

Department of Health and Human Services

**OFFICE OF  
INSPECTOR GENERAL**

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

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# *Office of Inspector General*

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## Report in Brief

Date: November 2019

Report No. A-09-18-02009

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



### Why OIG Did This Audit

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

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

### How OIG Did This Audit

Of the 1,202 nursing homes in California that participated in Medicare or Medicaid, we selected a nonstatistical sample of 20 nursing homes based on various factors, including the number of high-risk deficiencies that California reported to CMS. We conducted unannounced site visits at these nursing homes from September to December 2018 to check for life safety violations and review the nursing homes' emergency preparedness. We did not include deficiencies for one nursing home in our report because the home was destroyed by a wildfire after our site visit.

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

### What OIG Found

California did not ensure that selected nursing homes in the State that participated in the Medicare or Medicaid programs complied with CMS requirements for life safety and emergency preparedness. During our site visits, we identified deficiencies in areas related to life safety and emergency preparedness at all 19 nursing homes that we reviewed. Specifically, we found 137 instances of noncompliance with life safety requirements related to building exits, smoke barriers, and smoke partitions; fire detection and suppression systems; hazardous storage areas; smoking policies and fire drills; and electrical equipment testing and maintenance. We also found 188 instances of noncompliance with emergency preparedness requirements related to written emergency plans; emergency power; plans for evacuation, sheltering in place, and tracking residents and staff during and after an emergency; emergency communications plans; and emergency plan training and testing. As a result, nursing home residents at the 19 nursing homes were at increased risk of injury or death during a fire or other emergency.

The identified deficiencies occurred because nursing homes lacked adequate management oversight and had high staff turnover. In addition, California did not adequately follow up on deficiencies previously cited, ensure that surveyors were consistently enforcing CMS requirements, or have a standard life safety training program for all nursing home staff (not currently required by CMS).

### What OIG Recommends and California Comments

We recommend that California (1) follow up with the 19 nursing homes to ensure that corrective actions have been taken regarding the deficiencies we identified, (2) conduct more frequent site surveys at nursing homes to follow up on deficiencies, (3) ensure that all surveyors consistently enforce CMS requirements, and (4) work with CMS to develop life safety training for nursing home staff.

California concurred with our first and third recommendations and described actions that it had taken or planned to take to address the recommendations. However, California did not concur with our second and fourth recommendations. After reviewing California's comments, we maintain that our findings and recommendations are valid.

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## INTRODUCTION

### WHY WE DID THIS AUDIT

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

As part of its oversight activities, the Office of Inspector General (OIG) is conducting a series of audits nation-wide to assess compliance with these new life safety and emergency preparedness requirements. This audit focuses on selected nursing homes in California.<sup>1</sup>

### OBJECTIVE

Our objective was to determine whether the California Department of Public Health (State agency) ensured that selected nursing homes in California that participated in the Medicare or Medicaid programs complied with CMS requirements for life safety and emergency preparedness.

### BACKGROUND

#### Medicare and Medicaid Coverage of Nursing Homes

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

#### Requirements for Life Safety and Emergency Preparedness

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

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<sup>1</sup> We already issued a report covering New York State, entitled *New York Should Improve Its Oversight of Selected Nursing Homes' Compliance With Federal Requirements for Life Safety and Emergency Preparedness (A-02-17-01027)*, issued August 20, 2019.

*Facilities Code* (NFPA 99).<sup>2</sup> CMS lists applicable requirements on Form CMS-2786R, Fire Safety Survey Report.<sup>3</sup> Federal regulations on emergency preparedness (42 CFR § 483.73) include specific requirements for nursing homes' emergency plans and reference the *Standard for Emergency and Standby Power Systems* (NFPA 110) as part of these requirements.<sup>4</sup> CMS lists applicable requirements on its *Emergency Preparedness Surveyor Checklist*.<sup>5</sup>

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

## **Responsibilities for Life Safety and Emergency Preparedness**

In California, the State agency oversees nursing homes and is responsible for ensuring that nursing homes comply with Federal, State, and local regulations. Under an arrangement with CMS referred to as a "section 1864 agreement," the State agency is responsible for completing life safety and emergency preparedness surveys not later than once every 15 months at nursing homes that participate in Medicare or Medicaid.<sup>6</sup> However, the State agency may survey nursing homes more frequently to confirm that they corrected previously cited deficiencies.<sup>7</sup>

Management and staff at nursing homes are ultimately responsible for ensuring the safety and well-being of nursing home residents and for complying with Federal, State, and local regulations. They are responsible for ensuring that facility systems, such as furnaces, kitchen equipment, generators, sprinkler and fire alarm systems, elevators, and other equipment, are properly installed, tested, and maintained. They are also responsible for establishing and

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<sup>2</sup> CMS adopted the 2012 edition of both publications in a final rule published in 81 Fed. Reg. 26872 (May 4, 2016).

