



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

**Testimony Before the
United States Senate Special Committee on Aging**

***Residents at Risk: The Strained Nursing Home Inspection
System and the Need to Improve Oversight***

Testimony of
Erin Bliss
Assistant Inspector General
Office of Evaluation and Inspections
Office of Inspector General
Department of Health and Human Services

May 18, 2023

9:30 a.m.

366 Dirksen Senate Office Building

Good morning, Chair Casey, Ranking Member Braun, and distinguished Members of the Senate Special Committee on Aging. I am Erin Bliss, Assistant Inspector General for Evaluation and Inspections at the Department of Health and Human Services (HHS), Office of Inspector General (OIG). Thank you for inviting me to testify today regarding strains on the nursing home inspection system and the need to improve oversight to better protect nursing home residents.

I appreciate this opportunity to discuss one of the most consequential issues in health care today: ensuring safe, quality care for people in the Nation’s nursing homes. Many nursing homes provide excellent care. But through decades of OIG work, we have found that people in nursing homes are too often subjected to poor quality care and unsafe conditions. Improving nursing home care for those who need it is Inspector General Grimm’s top priority.

My testimony focuses on the roles and performance of State Survey Agencies (State Agencies) in overseeing more than 15,000 nursing homes nationally. While the responsibility for providing high-quality, safe care lies first and foremost with the nursing homes themselves, State Agencies provide critical, frontline oversight of nursing homes. State Agencies are the eyes and ears to conditions in nursing homes that millions of people and their families experience, and are the only Government entities regularly entering nursing homes to assess their operations.

I will provide brief context on the vital roles of State Agencies in overseeing nursing homes and then focus on concerns OIG has raised about State Agency performance and Centers for Medicare & Medicaid Services (CMS) oversight of State Agencies, challenges State Agencies face in fulfilling their responsibilities, and OIG’s recommendations for improvements.

KEY TAKEAWAYS

- **State Agencies have not consistently fulfilled their responsibilities for overseeing the quality and safety of nursing home care, which puts residents at risk.**
- **State Agencies point to key challenges—particularly staffing shortages—that limit their ability to meet their oversight responsibilities.**
- **CMS has struggled to improve performance by State Agencies that have repeatedly fallen short.**
- **Sustained commitment and efforts by CMS, State Agencies, and others are critical to ensuring nursing home quality and safety for millions of Americans.**

STATE AGENCIES ARE ON THE FRONT LINES FOR PROTECTING NURSING HOME RESIDENTS FROM SUBSTANDARD CARE AND UNSAFE CONDITIONS

State Agencies' responsibilities for overseeing nursing homes are vast, touching millions of lives and involving billions of dollars. Federal and State expenditures to nursing homes through Medicare and Medicaid totaled \$94 billion in 2022 (\$56 billion under Medicaid and \$38 billion under Medicare).¹ According to CMS data in July 2022, approximately 1.2 million people resided in more than 15,000 certified nursing homes.²

State Agencies have specific responsibilities aimed at ensuring that nursing homes meet Federal standards for quality and safety.

Conducting Standard Surveys. CMS requires State Agencies to conduct onsite "standard surveys" (i.e., inspections) of nursing homes on average every 12 months, with no facility going more than 15 months without a standard survey. These surveys are comprehensive assessments of nursing homes' compliance with Federal health and safety standards set by CMS.³

Assessing and Responding to Complaints. State Agencies receive, track, and respond to complaints about nursing homes. They assess incoming complaints and assign severity levels based on the degree of harm or potential harm associated with an alleged problem. State Agencies must investigate the most serious complaints on site within 3 business days (for the highest level known as "immediate jeopardy") or in 15 to 18 business days (for the next highest level, known as "high priority"). These investigations are also called "complaint surveys." State Long-Term Care Ombudsmen, who advocate for nursing home residents and their families and do not have oversight responsibilities, can also receive complaints about nursing homes and can work to help resolve these complaints. With a resident's consent, an ombudsman may refer a complaint to a State Agency for investigation.

