

Department of Health and Human Services

**OFFICE OF
INSPECTOR GENERAL**

**Nursing Home Survey and Certification:
Overall Capacity**



**JUNE GIBBS BROWN
Inspector General**

**MARCH 1999
OEI-02-98-00330**

OFFICE OF INSPECTOR GENERAL

The mission of the Office of Inspector General (OIG), as mandated by Public Law 95-452, is to protect the integrity of the Department of Health and Human Services programs as well as the health and welfare of beneficiaries served by them. This statutory mission is carried out through a nationwide program of audits, investigations, inspections, sanctions, and fraud alerts. The Inspector General informs the Secretary of program and management problems and recommends legislative, regulatory, and operational approaches to correct them.

Office of Evaluation and Inspections

The Office of Evaluation and Inspections (OEI) is one of several components of the Office of Inspector General. It conducts short-term management and program evaluations (called inspections) that focus on issues of concern to the Department, the Congress, and the public. The inspection reports provide findings and recommendations on the efficiency, vulnerability, and effectiveness of departmental programs.

OEI's New York Regional Office prepared this report under the direction of John I. Molnar, Regional Inspector General and Renee C. Dunn, Deputy Regional Inspector General. Principal OEI staff included:

REGION

Lucille Cop, RN
Danielle Fletcher
Daniel Ginsberg
Steve Shaw
Patricia Banta, RN *intern*

HEADQUARTERS

Susan Burbach, *Program Specialist*

To obtain copies of this report, please call the New York Regional Office at (212) 264-2000. Reports are also available on the World Wide Web at our home page address:

<http://www.dhhs.gov/progorg/oei>

EXECUTIVE SUMMARY

PURPOSE

To describe the overall capacity of the State survey and certification program to monitor quality of care in nursing homes.

BACKGROUND

While many studies indicate that changes in law and regulations may have had a positive effect on improving the environment and overall health care of nursing home residents, recent reports by the Health Care Financing Administration and the General Accounting Office have raised serious concerns about residents' care and well-being. The Senate Special Committee on Aging held hearings in the summer of 1998 on these results. At the same time, the Office of Inspector General undertook additional studies aimed at assessing the quality of care in nursing homes.

The 1987 Nursing Home Reform Act changed these requirements by introducing an increased focus on the quality of life and care, the importance of the individual resident, and the need to help the resident reach the "highest practicable level" of functioning. Enforcement policies were established that gave the Health Care Financing Administration the license to impose a variety of corrective measures when a facility is not in substantial compliance with the requirements for participation in the Medicare and/or Medicaid program.

This report examines the capacity of the State nursing home survey and certification program to monitor quality of care. A companion report analyzes trends in the Online Survey Certification and Reporting System (OSCAR) data that indicate quality of care problems in nursing homes. Other Office of Inspector General reports address the trend in reported abuse in nursing home residents and the role of the ombudsman in protecting nursing home residents.

We selected a purposive sample of ten States: New York, California, Texas, Ohio, Illinois, Pennsylvania, Massachusetts, Florida, New Jersey, and Tennessee. We analyzed OSCAR data in these States to identify trends in the amount and nature of deficiencies in nursing homes quality of care. We obtained and reviewed written procedures for State survey and certification programs. To better understand the overall context of these deficiencies, we conducted structured interviews with the State directors and surveyors.

FINDINGS

Generally Mandatory Surveys Are Performed Timely and Follow the Prescribed Process

All States report implementing the Health Care Financing Administration's guidelines in the same way, including an entrance conference, resident interviews, reviewing medical records, and concluding the review with an exit conference to provide the home with information about their potentially deficient areas. Based on OSCAR data over the last four standard surveys, all sample States completed 97 percent of standard surveys for all nursing homes in the mandated time frame of 9 to 15 months. All States report having a complaint process, although their procedures vary by State.

However, There Are Significant Weaknesses in the Process

Although all States report that nursing home standard surveys are unannounced, almost all directors and surveyors believe that facilities can roughly predict the survey start date. Most State directors and surveyors say they do not begin standard surveys on the weekend or evenings, but do continue standard surveys into the evening hours and conduct complaint surveys on weekends and evenings.

The OSCAR data show 900 nursing homes have been cited with the same deficiencies over the past four contiguous surveys, representing 13 percent of all homes in sample States. Nursing homes are given the opportunity to correct their deficiencies without penalty with a plan of correction. State directors and surveyors cite concerns with provisions that allow facilities the opportunity to avoid penalties and comply with regulations after the citation of deficiencies. Half of the State Directors and three-fourths of surveyors indicate that current enforcement measures are questionable, citing the lack of both the effectiveness of the penalties and the timeliness of the enforcement.

The OSCAR data also show that nursing home abuse complaints receive little to no action. Of the 4,707 substantiated and unsubstantiated abuse complaints reported between January 1997 and July 1998, ninety-seven percent of the complaint resolution concludes with no action, plans of correction, or "other".

Staff Resources May Be Inadequate in Some Cases

The overall number of surveyors varies by State, which may affect the intensity and thoroughness of their surveys, their ability to conduct follow-up reviews to verify correction of deficiencies, and to respond to complaints. The surveyor teams vary based upon facility size, resident characteristics, facility history, and surveyor availability. Some surveyors note the need for more Health Care Financing Administration training which

would provide a forum for surveyors to discuss issues and policy with other surveyors in different States.

Coordination with Ombudsman Is Not Working Effectively

Looking specifically at abuse complaints, the survey agency received only 13 percent of the total ombudsmen abuse complaints per month in 1997. Some States may have agencies other than the survey and certification agency designated to investigate abuse complaints. Ombudsman programs generally investigate and work to resolve complaints brought to their attention. However, only 5 percent of all complaints to the State survey and certification agency originate from the ombudsmen.

RECOMMENDATIONS

The resident-centered long-term care requirements of the nursing home survey are essential to guarantee the quality of care in nursing homes. Clearly some major problems need to be addressed. Our findings support and elaborate on the Health Care Financing Administration's (HCFA) initiative to strengthen the enforcement efforts by:

- ▶ making them more timely and effective,
- ▶ changing the survey schedule to make surveys more unpredictable,
- ▶ increasing the number of night and weekend surveys,
- ▶ increasing the number of surveys at nursing homes with chronic quality of care problems, and
- ▶ focusing on specific problems such as pressure sores, dehydration, and malnutrition.

These initiatives, if carried out completely, appear to be responsive to most of the problems in this report as well as our companion report "Nursing Home Survey and Certification: Deficiency Trends."

In light of our findings in this report, additional action is needed. We recommend that HCFA:

- ▶ evaluate the surveyor staffing in each State to assure that adequate staffing is available to complete all standard surveys, follow up surveys, and respond to complaints,
- ▶ provide additional training to State surveyors,
- ▶ provide a forum for State surveyors to meet and discuss common issues, and
- ▶ facilitate better coordination with the Ombudsman program.

AGENCY COMMENTS

We received comments on the draft report from HCFA, the Assistant Secretary for Planning and Evaluation (ASPE), the Administration on Aging (AoA), and informally from the Assistant Secretary for Legislation (ASL). The HCFA and AoA generally concur with our recommendations. The AoA and the ASL provided suggestions for clarifications of the text which have been incorporated into the final report.

The ASPE expressed some concern about the ability of OSCAR data to assess quality of care in nursing homes. We recognize the limitations of OSCAR but used it as only one indicator of quality. We are happy to re-emphasize here what we say in our report that OSCAR data should not be looked at independently. In this report we used it in combination with the views of nursing home surveyors and State Directors.

TABLE OF CONTENTS

| | PAGE |
|-----------------------------------|------|
| EXECUTIVE SUMMARY | 1 |
| INTRODUCTION | 6 |
| FINDINGS | |
| Survey Process | 14 |
| Weaknesses in the Process | 17 |
| Staff Resources | 23 |
| Coordination with Ombudsman | 25 |
| RECOMMENDATIONS | 27 |
| APPENDICES | |
| A: Deficiency Tags | 29 |
| B: Comments | 33 |

INTRODUCTION

PURPOSE

To describe the overall capacity of the State survey and certification program to monitor quality of care in nursing homes.

