

Department of Health and Human Services

**OFFICE OF  
INSPECTOR GENERAL**

**CMS GUIDANCE TO STATE SURVEY  
AGENCIES ON VERIFYING  
CORRECTION OF DEFICIENCIES  
NEEDS TO BE IMPROVED TO HELP  
ENSURE THE HEALTH AND SAFETY  
OF NURSING HOME RESIDENTS**

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## Report in Brief

Date: February 2019

Report No. A-09-18-02000

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



### Why OIG Did This Review

State survey agencies (State agencies) must verify that nursing homes corrected identified deficiencies, such as the failure to provide necessary care and services, before certifying whether the nursing homes are in substantial compliance with Federal participation requirements for Medicare and Medicaid. In our previous reviews of nine State agencies, we found that seven did not always verify or maintain sufficient evidence that they had verified nursing homes' correction of deficiencies identified during surveys.

Our objectives were to (1) summarize the results of our previous reviews that identified instances in which State agencies did not always verify nursing homes' correction of deficiencies in accordance with Federal requirements and (2) assess the Centers for Medicare & Medicaid Services' (CMS's) guidance to State agencies on verifying nursing homes' correction of deficiencies and maintaining documentation to support verification.

### How OIG Did This Review

We summarized the results of our previous reviews and assessed CMS's guidance to State agencies on verifying nursing homes' correction of deficiencies and interim guidance on maintaining documentation to support verification. In our previous reviews, we reviewed a stratified random sample of 100 deficiencies for each State agency.

## CMS Guidance to State Survey Agencies on Verifying Correction of Deficiencies Needs To Be Improved To Help Ensure the Health and Safety of Nursing Home Residents

### What OIG Found

Of the nine selected State agencies in our previous reviews, seven did not always verify nursing homes' correction of deficiencies as required. Specifically, for 326 of the 700 sampled deficiencies, these State agencies did not obtain evidence of nursing homes' correction of deficiencies or maintain sufficient evidence that they had verified correction of deficiencies. For less serious deficiencies, the practice of six of the seven State agencies was to accept a nursing home's correction plan as confirmation of substantial compliance with Federal participation requirements without obtaining from the nursing home the evidence of correction of deficiencies. Further, three of the seven State agencies had technical issues with maintaining supporting documentation in the software-based system used to support the survey and certification process; as a result, they did not have sufficient evidence of correction of deficiencies. If State agencies certify that nursing homes are in substantial compliance without properly verifying the correction of deficiencies and maintaining sufficient documentation to support the verification of deficiency correction, the health and safety of nursing home residents may be placed at risk.

In addition to summarizing the issues identified during our previous reviews, we determined that CMS's guidance to State agencies on verifying nursing homes' correction of deficiencies and maintaining documentation to support verification needed to be improved.

### What OIG Recommends and CMS Comments

To help ensure the health and safety of nursing home residents, we recommend that CMS take specific actions to (1) improve CMS's guidance to State agencies on verifying nursing homes' correction of deficiencies and maintaining documentation to support verification, (2) consider improving its forms related to the survey and certification process, and (3) work with State agencies to address technical issues with the system for maintaining supporting documentation. The "Recommendations" section in the body of the report lists our recommendations in detail.

CMS concurred with our recommendations and provided information on actions that it had taken or planned to take to address our recommendations.

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## **INTRODUCTION**

### **WHY WE DID THIS REVIEW**

Under an agreement with the Centers for Medicare & Medicaid Services (CMS), State survey agencies (State agencies) perform surveys to determine whether nursing and skilled nursing facilities (nursing homes) meet specified program requirements, known as Federal participation requirements. During a survey, a State agency identifies certain deficiencies, such as a nursing home's failure to provide necessary care and services. The State agency must verify that the nursing home corrected identified deficiencies before certifying whether the nursing home is in substantial compliance with Federal participation requirements.

In our previous reviews of nine State agencies across the Nation, we found that seven did not always verify or maintain sufficient evidence that they had verified nursing homes' correction of deficiencies identified during surveys in accordance with Federal requirements. (Appendix B lists the related Office of Inspector General reports.) This review builds on our previous findings and is intended to (1) help CMS understand the need for improvements to State agencies' practices for verifying nursing homes' correction of identified deficiencies and maintaining documentation supporting verification and (2) offer CMS recommendations to help ensure the health and safety of nursing home residents.

### **OBJECTIVES**

Our objectives were to (1) summarize the results of our previous reviews that identified instances in which State agencies did not always verify nursing homes' correction of deficiencies in accordance with Federal requirements and (2) assess CMS's guidance to State agencies on verifying nursing homes' correction of deficiencies and maintaining documentation to support verification.

### **BACKGROUND**

The Medicare and Medicaid programs cover care in skilled nursing and nursing facilities, respectively, for eligible beneficiaries in need of nursing services, specialized rehabilitation services, medically related social services, pharmaceutical services, and dietary services.

Sections 1819 and 1919 of the Social Security Act (the Act) provide that nursing homes participating in the Medicare and Medicaid programs, respectively, must meet Federal participation requirements, such as those related to quality of care, nursing services, and infection control. These sections also establish requirements for CMS and States to survey nursing homes to determine whether they meet Federal participation requirements that are

necessary for ensuring the health and safety of nursing home residents.<sup>1</sup> For both Medicare and Medicaid, these statutory participation and survey requirements are implemented in Federal regulations (42 CFR part 483, subpart B, and 42 CFR part 488, subpart E).

### **State Agencies' Surveys of Nursing Homes**

Under an agreement with the Secretary, a State agency must conduct standard surveys to determine whether nursing homes are in compliance with Federal participation requirements<sup>2</sup> (42 CFR § 488.305(a) and § 7200 of CMS's *State Operations Manual*, Pub. No. 100-07 (the Manual<sup>3</sup>)). A standard survey is a periodic nursing home inspection, using procedures specified in the Manual that focus on a sample of residents selected by a computer program or the State agency to gather information about the quality of service furnished to Medicare or Medicaid beneficiaries in a nursing home. A standard survey must be conducted at least once every 15 months (42 CFR § 488.308(a)). The first standard survey of a nursing home is referred to as an "initial survey," and any subsequent standard survey is referred to as a "recertification survey."

A nursing home's failure to meet a Federal participation requirement is defined as a deficiency (42 CFR § 488.301). Examples of deficiencies include a nursing home's failure to adhere to proper infection control measures and to provide necessary care and services. In addition to conducting the standard survey, the State agency must review all nursing home complaint allegations (42 CFR § 488.308(f)).<sup>4</sup> Depending on the outcome of the review, the State agency may conduct a standard survey or an abbreviated standard survey (complaint survey) to investigate an allegation of noncompliance with Federal participation requirements, such as a nursing home providing improper care or treatment to a beneficiary.

