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

February 27, 2012

Report Number: A-09-11-02019

Ron Chapman, M.D., M.P.H.
Director & State Health Officer
California Department of Public Health
1615 Capitol 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 *Federal Survey Requirements Not Always Met for Three California 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.

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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. Please refer to report number A-09-11-02019 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

FEDERAL SURVEY REQUIREMENTS NOT ALWAYS MET FOR THREE CALIFORNIA NURSING HOMES PARTICIPATING IN THE MEDICARE AND MEDICAID PROGRAMS

Daniel R. Levinson
Inspector General

February 2012
A-09-11-02019

Office of Inspector General

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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 § 488.305(a) and in section 7200 of CMS's *State Operations Manual* (the Manual), Pub. No. 100-07, conduct standard surveys to determine whether nursing homes are in compliance with Federal participation requirements. A standard survey is an inspection to gather information about the quality of resident care furnished in a nursing home.

Federal regulations (42 CFR § 488.301) define a nursing home's noncompliance with Federal participation requirements as a deficiency. The State survey agency must report to the nursing home and CMS each deficiency identified during a survey, including the seriousness of the deficiency (deficiency rating). The State survey agency is required to follow guidance in the Manual when determining the deficiency rating. The deficiency rating guides the selection of the appropriate enforcement action, such as denial of payment for all new Medicare and/or Medicaid admissions and imposition of civil monetary penalties.

For all deficiencies except those with the lowest rating, Federal regulations (42 CFR § 488.402(d)) require nursing homes to submit correction plans for approval to the State survey agency or CMS. The Manual states that a correction plan must address five corrective action elements and specify exactly how each deficiency was or will be corrected. The Manual also requires the State survey agency to review the correction plans for appropriateness and completeness. After a correction plan is submitted, the Manual instructs the State survey agency to certify whether a nursing home is in substantial compliance with Federal participation requirements. 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.

The State survey agency must determine whether a nursing home is in substantial compliance by verifying correction of the identified deficiencies through an onsite review (followup survey) or obtaining evidence of correction. The deficiency rating guides which verification method the State survey agency uses. For less serious deficiencies, the State survey agency may accept evidence of correction in lieu of conducting a followup survey to determine substantial compliance.

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.

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.

OBJECTIVE

Our objective was to determine whether the Division determined deficiency ratings, ensured the adequacy of correction plans, and verified nursing homes' correction of identified deficiencies in accordance with Federal requirements.

SUMMARY OF FINDINGS

From 2006 through 2008, the Division did not always determine deficiency ratings, ensure the adequacy of correction plans, and verify nursing homes' correction of identified deficiencies in accordance with Federal requirements. For 3 nursing homes that we judgmentally selected, the Division:

- understated the deficiency ratings for 23 of 178 deficiencies (13 percent), including 9 deficiencies that involved actual harm to resident health and safety;

- did not ensure that 40 of 52 correction plans (77 percent) contained specific information addressing the 5 corrective action elements for the deficiencies identified; and

- did not verify the nursing homes' correction of identified deficiencies by obtaining evidence of correction for 4 of 9 standard surveys (44 percent) before certifying substantial compliance with Federal participation requirements when followup surveys were not conducted.

Understated deficiency ratings result in inaccurate information on the Nursing Home Compare Web site. The ratings also may affect recommended enforcement actions and the Division's method of verifying nursing homes' correction of identified deficiencies before certifying substantial compliance with Federal participation requirements. In addition, the Division district offices' practices of not always ensuring the adequacy of correction plans and verifying correction of identified deficiencies by obtaining evidence of correction could have contributed to deficiencies that recurred three or more times from 2006 through 2008. However, we could not conclusively determine that district office practices contributed to these recurring deficiencies because a review of the recurrence of deficiencies under other circumstances was beyond the scope of our review.

The Division district offices did not always follow guidance in the Manual. According to the district office supervisors, surveyors used their judgment and interpretation of Manual guidance in determining deficiency ratings. In addition, surveyors used their judgment in ensuring the

adequacy of correction plans and verifying nursing homes' correction of identified deficiencies. Based on our findings that surveyors understated deficiencies, did not ensure that corrective action plans contained specific information addressing the five corrective action elements, and did not verify correction of identified deficiencies, it appears that the surveyors used their judgment in contradiction to guidance in the Manual.