<sup>3</sup> Form CMS-2786R is available online at <https://www.cms.gov/Medicare/CMS-Forms/CMS-Forms/CMS-Forms-Items/CMS009335.html>. Accessed on May 21, 2019.

<sup>4</sup> CMS adopted the 2010 edition of NFPA 110 in a final rule published in 81 Fed. Reg. 63860, 63929 (Sept. 16, 2016).

<sup>5</sup> CMS provides online guidance for emergency preparedness at <https://www.cms.gov/medicare/provider-enrollment-and-certification/surveycertemergprep/emergency-prep-rule.html>. Accessed on May 21, 2019.

<sup>6</sup> The Act §§ 1819(g)(2)(A)(iii) and 1919(g)(2)(A)(iii). Under the agreement, the State agency agrees to carry out the provisions of sections 1864, 1874, and related provisions of the Act. In Los Angeles County, the county performs surveys under a contract with the State agency.

<sup>7</sup> 42 CFR § 488.308(c). The State agency generally conducts life safety surveys every 12 to 15 months and will follow up on deficiencies either through a site visit or by reviewing documentation submitted by the nursing home depending on the nature and severity of the deficiency. For 10 of the 20 nursing homes we visited, the State agency conducted its 3 most recent life safety surveys no more frequently than every 12 to 15 months. For nine nursing homes, the State agency conducted life safety surveys no more frequently than every 9 to 15 months. For one nursing home, the State agency conducted these surveys every 4 to 5 months. In California, the new emergency preparedness requirements were covered in the life safety surveys conducted after November 15, 2017.

maintaining an emergency preparedness program, including an emergency plan that is updated and tested regularly.

## **HOW WE CONDUCTED THIS AUDIT**

As of June 2018, there were 1,202 nursing homes in California that participated in the Medicare or Medicaid programs. We selected for our audit a nonstatistical sample of 20 of these nursing homes based on various factors, including the number of high-risk deficiencies that the State agency reported to CMS's ASPEN system and the potential risk of environmental threats, such as wildfire, earthquake, and extreme heat, taking into account the nursing homes' locations.<sup>8</sup>

We conducted unannounced site visits at the 20 nursing homes from September to December 2018. During the site visits, we checked for life safety violations and reviewed the nursing homes' emergency preparedness.

This report includes the results of our audit for only 19 nursing homes because 1 of the 20 nursing homes we selected for audit was destroyed by a wildfire after our site visit.<sup>9</sup>

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.

## **FINDINGS**

The State agency did not ensure that selected nursing homes in California that participated in the Medicare or Medicaid programs complied with CMS requirements for life safety and emergency preparedness. During our site visits, we identified deficiencies in areas related to life safety and emergency preparedness at all 19 nursing homes that we reviewed:

- We found 137 instances of noncompliance with life safety requirements related to building exits, smoke barriers, and smoke partitions;<sup>10</sup> fire detection and suppression

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

<sup>9</sup> We omitted from our report the deficiencies we identified for this nursing home because there were no actions for the State agency to take.

<sup>10</sup> Smoke barriers restrict the movement of smoke and have a fire-resistance rating. Smoke partitions are designed to limit the movement of smoke and are not as substantial as smoke barriers. Smoke partitions may not have a fire-resistance rating.

systems; hazardous storage areas; smoking policies and fire drills; and electrical equipment testing and maintenance.

- We found 188 instances of noncompliance with emergency preparedness requirements related to written emergency plans; emergency power; plans for evacuation, sheltering in place, and tracking residents and staff during and after an emergency; emergency communications plans; and emergency plan training and testing.

As a result, nursing home residents at the 19 nursing homes were at increased risk of injury or death during a fire or other emergency.

The identified deficiencies occurred because nursing homes lacked adequate management oversight and had high staff turnover. In addition, the State agency did not adequately follow up on deficiencies previously cited, ensure that surveyors were consistently enforcing CMS requirements, or have a standard life safety training program for all nursing home staff (not currently required by CMS).

Appendix B summarizes the areas of noncompliance and the number of deficiencies that we identified at each nursing home.

## **SELECTED NURSING HOMES DID NOT COMPLY WITH LIFE SAFETY REQUIREMENTS**

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

### **Building Exits, Smoke Barriers, and Smoke Partitions**

In case of fire or emergency, nursing homes are required to have unobstructed exits that allow full use; self-closing doors in exit passageways that do not require tools or keys to open and are not manually propped open; discharges from exits (i.e., the immediate area outside the door) that are free from hazards; and illuminated exit signs. Nursing homes are also required to have sealed smoke barriers (i.e., with no holes) and sealed smoke partitions (K-Tags 161, 211, 222, 223, 271, 293, and 372).