Citing and Following Up on Deficiencies. When a State Agency finds (e.g., through a standard survey or a complaint survey) that a nursing home has failed to meet one or more quality or

¹ These figures are based on an OIG analysis of CMS claims data for calendar year 2022; accessed May 3, 2023. Amounts include payments to nursing homes and exclude payments to other providers (such as physicians) for services to nursing home residents.

² Kaiser Family Foundation (KFF), KFF analysis of CMS Care Compare data, Total Number of Residents in Certified Nursing Facilities, July 2022, accessed at [Total Number of Residents in Certified Nursing Facilities | KFF](#) on May 14, 2023.

³ In response to the COVID-19 pandemic, CMS temporarily suspended annual standard surveys in March 2020 and introduced a new, focused infection control survey. On June 1, 2020, CMS directed States to conduct focused infection control surveys for all nursing homes and, at a State's discretion, to continue surveys for the most serious complaints. On August 17, 2020, CMS further directed States to conduct standard surveys as soon as they had the appropriate resources to do so. (See CMS, [Suspension of Survey Activities](#), Ref: QSO-20-12-All, March 4, 2020; CMS, [Prioritization of Survey Activities](#), Ref: QSO-20-20-All, March 20, 2020; CMS, [Revised COVID-19 Survey Activities, CARES Act Funding, Enhanced Enforcement for Infection Control Deficiencies, and Quality Improvement Activities in Nursing Homes](#), Ref: QSO-20-31-All (rescinded as of March 30, 2023); CMS, [Enforcement Cases Held During Prioritization Period and Revised Survey Prioritization](#), Ref: QSO-20-35-All, August 17, 2020).

safety standards, the State cites the nursing home with applicable deficiencies and rates the severity of the deficiencies. The State Agency then obtains and reviews plans of correction from the nursing home and must verify that the nursing home corrects its deficiencies (for all but the least severe categories). CMS provides timeframes for State Agencies to cite and follow up on deficiencies.⁴

CMS provides funding to and oversight of State Agencies.

State Agency oversight of nursing homes is jointly funded by CMS and the States. According to HHS, CMS’s survey and certification budget to support State Agency operations has remained relatively flat between fiscal years (FYs) 2015 and 2023 at roughly \$400 million annually.⁵ Congress appropriated about \$100 million in supplemental funds to cover costs for COVID-19-related survey and certification activities through the Coronavirus Aid, Relief, and Economic Security (CARES) Act.⁶ The HHS FY 2024 budget requests \$566 million for survey and certification, and cites continuing problems with poor, substandard care leading to preventable harm for nursing home residents and increases in complaints about nursing homes requiring surveys.⁷

CMS oversees State Agency performance of responsibilities including conducting surveys, handling complaints, and citing and following up on deficiencies. CMS uses the State Performance Standards System to evaluate whether State Agencies are meeting obligations and to identify areas for improvement.⁸ CMS considers a State’s performance to be “inadequate”

⁴ This process varies by the scope and severity of the deficiency. For most deficiencies (not including immediate jeopardy), State Agencies have 10 working days to send a nursing home a statement of deficiencies. A nursing home then has 10 calendar days from receiving the statement of deficiencies from a State Agency to submit plans of correction. Generally, State Agencies have 60 days from the date of a survey to revisit a nursing home to verify compliance.

⁵ See HHS, “FY 2024 Budget in Brief,” pp. 115-16, accessed at <https://www.hhs.gov/sites/default/files/fy-2024-budget-in-brief.pdf> on May 3, 2023, and HHS, “CMS FY 2024 Justification of Estimates for Appropriations Committees,” pp. 69-73, accessed at <https://www.cms.gov/files/document/cms-fy-2024-congressional-justification-estimates-appropriations-committees.pdf-0> on May 3, 2023.

⁶ CARES Act, P.L. No. 116-136, Division B, Emergency Appropriations for Coronavirus Health Response and Agency Operations, Title VIII (March 27, 2020).