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<sup>1</sup> The Secretary of Health and Human Services (the Secretary) must use the State health agency, or another appropriate State agency, to determine whether nursing homes meet Federal participation requirements (the Act § 1864(a)). Further, the State must use the same State agency (commonly, the State survey agency) to determine whether nursing homes meet the participation requirements in the State Medicaid plan (the Act § 1902(a)(33)).

<sup>2</sup> CMS and the State agency certify compliance with Federal participation requirements for State-operated and non-State-operated nursing homes, respectively (42 CFR § 488.330).

<sup>3</sup> The Manual is part of the CMS Online Manual System, which is used by CMS program components, partners, and contractors and State agencies to administer CMS programs. It offers day-to-day operating instructions, policies, and procedures based on statutes and regulations, guidelines, models, and directives.

<sup>4</sup> An allegation of improper care or treatment of beneficiaries at a nursing home may come from a variety of sources, including beneficiaries, family members, and health care providers.



During nursing home surveys, the State agency may use either a traditional survey (for which the surveyor records the survey findings on paper) or a computer-assisted survey, called the Quality Indicator Survey.<sup>5</sup> The Quality Indicator Survey is designed to achieve several objectives, including (1) improving consistency and accuracy of quality-of-care and quality-of-life problem identification by using a more structured process and (2) enhancing documentation by organizing survey findings through automation.

### **State Agencies' Reporting of Deficiencies and Deficiency Ratings**

A State agency must report on the appropriate CMS form<sup>6</sup> each deficiency identified during a survey and provide the form to the nursing home and CMS. These forms include (1) a statement describing the deficiency, (2) a citation of the specific Federal participation requirement that was not met, and (3) a rating for the seriousness of the deficiency.

The State agency must determine the deficiency rating using severity and scope components (42 CFR § 488.404(b)). Each deficiency is given a letter rating of *A* through *L*, which corresponds to a severity and scope level. (*A*-rated deficiencies are the least serious, and *L*-rated deficiencies are the most serious.)

- *Severity* is the degree of or potential for resident harm and has four levels (beginning with the most severe): (1) immediate jeopardy to resident health or safety, (2) actual harm that is not immediate jeopardy, (3) no actual harm with potential for more than minimal harm but not immediate jeopardy, and (4) no actual harm with potential for minimal harm.
- *Scope* is the number of residents affected or pervasiveness of the deficiency in the nursing home and has three levels: (1) isolated, (2) pattern, and (3) widespread. The Manual provides information on the severity and scope levels used to determine the deficiency rating (§§ 7400.4 and 7400.5.1).

Table 1 on the following page shows the letter for each deficiency rating and its severity and scope levels.

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<sup>5</sup> On November 28, 2017, CMS began implementing a new software-based survey process, which replaced both the traditional survey and the Quality Indicator Survey.

<sup>6</sup> Form CMS-2567, Statement of Deficiencies and Plan of Correction, is used for all deficiencies except those determined to be isolated and with the potential for minimal harm. For these deficiencies, Form A, Notice of Isolated Deficiencies Which Cause No Harm with Only a Potential for Minimal Harm, is used.

**Table 1: Severity and Scope Levels for Deficiency Ratings**

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

**The Process for Correcting Deficiencies and Certifying Substantial Compliance**

*Nursing Homes’ Submissions of Correction Plans*

Nursing homes must submit for approval correction plans to the State agency or CMS for all deficiencies except A-rated deficiencies (which have the severity level of no actual harm with potential for minimal harm and the scope level of isolated) (42 CFR § 488.402(d)). Nursing homes use the Form CMS-2567 to submit correction plans. An acceptable correction plan must specify exactly how the nursing home corrected each deficiency (with the completion date) or how the nursing home plans to correct each deficiency (with the anticipated date of correction) (the Manual §§ 2728B and 7304.4). According to CMS officials, nursing homes may submit documentation supporting that they have corrected deficiencies when submitting correction plans.<sup>7</sup>

*State Agencies’ Verification That Deficiencies Were Corrected and Certification of Substantial Compliance*

After a nursing home submits a correction plan, the State agency must verify that the nursing home corrected the identified deficiencies to certify that the nursing home is in substantial compliance with Federal participation requirements.<sup>8</sup> A nursing home is in substantial compliance when identified deficiencies have ratings that represent no greater risk than potential for minimal harm to resident health and safety (A, B, or C).

Section 7317.1 of the Manual states: “While the plan of correction serves as the facility’s allegation of compliance in non-immediate jeopardy cases, substantial compliance cannot be certified and any remedies imposed cannot be lifted until facility compliance has been verified.”

<sup>7</sup> Supporting documentation may include (1) sign-in sheets verifying attendance of staff at inservice training or (2) a copy of an invoice or a receipt verifying purchases or repairs.

<sup>8</sup> A State agency is not required to verify correction of deficiencies with the ratings B or C; however, correction plans are still required for deficiencies with those ratings.

Further, section 2732A of the Manual states:

The [State agency] follows up on all deficiencies cited in [correction plans]. In some cases, the cited deficiencies may be of a nature that a mail or telephone contact will suffice in lieu of an onsite visit . . . . Because the [nursing home] survey process focuses on the care of the resident, revisits are almost always necessary to ascertain whether the deficiencies have indeed been corrected . . . . If documentation or onsite verification is warranted, the [State agency] obtains appropriate verification before reporting a deficiency as corrected.<sup>[9]</sup>

State agencies use the Form CMS-2567B, Post-Certification Revisit Report, to report correction of deficiencies to CMS. This report includes the name of the nursing home, the date of revisit or verification, each deficiency that was previously reported on the Form CMS-2567, and the date when a correction for each deficiency was accomplished.