BACKGROUND

While many studies indicate that changes in law and regulations may have had a positive effect on improving the environment and overall health care of nursing home residents, recent reports by the Health Care Financing Administration (HCFA) and the General Accounting Office (GAO) have raised serious concerns about residents' care and well-being. The Senate Special Committee on Aging held hearings in the summer of 1998 on these results. The Office of Inspector General (OIG) undertook a series of studies aimed at assessing the quality of care in nursing homes. This report examines the capacity of the State nursing home survey and certification program to monitor quality of care. A companion report analyzes trends in the Online Survey Certification and Reporting System (OSCAR) data that indicate quality of care problems in nursing homes. Future OIG reports will address the trend in reported abuse in nursing home residents, the role of the ombudsman, and the availability of nursing home survey results.

Generally, a nursing home is a residential facility offering daily living assistance to individuals who are physically or mentally unable to live independently. Residents are provided rooms, meals, assistance with daily living, and in most cases, some medical treatment for those who require it. Medicare can help pay for skilled nursing facility (SNF) care for up to 100 days in a benefit period when a beneficiary meets certain conditions. Medicaid coverage varies among States. Medicaid eligible beneficiaries who require custodial care such as help with eating, bathing, taking medicine and toileting, as well as those who require skilled care may have nursing home stay paid for by Medicaid. Medicaid payments to nursing homes in 1996 totaled \$29.6 billion. In 1989 Medicare paid \$2.8 billion to nursing homes, an amount totaling 4.7 percent of the Medicare budget. In 1996 this amount had increased to \$10.6 billion, totaling 9 percent of the Medicare budget.

In 1986 the Institute of Medicine conducted a study on nursing home regulation. The Institute reported prevalent problems regarding the quality of care for nursing home residents and the need for stronger Federal regulations. In 1987 the General Accounting Office (GAO) reported that over one third of nursing homes were operating below the Federal minimum standards. These reports, along with widespread concern regarding nursing home conditions, persuaded Congress to pass the Omnibus Budget Reconciliation

Act of 1987 (OBRA 1987). As a part of OBRA 1987, Congress passed the comprehensive Nursing Home Reform Act (PL 100-203). These actions expanded requirements that nursing facilities had to comply with prior to Medicare certification. The Nursing Home Reform Act also ceded personal rights to nursing home residents such as the right to be free of physical or mental abuse, and the right to be free from chemical and physical restraints. It also altered the principles for enforcement of Federal standards of care in nursing homes.

Medicare Requirements

The Health Care Financing Administration (HCFA) has the responsibility to act as “prudent purchaser” by ensuring that nursing homes participating in Medicare and/or Medicaid meet certain requirements for quality environment and services. These requirements are found at 42 Code of Federal Regulations (CFR) Part 483, Subpart B. The OBRA 1987, as amended in 1988, 1989, and 1990, changed these requirements by introducing an increased focus on the quality of life and care, the importance of the individual resident, and the need to help the resident reach the “highest practicable level” of functioning. It also included interviewing and assessing residents rather than simply reviewing medical records.

Also, as part of The Nursing Home Reform Act, HCFA developed the Minimum Data Sets (MDS) which required the Secretary to specify a minimum data set of core elements and common definitions in conducting the regulatory-required resident assessments and to establish guidelines for use of the data set. The MDS collects data through resident assessment measures with subsequent progress or decline documented in electronic format. Nursing homes must “conduct standardized, reproducible assessments of each resident’s functional capacity...” within 14 days of admission. Additional assessments must be completed within 12 months of the most recent full assessment and following a significant change in the resident’s status. This information tool, while aimed at improving assessment and consequent care planning, can also assist the surveyors in pre-survey preparation by highlighting potential areas of concern.

Enforcement Procedures

The 1987 Nursing Home Reform Act enforcement provisions were enacted when the State Operations Manual (SOM) became effective on July 1, 1995. The HCFA had several process goals during the implementation of the new survey and enforcement systems. The first was to promote consistency through extensive training, the second was to link appropriate remedies to deficiencies, and the third was to avoid unnecessary procedures. Congress recognized that one enforcement response would not be appropriate for all deficiencies. Enforcement policies were established that gave HCFA the license to impose a variety of corrective measures when a facility is not in substantial compliance with the requirements for participation in the Medicare and/or Medicaid

program. Some options include temporary management, denial of payment for new admissions, civil money penalties, termination of the facility, or State monitoring of the facility. States are responsible for establishing their own remedy guidelines.

The HCFA imposed a number of administrative changes on enforcement procedures following the implementation of the State Operations Manual. In June of 1995, HCFA enacted a temporary moratorium on the collection of certain lower-level money penalties (CMPs). The moratorium preceded HCFA's decision to alter the State Operations Manual in December of 1996. "Civil monetary penalties are now limited to situations of immediate jeopardy or to nursing facilities that are poor performers or have serious deficiencies that are not corrected at the time of a revisit." Additional changes by HCFA redefined the scope of deficiencies, permitted States to avoid revisits in facilities that have lower level deficiencies, and established new terms to define facilities that are not in substantial compliance.

Requirements of Surveys

An important characteristic of nursing homes is their Federal certification status for the Medicare and/or Medicaid programs. While some nursing homes may not meet certification requirements, or may elect not to participate in either program, nearly all nursing homes had some form of certification in 1996. The Nursing Home Reform Act defines the State survey and certification process for determining nursing home compliance with the Federal standards.

To ensure acceptable compliance, both the State for Medicaid facilities, and HCFA for Medicare facilities, are responsible for performing routine facility surveys. For those facilities designated as dually-certified, HCFA has the primary responsibility. The HCFA contracts with States to perform the surveys for Medicare and dually-certified nursing homes. The survey process determines, and the resulting survey documentation records (HCFA-2567), the compliance or noncompliance of the facilities. When a facility fails to meet a specific requirement, a deficiency or citation is given to the facility by the surveyors. Surveyors provide the reasons justifying any resulting enforcement action and the record on which to defend that action in the appeals process. Surveyors are instructed to use the Principles of Documentation when determining the extent of non-compliance. Generally, there are 20 principles that should be considered in the citation of deficiencies on the HCFA-2567. These principals are generic and apply to the documentation of survey outcomes regardless of the program (Medicare/Medicaid).

As a result of the Nursing Home Reform Act, a new survey and certification process was implemented in 1995. All nursing facilities are now subject to an unannounced standard survey "no later than 15 months after the date of the previous standard survey," and the Statewide average interval between standard surveys must be 12 months or less," creating a Federal standard survey window between 9 and 15 months. Each standard survey

includes a stratified case mix of nursing home residents measuring medical, nursing and rehabilitative care, dietary and nutrition services, activities, social participation, sanitation, infection control, and the physical environment. Written plans of care are reviewed to determine their adequacy and an audit of residents' assessments are conducted to determine the accuracy of such assessments. There is also a review of facility compliance of residents' rights.

In addition to the regular survey process there are "special" and "extended" surveys. Special surveys **may** be conducted within two months of any change in ownership, administration, management, or director of nursing to determine if the change is having an effect on the quality of care in the facility. Extended surveys are performed immediately or within two weeks after the standard survey completion on those facilities found to have provided substandard quality of care. The survey team reviews the policies and procedures that produced the substandard care, expands the size of the sample of resident's assessments, reviews staffing, in-service training, and if necessary, contracts with consultants.

The team for all surveys consists of multi-disciplinary professionals, which must include a registered professional nurse. Other professionals who may be on the survey team include social workers, therapists, dieticians, pharmacists, administrators, physicians, or others as selected by the State. Each State and the Health and Human Services Secretary must implement programs to measure and reduce inconsistency in the application of results among surveyors.

Validation surveys are generally conducted by HCFA on a representative sample of facilities in each State and must be conducted within two months of the State survey. The HCFA utilizes the same survey procedure as the State agency. Recently, some HCFA regional offices have chosen to conduct these validation surveys simultaneously with the State. The HCFA must survey at least five percent of the number of facilities surveyed by the State each year, but this number must never be less than five surveys a year.

