
D.C. Department of Health Has Systems to Monitor Nursing Homes But Some Risks Remain

September 30, 2019

A report by the Office of the District of Columbia Auditor



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Executive Summary

Why ODCA Did This Audit

ODCA audited oversight of nursing homes because nursing home residents are a vulnerable population. We selected the audit at our discretion, based on the authority at D.C. Code § 1-204.55.

What ODCA Found

We found that HRLA had systems in place to monitor each aspect of the oversight process included in the audit scope. At the same time, we found that HRLA can improve those processes and thereby reduce risks to nursing home residents. Some nursing homes repeated the same problems with resident care that HRLA previously had identified and required them to correct, and nursing homes' statements about how they would correct a problem did not always address the cause of the problem. Some complaints were not investigated as soon as they should have been, and HRLA does not have adequate procedures in place to ensure it does not overlook complaints submitted about nursing homes. HRLA sometimes accepts illegible documentation to monitor daily nursing home staffing and does not review copies of notices provided in advance to residents who must be moved to ensure the notices have been reviewed and signed by the resident or a resident's representative. Furthermore, HRLA inspections of some nursing homes are done on a regular schedule, and that predictability could well be affecting the assessment of actual conditions at nursing homes.

What ODCA Recommends

- HRLA should train staff with responsibility for reviewing Plans of Correction on how to determine if a Plan of Correction identifies the underlying cause of the problem, and the importance of doing so.
- HRLA should ensure that the repeated problems ODCA identified at Washington Center, Deanwood, and Bridgepoint Capitol Hill are resolved.
- HRLA should monitor nursing homes for repeats of high-risk problems.
- HRLA should revise its policies and procedures to ensure that complaints are reviewed and investigated in a timely manner.
- HRLA should require nursing homes to keep legible records of staffing for HRLA's review.
- Before a non-emergency resident move, HRLA should obtain the notice of discharge or transfer that the resident or the resident's representative has signed.
- HRLA should design and implement procedures to track complaints starting at initial submission to ensure that all submitted complaints are recorded and acted on as appropriate.
- HRLA should create a process to vary the time of year that nursing home inspections occur.
- HRLA should add a review step to the process for finalizing some reports.

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Background

On September 30, 2017, DC Health’s Health Regulation and Licensing Administration (HRLA) received a complaint about a 69-year-old nursing home resident who had been experiencing extensive bouts of vomiting and diarrhea and was at risk of dehydration. HRLA investigated 17 days later but the individual had already been discharged. ODCA’s expert reviewer contends this complaint should have been given the highest priority, requiring immediate investigation. The priority assigned and the delay in assigning could have caused further harm to the resident and prevented HRLA from assessing what might have been a pattern of poor care affecting other residents. Given HRLA’s mission to protect one of the District’s most vulnerable populations, it is essential that HRLA investigates serious complaints quickly, while evidence is available and before there is an opportunity for the situation to worsen and potential harm to continue.

There are 18 skilled nursing facilities and nursing facilities (nursing homes) in the District of Columbia, with the capacity to serve up to 2,598 residents.¹ It is HRLA’s responsibility to oversee the nursing homes that provide care to these residents. The agency’s mission is to “protect the health of the residents of the District of Columbia...by...building quality and safety in...facilities through an effective regulatory framework.”² Nursing home residents include senior citizens and people with disabilities and illnesses. The Office of the D.C. Auditor (ODCA) audited HRLA to determine if its regulatory framework is effective in protecting the health of D.C. nursing home residents.

Nursing homes provide nursing care, rehabilitative services, and other health-related care and services above the level of room and board. They receive payment through Medicare or Medicaid, or both, and must comply with federal law to maintain certification as Medicare and Medicaid providers. Medicare, the federal health insurance program for individuals over 65 and some younger persons with disabilities, pays in certain instances for care in a skilled nursing facility. Medicaid, the federal/state health care program for those without private resources, pays for care in a nursing facility.

HRLA regulates District health professionals and facilities, including nursing homes. It monitors nursing homes for compliance with D.C. regulations and federal regulations by agreement with the U.S. Health and Human Services Centers for Medicare and Medicaid Services (CMS).

HRLA surveyors, most of whom are registered nurses, function as inspectors and provide oversight of nursing homes through annual inspections,³ investigations of complaints HRLA receives, and by reviewing other information, including notices from nursing homes that must be issued to residents when they move within or out of the nursing home. Nursing homes that violate D.C. or federal regulations may face D.C. fines, federal fines, or both or may lose the certification required to receive federal funding. HRLA

1 The term “nursing home” is used throughout the report to refer to skilled nursing facilities and nursing facilities, and does not include facilities which offer similar care and accept only private payment.

2 HRLA’s mission is available on the DC Health website: <https://dchealth.dc.gov/page/health-regulation-and-licensing-administration>.

3 HRLA and federal requirements use the term “survey” for the annual on-site inspections of nursing homes. For clarity and uniformity, this audit report uses the term “inspection” throughout.

documents noncompliance with requirements observed on site at nursing homes in reports, some of which are available on the DC Health website,⁴ and on the federally-maintained Nursing Home Compare website.⁵

Some nursing home residents are so limited in their ability to care for themselves that they need nursing home staff to not only provide for their medical needs, but their personal hygiene needs as well. When nursing home staff make mistakes, fail to care for their residents, or allow a dangerous condition to exist in a way that does not comply with federal requirements, these are called deficiencies. Deficiencies, depending on their seriousness and rate of reoccurrence, can cause a resident discomfort, create a danger to one or more residents, or even be life-threatening to one or more residents. The purpose of nursing home oversight, according to the federal standards, is to promote continuous compliance with the program participation requirements, and nursing homes are expected to quickly address any noncompliance HRLA identifies in order to return to compliance.

HRLA inspects each nursing home annually, in a visit which is meant to be a surprise to staff and management. When noncompliance with federal or state requirements is uncovered during an annual inspection or a complaint investigation visit, the nursing home must correct it and submit its plan to do so to HRLA. HRLA also monitors nursing homes in response to complaints it receives through various methods, and is required to prioritize, investigate, and report on each complaint.

Another important determinant of the quality of care is staffing, which HRLA monitors annually. Nursing homes are required to alert residents in advance of discharge or any other planned moves within or out of the nursing home and must forward to HRLA the notice they provide residents, for ongoing monitoring. Any noncompliance HRLA notes through any of these monitoring steps must result in a corrective action plan, and HRLA must approve a nursing home's plan to correct noncompliance which is designed to prevent any recurrence of a problem with resident care.

4 Results of annual inspections for D.C. nursing homes can be found at <https://dchealth.dc.gov/service/nursing-homes-survey-reports>.

5 The federal reports from the most recent annual inspection and some complaint investigations are available under the Health Inspections tab for each D.C. nursing home at <https://www.medicare.gov/nursinghomecompare/results.html#state=DC>

Objectives, Scope and Methodology

Objectives

ODCA's objectives were to determine whether:

- Certification inspections were completed, and complaint investigations were initiated within the appropriate timelines in fiscal years (FYs) 2016-2018.
- HRLA cited nursing homes that were noncompliant with federal standards, D.C. Municipal Regulations, or D.C. Code for staffing levels, discharges, or transfers in FY 2018.
- Classification and enforcement of infractions and deficiencies identified in complaint investigations and certification and licensure inspections in FYs 2016-2018 comply with D.C. laws and regulations and with federal standards.

Scope

The audit scope was FY 2016 through FY 2018.⁶ We found that HRLA does not consistently record complaints when it receives them, so the audit would not have included any complaints HRLA received but did not record. ODCA was not able to review notices related to all FY 2018 discharges and transfers because HRLA does not always verify that nursing homes provide a notice for all discharges and transfers.

Methodology

To complete this audit, ODCA interviewed HRLA staff, conducted process walk-throughs, reviewed documentation and information available to the public on the DC Health website, and contracted with a specialist to determine the accuracy of samples of HRLA's complaint priority assessments, federal deficiencies and D.C. infractions, and to evaluate the acceptability of samples of nursing homes' Plans of Correction. ODCA also reviewed samples of complaints, staffing records, and resident discharge and transfer notices, and looked more closely at six of the 18 nursing homes for repeats of the same problem. For more details on methodology and the credentials of the specialist, please see **Appendix B: Methodology**.

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

⁶ ODCA's work focused on the D.C. nursing homes that were in operation in FY 2018, which are listed in Appendix A.

Audit Results

Overall, we found that HRLA had systems in place to monitor each aspect of the oversight process included in the audit scope. At the same time, we found that HRLA can improve those processes and thereby reduce risks to nursing home residents. In some cases, the risks that currently exist can be quite high, such as at nursing homes that have not effectively corrected problems to avoid recurrence (see Finding 1). Nursing home residents are an especially vulnerable population and risks identified here could seriously impact people's lives.

Finding Some nursing homes repeated deficiencies that should have been corrected following citation. A contributing factor could have been HRLA accepting Plans of Correction that were, themselves, deficient in identifying underlying causes.

When HRLA's inspectors visit nursing homes for regular inspections or for complaint investigations, they may discover that the nursing home is not complying with D.C. or federal requirements meant to protect residents. In most circumstances, the nursing homes must fix the problems HRLA identified, and may also be fined or otherwise penalized.

Federal and District policies are clear that the system of oversight should prevent a cycle in which nursing homes that are cited for noncompliance do not follow the proper steps toward corrective action and then repeat the same noncompliance. D.C. regulations for nursing homes provide higher fines for subsequent offenses than the initial one. Federal requirements require nursing homes to describe how they will fix the immediate problem identified by the inspector, but also how they will ensure that the problem is addressed systemically and will not recur. This description is called a Plan of Correction and must be reviewed and accepted by HRLA.

The Five Whys

ODCA's specialist, Carol Benner, related an anecdote about a nursing home that used "The Five Whys," a root cause analysis technique, and a van to turn around declining quality of care: "Rather than a simple 'blame and train the staff,' the nursing home determined that the deterioration in care was due to increased staff turnover, that was due to low morale, that was due to staff being written-up, that was due to staff being chronically late, that was due to no bus line to the facility. This all occurred after the nursing home relocated to a rural setting." The simple solution, based on the identification of the root cause, was to send a van to a nearby bus stop at the change of shift. Misdirected efforts in "firing or reeducating staff would not have fixed the problem," Ms. Benner noted, adding that "if we are ever to get to the point of sustained compliance, surveyors must take a more active role" in making sure "the correct solution matches the cause of the deficiency."