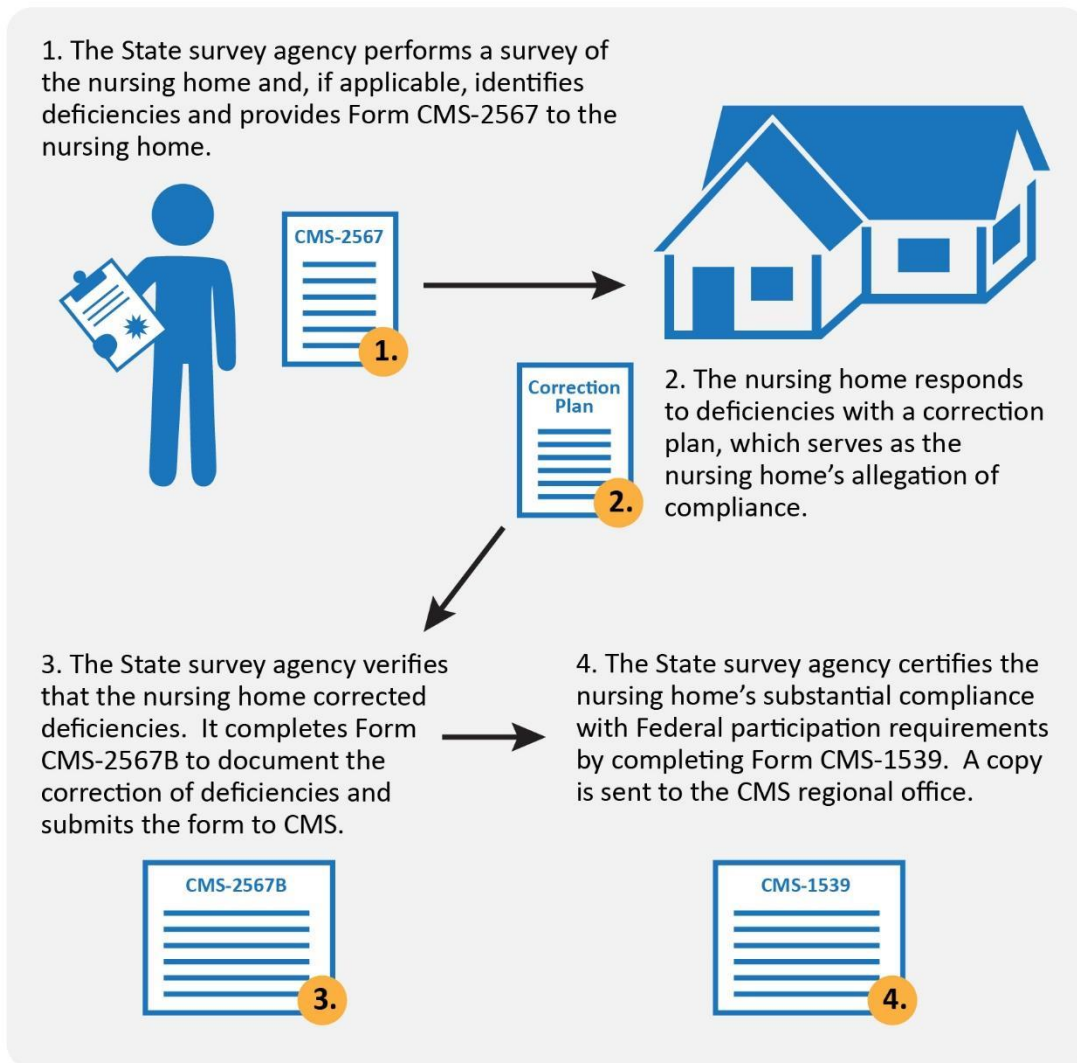
Further, State agencies use the Form CMS-1539, Medicare/Medicaid Certification and Transmittal, to certify a nursing home's substantial compliance with Federal participation requirements and submit the form to CMS. The Form CMS-1539 constitutes the primary record of approval for nursing homes to participate in the Medicare and Medicaid programs (the Manual § 2762A).

Figure 1 on the following page summarizes the steps in the survey and certification process for nursing homes.

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<sup>9</sup> We refer to an onsite revisit to verify that a nursing home corrected a deficiency as a "followup survey." The State agency may also verify that a nursing home corrected a deficiency through a desk review (e.g., a mail or telephone contact) without an onsite revisit.

**Figure 1: Overview of Steps in the Nursing Home Survey and Certification Process**



State agencies use CMS's Automated Survey Processing Environment (ASPEN) system, a suite of software tools, to support the survey and certification process, such as allowing State agencies to electronically generate and manage the Forms CMS-2567, CMS-2567B, and CMS-1539.<sup>10</sup>

### **CMS Oversight and Guidance and State Agencies' Maintenance of Supporting Documentation**

CMS is responsible for overseeing nursing homes' compliance with Medicare and Medicaid health and safety standards and delegates many of these tasks to State agencies. CMS issues

<sup>10</sup> These forms are also used by other types of providers, such as hospitals, laboratories, and psychiatric residential treatment facilities.

guidance to State agencies, such as the Manual and the State Survey Agency Directors letters. In July 2010, CMS provided State agencies with interim guidance for paper and electronic records.<sup>11</sup>

According to the interim guidance, the State agency is required to maintain documentation supporting information reflected on the Form CMS-2567<sup>12</sup> until the later of (1) one survey cycle,<sup>13</sup> (2) the period that a hearing is pending, or (3) after the period for filing an appeal has elapsed. After the later of these periods and after the State agency finalizes the Form CMS-2567, the supporting documentation may be destroyed provided that the form captured the information from the supporting documentation. After this point, according to CMS officials, evidence that a nursing home has been certified as in compliance with Federal participation requirements can be found on the Form CMS-1539.

## **HOW WE CONDUCTED THIS REVIEW**

We previously reviewed nine State agencies to determine whether they verified nursing homes' correction of deficiencies identified during surveys in accordance with Federal requirements. We summarized the results of those reviews for this report. In addition, we assessed CMS's Manual guidance to State agencies on verifying nursing homes' correction of deficiencies and its interim guidance to State agencies on maintaining documentation to support verification of deficiency correction.

Our nine reviews covered deficiencies that (1) the State agencies identified during calendar years (CYs) ranging from 2012 to 2016 and (2) required a correction plan. Table 2 on the following page shows each State and the respective audit period we reviewed.

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<sup>11</sup> CMS, State Survey Agency Directors letter, July 2, 2010, *Subject: Questions Related to State Agency (SA) Records Management Policy for Paper and Electronic Formats*. This guidance is not applicable to ASPEN system data. As of March 2018, the guidance had not been incorporated into the Manual.

<sup>12</sup> Supporting documentation includes surveyor notes, survey report forms, and other workpapers.

<sup>13</sup> According to a written statement that CMS provided to us, the start of the survey cycle "is the last day of the survey at which non-compliance [i.e., a deficiency] was determined to exist." The end of the survey cycle is the date when a State agency determined that a deficiency was corrected.

**Table 2: States and Audit Periods Associated With the Deficiencies Reviewed**

<b>State</b>	<b>Audit Period (CY)</b>
Washington	2012
Oregon	2014
Arizona	2014
Missouri	2014
Kansas	2014
New York	2014
North Carolina	2015
Florida	2015
Nebraska	2016

We completed these reviews using CMS’s deficiency data, which included deficiencies with (1) ratings of *D* or *E*, or *F* without substandard quality of care (less serious deficiencies) and (2) ratings of *G* through *L*, or *F* with substandard quality of care (more serious deficiencies). At each State agency, we reviewed a statistical sample of 100 deficiencies (70 less serious deficiencies and 30 more serious deficiencies). We reviewed each State agency’s documentation for each sampled deficiency to determine whether the State agency had verified the nursing home’s correction of the sampled deficiencies. (Of the nine State agencies, for the audit period, eight used the Quality Indicator Survey, and one used the traditional survey.)

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

Appendix A contains details of our audit scope and methodology.

## FINDINGS

Of the nine selected State agencies in our previous reviews, two State agencies verified nursing homes' correction of deficiencies identified during surveys in accordance with Federal requirements. However, the remaining seven State agencies did not always verify nursing homes' correction of deficiencies as required. Specifically, for 326 of the 700 sampled deficiencies, these State agencies did not obtain evidence of nursing homes' correction of deficiencies or maintain sufficient evidence that they had verified correction of deficiencies.<sup>14</sup>

### Magnitude of Findings at Seven State Agencies

Based on the sample results for each of the seven States, the estimated percentage of deficiencies for which correction was not verified as required ranged from 5 to 92 percent.

