

Department of Health and Human Services

**OFFICE OF
INSPECTOR GENERAL**

**STATE PROGRESS IN CARRYING OUT
THE NURSING HOME SURVEY REFORMS**



MAY 1993

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EXECUTIVE SUMMARY

PURPOSE

To assess States' progress in carrying out their Medicare/Medicaid nursing home survey responsibilities under the 1987 Nursing Home Reform Law.

BACKGROUND

The 1987 nursing home reforms marked a major shift in how States monitor nursing home quality. Prior to implementing those reforms in October 1990, State surveys of homes receiving Medicare or Medicaid stressed reviewing processes and records to document compliance with Federal standards. Now the process-focussed record review has taken a back seat to observing how well the staff meet individual resident needs and how well the home's structure supports resident well-being. This shift reflects the recommendations called for in the Institute of Medicine's 1986 study, *Improving the Quality of Care in Nursing Homes*.

In this report, we examine the States' progress in carrying out their survey responsibilities. By survey responsibilities, we mean conducting the certification surveys, responding to complaints, and carrying out the follow-up activities these two entail, such as extended surveys. We sought information from the top 20 States ranked by number of nursing home beds and draw on interviews with 18 State survey agency officials and data from 19 of those top 20 States. The 19 States contain 73 percent of the nursing home beds in the country; the 18, 70 percent. We interviewed nursing home surveyors and supervisors in two States. We also draw on information from the Health Care Financing Administration's (HCFA) central and regional office staff and discussions with national groups representing nursing homes and residents.

FINDINGS

The 19 States are making progress in carrying out their new nursing home survey responsibilities called for in the 1987 Nursing Home Reform Law.

- Resources for nursing home survey and certification increased from FY 1990 to 1992. The budgets increased in each of the 19 States; staff increased in 16 of the 19 States and decreased in 3. The average budget increase was 59 percent, and the average staff increase, 37 percent.
- State survey agencies are overseeing nursing homes with the new, outcome-focussed survey process. They are also taking steps to implement a new, more flexible survey cycle, which allows them to concentrate on problem homes.
- Seventeen of the 19 States are conducting the standard certification surveys on time.

Despite their progress, the 19 States are facing implementation problems that could jeopardize the intent of the nursing home reforms.

- State survey staff are experiencing problems adjusting to the new outcome-focussed survey. While surveyor training has helped, both HCFA regional staff and State officials expressed concerns about that training.
- State survey agencies contend with staff turnover and recruitment problems that are compounded by their own State fiscal pressures. At the time they responded to our survey, the 19 States reported over 700 vacancies among about 3,800 survey and support staff in FY 1992.
- State survey agencies' relationships with nursing homes are increasingly contentious as the reforms provide new incentives for nursing homes to refute deficiencies. This can result in surveyors citing fewer or less serious deficiencies.
- The State survey and HCFA regional officials expressed concerns over long waits for HCFA regulations and, to a lesser extent, over unclear and inconsistent guidance from HCFA. This can result in confusion and inconsistent implementation.

Vulnerabilities in both nursing homes and other State-surveyed health facilities could be looming as States focus on the implementation challenges of the reforms.

- Complaints about nursing homes increased for 15 and decreased for 3 of the 18 responding States from FY 1990 to 1992. The average increase was 74 percent. Some State survey officials are concerned about their ability to respond to complaints quickly and effectively.
- Some State survey officials report curtailing, delaying, and/or omitting surveys for facilities such as home health agencies, hospices, and hospitals.

CONCLUSION

Nursing home and resident advocates alike welcomed the nursing home reforms of 1987 as a positive step in improving the lives of nursing home residents. And the intent of the reforms is beginning to be realized. The HCFA has an important role to play in fostering continued progress in the implementation of these reforms. Toward this end, it has opportunities in three areas. First, it could invigorate its surveyor training program to enhance surveyor skills. Second, it could use its annual evaluation of each State agency's contract compliance to identify areas of weak performance, and then take action to prevent problems before they present any danger to users of State-surveyed health facilities. Finally, HCFA has opportunities to improve its guidance to States by quickly issuing final regulations and ensuring the State Operations Manual reflects current HCFA policy.

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INTRODUCTION

PURPOSE

To assess States' progress in carrying out their Medicare/Medicaid nursing home survey responsibilities under the 1987 Nursing Home Reform Law.