In eight of 42 instances HRLA accepted Plans of Correction submitted by nursing homes that were not adequate to avoid recurrence of a problem.

In a review of the 42 Plans of Correction, ODCA identified eight plans that did not outline how to systematically correct the problem and prevent recurrence (see Figure 1 on the following page). HRLA nevertheless accepted these Plans of Correction, indicating that it found them to be sufficient for correcting the problem.

The sample of Plans of Correction reviewed were not likely to lead to sustained compliance once implemented based on one of two reasons. Some did not identify the underlying cause of the problem. For example, one Plan of Correction does not identify the reason that there is no record of the assessment of a resident who became unresponsive and died. For other Plans of Correction, the nursing home or HRLA had identified the cause of the problem, but the nursing home Plan of Correction did not incorporate changes that would address the cause to ensure that the problem would not recur. For example, medication was administered improperly to a resident through a gastronomy tube because the employee who administered it was inexperienced. The Plan of Correction included a training on administering medicine through a gastronomy tube for all staff, rather than focusing on training or supervision of inexperienced staff to make sure they did not make mistakes administering medication.

Figure 1: Eight of the Plans of Correction Accepted by HRLA

Deficiency	Cause for Deficiency and Plan	Plan is Missing:
<p>1 United Medical staff failed to accurately assess an unresponsive resident’s condition. The resident subsequently died.</p>	<p>Cause: Missing.</p> <p>Plan: Trained staff on completing and documenting certain assessments & terminated involved nurse.</p>	<p>An explanation of why assessments were not documented accurately, and a strategy to address the reason.</p>
<p>2 United Medical did not have calibrated glucometers available for immediate use to test the glucose levels of a resident who became unresponsive and subsequently died.</p>	<p>Cause: Glucometers usually were not calibrated at that time of day.</p> <p>Plan: Ensure one glucometer is always calibrated. Statement that two employees were disciplined.</p>	<p>The connection between disciplining two employees and cause for uncalibrated glucometer.</p>

Deficiency	Cause for Deficiency and Plan	Plan is Missing:
<p>3 Inexperienced United Medical staff failed to check a gastronomy tube placement before administering medications to a resident and administered eye medications incorrectly.</p>	<p>Cause: Inexperienced employee. Plan: Trained all staff on eye drops and gastronomy tubes.</p>	<p>A plan to train new, inexperienced staff and supervise them until they administer medications appropriately.</p>
<p>4 Transitions Healthcare did not consistently notify the physician of worsening pressure ulcers on a resident with cognitive impairment over a one-month period. Resident was transferred to hospital to rule out sepsis.</p>	<p>Cause: Missing. Why was a physician not notified? Plan: Trained staff to notify physician.</p>	<p>An explanation of why the physician was not notified and a strategy to address it.</p>
<p>5 Deanwood failed to provide incontinence care for approximately five hours to a resident. The diaper and pad beneath it were soaked through.</p>	<p>Cause: Unclear. Why were staff not available to provide incontinence care? Plan: Staff will be trained on timely incontinence care.</p>	<p>An explanation of why no one was available to provide incontinence care.</p>
<p>6 Bridgepoint National's only freezer was not operational.</p>	<p>Cause: Many factors, including that the first freezer repair vendor called did not perform repairs immediately.</p>	<p>Steps to find a reliable repair service for the freezer.</p>
<p>7 Bridgepoint National did not ensure that frozen foods were stored frozen solid to prevent a foodborne illness outbreak in a highly susceptible population.</p>	<p>Plan: Trained staff on how to accurately complete a freezer temperature log.</p>	
<p>8 Ingleside did not follow proper procedures for the relocation of eight residents between floors.</p>	<p>Cause: Not specified Plan: Trained staff on proper procedures for relocations.</p>	<p>A commitment to prepare a Relocation Plan for unexpected moves within or outside facility.</p>

Source: ODCA analysis of Statements of Deficiencies and Plans of Correction

Three of six nursing homes reviewed in an ODCA sample repeated deficient practices in especially high-risk areas of resident care that HRLA had identified in a previous visit. The circumstances were especially concerning at two of those nursing homes.

ODCA did an in-depth review of problems identified in six of the 18 nursing homes and found a recurrence of serious problems. ODCA found that there were repeats of especially high-risk problems⁷ during FYs 2016-2018 in three of the sampled facilities: Bridgepoint Capitol Hill, Deanwood, and Washington Center (see Figure 2). Degrees of risk and levels and extent of harm are covered in federal guidance provided by CMS to HRLA and other state oversight bodies. Thomas Circle, Ingleside, and United Medical also were checked for repeats of the same seven problems, but none were found in these three.

The correction process for these problems failed in some way. A problem may have repeated because the nursing home submitted, and HRLA accepted, an inadequate Plan of Correction. It also is possible that a nursing home designed an adequate Plan of Correction but did not implement it. Three of the six nursing homes had the same problem more than once during FYs 2016-2018; two of those had two separate problems multiple times.

“I want to pee. I don’t want to wet myself.”

A Washington Center resident left in a room with no nursing home staff. The resident required the assistance of two persons for all daily living activities. Washington Center had been cited at least twice before for lack of supervision.

7 High-risk problems are those with a possibility for being serious, as demonstrated by CMS’s including them in the definition of substandard quality of care, and a realization of that possibility, as evidenced by HRLA’s citing them at least once at any facility during FYs 2016-2018 in a situation involving harm or immediate jeopardy to a resident or residents.

Figure 2: Repeated Deficiencies in Three D.C. Nursing Homes

Nursing Home	Deficiency	Inspection Date	Details
Washington Center	Supervision	7/15/2016	A wandering resident who was unsupervised entered another resident's room, leading to an altercation in which the resident of the room fell and sustained a hematoma to his/her head, and had to be sent to the emergency room for treatment.
		12/22/2016	A resident who used a wheelchair apparently entered the stairwell without the staff noticing and was found later by staff on the third step of the stairway with his/her wheelchair on top of him/her.
		9/1/2017	HRLA employees directly observed the nursing home leaving eight residents unsupervised for approximately 12 minutes during an inspection. All the unsupervised residents required at least extensive assistance from staff for their daily needs, and three have a history of falls.
	Oral Care	7/15/2016	A resident diagnosed with dementia and totally dependent on staff help for personal hygiene was not receiving consistent oral care, and had food particles in his/her teeth.
		9/1/2017	A resident with one arm paralyzed and the other amputated specifically told the surveyor he would like his teeth brushed. He had an electric toothbrush in the bathroom, but the staff were not using it.
Deanwood	Respiratory Care	2/8/2016	A resident with Chronic Obstructive Pulmonary Disease was supposed to have staff assess his/her breath sounds every shift, based on the physician's order, and staff had not been doing the assessments for almost a month.
		1/17/2017	Deanwood had not contacted the physician for clarification of orders that said to monitor a resident's oxygen levels and notify the physician if oxygen levels were above 90 percent and below 89 percent.
Bridgepoint Capitol Hill	Electrical Hazards	5/30/2017	A missing electrical switch cover.
		6/26/2018	Uncovered electrical outlets with exposed wiring.
	Nail Care	5/30/2017	A resident had a new certified nursing assistant (CNA) assigned to his/her care, and the CNA apparently had not cleaned the resident's fingernails.
		6/26/2018	A resident with impairment of both upper extremities had long nails.

Source: ODCA analysis of Statements of Deficiencies

National analysis has found that larger nursing homes are associated with lower quality ratings⁸ and performance.⁹ The two nursing homes in the sample of 6 with fewer than 70 beds did not have repeats of the high-risk problems ODCA reviewed. Both small nursing homes also are within continuing care retirement communities, which also is correlated with higher quality ratings nationally.¹⁰

If the repeated high-risk problems ODCA found had either placed a resident or residents in immediate jeopardy, resulted in harm to more than a very limited number of residents, or were pervasive and caused a potential for harm (which was not immediate jeopardy but was more than minimal),¹¹ HRLA would have been required to track the repeats, but none of the problems had these characteristics.

Inadequate Plans of Correction could lead to recurrence of the problem, which, in fact, ODCA observed for separate problems. The repeated problems were especially high risk—problems that are categorized in the definition of Substandard Quality of Care if the harm that results or the number of residents affected is great enough. Repeats of any problem, but particularly these high-risk ones, place nursing home residents at risk of accidents and insufficient care that could lead to injury, illness, or death.

The specific risks that may be unresolved in ODCA's sample include:

- Inadequate supervision.
- An environment with hazards that could lead to accidents.
- Lack of attention to physician orders related to respiratory care.
- Failure to provide necessary oral and nail care services to dependent residents.

In addition to these risks to residents, repeated citations constitute a pattern of noncompliance with the requirements to participate in Medicare and Medicaid at Bridgepoint Capitol Hill, Deanwood, and Washington Center.

A Washington Center resident with one paralyzed arm and one arm amputated above the elbow told the surveyor, *"I am going to see my doctor [on Thursday] and I would like to have my teeth brushed before I go."* Staff were not brushing his teeth daily. HRLA cited the nursing home a little over a year before for failing to provide oral care to another resident.

8 Kaiser Family Foundation (KFF). (2015). Reading the Stars: Nursing Home Quality Star Ratings, Nationally and by State. Retrieved from <https://www.kff.org/report-section/reading-the-stars-nursing-home-quality-star-ratings-nationally-and-by-state-issue-brief>

9 U.S. Government Accountability Office (GAO). (2009). Nursing Homes: CMS's Special Focus Facility Methodology Should Better Target the Most Poorly Performing Homes, Which Tended to Be Chain Affiliated and For-Profit (Page 29). Retrieved from <https://www.gao.gov/new.items/d09689.pdf>

10 KFF.

11 These levels of harm and extent are part of the definition of Substandard Quality of Care, repeats of which trigger HRLA to impose specific consequences on the nursing home. U.S. Centers for Medicare and Medicaid Services (CMS). State Operations Manual (Chapter 7). Retrieved from <https://www.cms.gov/Regulations-and-Guidance/Guidance/Manuals/Internet-Only-Manuals-IOMs-Items/CMS1201984.html>. See also the Repeated deficiencies section of Appendix B.