Of the 19 nursing homes we visited, 17 had 1 or more deficiencies related to building exits, smoke barriers, and smoke partitions.<sup>11</sup> Specifically, one nursing home had one side of a double-door emergency exit that was stuck and could not be used to exit, two nursing homes had pathways leading to emergency exit doors that were blocked or impeded, one nursing home had exterior doors that needed latching mechanisms, six nursing homes had self-closing doors that were propped open or did not close properly, and one nursing home had a discharge

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<sup>11</sup> Among the 17 nursing homes, there were a total of 31 deficiencies related to building exits, smoke barriers, and smoke partitions.

area from the emergency exit door that was blocked. In addition, one nursing home had an emergency exit door that was marked as both “Exit” and “Not an Exit.” Finally, 3 nursing homes had large holes in the smoke barriers that could contribute to the spread of smoke, and 16 nursing homes had small holes in the smoke partitions.

Photographs 1 to 3 depict some of the deficiencies we identified during our site visits.



**Photograph 1 (left): Emergency exit door blocked by a pallet.**

**Photograph 2 (center): Discharge area blocked by valet stand, and emergency exit door marked as both “Exit” and “Not an Exit” (circled).**

**Photograph 3 (right): Hole in smoke barrier in the ceiling (circled) that led to outside.**

### **Fire Detection and Suppression Systems**

Nursing homes are required to have a fire alarm system that is tested and maintained in accordance with NFPA requirements. Sprinkler systems must be inspected, tested, and maintained in accordance with NFPA requirements, which include the requirement to keep 18 inches of clearance below sprinkler system heads. Cooking equipment must be maintained at intervals necessary to maintain good working condition. Nursing homes must also have procedures for times when the fire alarm or sprinkler system is out of service,<sup>12</sup> and portable fire extinguishers must be inspected at a minimum of 30-day intervals (K-Tags 324, 345, 346, 353, 354, and 355).

Of the 19 nursing homes we visited, 16 had 1 or more deficiencies related to their fire detection and suppression systems.<sup>13</sup> Specifically, 2 nursing homes failed to have their fire alarm systems

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

<sup>13</sup> Among the 16 nursing homes, there were a total of 46 deficiencies related to fire detection and suppression systems.

routinely tested and maintained, and 12 nursing homes did not maintain 18 inches of clearance below sprinkler system heads.<sup>14</sup>

At one nursing home, the exhaust hood on cooking equipment was over a month past due for service. In addition, 10 nursing homes had incomplete or were missing policies and procedures for when the fire alarm was out of service, and 14 nursing homes had incomplete or were missing policies and procedures for when the sprinkler system was out of service. Finally, six nursing homes did not inspect their portable fire extinguishers every 30 days, and one nursing home did not store a portable fire extinguisher securely.

Photographs 4 and 5 depict some of the deficiencies we identified during our site visits.



**Photograph 4 (left): Sprinkler system head lacked 18 inches of clearance.**

**Photograph 5 (right): Fire extinguisher did not have July, August, and September 2018 inspections documented (circled) and was in the red zone (circled), which indicated it needed immediate service. Photograph taken on October 10, 2018.**

### **Hazardous Storage Areas**

In hazardous storage areas, nursing homes must install self-closing doors. In addition, rooms with oxygen cylinders must be properly placarded and have separately labeled storage spaces for full and empty cylinders. Oxygen cylinders must also be stored in a safe manner and used in the order received (K-Tags 321 and 923).

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<sup>14</sup> One of the twelve nursing homes could not provide documentation that its sprinklers were inspected.

Of the 19 nursing homes we visited, 11 had 1 or more deficiencies related to hazardous storage areas.<sup>15</sup> Specifically, 1 nursing home had a shower room that was being used to store soiled linens without a self-closing door, and 11 nursing homes stored oxygen cylinders in an unsecure manner or did not ensure that cylinders were used in the order received.

Photographs 6 and 7 depict some of the deficiencies we identified during our site visits.



**Photograph 6 (left): Shower room that was being used to store soiled linens (circled) without a self-closing door.**

**Photograph 7 (right): Empty (circled) and full oxygen cylinders stored in the same storage space.**

### Smoking Policies and Fire Drills

Nursing homes are required to establish smoking policies for residents and staff. Smoking is permitted only in authorized areas where ash receptacles are provided. Nursing homes are also required to conduct fire drills each calendar quarter that cover each work shift. The drills include the transmission of a fire alarm signal and simulation of emergency fire conditions (K-Tags 712 and 741).

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<sup>15</sup> Among the 11 nursing homes, there were a total of 12 deficiencies related to hazardous storage areas. Hazardous areas are areas that pose a degree of hazard greater than normal to the general occupancy of a building and include areas for the storage or use of (1) combustible materials; (2) toxic, noxious, or corrosive materials; or (3) heat-producing appliances. Included in CMS's list of hazardous areas are boiler rooms, repair and maintenance shops, rooms containing more than 64 gallons of soiled linens, and laboratories.

Of the 19 nursing homes we visited, 16 had 1 or more deficiencies related to smoking policies or fire drills.<sup>16</sup> Specifically, 16 nursing homes were not following their smoking policies, which required, for example, banning smoking except in allowable marked areas. In addition, six nursing homes did not ensure that fire drills were properly conducted each quarter.