BACKGROUND

The 1987 nursing home reforms¹ marked a major shift in how States monitor nursing home quality. Prior to implementing those reforms in October 1990, State surveys of homes receiving Medicare or Medicaid funds stressed reviewing processes and records to document compliance with Federal standards. Now the process-focussed record review has taken a back seat to *outcomes*, observing how well the staff meet individual resident needs and how well the home's structure supports resident well-being. This shift reflects the recommendations called for in the Institute of Medicine's (IOM) 1986 study, *Improving the Quality of Care in Nursing Homes*.

The 1987 reforms addressed the problems the IOM identified with the previous nursing home inspection process. That process included an annual survey, an annual inspection of the care provided to each Medicaid recipient (both utilization review and quality of care), and the ad hoc investigation of complaints. Among the problems IOM identified with that process were its predictability, insensitivity to resident needs, focus on paper compliance, and the ease with which substandard homes could avoid termination by maintaining compliance only long enough to become recertified.

The reforms addressed the surveys' predictability by eliminating nursing homes' time-limited agreements (TLAs)², so that the survey schedule could be more flexible. Now surveys must occur at least every 15 months, with a statewide average of 12 months. The reforms also called for surveyors to focus on outcomes, by determining how well nursing home residents are achieving their "highest practicable physical, mental and psychosocial well-being."³ That new focus addresses IOM's concerns not only about insensitivity to resident needs but also paper compliance because surveyors are now required to observe residents, not simply ensure the proper documentation of their records. And the reforms called for a range of intermediate sanctions to deter violations and support sustained compliance.

About 90 percent of all nursing homes participate in Medicare and Medicaid.⁴ To participate in those programs, the homes must meet new Federal standards called for in the reforms. The Health Care Financing Administration (HCFA) contracts with State governments (i.e., survey agencies) to inspect the quality of care each home provides and ensure those standards are met. These State survey agencies not only conduct certification surveys but also investigate complaints and license nursing homes.⁵ And they oversee other health care facilities, such as laboratories, hospices, home health agencies, and hospitals.

The HCFA details the procedures for each of the seven standard survey tasks in its State Operations Manual. The tasks are: (1) off-site preparation, (2) entrance conference and on-site preparation, (3) orientation tour, (4) resident sampling, (5) information gathering, (6) information analysis and decision making, and (7) exit conference.

If the survey team finds the home meets the standards, then the State certifies that home to participate in Medicare and/or Medicaid. If certain standards are not met, the home can still be certified but has to correct its deficiencies through a written plan of correction. Based on deficiencies, the teams can also conduct extended surveys to focus on the home's underlying policies and procedures that allow the deficiencies to exist.⁶

The survey agencies must take more drastic actions if deficiencies threaten the health or safety of residents. The 1987 reforms require a range of enforcement remedies including payment denial, civil monetary penalties, temporary management, and termination from Medicare and Medicaid. They require criteria for enforcement that specify how and when the remedies be applied based on a deficiency's scope and severity, specify the amount of fines, minimize the time between the deficiency and remedy, and provide for more severe remedies for repeat deficiencies.

Thus, these nursing home reforms mandated major changes in how States will ensure that the nursing homes where thousands of Americans live meet Federal standards. In addition, the Clinical Laboratory Improvement Act (CLIA) of 1990⁷ also placed new burdens on State survey agencies. Given these changes plus the fiscal stress many States are operating under, State survey agencies are facing many challenges in implementing the reforms.

More than two years have passed since the implementation of the reforms. The reduced use of physical and chemical restraints on nursing home residents is often cited as one positive and tangible outcome of the reforms to date. In this report, we examine the State survey agencies' progress in carrying out the reforms in their survey responsibilities. By survey responsibilities, we mean conducting the certification surveys, responding to complaints, and carrying out the follow-up activities these two entail, such as extended surveys. We sought information from the top 20 States ranked by number of nursing home beds and draw on interviews with 18 State survey agency officials and data from 19 of those top 20 States. The 19 States contain 73 percent of the nursing home beds in the country, the 18, 70 percent. We interviewed nursing home surveyors and supervisors in two States. We also draw on information from the Health Care Financing Administration's central and regional office staff and discussions with national groups representing nursing homes and residents. (Refer to appendix A for more detail on our methodology.)

We conducted our review in accordance with the *Quality Standards for Inspections* issued by the President's Council on Integrity and Efficiency.

FINDINGS

The 19 States are making progress in carrying out their new nursing home survey responsibilities called for in the 1987 Nursing Home Reform Law.