The State Agency Quality Improvement Program (SAQIP) is a process calling for the State Agency and HCFA regional offices to work together to develop the State's individual quality improvement plans (IQIPs). The regional office will assist the State by providing training, technical assistance, and support as necessary and appropriate. These individual plans are tailored to the specific needs and circumstances of each State, and are revised and improved based on changing needs. The SAQIP is designed to promote quality and ongoing improvement in survey and certification activities, and applies to all aspects of the survey and certification process.

Complaint Procedures

Each State is required to maintain written procedures and adequate staff to investigate

complaints of violations at nursing homes. States must review all allegations of resident neglect and abuse, and misappropriation of resident property. All allegations, regardless of source, must be reviewed in a timely manner. If an allegation is found to have occurred, the State must notify in writing, the individuals implicated and the administrator of the nursing home where the incident transpired. In addition, each State is required to notify the nurse aid registry and licensure boards when an abuse or neglect claim has been substantiated.

Online Survey Certification and Reporting System (OSCAR)

The HCFA's Online Survey Certification and Reporting System (OSCAR) came online in October 1991 as a replacement for the Medicare/Medicaid Automated Certification System (MMACS) and the Rapid Data Retrieval System (RADARS). The HCFA uses OSCAR in its survey of Medicare and Medicaid providers to monitor State agency and provider performance. OSCAR contains data for the current and 3 previous surveys. Some of the data is overwritten as new information is entered (e.g. number of beds, address, and employment information), but deficiency data remains and is tracked historically. The HCFA recently began tracking the scope and severity of deficiencies historically as well.

Part of the OSCAR data is self-reported information by the nursing homes about the facility and its' patients. The remaining data is information generated by the surveyors based on deficiencies. The Federal regulations detailing survey requirements are classified into 17 major categories. The specific survey requirements within these categories were consolidated from 325 individual items to 185 items effective on July 1, 1995.

Prior Studies

A recent study, "The Regulation and Enforcement of Federal Nursing Home Standards" by Charlene Harrington published in March of 1998, details the problems with nursing home certification that precipitated the action by Congress in passing the Nursing Home Reform Act. She challenges the declining State deficiency averages by raising the notion that the enforcement process may be weakening rather than nursing facilities improving quality of care.

"The National State Auditors Association Joint Performance Audit on Long-Term Care", completed in May of 1998 by the Louisiana Office of the Legislative Auditor, compiled information from ten States regarding survey and certification concerns. Issues discussed include licensing, inspection, sanctions, complaints, and reimbursement. The audit findings conclude that States should vary the timing of inspections, evaluate how aggressively they are imposing State sanctions on facilities with deficiencies, and avoid delaying the investigation of complaints.

The Secretary released a report to Congress in July of 1998 indicating that significant improvements were made since 1995 in the quality of care delivered by nursing homes. These improvements included more appropriate use of physical restraints, anti-psychotic drugs, anti-depressants, urinary catheters, and hearing aids. The report also found a need for further improvements by States, nursing homes, and others. Additional steps will be taken to address the problems identified in the report and include tougher enforcement of Medicare and/or Medicaid rules. Efforts will be aimed at preventing instances of bed sores, dehydration, and nutrition problems. The following are new approaches aimed at improving quality of care: facilities that have repeat offenses will face sanctions without a grace period; inspections will be conducted more frequently for repeat offenders without decreasing inspections at other facilities; inspections will be staggered; a set amount of inspections will be conducted on weekends; and efforts will be focused on facilities within chains that have a record of non-compliance.

In conjunction with the Secretary's report to Congress, the President announced a new nursing home care initiative to provide enhanced protections and to target needed improvement in nursing home care. Proposed actions include checking criminal backgrounds of nursing home workers, establishing a national registry of employees convicted of abusing patients, targeting nursing home chains with poor records, cutting off inspection funds to States with poor records of citing substandard quality of care, publishing annual nursing home surveys on the Internet, increasing Federal oversight of State inspections, providing additional training to State officials, changing the survey schedule to make them more unpredictable, increasing the number of night and weekend surveys, and re-authorizing the Ombudsman program in the Older Americans Act.

One week after the President's initiative, the Government Accounting Office (GAO) published a report examining the quality of care in 1,370 California nursing homes that were inspected from 1995 to 1998. They found 30 percent of the homes had violations that caused death or life-threatening harm to residents, or had understated the frequency of poor care by falsifying medical records. As a result of this report, the US Senate Special Committee on Aging, chaired by Senator Charles Grassley, held hearings in July 1998 to discuss the findings on the quality of care in nursing homes.

METHODOLOGY

This inspection is based on information gathered from four different sources: OSCAR data, a review of individual State survey procedures, interviews with State survey and certification directors, and State survey and certification surveyors. We looked for consistencies between the data and the observations of the insiders we interviewed. We selected a purposive sample of ten States: New York, California, Texas, Ohio, Illinois, Pennsylvania, Massachusetts, Florida, New Jersey, and Tennessee. These States have comprehensive survey and certification programs and represent 55.8 percent of the

nation's total skilled nursing beds. In addition, they represent 56 percent (\$23 billion) of Medicaid institutional long-term care expenditures in 1996. The purposive sample represents States of various sizes in different parts of the country.

OSCAR Data

The Online Survey Certification and Reporting System (OSCAR) is the system HCFA uses in its survey of Medicare and Medicaid providers to monitor State agency and provider performance. OSCAR contains data for the current and 3 previous standard surveys. The second part of OSCAR is information generated by the surveyors based on deficiencies. The Federal regulations detailing survey requirements are classified into 17 major categories. We analyzed three of these categories which could determine poor quality of care depending on their scope and severity. Resident behavior and facility practices includes the areas of restraints, abuse and staff treatment of residents; quality of life includes the residents ability to make decisions about his or her daily activities and the nursing home's accommodation of those needs; and quality of care includes the technical ability of the nursing home to prevent and treat the medical conditions of the residents.

We looked at those substandard quality of care deficiencies repeated over the last four standard surveys. We also looked at OSCAR complaint data specifically at complaints of abuse. We compared complaints of abuse filed from January 1997 to July 1998 to abuse deficiencies in the most current survey. The direct relationship between abuse codes in the deficiency and complaint tables allowed us to look closely at the scope of abuse and examine enforcement patterns and outcomes.

Since information in the OSCAR database is constantly being updated, we downloaded OSCAR data on August 4, 1998. In all cases we compared our 10 sample States to aggregate national data both for deficiencies and complaints.

Procedures Review

We requested each State survey and certification director to send us any written procedures, as well as any other relevant documentation, to obtain an overall understanding of the survey and certification process. We reviewed procedures and other State specific documentation from the eight State survey and certification agencies that submitted information. We examined this information for any additional State procedures that were not included in the Federal survey and certification guidelines.

Interviews

We also conducted a total of thirty structured interviews; three interviews in each of the ten sample States, one with the State survey and certification director or a designee, and two with State surveyors within each State. The two State surveyors were selected

randomly from a list of at least ten surveyors submitted by the State director. During these interviews, we obtained information about the State survey and certification program structure, the processes utilized to monitor quality of care, how deficiencies are addressed, and the satisfaction of State survey and certification directors and surveyors with the process.

We selected both directors and surveyors for their different perspectives on the survey and certification process. We compared the information provided by the directors to information provided by surveyors. In our analysis we paid special attention to consensus within and among the groups.

This inspection was conducted in accordance with the **Quality Standards for Inspections** issued by the President’s Council on Integrity and Efficiency.

FINDINGS

Generally mandatory surveys are performed timely and follow the prescribed process

Timely surveys

Based on OSCAR data over the last four standard surveys, all sample States completed 97 percent of standard surveys for all nursing homes in the mandated time frame of 9 to 15 months. An average of 3 percent of standard surveys were conducted below 9 months, while an average of 2 percent were conducted above 15 months.