⁷ HHS, “FY 2024 Budget in Brief,” pp. 115-16, accessed at <https://www.hhs.gov/sites/default/files/fy-2024-budget-in-brief.pdf> on May 3, 2023.

⁸ 42 CFR § 488.320(a); CMS State Operations Manual (SOM), Pub. No. 100-07, Ch. 8–Standards and Certification (Rev. 1, 05-21-04); Accessed at <https://www.cms.gov/Regulations-and-Guidance/Guidance/Manuals/Downloads/som107c08pdf.pdf> on May 14, 2023.

when the State does not meet a specified performance threshold.⁹ When CMS determines that State performance is inadequate, it may impose one or more remedies or sanctions on the State.¹⁰

Longstanding, persistent problems in nursing homes make State Agency oversight crucial for the safety and well-being of residents.

The importance of State Agencies' roles in identifying and correcting poor care by nursing homes cannot be overstated in light of the longstanding and persistent problems that affect resident health and safety. Although many nursing homes provide excellent care and are diligent in protecting their residents, an alarming number of nursing home residents are subject to low-quality care and unsafe conditions.

Decades of OIG oversight and enforcement have revealed persistent, entrenched problems in nursing homes ranging from preventable harm to residents to failed emergency preparedness, understaffing, and cases of abuse and neglect, among others. The COVID-19 pandemic and its devastating impact on nursing home residents brought to the forefront known and new nursing home challenges, including staffing shortages and poor infection control.

STATE AGENCIES HAVE NOT CONSISTENTLY FULFILLED THEIR RESPONSIBILITIES FOR OVERSEEING THE QUALITY AND SAFETY OF NURSING HOME CARE, WHICH PUTS RESIDENTS AT RISK.

OIG and CMS have identified a variety of shortfalls among some State Agencies in performance of their responsibilities for protecting nursing home residents' health and safety.

Many States repeatedly failed to conduct timely standard and complaint surveys.

OIG analyzed CMS's performance metrics for State Agencies from 2015 to 2018. We found that the most common recurring performance deficiencies identified by CMS were associated with timeliness of standard and complaint surveys. In each of those years, between 20 and 29 States failed to meet the performance threshold of investigating 95 percent of high priority complaints within 10 business days.¹¹ From 2015 to 2018, between 12 and 28 States each year failed to meet the performance threshold of conducting standard surveys within 15.9 months for each

⁹ CMS SOM, Pub. No. 100-07, Ch. 8—Standards and Certification, Section 8000F (Rev. 1, 05-21-04); CMS response to OIG informational questions on August 30, 2019; and CMS, "FY 2018 State Performance Standards System Guidance," Admin Info: 18-02-ALL, October 17, 2017.

¹⁰ Sections 1819(g)(3)(C) and 1919(g)(3)(C) of the Social Security Act; 42 CFR §§ 488.320; CMS, SOM, Pub. No. 100-07, Ch. 8—Standards and Certification, Section 8000G (Rev. 1, 05-21-04).

¹¹ During that time period, CMS required States to investigate high priority complaints onsite within 10 business days. CMS recently changed that requirement. Effective October 2022, States need to investigate these complaints on site within 15 business days on average, not to exceed 18 business days for any high priority complaint. See Medicare [State Operations Manual](#).

nursing home or a Statewide average interval of 12.9 months.¹² When State Agencies miss these performance measures, poor care or safety risks for residents may go undetected and unaddressed.

OIG also evaluated State Agency timeliness in conducting onsite investigations of serious complaints (i.e., immediate jeopardy and high priority complaints) from 2011 to 2018, and our findings raise concerns.¹³ Serious complaints typically include allegations concerning health and safety, such as allegations of residents left sitting in urine and feces, preventable infections, or verbal and physical abuse, among others. We found that in 2018, States were late in investigating 13 percent of immediate jeopardy (the most serious) complaints and were late in investigating 19 percent of high priority (the second most serious) complaints. Furthermore, 10 States did not meet the timeliness threshold for high priority complaints for 8 consecutive years, from 2011 through 2018.

State Agencies have sometimes fallen short in identifying risks to nursing home residents.