Photographs 8 and 9 depict some of the deficiencies we identified during our site visits.



**Photograph 8 (left): Cigarette butts (circled) in trash can with combustible materials.**  
**Photograph 9 (right): Cigarette butts (circled) in a grassy area next to a generator.**

### **Electrical Equipment Testing and Maintenance**

Nursing homes must keep a record of tests of electrical equipment, such as receptacles. If power strips are used, they must meet Underwriters Laboratories (UL) requirements and be used in a safe manner; they cannot be mounted to building surfaces or attached to other power strips. Extension cords can be used temporarily but must be removed immediately after use. Portable space heaters are allowed only in nonsleeping staff and employee areas (K-Tags 781, 914, and 920).

### **NURSING HOME NOT CITED FOR A HAZARDOUS WATER LEAK**

During one site visit at a selected nursing home, we identified standing water in an electrical room. Although it was raining outside, it was not apparent how the water was entering the nursing home. We immediately notified the State agency, Los Angeles County, and CMS of the hazardous situation, and a surveyor immediately responded to investigate the leak. The surveyor informed us that the incident would be investigated as a formal complaint. A survey was conducted and determined that a leak in the roof allowed water to run down the inside of the wall and that there was no actual penetration in the wall. As a result of the survey, Los Angeles County did not cite the nursing home for a deficiency; however, the State agency planned to follow up to determine why the nursing home was not cited.

<sup>16</sup> Among the 16 nursing homes, there were a total of 22 deficiencies related to smoking policies and fire drills.

All of the 19 nursing homes we visited had 1 or more deficiencies related to electrical equipment testing and maintenance.<sup>17</sup> Specifically, six nursing homes did not keep records of their receptacle testing. In addition, all 19 nursing homes used power strips that did not meet UL requirements, were mounted to building surfaces, or were unsafely connected to appliances or other power strips, or used extension cords to replace fixed wiring. Finally, one nursing home had a portable space heater that was left on in an empty office.

Photographs 10 to 12 depict some of the deficiencies we identified during our site visits.



**Photograph 10 (left): Unallowable use of extension cord to replace fixed wiring; the extension cord is also attached to a mounted power strip.**

**Photograph 11 (center): Air conditioner plugged in to a power strip that is mounted to a wall with a plastic zip tie.**

**Photograph 12 (right): Unsafe use of a power strip (circled).**

## **SELECTED NURSING HOMES DID NOT COMPLY WITH EMERGENCY PREPAREDNESS REQUIREMENTS**

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

### **Written Emergency Plans**

Nursing homes are required to have an emergency plan in place and to update the plan at least annually. The emergency plan must include a facility and community all-hazards risk assessment; address emergency events and resident population needs; include types of services available during an emergency and a continuity-of-operations plan; and address

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<sup>17</sup> Among the 19 nursing homes, there were a total of 26 deficiencies related to electrical equipment testing and maintenance.

coordination with Federal, State, and local government emergency management officials (E-Tags 0004, 0006, 0007, and 0009).

Of the 19 nursing homes we visited, 10 had 1 or more deficiencies related to their emergency plans.<sup>18</sup> Specifically, one nursing home did not update its emergency plan annually. In addition, six nursing homes did not complete a facility and community all-hazards risk assessment, seven nursing homes did not address emergency events, seven nursing homes did not address resident population needs or types of services available during an emergency, four nursing homes did not address continuity of operations, and six nursing homes did not provide for coordination with all government emergency management officials.

### **Emergency Power**

Nursing homes must have an emergency plan that addresses emergency power. Nursing homes are required to provide an alternate source of energy (usually a generator) for maintaining temperatures to protect patient health, food storage, emergency lighting, fire protection, and sewage disposal (if applicable). Nursing homes that have generators are required to perform weekly maintenance checks, monthly load tests, and annual fuel quality tests (if the generator operates on diesel fuel). Nursing homes located in certain seismic zones must maintain a 96-hour supply of fuel, and all nursing homes with generators should have a plan in place to keep generators fueled “as necessary” during an emergency, unless they are evacuated (E-Tags 0015 and 0041).

Of the 19 nursing homes we visited, 9 had 1 or more deficiencies related to emergency power.<sup>19</sup> Specifically, one nursing home could not determine the size of the generator fuel tank or confirm how long the generator could provide an alternate source of energy and had not completed its contract with a fuel vendor to provide emergency fuel. In addition, eight nursing homes had not properly inspected, tested, and maintained their generators. Finally, two nursing homes located in certain seismic zones did not have sufficient generator fuel on hand to last 96 hours.

### **Plans for Evacuations, Sheltering in Place, and Tracking Residents and Staff During and After an Emergency**

Nursing homes are required to have a plan for evacuations, sheltering in place, and tracking residents and staff during and after an emergency. Nursing homes must also have plans for maintaining availability of medical records, using volunteers, and transferring residents and must have procedures for their roles under a waiver to provide care at alternate sites during an emergency (E-Tags 0018, 0020, 0022, 0023, 0024, 0025, and 0026).