For less serious deficiencies, the practice of six of the seven State agencies was to accept a nursing home's correction plan as confirmation of substantial compliance with Federal participation requirements without obtaining from the nursing home the evidence of correction of deficiencies.<sup>15</sup> Further, three of the seven State agencies had technical issues with maintaining supporting documentation in the ASPEN system; as a result, they did not have sufficient evidence of correction of deficiencies.

If State agencies certify that nursing homes are in substantial compliance without properly verifying the correction of deficiencies and maintaining sufficient documentation to support the verification of deficiency correction, the health and safety of nursing home residents may be placed at risk.

In addition to summarizing the issues identified during our nine previous reviews, we determined that CMS's guidance to State agencies on verifying nursing homes' correction of deficiencies and maintaining documentation to support verification needed to be improved.

### STATE AGENCIES DID NOT ALWAYS VERIFY NURSING HOMES' CORRECTION OF DEFICIENCIES IN ACCORDANCE WITH FEDERAL REQUIREMENTS

#### Seven State Agencies Did Not Have Evidence of Nursing Homes' Correction of Deficiencies

For 326 of the 700 sampled deficiencies, 7 State agencies did not verify correction of deficiencies as required:

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<sup>14</sup> On September 6, 2018, we shared the results of our previous reviews at the seven State agencies during testimony before the U.S. House of Representatives Committee on Energy and Commerce, Subcommittee on Oversight and Investigations. The testimony, entitled "Examining Federal Efforts to Ensure Quality of Care and Resident Safety in Nursing Homes," can be found at <https://oig.hhs.gov/testimony/docs/2018/dorrill-testimony090618.pdf>.

<sup>15</sup> One of the six State agencies followed the same practice for G-rated deficiencies, which are more serious.

- For 294 of the 490 less serious deficiencies, 7 State agencies did not obtain evidence or maintain sufficient evidence that nursing homes corrected the deficiencies.
- For 32 of the 210 more serious deficiencies, 4 State agencies did not document or could not provide support that they had verified the correction of the deficiencies during followup surveys.<sup>16</sup>

See below for examples of less and more serious deficiencies at two of the State agencies.

Example of a Less Serious Deficiency
<p>A State agency completed a nursing home survey and identified several deficiencies, including a <i>D</i>-rated deficiency related to resident behavior and facility practices. The surveyor noted: “Based on clinical record review, facility documentation, staff interviews, and policy review, the facility failed to ensure that one resident . . . was free from a physical restraint imposed by a certified nursing assistant . . . .”</p> <p>To address this deficiency, the nursing home listed two corrective actions in its correction plan. The first corrective action was the termination of the certified nursing assistant involved in the deficient practice. The second corrective action was the following: “Staff was in-serviced on the facility’s policy on the use of restraints immediately following the incident and will be in-serviced again at the all staff meeting.” However, the State agency did not have documentation to show that the nursing home had terminated the certified nursing assistant and did not have training sign-in sheets to support that the nursing home had provided the training.</p>

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<sup>16</sup> An onsite followup survey is required to verify the correction of more serious deficiencies.



**Example of a More Serious Deficiency**

A State agency completed a nursing home survey and identified several deficiencies, including a G-rated deficiency related to quality of care (42 CFR § 483.25). The surveyor noted:

Based on observation, interview and record review, the facility failed to provide the necessary care and services . . . in accordance with the comprehensive assessment and plan of care for 1 of 4 diabetic residents . . . reviewed for medication administration. This failure occurred when the resident received too much diabetic medication and sustained a life threatening event requiring emergency medical intervention.

The State agency conducted the required followup survey; however, it did not have documentation supporting that it had verified the correction of the deficiency.

Figure 2 below shows the number of sampled deficiencies for which each State agency did not verify nursing homes' correction of deficiencies in accordance with Federal requirements.

**Figure 2: The Number of Sampled Deficiencies for Which Correction Was Not Verified as Required Ranged From 4 to 83**

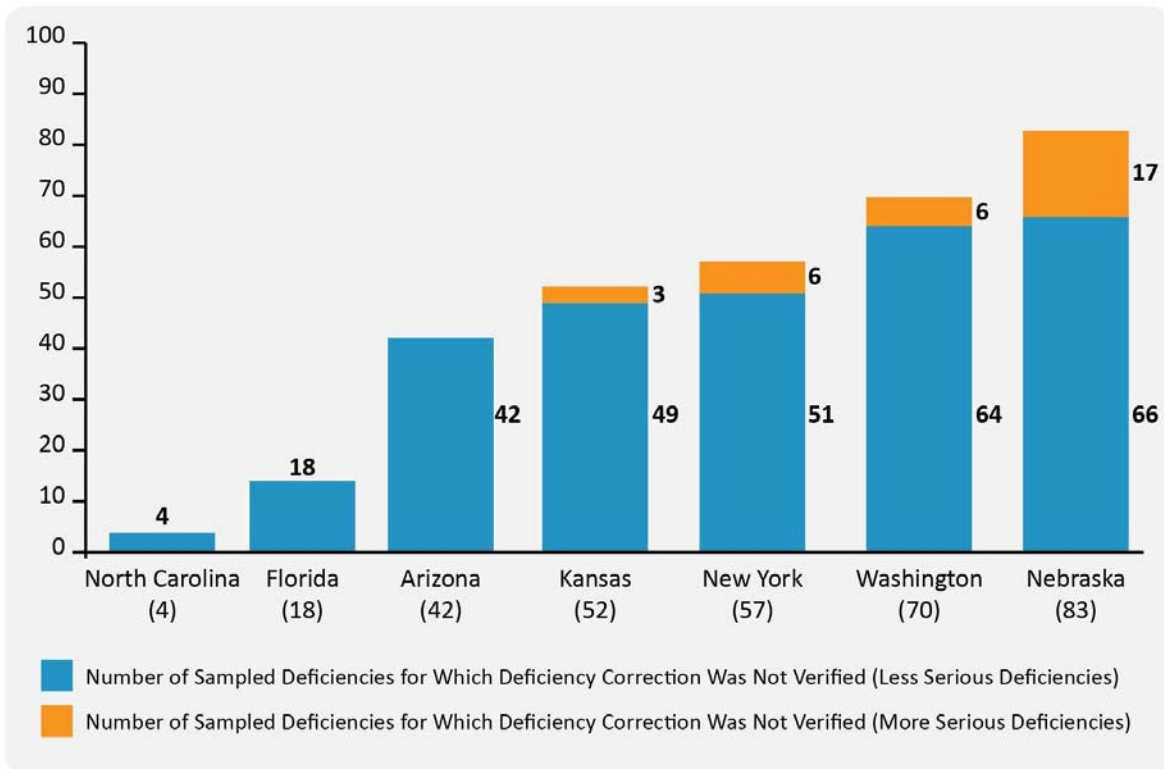
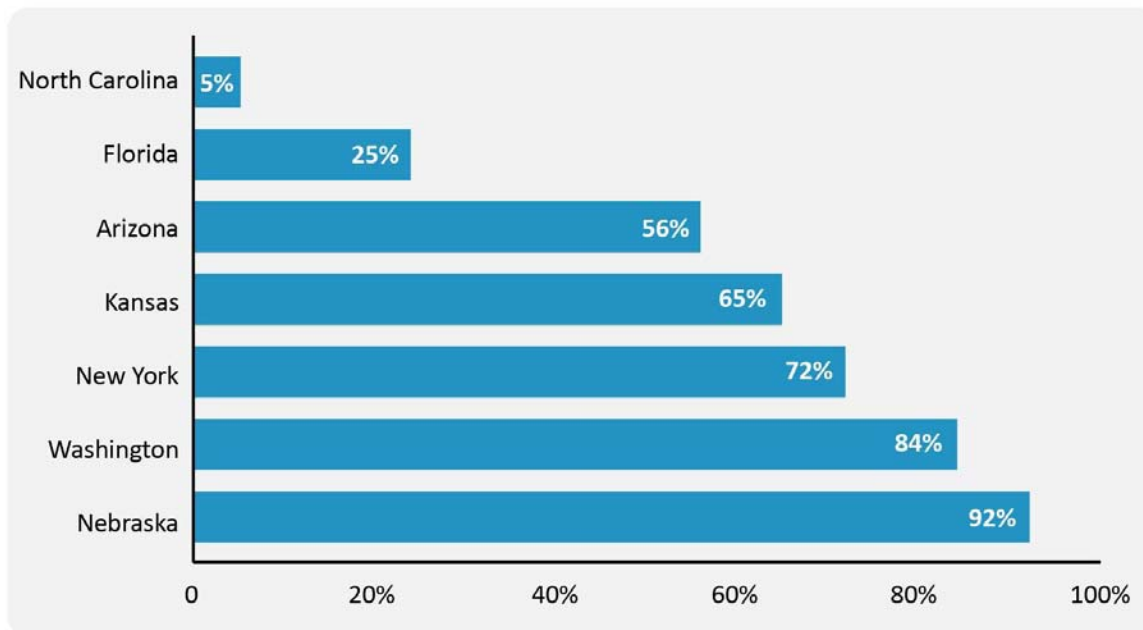