RECOMMENDATIONS

We recommend that the Division provide guidance and training to district offices to ensure that surveyors comply with the Manual in (1) determining appropriate deficiency ratings, (2) ensuring that correction plans contain specific information addressing the five corrective action elements for each deficiency identified, and (3) verifying correction of identified deficiencies by obtaining evidence of correction when followup surveys are not required.

AUDITEE COMMENTS

In its written comments on our draft report, the Division agreed with our recommendations and provided information on actions that it had taken and planned to take based on our recommendations. The Division stated that it had included the five corrective action elements as part of its training program in 2011. In addition, the Division stated that it will include our training recommendations in its 2012 and 2013 training academies for new, advanced, and supervisory surveyors.

As part of its comments, the Division provided lesson plans for the training curriculum. The Division's comments, excluding the lesson plans, are included as the Appendix.

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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 in 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 § 488.305(a) and in section 7200 of CMS's *State Operations Manual* (the Manual), Pub. No. 100-07, conduct standard surveys to determine whether nursing homes are in compliance with Federal participation requirements.[1] 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. Federal regulations (42 CFR § 488.308(a)) require that a standard survey be conducted at least once every 15 months.

Federal regulations (42 CFR § 488.308(e)(2)) also require the State survey agency to review all nursing home complaint allegations.[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. Federal regulations (42 CFR § 488.301) define noncompliance with Federal participation requirements as a deficiency. Examples of noncompliance include a nursing home's failure to provide necessary

[1] CMS and the State survey agency certify compliance with Federal participation requirements for State-operated and non-State-operated nursing homes, respectively.

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

treatment to promote healing of a resident's pressure sore and failure to provide nutritional services.

Deficiencies and Deficiency Ratings

The State survey agency must report each deficiency identified during a survey on the appropriate form[3] 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.

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

Correction Plans

Federal regulations (42 CFR § 488.402(d)) require nursing homes to submit for approval correction plans to the State survey agency or CMS for all deficiencies, except for deficiencies with a rating that represents the severity and scope levels of potential for minimal harm and isolated, respectively. Section 7304D[4] of the Manual states that a correction plan must address five corrective action elements. Section 2728B of the Manual states that a correction plan must specify exactly how each deficiency was or will be corrected.

After a correction plan is submitted, section 7317 of the Manual instructs the State survey agency to certify whether a nursing home is in substantial compliance with Federal participation requirements. 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. The State survey agency must determine whether there is substantial compliance by verifying correction of the identified deficiencies through an onsite review (followup survey) or

[3] 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.

[4] When CMS revised the chapter 7 section designations in a September 10, 2010, revision of the Manual, section 7304D changed to 7304.4.

obtaining evidence of correction.[5] The deficiency rating guides which verification method the State survey agency uses. For less serious deficiencies, the State survey agency may accept evidence of correction in lieu of conducting a followup survey to determine substantial compliance. Further, section 2762 of the Manual requires the State survey agency to certify whether the nursing home is in substantial compliance and provide the certification information to CMS on Form CMS-1539, Medicare/Medicaid Certification and Transmittal (certification letter).

Nursing Home Compare System

CMS uses survey data for every certified Medicare and Medicaid nursing home, including quality-of-care 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.

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/or Medicaid program. The Division also determines whether nursing homes comply with State laws and regulations. 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.

Within the Division, the Staff Education and Quality Improvement Section (the QI unit) performs training and quality improvement functions, including audits of district offices, development of training and education for surveyors, reviews of enforcement actions, and reviews of deficiencies that involve actual harm or substandard quality of care.[6]

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

[6] 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.

Prior Office of Inspector General Report

In September 2011, we issued a report on the Division's complaint survey process from 2006 through 2008 at three nursing homes that we judgmentally selected.[7] For 24 of 47 complaint surveys, we identified 41 deficiencies for which the Division did not identify and report deficiencies for unmet Federal participation requirements; instead, the Division cited only unmet State requirements. We recommended 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. In its written comments, the Division disagreed with our recommendation, stating that there were insufficient Federal funds to use the Federal process.