Recommendations

1. HRLA should train staff with responsibility for reviewing Plans of Correction on how to determine if a Plan of Correction identifies the underlying cause of the problem, and the importance of doing so. HRLA also may want to consider offering a similar training to nursing homes so nursing home staff can determine underlying causes, and the importance of including and addressing them in the Plan of Correction.
2. HRLA should obtain credible evidence that problems no longer exist in the following areas: inadequate supervision and failure to provide oral care at Washington Center; failure to comply with physician's orders related to respiratory status at Deanwood; and exposed wiring and failure to provide nail care at Bridgepoint Capitol Hill. If these problems persist or evidence is not available that the identified problems have been rectified, HRLA should use existing enforcement mechanisms such as fines to obtain such evidence or incentivize compliance.
3. HRLA should conduct an assessment and determine which practices that are noncompliant with federal or D.C. regulations have the potential for the highest risks to resident well-being, and design and implement procedures to monitor all nursing homes for repeated instances of those problems and incentivize returning to and maintaining compliance.

Finding **HRLA investigated some complaints late because it did not always prioritize complaints accurately and in a timely manner.**

Several related metrics provide insight into the effectiveness of the complaint process: time from receipt to assessment, accuracy of priority assessment, and time from assessment to investigation.

- **Time from receipt to assessment.** When a complaint alleges that a nursing home is not in compliance with federal or state requirements, qualified HRLA staff must assess the complaint to evaluate the nature of the problem, and to establish the timeframe for initiation of an on-site investigation. The date of assessment may be later than the day HRLA receives the complaint so that HRLA may have time to gather additional information before determining the complaint's priority. During the audit scope, federal requirements limited the interval from receipt to assessment to two working days except when extenuating circumstances kept HRLA from collecting relevant information needed to assign a priority.
- **Accuracy of priority assessment.** Federal requirements outline four levels of complaint priority and a corresponding required timeframe for initiation of an investigation (See Figure 3).¹²
- **Time from assessment to investigation.** The highest priority complaints, in which the resident may be in immediate jeopardy, must be investigated within two working days from the day HRLA receives them; the second-highest must be investigated within 10 working days of the date HRLA assessed the complaint to determine its priority.

12 U.S. Centers for Medicare and Medicaid Services (CMS). State Operations Manual (Sections 5070–5075.9). Retrieved from <https://www.cms.gov/Regulations-and-Guidance/Guidance/Manuals/Internet-Only-Manuals-IOMs-Items/CMS1201984.html>

As shown in the example that opens this report, if HRLA takes more than two days to review a complaint to determine its priority, HRLA cannot meet the federal requirement to investigate quickly a complaint relating to a resident who is in immediate jeopardy, because the time limit for initiating the investigation has elapsed already.

Figure 3: Priority Levels and Investigation Time Frames for Nursing Home Complaints

Priority	On-Site Investigations Must Be	
Immediate Jeopardy (IJ) Has caused or is likely to cause serious injury, harm, impairment, or death to a resident	Initiated within	2 working days from receipt of complaint
Non-IJ High May have caused harm that negatively impacts a resident’s mental, physical and/or psychological status and is of such a consequence to the resident’s well-being that a rapid response by HRLA is indicated	Initiated within	10 working days after priority assessment
Non-IJ Medium Caused or may cause harm that is of limited consequence and does not significantly impair the resident’s mental, physical and/or psychological status or function	Scheduled	(No concrete time frame is required)
Non-IJ Low May have caused physical, mental and/or psychological discomfort that does not constitute injury or damage	Conducted	During the next on-site inspection

Source: CMS State Operations Manual Section 5075

For a sample of 20 of the 54 complaints HRLA recorded in FY 2018, ODCA found that HRLA investigated every one within the time requirements for the priority level HRLA had assigned. However, ODCA identified weakness in the accuracy of complaint priority and the time from complaint assessment to investigation.

Using the same federal prioritization criteria HRLA is required to use, ODCA independently determined that HRLA’s priority rating was too low for 12 of the sample of 20 complaints HRLA recorded in FY 2018 (See Figure 4). Because complaint priority determines when HRLA must initiate investigation, an accurate priority rating is key to regulating nursing homes and ensuring resident safety.

Figure 4: ODCA and HRLA Prioritization of Nursing Home Complaints

FY 2018 Complaints		ODCA	HRLA
HRLA should have prioritized higher	2	Immediate Jeopardy (IJ)	Non-IJ Medium
	10	Non-IJ High	Non-IJ Medium or Low
No material differences	8	Non-IJ Medium or Low	(Same priority or higher)

Source: ODCA analysis of complainant statements and HRLA priority ratings

Some complaints were not prioritized as soon after receipt as required. HRLA had taken more than two working days to prioritize seven of these 20 complaints. For two of the other 13 complaints, there was no record of the date of receipt, so ODCA could not determine the interval from receipt to initial review. HRLA was unable to provide documentation to support why some priority assessments were made several days after receipt.¹³ After the priority assessment, HRLA waited too long to investigate five of the 12 complaints it had not prioritized high enough. An interval from priority assessment to the beginning of the investigation caused by an inaccurate priority assessment is important because it could lead to overall delay, potentially leaving nursing home residents at risk for infection, illness, or other harm.

Overall, combining the effect of the delay in prioritizing complaints and the inaccurate priority rating, three of the 20 complaints were investigated later than they should have been. The other complaints for which one or more aspects of the process had been late nevertheless were not investigated late.

Figure 5: Three Complaints HRLA Investigated Late in FY 2018

ODCA Priority	Complaint	Working Days from Receipt to Investigation		HRLA Priority Led to Delay Because It Was:
		Required	Actual	
IJ	Resident at risk of dehydration from vomiting and diarrhea	2	11	Low (Non-IJ-medium) and late
Non-IJ High	Resident fell and injured his knee, and subsequently developed a large bedsore. Family not properly notified of either condition.*	12	At least 26	Low (Non-IJ Low) and possibly also late
Non-IJ High	Unsanitary conditions in the kitchen	12	At least 13	Low (Non-IJ medium) and possibly also late

*The affected resident was subsequently admitted to the hospital and later died, but the significant quality of care issues could have affected other residents.

Source: ODCA analysis of complainant statements and complaint investigation log

¹³ HRLA stated that the recorded date for complaint review may have been later than the actual review, but did not provide any documentation to support this assertion.

Federal requirements state that HRLA is “expected to have written policies and procedures to ensure that the appropriate response is taken for each complaint,” including “response timelines and a process to document actions taken by the SA [State Agency] in response to complaints.”¹⁴ Appropriate internal controls require that management periodically review policies, procedures, and related control activities for continued relevance and effectiveness in achieving the entity’s objectives and addressing related risks.¹⁵

Weaknesses in the policy and procedure manual may have contributed to inaccurate prioritization of complaints. HRLA’s Policies and Procedures for Handling Complaints document, which was revised in May 2018, according to HRLA, includes factors to consider when determining the priority of a complaint, such as the immediacy of the problem and the number of persons affected, but there is no guidance on what specific priority should be selected based on the factors. Federal requirements are clearly stated in the CMS State Operations Manual¹⁶. While HRLA acknowledges that it is governed by those requirements, they are not referenced or paraphrased in the HRLA policies and procedures document. Examples of situations that should be prioritized as immediate jeopardy and guidance on how to make decisions, such as what level of risk or how many residents affected constitute a given level of priority, would improve the procedures. Incomplete procedures and guidance for assigning complaint priorities likely contributed to HRLA assigning complaint priorities that were not high enough.

Other weaknesses in the policy and procedure manual may have contributed to the lateness of priority assessments. HRLA’s policies and procedures document does not contain enough detail to ensure that HRLA prioritizes complaints in a timely manner. The policies and procedures do not specify a timeframe within which staff must review a received complaint to determine priority. There is no procedure that specifies the frequency at which points of submission, such as the online portal and the fax machine, or the point of receipt for mail delivered by the U.S. Postal Service, should be monitored. The Compliance Officer stated that he checks the online portal each Monday, Wednesday, and Friday, but this is not reflected in the document.

In the absence of strong internal controls to ensure that all complaint allegations are prioritized accurately and in a timely manner, it is possible that the condition or circumstance in question may escalate and become more serious before HRLA investigates it. For complaints directly related to the health, safety, or quality of care of nursing home residents, conditions could worsen, leading to additional health complications up to and including death of a resident or residents.

Recommendation

4. HRLA should design, implement, and train staff in: (a) policies that establish timeframe requirements from initial complaint receipt to priority assessment, regardless of receipt method; (b) procedures for

14 CMS. (Section 5010).

15 GAO. *Standards for Internal Control in the Federal Government* (Paragraph 12.05). Retrieved from <https://www.gao.gov/products/GAO-14-704G>

16 CMS. (Section 5075)

monitoring each point of complaint receipt; and (c) formal procedures for making priority assessments; that will ensure that all complaints are prioritized appropriately and in a timely manner so that they are investigated timely.

Finding The documentation that HRLA retained from nursing homes was not sufficient for HRLA to determine if nursing homes had enough staff to provide care.¹⁷

District nursing homes must be adequately staffed to ensure that residents receive proper care, including:

- Treatment, medication, and nutritional supplements as prescribed.
- Assistance with personal grooming so that the resident is comfortable and clean.
- Prompt responses to all calls for help.

Specifically, D.C. Code requires nursing homes to provide at least 4.1 hours of direct nursing care per resident each day. Of these hours, 0.6 hours must be provided by a registered nurse (RN) or an advanced practice registered nurse (APRN).¹⁸ HRLA provided the District’s nursing homes with a memorandum instructing them on how these measures should be calculated. In reviewing the instructions, ODCA noted that they are based on an assumption that each staff person always works his or her full eight-hour shift.