- Resources for nursing home survey and certification increased from FY 1990 to 1992. The budgets increased in each of the 19 States; staff increased in 16 of the 19 States and staff decreased in 3. The average budget increase was 59 percent, and the average staff increase, 37 percent.
- State survey agencies are overseeing nursing homes with the new, outcome-focussed survey process. They are also taking steps to implement a new, more flexible survey cycle, which allows them to concentrate on problem homes.
- Seventeen of the 19 States have conducted the standard certification surveys on time.

The Medicare and Medicaid nursing home survey and certification budgets for the 19 States and increased from \$96,737,360 in FY 1990 to \$152,823,544 in FY 1992.⁸ The increases ranged from a low of 10 percent to a high of 128 percent. The median was 55 percent. In most States, both the Medicare and Medicaid budgets increased: in 16 States Medicare budgets increased 62 percent on average, and in 17 States Medicaid budgets increased 99 percent on average.⁹ The overall nursing home survey and certification budgets increased even in those States that experienced a decrease in either Medicare (three States) or Medicaid (two States) from FY 1990 to 1992.

The 19 States that responded to our survey reported having 1,923 full-time equivalent (FTE) surveyors conducting nursing home surveys in FY 1990, most of them registered nurses. By FY 1992, that number increased 35 percent to 2,587, still mostly registered nurses. Likewise, the number of support staff, such as supervisors and clerks, increased 23 percent between FY 1990 and 1992. Overall, the staff (survey and support staff) increases ranged from a low of 2 percent to a high of 128 percent for the 16 States that had an increase; the median was 31 percent.

These increases reflect the survey agencies' increased workload under the nursing home reforms. The majority of the State survey officials responding to our inquiry reported that each of survey tasks we asked about took longer than before the reforms; no one said they took less. The tasks we asked about are: conducting the surveys on-site, preparing the survey paperwork *before* the survey, preparing the survey paperwork *after* the survey, conducting enforcement activities, and responding to complaints. Extended and partial extended surveys, begun since the reforms, also add to the workload. Prior to implementing them, HCFA estimated that the reforms would increase survey workload by a minimum of 40 percent for a standard survey to as much as 64 percent when an extended survey is needed.¹⁰

In our discussions with them, the State survey officials indicated they were implementing the new flexible survey cycle as called for in the reforms.¹¹ Some reported they will rely on a home's compliance history, complaints, and/or turnover among key staff to select homes for more frequent surveys. Some also reported expecting this change to reduce some of the paperwork burden of the survey process. Before States began implementing this new survey cycle, HCFA required them to complete the standard recertification surveys before the 12-month agreements expired. With few exceptions, the States reported meeting those deadlines.¹² And HCFA's evaluation of the States' timely conduct of the surveys also shows that, for the most part, States were up-to-date in completing those surveys.¹³

Despite their progress, the 19 States are facing implementation problems that could jeopardize the intent of the nursing home reforms.

- State survey staff are experiencing problems adjusting to the new outcome-focussed survey. While surveyor training has helped, both HCFA regional staff and State officials expressed concerns about that training.

The new survey process represents a major culture change for many surveyors.¹⁴ They now look to see if the care provided by nursing homes allows the residents to achieve their "highest practicable level of physical, mental, and psychosocial well-being." This attention to resident outcomes is a long way from the prior focus on a home's capacity to meet Federal standards. Indeed, the focus on outcomes calls for developing new investigatory skills and enhancing skills many surveyors already have, such as interviewing and observation.

A recent study involved the review of a random sample of 359 deficiency statements from 21 States.¹⁵ Deficiency statements are the paperwork, using specific HCFA forms, that surveyors prepare to document deficiencies they find during the survey. That study raises questions about the extent to which surveyors writing those statements have adjusted to the new outcome focus: 45 percent of the deficiency statements failed to consider either actual or potential negative outcomes. When those deficiencies related more to a home's structure than to a resident's outcome were excluded, 43 percent still failed to consider actual or potential outcome.¹⁶

Teaching hundreds of surveyors not only to shift their focus to outcomes and learn new skills but also become familiar with a barrage of new survey forms and processes is a daunting task. The HCFA undertook this task through training manuals and courses in Baltimore and the regions. In some respects, this training has been helpful and well-regarded; however, many with whom we spoke expressed some serious concerns about the content and availability of the training.

Most of the State survey officials rated HCFA's training highly: 14 of the 18 who answered the question said the training was moderately or significantly helpful. They cited a range of activities for which the surveyors had received training, from conducting the standard and extended surveys, to completing the forms and using

computers. Many praised the *Principles of Documentation* manual and course, which provide guidance on the proper documentation for deficiencies. That course addresses the types of concerns raised in the above-noted study on deficiency statements.