OBJECTIVE, SCOPE, AND METHODOLOGY

Objective

Our objective was to determine whether the Division determined deficiency ratings, ensured the adequacy of correction plans, and verified nursing homes' correction of identified deficiencies in accordance with Federal requirements.

Scope

We reviewed deficiencies and correction plans for standard, complaint, and followup surveys conducted from 2006 through 2008 at three California nursing homes that we judgmentally selected.[8] 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 pressure sores and/or infections (indicating potential 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 excluded from our review the nursing homes' self-reported and physical environment deficiencies (42 CFR § 483.70). In determining whether the Division obtained evidence of correction, we reviewed only the nursing home certification letters that the Division submitted to CMS.

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.

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[7] *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.

[8] We reviewed one standard survey from December 2005 because a standard survey was not conducted in 2006 for one of the nursing homes.

Methodology

To accomplish our objective, we

- reviewed applicable Federal laws, regulations, and guidance and the State Medicaid plan;

- interviewed CMS Region IX program officials regarding the Division's oversight responsibilities and CMS's management information systems for nursing homes;

- interviewed Division management regarding survey operations, quality assurance, and training;

- interviewed district office supervisors and staff responsible for surveys;

- reviewed Division training manuals for supervisors;

- reviewed 178 deficiencies identified in 9 standard and 2 followup surveys conducted at the 3 judgmentally selected nursing homes and compared the deficiency statements with guidance provided in the Manual to determine whether the surveyors determined appropriate deficiency ratings (i.e., severity and scope levels);

- reviewed 52 correction plans for 52 judgmentally selected deficiencies identified during standard surveys to determine whether the Division ensured that the plans contained specific information addressing the 5 corrective action elements;

- requested the QI unit to review 20 deficiency ratings[9] that we determined to be potentially understated and 40 correction plans that we determined did not contain specific information addressing the 5 corrective action elements;

- reviewed the Division's certification letters to CMS for 9 standard surveys to determine whether the Division verified nursing homes' correction of identified deficiencies by obtaining evidence of correction before certifying the nursing homes' substantial compliance with Federal participation requirements when followup surveys were not conducted; and

- evaluated the 178 deficiencies identified in 9 standard and 2 followup surveys, as well as 60 deficiencies identified in 47 complaint surveys,[10] for trends of recurring deficiencies from 2006 through 2008.

[9] We requested the QI unit to review only the scope for 20 deficiencies because the Manual does not provide specific examples for determining scope levels; it only provides definitions of scope levels.

[10] The 47 complaint surveys were included in our September 21, 2011, report (A-09-09-00114). For the 47 complaint surveys, we identified the applicable unmet Federal participation requirement using the statement describing the deficiency when the Division did not identify or report an unmet Federal participation requirement.

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 RECOMMENDATIONS

From 2006 through 2008, the Division did not always determine deficiency ratings, ensure the adequacy of correction plans, and verify nursing homes' correction of identified deficiencies in accordance with Federal requirements. For 3 nursing homes that we judgmentally selected, the Division:

- understated the deficiency ratings for 23 of 178 deficiencies (13 percent), including 9 deficiencies that involved actual harm to resident health and safety;

- did not ensure that 40 of 52 correction plans (77 percent) contained specific information addressing the 5 corrective action elements for the deficiencies identified; and

- did not verify the nursing homes' correction of identified deficiencies by obtaining evidence of correction for 4 of 9 standard surveys (44 percent) before certifying substantial compliance with Federal participation requirements when followup surveys were not conducted.

Understated deficiency ratings result in inaccurate information on the Nursing Home Compare Web site. The ratings also may affect recommended enforcement actions and the Division's method of verifying nursing homes' correction of identified deficiencies before certifying substantial compliance with Federal participation requirements. In addition, the Division district offices' practices of not always ensuring the adequacy of correction plans and verifying correction of identified deficiencies by obtaining evidence of correction could have contributed to deficiencies that recurred three or more times from 2006 through 2008. However, we could not conclusively determine that district office practices contributed to these recurring deficiencies because a review of the recurrence of deficiencies under other circumstances was beyond the scope of our review.