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<sup>18</sup> Among the 10 nursing homes, there were a total of 31 deficiencies related to emergency plan requirements.

<sup>19</sup> Among the 9 nursing homes, there were a total of 11 deficiencies related to emergency power.

Of the 19 nursing homes we visited, 12 had 1 or more deficiencies related to their emergency plans for evacuations, sheltering in place, and tracking residents and staff during and after emergencies.<sup>20</sup> Specifically, three nursing homes' plans did not address evacuations, three nursing homes' plans did not address sheltering in place, eight nursing homes' plans did not address tracking residents and staff, three nursing homes' plans did not address maintaining availability of medical records, four nursing homes' plans did not address using volunteers, one nursing home's plan did not address transferring residents during disasters, and eight nursing homes' plans did not address their role under a waiver to provide care at alternate sites during an emergency.

### **Emergency Communications Plans**

Nursing homes are required to have a communications plan that includes names and contact information for staff, entities providing services, residents' physicians, volunteers, government emergency management offices, and the State agency, among others. The plan must be updated at least annually. Nursing homes are also required to have a plan for primary and alternate means of communication, such as cell phones or radios, and for communicating the facility's occupancy, needs, and ability to provide assistance. In addition, nursing homes must have a plan for transferring medical records, a means to communicate information about residents' conditions and locations in the event of an evacuation, and methods to share emergency plan information with residents and their families (E-Tags 0029, 0030, 0031, 0032, 0033, 0034, and 0035).

### **NURSING HOME CITED FOR IMMEDIATE JEOPARDY RELATED TO DEFICIENCIES IDENTIFIED DURING SITE VISIT**

During one site visit at a selected nursing home, we identified 9 deficiencies for life safety and 26 deficiencies for emergency preparedness, including several that the State agency previously cited. We conducted our site visit on November 6, 2018, and identified deficiencies related to the nursing home's fire drills, written emergency plan, plan for evacuation, emergency communications plan, and emergency plan training and testing, among others. The State agency conducted a routine survey on December 12, 2018, and cited the nursing home for most of the same deficiencies we identified during our November visit. Based on the deficiencies we identified, the State agency returned to the nursing home on May 1, 2019, to conduct a formal complaint survey. As of that date, the nursing home had not corrected any of the deficiencies, and the surveyor determined the situation was an immediate jeopardy (i.e., when a nursing home's noncompliance with one or more requirements has caused, or is likely to cause, serious injury, harm, impairment, or death to a resident). The nursing home was given 48 hours to provide a plan to the State agency to correct the deficiencies. A State agency official stated that the State agency planned to follow up with the nursing home to confirm that the deficiencies were corrected.

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<sup>20</sup> Among the 12 nursing homes, there were a total of 30 deficiencies related to plans for evacuations, sheltering in place, and tracking residents and staff.

Of the 19 nursing homes we visited, 18 had 1 or more deficiencies related to the adequacy of their emergency communications plans.<sup>21</sup> Specifically, eight nursing homes did not have an official emergency communications plan but had contact information in other locations. In addition, 18 nursing homes did not have required name and contact information;<sup>22</sup> 1 nursing home did not update its plan annually; 6 nursing homes did not indicate their plans for primary and alternate means of communication; 10 nursing homes did not have plans to communicate occupancy, needs, and ability to provide services; 3 nursing homes did not address transferring medical records; 6 nursing homes did not have procedures for communicating information about residents' conditions and locations; and 7 nursing homes did not have procedures for sharing emergency plan information with residents and their families.

### **Emergency Plan Training and Testing**

Nursing homes are required to have a training and testing program related to their emergency plan and to update the training and testing program at least annually. Initial training must be provided to new staff members, independent contractors (e.g., contracted cleaning staff), and volunteers. The training, as well as annual refresher training required for all staff, must be designed to demonstrate knowledge of emergency procedures and must be documented. Nursing homes must also conduct an annual community-based, full-scale testing exercise.<sup>23</sup> An analysis of all training exercises (and actual events) must be completed and documented, and the emergency plan must be revised, if necessary (E-Tags 0036, 0037, and 0039).

Of the 19 nursing homes we visited, 11 had 1 or more deficiencies related to emergency plan training and testing.<sup>24</sup> Specifically, two nursing homes did not have an existing training plan, two nursing homes did not update their training plan annually, four nursing homes did not provide initial training, five nursing homes did not provide annual refresher training, eight nursing homes did not conduct annual full-scale testing exercises, and seven nursing homes did not conduct analyses of their training exercises.

### **STATE AGENCY COULD IMPROVE ITS OVERSIGHT**

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

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<sup>21</sup> Among the 18 nursing homes, there were a total of 88 deficiencies related to emergency communications plans.

<sup>22</sup> The 18 nursing homes had a total of 47 deficiencies for missing name and contact information.

