employees were licensed or certified in accordance with applicable State law. However, for 59 employees, required health examinations were not conducted, and for 73 employees, at least 1 required component of health examinations was not conducted. Using our sample results, we estimated that during CYs 2010 and 2011, health examinations were not conducted for 30 percent of employees statewide, and at least one required component of health examinations was not conducted for 26 percent of employees statewide. The sampled nursing homes did not always follow their policies and procedures for health examinations, or their policies and procedures were inadequate. Also, the State agency did not always conduct the required licensing surveys, and the State agency's procedures for reviewing health examination records did not specify all required components.

In addition, seven of the eight sampled nursing homes did not obtain State agency approval for optional service units but provided services in those units. The nursing homes and State agency district offices misunderstood the requirement to obtain approval for optional service units. Also, the State agency's licensing survey procedures for reviewing optional service units did not require surveyors to determine whether the nursing homes had approval to operate them.

The nursing homes and the State agency could not be sure that nursing home employees were free of any health conditions that might have created a hazard for Medicare and Medicaid beneficiaries. Further, they could not always demonstrate that optional service units at the nursing homes met State requirements for adequate policies and procedures, staff, equipment, and space.

## **EMPLOYEE HEALTH EXAMINATIONS WERE NOT CONDUCTED IN ACCORDANCE WITH STATE REQUIREMENTS**

### **State Requirements**

All employees working in a nursing home are required to have a health examination by a person lawfully authorized to perform such a procedure indicating that the employee "... is sufficiently free of disease to perform assigned duties and does not have any health condition that would create a hazard for himself, fellow employees, or patients or visitors" (22 CCR § 72535(a)). These examinations must occur within 90 days before employment or within 7 days after employment (initial health examination) and at least annually thereafter (annual health examination) (22 CCR § 72535(a)). The three required components of a health examination are a physical evaluation, medical history evaluation, and tuberculosis screening (22 CCR §§ 72535(a) and (b)). The nursing home must keep health records of all employment-related health examinations for a minimum of 3 years following termination of employment (22 CCR § 72535(c)).

### **Health Examinations Were Not Conducted When Required**

For 59 of the 240 sampled employees, health examinations were not conducted when required. For 11 of the 59 employees, nursing homes did not provide files containing health examination records (health file). For the remaining 48 employees, the nursing homes provided health files that were missing at least 1 required initial or annual health examination record. Because the nursing homes did not provide documentation to support the health examinations, we concluded that the health examinations were not conducted. Using our sample results, we estimated that health examinations were not conducted for 30 percent of employees statewide during CYs 2010 and 2011. Table 1 on the following page shows the number of employees who had no health files or were missing at least one required health examination record at each of the eight nursing homes.

**Table 1: Number of Employees Without Health Files or Missing at Least One Health Examination Record**

<b>Nursing Home</b>	<b>No Health File</b>	<b>Missing at Least One Health Examination Record</b>	<b>Total</b>
A	8	8	16
B	0	2	2
C	1	14	15
D	0	6	6
E	1	13	14
F	1	2	3
G	0	1	1
H	0	2	2
<b>Total</b>	<b>11</b>	<b>48</b>	<b>59</b>

All eight of the sampled nursing homes had policies and procedures for conducting employee health examinations but did not always follow them. Further, two of these nursing homes did not follow their procedures for conducting employee health examinations after the State agency had determined that such examinations had not always been conducted. For example, one district office, during its CY 2010 licensing survey, determined that health examinations were not conducted for four of eight employees at nursing home A. In its October 25, 2010, response to the district office’s finding, the nursing home stated that employees “will receive their health exam as required.” However, after reviewing employee health records at nursing home A in June 2012, we determined that health examinations were still not always conducted.

**Required Components of Health Examinations Were Not Conducted**

For 73 of the 240 sampled employees, the following required components of initial or annual health examinations or both were not conducted:

- physical evaluations for 38 employees,
- medical history evaluations for 49 employees, and
- tuberculosis screenings for 25 employees.<sup>4</sup>

See Appendix D for an example of an employee health examination, including the physical and medical history evaluations and tuberculosis screening for one of the sampled employees.

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<sup>4</sup> The total number of employees whose health examinations lacked a required component exceeds 73 because 38 employees had at least 1 health examination that lacked 2 required components.