Figure 3 below shows that the estimated percentage of deficiencies for which correction was not verified as required ranged from 5 to 92 percent of the total deficiencies that required verification.<sup>17</sup>

**Figure 3: The Estimated Percentage of Deficiencies for Which Correction Was Not Verified as Required Ranged From 5 to 92 Percent**



### **Six State Agencies' Practice Was To Accept Correction Plans as Confirmation of Substantial Compliance for Less Serious Deficiencies**

Six State agencies' practice was to accept nursing homes' correction plans as confirmation of substantial compliance with Federal participation requirements without obtaining from nursing homes the required evidence of correction of deficiencies.<sup>18</sup>

Officials from all six State agencies stated that for less serious deficiencies (i.e., deficiencies with the ratings *D* or *E*, or *F* without substandard quality of care), the routine practice was to accept nursing homes' correction plans as confirmation of substantial compliance. However, officials from four of the six State agencies stated that if a nursing home had both more serious and less serious deficiencies, the State agency would verify the correction of both types during its followup survey.

<sup>17</sup> For Florida and Kansas, we previously reported two estimates for each State. To calculate each State's percentage, we added the estimated number of deficiencies for which the State agency did not obtain evidence of correction and the estimated number of deficiencies for which the State agency could not provide documentation and divided that total by the number of deficiencies for which the State agency was required to verify correction.

<sup>18</sup> For the seventh State agency, we did not identify that it had this practice.

In addition, at one of the six State agencies, we received different responses from field office managers and surveyors related to their understanding of and routine practices for obtaining evidence of correction. For example, employees from two field offices stated that for less serious deficiencies, their routine practice was not to obtain evidence of correction but to rely on the nursing homes' correction plans. However, employees from two other field offices stated that they did the same for G-rated deficiencies, which are more serious deficiencies.

When we recommended to the six State agencies that they improve internal controls or practices or revise policies for (1) verifying nursing homes' correction of less serious deficiencies or (2) retaining documentation to support that they had verified correction, three State agencies agreed with our recommendation. (For example, one State agency said that it had completed an internal audit in September 2016 and had then made immediate systemic changes to require evidence of correction for less serious deficiencies.) One of the six State agencies did not agree or disagree with our recommendation but described steps that it had taken to implement our recommendation. The remaining two State agencies disagreed with our recommendation or conclusion but described actions that they had taken or planned to take to address our recommendation.

### **Three State Agencies Had Technical Issues With Maintaining Documentation in the Automated Survey Processing Environment System To Support Evidence of Correction**

Three State agencies had technical issues with maintaining supporting documentation in the ASPEN system; as a result, they did not have sufficient evidence of correction of deficiencies.

Staff from each of the three State agencies stated that they had encountered one of the following technical issues:

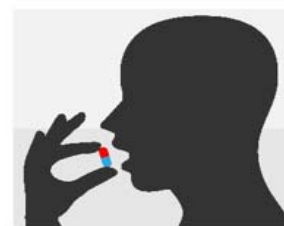
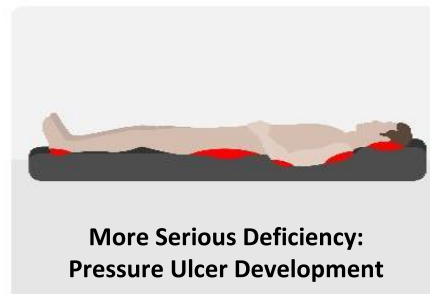
- Data on nursing home residents had been deleted from the ASPEN system after completion of the survey.
- The ASPEN system software used during the survey process could be modified after the completion of a survey, to the point that some files, including the evidence of correction, within the system had been deleted.
- The data upload from the surveyors' tablets to the ASPEN system failed.

When we recommended to the two State agencies that had issues with ASPEN data deletion that they update information system controls to ensure that data were protected against unauthorized or unintended modification or loss, one stated that it had already fixed the system. However, the other State agency said that it was not responsible for the unintended data loss because CMS maintained the ASPEN system. When we recommended to the State agency that had an issue with data upload failure that it provide guidance and training to its surveyors to ensure that they properly upload data to the ASPEN system, it stated that it had begun to implement our recommendation.