The Division district offices did not always follow guidance in the Manual. According to the district office supervisors, surveyors used their judgment and interpretation of Manual guidance in determining deficiency ratings. In addition, surveyors used their judgment in ensuring the adequacy of correction plans and verifying nursing homes' correction of identified deficiencies. Based on our findings that surveyors understated deficiencies, did not ensure that corrective action plans contained specific information addressing the five corrective action elements, and did not verify correction of identified deficiencies, it appears that the surveyors used their judgment in contradiction to guidance in the Manual.

UNDERSTATED DEFICIENCY RATINGS

Section 2712 of the Manual states that survey protocols and interpretive guidelines are authorized interpretations of mandatory requirements set forth in provisions of Federal laws and regulations and are to be used in determining a provider's compliance with Federal participation requirements. Further, section 7200 of the Manual instructs surveyors to follow survey procedures in Appendix P when conducting surveys of nursing homes. Appendix P of the Manual provides guidelines for determining deficiency ratings, including severity and scope levels. In addition, Appendix PP of the Manual provides interpretive guidelines regarding Federal participation requirements and includes examples of severity levels.

Section 7400E[11] of the Manual provides information on the severity and scope levels used to determine deficiency ratings and the letters representing those ratings. Table 1 shows the letter for each deficiency rating and its severity and scope levels.

Table 1: Deficiency Ratings for Nursing Homes

SEVERITY	SCOPE		
	Isolated	Patterned	Widespread
Immediate jeopardy	J	K	L
Actual harm that is not immediate	G	H	I
No actual harm with potential for more than minimal harm	D	E	F
No actual harm with potential for minimal harm	A	B	C

The Division's district offices understated deficiency ratings for 23 of 178 deficiencies (13 percent), including severity levels for 10 deficiencies (9 involving actual harm) and scope levels for 13 deficiencies.

Example of Understated Severity

In a 2007 standard survey for nursing home A, the district office cited a deficiency related to urinary incontinence (42 CFR § 483.25(d)). The district office determined that the nursing home failed to prevent urinary tract infections by not continuously monitoring indwelling catheters for four residents.

The district office reported the following deficiency information for one of the four residents: On September 21, 2006, one resident was transferred to a hospital emergency room for evaluation of a midback surgical wound and blood in the urine. On September 22, 2006, the resident was discharged from the emergency room with a diagnosis of a bladder infection, i.e., lower urinary tract infection, and was readmitted to the nursing home. At the time of discharge, the emergency room nurse informed the nursing home nurse that the resident was returning with no medication orders and a followup visit with the primary physician was needed within 2 or 3

[11] In the September 10, 2010, revision of the Manual, section 7400E changed to 7400.5.

days. However, there was no documented evidence that the nursing home treated the resident for blood in the urine and a bladder infection. On September 29, 2006, "the charge nurse [at the nursing home] documented the resident was lethargic, with foul smelling vaginal discharge and some blood in the urinary catheter." The attending physician again ordered the resident to be transferred to the hospital for evaluation.

The district office assigned the deficiency rating *D*, indicating a severity level of potential for more than minimal harm, rather than assigning the deficiency rating *G*, indicating a severity level of actual harm. Appendix PP of the Manual provides an example of actual harm related to urinary incontinence: "As a result of a facility's noncompliance, the resident … developed recurrent symptomatic [urinary tract infections] …. As a result of the facility's noncompliance, the catheter was improperly managed, resulting in catheter-related pain, bleeding …." Based on Appendix PP's guidelines, the deficiency should have been rated *G* because the resident developed a recurrent urinary tract infection, which resulted in blood in the catheter.