Using our sample results, we estimated that at least one required component of health examinations was not conducted for 26 percent of employees statewide during CYs 2010 and 2011. Table 2 shows the number of employees whose health examinations lacked a required component at each of the eight nursing homes.

**Table 2: Number of Employees Whose Health Examinations Lacked a Required Component**

<b>Nursing Home</b>	<b>Physical Evaluation Not Conducted</b>	<b>Medical History Evaluation Not Conducted</b>	<b>Tuberculosis Screening Not Conducted</b>	<b>Total Number of Employees Whose Examinations Lacked at Least One Component<sup>5</sup></b>
A	1	1	4	5
B	0	9	2	10
C	4	0	6	8
D	1	4	1	5
E	1	4	2	4
F	6	6	3	9
G	0	0	7	7
H	25	25	0	25
<b>Total</b>	<b>38</b>	<b>49</b>	<b>25</b>	<b>73</b>

The nursing homes' policies and procedures were not fully implemented or did not specifically address all required components of an employee health examination:

- Two nursing homes had specific policies and procedures on the three required components of an employee health examination. However, our results indicate that those policies and procedures were not fully implemented.
- Six nursing homes did not have specific policies and procedures on the three required components of an employee health examination.<sup>6</sup> For example, two nursing homes provided us with identical policies that stated: "All employees will undergo a health examination and tuberculosis screening when hired by this facility. Thereafter, government guidelines and facility policies will dictate reexamination procedures. Results of tests will be kept in the employee's health record." This policy did not describe all the required components of an employee health examination. These two

<sup>5</sup> See footnote 4.

<sup>6</sup> One nursing home was hospital-based and followed the hospital's policies and procedures, which required only an annual employee tuberculosis screening after an initial health examination. However, this nursing home should have complied with the annual health examination requirement, which included a physical evaluation and a medical history evaluation.

nursing homes did not provide any additional facility policies or procedures on annual health examinations.

### **State Agency Did Not Always Review Health Examination Records**

The State agency did not always review nursing homes' employee health examination records.<sup>7</sup> The State agency reviewed employee health examinations records for four of the eight sampled nursing homes. However, it did not conduct the required licensing surveys during CYs 2010 and 2011 or review those records during the licensing surveys for the four other nursing homes. Officials at the district offices told us that they did not conduct licensing surveys at two of these nursing homes because they had other priorities. For two other nursing homes, the district offices did not provide documentation to show they had reviewed employee health examination records during licensing surveys. According to the State agency, the health examination is the primary source of documentation to show that employees are sufficiently free of disease and do not have any health condition that may create a hazard for beneficiaries.

### **State Agency Licensing Survey Procedures for Reviewing Health Examination Records Did Not Specify All Required Components**

The State agency's licensing survey procedures for reviewing nursing homes' employee health examination records did not specify all three required components of a health examination. The procedures included a "State Survey Tool" (survey booklet), which consisted of nine sections and checklists for licensing surveys. However, the survey booklet did not specifically refer to the employee health record requirement. Instead, the survey booklet recommended that surveyors use a supplemental form, i.e., "Smart Tool," to document the review of employee records, including health examinations. Although the Smart Tool required surveyors to check that health examinations and tuberculosis screenings had been conducted, it did not specify that the health examination also required both a physical evaluation and medical history evaluation.<sup>8</sup>

## **NURSING HOMES OPERATED OPTIONAL SERVICE UNITS WITHOUT THE STATE AGENCY'S APPROVAL**

### **State Requirements**

Optional service units are units within a nursing home that are organized, staffed, and equipped to provide specific types of patient care (22 CCR § 72401(a)). Nursing homes must obtain State agency approval to operate the units (22 CCR § 72401(d)). Nursing homes that operate optional service units are required to meet State regulations for adequate policies and procedures, staff, equipment, and space. For example, according to State requirements, physical therapy service units must have equipment sufficient to provide physical therapy services (22 CCR § 72409(a)).

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<sup>7</sup> The State agency told us that it sent a letter (All Facilities Letter 12-24, May 15, 2012) to all district offices to remind surveyors to verify that nursing homes complied with the health examination requirements in 22 CCR.