## The Health and Safety of Nursing Home Residents May Be Placed at Risk if Correction of Deficiencies Is Not Properly Verified

If State agencies certify that nursing homes are in substantial compliance with Federal participation requirements without properly verifying the correction of deficiencies and maintaining sufficient documentation to support the verification of deficiency correction, the health and safety of nursing home residents may be placed at risk. Following are examples of deficiencies that, if not corrected, could result in harm to additional beneficiaries:

- A State agency did not have sufficient evidence that it had verified a nursing home's correction of a *G*-rated (more serious) deficiency related to quality of care. A surveyor noted: "Based on observation, record review and interview, the facility staff failed to obtain treatment orders and failed to evaluate nutritional requirements for the development of a pressure ulcer for 1 resident."
- A State agency did not obtain evidence of correction for an *E*-rated (less serious) deficiency related to quality of care. A surveyor noted: "Based on interviews and record reviews, it was determined that for one of five residents reviewed for unnecessary medications, the facility did not ensure that all of the residents were free of significant medication errors."



Less Serious Deficiency:  
Medication Error

### IMPROVEMENTS TO CMS'S GUIDANCE ARE NEEDED TO ENSURE THAT STATE AGENCIES PROPERLY VERIFY NURSING HOMES' CORRECTION OF DEFICIENCIES

CMS's guidance on verifying nursing homes' correction of less serious deficiencies and its interim guidance on maintaining documentation supporting verification of deficiency correction need clarification.

#### CMS's Guidance on Verifying Nursing Homes' Correction of Less Serious Deficiencies Needs Clarification

The Manual does not specify how State agencies must verify and document verification of nursing homes' correction of less serious deficiencies before the State agencies certify nursing homes' substantial compliance with Federal participation requirements.

In March 2018, CMS officials provided us with a written statement that, for recertification surveys, the best practice would be for State agencies to collect and retain evidence of correction of deficiencies in addition to the correction plan. However, the guidance in the Manual does not specifically require State agencies to collect and retain evidence of correction

for less serious deficiencies.<sup>19</sup> According to CMS, State agencies are permitted to verify a nursing home’s correction of less serious deficiencies on the basis of a correction plan without evidence of correction.<sup>20</sup>

We agree that the guidance in the Manual does not specifically direct how a State agency should verify and document its verification of a nursing home’s correction of less serious deficiencies before certifying the nursing home’s substantial compliance. However, the Manual explains that the correction plan serves only as the nursing home’s *allegation* of compliance<sup>21</sup> because it describes the actions that the nursing home will take to correct deficiencies and specifies the date by which those deficiencies will be corrected (or the date on which they were corrected).<sup>22</sup> The correction plan is the basis on which CMS or the State agency verifies compliance. The correction plan—on its own—does not serve as evidence that the State agency verified the nursing home’s correction of deficiencies and should not be used as the basis for certifying the nursing home’s substantial compliance. A State agency can verify correction of deficiencies by obtaining evidence of correction<sup>23</sup> or performing a followup survey.

### **CMS’s Interim Guidance on Maintaining Documentation To Support Verification of Deficiency Correction Needs Clarification**

CMS’s interim guidance on maintaining documentation does not specify how a State agency should document the information or evidence it used to verify the correction of deficiencies.

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<sup>19</sup> Two of the six State agencies whose practice was to accept nursing homes’ correction plans as confirmation of substantial compliance stated that the Manual did not specifically require a State agency to collect additional documentation beyond the correction plan to verify compliance for less serious deficiencies when desk reviews were conducted.

<sup>20</sup> This information was different from that provided by CMS during our review of one State. In a written response to our followup question, in August 2013, CMS stated: “The guidance in the [Manual] states that compliance needs to be verified. The type of evidence or verification of [correction plan] implementation will depend on the deficiency and [correction plan]. CMS relies on the State Agencies to gather sufficient information which supports that the deficiency is corrected.”

<sup>21</sup> The Manual § 7304.4. The Form CMS-2567, which includes a correction plan, requires a signature and title of a nursing home representative and the signature date. It does not include an attestation statement that the nursing home will implement the correction plan or indicate which nursing home representative should sign the correction plan.

<sup>22</sup> 42 CFR § 488.401. For initial surveys, section 7300.3 of the Manual states: “The plan of correction does not assure the execution of a provider agreement. The effective date of the provider agreement would be the date the survey agency verifies substantial compliance as determined by the appropriate evidence of correction as discussed . . . .”

<sup>23</sup> Examples of acceptable evidence of a nursing home’s correction of a deficiency include invoices verifying purchases or repairs, sign-in sheets verifying attendance of staff at inservice training, or interviews with more than one training participant about training (the Manual § 7317.2).

CMS's interim guidance<sup>24</sup> generally states that documentation, such as surveyor notes, rough-copy survey report forms, and other workpapers supporting the Form CMS-2567, needs to be kept for only one survey cycle, provided that the form has captured the information from the supporting documentation. However, the interim guidance does not describe what type of information should be retained to support that a State agency verified a nursing home's correction of deficiencies.

Further, the Forms CMS-2567, CMS-2567B, and CMS-1539 include the date that the nursing home attested to the correction of a deficiency, the date that the surveyor determined the deficiency was corrected, and the date that the State agency certified that the nursing home was in substantial compliance with Federal participation requirements, respectively. However, these forms do not include a section for a State agency to indicate how it verified that a nursing home corrected deficiencies (e.g., through an onsite revisit or using other evidence) and what type of evidence it reviewed.

Without specifying how a State agency should document the information or evidence it used to verify the correction of deficiencies, CMS cannot be assured that a State agency verified that a nursing home corrected the deficiencies. The State agency may have certified the nursing home's substantial compliance with Federal participation requirements even though the nursing home did not correct the deficiencies.

## RECOMMENDATIONS

To help ensure the health and safety of nursing home residents, we recommend that CMS:

- reconsider its position on permitting State agencies to certify nursing homes' substantial compliance on the basis of correction plans without obtaining evidence of correction for less serious deficiencies (deficiencies with ratings *D*, *E*, and *F* without substandard quality of care);
- revise guidance to State agencies to provide specific information on how State agencies should verify and document their verification of nursing homes' correction of less serious deficiencies before certifying nursing homes' substantial compliance with Federal participation requirements;
- revise guidance to State agencies to clarify the type of supporting evidence of correction that should be provided by nursing homes with or in addition to correction plans;
- strengthen guidance to State agencies to clarify who must attest that a correction plan will be implemented by a nursing home;

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<sup>24</sup> See footnote 11.

- consider improving its forms related to the survey and certification process, such as the Forms CMS-2567, CMS-2567B, and CMS-1539, so that surveyors can explicitly indicate how a State agency verified correction of deficiencies and what evidence was reviewed; and
- work with State agencies to address technical issues with the ASPEN system for maintaining supporting documentation.

### **CMS COMMENTS**

In written comments on our draft report, CMS concurred with our recommendations and provided information on actions that it had taken or planned to take to address our recommendations. CMS also provided technical comments, which we addressed as appropriate. CMS's comments, excluding the technical comments, are included as Appendix C.