Survey protocol

All State survey and certification directors and surveyors report using HCFA guidelines that outline the protocol for the implementation of nursing home surveys. The HCFA survey protocol “provides instructions, check lists, and other tools for use both in preparation for the survey and when surveyors are on-site performing the survey. Survey protocols are to be used by all surveyors to measure compliance with Federal requirements.” The following description of the survey process is based upon a consensus of State directors and surveyors responses.

Entrance conference

During the entrance conference, the team leader meets with nursing home administration, introduces the survey team, discusses the purpose of the visit, and requests all necessary paperwork. The survey team tours the facility and makes observations about the quality of resident care and the nursing home’s overall condition. During this initial tour, surveyors talk to residents and start to select residents for the interview and medical record review portion of the survey. The initial tour also helps surveyors to determine whether their pre-survey concerns found while examining data from prior surveys, complaints, and long-term care Ombudsman discussions continue to be concerns.

Interviews

Many surveyors believe that an accurate picture cannot be formalized until they tour a nursing home and meet the residents. The HCFA guidelines require surveyors to select a “case-mix stratified sample of facility residents in order to assess compliance with the resident-centered long term care requirements” based on findings from previous surveys, Ombudsman information, and surveyor observations. Thus, residents are selected and interviewed based upon many different factors. Many surveyors feel the shift from former “paperwork” surveys, where there was little contact with residents or nursing home staff, to current resident and outcome oriented surveys, as a result of the Nursing Home Reform

Act in 1995, has improved the survey process.

In order to gain a comprehensive understanding of the facility, surveyors report they will also interview anyone on the nursing home staff who can discuss the treatment and the activities of the residents and answer their quality of care concerns. In addition to staff, family members also provide beneficial information to the surveyors.

Exit conference

All standard surveys close with the exit conference where surveyors present their findings to the nursing home. State survey and certification directors and surveyors report that deficient areas are noted although the scope and severity of the deficiency may or may not be discussed at the exit conference. The nursing home can provide additional information to refute potentially deficient areas. At the conclusion of the meeting, the survey team fields questions about the standard survey process or their findings. All surveyors list the survey team, the nursing home administrator, the Ombudsman, and the resident council, as groups who usually attend the exit conference.

Final survey report

All State survey and certification directors and surveyors remark that the final survey report is a collaborative effort. It is a result of the survey team convening to discuss the deficiency list and agreeing on scope and severity designations. The survey report may then be reviewed by State regional supervisors or a centrally located enforcement committee in the State. Deficiencies may be added, deleted, or substantially changed at any time during the review process. Almost all State survey and certification directors and surveyors say that deficiencies noted by surveyors are seldom removed from the final data, although they may be changed after discussion. The most frequently cited reason for any deficiency change or removal is a failure to meet the principles of documentation, a requirement so that the deficiency can be supported on appeal or during enforcement proceedings.

Nursing home response

If deficiencies have been cited, most State survey and certification directors and surveyors say nursing homes must complete a plan of correction within 10 days of receiving the survey report. The plan of correction addresses, in four distinct parts, how each deficiency will be rectified and how soon the corrections will take effect. Almost all directors and surveyors indicate there is a mandated time frame to correct deficiencies. This time frame varies, depending on the severity of each deficiency. Within two days of receiving notice of an “immediate jeopardy” deficiency, the nursing home must correct the problem or penalties will take effect. Deficiencies with no immediate jeopardy may have a 15 day correction window before penalties take effect.

It is incumbent upon the State to verify that the facility corrects any deficiencies. States vary on the scope and severity of deficiencies that require surveyor revisits. Only one State revisits nursing homes for all deficiencies, but all States revisit in person, as required, for deficiencies that meet certain scope and severity requirements. For those deficiencies that do not require a revisit, a letter or phone call to the State agency suffice as proof of correction.

Additional State requirements

While all States report using HCFA guidelines from the State Operations Manual, seven Directors report that they have State specific criteria in addition to HCFA guidelines. In practice, the more stringent of the two are implemented. Our review of the State specific requirements submitted by the State Directors found they include, but are not limited to, State licensure requirements for nursing homes. For example, one State specifies nursing staff resident ratios at various shifts throughout the day and night and this is measured during the survey. Another State requires measuring water temperature to prevent patient burns.

Some States have additional databases and information sources. For example, one State has a web site for nursing home consumers that numerically rates nursing homes. The site includes the survey date, administration, nursing, resident rights, food service, and environment, totaling all categories for an overall score. Another State developed a specific database that logs information such as inspection information, license status at notice of violation, license status after hearings, and quality assurance licensure logs. This database is useful because it is tailored to the individual State's needs and the information is not compiled in OSCAR.

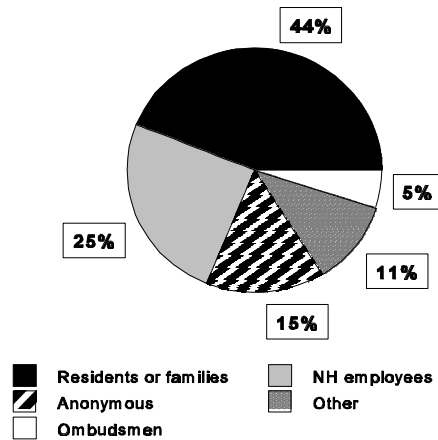
Complaints procedures

All States are required to "establish procedures and maintain adequate staff to investigate complaints of nursing home violations." All State survey and certification directors and surveyors report the existence of a complaint process to address the complaints received concerning nursing home practices. All States log incoming phone calls which are then directed to the appropriate region or staff to follow up on the complaint. In some States separate complaint departments handle all surveys. Complaints are ranked according to severity of the allegation. In all cases of immediate jeopardy, an investigation must be initiated promptly. States vary in their response to the remainder of the calls. The balance of the complaints are handled anywhere from seven to 45 days. Some complaints are rolled into the next scheduled survey if the complaint does not warrant an abbreviated survey and/or the surveyors are approaching the next scheduled survey.

According to OSCAR data almost half (44 percent) of the national complaints reported to the survey agency from January 1997 to July 1998 are from residents or families of

residents. A quarter are from employees or ex-employees of nursing homes, 15 percent are anonymous and 11 percent are some other non-specified source. Only 5 percent of complaints come from Ombudsmen. Figure I below displays the sources of nursing home complaints nationwide.

Figure I
Sources of Complaints Nationwide



**However,
significant
the process**

**there are
weaknesses in**

Predictability

Although all States report that nursing home standard surveys are unannounced, almost all directors and surveyors believe that facilities can roughly predict the survey start date. The OSCAR data for three consecutive surveys indicates that 11 percent of nursing homes are surveyed within a two week time period of the previous survey. Since nursing home administrators know the Federal standard survey window is between 9 and 15 months, and also realize that the outcome of their latest standard survey will dictate the following year’s start date, those facilities with quality of care issues know their survey will fall closer to the 9 month end of the survey spectrum, and those with fewer deficiencies closer to the 15 month end of the survey spectrum. One State director declared “adhering to the Federal 12 month average requirement makes it extremely difficult to be totally unpredictable.”

A few States note that facilities have been alerted about approaching surveys by friends

operating local hotel accommodations. Some surveyors mention that conference rooms at nursing homes are sometimes prepared in anticipation of the survey team's arrival. Most often, facilities will simply compare the survey start dates from previous years in order to estimate when the upcoming survey will occur.

States report nursing homes anticipate their annual standard survey and often modify their normal daily procedures to reduce potential deficiencies. In one example, facilities increase the number of staff on certain shifts. To alleviate this practice, directors and surveyors suggest more randomness in the survey schedule. One director says that surveys are started for all nursing homes in chain organizations on the same day to prevent staff shifts among nursing homes in the chain. Directors and surveyors voice concerns about whether or not standard surveys represent an accurate reflection of quality of care in nursing home. One surveyor notes, "annual standard surveys are only a snapshot in time. We are not seeing the true picture of these facilities throughout the year."