We reviewed the original data HRLA had obtained from a sample of five nursing homes for one date each. Based on this sample, ODCA was unable to recalculate staffing ratios for two of five sampled nursing homes for the date selected:

- The Serenity Rehabilitation staff schedule ODCA reviewed has pre-printed spaces by shift and role, such as RNA or CNA (which stand for registered nursing assistant and certified nursing assistant respectively), and another space that is likely for staff names. The handwritten text in these spaces was often crossed out or illegible, making it impossible for ODCA to tally staff attendance. The sheet contains numerous notes outside the blanks, written at an angle, in red or black ink. Many of the notes appear to be short strings of letters, but they often are also illegible. Some of the notes are next to the crossed-out text filling some of the pre-printed blanks. It is not clear if the note text is another staff person’s name or a note about the absence of the originally scheduled individual whose name is written in the given space. Some of the notes also appear to be numbers, and it is not clear what their significance is.
- For Transitions Healthcare, ODCA could not obtain the original staff schedule and nursing home census used by HRLA for recalculation because HRLA did not retain the original source documents it used for the calculation.

For the other three sampled nursing homes, ODCA confirmed HRLA’s determination that Lisner and Bridgepoint Capitol Hill complied with staffing ratio requirements to provide 4.1 hours of direct care per resident, including 0.6 hours of care from an RN or APRN. ODCA also confirmed HRLA’s determination

¹⁷ D.C. Code § 44-504 (h-1)(1)(B)(ii)
¹⁸ D.C. Code § 44-504 (h-1)(1)(B)(ii)

that Carroll Manor’s staffing did not comply with either requirement on the date sampled.

Staff schedules and census data were not collected using standardized forms and processes. For example, the schedule for one date for Bridgepoint Capitol Hill has printed grids for each shift and floor, with individual lines labeled with role (such as RN). Staff names are printed on each labeled line. There are handwritten notes near many of the shift grids; some of these are legible and appear to be staff names. Some printed and handwritten names have a line through them and a handwritten note on the same line, some of which seem to indicate a reason for absence, such as “VAC” for vacation. In contrast, the Lisner schedule reviewed was computer-generated except for one unclear handwritten note at the bottom. Staff names are recorded by shift and role and none are crossed out or annotated.

Recent changes have strengthened the staffing review process slightly. An HRLA supervisor told us that beginning in July 2018, inspectors requested staff schedules for randomly selected time periods in the past year, in addition to reviewing staffing documentation for the period just before the interview. Reviewing random dates is an effective way to monitor compliance throughout the period under review. Inspections that are a surprise to the nursing home because of randomization would do even more to promote effective monitoring.

The source documents HRLA used to assess compliance with staffing levels at some nursing homes were not legible enough to be reliable. Effective internal controls require that an organization’s management obtain relevant data from reliable sources, which are “reasonably free from error and bias and faithfully represent what they purport to represent.”¹⁹

Nursing home staffing has an important impact on the quality of care for residents. Without HRLA’s proper oversight of staffing levels, nursing homes could be understaffed without detection, which could interfere with residents receiving the appropriate assistance with personal grooming, medical treatments as prescribed, and prompt responses to requests for help.

Recommendations

5. HRLA should assess the sufficiency of existing regulations to require nursing homes to record actual staffing legibly in a standardized form every day and strengthen these requirements or seek additional authorities as appropriate. The form should capture a listing of individuals who worked during each shift, their titles or roles and their professional qualifications (e.g. RN, CNA), the number of hours they worked, and the resident census for the nursing home. It should not contain notes about staffing changes.
6. For any dates for which HRLA reviews staffing ratios at a nursing home, HRLA should cross-reference the number of hours a sample of employees worked with official payroll time and attendance cards to ensure accuracy and retain both the documentation and the inspector’s calculations to enable managerial review (regardless of whether the nursing home is found in or out of compliance).

19 U.S. Government Accountability Office (GAO). (2014). *Standards for Internal Control in the Federal Government* (Paragraph 13.04).

Finding HRLA obtained information in a timely manner to monitor resident discharges and transfers from nursing homes, but the information was incomplete. HRLA did not always review evidence, such as signature, that the resident or his or her representative received all required information sufficiently in advance of non-emergency moves.

To protect the rights of nursing home residents and give them sufficient time to plan for a move, District nursing homes must provide their residents with written and oral notice whenever they are to be discharged from the nursing home or transferred to another facility. A move from home to a health care facility or from one health care facility to another can be stressful for older adults. This stress can threaten the wellbeing and even survival of residents, particularly those in fragile health.²⁰

HRLA's oversight is important to ensure that the resident receives the information he or she needs, and the move is conducted properly. A resident who will be moving from a nursing home, or their representative, may need to make sure the resident will have somewhere to go, and that he or she will have help with health care needs. The resident or resident's representative needs time to make these arrangements, and time to appeal the planned move if it will be harmful to the resident. A resident who is transferred to a hospital for treatment may need to return to a nursing home afterward to receive specialized care.

Written notices are how HRLA ensures that nursing homes conduct moves properly and provide the information to residents that D.C. Code requires. Nursing homes are required to send HRLA a copy of the written notice. HRLA had a record of 8,950 written notices (more than 4,000 per year) of moves outside and within nursing homes it had received from January 1, 2017, to October 29, 2018.²¹

Both federal law²² and D.C. Code require nursing homes to provide a resident notice before moving him or her outside the facility. D.C. Code²³ requires that D.C. nursing homes:

- Provide the written notice to the resident at least 21 days before the proposed discharge or transfer. There are exceptions to this requirement:
 - The resident may waive the right to a 21-day notice period. In some cases, a resident is provided with notice of less than 21 days, which includes a move date. The resident can accept by agreeing to a waiver of the notice period. Consent to abbreviated notice is only valid if knowingly and voluntarily given at the time the move is proposed.
 - In the case of an emergency. If a move on an emergency basis is necessary, the attending physician must write and sign orders for it, or the Long-Term Care Ombudsman must document the need for it in the resident's clinical record.

20 See Melrose, Sherri. (2013). Relocation Stress: How Staff Can Help. *Canadian Nursing Home*, 24(1), 16-19 and Morse, Donna. (2000). Relocation Stress Syndrome is Real. *The American Journal of Nursing*, 100(8), 24AAAA-24BBBB, 24DDDD.

21 All moves included relocations within the nursing home, which ODCA excluded from its analysis because the risk to resident health and safety is higher with moves to places outside of the nursing home.

22 42 CFR § 483.15 (c)

23 See generally D.C. Code § 44-1003.02

- Complete the written notice in a form specified by HRLA. The form includes the information required by law, found in Figure 6.

Nursing homes submit written notices to HRLA using an electronic process that HRLA designed to expedite its receipt of the notices so that it can take timely action if needed. HRLA has instructed nursing homes to complete an online form to comply with written notice requirements. Also, some written notices are transmitted by fax. The online form has fillable fields for nursing homes to supply information about the move. When a nursing home submits the notice electronically, the established procedure requires that it also print a hard copy to provide to the resident or resident’s representative for signature to indicate receipt, if possible. Signed copies of the notice or alternative evidence of receipt are required to be retained in the resident’s clinical record.

ODCA found that HRLA’s current process is open to risks. Some information is prepopulated in the online form the nursing homes complete. ODCA’s review of the electronic copies of the notices that HRLA receives indicates that the prepopulated information does not transmit to HRLA (see Figure 6). Most importantly, all written notices in a sample of 45 were missing evidence of receipt, such as a dated resident or resident’s representative signature, so HRLA could not confirm that the written notice had, in fact, been provided to the resident in a timely manner.

Some of the sample of 45 also were missing additional information (see Figure 6).

Figure 6: Information Included in 45 HRLA Discharge/Transfer Notices

Statutory Notice Requirement ²⁴		Information Transmitted to HRLA for Review
Evidence that resident/representative received notice	0	Evidence of receipt, such as signature
Reason for the move	39	
Date of proposed move	43	
Name, address, and telephone number of the person supervising the move	45	
The location to which the resident will be transferred	43	
The resident’s right to appeal the proposed move	0*	
Name, address, and telephone number of the Long-Term Care Ombudsman	0*	
Hearing request form and a postage-paid envelope preaddressed to the appropriate District of Columbia official or agency	0	Evidence they had been provided

Source: Discharge, transfer or relocation form on HRLA website, and ODCA analysis of written notices of resident discharges and

24 D.C. Code § 44-1003.02 (d).

transfers

* Some information is already populated in the online form the nursing homes complete. ODCA’s review of the electronic copies of the notices that HRLA receives indicates that the already populated information does not transmit to HRLA.

HRLA contacts the nursing home by email or telephone to obtain any information that is missing from the written notice, such as the reason or destination for the move. HRLA explained to us that if the written notice raises specific concerns, HRLA will investigate it at the nursing home as an incident.

The lack of residents’ signatures also carries additional risk for residents discharged with abbreviated notice after completion of rehabilitation. A signature would double as evidence of consent on a written notice with an abbreviated notice period. All eleven of the discharge notices for residents who had completed rehabilitation in our sample provided less than 21 days of notice, and some included language indicating that the resident had waived the right to the full notice period. They did not include signatures or other evidence of consent, so neither ODCA nor HRLA could confirm the resident’s voluntary consent to an abbreviated notice period.

Figure 7: Written Notices of Nursing Home Transfers and Discharges

Total	45
Transfers	28
Emergency	23
Other/unclear	5
Discharges	17
Completed rehabilitation	11
Other/unclear	6

Source: ODCA analysis of written notices of resident discharges and transfers

There are some valid reasons for the current process. Before HRLA instituted it, nursing homes often submitted the written notices after a substantial delay. Therefore, HRLA sought to address the delay by instructing nursing homes to transmit the electronic copy to HRLA as soon as possible, rather than waiting for the resident or resident’s representative to sign the hard copy. The more rapid electronic system allows HRLA to review some information for an emergency transfer soon after it occurs, and take timely action if needed.

HRLA needs relevant, timely information from reliable sources to ensure that nursing homes are providing appropriate notice to residents.²⁵ The system for submitting the written notices electronically improves the timeliness with which HRLA receives the information. However, to achieve the objectives outlined in

25 GAO. *Standards for Internal Control in the Federal Government* (Paragraph 13.04).

D.C. Code,²⁶ HRLA also needs to ensure that nursing homes have provided their residents with advance notice of a pending move (unless an emergency move was necessary), or the resident consented to an abbreviated notice period.

