

Department of Health and Human Services

**OFFICE OF
INSPECTOR GENERAL**

**OREGON PROPERLY VERIFIED
CORRECTION OF DEFICIENCIES
IDENTIFIED DURING SURVEYS OF
NURSING HOMES PARTICIPATING IN
MEDICARE AND MEDICAID**

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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.

Oregon properly verified correction of deficiencies identified during surveys in 2014 of nursing homes participating in the Medicare and Medicaid programs.

INTRODUCTION

WHY WE DID THIS REVIEW

Federal regulations require nursing and skilled nursing facilities (nursing homes) to submit correction plans to the Centers for Medicare & Medicaid Services (CMS) or to their respective State survey agency for certain deficiencies identified during surveys, such as nursing homes' failure to provide necessary care and services. State survey agencies must verify the correction of identified deficiencies by obtaining evidence of correction or through onsite reviews. Previous Office of Inspector General (OIG) reviews found that the State survey agencies in California and Washington did not verify that selected nursing homes had corrected identified deficiencies. This review of the State survey agency in Oregon is part of an ongoing series of reviews of States' verification of correction of deficiencies. (Appendix A lists related OIG reports on nursing home compliance issues.)

OBJECTIVE

Our objective was to determine whether the Oregon Department of Human Services, Office of Licensing and Regulatory Oversight (State agency), verified nursing homes' correction of deficiencies identified during surveys in calendar year (CY) 2014 in accordance with Federal requirements.

BACKGROUND

Medicare and Medicaid Coverage of Nursing Homes

The Medicare and Medicaid programs cover care in skilled nursing and nursing facilities, 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), such as quality of care, nursing services, and infection control. These sections also establish requirements for CMS and States to survey nursing homes to determine whether they meet Federal participation requirements. For both Medicare and Medicaid, these statutory participation and survey requirements are implemented in Federal regulations at 42 CFR part 483, subpart B, and 42 CFR part 488, subpart E, respectively.

Standard and Complaint Surveys of Nursing Homes

The Secretary of Health and Human Services must use the State health agency, or other appropriate State agency, to determine whether nursing homes meet Federal participation requirements (the Act § 1864(a)). Further, the State must use the same State agency to

determine whether nursing homes meet the participation requirements in the State Medicaid plan (the Act § 1902(a)(33)).

Under an agreement with the Secretary, the State agency must conduct standard surveys to determine whether nursing homes are in compliance with Federal participation requirements¹ (42 CFR § 488.305(a) and § 7200 of CMS's *State Operations Manual* (the Manual), Pub. No. 100-07). A standard survey is a periodic nursing home inspection, using procedures specified in the Manual that focuses on a sample of residents selected by the State survey agency to gather information about the quality of resident care furnished to Medicare or Medicaid beneficiaries in a nursing home. A standard survey must be conducted at least once every 15 months (42 CFR § 488.308(a)).

The State survey agency must review all nursing home complaint allegations (42 CFR § 488.308(e)(2)).² 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 nursing home's noncompliance with a Federal participation requirement is defined as a deficiency (42 CFR § 488.301). Examples of deficiencies include a nursing home's failure to adhere to proper infection control measures or failure to provide necessary care and services.

Deficiencies and Deficiency Ratings

The State survey agency must report each deficiency identified during a survey on the appropriate CMS form³ and provide the form 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).

The State survey agency must determine the deficiency rating using severity and scope components (42 CFR § 488.404(b)). Each deficiency is given a letter rating of *A* through *L* (deficiency rating), which corresponds to a severity and scope level. (*A*-rated deficiencies are the least serious, and *L*-rated deficiencies are the most serious.) Severity is the degree of or potential for resident harm and has four levels, beginning with the most severe: (1) immediate jeopardy to resident health or safety, (2) actual harm that is not immediate jeopardy, (3) no actual harm with potential for more than minimal harm, and (4) no actual harm with potential for minimal harm. Scope is the number of residents affected or pervasiveness of the deficiency in the nursing home and has three levels: (1) isolated, (2) pattern, and (3) widespread.

¹ CMS and the State survey agency certify compliance with Federal participation requirements for State-operated and non-State-operated nursing homes, respectively (42 CFR § 488.330).

² An allegation of improper care or treatment of beneficiaries at a nursing home may come from a variety of sources, including beneficiaries, family members, and health care providers.

³ Form CMS-2567, Statement of Deficiencies and Plan of Correction, is used for all deficiencies except those 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.

Correction Plans

Nursing homes must submit for approval correction plans to the State survey agency or CMS for all deficiencies except A-rated deficiencies (with the severity level of no actual harm with potential for minimal harm and the scope level of isolated) (42 CFR § 488.402(d)). An acceptable correction plan must specify exactly how the nursing home corrected or plans to correct each deficiency (the Manual § 7304.4). Nursing homes use Form CMS-2567, Statement of Deficiencies and Plan of Correction, to submit correction plans.