Officials from HCFA regional offices, State survey agencies, and national groups representing nursing homes and residents expressed concerns about the content of the training. Both HCFA and State officials mentioned the lack of training in investigatory skills; one also mentioned the lack of training aimed at the needs of more experienced surveyors who account for as much as 75 percent of all surveyors.¹⁷ Some questioned whether the focus of the training adequately reflected the focus of the reforms. For example, the basic surveyor training course¹⁸ includes a mock hearing, which few surveyors will likely ever attend. Some also expressed concerns about how most of the training was provided: structured lectures to large groups rather than a more interactive approach with smaller groups. Typical of the concerns of the national groups was this comment from one such official who, in questioning how well surveyors are coping with the new outcome focus, also questioned whether the training has taught "the spirit of OBRA, not just the letter."

We also heard concerns about the amount of training available for surveyors. For example, many State officials noted inadequate space in the training courses, and HCFA regional officials echoed this concern.¹⁹ In fact, as of October 1, 1990, when the new survey system was to begin, 924 State and Federal surveyors had attended HCFA's 3-day course on the new survey process. At best, that represented about one-fifth of all State surveyors.²⁰ Since then, of course, more surveyors have attended that and other courses, such as the basic health facility course, designed for new surveyors. According to HCFA's "train the trainer" approach, those who attend each course are expected to share their knowledge with those unable to attend. But based on HCFA's own data, as many as one-third of State surveyors had not been trained by the end of FY 1992.²¹

State survey agencies, of course, also have orientation and training programs for their surveyors. They often assign new surveyors to shadow more experienced surveyors until they know the ropes. But HCFA officials and others we spoke with expressed concerns that, because the more experienced surveyors may be the ones having the hardest time adjusting to the new focus on outcomes, this approach to training may be counterproductive.

To the extent that the new outcome focus of the survey process is not being implemented, the intent of the reforms is left unrealized. For example, the survey in one home we know about illustrates this threat. Surveyors cited this home for deficiencies that posed an immediate and serious threat to the health and safety of its residents. The survey agency gave the home 23 days to correct its problems or be terminated from the Medicare and Medicaid programs. At the end of the 23 days, the home had not only failed to correct its deficiencies, but the State survey agency had also determined that the conditions in the home constituted an emergency that directly

jeopardized many residents. The State survey agency therefore issued an emergency order for the relocation of these residents. When challenged by the home's attorney, however, the State survey agency decided the residents could remain if the attending physician of each resident or the home's medical director simply documented that each resident would not be at jeopardy in the home. And the physicians did just that. Thus the survey agency essentially erased the emergency relocation order based on documentation rather than actual improvement or correction of deficiencies.

- State survey agencies contend with staff turnover and recruitment problems that are compounded by their own State fiscal pressures. At the time they responded to our survey, the 19 States reported over 700 vacancies among about 3,800 survey and support staff in FY 1992.

All but one of the State survey officials who responded to our survey said they had turnover and/or recruitment problems. Several mentioned chronic vacancy rates of 15 percent and 1 as high as 27 percent. Each of the 19 States for which we have data reported vacancies among their nurse surveyors--often long-term vacancies. In one State, only two of seven survey teams were fully staffed; in another, survey teams in one urban area have never been fully staffed. And in another large State, some of the district offices lack experienced surveyors.

In explaining the problems, many survey agency officials cited the onerous travel required of the surveyors and lack of competitive salaries, especially for registered nurse surveyors and registered dietitians.²² They also cited State salary and hiring freezes, early retirement programs, and cumbersome hiring procedures as exacerbating these problems.

These problems can have serious implications for the State survey agencies. Twelve of the 18 survey agencies that responded to our survey reported having inadequate capacity to conduct either their standard surveys, extended surveys, and/or complaint investigations. Officials from 11 States reported cutting back on survey activities in some ways, most often by not conducting all the follow-up required to monitor a home's progress in correcting deficiencies. The surveyors we spoke with in two States reported needing more time for some of the survey tasks, particularly observing residents and reviewing medical records for the quality of care assessment. And in another State, the survey agency officials have cut HCFA's required survey samples in half because of staffing shortages.

- State survey agencies' relationships with nursing homes are increasingly contentious as the reforms provide new incentives for nursing homes to refute deficiencies. This can result in surveyors citing fewer or less serious deficiencies.