CMS's comments on our recommendations are summarized below:

- Regarding our first recommendation, for less serious deficiencies in which no actual harm was identified, CMS stated that it will review current guidance regarding the requirement to provide evidence of correction of a deficiency and determine whether updates are needed to help verify correction.
- Regarding our second recommendation, CMS stated that it will review the current guidance to State agencies regarding the verification and documentation of correction of less serious deficiencies and discuss with State agencies any areas needing additional clarification in determining the scope of changes needed.
- Regarding our third recommendation, CMS stated that it will review guidance to State agencies and continue to educate State agencies on the types of supporting evidence of correction that should be provided with corrective action plans.
- Regarding our fourth recommendation, CMS stated that it will review its existing policies and guidance to ensure that a nursing home official with authority and responsibility for operations of a facility is attesting to the plan of correction and its implementation.
- Regarding our fifth recommendation, CMS stated that it will review forms related to the survey and certification process and evaluate whether updates are needed.
- Regarding our sixth recommendation, CMS stated that it continually reviews its systems for technical issues and addresses those issues as they arise. CMS also stated that it will continue to provide education and technical support to State agencies on its systems.

## APPENDIX A: AUDIT SCOPE AND METHODOLOGY

### SCOPE

We previously reviewed nine State agencies to determine whether they verified nursing homes' correction of deficiencies identified during surveys in accordance with Federal requirements.<sup>25</sup> We summarized the results of those reviews for this report. In addition, we assessed CMS's Manual guidance to State agencies on verifying nursing homes' correction of deficiencies and its interim guidance to State agencies on maintaining documentation to support verification of deficiency correction.

Our nine reviews covered deficiencies that (1) the State agencies identified during CYs ranging from 2012 to 2016 and (2) required a correction plan. Table 3 below shows each State and the respective audit period we reviewed.

**Table 3: States and Audit Periods Associated With the Deficiencies Reviewed**

State	Audit Period (CY)
Washington	2012
Oregon	2014
Arizona	2014
Missouri	2014
Kansas	2014
New York	2014
North Carolina	2015
Florida	2015
Nebraska	2016

We completed these reviews using CMS's deficiency data, which included deficiencies with (1) ratings of *D* or *E*, or *F* without substandard quality of care (less serious deficiencies) and (2) ratings of *G* through *L*, or *F* with substandard quality of care (more serious deficiencies). At each State agency, we reviewed a statistical sample of 100 deficiencies (70 less serious deficiencies and 30 more serious deficiencies).

We did not review the overall internal control structure of CMS. Rather, we limited our review of internal controls to those that were significant to the second objective of our audit.

We conducted this review from February to September 2018, which included contacting CMS in Baltimore, Maryland. We performed the fieldwork for our previous nine reviews at State agencies in Washington State, Oregon, Arizona, Missouri, Kansas, New York, North Carolina, Florida, and Nebraska.

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<sup>25</sup> Of the nine State agencies, for the audit period, eight used the Quality Indicator Survey, and one used the traditional survey.



## METHODOLOGY

To accomplish our first objective, we analyzed the findings and recommendations from our nine previous reviews. To accomplish our second objective, we interviewed CMS officials to obtain information on procedures that State agencies are required to follow and reviewed CMS's guidance, including its policies and procedures. We discussed the results of our review with CMS officials.

To accomplish our objectives for the nine previous reviews, we:

- reviewed applicable Federal laws, regulations, and guidance;
- interviewed CMS officials to gain an understanding of State agencies' oversight responsibilities for nursing homes and CMS's guidance to the State agencies on verification of corrections of deficiencies identified during nursing home surveys;
- interviewed State agency officials and employees on survey operations, quality assurance, and training;
- obtained from CMS a database containing deficiencies that required a correction plan and were identified during standard and complaint surveys performed in each respective State in CYs 2012, 2014, 2015, or 2016;
- developed a stratified random sample of 100 deficiencies for each State agency;
- reviewed each State agency's documentation for each sampled deficiency to determine whether the State agency had verified the nursing home's correction of the deficiency;
- estimated the number and percentage of deficiencies in the sampling frame for which each State agency did not verify the nursing homes' correction of deficiencies in accordance with Federal requirements; and
- discussed the results of our reviews with State agency officials.

We conducted this performance audit in accordance with generally accepted government auditing standards.<sup>26</sup> Those standards require that we plan and perform the audit to obtain sufficient, appropriate evidence to provide a reasonable basis for our findings and conclusions based on our audit objectives. We believe that the evidence obtained provides a reasonable basis for our findings and conclusions based on our audit objectives.

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<sup>26</sup> All of the previous reviews (Appendix B) covered by this rollup report were also conducted in accordance with generally accepted government auditing standards.

**APPENDIX B: RELATED OFFICE OF INSPECTOR GENERAL REPORTS**

<b>Report Title</b>	<b>Report Number</b>	<b>Date Issued</b>
<i>Nebraska Did Not Always Verify Correction of Deficiencies Identified During Surveys of Nursing Homes Participating in Medicare and Medicaid</i>	<a href="#"><u>A-07-17-03224</u></a>	5/30/2018
<i>Florida Did Not Always Verify Correction of Deficiencies Identified During Surveys of Nursing Homes Participating in Medicare and Medicaid</i>	<a href="#"><u>A-04-17-08052</u></a>	4/27/2018
<i>North Carolina Did Not Always Verify Correction of Deficiencies Identified During Surveys of Nursing Homes Participating in Medicare and Medicaid</i>	<a href="#"><u>A-04-17-02500</u></a>	1/4/2018
<i>New York Did Not Always Verify Correction of Deficiencies Identified During Surveys of Nursing Homes Participating in Medicare and Medicaid</i>	<a href="#"><u>A-02-15-01024</u></a>	10/19/2017
<i>Kansas Did Not Always Verify Correction of Deficiencies Identified During Surveys of Nursing Homes Participating in Medicare and Medicaid</i>	<a href="#"><u>A-07-17-03218</u></a>	9/6/2017
<i>Missouri Properly Verified Correction of Deficiencies Identified During Surveys of Nursing Homes</i>	<a href="#"><u>A-07-16-03217</u></a>	3/17/2017
<i>Arizona Did Not Always Verify Correction of Deficiencies Identified During Surveys of Nursing Homes Participating in Medicare and Medicaid</i>	<a href="#"><u>A-09-16-02013</u></a>	10/20/2016
<i>Oregon Properly Verified Correction of Deficiencies Identified During Surveys of Nursing Homes Participating in Medicare and Medicaid</i>	<a href="#"><u>A-09-16-02007</u></a>	3/14/2016
<i>Washington State Did Not Always Verify Correction of Deficiencies Identified During Surveys of Nursing Homes Participating in Medicare and Medicaid</i>	<a href="#"><u>A-09-13-02039</u></a>	7/9/2015

## APPENDIX C: CMS COMMENTS



DEPARTMENT OF HEALTH & HUMAN SERVICES

Centers for Medicare & Medicaid Services

Administrator  
Washington, DC 20201

**Date:** JAN 10 2019

**To:** Daniel R. Levinson  
Inspector General  
Office of Inspector General

**From:** Seema Verma *SV*  
Administrator  
Centers for Medicare & Medicaid Services

**Subject:** Office of Inspector General Draft Report: "CMS Guidance to State Survey Agencies on Verifying Correction of Deficiencies Needs to be Improved to Help Ensure the Health and Safety of Nursing Home Residents (A-09-18-02000)"

The Centers for Medicare & Medicaid Services (CMS) appreciates the opportunity to review and comment on the Office of Inspector General (OIG) draft report on the verification of nursing home deficiency corrections. CMS makes resident safety a top priority in nursing homes and all facilities that participate in the Medicare and Medicaid programs.