<sup>23</sup> The exercise can be conducted at a facility if a community-based exercise is not possible. Further, a nursing home is exempt from this requirement if it activated its emergency plan during the year.

<sup>24</sup> Among the 11 nursing homes, there were a total of 28 deficiencies related to emergency plan training and testing.

reviews of documentation submitted by nursing homes. We identified several previously cited deficiencies for which nursing homes submitted documentation to the State agency showing that the deficiencies were corrected. The State agency could also ensure that surveyors consistently enforce CMS requirements. We identified deficiencies related to power strips at all 19 nursing homes; however, nursing homes that had surveys shortly before or after our site visits were not cited for those deficiencies.<sup>25</sup>

While conducting our site visits, we found that there was a frequent turnover of nursing home management and staff. In addition, although not required by CMS, the State agency did not have a standard life safety training program for all nursing home staff that management could use to educate newly hired staff on how to comply with CMS requirements for life safety. For example, there was no standardized training program to teach newly hired maintenance staff about fire extinguisher inspections, fire alarm and sprinkler maintenance, the proper way to conduct and document fire drills, or how to test and maintain electrical equipment. The State agency could explain CMS requirements for life safety and emergency preparedness to nursing homes by providing standardized life safety training.<sup>26</sup>

## RECOMMENDATIONS

We recommend that the California Department of Public Health:

- follow up with the 19 nursing homes to ensure that corrective actions have been taken regarding the life safety and emergency preparedness deficiencies identified in this report,
- conduct more frequent site surveys at nursing homes to follow up on deficiencies,
- ensure that all surveyors consistently enforce CMS requirements, and
- work with CMS to develop life safety training for nursing home staff.

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<sup>25</sup> At a few nursing homes, the maintenance directors said that surveyors told them that they could mount the power strips and, in a couple of cases, told them to mount the power strips so that they were off the floor to reduce the risk of electrical shock when the floors were mopped.

<sup>26</sup> Although CMS does not specifically require this type of comprehensive life safety training, under the State agency's section 1864 agreement with CMS (described on page 2), the State agency agreed to perform certain functions, including explaining Federal requirements to providers to enable them to maintain standards of healthcare consistent with Medicare and Medicaid participation requirements (*CMS State Operations Manual* § 1010). Also, as mandated by sections 1819(g)(1)(B) and 1919(g)(1)(B) of the Act, States must conduct periodic educational programs for the staff and residents of nursing homes to present current regulations, procedures, and policies.

## STATE AGENCY COMMENTS

In written comments on our draft report, the State agency concurred with our first and third recommendations and described actions that it had taken or planned to take to address the recommendations. However, the State agency did not concur with our second and fourth recommendations:

- Regarding our second recommendation, the State agency commented that it conducts surveys at nursing homes per Federal guidelines and frequencies. The State agency also commented that CMS guidelines do not expect and the State agency does not have the surveyor capacity to conduct more frequent site surveys at nursing homes to follow up on deficiencies that were identified.
- Regarding our fourth recommendation, the State agency commented that working with CMS to develop life safety training for nursing home staff was beyond the State agency's "power to operationalize" but described actions within its authority that it would take, including training surveyors to remind providers to view training and guidance on CMS's website.

As attachments to its comments, the State agency included summaries of the surveys that it conducted to follow up on the deficiencies identified in this report and information from CMS regarding life safety and emergency preparedness training available to State agencies. The State agency's comments, excluding the attachments, are included as Appendix C.

## OFFICE OF INSPECTOR GENERAL RESPONSE

After reviewing the State agency's comments, we maintain that our findings and recommendations are valid:

- Regarding our second recommendation, CMS guidelines allow for the State agency to survey nursing homes more frequently to confirm that they corrected previously cited deficiencies. Although nursing homes submitted documentation to the State agency indicating that the deficiencies were addressed, we found that some deficiencies were not corrected. The State agency could confirm whether the deficiencies were addressed by conducting more frequent site surveys rather than strictly relying on documentation submitted by the providers.
- Regarding our fourth recommendation, we found that some nursing home staff were not knowledgeable about the CMS requirements. Under the State agency's section 1864 agreement with CMS, the State agency agreed to perform certain functions, including explaining Federal requirements to providers. Therefore, we continue to recommend that the State agency work with CMS to develop life safety training for nursing home staff.

## APPENDIX A: AUDIT SCOPE AND METHODOLOGY

### SCOPE

As of June 2018, there were 1,202 nursing homes in California that participated in the Medicare or Medicaid programs. We selected for audit a nonstatistical sample of 20 of these nursing homes based on various factors, including the number of high-risk deficiencies that the State agency reported to CMS's ASPEN system and the potential risk of environmental threats, such as wildfire, earthquake, and extreme heat, taking into account the nursing homes' locations.