Additionally, HRLA needs to ensure that the notice provided to the resident or resident's representative contained all information required by law, including the details of the move, appeal rights, and contact information for District officials who are able to help the resident if he or she wishes to appeal the move. A more complicated process than the current one would be required to ensure that each of the resident safeguards noted above is achieved.

The gaps in the current process create risks illustrated in the following hypothetical examples:

- A resident who is moved without sufficient time to establish needed care may not be safe. She could be hurt, her health could decline, or in an extreme case she could die.
- A resident who has made the nursing home his home for many years may experience homelessness after discharge, which would make scheduling health supports, like a home health aide, extremely challenging and risk his health and safety.
- A resident who recently transitioned home but without the necessary supports may activate emergency medical services to meet routine health care needs, which would be expensive for the District and possibly put an unnecessary strain on emergency resources.
- A D.C. resident unable to return to a D.C. nursing home after emergency transfer to a hospital for treatment, and unable to find another nursing home which will accept her, may have to choose a nursing home outside the District. Family and friends may not be able to visit her as frequently.

Particularly for a resident in fragile health, moving without enough time to learn about the destination and the care that will be received at the new destination may be frightening.

Recommendation

7. In non-emergency situations, HRLA should ensure that before the resident is discharged or transferred, it obtains the copy of the written notice of the move that the resident or the resident's representative signed and dated. It is not necessary to obtain the signed copy before an emergency move as described by D.C. Code §44-1003.02(b). HRLA should use the signed copy of the notice to confirm that the resident or his or her representative was in fact given advance written notice of the discharge or transfer (or that he or she consented to abbreviated notice) and that all required information was provided in the written notice.

Finding **HRLA provides a variety of complaint submission methods but was unable to demonstrate that complaints from all intake methods had been captured and investigated in a timely manner.**

²⁶ D.C. Code § 44-1003.02.

HRLA managers have a responsibility to ensure that each complaint is captured, recorded, and investigated so that all allegations and concerns are addressed. The resident, a family member or even an anonymous witness can file a complaint about the health care or treatment a resident received or did not receive. Complaints can be filed by mail, telephone, fax, online, or in person. The primary goal of investigating complaints is to provide a system that will assist in promoting and protecting the health, safety, and welfare of nursing home residents. According to federal requirements, complaint process objectives include:

- Protective oversight.
- Prevention of harm.
- Promotion of efficiency and quality within the health care delivery system.²⁷

The general public can obtain information on how to submit a complaint by visiting the DC Health website.²⁸ After clicking on the link labeled File a Complaint Against a Health Professional or Facility, the user is presented with the following five options for submitting complaints:

- Online webform submitted via the DC Health website.
- Paper form which can be downloaded, printed, and then filled out manually and mailed to HRLA.
- Complaint intake hotline (202) 442-5833 (indicated on the online webform).
- Fax (202) 442-4924 (indicated on the first page of the paper form).
- Fax (202) 724-8677 (indicated on the last page of the paper form).

After speaking with HRLA employees in the Office of Compliance, and reviewing a sample of actual complaints, the following additional methods were discovered by which complaints could be, and actually were, submitted:

- Telephone line other than the designated complaint intake hotline, for example the Compliance Officer's direct line.
- Email directly to the following HRLA employees:
 - Compliance Officer.
 - Program Manager, Health Care Facilities Division.
 - Complaint Intake Coordinator, Office of Compliance.
 - Supervisory Nurse Consultant, Health Care Facilities Division.

While ODCA commends HRLA for providing the public with multiple methods for submitting complaints, it is problematic that HRLA does not have a process in place for ensuring that each complaint has been logged and addressed. For example, one could obtain a log of all incoming telephone calls and compare it to a listing of all investigations that were conducted to verify that each complaint was addressed. However, this raises another concern with the various methods HRLA uses to accept complaints, which is that they are not limited to complaints about nursing homes exclusively, making a reconciliation very difficult.

²⁷ CMS. (5000.1).

²⁸ <https://dchealth.dc.gov/node/145702>

Procedures, roles, and responsibilities for complaint intake have not been clearly defined or documented. For example:

- Of the complaints ODCA reviewed, 80 percent had been submitted directly to individual staff email addresses at HRLA.
- The Compliance Officer monitored the online portal for complaints, but responsibility for review in the Compliance Officer's absence was not clearly defined, raising the risk of complaints lingering unaddressed.
- HRLA's complaint intake process did not include a method for reconciling each intake method with the list of prioritized complaints to ensure that all complaints were captured.

In the absence of a process for reconciling each complaint intake method with the actual investigations HRLA conducts, HRLA cannot ensure that all complaints have been addressed. When complaints are not investigated, nursing home residents may suffer harm. Appropriate internal controls that would support more efficient and effective operations require that management clearly define roles and responsibilities and ensure that all transactions are completed in an accurate and timely manner. Further, management should use comparisons and reconciliations to monitor the effectiveness of its internal controls on an ongoing basis.²⁹

Recommendation

8. HRLA should design, implement, and train staff in policies and procedures for all complaint intake methods, including individual staff email addresses, to:
 - a. Immediately record the date each complaint is received, along with an indication of the intake method (e.g., email, fax, telephone).
 - b. Reconcile records of all complaints from each complaint intake method made as recommended in (a), above, with a listing of all complaints that received a priority rating to ensure that all complaints are prioritized for investigation.

Finding HRLA completed each annual inspection within required timeframes but did not always vary the timing of inspections to ensure that they were unpredictable to the nursing homes.

HRLA is responsible for conducting inspections of nursing homes to ensure that they are in compliance with federal standards. Federal requirements define these inspections as periodic and compliance-focused, for the purpose of gathering information about the quality of service provided to a nursing home's residents.

Federal requirements for how inspections are to be conducted include:

- HRLA must keep inspection timing unpredictable so that inspectors will observe the nursing home's usual conditions and practices. Specifically, the federal requirements, which refer to annual

²⁹ GAO. *Standards for Internal Control in the Federal Government* (Paragraphs 3.06, 10.03 and 16.05).

inspections as surveys, state that “Facilities, within a geographical area, should not be surveyed in the same order as was conducted in the previous standard survey” and that “the month in which a survey begins should not, if possible, coincide with the month in which the previous standard survey was conducted.” D.C. is one geographic area.

- HRLA also must complete an inspection of each nursing home within 15 months of the previous inspection.
- HRLA must ensure that the average length of time since the previous inspection, state-wide, does not exceed 12 months.³⁰

ODCA’s review of HRLA’s inspections conducted in FYs 2016-2018 for each of the District’s 18 nursing homes found that, in some cases, the timing of the inspection appears to have been predictable. For most nursing homes, inspections for FYs 2016-2018 were clustered in the same three-month period each year (78 percent; see Figure 8, below). At three nursing homes, inspections were in the exact same month two years in a row, and HRLA inspected one nursing home in the exact same month (September) in all three years included in the review. Figure 8 shows the month each inspection was completed, making patterns clear.

30 CMS. (7205.2 and 7207.2).

Figure 8: Timing of Nursing Home Inspections During FYs 2016-2018



Source: ODCA analysis of HRLA nursing home inspection log

Within the audit scope, HRLA had completed inspections within required timeframes for each of the District’s nursing homes. The interval between inspections did not exceed 15 months for any nursing home as required by federal requirements.³¹ In addition, the state-wide average number of months between inspections was in compliance with the federal standard of 12 months in FY 2017 and FY 2018.³²

HRLA is aware of the need to vary inspection timing, and has taken steps to do so, although they are not

31 CMS. (Chapter 7).

32 CMS. (7205.2).

sufficient. In an interview about inspection scheduling, the HRLA Supervisory Nurse Consultant, who has responsibility for scheduling inspections, appeared to be aware of the need to vary inspection timing, stating that she intentionally shuffled the dates for inspections. She had observed patterns in inspection dates chosen before she assumed responsibility for scheduling and had heard comments from facility staff which led her to believe that the inspections may have been anticipated. She explained that several factors are taken into consideration when scheduling the date for an inspection, including the date of the last inspection for the nursing home, staff schedules, and holidays. Based on the timing of inspections over the past three years, consideration of the factors she shared in the interview does not seem to have been sufficient to vary the timing of inspections.

In many cases, it appears as though nursing homes could predict when their inspection would be conducted. It is possible that those nursing homes escaped a thorough review, by temporarily improving their operations (e.g., cleaning more thoroughly, increasing staff), in anticipation of an inspection. In those instances, HRLA may have observed and documented nursing home operations that were not representative of actual day-to-day conditions at the nursing home.

Recommendation

- HRLA should use a procedure or automated tool to schedule its inspections, ensuring they are performed in a different sequence each year, and considering the order and timing of prior inspections.

Finding The infractions and level of harm that HRLA identified at nursing homes seemed reasonable in most cases. Adding a review step for complaint investigation reports would have helped eliminate errors.

HRLA may find noncompliance with D.C. Municipal Regulations (DCMR)³³, federal requirements³⁴, or both during inspections and investigations at nursing homes.

Figure 9: How D.C. and Federal Requirements Are Enforced for Nursing Homes

DCMR Infractions	Federal Deficiencies
Noncompliance with DCMR	Noncompliance with federal requirements
Fine amount based on class and repeats	Fine amount based on extent and harm
Reported in State Form Statement of Deficiencies	Reported in Statement of Deficiencies

33 District nursing homes must adhere to the provisions outlined in D.C. Municipal Regulations (DCMR). See DCMR Title 22, Chapter 32 (§§ 22–B3200–B3265). 16 DCMR § 3607 outlines the schedule of fines for nursing home infractions.

34 Federal requirements for nursing homes participating in Medicare and Medicaid are consolidated at 42 CFR Part 483 Subpart B – Requirements for Long Term Care Facilities §§ 483.1 – 483.95.

Infractions under DCMR are grouped into classes, which determine the fine that HRLA can assess. Nursing home infractions carry fines of up to \$2,000 for the first offense and subsequent offenses for the same infraction carry increased fines.³⁵ A measure of extent and harm of each deficiency in complying with federal regulations determines what federal penalties CMS can impose. During the scope of the audit, federal requirements associated greater extent and harm with stiffer penalties, including higher fines. Infractions and deficiencies are each documented and submitted to nursing homes for their response on separate Statements of Deficiencies. The Statement of Deficiencies with infractions is called the State Form and, in the District, includes violations of the DCMR.