OIG’s work has raised questions about the effectiveness of State Agencies in identifying certain problems in nursing homes.

Infection Control. OIG has raised serious concerns about the effectiveness of the State Agency survey process in uncovering infection control problems during the first year of the COVID-19 pandemic. We identified more than 1,300 nursing homes that experienced extremely high infection rates—75 percent or more of their Medicare beneficiaries—during COVID-19 surge periods in the spring and fall of 2020. More than half—54 percent—of the nursing homes with extremely high infection rates were not cited with an infection control deficiency during any

¹² OIG, “CMS Should Take Further Action To Address States With Poor Performance Conducting Nursing Home Surveys,” OEI-06-19-00460, January 2022, accessed at [CMS Should Take Further Action To Address States With Poor Performance in Conducting Nursing Home Surveys](#) on April 27, 2023.

¹³ OIG, “States Continued To Fall Short in Meeting Required Timeframes for Investigating Nursing Home Complaints: 2016–2018,” September 2020, OEI-01-19-00421, accessed at [States Continued To Fall Short in Meeting Required Timeframes for Investigating Nursing Home Complaints: 2016–2018](#) on April 19, 2023.

standard survey, complaint survey, or targeted infection control survey in 2020, despite virtually all of these facilities having had multiple surveys during that year.^{14, 15}

Life Safety and Emergency Preparedness. Beginning in 2018, OIG audited 154 nursing homes across 8 States to assess the facilities' compliance with CMS's life safety and emergency preparedness requirements, which were updated in 2016.¹⁶ Across these 8 States, we found more than 1,000 areas of noncompliance with life safety requirements (e.g., requirements for building exits, and fire and carbon monoxide detectors) and more than 1,000 areas of noncompliance with emergency preparedness requirements (e.g., requirements for emergency supplies, evacuations, and emergency communications). As a result, residents were at increased risk of injury or death during a fire or other emergency in 150 of the 154 nursing homes included in our review. OIG determined that inadequate oversight by State Agencies was one of multiple factors contributing to these deficiencies.¹⁷

State Agencies have not always verified that nursing homes have corrected cited deficiencies, as required.

Through a series of reports, OIG determined that seven of nine State Agencies reviewed did not always verify nursing home correction of deficiencies. The deficiencies ranged in scope and severity, and included improper restraining of residents and failing to provide necessary care and services for managing diabetes, among others. Furthermore, for the less serious deficiencies, six of the seven State Agencies without further evidence or followup simply accepted the nursing homes' correction plans as confirming compliance.¹⁸ Without proper verification that nursing homes are correcting their deficiencies, residents may be at risk.

¹⁴ CMS temporarily suspended annual standard surveys in late March 2020 and introduced a new, focused infection control survey. On June 1, 2020, CMS directed States to conduct focused infection control surveys for all nursing homes and, at the State's discretion, to continue surveys for the most serious complaints. On August 17, 2020, CMS further directed States to conduct standard surveys as soon as they had the appropriate resources to do so. (See CMS, [Suspension of Survey Activities](#), Ref: QSO-20-12-All, March 4, 2020; CMS, [Prioritization of Survey Activities](#), Ref: QSO-20-20-All, March 20, 2020; CMS, [Revised COVID-19 Survey Activities, CARES Act Funding, Enhanced Enforcement for Infection Control Deficiencies, and Quality Improvement Activities in Nursing Homes](#), Ref: QSO-20-31-All (rescinded as of March 30, 2023); CMS, [Enforcement Cases Held During Prioritization Period and Revised Survey Prioritization](#), Ref: QSO-20-35-All, August 17, 2020).

¹⁵ OIG, "Data Brief: More Than a Thousand Nursing Homes Reached Infection Rates of 75 Percent or More in the First Year of the COVID-19 Pandemic; Better Protections Are Needed for Future Emergencies," OEI-02-20-00491, accessed at <https://oig.hhs.gov/oei/reports/OEI-02-20-00491.pdf> on May 5, 2023.