<sup>8</sup> The State agency told us that it plans to revise the survey booklet to include the health examination requirements listed in 22 CCR.

When approval is granted for an optional service unit, the State agency is required to list the services on the nursing home's license (22 CCR § 72401(e)).

### **Nursing Homes Did Not Obtain State Agency Approval for Optional Service Units**

Seven of the eight sampled nursing homes did not obtain approval from the State agency for optional service units but provided services in those units. Also, the services provided by these units were not listed on the nursing homes' licenses. The remaining nursing home was hospital-based, and its hospital license listed optional services.

The nursing homes misunderstood the requirement to obtain State agency approval for optional service units. According to six nursing homes, they thought that the nursing home license permitted them to provide optional services without separate approval or that approval was needed only if the nursing home provided outpatient services. One other nursing home indicated that it did not need to request separate approval if contracted therapists provided the optional services. According to the State agency, optional service units that provide physical, occupational, or speech therapy services in the nursing home must be approved, even if the services are provided by contracted therapists.<sup>9</sup>

### **State Agency District Offices Misunderstood the Approval Requirement for Optional Service Units**

State agency district offices misunderstood when optional services needed approval. For example, a supervisor from one district office stated that nursing homes may provide "basic physical or occupational therapy" to residents without approval. The supervisor did not provide additional information on the difference between basic therapy and optional services. Also, two district office surveyors thought that optional services needed approval only when provided on an outpatient basis.

### **State Agency Licensing Survey Procedures for Optional Service Units Did Not Require Surveyors To Determine Whether Nursing Homes Had Approval To Operate Them**

The State agency's licensing survey procedures for reviewing optional service units did not require surveyors to determine whether nursing homes had approval to operate them or had licenses with a list of optional services that were provided. According to two district office officials, the licensing survey procedures for reviewing optional service units would be followed only if the nursing home license listed the optional services.

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<sup>9</sup> The State agency issued a letter (All Facilities Letter 13-19, July 23, 2013) to remind nursing homes that the State agency must approve an optional service unit and that the optional service must be identified on the nursing home license when the nursing home has a unit organized and equipped for that service.



## **CMS'S RELIANCE ON LICENSING SURVEYS COULD NOT ENSURE THE QUALITY OF CARE PROVIDED TO MEDICARE AND MEDICAID BENEFICIARIES**

CMS relied on the State agency's licensing surveys of nursing homes. However, we found that nursing homes did not always meet certain State requirements for employee health examinations and optional service units. The licensing surveys did not always identify these issues; therefore, CMS's reliance on these surveys could not ensure quality of care and that adequate protection was provided to Medicare and Medicaid beneficiaries. According to CMS, nursing homes are licensed in accordance with State regulations, and nursing homes are expected to comply with those regulations. In addition, CMS stated that it relies on the State licensing regulations because State standards can provide a greater level of protection to Medicare and Medicaid beneficiaries than Federal standards can provide.

The effect of the deficiencies that we identified in our review was that the nursing homes and the State agency could not be sure that nursing home employees were free of any health conditions that might have created a hazard for Medicare and Medicaid beneficiaries. Further, they could not always demonstrate that optional service units at the nursing homes met State requirements for adequate policies and procedures, staff, equipment, and space.

### **RECOMMENDATIONS**

To ensure quality of care and the adequacy of the protection provided to Medicare and Medicaid beneficiaries in nursing homes, we recommend that CMS work with the State agency to ensure that:

- nursing homes (1) implement and follow adequate policies and procedures for employee health examinations and (2) request approval for optional service units,
- the State agency conducts all required licensing surveys and reviews employee health examination records during those surveys, and
- the State agency improves licensing survey procedures for (1) reviewing employee health examination records and the three required components and (2) determining whether optional service units operated by the nursing homes are approved and optional services are listed on the licenses.

### **CMS COMMENTS**

In written comments on our draft report, CMS concurred with all of our recommendations and provided information on actions that it planned to take to address our recommendations. CMS's comments are included in their entirety as Appendix E.