We heard about the increasingly contentious relationship from both HCFA and State officials, as well as officials from groups representing residents and nursing homes. For example, they reported a trend of more and more homes refuting deficiencies and

appealing sanctions--although neither HCFA nor any of the nursing home or resident associations we asked track how many deficiencies are refuted or how many sanctions are appealed.

That trend may be in response, at least in part, to two stimuli: increasing numbers of malpractice suits against nursing homes²³ and HCFA's proposed enforcement regulations. Survey reports and deficiencies can become evidence in malpractice suits, and recent cases have resulted in significant awards against homes.²⁴ And the proposed enforcement regulations call for sanctions when homes are found to have provided substandard care²⁵ for three consecutive surveys. This means the stakes are higher for homes having even one deficiency in any one survey.

We also heard about a related trend that speaks to the increasingly contentious relationship: homes submitting plans of correction that more and more often contain a disclaimer stating that preparing and executing such a plan does not indicate the home agrees to the facts alleged in the deficiency. For example, the disclaimer in one plan of correction we reviewed read as follows: "Preparation and/or execution of this plan of correction does not constitute admission or agreement by the provider of the truth of the facts alleged or conclusions set forth in the statement of deficiencies. The plan of correction is prepared and/or executed solely because it is required by the provisions of federal and state law." The homes may view such a disclaimer as valuable if they were to appeal a sanction or if they were to defend themselves against a malpractice suit.

Of course, that the relationship can be contentious is not always problematic, nor is it a surprise--after all, the relationship between the home and the surveyor is one of the regulated and the regulator. Indeed, to the extent that a contentious relationship causes the surveyors to improve by being more careful and precise in documenting deficiencies, it is welcome. But the trends we describe also have other implications that can threaten the intent of the reforms. For example, surveyors, seeking to avoid a lengthy battle or appeals process, may cite fewer or less serious deficiencies. Or they may become involved in long appeals or malpractice cases, meaning they have less time for their routine survey, follow-up, and enforcement activities.

- The State survey and HCFA regional officials expressed concerns over long waits for HCFA regulations and, to a lesser extent, over unclear and inconsistent guidance from HCFA. This can result in confusion and inconsistent implementation.

The nursing home reform legislation provided statutory deadlines for implementing major parts of the reforms. The HCFA failed to issue proposed or final regulations timely for both of the two major sets of regulations upon which State survey agencies rely. One is related to survey and certification, which had a statutory deadline of January 1990; the other, enforcement, had a statutory deadline of October 1988. The proposed regulations for both were published August 28, 1992; final regulations have yet to be issued.

Both State and HCFA regional officials with whom we spoke called the delays unacceptable and expressed deep frustration with them. They are concerned that the lack of final regulations leaves inadequate guidance for the States and invites provider challenges, such as refuting deficiencies or appealing sanctions. With such challenges, HCFA faces the threat that proposed regulations will be interpreted through the courts.

Both State officials and HCFA regional staff with whom we spoke also cited inconsistent and unclear guidance from HCFA as presenting implementation problems for the States. Confusion over what constitutes HCFA policy is part of the problem. For example, HCFA regional offices routinely submit questions to the central office, which responds in a memorandum. Each regional office receives a copy. Whether these memoranda apply only to the specific question posed or constitute policy is interpreted differently among the HCFA regional offices. And since the regional offices interpret these memoranda differently, guidance to the States may also differ.

In another example, reported in an industry newsletter²⁶ and referred to by several people with whom we spoke, a HCFA regional office responded in September 1992 to a consumer group's question about what nursing homes are allowed to ask of prospective residents' finances. Shortly thereafter, HCFA central office issued another response. With HCFA and consumers sparring not only over the consistency but also the correctness of the two HCFA responses, State survey agencies are left unsure about how to enforce the policy in question.

Vulnerabilities in both nursing homes and other State-surveyed health facilities could be looming as States focus on the implementation challenges of the reforms.

- Complaints about nursing homes increased for 15 and decreased for 3 of the 18 responding States from FY 1990 to 1992. The average increase was 74 percent. Some State survey officials are concerned about their ability to respond to complaints quickly and effectively.
- Some State survey officials report curtailing, delaying, and/or omitting surveys for facilities such as home health agencies, hospices, and hospitals.