¹⁶ Except for one State, these audits were conducted prior to the COVID-19 pandemic and CMS's 2019 updated infection control requirements. Accordingly, these audits did not focus on infectious disease preparedness.

¹⁷ OIG, "Audits of Nursing Home Life Safety and Emergency Preparedness in Eight States Identified Noncompliance With Federal Requirements and Opportunities for the Centers for Medicare & Medicaid Services to Improve Resident, Visitor, and Staff Safety," A-02-21-01010, July 2022, accessed at <https://oig.hhs.gov/oas/reports/region2/22101010.asp> on April 20, 2023.

¹⁸ OIG, "CMS Guidance to State Survey Agencies on Verifying Correction of Deficiencies Needs To Be Improved To Help Ensure the Health and Safety of Nursing Home Residents," February 2019, A-09-18-02000, accessed at <https://oig.hhs.gov/oas/reports/region9/91802000.pdf> on April 20, 2023.

STATE AGENCIES POINT TO KEY CHALLENGES—PARTICULARLY STAFFING SHORTAGES—THAT LIMIT THEIR ABILITY TO MEET THEIR OVERSIGHT RESPONSIBILITIES.

For State Agency performance problems, especially timeliness problems, CMS and State Agencies have pointed to staffing shortages as a root cause.

CMS and State Agencies have reported that staffing shortages are a driving factor in States' performance shortfalls, particularly with respect to timeliness of surveys. Staffing concerns reported by State Agencies commonly centered on the inability to attract and retain surveyors (who are typically nurses), and some State Agencies pointed to long hours and not being able to offer salaries that are high enough to compete in local markets. CMS staff from one region noted that many of the staffing shortages occur in States with widespread nurse shortages, and that these States have difficulty attracting and retaining nurses to conduct surveys. In one State, 15 of 47 surveyor positions were vacant.¹⁹ Not surprisingly, State Agencies reported to OIG that the COVID-19 pandemic exacerbated longstanding challenges in maintaining sufficient staffing levels.²⁰

CMS and State Agencies have also linked performance challenges to increased workloads. In our report on the timeliness of State Agency complaint surveys, OIG documented that the rate of incoming complaints grew from 2015 to 2018, and about half of the complaints were serious enough to require that State Agencies investigate promptly. CMS reported to us that the increase in nursing home complaints over the years has remained a challenge for CMS and States because resources to investigate these complaints have not kept up.²¹ The HHS FY 2024 budget request stated that in recent years State Agencies conducted more than 10,000 additional complaint surveys compared to 2015, marking a 19 percent increase.²²

¹⁹ OIG, "CMS Should Take Further Action To Address States With Poor Performance Conducting Nursing Home Surveys," OEI-06-19-00460, January 2022, accessed at [CMS Should Take Further Action To Address States With Poor Performance in Conducting Nursing Home Surveys](#) on April 27, 2023.

²⁰ OIG, "Onsite Surveys of Nursing Homes During the COVID-19 Pandemic: March 23-May 30, 2020," December 2020, OEI-01-20-00430, accessed at [Onsite Surveys of Nursing Homes During the COVID-19 Pandemic: March 23–May 30, 2020 \(hhs.gov\)](#) on April 25, 2023.

²¹ OIG, "States Continued To Fall Short in Meeting Required Timeframes for Investigating Nursing Home Complaints: 2016–2018," OEI-01-19-00421, September 2020, accessed at [States Continued To Fall Short in Meeting Required Timeframes for Investigating Nursing Home Complaints: 2016–2018](#) on April 27, 2023.

²² HHS, "FY 2024 Budget in Brief," p. 115, accessed at <https://www.hhs.gov/sites/default/files/fy-2024-budget-in-brief.pdf> on May 3, 2023.

The COVID-19 pandemic drove substantial backlogs of standard surveys that persist in many States.

In early 2020 and in light of the unprecedented pandemic, CMS directed State Agencies to temporarily suspend standard surveys and shift their resources to conduct more limited focused infection control surveys and investigations of serious complaints. Starting on March 23, 2020, State Agencies conducted shorter onsite surveys as opposed to the standard surveys that comprehensively cover nursing home quality and safety operations.