## **APPENDIX A: AUDIT SCOPE AND METHODOLOGY**

### **SCOPE**

Our review covered 1,117 nursing homes in California; these nursing homes were certified by Medicare or Medicaid or were certified by both programs. From these 1,117 nursing homes, we randomly selected 8. From each of the 8 nursing homes, we randomly selected 30 employees who were required to have a license or certification when they provided health care services during CYs 2010 and 2011 (audit period). For the total 240 employees sampled, we reviewed their licenses or certifications and initial and annual health examination records applicable to the audit period. If an employee was not subject to a required health examination during the audit period, we reviewed the health examination record related to CY 2009. In addition, our review covered optional service units that provided specific types of services (such as physical, occupational, and speech therapy services) to Medicare and Medicaid beneficiaries at the nursing homes.

We did not review the overall internal control structure of the State agency or each sampled nursing home. We reviewed only those internal controls that were significant to the objective of our audit.

We conducted our audit from April 2012 to March 2013 and performed fieldwork at the State agency's office in Sacramento, the State agency's three district offices in southern California, and the eight sampled nursing homes.

### **METHODOLOGY**

To accomplish our objective, we:

- reviewed applicable Federal and State laws, regulations, and guidance;
- interviewed CMS officials regarding CMS's reliance on State licensing requirements for nursing homes;
- interviewed State agency officials regarding licensing surveys and the management at 6 district offices regarding licensing surveys performed for the 8 sampled nursing homes;
- reviewed the State agency's procedures for conducting licensing surveys;
- created a sampling frame of 1,117 nursing homes and randomly selected a sample of 8;
- created a sampling frame of nursing home employees who were required to have a license or certification to provide health care services and were employed during the audit period for each nursing home;
- randomly selected 30 employees from each nursing home and reviewed their personnel and health examination records, when available;

- verified the license or certification for each of the 240 sampled employees by checking the applicable professional State licensing board database and contacting the State agency;
- interviewed nursing home management and employees at the 8 nursing homes, including but not limited to the administrator, director of nursing, and director of staff development, about hiring processes and procedures, health examinations, and recordkeeping procedures for personnel and health examination records;
- estimated the percentages of employees in California for which the required health examinations or all required components of health examinations were not conducted;
- determined the types of optional services that were provided at the nursing homes by contacting the nursing homes or reviewing the nursing home's license or both;
- reviewed each nursing home's license issued by the State agency and determined the optional services that the nursing home was approved to provide;
- reviewed the results of the State agency's licensing surveys conducted during the audit period, when available;
- reviewed available supporting documentation for the State agency's evaluation of nursing homes' compliance with requirements for health examinations and licensing of optional service units; and
- discussed the results of our review with CMS officials.

See Appendix B for the details of our statistical sampling methodology and Appendix C for our sample results and estimates.

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: STATISTICAL SAMPLING METHODOLOGY

### POPULATION

The population consisted of employees from California nursing homes that participated in Medicare or Medicaid or both programs during the audit period. These employees were those required to have a license or certification to provide health care services during our audit period.

### SAMPLING FRAME

We created our sampling frame by obtaining a Microsoft Access database of all nursing homes in the United States from CMS's Nursing Home Compare system. The database consisted of 15,637 nursing homes. From the database, we removed nursing homes that (1) were outside California, (2) had fewer than 30 certified beds and 30 residents, and (3) had a duplicate address. We also removed nursing homes at which OIG had recently performed work. Table 3 summarizes the number of nursing homes removed from the sampling frame.

**Table 3: Reasons for Removing Nursing Homes From the Sampling Frame**

<b>Reason for Exclusion</b>	<b>Number of Nursing Homes</b>
Outside California	14,405
Fewer than 30 certified beds and 30 residents	100
Duplicate address	1
Where OIG had recently performed work	14
<b>Total</b>	<b>14,520</b>

After removing the 14,520 nursing homes, the first-stage sampling frame consisted of 1,117 nursing homes in California. We then randomly selected eight nursing homes.

Because the total number of employees at each of the 1,117 nursing homes was unknown, we developed a second-stage sampling frame for each of the 8 sampled nursing homes. For each nursing home, we:

- obtained a list of all current and terminated employees with job position, initial date of hire, and date of termination, if applicable;
- had nursing home staff identify the employees who were subject to licensing or certification requirements; and
- performed validation procedures to verify that these employees were subject to licensing or certification requirements.

After performing these procedures, we determined the sampling frame for each nursing home (Table 4).