Most States say they do not begin or continue standard surveys on the weekend. One director notes that their union rules prohibit standard surveys on weekend hours. However one State has a requirement that 20 percent of surveys in each region be on the weekend or off hours. In addition, many States report not starting standard surveys in the evening hours, but almost all States cite a policy of continuing standard surveys into the evening hours. The policy of continuing surveys into evening hours seems to mainly be a function of the surveyors' extended work day schedules.

Questions often arise about the quality of care in nursing facilities during the weekend and evening hours. One director addressed this concern and replied, "we need to change the Health Care Financing Administration guidelines to require more night and weekend visits." State survey and certification directors and surveyors did indicate that they conduct complaint surveys during weekend or evening hours, particularly if the complaint originated during these hours. Depending on the scope and severity of the complaint received, surveyors may initiate complaint surveys at any time of the day or week.

Abuse complaints

From January 1997 to July 1998, 4,707 abuse complaints were reported by friends, family members of residents, or nursing home staff in the ten sample States. As defined by the Federal guidelines, abuse complaints and deficiencies violate "the residents right to be free from verbal, sexual, physical and mental abuse, corporal punishment, and voluntary seclusion." These complaints involved almost one third or 2,306 nursing homes in all ten States. In some situations, multiple complaints were filed against the same nursing home. These 4,707 complaints are divided between substantiated and unsubstantiated complaints. In order to substantiate a complaint a surveyor must establish that the action occurred. Abuse is often difficult to cite due to constraints placed on the surveyor. Abuse must be "observed" by the surveyors rather than recounted by the resident or family member.

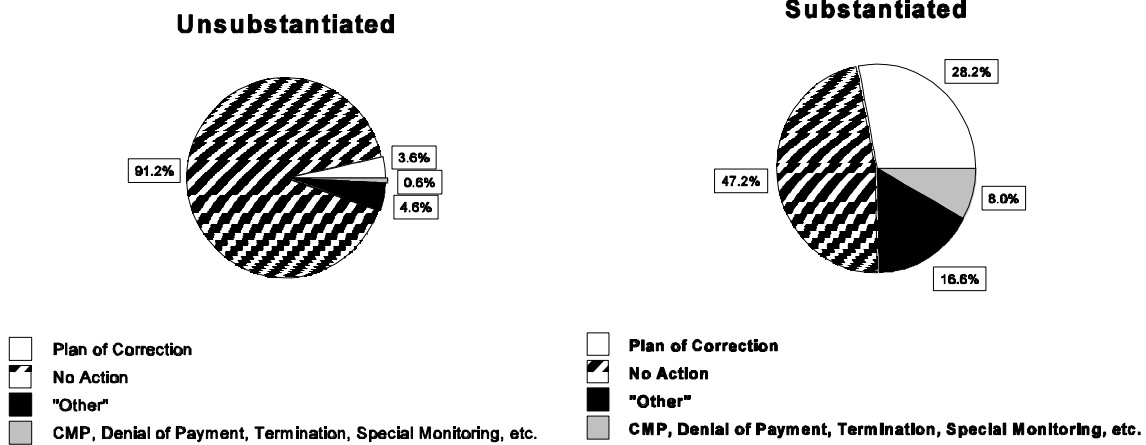
Because of this limitation, many abuse complaints go without action taken against the nursing home. Unsubstantiated complaints do not indicate that the complaints are illegitimate but rather that the surveyor could not authenticate the actions. Of the 4,707 abuse complaints in the sample States, 1,524 (32 percent) are substantiated while 3,183 (68 percent) are unsubstantiated.

There are 18 possible action codes that complaints could receive. Possible action categories include: termination, plans of correction, denial of payment for new admissions, fines, civil monetary penalties, license revocation, provisional licenses, receivership, special monitoring, injunction, suspension of Medicare payments, no action, or "other". Despite the differences between substantiated and unsubstantiated complaints, the number of complaints in both categories that conclude with no action, plans of correction, or "other" remain comparable. Unsubstantiated abuse complaints that conclude with no action plans of correction, or "other" totals 99 percent of the total complaints. Notwithstanding that substantiated complaints are confirmed by surveyors, 92 percent of them conclude with no action, plans of correction, or "other". See Figures II and III below.

Figure II

Figure III

Complaint Outcomes



When looking at all abuse complaints, two percent were reported after the standard survey cited the nursing home with an abuse deficiency. Despite the documented history of abuse in a particular nursing home, the outcome of the complaint investigation is confined to the three courses of action mentioned previously. No action was taken in 71 percent of the

complaints, 14 percent were resolved with a plan of correction without sanction, and 12 percent fell into the “other” category.

Enforcement

The OSCAR data shows 900 nursing homes have been cited with the same deficiencies over the past four contiguous surveys, representing 13 percent of all homes in the sample States. The number of nursing homes with repeat deficiencies ranges from 5 in New York to 453 in California. Table I shows the number of nursing homes in sample States with repeat deficiencies. There are a total of 1,359 repeat deficiencies cited among sixty-three different deficiency types. When we looked at the top 10 repeat deficiencies, we found that five are in the substandard quality of care categories. See table II below for the number of sample State nursing homes affected by the top 10 repeat deficiencies.

Table I

The Number of Nursing Homes in Sample States with Repeat Deficiencies over Four Surveys

| State | Number of Nursing Homes with Repeat Deficiencies | Percent of Nursing Homes with Repeat Deficiencies | Number of Repeat Deficiencies |
|--------------|---|--|--------------------------------------|
| CA | 453 | 35% | 769 |
| FL | 57 | 08% | 74 |
| IL | 134 | 21% | 185 |
| MA | 10 | 02% | 21 |
| NJ | 12 | 04% | 13 |
| NY | 5 | 01% | 6 |
| OH | 76 | 09% | 94 |
| PA | 29 | 04% | 31 |
| TN | 13 | 05% | 17 |
| TX | 111 | 10% | 149 |

Source: OSCAR Data

These nursing homes are given the opportunity to correct their deficiencies without penalty with a plan of correction. The nursing home submits an action plan to the State agency that addresses how each deficiency will be corrected and how soon the correction will take place. The State agency either re-visits the facility to confirm the correction or phones or writes to the facility for proof of correction.

Table II

Top 10 Repeat Deficiencies

| Deficiency | Facilities in Sample States | Facilities Nationwide |
|--|------------------------------------|------------------------------|
| Facility must store, prepare, distribute, and serve food under sanitary conditions | 162 | 254 |
| Facility must develop comprehensive care plans for each resident | 156 | 221 |
| Facility promotes care that maintains or enhances dignity | 142 | 174 |
| Rooms measure 80 square feet | 100 | 205 |
| Facility must make a comprehensive assessment of a resident's needs | 95 | 187 |
| Facility must provide necessary housekeeping and maintenance services | 91 | 151 |
| Clinical records meet professional standards | 84 | 100 |
| Facility should have policies that accommodate need and preferences | 68 | 80 |
| Facility is free of accident hazards | 64 | 99 |
| Drug regimen free of unnecessary drugs | 33 | 58 |

Source: OSCAR Data

This data about repeat deficiencies supports the opinions of half of the State directors and three-fourths of surveyors indicating that current enforcement measures are questionable.

State survey and certification directors and surveyors express concern that civil monetary penalties, as currently administered, do not compel facilities to observe Federal regulations and are insufficient to influence big facilities or nursing home conglomerates. Additionally, civil monetary penalties are not imposed immediately, allowing facilities to remain non-compliant for longer periods of time.

State survey and certification directors and surveyors also cite concerns with provisions that allow facilities the opportunity to avoid penalties and comply with regulations after the citation of deficiencies. One State director notes these provisions are “contrary to perpetual adherence to regulations.” Another director expresses the “need to break the cycle on non-compliant facilities” and is concerned that nursing homes are “not held accountable until there is actual harm to the resident.” Most State survey and certification directors and surveyors agree that civil monetary penalties could be effective, but are presently not enforced on a timely basis.