Example of Understated Scope

In a 2007 standard survey for nursing home B, the district office cited a deficiency related to infection control (42 CFR § 483.65(a)). The district office determined that six residents used respiratory equipment not labeled or dated to comply with infection control standards; one resident had oxygen tubing on the floor and the oxygen concentrator in the "on" position when the resident was not using the oxygen; and one resident with methicillin-resistant *Staphylococcus aureus*, i.e., a staph infection, was not properly isolated and shared a room with another resident who did not have a staph infection. In addition, the district office determined that the nursing home had 22 uncovered tracheotomy suction canisters that contained suctioned sputum from residents with tracheotomies.

The district office assigned the deficiency rating *D*, indicating an isolated scope, rather than assigning the deficiency rating *E*, indicating a patterned scope. Section IV.C. of Appendix P of the Manual defines a patterned scope level as "when more than a very limited number of residents are affected, and/or more than a very limited number of staff are involved, and/or the situation has occurred in several locations, and/or the same resident(s) have been affected by repeated occurrences of the same deficient practice." Based on Appendix P's guidelines, the deficiency should have been rated *E* because more than a very limited number of residents were affected. The QI unit agreed that the district office should have assigned an *E* rating.

INADEQUATE CORRECTION PLANS

For deficiencies rated *B* or higher, Federal regulations (42 CFR § 488.402(d)) require nursing homes to submit for approval correction plans to the State agency or CMS. Section 2728C of the Manual says that the State survey agency is responsible for reviewing nursing homes' correction plans for appropriateness, legibility, and completeness.

Section 7304D of the Manual states that a correction plan must address the following five corrective action elements:

- how corrective action will be taken for those residents found to be affected by the deficient practice,

- how the facility will identify other residents potentially affected by the deficient practice,

- what measures will be put in place or systemic changes made to ensure that the deficient practice will not recur,

- how the facility plans to monitor its performance to make sure that solutions are sustained, and

- inclusion of the dates when corrective action will be completed.

Further, section 2728B of the Manual states that a correction plan "must be specific and realistic, stating exactly how the deficiency was or will be corrected."

The Division's district offices did not ensure that 40 of 52 correction plans (77 percent) contained specific information addressing the 5 corrective action elements for the deficiencies identified.

The Division's QI unit reviewed the 40 correction plans and stated:

> Generally … the corrective action plans lacked sufficient corrective actions specific to the identified deficient practice(s), effective identification of other residents having the potential to be affected, sufficient provision for systemic changes to ensure that the deficient practice will not recur, effective oversight and/or by appropriate facility staff and/or appropriate timeframes, and effective [quality assurance] system integration plan and/or evaluation for effectiveness.

LACK OF VERIFICATION OF DEFICIENCY CORRECTION

Federal regulations (42 CFR §§ 488.330(a)(1) and (b)(1)) require the State survey agency to certify a nursing home's substantial compliance with Federal participation requirements and determine whether the nursing home is eligible to participate in the Medicare and/or Medicaid program. A nursing home is in substantial compliance when identified deficiencies have ratings no higher than *A*, *B*, or *C*.

Section 7317 of the Manual requires the State survey agency to conduct a followup survey (i.e., an onsite review) to determine whether a nursing home is in substantial compliance for deficiencies rated *G* through *L*, or *F* involving substandard quality of care. For deficiencies rated *D* or *E*, or *F* not involving substandard quality of care, the State survey agency has the option to accept evidence of correction to confirm substantial compliance in lieu of conducting a followup survey.

For four of nine standard surveys reviewed, the Division's district offices did not verify correction of identified deficiencies either through conducting followup surveys or by obtaining

evidence of correction before certifying the nursing homes' substantial compliance with Federal participation requirements.

For example, one district office indicated on the 2007 certification letter for nursing home B, "Based upon an acceptable [correction plan] and allegation of compliance, recommend recertification." For the 2007 standard survey of nursing home B, the district office identified a total of 16 deficiencies with the rating *D*. Pursuant to the Manual, the 16 deficiencies required evidence of correction in order for the Division to certify the nursing home's substantial compliance with Federal participation requirements.