**Table 4: Number of Health Care Employees in Our Sampling Frame**

<b>Nursing Home</b>	<b>Number of Health Care Employees in Sampling Frame</b>
A	494
B	113
C	106
D	382
E	135
F	125
G	71
H	154
<b>Total</b>	<b>1,580</b>

#### **SAMPLE UNIT**

The primary sample unit was a California nursing home.

The secondary sample unit was a nursing home employee.

#### **SAMPLE DESIGN**

We used a multistage sample design. The first stage consisted of a random sample of eight nursing homes from the sampling frame. The second stage consisted of a random sample of employees who worked at each of the sampled nursing homes.

#### **SAMPLE SIZE**

We randomly selected eight nursing homes as the primary sample units. For the secondary sample units, we selected a random sample of 30 employees, for a total of 240 employees.

#### **SOURCE OF RANDOM NUMBERS**

We generated the random numbers with the OIG, Office of Audit Services (OAS), statistical software.

#### **METHOD FOR SELECTING SAMPLE UNITS**

For the primary units, we consecutively numbered the nursing homes from 1 through 1,117. After generating eight random numbers, we selected the corresponding frame items.

For each nursing home, we consecutively numbered each employee in the sampling frame, starting with the value of one. After generating the random numbers, we selected the corresponding frame items.

## **ESTIMATION METHODOLOGY**

We used the OIG, OAS, statistical software to estimate the percentage of employees statewide for whom (1) the required health examinations were not conducted and (2) all required components of health examinations were not conducted.

**APPENDIX C: SAMPLE RESULTS AND ESTIMATES**

**Table 5: Sample Results for Eight Nursing Homes Where Health Examinations Were Not Conducted (Number of Employees)**

<b>Nursing Home</b>	<b>Nursing Home Sampling Frame</b>	<b>Sample Size</b>	<b>No Health File or Missing at Least One Required Health Examination Record<sup>10</sup></b>
A	494	30	16
B	113	30	2
C	106	30	15
D	382	30	6
E	135	30	14
F	125	30	3
G	71	30	1
H	154	30	2
<b>Total</b>	<b>1,580</b>	<b>240</b>	<b>59</b>

**Table 6: Sample Results for Eight Nursing Homes Where Health Examinations Were Missing at Least One Required Component (Number of Employees)**

<b>Nursing Home</b>	<b>Nursing Home Sampling Frame</b>	<b>Sample Size</b>	<b>Health Examinations Missing at Least One Required Component</b>
A	494	30	5
B	113	30	10
C	106	30	8
D	382	30	5
E	135	30	4
F	125	30	9
G	71	30	7
H	154	30	25
<b>Total</b>	<b>1,580</b>	<b>240</b>	<b>73</b>

<sup>10</sup> We did not use the sample results for nursing homes B, G, and H to calculate the estimated percentage of health examinations that were not conducted because the number of errors was fewer than three.

**Table 7: Estimated Statewide Percentage of Health Examinations Not Conducted and Health Examinations Without a Required Component**  
*(Limits Calculated for a 90-Percent Confidence Interval)*

	<b>Health Examinations Not Conducted</b>	<b>Health Examinations Without a Required Component</b>
Point estimate	30%	26%
Lower limit	14%	14%
Upper limit	45%	38%



## APPENDIX D: EMPLOYEE HEALTH EXAMINATION EXAMPLE

The examples below and on the following page are excerpts from an employee health examination at one of the eight nursing homes, including an employee's physical and medical history evaluations and tuberculosis screening.<sup>11</sup> Documentation for employee health examinations varied at the eight nursing homes.

### Exhibit 1: Physical Evaluation and Tuberculosis Screening

NAME OF FACILITY [REDACTED]

## EMPLOYEE HEALTH EXAMINATION

TO BE FILLED OUT BY EMPLOYEE'S PHYSICIAN

I have examined Mr. [REDACTED]  
 Mrs. [REDACTED]  
 Ms. [REDACTED] NAME-LAST FIRST MIDDLE

and I have found no condition that appears to prevent him/her from performing the duties of the position applied for, with the exception or possible exception of the following:

Flu + PPD for CRF

Further, I have found no indication of any condition which might represent a possible hazard to the health of residents or other employees of this facility.