After a nursing home submits a correction plan, the State survey agency or CMS must certify whether the nursing home is in substantial compliance with Federal participation requirements (the Manual § 7317.1).⁴ A nursing home is in substantial compliance when identified deficiencies have ratings that represent no greater risk than potential for minimal harm to resident health and safety (A, B, or C). The State survey agency must determine whether there is substantial compliance by verifying correction of the identified deficiencies through obtaining evidence of correction⁵ or conducting an onsite review (followup survey).⁶ The deficiency rating guides which verification method the State survey agency uses. For less serious deficiencies (with the ratings D or E, or F without substandard quality of care), the State survey agency may accept the nursing home's evidence of correction in lieu of conducting a followup survey to determine substantial compliance. For more serious deficiencies (with the ratings G through L, or F with substandard quality of care), the State survey agency must conduct a followup survey to determine substantial compliance.

Nursing Home Compare System

CMS uses survey data for every certified Medicare and Medicaid nursing home, including deficiencies and their ratings, in information provided to the public on its Nursing Home Compare Web site. 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 deficiencies and deficiency ratings that were identified during the three most recent standard surveys and the most recent 36 months of complaint surveys.

Oregon State Agency

In Oregon, the State agency 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. During CY 2014, the State agency had approximately 38 surveyors to conduct surveys of 139 nursing homes.

⁴ The State survey agency provides the certification information to CMS on Form CMS-1539, Medicare/Medicaid Certification and Transmittal (the Manual § 2762).

⁵ Examples of evidence of correction include sign-in sheets of those attending inservice training and interviews with training participants.

⁶ The State survey agency is not required to verify the correction of deficiencies with the ratings B or C; however, correction plans are still required for deficiencies with those ratings.

HOW WE CONDUCTED THIS REVIEW

According to CMS's deficiency data, the State agency identified 681 deficiencies that required a correction plan during CY 2014. We excluded from our review 187 deficiencies that (1) were not directly related to resident health services or (2) had the ratings *B* or *C*, which did not require verification of correction. The remaining 494 deficiencies had ratings that required the State agency to verify correction by either obtaining evidence of correction (447 deficiencies) or conducting a followup survey (47 deficiencies). We selected a stratified random sample of 100 deficiencies and reviewed State agency documentation to determine whether the State agency had verified the nursing homes' correction of the sampled deficiencies. We also interviewed State agency officials and employees regarding survey operations, quality assurance, and training.

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 describes our audit scope and methodology.

RESULTS OF REVIEW

On the basis of our review of the 100 sampled deficiencies, we determined that the State agency verified nursing homes' correction of deficiencies identified during surveys in CY 2014 in accordance with Federal requirements. Accordingly, this report contains no recommendations.

We also noted the following practices that the State agency followed, which may have helped to ensure its compliance with Federal requirements:

- The State agency conducted followup surveys to verify substantial compliance for less serious deficiencies (with ratings of *D*, *E*, or *F* without substandard quality of care) even though it was not required to do so.
- The State agency had forms for its surveyors to use when verifying nursing homes' correction of deficiencies. See Appendix C for examples of these forms.

APPENDIX A: RELATED OFFICE OF INSPECTOR GENERAL REPORTS

| Report Title | Report Number | Date Issued |
|--|--|--------------------|
| <i>Washington State Did Not Always Verify Correction of Deficiencies Identified During Surveys of Nursing Homes Participating in Medicare and Medicaid</i> | <u>A-09-13-02039</u> | 7/9/2015 |
| <i>Nursing Facilities' Compliance With Federal Regulations for Reporting Allegations of Abuse or Neglect</i> | <u>OEI-07-13-00010</u> | 8/15/2014 |
| <i>CMS's Reliance on California's Licensing Surveys of Nursing Homes Could Not Ensure the Quality of Care Provided to Medicare and Medicaid Beneficiaries</i> | <u>A-09-12-02037</u> | 6/4/2014 |
| <i>Adverse Events in Skilled Nursing Facilities: National Incidence Among Medicare Beneficiaries</i> | <u>OEI-06-11-00370</u> | 2/27/2014 |
| <i>Skilled Nursing Facilities Often Fail To Meet Care Planning and Discharge Planning Requirements</i> | <u>OEI-02-09-00201</u> | 2/27/2013 |
| <i>Federal Survey Requirements Not Always Met for Three California Nursing Homes Participating in the Medicare and Medicaid Programs</i> | <u>A-09-11-02019</u> | 2/27/2012 |
| <i>Unidentified and Unreported Federal Deficiencies in California's Complaint Surveys of Nursing Homes Participating in the Medicare and Medicaid Programs</i> | <u>A-09-09-00114</u> | 9/21/2011 |

APPENDIX B: AUDIT SCOPE AND METHODOLOGY

SCOPE

According to CMS's deficiency data, the State agency identified 681 deficiencies that required a correction plan during CY 2014. We excluded from our review 187 deficiencies that (1) were not directly related to resident health services or (2) had the ratings *B* or *C*, which did not require verification of correction. The remaining 494 deficiencies had ratings that required the State agency to verify correction by either obtaining evidence of correction (447 deficiencies) or conducting a followup survey (47 deficiencies). We selected for review a stratified random sample of 100 deficiencies.