ODCA agreed with the category HRLA selected for most infractions (23 out of 25) and HRLA's determination of the potential for harm for most deficiencies (42 out of 45) in samples from FY 2018. Material disagreements were usually slight and arose over areas legitimately open to interpretation, such as which parts of the problem were included in the deficiency, or the seriousness of a problem. For example, when Deanwood failed to provide incontinence care to a resident for approximately five hours, HRLA did not find any harm to the resident's skin integrity, or expression of emotional distress. Therefore, HRLA had concluded that the failure did not constitute neglect because it did not cause harm, while ODCA disagreed and thought it constituted neglect because harm could have occurred.

There was, however, one instance in which disagreement was not slight, and in which HRLA confirmed an error. A resident at Unique Rehabilitation had fallen, but was uninjured, and the nursing home was not required to notify the resident's representative and did not do so. In the State Form, HRLA identified the episode as noncompliance with the provision requiring an administrator to be on site 40 hours a week, a provision not related to resident falls. When ODCA asked about the infraction, HRLA acknowledged that an incorrect provision was selected, and that the correct one would have been the requirement for the resident's representative to be notified of an injury. ODCA believes no infraction was warranted because the investigation had not determined that the resident was injured.

A review of the State Form for complaints might have corrected the error ODCA found. The incorrect infraction for an administrator's absence was assigned following the investigation of a complaint.³⁶ An investigation into the allegations included in a complaint requires an in-depth review of many different types of documents and processes. The State Form, the final product resulting from such a complex process, could benefit from a review to correct errors. Effective internal controls require that "management performs ongoing monitoring...[which] includes regular management and supervisory activities, comparisons, reconciliations, and other routine actions."³⁷ A flow chart for HRLA's complaint process does not contain review steps for the State Form. A supervisory review of the State Form likely would have corrected the incorrect infraction and may also have identified that no citation was warranted at all as the resident was unhurt.

35 Infractions that result in demonstrable harm to a resident are subject to a fine of up to \$10,000 for each offense. See D.C. Code § 44-509(f)(1).

36 The disagreement over whether failure to provide incontinence care to a resident in a timely manner constituted neglect was also related to the results of a complaint investigation.

37 GAO. *Standards for Internal Control in the Federal Government* (Paragraph 16.05).

If HRLA cites the wrong infraction, the fine assessed against the nursing home may be either higher or lower than warranted for the current complaint investigation, as well as for subsequent offenses for the same infraction. The citation of infractions impacts the D.C. fines assessed against nursing homes. In addition to fine variation based on class of infraction, repeat offenses lead to higher fines. Therefore, it is important that the correct infractions are cited so that fines can be assessed correctly, because fines help incentivize nursing home compliance with regulations that protect resident health and safety.

Recommendation

- 10.** The process for identifying and reporting DCMR infractions and the level of harm for federal deficiencies is generally effective, but to avoid errors, HRLA should design and implement procedures to ensure a supervisor reviews and approves State Forms before they are issued in complaint investigations. The procedure should designate a responsible party for each step. This will help HRLA ensure that the correct conclusion has been drawn from the evidence and that the State Form is free of errors.

Auditor's Concern

Complaint investigation may be an area to consider having as a rotating assignment to protect against any risk of bias developing based on longevity and familiarity.

As noted above, the monitoring of nursing homes by HRLA includes annual inspections and investigations based on specific complaints. During this audit, it came to ODCA's attention that almost all complaint investigations were carried out by a single individual over the last nine years. Complaint investigation is an especially important aspect of nursing home oversight, as the most serious risks to nursing home residents may come to HRLA's attention through complaints from family members or others.

Research in multiple contexts has found that inspectors are less effective when they have inspected the same manufacturing plant before,³⁸ and that financial audit quality decreases the longer an individual auditor or audit firm performs the audit of a given entity.³⁹ Even unintentionally, individuals are at risk of losing impartiality and skepticism toward the institutions they oversee over time, and the current system of assignments may expose HRLA to an elevated risk of bribery, influence, and other types of occupational fraud. We suggest that HRLA consider redesigning the complaint investigation system to rotate complaint investigation duties among the other surveyors responsible for the annual inspections and other monitoring duties.

38 In medical device manufacturing plants, inspectors who had visited the same plant before failed to detect more quality defects that led to product recalls. The risk of recall for a device increased 21% the second time the investigator visited a specific plant, and 57% the third time, compared to the first visit by a given inspector. See Ball, George; Siemsen, Enno & Shah, Rachna. (2017). Do Plant Inspections Predict Future Quality? The Role of Investigator Experience. *Manufacturing & Service Operations Management*, 19(4), 534-550. DOI: 10.1287/msom.2017.0661. See also Short, Jodi; Toffel, Michael & Hugill, Andrea. (2016). Monitoring Global Supply Chains. *Strategic Management Journal*, 37, 1878-1897. DOI: 10.1002/smj.2417

39 Singer, Zvi & Zhang, Jing. (2018). Auditor Tenure and the Timeliness of Misstatement Discovery. *The Accounting Review*, 93(2), 315-338. DOI: 10.2308/accr-51871 and Carey, Peter & Simnett, Roger. (2006). Audit Partner Tenure and Audit Quality. *The Accounting Review*, 81(3), 653-676. DOI: 10.2308/accr.2006.81.3.653.

Conclusion

The Health Regulation and Licensing Administration's (HRLA's) oversight of nursing homes is important for two reasons. Because of their advanced age and/or health issues, nursing home residents are some of D.C.'s most vulnerable residents. In addition, nursing homes are paid with public dollars for providing quality care that meets the participation requirements of Medicare or Medicaid and HRLA is responsible for ensuring that nursing homes comply with federal care requirements. The goal of HRLA's oversight of nursing homes is to protect the health and safety of these residents, and to ensure nursing homes are providing the services for which they are paid.

In this audit, ODCA found that some nursing homes repeated the same problems with resident care that HRLA previously had identified and required them to correct, and that nursing homes' statements about how they would correct a problem did not always address the cause of the problem. ODCA also found that some complaints were not investigated as soon as they should have been, and there is a risk that HRLA could fail to investigate a concern reported in a complaint. ODCA also found that HRLA does not have enough or reliable information to monitor nursing home staffing and the moving of residents. Furthermore, HRLA inspections of some nursing homes are done on a regular schedule, and that predictability could well be affecting the assessment of actual conditions at nursing homes. Finally, ODCA found that HRLA usually correctly assesses noncompliance it identifies at nursing homes, but the review process for these deficiencies and infractions could be improved.

We commend HRLA for its responsiveness and cooperation with our many requests for information for this audit. We are grateful for the time HRLA staff spent responding to our questions and for the courtesies they extended to the audit team during our work.

We anticipate that the implementation of our recommendations to monitor and require correction of repeated problems, train HRLA staff, obtain better information for monitoring, develop policies and procedures for complaint intake and timely investigation, adjust the inspection scheduling process to address the risk of predictable inspections, and add procedures to review the processes for finalizing some reports will improve the quality of care provided at nursing homes, and with it, the safety of D.C.'s nursing home residents.

Agency Comments

On August 23, 2019, we sent a draft copy of this report to the Department of Health (DOH) for review and written comment. DOH submitted a written response on September 18, 2019 and submitted a revised response on September 24, 2019. The comments DOH submitted on September 24, 2019 are included here in their entirety, followed by ODCA's response.

Office of the Director

September 24, 2019

Kathleen Patterson
District of Columbia Auditor
Office of the District of Columbia Auditor
717 14th Street, NW, Suite 900
Washington, D.C. 20005

Subject: *D.C. Department of Health Has Systems to Monitor Nursing Homes But Some Risks Remain*

Dear Ms. Patterson:

Thank you for providing us with the opportunity to review the draft report entitled *D.C. Department of Health Has Systems to Monitor Nursing Homes But Some Risks Remain* (Report). We are pleased the Report recognizes the efforts of DC Health's Health Regulation and Licensing Administration (HRLA) to fulfill our mission to protect the health of the residents of the District of Columbia by fostering excellence in health professional practice and building quality and safety in facilities through an effective regulatory framework.

As referenced in your report, nursing homes provide nursing care, rehabilitative services, and other health-related care and services above the level of room and board. HRLA regulates District health professionals and facilities, including nursing homes. It monitors nursing homes for compliance with D.C. regulations and federal regulations by agreement with the U.S. Health and Human Services Centers for Medicare and Medicaid Services (CMS).

The report highlights many aspects of the work of the Office of Compliance, Quality Assurance and Investigations Division and the Health Care Facilities Division of HRLA and we welcome the opportunity to provide responses to the report and its recommendations. The following reflects the responses of HRLA.

Sincerely,



LaQuandra S. Nesbitt, MD, MPH
Director

DC Health Response to the DC Auditor's Draft Report

Health Regulation and Licensing Administration (HRLA) reviewed the "Background" statement in the Auditor's Report dated August 23, 2019. The following facts need to be considered. The event occurred on Friday, September 20, 2017. However, the family didn't file the complaint until Saturday, September 30, 2017, at 9:49, 10 days after the occurrence. The complaint had a received start date of October 6, 2017 and a received end date October 10, 2017. The complaint was assigned and triaged, Non IJ Medium, the onsite visit was scheduled October 17, 2017. The onsite investigation was scheduled and conducted 10 business days after the received end date in accordance with the Non IJ High triage category. It was noted during the onsite visit, the resident had been discharged home on Sunday, October 8, 2017.

The onsite investigation was conducted on Thursday, October 17, 2017, as a closed record (10 business days [October 9, 2017 was a holiday] after triage). The investigation determined that the facility immediately initiated medical interventions. The resident did not require hospitalization nor were there other residents with the same symptoms at that time. Therefore, there was no harm to residents.

Finding #1 Recommendation 1

1. HRLA should train staff with responsibility for reviewing Plans of Correction on how to determine if a Plan of Correction (POC) identifies the underlying cause of the problem and the importance of doing so. HRLA also may want to consider offering a similar training to nursing homes so nursing home staff can determine underlying causes and the importance of including and addressing them in the Plan of Correction.