Prior to the suspension, State agencies were required to conduct a standard survey for each nursing home at least once every 15 months. By late June 2020, 8 percent of nursing homes had gone at least 16 months without a standard survey, and State Agencies were growing concerned about how they would eventually work through mounting backlogs.²³ In August 2020, CMS called on States to resume their standard surveys if they had the resources to do so. By May 31, 2021, the backlog of standard surveys had grown substantially: 71 percent of nursing homes had gone at least 16 months without a standard survey.²⁴ According to CMS's publicly available data as of May 7, 2023, that backlog stood at 28 percent of nursing homes nationwide going at least 16 months without a standard survey. By State, the backlogs range from less than 1 percent to as high as 87 percent, with Kentucky and Maryland each facing a backlog of 80 percent or greater.²⁵

CMS HAS STRUGGLED TO IMPROVE PERFORMANCE BY STATE AGENCIES THAT HAVE REPEATEDLY FALLEN SHORT.

The persistence of State Agency performance problems over time raises questions about how effectively CMS is able to drive improvements. CMS has relied primarily on corrective action plans, training, and informal communication to improve State Agency performance. But these tools did not always resolve problems. CMS has raised concerns about having few practical options for addressing intractable problems in some States.²⁶

²³ OIG, "Onsite Surveys of Nursing Homes During the COVID-19 Pandemic: March 23–May 30, 2020," December 2020, OEI-01-20-00430, accessed at [Onsite Surveys of Nursing Homes During the COVID-19 Pandemic: March 23–May 30, 2020 \(hhs.gov\)](#) on April 25, 2023.

²⁴ OIG, "Addendum: States' Backlogs of Standard Surveys of Nursing Homes Grew Substantially During the COVID-19 Pandemic," August 2021, OEI-01-20-00431, accessed at [States' Backlogs of Standard Surveys of Nursing Homes Grew Substantially During the COVID-19 Pandemic](#) on April 20, 2023.

²⁵ Calculated at [S&C QCOR](#), accessed on May 7, 2023.

²⁶ OIG, "CMS Should Take Further Action To Address States With Poor Performance in Conducting Nursing Home Surveys," OEI-06-19-00460, January 2022, accessed at [CMS Should Take Further Action To Address States With Poor Performance in Conducting Nursing Home Surveys](#) on April 27, 2023.

OIG work raises concerns about how effectively CMS is using corrective action plans.

CMS has commonly relied upon State Agencies to address their performance problems by developing corrective action plans, but OIG has found that those corrective action plans are sometimes insufficient to address performance. In a review spanning 2015 to 2018, plans for 12 States were missing from CMS files. When plans were available for our review, we found that State Agencies often failed to include substantive details about which actions would address the performance problem. For example, one State Agency indicated it would “work to achieve 100 percent” without providing further detail in each of three corrective action plans responding to three missed performance measures. In other States, corrective action plans were nearly identical to plans submitted for the previous year, which raises concern that either the plan was insufficient to address the problem or that the original plan was not fully implemented.

CMS has used other remedies, but many of these have limitations.

We found that CMS also used other remedies to address State Agency performance. Some examples include training, technical assistance, close communications, and allocating funding as States meet performance goals, a process called “benchmarking.” Among these examples, benchmarking to provide incentives for performance improvement appears to hold some promise. Limits in documenting training, assistance, and communications make it hard to determine their effectiveness. Other types of remedies included a few cases in which CMS used third-party contractors to support State Agencies struggling with performance; however, CMS reported to us that limited funding means only one to three States will typically receive this kind of support in a year.

CMS can also impose financial penalties, but this approach can compound the strains associated with increased workloads and staffing shortages. CMS has the authority to terminate its agreement, in whole or in part, with any State Agency for performance concerns;²⁷ it considers this to be the option of last resort. Terminating an agreement with a State Agency could lead to significant gaps in the oversight of nursing homes in that State.