IMPACT OF FINDINGS

Understated deficiency ratings result in inaccurate information on the Nursing Home Compare Web site. The ratings also may affect the recommended enforcement actions and the Division's method of verifying nursing homes' correction of identified deficiencies before certifying substantial compliance with Federal participation requirements.[12] In addition, the district offices' practices of not always ensuring the adequacy of correction plans and verifying the correction of identified deficiencies by obtaining evidence of correction could have contributed to deficiencies that recurred three or more times from 2006 through 2008. However, we could not conclusively determine that district office practices contributed to these recurring deficiencies because a review of the recurrence of deficiencies under other circumstances was beyond the scope of our review.

Impact on Nursing Home Compare

Understated deficiency ratings result in inaccurate information provided to the public for the nursing homes on the Nursing Home Compare Web site. The Web site reports each deficiency's severity as "level of harm" and scope as "residents affected." Further, a nursing home's five-star rating could be affected because it is based in part on the deficiency ratings. We could not determine whether the three nursing homes reviewed would have received a lower star rating because of the understated deficiency ratings.

Potential Impact on Enforcement Actions and Method of Verifying Correction of Deficiencies

Understated deficiency ratings may affect the recommended enforcement actions and the Division's method of verifying correction of identified deficiencies before certifying nursing homes' substantial compliance with Federal participation requirements:

- Recommended enforcement actions are based on the deficiency rating. A more severe enforcement action is required for a higher deficiency rating. For example, a *D* rating requires less severe enforcement, such as in-service training and/or State monitoring of

[12] A deficiency rating that was understated within the same severity level may not require additional enforcement remedies or a followup survey to verify correction of identified deficiencies before certification of substantial compliance with Federal participation requirements.

the nursing home. In contrast, a *G* rating requires harsher enforcement, such as denial of payment for new resident admissions and imposition of civil monetary penalties.

- Verification methods are based on the deficiency rating. Deficiencies rated higher, such as *G*, require a followup survey to verify whether the nursing home has addressed the identified deficiencies. In contrast, deficiencies rated lower, such as *D*, do not require a followup survey because the surveyor could accept evidence of correction in lieu of conducting a followup survey.

Potential Impact on Recurrence of Deficiencies

The district offices' practices of not always ensuring the adequacy of correction plans and verifying correction of deficiencies by obtaining evidence of correction could have contributed to recurring deficiencies. For the 9 standard, 2 followup, and 47 complaint surveys, the district offices cited 22 deficiencies that recurred 3 or more times from 2006 through 2008: 10 deficiencies for nursing home A, 9 deficiencies for nursing home B, and 3 deficiencies for nursing home C. However, we could not conclusively determine that district office practices contributed to these recurring deficiencies because a review of the recurrence of deficiencies under other circumstances was beyond the scope of our review.

Table 2 provides examples of the deficiencies that recurred three or more times for each nursing home and the months and years in which each deficiency was identified.

Table 2: Examples of Recurring Deficiencies by Nursing Home

Nursing Home	Deficiency Category	2005 Survey	2006 Surveys	2007 Surveys	2008 Surveys
A	Pressure sores (42 CFR § 483.25(c))		July October	September	December
B	Pharmacy services (42 CFR § 483.60(a))		January May August	June	June
C	Comprehensive care plan (42 CFR § 483.20(k))	December		March	June

FAILURE TO FOLLOW FEDERAL GUIDANCE

The Division district offices did not always follow guidance in the Manual. According to the district office supervisors, surveyors used their judgment and interpretation of Manual guidance in determining deficiency ratings. In addition, surveyors used their judgment in ensuring the adequacy of correction plans and verifying nursing homes' correction of identified deficiencies. Based on our findings that surveyors understated deficiencies, did not ensure that corrective action plans contained specific information addressing the five corrective action elements, and did not verify correction of identified deficiencies, it appears that the surveyors used their judgment in contradiction to the guidance in the Manual.

Our review of the Division's training manuals revealed that supervisor training on acceptable correction plans was scheduled for an hour-and-a-half-long session in conjunction with reviewing the Form CMS-2567. This training may not have been effective because the district offices accepted 77 percent of correction plans that we reviewed, even though the correction plans did not contain specific information addressing the 5 corrective action elements for the deficiencies identified. Division officials stated that they were unaware of the requirements in section 2728B of the Manual, which provides that a correction plan "must be specific and realistic, stating exactly how the deficiency was or will be corrected." The QI unit indicated that training on correction plans increased beginning in late 2008.