**EXAMINATION**

HEIGHT \_\_\_\_\_ BLOOD PRESSURE 136/71  
 WEIGHT 121 lbs PULSE 80

FREE FROM COMMUNICABLE DISEASE \_\_\_\_\_

TESTS	DATE PERFORMED	RESULTS
CHEST X-RAY	<u>RS</u>	<u>Negative for TB 5/07</u>
PPD	1st step <u>Hy of PPD</u> 2nd step _____	<u>PPD</u>

DATE [REDACTED] SIGNED [REDACTED] M.D.

According to the nursing home administrator, the handwritten notation on the physical evaluation indicates "follow up with primary care physician for complete physical."

The purified protein derivative (PPD) skin test is a method used to diagnose latent tuberculosis.

<sup>11</sup> We redacted the names of the employee and the facility and the signature of the physician on the health examination record.

**Exhibit 2: Medical History Evaluation**

**EMPLOYEE'S HEALTH QUESTIONNAIRE**

LAST NAME: [REDACTED] FIRST NAME: [REDACTED] INITIAL: [REDACTED] S M W O: [REDACTED] AGE: [REDACTED] SEX: [REDACTED]

ADDRESS: [REDACTED] TELEPHONE: [REDACTED]

POSITION APPLIED FOR: LVN DATE: [REDACTED]

FAMILY PHYSICIAN: [REDACTED] DATE AND REASON FOR LAST VISIT: Annual

---

FAMILY HISTORY: NERVOUS OR MENTAL ILLNESS None      DIABETES No      TUBERCULOSIS No

HAVE YOU HAD OR DO YOU HAVE ANY OF THE FOLLOWING (Check "Yes" or "No" after each question):