A few surveyors suggest that previous enforcement efforts were more successful. One surveyor states that the enforcement system functioned more effectively when facilities did not have as many opportunities to correct deficiencies. Another surveyor adds that withholding payments to a deficient facility, referred to as vender hold enforcement, was much more effective because facilities would correct their deficiencies almost immediately. Some surveyors believe the current enforcement process allows deficient facilities far too many chances without sufficient enforcement.

Two different opinions were expressed concerning the compliance function of the State survey and certification office: collaborative and punitive. Those who advocate a collaborative relationship seek to maintain the highest possible quality of life and care at nursing facilities by working with the facility. One State director remarks that nursing facilities are not negligent but simply “do not know how to stay out of trouble.” Another surveyor adds that the purpose of the survey is “not to be punitive. The object of the survey should not be to close a facility, but to help it strive for compliance.” Proponents of this opinion believe that surveyors need to better educate facility personnel, and constant communication is more effective than harsh penalties forcing nursing home closures.

Other surveyors and State directors believe that policing efforts are most beneficial to nursing home residents. Some State survey and certification directors and surveyors maintain that leniency from the State leads to repeat deficiencies in nursing homes. One surveyor says “enforcement is the number one means to an end.” Another respondent feels surveyors are the true resident advocates, and no one is in a better position to really improve the lives of residents. Many States suggest greater vigilance of nursing home conglomerates who are able to move across State lines and reestablish themselves without a prior record of impropriety from other States. Nursing home lawyers utilize legal loopholes to place financial interests above resident well being. One surveyor notes that

“valid deficiencies go by the wayside based on a legal technicality.”

OSCAR data

Most surveyors and more than half of directors are satisfied with OSCAR data but propose changes. During the pre-survey phase of a standard survey, OSCAR data from the previous survey are reviewed and specific quality of care issues are frequently targeted. At the start of the nursing home tour, surveyors may find a very different situation from the previous survey. The quality of care at the nursing home may have drastically changed for the better or worse. Therefore, surveyors suggest using OSCAR data in conjunction with other tools to obtain an accurate view of quality of care. “OSCAR is only one part of the quality of care story”, one surveyor said. A director notes that OSCAR is a useful instrument to help focus a survey team during the pre-survey, but doesn’t indicate quality of care when analyzed alone. State survey and certification directors and surveyors are also concerned that OSCAR data is not user friendly, accurate, streamlined, accessible, or timely. Another director said, “OSCAR generated reports are cumbersome and time consuming.” The consensus of the State survey and certification directors and surveyors is that OSCAR is difficult to use.

Staff resources may be inadequate in some cases

Surveyor staffing

The overall number of surveyors varies by States, thereby affecting the number of standard surveys each survey team is capable of conducting each year. The average number of standard surveys per team is 19 a year based on four person survey teams. However, the range of standard surveys among the 10 sample States falls between 12 and 26 nursing homes a year. We are not in a position to judge the adequacy of surveyor staffing nor discern what is the ideal number of surveys per survey team.

Although States complete their mandatory standard surveys, surveyors are also responsible to survey nursing homes where complaints were generated or when follow-up visits are required for nursing homes with deficiencies. Surveyor constraints may be a cause for concern for two reasons. First, States with a high survey per team ratio may be adversely affecting quality of care in nursing homes because of time constraints. Second, revisiting deficient nursing homes to ensure compliance or follow-up on complaints could also be adversely affecting quality of care because there may not be enough surveyors to handle the work load. Some States have surveyors dedicated solely to long term care while other States divide the surveyor’s responsibilities among all surveyed facilities. We allowed for this fact in these numbers. See Table III below for a list of surveyor staff dedicated to nursing home surveys in sample States.

Table III

Surveyor Staffing in 10 States

| State | # of Surveyors | # of Nursing Homes | # of Residents | # of Nursing Homes to Surveyors | # of Surveys per 4 Surveyor Team | # of Residents to Surveyors |
|-------|----------------|--------------------|----------------|---------------------------------|----------------------------------|-----------------------------|
| CA | 228 | 1309 | 100,391 | 5.74 | 22.96 | 440.3 |
| FL | 128 | 732 | 68,969 | 5.72 | 22.88 | 538.8 |
| IL | 216 | 650 | 66,187 | 3.01 | 12.04 | 306.4 |
| MA | 80 | 524 | 50,542 | 6.55 | 26.20 | 631.8 |
| NJ | 73 | 327 | 44,472 | 4.48 | 17.92 | 609.2 |
| NY | 139 | 658 | 112,472 | 4.73 | 18.93 | 809.2 |
| OH | 192 | 862 | 75,613 | 4.49 | 17.96 | 393.8 |
| PA | 123 | 776 | 85,382 | 6.31 | 25.23 | 694.2 |
| TN | 51 | 278 | 28,630 | 5.45 | 21.80 | 561.4 |
| TX | 328 | 1077 | 72,996 | 3.28 | 13.13 | 222.5 |

Source: OSCAR Data

Surveyor teams

All State survey and certification directors and surveyors have multi-disciplinary teams with at least one registered nurse, as required by HCFA. Social workers, nutritionists, sanitarians, pharmacists, consultants, and health care generalists often complete the survey team composition. One State is moving toward teams comprised solely of registered nurses with other professionals available as consultants. Nine States report the survey team composition fluctuates based upon the characteristics at particular nursing homes. Surveyors listed the facility size, resident characteristics, facility history, and surveyor availability, as factors that determine survey team composition.

Many surveyors note the dedication and competency of the surveyor staff as a strength in the survey process. Surveyors believe the varied experience and background of staff is important for successful teams. One surveyor describes the staff as “unbiased people who are dedicated to change,” while other surveyors emphasize “excellent” supervisors who “respect and listen to surveyors.”

However, three State directors report high turnover rates for surveyors, and half of the directors acknowledge difficulties replacing staff once they leave. Reasons for this difficulty include poor salary scales for surveyors, geographic constraints, and extensive training periods. State directors mention a variety of specialties are difficult to replace such as nurses, pharmacists, and social workers.

Surveyor training

All State surveyors complete Federal training in HCFA headquarters in order to pass the required Standard Minimum Qualifications Test (SMQT). While new surveyor training is consistent across sample States, on-going training ranges from no training up to 100 hours a year. Most on-going training consists of in-service staff meetings facilitated internally or by outside consultants. Many surveyors note a lack of time to schedule on-going training, while others cite a decrease in HCFA facilitated training as problems. Some surveyors note the need for more HCFA training which would provide a forum for surveyors to discuss issues and policy with other surveyors in different States.

Coordination with Ombudsman is not working effectively

We examined abuse complaints in the National Ombudsman Reporting System (NORS), the data collected by each State Ombudsman Program. NORS data shows 243 abuse complaints a month in sample States, while OSCAR data shows only 31 abuse complaints a month referred by the Ombudsmen to the State survey and certification agency. This is 13 percent of the total Ombudsmen abuse complaints per month. Some States may have agencies other than the survey and certification agency designated to investigate abuse complaints. Ombudsman programs generally investigate and work to resolve complaints brought to their attention. Compared to other sources, the Ombudsmen have referred only 5 percent of the abuse complaints to the survey programs in sample States. The number in each of the States varies as shown in Table IV below.

Table IV

Ombudsmen Abuse Complaints by Sample State

| State | Ombudsmen Abuse Complaints | % Of Ombudsmen Abuse Complaints To State's Total Abuse Complaints | Total Abuse Complaints |
|--------------|-----------------------------------|--|-------------------------------|
| CA | 169 | 18% | 961 |
| FL | 0 | 0% | 124 |
| IL | 9 | 2% | 476 |
| MA | 8 | 3% | 314 |
| NJ | 1 | 3% | 38 |
| NY | 5 | 2% | 286 |
| OH | 37 | 13% | 277 |
| PA | 15 | 10% | 144 |
| TN | 15 | 5% | 282 |
| TX | 65 | 2% | 3299 |
| Total | 324 | 5% | 6201 |

Source: OSCAR Data

Although State survey and certification directors and surveyors report that State Ombudsmen provide useful information to the surveyor and all surveyors and State directors indicate that Ombudsmen are contacted either before entering, or immediately upon entering, the facility, surveyors report that Ombudsmen are not always available at the time of the survey. One surveyor said, “they are always invited and if available, they come.” Another surveyor said, “I haven’t seen an Ombudsman in years.” Surveyors report that Ombudsman also provide information regarding the facility and about specific residents and this information is utilized during the pre-survey process to help select residents for the interview and medical records to review.