Division officials and the district office supervisors stated that it is standard practice to review only the information provided in a nursing home's correction plan to verify the correction of identified deficiencies before certifying the nursing home's substantial compliance with Federal participation requirements when a followup survey was not required. On a case-by-case basis, the district office may request evidence of correction, or the nursing home may voluntarily provide evidence of correction for deficiencies rated *D* or *E*, or *F* not involving substandard quality of care. The Division refers to the process of certifying nursing homes' substantial compliance based on correction plans without evidence of correction as "paper compliance."

RECOMMENDATIONS

We recommend that the Division provide guidance and training to district offices to ensure that surveyors comply with the Manual in (1) determining appropriate deficiency ratings, (2) ensuring that correction plans contain specific information addressing the five corrective action elements for each deficiency identified, and (3) verifying correction of identified deficiencies by obtaining evidence of correction when followup surveys are not required.

AUDITEE COMMENTS

In its written comments on our draft report, the Division agreed with our recommendations and provided information on actions that it had taken and planned to take based on our recommendations. The Division stated that it had included the five corrective action elements as part of its training program in 2011. In addition, the Division stated that it will include our training recommendations in its 2012 and 2013 training academies for new, advanced, and supervisory surveyors.

As part of its comments, the Division provided lesson plans for the training curriculum. The Division's comments, excluding the lesson plans, are included as the Appendix.

OTHER MATTER: NONCOMPLIANT FOLLOWUP SURVEY PRACTICE

The Division's followup survey practice for deficiencies identified through complaint surveys does not comply with the State Medicaid plan or the Division's policy and procedures. The State Medicaid plan, approved February 26, 1996, stipulates that complaint surveys "requiring a formal [correction plan] receive a followup [survey] for determination of compliance." The Division's complaint policies and procedures also require surveyors to conduct followup surveys

for deficiencies identified through complaint surveys that require a correction plan. However, according to the Division, a followup survey is conducted only when a complaint survey identified serious violations of State regulations or statutes that subject the nursing home to a financial penalty.

APPENDIX

APPENDIX: AUDITEE COMMENTS

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

RON CHAPMAN, MD, MPH
Director

EDMUND G. BROWN JR.
Governor

JAN 31 2012

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 Lori Ahlstrand:

Enclosed is the California Department of Public Health's (CDPH) response to the Department of Health & Human Services (HHS) Office of Inspector General (OIG) draft report, entitled: "Federal Survey Requirements Not Always Met for Three California Nursing Homes Participating in the Medicare and Medicaid Programs." CDPH appreciates the opportunity to respond.

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

Sincerely,

Kathleen Billingsley for Dr. Ron Chapman

Ron Chapman, MD, MPH
Director & State Health Officer

Enclosure

California Department of Public Health Response to the Office of Inspector General
Draft Report: Federal Survey Requirements Not Always Met for Three California
Nursing Homes Participating in the Medicare and Medicaid Programs
January 2012
Report A-09-11-02019

RECOMMENDATION 1:

We recommend that the Division provide guidance and training to district offices to ensure that surveyors comply with the Manual in determining appropriate deficiency ratings.

CDPH Response 1:

The California Department of Public Health (CDPH) agrees with the Office of Inspector General's (OIG) recommendation to provide guidance and training to the district offices to ensure compliance with the Federal State Operations Manual (Manual) in determining appropriate deficiency ratings. The Licensing and Certification (L&C) Program has a New Surveyor Long-Term Care (LTC) Academy that every new surveyor must attend. This academy provides training on the nursing home survey process, which includes the Principles of Documentation, Principles of Investigation, and briefly addresses assignment of severity and scope for federal deficiencies and acceptable plans of corrections with the five corrective action elements Appendix A provides the * lesson plan for "Introduction to Deficiency Writing: Principles of Documentation" module for the New Surveyor Academy. In 2012, L&C will develop and provide mandatory statewide in-service training to all district office survey staff that will incorporate the three OIG recommendations: 1) determining appropriate deficiency ratings, 2) the five corrective action elements for an acceptable plan of correction, and 3) correction of identified deficiencies by obtaining evidence of correction when follow-up surveys are not required. L&C will give this webinar training twice in 2012 and will archive it for later use.

