



AUDIT SUMMARY

ERNEST A. ALMONTE, CPA, CFE
AUDITOR GENERAL
ernest.almonte@oag.ri.gov

INTEGRITY ♦ RELIABILITY ♦ INDEPENDENCE ♦ ACCOUNTABILITY

FEBRUARY 2005

Office of Facilities Regulation
Division of Health Services Regulation
Department of Health
Performance Audit
July 1, 2002 – December 31, 2004

We completed a performance audit of the Office of Facilities Regulation (OFR) within the Department of Health. The performance audit focused on the practices and procedures utilized by the OFR in regulating nursing facilities operating within the State. Our objective was to determine whether these practices and procedures complied with federal and state laws and regulations, and were effective and efficient. Our audit was conducted in accordance with *Government Auditing Standards* and covered primarily the fiscal years ended June 30, 2003 and 2004, and the current fiscal year through December 31, 2004.

The Department of Health's Office of Facilities Regulation (OFR) did not perform all surveys of nursing facilities required by state law and did not meet state timeframes for investigating complaints for nursing facilities. Nine nursing facilities were issued a 2005 license without the required annual survey in calendar year 2004.

Both federal and state laws and regulations govern the regulation of nursing homes. Because the federal government, through the Medicaid and Medicare programs, is the largest payor of nursing home costs, nursing facilities must

comply with federal regulatory requirements to maintain participation in the Medicaid and Medicare programs. The federal government supports these activities with federal grants and the federal requirements are largely complied with by OFR. State laws, in most instances, layer additional requirements over the federal requirements—these additional state requirements are usually not met principally due to lack of resources within OFR.

Federal regulations require a comprehensive certification survey of nursing facilities not later than 15 months after the previous survey; however, a statewide average of 12 months between surveys must be maintained. In practice, the federal certification survey also meets the required annual State licensing survey. State law further requires two unannounced surveys (interim surveys) each year. We found that OFR did not meet this requirement—interim surveys were not conducted for most nursing facilities in both fiscal years 2003 and 2004. State law also requires that any facility cited for substandard care shall be inspected on a bi-monthly basis for the twelve-month period immediately following the citation. We found that

AUDIT HIGHLIGHTS

- OFR is largely complying with federal requirements for surveying nursing facilities but is not complying with more stringent state survey requirements principally due to lack of resources.
- Nine nursing facilities were issued a 2005 license without the required annual survey in calendar year 2004.
- OFR did not meet the state requirement for interim surveys for most nursing facilities in both fiscal years 2003 and 2004.
- Complaints are not being investigated within the 7-day timeframe required by State law. The prioritization of complaints using federal guidelines needs to be improved.
- OFR needs additional resources to perform its mandated federal and state functions.
- Financial condition information could be used as an indicator of increased risk of deteriorating quality of care in nursing facilities. Cost data currently collected by the Department of Human Services for rate setting purposes may, with minimal supplement, be able to be used to develop a fiscal rating for each nursing facility.

six out of seven facilities cited for substandard care between July 2002 and December 2004 were not inspected on a bi-monthly basis as required.

We recommended improvements in procedures to allow the tracking of deficiencies found on nursing facilities surveys throughout the survey process to final reporting. We also recommended that the Department of Health adopt the federal conflict of interest policy for all OFR employees to enhance the integrity of its regulatory process.

We found that OFR, in most instances, met the federal timeframes for complaint investigations but did not meet the more stringent seven-day investigation requirement mandated by state law. We also found that the prioritization of complaints using federal guidelines needs to be improved. The timeframe for investigating a complaint is dictated by the severity category assigned during triage. Because the individuals performing the triage of complaints are responsible for activities which compete for the same resources, there is an inherent risk of prioritizing the complaints in a less severe category to allow more time for investigation. We recommended these functions be segregated and that an immediate supervisory review be performed of complaint triage.

The State Long-Term Care Ombudsperson (LTCO) also receives and investigates nursing homes complaints. All LTCO complaints are not forwarded to the Department of Health for consideration and investigation. We believe this may distort OFR's perspective on conditions in a specific nursing home and limit its ability to perform fully its federal and state regulatory functions. We recommended that the LTCO forward all complaints received to the Department of Health to allow concurrent investigations as necessary.

The OFR needs additional resources to perform its mandated federal and state functions. First, we believe that OFR's

responsibilities assigned by state law should be reexamined to affirm that these are the functions that best ensure overall quality of care in nursing facilities. State requirements that exceed federal requirements should be evaluated concurrently with estimating the additional resources needed to meet those statutory provisions. For example, meeting a seven-day complaint investigation timeframe may require as many as 11 staff dedicated just to this task.

OFR has prepared a staffing analysis to support its request for additional personnel; however, we found the analysis to be incomplete and unsupported in various respects. While the flaws in OFR's work plan analysis precluded us from concurring with the exact number of additional personnel that are needed, it is clear that additional resources are needed to comply with existing state requirements. We recommended that OFR revise and update its personnel budget request and accumulate data to support its estimates.

OFR does not currently review any financial data or assess the financial position of a nursing facility in conjunction with performing its federal and state regulatory functions. However, there is general agreement that a direct relationship exists between the fiscal soundness of a nursing facility and its ability to provide consistent quality care. Our report includes discussion of how financial condition information could be used as an indicator of increased risk of deteriorating quality of care and prompt more frequent inspections. Cost data currently collected by the Department of Human Services for rate setting purposes may, with minimal supplement, be able to be used to develop a fiscal rating for each nursing facility. This financial rating factor could be provided by DHS to OFR for use in a risk-based model, along with other relevant risk factors to determine frequency of inspection. These issues are discussed in a section of our report entitled *Matters Requiring Further Study or Legislative Deliberation*.

We have also highlighted other matters that require further study or legislative

deliberation which are not solely within the control of the Department of Health. We believe these issues warrant consideration as corrective action, statutory changes, and budget appropriations are considered.

Copies of the Single Audit Report can be obtained by calling 222-2435 or by visiting our website at www.oag.ri.gov.