DISEASE OF:	Yes	No	Genitals	Yes	No	Chronic Constipation	Yes	No	Malaria	Yes	No
Brain	<input type="checkbox"/>	<input checked="" type="checkbox"/>	.....	<input type="checkbox"/>	<input checked="" type="checkbox"/>	.....	<input type="checkbox"/>	<input checked="" type="checkbox"/>	.....	<input type="checkbox"/>	<input checked="" type="checkbox"/>
Eyes	<input type="checkbox"/>	<input checked="" type="checkbox"/>	Dizziness	<input type="checkbox"/>	<input checked="" type="checkbox"/>	Black or Bloody	<input type="checkbox"/>	<input checked="" type="checkbox"/>	Rheumatic Fever	<input type="checkbox"/>	<input checked="" type="checkbox"/>
Ears	<input type="checkbox"/>	<input checked="" type="checkbox"/>	Frequent Headaches	<input type="checkbox"/>	<input checked="" type="checkbox"/>	Bowel Movements	<input type="checkbox"/>	<input checked="" type="checkbox"/>	Paralysis	<input type="checkbox"/>	<input checked="" type="checkbox"/>
Nose	<input type="checkbox"/>	<input checked="" type="checkbox"/>	Deafness	<input type="checkbox"/>	<input checked="" type="checkbox"/>	Freq. or Painful	<input type="checkbox"/>	<input checked="" type="checkbox"/>	Cancer or Tumors	<input type="checkbox"/>	<input checked="" type="checkbox"/>
Throat	<input type="checkbox"/>	<input checked="" type="checkbox"/>	Running Ears	<input type="checkbox"/>	<input checked="" type="checkbox"/>	Urination	<input type="checkbox"/>	<input checked="" type="checkbox"/>	Asthma	<input type="checkbox"/>	<input checked="" type="checkbox"/>
Heart	<input type="checkbox"/>	<input checked="" type="checkbox"/>	Freq. Sore Throat	<input type="checkbox"/>	<input checked="" type="checkbox"/>	Blood in Urine	<input type="checkbox"/>	<input checked="" type="checkbox"/>	Hay Fever	<input type="checkbox"/>	<input checked="" type="checkbox"/>
Lungs	<input type="checkbox"/>	<input checked="" type="checkbox"/>	Frequent Colds	<input type="checkbox"/>	<input checked="" type="checkbox"/>	Swollen Ankles	<input type="checkbox"/>	<input checked="" type="checkbox"/>	Diabetes	<input type="checkbox"/>	<input checked="" type="checkbox"/>
Stomach	<input type="checkbox"/>	<input checked="" type="checkbox"/>	Fainting Spells	<input type="checkbox"/>	<input checked="" type="checkbox"/>	High Blood Pressure	<input type="checkbox"/>	<input checked="" type="checkbox"/>	Arthritis	<input type="checkbox"/>	<input checked="" type="checkbox"/>
Intestines	<input type="checkbox"/>	<input checked="" type="checkbox"/>	Chest Pains	<input type="checkbox"/>	<input checked="" type="checkbox"/>	Jaundice	<input type="checkbox"/>	<input checked="" type="checkbox"/>	Rheumatism	<input type="checkbox"/>	<input checked="" type="checkbox"/>
Liver	<input type="checkbox"/>	<input checked="" type="checkbox"/>	Shortness of Breath	<input type="checkbox"/>	<input checked="" type="checkbox"/>	Hernia (Rupture)	<input type="checkbox"/>	<input checked="" type="checkbox"/>	Nervous Breakdown	<input type="checkbox"/>	<input checked="" type="checkbox"/>
Spleen	<input type="checkbox"/>	<input checked="" type="checkbox"/>	Chronic Cough	<input type="checkbox"/>	<input checked="" type="checkbox"/>	Stomach Ulcers	<input type="checkbox"/>	<input checked="" type="checkbox"/>	Painful Flat Feet	<input type="checkbox"/>	<input checked="" type="checkbox"/>
Gallbladder	<input type="checkbox"/>	<input checked="" type="checkbox"/>	Coughing up Blood	<input type="checkbox"/>	<input checked="" type="checkbox"/>	Pneumonia	<input type="checkbox"/>	<input checked="" type="checkbox"/>	Backaches	<input type="checkbox"/>	<input checked="" type="checkbox"/>
Kidneys	<input type="checkbox"/>	<input checked="" type="checkbox"/>	Palpitations	<input type="checkbox"/>	<input checked="" type="checkbox"/>	Pleurosy	<input type="checkbox"/>	<input checked="" type="checkbox"/>	Chronic Sinus Infection	<input type="checkbox"/>	<input checked="" type="checkbox"/>
Bladder	<input type="checkbox"/>	<input checked="" type="checkbox"/>	Allergies	<input type="checkbox"/>	<input checked="" type="checkbox"/>	Kidney Stones	<input type="checkbox"/>	<input checked="" type="checkbox"/>	Injuries	<input type="checkbox"/>	<input checked="" type="checkbox"/>
Bone	<input type="checkbox"/>	<input checked="" type="checkbox"/>	Poor Appetite	<input type="checkbox"/>	<input checked="" type="checkbox"/>	Piles	<input type="checkbox"/>	<input checked="" type="checkbox"/>	Operations	<input type="checkbox"/>	<input checked="" type="checkbox"/>
Joints	<input type="checkbox"/>	<input checked="" type="checkbox"/>	Chronic Indigestion	<input type="checkbox"/>	<input checked="" type="checkbox"/>	Fits or Convulsions	<input type="checkbox"/>	<input checked="" type="checkbox"/>	Other Serious	<input type="checkbox"/>	<input checked="" type="checkbox"/>
Back (Spine)	<input type="checkbox"/>	<input checked="" type="checkbox"/>	Recurrent Nausea	<input type="checkbox"/>	<input checked="" type="checkbox"/>	Tuberculosis	<input type="checkbox"/>	<input checked="" type="checkbox"/>	Illnesses	<input type="checkbox"/>	<input checked="" type="checkbox"/>
Skin	<input type="checkbox"/>	<input checked="" type="checkbox"/>	Recurrent Vomiting	<input type="checkbox"/>	<input checked="" type="checkbox"/>	Bronchitis	<input type="checkbox"/>	<input checked="" type="checkbox"/>			
Lymph Nodes	<input type="checkbox"/>	<input checked="" type="checkbox"/>	Vomiting of Blood	<input type="checkbox"/>	<input checked="" type="checkbox"/>	Nephritis	<input type="checkbox"/>	<input checked="" type="checkbox"/>			