Monitoring patient safety and quality of care in nursing homes and other long-term care facilities serving Medicare and Medicaid beneficiaries is an essential part of CMS's oversight efforts and requires coordinated efforts between the federal government and the states. CMS works with state survey agencies to perform surveys of participating providers and suppliers. For nursing homes, state survey agencies inspect providers for compliance with Medicare and Medicaid health and safety standards related to both delivery and monitoring of care. Utilizing the expertise of state officials to perform surveys means state agencies and officials have up-to-date information on health and safety risks at facilities and, as appropriate, can take direct action against facilities through state licensure sanctions as well as recommend federal enforcement actions and remedies in response to deficiencies in health and safety requirements.

When state inspectors identify violations of federal certification requirements, they notify the facility and in serious cases refer the case to CMS for enforcement. In most cases, the facility is required to develop a plan of correction to address identified violations within a time period depending on the scope and severity of the noncompliance violation. When immediate jeopardy to resident health and safety exists (meaning that the facility's noncompliance with one or more requirements has caused, or is likely to cause, serious injury, harm, impairment, or death), a CMS Regional Office or state Medicaid agency must take immediate action to remove the jeopardy and correct the deficiency by either terminating the facility or installing temporary

management in as few as two calendar days after the facility receives notice that immediate jeopardy exists. Civil monetary penalties can also be assessed for each instance or each day of noncompliance up to approximately \$20,000 per day until substantial compliance is achieved for the deficiency identified. For deficiencies that do not constitute immediate jeopardy, remedies could include directed in-service training, denial of payments, or civil monetary penalties. CMS collaborates with state partners to educate nursing homes regarding our requirements, making sure they have the information they need to address any violations found during a survey.

CMS has also taken other actions to improve the quality and timeliness of state agency reporting. CMS conducts surveys of states to determine whether states are identifying deficiencies correctly, investigating compliance effectively, and meeting their other obligations. The CMS Regional Offices conduct formal assessments annually of each state survey agency's performance relative to measures included in the State Performance Standards System (SPSS). The SPSS provides a framework to organize and measure important aspects of state survey activities and is comprised of three domains: frequency, survey quality, and enforcement and remedy. These three areas also support our efforts to standardize and promote consistency among state survey agencies. In addition, CMS's regional offices are in regular contact with the state survey agencies to provide education and technical support relating to reporting deficiencies and verifying corrections. This occurs both during the routine flow of deficiencies that are routed up for enforcement and through more general calls with states regarding survey, certification and enforcement issues.

OIG's recommendations and CMS's responses are below.

**OIG Recommendation**

CMS should reconsider its position in permitting state agencies to certify nursing homes' substantial compliance on the basis of correction plans without obtaining evidence of correction for less serious deficiencies (deficiencies with ratings D, E, and F without substandard quality of care).

**CMS Response**

CMS concurs with this recommendation. For less serious deficiencies where no actual harm was identified, CMS will review current guidance regarding the requirement to provide evidence of correction and determine if updates are needed to help verify correction of the deficiency. This review will include a risk based assessment, taking into consideration current CMS efforts to reduce unnecessary provider burden and state agency workload to ensure adequate resources are available to prioritize remediation of more serious and repeat deficiencies.

**OIG Recommendation**

CMS should revise guidance to state agencies to provide specific information on how state agencies should verify and document their verification of nursing homes' correction of less

serious deficiencies before certifying nursing homes' substantial compliance with federal participation requirements.

**CMS Response**

CMS concurs with this recommendation. CMS will review the current guidance to states regarding the verification and documentation of correction of less serious deficiencies and discuss with states any areas needing additional clarification in determining the scope of changes needed. As part of this effort, CMS will take into consideration current CMS efforts to reduce unnecessary provider burden and state agency workload to ensure adequate resources are available to prioritize remediation of more serious and repeat deficiencies.

**OIG Recommendation**

CMS should revise guidance to state agencies to clarify the type of supporting evidence of correction that should be provided by nursing homes with or in addition to correction plans.

**CMS Response**

CMS concurs with this recommendation. As required in the Medicare State Operations Manual, the course of action for verifying provider compliance varies based on the seriousness of the noncompliance, ranging from reviewing a plan of correction and associated supporting documentation where needed to conducting an onsite revisit survey. If supporting documentation is required, examples of acceptable supporting documentation may include an invoice or receipt verifying purchases or repairs, and sign-in sheets verifying attendance of staff at in-services training. CMS will review guidance to state agencies and continue to educate state agencies on the types of supporting evidence of correction where needed that should be provided with corrective action plans.

**OIG Recommendation**

CMS should strengthen guidance to state agencies to clarify who must attest that a correction plan will be implemented by a nursing home.

**CMS Response**

CMS concurs with this recommendation. CMS will clarify which nursing home officials may attest that a correction plan will be implemented. Currently, CMS requires signature by the nursing home representative on the plan of correction. CMS will review our existing policies and guidance to ensure that a nursing home official with authority and responsibility for operations of the facility is attesting to the plan of correction and its implementation.

**OIG Recommendation**

CMS should consider improving its forms related to the survey and certification process, such as the Forms CMS-2567, CMS-2567B, and CMS-1539, so that surveyors can explicitly indicate how a state agency verified correction of deficiencies and what evidence was reviewed.

**CMS Response**

CMS concurs with this recommendation. CMS will review forms related to the survey and certification process, including Forms CMS-2567, CMS-2567B, and CMS-1539, and evaluate whether updates are needed. This review will also take into consideration current CMS efforts to reduce unnecessary provider burden and duplicative reporting requirements.

**OIG Recommendation**

CMS should work with state agencies to address technical issues with the Automated Survey Processing Environment (ASPEN) system for maintaining supporting documentation.

**CMS Response**

CMS concurs with this recommendation. CMS continually reviews its systems for technical issues and addresses these issues as they arise. In addition, CMS will continue to provide education and technical support to states on its systems. State agencies have designated staff who receive the Automated Survey Processing Environment (ASPEN) database training and information on system updates. CMS has established clear communication paths with state agencies for prompt handling of technical issues through ASPEN Technical Support and additional support available through experienced CMS ASPEN technical experts. In addition, CMS has worked with states identified as having ASPEN system issues to implement updated policies, procedures and training to ensure that appropriate supporting documentation is maintained in ASPEN.