RECOMMENDATIONS

The resident-centered long-term care requirements of the nursing home survey are essential to guarantee the quality of care in nursing homes. Clearly some major problems need to be addressed. Our findings support and elaborate on the Health Care Financing Administration's (HCFA) initiative to strengthen the enforcement efforts by:

- ▶ making them more timely and effective,
- ▶ changing the survey schedule to make surveys more unpredictable,
- ▶ increasing the number of night and weekend surveys,
- ▶ increasing the number of surveys at nursing homes with chronic quality of care problems, and
- ▶ focusing on specific problems such as pressure sores, dehydration, and malnutrition.

These initiatives, if carried out completely, appear to be responsive to most of the problems in this report as well as our companion report "Nursing Home Survey and Certification: Deficiency Trends."

In light of our findings in this report, additional action is needed. We recommend that HCFA:

- ▶ evaluate the surveyor staffing in each State to assure that adequate staffing is available to complete all standard surveys, follow up surveys, and respond to complaints,
- ▶ provide additional training to State surveyors,
- ▶ provide a forum for State surveyors to meet and discuss common issues, and
- ▶ facilitate better coordination with the Ombudsman program.

AGENCY COMMENTS

We received comments on the draft report from HCFA, the Assistant Secretary for Planning and Evaluation (ASPE), the Administration on Aging (AoA), and informally from the Assistant Secretary for Legislation (ASL). The HCFA and AoA generally concur with our recommendations. The AoA and the ASL provided suggestions for clarifications of the text which have been incorporated into the final report.

The ASPE expressed some concern about the ability of OSCAR data to assess quality of care in nursing homes. We recognize the limitations of OSCAR but used it as only one indicator of quality. We are happy to re-emphasize here what we say in our report that

OSCAR data should not be looked at independently. In this report we used it in combination with the views of nursing home surveyors and State Directors.

Definitions of Substandard Quality of Care Deficiencies

“Resident Behavior and Facility Practices” Category

| <u>Deficiency - (Ftag)</u> | <u>Definition</u> |
|----------------------------|---|
| F0221 | Resident has the right to be free from any physical restraint for purposes of discipline or convenience. |
| F0222 | Resident has the right to be free from any chemical restraint for purposes of discipline or convenience. |
| F0223 | Resident has the right to be free from verbal, sexual, physical and mental abuse, corporal punishment, and involuntary seclusion. |
| F0224 | Facility must have written policies and procedures that prohibit abuse and neglect. |
| F0225 | Facility may not employ persons who have been found guilty of abuse. |

“Quality of Life” Category

| <u>Deficiency - (Ftag)</u> | <u>Definition</u> |
|----------------------------|---|
| F0240 | Facility must promote/enhances quality of life. |
| F0241 | Facility must promote care that maintains or enhances dignity. |
| F0242 | Resident has the right to choose activities, schedules, interact with members of community, and make choices about aspects of life in the facility. |
| F0243 | Resident has the right to organize and participate in resident groups. |
| F0244 | Facility must listen and respond to resident or family group. |

| | |
|-------|---|
| F0245 | Resident has the right to participate in social, religious, and community activities. |
| F0246 | Facility should have policies that accommodate residents' needs and preferences. |
| F0247 | Resident to receive notice before room or roommate in the facility is changed. |
| F0248 | Facility is to provide ongoing program of activities that fit resident. |
| F0249 | Facilities director must be fully qualified. |
| F0250 | Facility must provide medically related social services. |
| F0251 | Facility with more than 120 beds must employ a qualified social worker on a full time basis. |
| F0252 | Facility must provide a safe, clean, comfortable, and homelike environment. |
| F0253 | Facility must provide housekeeping and maintenance services necessary to maintain a sanitary, orderly and comfortable interior. |
| F0254 | Facility must provide clean bed and bath linens that are in good condition. |
| F0255 | Facility must provide private closet space in each resident's room. |
| F0256 | Facility must provide adequate and comfortable lighting levels in all areas. |
| F0257 | Facility must provide comfortable and safe temperature levels. |
| F0258 | Facility must provide comfortable sound levels. |

“Quality of Care” Category

Deficiency - (Ftag)

Definition

| | |
|-------|---|
| F0309 | Facility to provide necessary care for the highest practicable physical, mental, and psychosocial well being. |
|-------|---|

- F0310 Activities of daily living do not decline unless unavoidable.
- F0311 Resident is given treatment to improve abilities.
- F0312 Activities of daily living care is provided for dependent residents.
- F0313 Resident receive treatment to maintain hearing and vision.
- F0314 Proper treatment to prevent or treat pressure sores.
- F0315 Resident is not catheterized unless unavoidable.
- F0316 Appropriate treatment for incontinent resident.
- F0317 No reduction of range of motion unless unavoidable.
- F0318 Resident with limited range of motion receives appropriate treatment.
- F0319 Appropriate treatment for mental or psychosocial problems.
- F0320 No development of mental problems unless unavoidable.
- F0321 No naso-gastric tube unless unavoidable.
- F0322 Proper care and services for resident with naso-gastric tube.
- F0323 Facility is free of accident hazards.
- F0324 Resident receives adequate supervision and assistance devices to prevent accidents.
- F0325 Facility must maintain acceptable parameters of nutritional status unless unavoidable.
- F0326 Resident receives therapeutic diet when required.
- F0327 Facility must provide sufficient fluid intake to maintain proper hydration and health.
- F0328 Facility must ensure that proper treatment and care is provided.
- F0329 Each resident's drug regimen must be free from unnecessary drugs.

- F0330 No use of antipsychotic drugs except when necessary.
- F0331 Residents who use antipsychotic drugs receive gradual dose reductions.
- F0332 Facility must ensure that it is free of medication error rates of five percent or greater.
- F0333 Residents are free of any significant medication errors.

Comments on the Draft Report

In this appendix, we present in full the comments from the Health Care Financing Administration, the Administration on Aging, and the Assistant Secretary for Planning and Evaluation.



DATE: FEB 10 1999

TO: June Gibbs Brown
Inspector General

FROM: Nancy-Ann Min DeParle *Nancy-Ann DeParle*
Administrator

SUBJECT: Office of Inspector General (OIG) Draft Reports: "Nursing Home Survey and Certification - Overall Capacity," (OEI-02-98-00330) and "Nursing Home Survey and Certification - Deficiency Trends," (OEI-02-98-00331)

We appreciate OIG's efforts to assist us in addressing the State survey and certification programs' capacity to monitor quality of care in nursing homes. The reports echo our own concerns and underscores the need for our on-going efforts to help states to improve enforcement efforts, make surveys less predictable, ensure adequate staff resources and promote better coordination with Ombudsmen. In fact, HCFA has already begun implementing a number of your recommendations.

In 1995, the Clinton Administration implemented the toughest-ever enforcement regulations, which resulted in measurable improvement in quality of care in nursing homes. Building on that foundation, the President announced an aggressive new initiative in July 1998 to further strengthen enforcement and to ensure that all nursing home residents receive the quality care that they deserve and their families expect.

We have already implemented many aspects of the initiative. We have issued new guidance to States to strengthen their nursing home inspection systems and to crack down on nursing homes that repeatedly violate safety rules. We have also taken other steps to reduce the incidence of bed sores, dehydration and malnutrition, and to give consumers ready access to comparative information about nursing home quality. The President's Fiscal Year 2000 budget request includes additional resources to fully implement all aspects of the initiative.

I am pleased to see that the reports acknowledge that our on-going initiative addresses many of the OIG's findings. Ultimately, we want all residents of nursing homes to be treated with compassion and dignity. Our efforts to date represent a major step in that direction, and we will continue to work with the states, providers and advocates to better protect our most vulnerable citizens.