Finally, CMS reported to OIG that in three cases, CMS escalated to senior State officials—in one case to a Governor and in the others to a State health department director—its concerns about State Agency performance and that this elevated attention led to some improvements.²⁸

²⁷ Under 42 CFR § 488.320(d)(5), for all survey inadequacies in Medicare facilities CMS may initiate action to terminate the 1864 agreement with the State, either in whole or in part.

²⁸ OIG, “CMS Should Take Further Action To Address States With Poor Performance in Conducting Nursing Home Surveys,” January 2022, OEI-06-19-00460, accessed at [CMS Should Take Further Action To Address States With Poor Performance in Conducting Nursing Home Surveys](#) on April 25, 2023.

CMS’s processes for reviewing State survey results reported on the Care Compare website were inadequate, resulting in some inaccurate information for consumers.

In 2023, an OIG audit found that CMS’s processes for reviewing State survey results reported on its Care Compare website were inadequate. Care Compare is a resource with information about health care providers to help consumers make informed health care decisions. It provides information for each Medicare- and Medicaid-certified nursing home in the country, including results of recent surveys by State Agencies. An estimated two-thirds of nursing homes had one or more deficiencies related to health, fire safety, and emergency preparedness identified during State Agency surveys that were inaccurately reported on Care Compare. CMS looked into the circumstances of some of the inaccuracies we identified. CMS determined that human error by surveyors entering the data had caused some of them and that systems errors had cause some others.²⁹

SUSTAINED COMMITMENT AND EFFORTS BY CMS, STATE AGENCIES, AND OTHERS ARE CRITICAL TO ENSURING NURSING HOME QUALITY AND SAFETY FOR MILLIONS OF AMERICANS.

Supporting a robust and effective survey process is crucial to the health and safety of nursing home residents. State agencies are on the front lines for determining whether nursing homes meet standards, investigating complaints, identifying deficiencies in nursing home care or conditions, and validating that deficiencies are corrected. Delays in responding to complaints or conducting comprehensive inspections and unaddressed nursing home deficiencies can put residents at great risk of harm.

OIG has made numerous recommendations to CMS to address specific shortcomings of State Agency oversight identified in our evaluations and audits. CMS has implemented some, and others remain open. We continue to call on CMS to work with urgency in implementing recommendations, including the following:

- **Address State Agency Timeliness Problems More Effectively.** CMS should engage earlier and more frequently with high-level State officials on serious or recurring performance shortfalls (most commonly survey timeliness), disseminate results of State performance reviews more widely, and actively monitor State Agency corrective action plans and other remedies to focus on making the remedies specific and outcome-oriented. CMS should also identify new approaches to address States that consistently fail to meet the required timeframes for investigating the most serious nursing home complaints, one of the most

²⁹ OIG, “CMS Did Not Accurately Report on Care Compare One or More Deficiencies Related to Health, Fire Safety, and Emergency Preparedness for an Estimated Two-Thirds of Nursing Homes,” April 2023, A-09-20-02007, accessed at <https://oig.hhs.gov/oas/reports/region9/92002007.pdf> on April 20, 2023.

persistent and widespread problems. Furthermore, CMS should work with State Agencies on a plan to more frequently survey nursing homes with repeat deficiencies.

- **Strengthen Oversight of Nursing Home Risk Areas.** These areas include:
 - Infection Control. CMS should improve how surveys identify infection control risks and strengthen guidance on assessing the scope and severity of those risks.
 - Life Safety. CMS should work with State Agencies to require standardized life safety training for nursing home staff.
 - Leveraging Data to Target Risks. OIG has also encouraged CMS efforts to leverage data to analyze risks and target CMS and State agency oversight efforts in ways that are most likely to uncover problems in nursing home care. For example, CMS has implemented an OIG recommendation to provide State Agencies with certain nursing home staffing data to help States target specific nursing homes for weekend inspections.³⁰ OIG has also recommended that CMS use data to identify nursing homes associated with a higher use of psychotropic drugs and focus oversight on nursing homes with trends that may signal inappropriate use.³¹

- **Better Ensure That State Agencies Verify Nursing Home Corrections of Deficiencies.** CMS should improve guidance to State Agencies on verifying nursing home corrections of deficiencies and documentation to support verification.