Officials from 11 States expressed concerns about their ongoing ability to respond to complaints--more so than other areas of their survey responsibilities that we asked about. The dramatic increase in complaints ranged from 4 percent to as high as 438 percent in those 15 States. The median was 23 percent. The increase, coupled with the surveyors' limited investigatory skills, have taxed States' ability to respond. Officials for those 11 States reported having inadequate capacity to investigate those complaints appropriately. Even among the States that reported having adequate capacity to investigate their complaints, some officials mentioned cutting back in other areas, such as follow-up visits to verify plans of correction, in order to investigate complaints.

Investigating complaints requires many skills and even contacts within the nursing home's community, particularly complaints alleging resident abuse or misappropriation of resident property. And while no State official reported having studied their increased complaints, 7 of the 17 State officials who responded to our question thought that the nature of the complaints might be changing. They mentioned more complaints of resident abuse, neglect, and misappropriation of resident property most often. In those types of cases, the complainant may wish to press criminal charges, so that preserving evidence, identifying witnesses, and contacting proper authorities (such as the police and/or State Medicaid Fraud Control Units) are vital to the proper investigation of the complaint.

Areas other than complaints may also become vulnerable as States continue to focus on the nursing home reforms. Indeed, officials from 10 of the 19 States we heard from reported cutting back their State licensure or survey activities for facilities other than nursing homes. For example, one State official reported deferring hospice and home health agency surveys in order to devote more staff to nursing home surveys. Officials from HCFA regional offices also expressed concern about the lack of attention to these other facilities. While recognizing nursing homes as the largest portion of survey agencies' workload, they also warned that other areas not be neglected.

In 13 of the 19 responding States, the same surveyors that are responsible for nursing home surveys also conduct surveys of other health facilities, such as hospitals, home health agencies, hospices, and end-stage renal disease (ESRD) facilities, among others. Each of these surveys requires some specialized knowledge. One State official elaborated on these concerns about surveyors' abilities to keep up with each field and noted particularly infection control techniques for facilities relying on high or quickly changing technologies, such as ESRD and hospitals.

CONCLUSION

Nursing home and resident advocates alike welcomed the nursing home reforms of 1987 as a positive step toward improving the lives of nursing home residents. And the intent of those reforms is beginning to be realized. In this report, we addressed both the progress State survey agencies have made in implementing the reforms and the implementation problems they face. We also reported on some dangers: survey agencies' continued focus on nursing home reforms could be at the expense of both adequately responding to complaints and attending to other State-surveyed health facilities.

Clearly, State survey agencies operate in a complex environment of myriad State fiscal pressures and responsibilities, Federal oversight, and an array of State and Federal regulations. And while implementation of the nursing home reforms is underway, State survey agencies also face the implementation of the Clinical Laboratory Improvement Act of 1988, which calls for unannounced inspections of all laboratories testing human specimens--an enormous undertaking.

The HCFA's role is crucial in helping the States maintain progress in realizing the nursing home reforms. The HCFA has opportunities to foster the momentum through its surveyor training initiatives, its evaluation of State survey agencies, and its guidance to the States. Renewed efforts to be responsive to State and HCFA regional office concerns in each of these areas could enhance the partnership between HCFA and the States, and promote further progress in realizing the full intent of the nursing home reforms.

- *Surveyor Training*

The HCFA has an opportunity to invigorate its surveyor training program and ensure its focus reflects the goals of the reforms and the needs of the surveyors. The HCFA has many resources from which to draw to do that. For example, HCFA recently completed a provider survey that offered insights on the providers' views of the survey process and how well surveyors convey their findings. Likewise, HCFA will soon have a report for which it contracted on surveyor decision-making and consistency as well as quality-of-life and quality-of-care measurement.²⁷ The HCFA will also have the results of its Surveyor Minimum Qualifications Test (SMQT).²⁸ Each of these resources, plus this report, should provide HCFA with ample information to draw on in assessing ways to improve its training programs, for example, to enhance surveyor skills for assessing resident outcome and address other training needs that are identified.

- *Evaluation*

The HCFA also has an opportunity to address whether it is getting enough meaningful information from its State Agency Evaluation Program (SAEP). Its existing SAEP

workgroup could consider new areas for data collection, such as the number and types of deficiencies refuted by providers and the number and outcome of appealed sanctions. Workgroup members could assess the extent to which SAEP data could be used to monitor not only each States' contract compliance, but also patterns of weak performance. They could also consider a shift in the SAEP's focus from process to outcomes--thereby reflecting the shift in the survey's focus. Such careful data collection and monitoring through the SAEP could enable HCFA to take action and to avert potential problems before they present any danger to nursing home residents, hospital patients, and others relying on State-surveyed health facilities for services.