DO YOU HEAR WELL? yes      WEIGHT: \_\_\_\_\_

HAVE YOU EVER BEEN REJECTED OR DISCHARGED FROM MILITARY SERVICE BECAUSE OF ILLNESS OR INJURY? \_\_\_\_\_

HAVE YOU EVER RECEIVED ANY PENSION, INSURANCE PAYMENTS OR COMPENSATION FOR AN INJURY OR ILLNESS? No

DO YOU HAVE ANY DEFECT, DEFORMITY OR DISEASE WHICH MAY INTERFERE WITH YOUR WORK? No

STATE DETAILS OF ILLNESSES, INJURIES, OPERATIONS OR DEFECTS None

## APPENDIX E: CMS COMMENTS



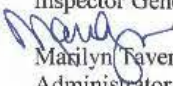
DEPARTMENT OF HEALTH & HUMAN SERVICES

Centers for Medicare & Medicaid Services

*Administrator*  
Washington, DC 20201

**DATE:** MAR 14 2014

**TO:** Daniel R. Levinson  
Inspector General

**FROM:**   
Marilyn Favenner  
Administrator

**SUBJECT:** Office of Inspector General (OIG) Draft Report: CMS's Reliance of California's Licensing Surveys of Nursing Homes Could not Ensure the Quality of Care Provided to Medicare and Medicaid Beneficiaries (A-09-12-02037)

The Centers for Medicare & Medicaid Services (CMS) thanks OIG for the opportunity to review and comment on the above subject OIG draft report on California's licensing requirements and the extent to which California surveyors identified concerns in nursing facilities regarding employee screening of health conditions and approval of optional service units. OIG's objective was to determine whether CMS's reliance on the California Department of Public Health, Licensing and Certification Division's (state agency) licensing surveys of nursing homes ensured quality of care and that adequate protection was provided to Medicare and Medicaid beneficiaries.

The CMS will discuss the findings with the state agency and ask them to review the forms, booklets and procedures used to complete the California licensing survey activities to ensure they include all components of the requirements. In the following remarks, we elaborate on our response to each individual OIG recommendations.

### OIG Recommendation

To ensure quality of care and the adequacy of the protection provided to Medicare and Medicaid beneficiaries in nursing homes, OIG recommends that CMS work with the State agency to ensure that nursing homes (1) implement and follow adequate policies and procedures for employee health examinations and (2) request approval for optional service units.

### CMS Response

The CMS concurs. Though CMS does not have specific Requirements for Participation (RfPs) that address these issues and do not have authority over state licensure requirements, proper screening of employees and approval of specific units outlined in the state licensure requirements are related to quality of care issues outlined in the RfPs (e.g., preventing spread of infections by employees and proper provision of services such as specialized rehabilitation). CMS will discuss further with the state agency. We understand that the state agency issued on May 15, 2012, an All Facilities Letter that reminded nursing homes of their obligation under Title 22 of the California Code of Regulations to ensure that employee health exams are performed and documented.

**OIG Recommendation**

To ensure quality of care and the adequacy of the protection provided to Medicare and Medicaid beneficiaries in nursing homes, OIG recommends that CMS work with the State agency to ensure that the State agency conducts all required licensing surveys and reviews employee health examination records during those surveys.

**CMS Response**

The CMS concurs. CMS understands that the California State Agency has reminded surveyors to review these state regulations while conducting its licensing surveys. CMS will request additional information and discuss further with the state agency.

**OIG Recommendation**

To ensure quality of care and the adequacy of the protection provided to Medicare and Medicaid beneficiaries in nursing homes, OIG recommends that CMS work with the State agency to ensure that the State agency improves licensing survey procedures for (1) reviewing employee health examination records and the three required components and (2) determining whether optional service units operated by the nursing homes are approved and optional services are listed on the licenses.

**CMS Response**

The CMS concurs. The California State Agency Training Academy for new surveyors includes training on conducting state licensing surveys. CMS is aware the state agency has proposed to—(1) update the training on infection control to include the importance of surveying towards employee health records; and 2) clarify with surveyors and nursing home providers that anytime a nursing home has a dedicated unit (room) set aside for one of the optional services that may include equipment, the state agency must approve the optional service and the optional service must be identified on the facility's license. The above information is based on a letter from the California Department of Health dated March 29, 2013 to OIG. CMS will request information and discuss further with the state agency.

The CMS thanks OIG for their efforts on this issue and looks forward to working with OIG on this and other issues in the future.