Additionally, L&C will include the OIG training recommendations in the Supervisor Academy in April 2012 and the Advanced Surveyor Academy in 2013. Appendix B provides an outline of how to determine appropriate deficiency ratings. L&C holds these academies every other year, in opposite years, to experienced surveyors, supervisors, and managers as refreshers on federal survey processes. CDPH has invited the Centers for Medicare and Medicaid (CMS) Region IX Long-Term Care Manager and her staff to present at the April 2012 Supervisor's Academy. CDPH asked CMS to discuss the findings in OIG report 09-09-00114 (Unidentified and Unreported Federal Deficiencies in California's Complaint Surveys of Nursing Homes Participating in the Medicare and Medicaid Programs) and OIG report 09-11-02019 (California Department of Public Health Response to the Office of Inspector General Draft Report: Federal Survey Requirements Not Always Met for Three California Nursing Homes Participating in the Medicare and Medicaid Programs). CMS will reinforce the requirements established in federal regulations for federal investigation of complaints and facility-reported incidents, appropriated scoping of severity of substantiated findings, review of

***Office of Inspector General Note:** We excluded from the Appendix the lesson plans for the training curriculum.

the elements for an acceptable plan of correction, and review of regulations for follow-up on-site revisits and/or acceptance of credible evidence for correction of cited deficiencies.

In the latter part of 2012, L&C will review deficiency ratings assigned by district offices for quality assurance monitoring and to assess the effectiveness of the training.

RECOMMENDATION 2:

We recommend that the Division provide guidance and training to district offices to ensure that surveyors comply with the Manual in ensuring that the corrective action plans contain specific information addressing the five corrective action elements for each deficiency identified.

CDPH Response 2:

CDPH agrees with the OIG audit recommendation to provide guidance and training to district offices to ensure surveyors comply with the Manual in ensuring that the corrective action plans contain specific information addressing the five corrective action elements for each deficiency identified.

L&C included the five corrective action elements in the April 2011 Advanced Academy training curriculum (see Appendix C). L&C also incorporated the five corrective action elements for an acceptable plan of correction into the New Surveyor LTC Academy in early 2011.

In addition, on June 30, 2011, L&C implemented mandatory statewide in-service training (See Appendix D) to address the five corrective action elements. The in-service training was given to all of the field district office managers, supervisors and surveyors involved in the federal survey process. L&C added the three OIG training recommendations to the Supervisor Academy scheduled for April 2012 and the Advanced Surveyor Academy that will take place in 2013.

In 2012, L&C will develop and provide mandatory statewide training, via webinar and archived for later use, to all district offices and continue providing plan of correction and deficiency training in the New Surveyor LTC Academy. The Advanced Surveyor Academy and Supervisor Academy will contain training for all three training recommendations submitted by OIG.

In the latter part of 2012, L&C will review will plans of corrections from 15 district office for quality assurance monitoring and to assess the effectiveness of the training.

RECOMMENDATION 3:

We recommend that the Division provide guidance and training to district offices to ensure that surveyors comply with the Manual in verifying correction of

identified deficiencies by obtaining evidence of correction when follow-up surveys are not required.

CDPH Response 3:

CDPH agrees with the OIG audit recommendation to provide guidance and training to district offices to ensure that surveyors comply with the Manual in verifying correction of identified deficiencies by obtaining evidence of correction when follow-up surveys are not required.

L&C will update the plan of correction training to instruct surveyors to obtain evidence from the provider that correction has been completed per the plan of correction. The New Surveyor LTC Academy, the Supervisor Training Academy, and the mandatory statewide webinar training will incorporate the five corrective action elements and the requirement for evidence of correction

In the latter part of 2012, L&C will review will plans of corrections from 15 district offices for quality assurance monitoring and to assess the effectiveness of the training.