Response: DC Health Partially Agrees:

The Department of Health (DC Health) agrees in part with the recommendation. According to the CMS training Module #3 Survey Process Plan of Correction¹ for nursing home surveyors, there is no requirement for the provider to indicate cause as a component for the corrective action plan.

Click on the link below:

https://surveyortraining.cms.hhs.gov/data/160/9c7fe690-a38a-48d2-95e7-f438d545e72a/M3_090.htm

Licensure and federal regulations have specific deficiency citation tags that are wide-ranging with multiple aspects for citation. One citation can be cited for failed practices in a multitude of situations. For example, the same citation tag was identified for the following three different types of instances: supervision was cited for a single wandering resident, a resident who fell down the stairs and for no supervision in the day room with 8-12

¹ https://surveyortraining.cms.hhs.gov/data/160/9c7fe690-a38a-48d2-95e7-f438d545e72a/M3_090.htm

residents. The POC would be different for each of these situations. DC Health returns POCs that do not address the deficient practice identified in the Statement of Deficiency, submitted to the facility, and request a revised POC until approval is met with the requirements as outlined in the Centers for Medicare and Medicaid Services (CMS) State Operations Manual (SOM) Chapter 7 Survey and Enforcement Process for Skilled Nursing and Nursing Facilities §7317.

7317 - Acceptable Plan of Correction (Rev. 185, Issued: 11-16-18, Effective: 11-16-18, Implementation: 11-16-18) except in cases of past noncompliance, facilities having deficiencies (other than those at scope and severity level A) must submit an acceptable plan of correction. An acceptable plan of correction must:

- Address how corrective action will be accomplished for those residents found to have been affected by the deficient practice;
- Address how the facility will identify other residents having the potential to be affected by the same deficient practice;
- Address what measures will be put into place or systemic changes made to ensure that the deficient practice will not recur;
- Indicate how the facility plans to monitor its performance to make sure that solutions are sustained; and
- Include dates when corrective action will be completed. The corrective action completion dates must be acceptable to the State. If the plan of correction is unacceptable for any reason, the State will notify the facility in writing. If the plan of correction is acceptable, the State will notify the facility by phone, e-mail, etc. Facilities should be cautioned that they are ultimately accountable for their own compliance, and that responsibility is not alleviated in cases where notification about the acceptability of their plan of correction is not made in a timely manner. The plan of correction serves as the facility's allegation of compliance and, without it, CMS and/or the State have no basis on which to verify compliance.²

DC Health surveyors will take a refresher online webinar on POCs as it pertains to the required components for provider's responses through the CMS website. An educational session will be held with the Nursing Home Administrators and Directors of Nursing at one of their monthly meetings through the DC Health Care Association (DCHCA). This session will address what is included in a plan of correction. DC Health will request to be placed on the meeting agenda as soon as possible. The goal is to have this educational session prior to December 31, 2019.

DC Health will ensure the following for POCs received:

- (1) The plan of correction will include resident(s) who have suffered negative outcomes as a result of the deficient practice.
- (2) Specify the action the entity will take to alter the process or system failure to prevent the deficient practice from occurring or recurring related to other resident(s).

² <https://www.cms.gov/Regulations-and-Guidance/Guidance/Manuals/Downloads/som107c07.pdf>

(3) Ensure the deficient practice will not occur or reoccur and initiate processes to ensure that corrective actions are successful.

(4) Identify how the interventions will be monitored.

(5) Include a date by which the entity asserts the likelihood of compliance.

Finding #1 Recommendation 2

2. HLRA should obtain credible evidence that problems no longer exist in the following areas: inadequate supervision and failure to provide oral care at Washington Center; failure to comply with physician's orders related to respiratory status at Deanwood; and exposed wiring and failure to provide nail care at Bridgepoint Capitol Hill. If these problems persist or evidence is not available that the identified problems have been rectified, HRLA should use existing enforcement mechanisms such as fines to obtain such evidence or incentivize compliance.

Response: DC Health Disagrees

DC Health disagrees with this recommendation.

When a provider submits a plan of correction, DC Health staff reviews the plan for how the failed practice is corrected as follows: how corrective actions are addressed for those residents or environmental areas that were affected by the deficient practice; how the potential for other residents and environmental areas are prevented from the same failed practice; what new systems have been implemented including changes in policies/procedures as well as training and competency have been conducted; and the quality improvement practices that have been enacted with time frames. In addition, the provider submits supporting documents aligning with their POC. DC Health staff approves the provider's POC once all of these components are met; hence an allegation of compliance.

Evidence of compliance is reviewed at each survey (re-certification, complaint and follow up inspections as required) for the prior deficiencies cited. If there are repeat deficiencies, civil money penalties are considered immediately as one of the enforcement remedies.

Finding #1 Recommendation 3

3. HRLA should conduct an assessment and determine which practices that are noncompliant with federal or D.C. regulations have the potential for the highest risks to resident well-being, and design and implement procedures to monitor all nursing homes for repeated instances of those problems and incentivize returning to and maintaining compliance.

Response: DC Health Agrees

DC Health agrees and currently conducts multiple unannounced onsite visits to facilities identified with high/potential risks of harm for the health and safety of residents.

DC Health's Office of Compliance, Quality Assurance and Investigations Division and the Health Care Facilities Division will review POCs from complaint investigations and annual surveys collaboratively starting October 1, 2019.

The fee schedule for Notices of Infractions (Civil Money penalties) will be reviewed with all surveyors and implemented for repeated deficient practices by October 31, 2019.

Finding #2 Recommendation 4

4. HRLA should design, implement, and train staff in: (a) policies that establish timeframe requirements from initial complaint receipt to priority assessment, regardless of receipt method; (b) procedures for monitoring each point of complaint receipt; and (c) formal procedures for making priority assessments; that will ensure that all complaints are prioritized appropriately and in a timely manner so that they are investigated timely.

Response: DC Health Agrees

DC Health agrees with this recommendation. In-house training will be conducted on the federal ASPEN/ACTS for timely entries for all complaints. The ACTS intake sheet will be included with all complaint reports given to the supervisor. All complaints will be reviewed within 2 business days of receipt and triaged in accordance with CMS, SOM Chapter 5 § 5075.9 - *Maximum Time Frames Related to the Federal Onsite Investigation of Complaints/Incidents*.³ The compliance unit supervisor and nurse consultant will meet every other day to review and triage all complaints within the next 30 days. CMS guidelines for triage will be followed.

Finding #3 Recommendation 5

5. HRLA should assess the sufficiency of existing regulations to require nursing homes to record actual staffing legibly in a standardized form every day and strengthen these requirements or seek additional authorities as appropriate. The form should capture a listing of individuals who worked during each shift, their titles or roles and their professional qualifications (e.g. RN, CNA), the number of hours they worked, and the resident census for the nursing home. It should not contain notes about staffing changes.

Response: DC Health Disagrees

DC Health disagrees with this recommendation. Surveyors review working documents to assess the correct number of staff for each day. Surveyors ask for an actual working schedule, not a projected schedule. Although working copies may be difficult to read, they represent the actual staffing on each unit for the day. Surveyors interview responsible

³ <https://www.cms.gov/Regulations-and-Guidance/Guidance/Manuals/Downloads/som107c05.pdf>

facility staff during review of staffing work sheets. There are instances when surveyors will verify staffing with actual time card validation as indicated.

Each nursing home has its own system of staffing and recording staff present for the day. There is no regulation to require a facility to implement a standardized form.

Finding #3 Recommendation 6

6. For any dates for which HRLA reviews staffing ratios at a nursing home, HRLA should cross-reference the number of hours a sample of employees worked with official payroll time and attendance cards to ensure accuracy and retain both the documentation and the inspector's calculations to enable managerial review (regardless of whether the nursing home is found in or out of compliance).

Response: DC Health Disagrees

DC Health disagrees with this recommendation. Each annual survey requires a review of staffing for a minimum of a two (2) week period, including holidays, weekends, and randomly chosen dates. If staffing meets the licensure requirements, as stipulated in 22-C DCMR Chapter 32 § 3211 NURSING PERSONNEL AND REQUIRED STAFFING LEVELS,⁴ no further action is required.

Finding #4 Recommendation 7

7. In non-emergency situations, HRLA should ensure that before the resident is discharged or transferred, it obtains the copy of the written notice of the move that the resident or the resident's representative signed and dated. It is not necessary to obtain the signed copy before an emergency move as described by D.C. Code §44-1003.02(b). HRLA should use the signed copy of the notice to confirm that the resident or his or her representative was in fact given advance written notice of the discharge or transfer (or that he or she consented to abbreviated notice) and that all required information was provided in the written notice.

Response: DC Health Disagrees

DC Health disagrees with this recommendation. Implementing this recommendation will cause a substantial delay.

The accurate completion of the DC 6-108s will be discussed at a District of Columbia Health Care Association (DCHCA) Nursing Home Administrators and Directors of Nursing's monthly meeting. Facilities will be asked to send signed copies of the form to DC Health. Also, procedures for recording telephone consent from the Responsible Party by two (2) nurse witnesses for relocations, transfers, and discharges will be developed and discussed with the Nursing Home Administrators and Directors of Nursing at one of their monthly meetings through the DC Health Care Association (DCHCA). They will be

⁴ https://dchealth.dc.gov/sites/default/files/dc/sites/doh/publication/attachments/Nursing_Facility_Regulations_Health_Care_Facilities_Improvement_2012.pdf

instructed to complete the 6-108 form, with signature or telephone consent, and fax or scan and email to DC Health.

Finding #5 Recommendation 8

8. HRLA should design, implement, and train staff in policies and procedures for all complaint intake methods, including individual staff email addresses, to:
- a. Immediately record the date each complaint is received, along with an indication of the intake method (e.g., email, fax, telephone).
 - b. Reconcile records of all complaints from each complaint intake method made as recommended in (a), above, with a listing of all complaints that received a priority rating to ensure that all complaints are prioritized for investigation.

Response: DC Health Agrees

DC Health agrees with this recommendation. Presently, policies and procedures pertaining to complaint intake from all Divisions within Health Regulation and Licensing Administration are included in a working group to coordinate with the Office of Compliance, Quality Assurance and Investigations Division. Specifically, for nursing homes complaints, staff will document the date received on each intake. Method of receipt can be as follows: fax, email, complaint online system, telephone, postal mail and/or walk in complainants. There will be an assigned staff member to check incoming fax documents.