- **Improve the Accuracy of Deficiency Data in Care Compare.** CMS should strengthen its processes for reviewing State Agency survey results reported on Care Compare by requiring State Agencies to verify that deficiencies shown across CMS’s systems are accurate, providing technical assistance and additional training to State Agencies that are not following procedures for reporting deficiencies, and requiring quality assurance checks to ensure accurate reporting.

³⁰ OIG, “CMS Use of Data on Nursing Home Staffing: Progress and Opportunities To Do More,” March 2021, OEI-04-18-00451, accessed at [CMS Use of Data on Nursing Home Staffing: Progress and Opportunities To Do More](#) on May 3, 2023.

³¹ OIG, “Long-Term Trends of Psychotropic Drug Use in Nursing Homes,” November 2022, OEI-07-20-00500, accessed at [Long-Term Trends of Psychotropic Drug Use in Nursing Homes](#) on April 26, 2023.

OIG is committed to and is investing in improving quality of care and safety for nursing home residents.

This is the top priority of Inspector General Grimm, and OIG is building a nursing home strategy that targets problems with care, safety, and oversight. OIG’s “**PRO**” strategy centers on initiatives in three key areas:

1. **Performance.** Understanding why poorly performing nursing homes fail and why good ones succeed.
2. **Residents First.** Ensuring that nursing homes prioritize quality of care and quality of life for residents.
3. **Oversight.** Ensuring that CMS and State Agencies detect and remedy problems quickly and effectively.

OIG is investing substantial resources into our oversight and enforcement work to drive better outcomes for nursing home residents. We have 26 audits and evaluations underway focused on nursing homes, and we have released 19 reports related to nursing home since January 2021.³² We also prioritize nursing home cases on the enforcement side. For example, OIG works in partnership with the Department of Justice on False Claims Act cases, including two recent cases involving allegations of materially substandard care by nursing home providers. The San Miguel Villa case in California involved allegations of overuse of psychotropic drugs, excessive falls, resident-to-resident altercations, and other serious mental and physical harm to residents. The Saratoga Center case in New York involved allegations of worthless nursing home care and misrepresentations in order to obtain operating certificates. As part of the Saratoga Center settlement, OIG excluded culpable individuals and entities from participation in Federal health care programs.

However, while more needs to be done, OIG’s investments in this critical work are constrained by our resources. With a FY 2023 enacted budget of \$432.5 million, OIG has about 2 cents to oversee every \$100 in HHS spending. With current resources, we cannot keep up with the level of threats to HHS programs, nursing home residents and other patients, and taxpayer dollars. Every day, we make difficult choices on which cases we can and can’t investigate, and which new audits and evaluations we can and can’t start. There are many areas of critical concern that we are not able to address each year. The increased funding for Medicare and Medicaid oversight and enforcement in the President’s FY 2024 Budget Request would significantly expand OIG’s ability to conduct consequential oversight and enforcement, including to improve nursing homes for the people who need them and ensure that taxpayer dollars are being well spent on high-quality, safe nursing home care.

³² Some of these audits and evaluations underway may produce more than one final report.

Conclusion

Nursing home residents deserve and should expect high-quality care and safe living conditions. The persistence and seriousness of quality and safety problems in many nursing homes demands urgent attention and sustained action by stakeholders across Federal and State Governments, including program officials, Congress, and oversight entities, as well as the nursing home industry and care providers. My testimony today focuses on one critical component of the safety system designed to protect nursing home residents: the State Agency survey process. OIG is committed to driving positive change to strengthen this safety system as well as other aspects of nursing home performance, resident well-being, and oversight. Nursing home care is a deeply challenging enterprise. But with dedicated attention and action, nursing homes can be made better for residents who need them.

Thank you for your ongoing leadership in this area and for affording OIG the opportunity to testify and discuss with you this vitally important topic. I am happy to answer questions.