This report includes the results of our audit for only 19 nursing homes because 1 of the 20 nursing homes we selected for audit was destroyed by a wildfire after our site visit.<sup>27</sup>

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

We performed our fieldwork at the State agency's offices in Sacramento, California, and conducted unannounced site visits at the 20 nursing homes throughout California from September to December 2018.

### METHODOLOGY

To accomplish our objective, we:

- reviewed applicable Federal requirements;
- held discussions with CMS and State agency officials to gain an understanding of the process for conducting nursing-home life safety and emergency preparedness surveys;
- obtained from CMS's Quality and Certification Oversight Reports (QCOR) online reporting system a list of all 1,202 active nursing homes in California that participated in the Medicare or Medicaid programs as of June 2018;
- compared the list obtained from CMS's QCOR online reporting system with a list provided by the State agency to verify completeness and accuracy;

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<sup>27</sup> Although the nursing home had some deficiencies related to its life safety and emergency preparedness, the nursing home safely evacuated its residents to other nursing homes. We omitted the deficiencies from our report because there were no actions for the State agency to take.

- obtained from CMS’s QCOR online reporting system a list of 79 nursing homes that had 20 or more *D*-rated or more serious deficiencies and 43 nursing homes that had 10 or more *E*-rated or more serious deficiencies in the previous 4 years;<sup>28</sup>
- selected 20 nursing homes for site visits and for each:
  - reviewed the deficiency reports prepared by the State agency for the nursing home’s 3 most recent life safety surveys and
  - conducted unannounced site visits to check for life safety violations and review emergency preparedness; and
- discussed the results of our site visits with nursing home, State agency, and CMS officials.

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

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<sup>28</sup> *D*-rated deficiencies represent a very limited number of events that have the potential for more than minimal harm, and *E*-rated deficiencies represent more than a very limited number of such deficiencies. Deficiencies that the State agency enters into the ASPEN system are uploaded to CMS’s Certification and Survey Provider Enhanced Reports system and are available to the public through the QCOR online reporting system.

**APPENDIX B: INSTANCES OF NONCOMPLIANCE AT EACH NURSING HOME**

**Table 1: Life Safety Deficiencies**

<b>Nursing Home</b>	<b>Building Exits, Smoke Barriers, and Smoke Partitions</b>	<b>Fire Detection and Suppression Systems</b>	<b>Hazardous Storage Areas</b>	<b>Smoking Policies and Fire Drills</b>	<b>Electrical Equipment Testing and Maintenance</b>	<b>Total</b>
1	1	3	1	2	2	9
2	2	2	1	1	1	7
3	1	1	1	1	2	6
4	1	4	2	2	1	10
5	-	-	1	-	1	2
6	2	2	1	2	1	8
7	4	3	1	1	1	10
8	-	-	-	-	1	1
9	3	3	1	1	2	10
10	2	6	-	1	2	11
11	2	2	-	2	2	8
12	1	3	1	2	2	9
13	1	-	-	1	1	3
14	1	3	1	2	1	8
15 <sup>29</sup>	-	-	-	-	-	-
16	1	2	-	-	1	4
17	4	4	-	1	2	11
18	1	3	1	1	1	7
19	2	2	-	1	1	6
20	2	3	-	1	1	7
<b>Total</b>	<b>31</b>	<b>46</b>	<b>12</b>	<b>22</b>	<b>26</b>	<b>137</b>

<sup>29</sup> The deficiencies for this nursing home are not included because it was destroyed by a wildfire after our site visit.

**Table 2: Emergency Preparedness Deficiencies**

<b>Nursing Home</b>	<b>Written Emergency Plans</b>	<b>Emergency Power</b>	<b>Evacuations, Sheltering in Place, and Tracking Residents and Staff</b>	<b>Emergency Communications Plans</b>	<b>Emergency Plan Training and Testing</b>	<b>Total</b>
1	5	1	7	9	-	<b>22</b>
2	-	1	-	1	-	<b>2</b>
3	3	1	1	4	-	<b>9</b>
4	-	2	-	2	1	<b>5</b>
5	1	2	1	4	-	<b>8</b>
6	-	1	1	4	2	<b>8</b>
7	-	-	1	1	-	<b>2</b>
8	-	-	-	-	-	-
9	3	1	2	7	4	<b>17</b>
10	3	1	2	7	1	<b>14</b>
11	-	1	3	6	1	<b>11</b>
12	6	-	5	10	5	<b>26</b>
13	1	-	2	7	-	<b>10</b>
14	-	-	-	4	-	<b>4</b>
15 <sup>30</sup>	-	-	-	-	-	-
16	-	-	-	7	1	<b>8</b>
17	3	-	2	3	4	<b>12</b>
18	2	-	-	2	1	<b>5</b>
19	-	-	-	3	3	<b>6</b>
20	4	-	3	7	5	<b>19</b>
<b>Total</b>	<b>31</b>	<b>11</b>	<b>30</b>	<b>88</b>	<b>28</b>	<b>188</b>

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

<sup>30</sup> The deficiencies for this nursing home are not included because it was destroyed by a wildfire after our site visit.