We did not review the overall internal control structure of the State agency or the nursing homes associated with the selected sample items. Rather, we reviewed only those internal controls related to our objective.

We conducted our audit from November 2015 to January 2016 and performed fieldwork at the State agency's office in Salem, Oregon.

METHODOLOGY

To accomplish our objective, we:

- reviewed applicable Federal laws, regulations, and guidance;
- interviewed CMS officials to gain an understanding of the State agency's oversight responsibilities for nursing homes and CMS's guidance to the State agency regarding verification of corrections of deficiencies identified during nursing home surveys;
- interviewed State agency officials and employees regarding survey operations, quality assurance, and training;
- obtained from CMS's Nursing Home Compare Web site a database containing 681 deficiencies⁷ that required a correction plan and were identified during standard and complaint surveys of Oregon nursing homes in CY 2014;
- removed 187 deficiencies that:
 - were not directly related to resident health services⁸ or
 - had the ratings *B* or *C* (not requiring verification of correction);

⁷ This figure does not include A-rated deficiencies.

⁸ We excluded deficiencies that were related to administration; physical environment; residents' rights; admission, transfer, and discharge of residents; dietary services; and quality of life.

- developed a stratified random sample from the remaining 494 deficiencies by:
 - creating two strata, representing deficiencies that required the State agency to obtain, at a minimum, evidence of correction (stratum 1) and that required the State agency to conduct a followup survey (stratum 2) and
 - selecting a total of 100 sample units, consisting of 70 sample units from stratum 1 and 30 sample units from stratum 2;
- reviewed State agency documentation for each sampled deficiency to determine whether the State agency had verified the nursing home’s correction of the deficiency;⁹
- determined whether the State agency had certified the nursing homes that had the sampled 100 deficiencies; and
- discussed the results of our review with State agency officials.

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

⁹ Documentation included surveyor notes and resident review worksheets, if available.

APPENDIX C: STATE AGENCY SURVEY FORMS

Figure 1: The Tag Review/Consensus Form

| TAG REVIEW / CONSENSUS | | | | |
|---|------------|------------|--|----------------------|
| Conduct the tag review, with all team members present, before the exit, reaching consensus on whether each tag discussed is met or not met. Decide at this time who will write examples for each cited tag. For tags discussed as findings but not deficiencies, note the reasons for the decision not to cite. | | | | |
| Facility _____ | | Date _____ | | Name _____ |
| TAG #/ DESCRIPTION/SS Author of header | NOT MET | MET | EXAMPLES / AUTHORS | Universe / Extent |
| F157 Notification of changes | | x | Reviewed three resident for notification of family/physician when changes occurred – no concerns | |
| F281 Professional Standards of Practice | | X | Reviewed four residents for wound care- no concerns noted | |
| F309 Quality of care | | x | Reviewed three residents for following physician orders- no concerns noted | |
| F514 Accurate Clinical Records | | X | Reviewed three residents for accurate transcription of physician orders- Orders were accurately transcribed onto MAR/TAR –tech asst re Aleve for how often to give PRN | |

The State agency uses a State-specific form, the Tag¹⁰ Review/Consensus form, as an optional tool for surveyors to summarize the findings of surveys. The form is used to document the deficiencies reviewed during the surveys.

¹⁰ A tag is an alphanumeric code that represents a deficiency. For example, tag F309 is used to note a nursing home’s failure to provide necessary care and services as required by 42 CFR § 483.25 (Quality of Care).

Figure 2: Nursing Home Entrance Conference, Information Request, Form

| NURSING HOME ENTRANCE CONFERENCE | |
|---|---|
| Information requested from the Facility | |
| Facility: | [REDACTED] |
| Date: | 1/5/15 at 11:11 am by phone |
| Administrator: | [REDACTED] |
| DNS: | [REDACTED] |
| RNCMs: | [REDACTED] |
| | |
| <input checked="" type="checkbox"/> x | 1. List of residents by room number |
| <input checked="" type="checkbox"/> x | 2. Resident Census __91__ |
| <input checked="" type="checkbox"/> x | 3. Administrator's email address [REDACTED] |
| <input checked="" type="checkbox"/> x | 4. List of residents with changes in condition since 12/29 |
| <input checked="" type="checkbox"/> x | 5. List of residents with wound care orders since 12/29, identify if new orders |
| <input checked="" type="checkbox"/> x | 6. List of newly admitted/re-admitted residents since 12/29 |
| <input checked="" type="checkbox"/> x | 7. Copies of in-services noted in POC |
| <input checked="" type="checkbox"/> x | 8. Copies of audit tools |

The State agency uses the Nursing Home Entrance Conference, Information Request, form as an optional tool to request specific documents needed for followup surveys to verify nursing homes' substantial compliance with Federal participation requirements.