- *Improved Guidance*

Finally, HCFA has opportunities to improve its guidance to the States. It could move quickly to issue final regulations. It could ensure the State Operations Manual that survey agencies rely upon is up-to-date and consistent with proposed and/or final regulations. It could also ensure that other sources of policy information, such as memoranda, are clearly labeled as such and incorporated into that manual as appropriate. This could reduce the confusion we heard about from both State survey agency officials and HCFA regional office staff.

APPENDIX A

Methodology

Our methodology for this study included collecting information from and about the top 20 States ranked by the number of nursing home beds. These 20 States account for about 75 percent of all the nursing home beds in the country. Beginning with those having the most nursing home beds, they are: California, Texas, New York, Illinois, Ohio, Pennsylvania, Florida, Indiana, Missouri, Michigan, Wisconsin, Massachusetts, Minnesota, New Jersey, Louisiana, Georgia, Iowa, Tennessee, Oklahoma, and Kansas.

We received budget and evaluation data from the HCFA regional and central offices for the 20 States for FYs 1990, 1991, and 1992. The evaluation data is based on HCFA's annual, formal review of the State agencies' performance. We also wrote to the survey directors in each State and requested both data on their nursing home survey staff and activities and answers to open-ended questions on the implementation of the reforms. We received data from 19 of the 20 States (all except Minnesota) and responses to our open-ended questions from 18 of the 20 States (all except Minnesota and Louisiana). The 19 States contain 73 percent of the nursing home beds in the country; the 18, 70 percent. We also held telephone interviews with a total of nine surveyors and surveyor supervisors in two States.

We talked to HCFA regional office staff in each of the eight regions responsible for States in our sample. We asked them how well they thought the reforms were being implemented and what constraints they thought the States face in implementing the reforms, among other things.

We also talked to several officials of national groups representing nursing homes and nursing home residents and researchers and consultants involved in this field. These interviews included officials from the American Health Care Association, American Association of Homes for the Aged, National Citizens' Coalition for Nursing Home Reform, National Association of State Long Term Care Ombudsmen, Abt Associates, and a former staff member of the Institute of Medicine who was involved in researching and writing the 1986 report, *Improving the Quality of Care in Nursing Homes*.

Finally, we reviewed relevant materials such as legislation, articles, and the above-noted Institute of Medicine book.

APPENDIX B

Notes

1. The reforms are contained in the Omnibus Budget Reconciliation Act of 1987 (Public Law 100-203), which was enacted on December 22, 1987.
2. The agreement requiring that nursing homes be surveyed and recertified every 12 months.
3. 47 FR 5365.
4. National Citizens' Coalition for Nursing Home Reform, *Nursing Home Reform Law: The Basics* (Washington, DC) 1991.
5. All nursing homes are subject to State licensure, even if they do not receive funds from Medicare and Medicaid.
6. Surveyors must conduct extended surveys if they find any Level A deficiency in the following requirements: Resident Rights, Resident Behavior and Facility Practices, Quality of Life, or Quality of Care.
7. The CLIA (Public Law 100-578) set standards for improving the quality of testing in all clinical laboratories that test human specimens. It calls for State survey agencies to assess compliance with the new standards through unannounced laboratory inspections, among other things.
8. These budget data from HCFA reflect Medicare budgets requested and approved by HCFA. They also include Intermediate Care Facilities and Medicaid nursing homes because HCFA cannot separate them from other nursing home survey and certification data. The national nursing home survey and certification budgets (Medicare and Medicaid) increased from \$120.2 million in FY 1990 to \$213.3 million in FY 1992.
9. Medicare increases ranged from a low of 9 percent to a high of 276 percent with a median of 79 percent. Medicaid increases ranged from a low of 7 percent to a high of 135 percent with a median of 49 percent.
10. Based on the HCFA survey time parameters used for Medicare surveys in nursing homes before and after OBRA 1987. These show that a survey before OBRA would take about 148 hours on average, nationally, and 207 after OBRA. An extended survey would require an additional 36 hours.

11. Our contact with State survey agencies began shortly after HCFA issued its implementation instruction for eliminating time-limited agreements. The HCFA issued that instruction on September 15, 1992. We mailed our surveys to the States on September 24, 1992 and began calling them shortly thereafter.