Our specific comments follow:

"Nursing Home Survey and Certification - Overall Capacity." (OEI-02-98-00330)
OIG Recommendations #1 - 5

The following OIG recommendations support HCFA's initiative to strengthen the enforcement efforts:

- making surveys more timely and effective,
- changing the survey schedule to make surveys more unpredictable,
- increasing the number of night and weekend surveys.
- increasing the number of surveys at nursing homes with chronic quality of care problems, and
- focusing on specific problems such as pressure sores, dehydration, and malnutrition.

HCFA Response

We concur. The above recommendations are part of HCFA's nursing home initiative which was developed in July 1998 in response to HCFA's Report to Congress. Implementation of these recommendations is well underway.

OIG Recommendation #6

HCFA should evaluate the surveyor staffing in each State to assure that adequate staffing is available to complete all standard surveys, follow up surveys, and respond to complaints.

HCFA Response

We concur. In fact, we do review state surveyor staffing as part of the survey and certification budget process, and we will be examining these data more closely as part of our effort to determine whether states are complying with the requirements of the contractual agreement they enter into with HCFA to perform these activities. We note, however, that surveyor staffing levels are directly dependent upon Congressional funding. Currently, even with the increased appropriations we have received to fund the survey and certification program, we must allocate carefully and phase in the implementation of some of the pieces of the nursing home initiative. We look forward to working with the Congress as we evaluate surveyor staffing needs.

OIG Recommendations #7 - 9

HCFA should:

- provide additional training to State surveyors
- provide a forum for State surveyors to meet and discuss common issues
- facilitate better coordination with the Ombudsman program

HCFA Response

We concur. These issues are being addressed by the new Federal Monitoring System (FMS). The FMS was implemented on September 30, 1998 and, through our regional offices, we are beginning to receive feedback from states on the new process. We will use that feedback to guide our training and coordination efforts.

"Nursing Home Survey and Certification--Deficiency Trends." (OEI-02-98-00331)
OIG Recommendations #1 - 5

The following OIG recommendations support HCFA's initiative to strengthen the enforcement efforts:

- making them more timely and effective,
- changing the survey schedule to make surveys more unpredictable,
- increasing the number of night and weekend surveys.
- increasing the number of surveys at nursing homes with chronic quality of care problems, and
- focusing on specific problems such as pressure sores, dehydration, and malnutrition.

HCFA Response

We concur. The above recommendations are part of HCFA's nursing home initiative which the President announced in July 1998 as the Administration's initial response to HCFA's Report to Congress outlining the strengths and weaknesses of the 1995 regulations. Implementation of these recommendations is well underway.

OIG Recommendation #6

HCFA should develop staffing standards for registered nurses and certified nurse assistants in nursing homes to assure sufficient staff on all shifts to enable residents to have proper care. Staffing standards should account for the intensity of care needed, qualifications of the staff, and the specific characteristics of both the nursing home and the residents.

HCFA Response

We concur that many of the problems that we have identified, and that the OIG and the GAO have identified, appear to be related to inadequate staffing or ineffective training of staff. In the early 1990's, Congress requested that HCFA prepare a report studying the relationship of staffing levels to the quality of care nursing home residents receive. That report was never developed. Last summer, the Administrator directed HCFA staff to undertake this effort, and in September 1998 a contract was awarded to Abt Associates to assist us in completing a comprehensive nurse staffing study. Current plans call for the analyses to be completed and a report delivered to HCFA by October 1999, and then submitted to Congress by the end of the year.

This comprehensive nurse staffing study will help HCFA determine if minimum nurse staffing ratios are appropriate, and should address the issue of staff qualifications the OIG has identified. The potential cost and budgetary implications of minimum ratio requirements will also be studied.

TOTAL P.05



FEB - 3 1999

Washington, D.C. 20201

TO: June Gibbs Brown
Inspector General

FROM: Assistant Secretary for Aging

SUBJECT: Comment on Draft Report "Nursing Home Survey and Certification - Overall Capacity" OEI-02-98-00330

| | |
|-----------|--------|
| IG | ✓ |
| EAIG | ✓ |
| SAIG | ✓ |
| PDIG | ✓ |
| DIG-AS | ✓ |
| DIG-EC | ✓ |
| DIG-EI | ✓ |
| DIG-OI | ✓ |
| DIG-MP | ✓ |
| AIG-LC | ✓ |
| CGC/IG | ✓ |
| ExecSec | ✓ |
| Date Sent | 2/4/99 |

OFFICE OF THE SECRETARY
 ADMINISTRATION ON AGING
 FEB 11 1999
 11:05 AM
 TELETYPE UNIT

We appreciate having the opportunity to review the above-referenced draft report and found it thorough and informative.

We have two suggestions for improving the report:

1. Reauthorization of the Ombudsman Program in the Older Americans Act was among the initiatives to improve nursing homes announced by the President and should be included among the proposed actions listed in the third paragraph on page 9.
2. Not all abuse complaints in a state should be referred to the state survey and certification agency. Some states have other agencies designated to investigate abuse complaints. Additionally, not all abuse complaints made to the Ombudsman Program should be referred to the state survey and certification agency. Ombudsmen are expected to investigate and resolve complaints brought to them, even though there are differing arrangements in the various states regarding investigation of allegations of abuse. Therefore, we ask that the last sentence on page 2 and similar statements on page 21 be changed to read as follows:

Some states may have agencies other than the survey and certification agency designated to investigate abuse complaints. Ombudsman programs generally investigate and work to resolve complaints brought to their attention. It is worth noting that in the sample states thirteen percent of the total ombudsman abuse complaints per month were referred to the survey and certification agencies, and these referrals constituted only five percent of the total abuse complaints made to the survey and certification agencies.

Notwithstanding the above caveats, we are pleased that the report recommends better coordination between the Health Care Financing Administration and the Long-Term Care Ombudsman Program and will do everything we can to help facilitate and promote improved coordination between the Ombudsman Program and the state and federal nursing home survey and certification programs.


Jeanette C. Takamura



MAR - 4 1999

TO: LaVarne Burton
Executive Secretary

FROM: Margaret A. Hamburg, M.D. *MAH*
Assistant Secretary for Planning and Evaluation

SUBJECT: OIG Draft Reports: Nursing Home Survey and Certification - Overall Capacity
and Deficiency Trends (OEI-02-98-00330 and OEI-02-98-00331) --
CONCURRENCE WITH COMMENT

We have reviewed the OIG draft reports on the nursing home survey and certification program entitled, "Overall Capacity" and "Deficiency Trends." We have also reviewed the reports on the long term care ombudsman program. We have one general and one technical comment.

General Comment

Our primary comment pertains to the "Deficiency Trends" report. The stated purpose of this report is to "describe deficiency trends indicated by the survey data and the extent to which these trends indicate quality of care in nursing homes" (p.1). Many of the conclusions in this report are based largely on deficiency citations included in the OSCAR data system. We recommend that early on in this report the reader be advised that the presence or absence of such citations in the OSCAR data system may or may not be indicative of changes in the quality of care.

We agree with the OIG that additional research is needed to understand the effectiveness of the nursing home reforms established by OBRA '87. We look forward to working with the OIG, HCFA, and others to study the impact of nursing home reform on the quality of care. One study suggested by the OIG is a systematic assessment of OBRA '87. We support such an assessment and recommend that it include a review of the extent to which nursing home residents are inappropriately placed. In addition, ASPE is in the process of formulating its FY '99 research agenda and anticipates that it will include activities to promote the quality of care in nursing homes including ways to enhance the survey, certification, and enforcement processes. ASPE will continue to consult with HCFA and AoA as we finalize our agenda.

Technical Comment

We recommend clarifying in the OIG report entitled, "Long-Term Care Ombudsman Program: Overall Capacity" that the ombudsman mandate is not limited to advocating on behalf of "elderly residents" (e.g., p.1). We understand that ombudsman will advocate on behalf of all nursing home residents regardless of age.