## APPENDIX C: STATE AGENCY COMMENTS



SUSAN FANELLI  
Acting Director

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



GAVIN NEWSOM  
Governor

September 17, 2019

Lori A. Ahlstrand  
Regional Inspector General for Audit Services  
90 – 7th Street, Suite 3-650  
San Francisco, CA 94814

Dear Ms. Ahlstrand,

The California Department of Public Health (CDPH) has reviewed the “California Should Improve Its Oversight of Selected Nursing Homes’ Compliance With Federal Requirements for Life Safety and Emergency Preparedness” Audit. CDPH appreciates the opportunity to respond to the report.

The report concludes CDPH is not in full compliance with Centers for Medicare & Medicaid Services (CMS) regulations for life safety and emergency preparedness that were updated in 2016. Specifically, the auditors noted the following:

- 137 instances of noncompliance with life safety requirements related to building exits, smoke barriers, and smoke partitions; fire detection and suppression systems; hazardous storage areas; smoking policies and fire drills; and electrical equipment testing and maintenance
- 188 instances of noncompliance with emergency preparedness requirements related to written emergency plans; emergency power; plans for evacuation, sheltering in place, and tracking residents and staff during and after an emergency; emergency communications plans; and emergency plan training and testing
- The identified deficiencies were a result of lack of management oversight and high staff turnover, inadequate follow up on previously cited deficiencies, and lack of a standard life safety training program for nursing home staff

Below we address the report findings in detail, followed by our response to the auditor’s specific recommendations.

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CDPH Acting Director, MS 0500 • P.O. Box 997377 • Sacramento, CA 95899-7377  
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**Recommendations to Public Health:**

- (1) Follow up with the 19 nursing homes to ensure that corrective actions have been taken regarding the life safety and emergency preparedness deficiencies identified in the report.**

**CDPH Response: Concur**

For the 19 nursing homes indicated, CDPH Licensing and Certification (L&C) Life Safety Code Unit (LSC) and the Los Angeles County Health Facilities Inspection Division (LACHFID) conducted complaint revisits at each facility in the last eight months (December 2018 to July 2019) to confirm that the providers implemented corrections for the life safety and emergency preparedness deficient practices that were identified during the OIG Audit site visits. Where repeat deficiencies were identified during the onsite complaint investigation, a Statement of Deficiencies 2567 was sent to the provider, and a Plan of Correction was submitted by the provider and approved by the Department. (See attached spreadsheets)

- (2) Conduct more frequent site surveys at nursing homes to follow up on deficiencies.**

**CDPH Response: Do Not Concur**

CDPH LSC Unit and the LACHFID conduct recertification surveys at nursing homes per Federal guidelines and frequencies. Per CMS guidelines, revisits are conducted for surveys that identified substandard quality of care with a Scope and Severity of E or higher until it is determined the facility is back in compliance. CMS guidelines do not expect, nor does CDPH or LACHFID have the surveyor capacity to conduct more frequent site surveys at nursing homes to follow up on deficiencies that were identified.

- (3) Ensure that surveyors consistently enforce CMS requirements.**

**CDPH Response: Concur**

CDPH LSC Unit and the LACHFID will develop and facilitate additional training for all Life Safety Code surveyors to ensure consistent enforcement of CMS survey requirements for life safety and emergency preparedness.

These trainings either will be in person or via webinar and conference calls to ensure consistent enforcement of CMS requirements statewide.

In addition, CDPH will implement the following strategies to ensure that surveyors consistently enforce CMS requirements:

1. The Department will continue to require nursing home providers to submit evidence of compliance for deficiencies that were identified during a life safety or emergency preparedness survey to confirm that corrective actions were completed, and the provider is in compliance with the code requirements.
2. The Department will periodically run data reports on commonly cited deficiencies and identify trends or patterns in repeated deficiencies for life safety and emergency preparedness.
3. The Department will continue to meet quarterly with CMS via the Western Consortium conference calls that are moderated by CMS. Participants include surveyors from the western states, and the goal of the calls is to maintain communication with CMS, and to share knowledge and best practices between State Survey agencies for CMS. CMS subject matter experts answer questions from the State agencies and provide survey guidance.

**(4) Work with CMS to develop life safety training for nursing home staff.**

**CDPH Response: Do Not Concur**

The recommendation to work with the CMS to develop life safety training for nursing home staff is beyond CDPH's power to operationalize. CMS offers online trainings, reference materials and information on their website that is available to all providers, and includes trainings on Life Safety and Emergency Preparedness. (See attached).

CDPH will implement the following strategy that is within our authority:

1. Provide training to surveyors to remind providers at the Exit conference to visit the CMS website for up-to-date code information and survey guidance and trainings that are available.

We appreciate the opportunity to respond to the audit. If you have any questions, please contact Monica Vazquez, Chief, Office of Compliance at (916) 306-2251.

Sincerely,

Susan Fanelli  
Acting Director

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