12. The major exceptions are Michigan and California. The Michigan survey agency recently caught up on a large backlog of nursing home surveys. In California, the survey agency refused to implement the reforms because it believed its State law exceeded the new Federal standards. On October 1, 1990, the National Senior Citizens Law Center took California to court to force implementation. Meanwhile, over one hundred Federal surveyors flew to California to enforce the law. In March of 1991, California, HCFA, and the administration negotiated an agreement allowing the State to make changes in the surveyor instructions, and California resumed its survey activities.

13. According to the State Agency Evaluation Program Reports we reviewed for FY 1992, HCFA required 3 of the 19 States in our sample to submit corrective action plans based on poor performance in completing the surveys on time. In addition to Michigan and California, HCFA also identified Massachusetts. Massachusetts officials we spoke with indicated no backlog, nor did data from that State which we reviewed. The HCFA's concerns in its review of the State's performance appear to relate more to paperwork problems.

14. For a discussion of social systems' active resistance to change, referred to as "dynamic conservatism," see Donald A. Schon, Beyond the Stable State, New York: W. W. Norton & Company, Inc. 1971.

15. The sample included statements from the period April 1, 1991 to March 30, 1992. Jean Johnson-Pawson, *Study of Surveyor Performance*, The George Washington University, October 26, 1992. This study was funded by the American Health Care Association.

16. Letter from the American Health Care Association to HCFA, April 28, 1993.

17. Personal communication with a representative of Abt Associates. Under contract with HCFA, Abt is undertaking an evaluation of the surveyors' decision-making. One part of that evaluation involved a mail survey to 750 State surveyors. Preliminary results of that mailing indicate that 75 percent of the surveyors were surveying nursing homes prior to October 1990, when the new survey process was implemented.

18. The HCFA requires all surveyors to attend its basic health facility training course within their first year of employment to participate fully as a survey team member.

19. Many State officials said they would like to see more training opportunities in the regions rather than Baltimore, and the HCFA regional staff also noted wanting to offer more. The HCFA regional officials noted that their training budgets for such projects were limited, especially because funds for training compete with funds

required for the Federal surveyors to conduct their monitoring surveys at the mandated 5 percent of the homes in each State.

20. Based on HCFA's estimated 4,111 State nursing home surveyors in FY 1990 and its training records indicating that 924 State and Federal surveyors attended that course by October 1, 1990. These data include all States.

21. Based on HCFA's estimated numbers of State nursing home surveyors (5,255) in FY 1992 and actual number of State and Federal surveyors (3,568) completing the long-term care specialty training, the basic training, or a course on resident assessment from FY 1990 through FY 1992 as tracked by the training branch in HCFA. These data include all States.

22. We asked some State officials about recent pay raises to address recruitment and retention problems. Eleven States official reported raises, mostly for the registered nurses and often based on union negotiations, although the raises were generally small cost-of-living increases.

23. Malcolm J. Harkins and Bradley L. Kelly. *The Impact of Nursing Home Survey Reports in Tort and Criminal Cases*. Washington, DC: Cassons and Harkins. April 1992.

24. For example, a jury in Texas awarded \$39.4 million to the family of a woman strangled in a restraint and a jury in Alabama awarded \$2 million in punitive damages for a home's alleged mismanagement of a resident's bedsores. See David T. Marks. *Nursing Home Litigation Exchange Report*. Houston, TX: Association of Trial Lawyers of America. July 28, 1992, and *The Impact of Nursing Home Survey Reports in Tort and Criminal Cases*, op. cit.

25. Substandard care means care furnished in a facility that has one or more deficiencies in any area with a severity level of 3 (potential physical harm) or 4 (actual physical harm), regardless of scope; or a level 2 (negative outcome or resident rights violation, or in the survey team's judgement, the ability of the individual to achieve the highest practicable physical, mental or psychosocial well-being has been compromised, or both) in severity with a level 3 (pattern) or 4 (widespread) in scope in the quality of care requirements for long term care facilities.

26. See Long Term Care Management. *HCFA Bars Homes From Asking Financial Questions*. October 15, 1993: 3. and *Consumers, HCFA Dispute LTC Financial Screening Ruling*. March 10, 1993: 1.

27. The HCFA's contract is with Abt Associates.

28. The reforms mandated a surveyor training and testing program, and the SMQT is HCFA's response to that mandate. It is a standardized test that all surveyors will have to pass to participate fully as team members. Those who fail can participate as trainees, will receive feedback on their test results, and must undertake remedial

training. The pretest was held December 7, 1992, and HCFA has modified the test and its administration of the test based on those results. The operational test will be held in the late summer, 1993.