Findings # 6 Recommendation 9

9. HRLA should use a procedure or automated tool to schedule its inspections, ensuring they are performed in a different sequence each year, and considering the order and timing of prior inspections.

Response: DC Health Agrees

DC Health agrees with this recommendation. Eleven (11) nursing home surveys have been conducted in different months, since the Office of the DC Auditor's review for the sequence of surveys during FY 16, FY 17 and FY18. The Supervisory Nurse Consultant and Program Manager will continue to schedule surveys to ensure they are staggered. A projected FY 2020 nursing home survey schedule has been develop to prevent predicable time frames for inspections.

Finding # 7 Recommendation 10

10. The process for identifying and reporting DCMR infractions and the level of harm for federal deficiencies is generally effective, but to avoid errors, HRLA should design and implement procedures to ensure a supervisor reviews and approves State Forms before they are issued in complaint investigations. The procedure should designate a responsible party for each step. This will help HRLA ensure that the correct conclusion has been drawn from the evidence and that the State Form is free of errors.

Response: DC Health Agrees

DC Health agrees with this recommendation. The error was acknowledged. A citation tag was mistakenly selected however the deficient practice was correct and the provider responded with a POC. Subsequent to the finding, a corrected statement of deficiency was submitted to the provider with the corrected citation tag.

The error did not cause any harm or potential harm to the residents. Nor was there a delay in the implementation of the plan of correction. The deficient practice was appropriately responded to by the facility. The nurse consultant and Supervisor review the statement of deficiency (2567) before the document is sent to the facility for accuracy. This is currently in effect.

Other

DC Health desires to clarify the nursing home infraction fine schedule. See below the regulatory reference for Notices of Infractions for nursing homes.

The Health-Care and Community Residence Facility, Hospice and Home Care Licensure Act of 1983, D.C. Law 5-48

D.C. Official 44-509(f)(1) provides: Any person who commits a violation of any provision of this subchapter, or any rules or regulations promulgated pursuant to this subchapter, that results in demonstrable harm to a patient, resident, or client of a facility or agency, shall be subject to a fine for each offense not to exceed \$10,000. For each violation, each day of violation shall constitute a separate offense, and the penalties prescribed shall apply to each separate offense. The total fine for a series of related offenses shall not exceed \$100,000.⁵

⁵ <https://code.dccouncil.us/dc/council/code/sections/44-509.html>

ODCA Response to Agency Comments

We are pleased with the Department of Health's (DOH's) careful analysis of our findings and response to the recommendations. We are gratified that DOH agrees with and plans to take steps to implement most of our recommendations, including some with which it does not completely agree. In particular, we are encouraged that DOH will take steps to reduce risks in the complaint intake process by creating systems to ensure that complaints are reviewed in a timely manner and tracked to ensure none are missed, as its complaint investigation function is so critical to the health and safety of nursing home residents.

We appreciate DOH's response detailing the process to ensure correction of deficiencies, and how the sorts of problems that we found repeated at a few nursing homes would be addressed. As no system is perfect, we hope that DOH will still consider verifying resolution or taking action to address the most concerning repeats we identified at Washington Center, Deanwood, and Bridgepoint Capitol Hill.

With regard to our recommendation to provide training on identifying root cause, we appreciate DOH's commitment to conduct additional training, including identifying how the corrective action will ensure that the deficient practice will not recur. We emphasize again, though, the importance of identifying the root cause of a deficiency regardless of the extent to which such identification is required by federal regulation. In this context the District governs as a state and we are not aware of any prohibition against a state having a more rigorous set of requirements for correcting deficiencies than what is found in federal guidance.

As a result of DOH's comments about the nursing home infraction fine schedule, we added information in the report body about the maximum amount a nursing home may be fined for an infraction that causes demonstrable harm to a resident. We acknowledge that the complaint received September 30, 2017 was about an event that occurred 10 days earlier. HRLA resubmitted and we reassessed documentation about the complaint which was consistent with our description at the beginning of the report, and we therefore made no changes to the report.

Summary of Report Recommendations

Most of the recommendations in this report can be implemented without any additional costs to the Department of Health, and help to advance the mission of the Health Regulation and Licensing Administration (HRLA), as seen below.

Recommendation	Is There a Cost to the Agency/ Entity to Implement?	Potential to Generate Revenue or Savings to the District?	Specific Agency/ Entity or District-Wide Goal Advanced by Recommendation
<p>1. HRLA should train staff with responsibility for reviewing Plans of Correction on how to determine if a Plan of Correction identifies the underlying cause of the problem, and the importance of doing so. HRLA also may want to consider offering a similar training to nursing homes so nursing home staff can determine underlying causes, and the importance of including and addressing them in the Plan of Correction.</p>	No	No	Plans of Correction that address the cause of a problem will be an important tool for HRLA to use to ensure that nursing homes correct problems and provide safe and quality care to residents on a continuous basis, which is HRLA's mission to promote.
<p>2. HRLA should obtain credible evidence that problems no longer exist in the following areas: inadequate supervision and failure to provide oral care at Washington Center; failure to comply with physician's orders related to respiratory status at Deanwood; and exposed wiring and failure to provide nail care at Bridgepoint Capitol Hill. If these problems persist or evidence is not available that the identified problems have been rectified, HRLA should use existing enforcement mechanisms such as fines to obtain such evidence or incentivize compliance.</p>	No	Yes	Ensuring the compliance of these nursing homes or using enforcement to return them to compliance will promote HRLA's mission of quality and safety in nursing homes. It is possible that fines will be necessary to enforce compliance, generating revenue.

Recommendation	Is There a Cost to the Agency/ Entity to Implement?	Potential to Generate Revenue or Savings to the District?	Specific Agency/ Entity or District-Wide Goal Advanced by Recommendation
<p>3. HRLA should conduct an assessment and determine which practices that are noncompliant with federal or D.C. regulations have the potential for the highest risks to resident well-being, and design and implement procedures to monitor all nursing homes for repeated instances of those problems and incentivize returning to and maintaining compliance.</p>	No	Yes	<p>More stringent enforcement for nursing homes that repeat high-risk problems will promote HRLA’s mission to protect the health of D.C. nursing home residents through an effective, risk-driven, regulatory framework. It is possible that the measure may also generate revenue in the form of fines from noncompliant nursing homes.</p>
<p>4. HRLA should design, implement, and train staff in: (a) policies that establish timeframe requirements from initial complaint receipt to priority assessment, regardless of receipt method; (b) procedures for monitoring each point of complaint receipt; and (c) formal procedures for making priority assessments; that will ensure that all complaints are prioritized appropriately and in a timely manner so that they are investigated timely.</p>	No	Yes	<p>In addition to advancing HRLA’s mission of promoting the health and safety of D.C. nursing home residents, more timely complaint investigation could mean better evidence would be available to support infractions and deficiencies, possibly increasing revenue in the form of fines.</p>

Recommendation	Is There a Cost to the Agency/ Entity to Implement?	Potential to Generate Revenue or Savings to the District?	Specific Agency/ Entity or District-Wide Goal Advanced by Recommendation
<p>5. HRLA should assess the sufficiency of existing regulations to require nursing homes to record actual staffing legibly in a standardized form every day and strengthen these requirements or seek additional authorities as appropriate. The form should capture a listing of individuals who worked during each shift, their titles or roles and their professional qualifications (e.g. RN, CNA), the number of hours they worked, and the resident census for the nursing home. It should not contain notes about staffing changes.</p>	No	Yes	<p>As the D.C. Code acknowledges, staffing is an important determinant of quality of resident care. Improved monitoring will promote HRLA’s mission to protect the health of D.C. residents in nursing homes. It also may identify additional instances of noncompliance with staffing requirements, and generate revenue in the form of fines.</p>
<p>6. For any dates for which HRLA reviews staffing ratios at a nursing home, HRLA should cross-reference the number of hours a sample of employees worked with official payroll time and attendance cards to ensure accuracy and retain both documentation and the inspector’s calculations to enable managerial review (regardless of whether the nursing home is found in or out of compliance).</p>	No	No	<p>As the D.C. Code acknowledges, staffing is an important determinant of quality of resident care. Improved monitoring will promote HRLA’s mission protecting the health of D.C. residents in nursing homes. It also may identify additional instances of noncompliance with staffing requirements, and generate revenue in the form of fines.</p>

Recommendation	Is There a Cost to the Agency/ Entity to Implement?	Potential to Generate Revenue or Savings to the District?	Specific Agency/ Entity or District-Wide Goal Advanced by Recommendation
<p>7. In non-emergency situations, HRLA should ensure that before the resident is discharged or transferred, it obtains the copy of the written notice of the move that the resident or the resident’s representative signed and dated. It is not necessary to obtain the signed copy before an emergency move as described by D.C. Code §44-1003.02(b). HRLA should use the signed copy of the notice to confirm that the resident or his or her representative was in fact given advance written notice of the discharge or transfer (or that he or she consented to abbreviated notice) and that all required information was provided in the written notice.</p>	No	No	Effective oversight of discharges and transfers will promote quality and safety in nursing homes.
<p>8. HRLA should design, implement, and train staff in policies and procedures for all complaint intake methods, including individual staff email addresses, to:</p> <ul style="list-style-type: none"> a. Immediately record the date each complaint is received, along with an indication of the intake method (e.g., email, fax, telephone). b. Reconcile records of all complaints from each complaint intake method made as recommended in (a), above, with a listing of all complaints that received a priority rating to ensure that all complaints are prioritized for investigation. 	No	No	Implementation of this recommendation would ensure that no complaints are lost during intake, which promotes HRLA’s mission to use an effective regulatory framework to build quality and safety in D.C. nursing homes.

Recommendation	Is There a Cost to the Agency/ Entity to Implement?	Potential to Generate Revenue or Savings to the District?	Specific Agency/ Entity or District-Wide Goal Advanced by Recommendation
<p>9. HRLA should use a procedure or automated tool to schedule its inspections, ensuring they are performed in a different sequence each year, and considering the order and timing of prior inspections.</p>	No	Yes	<p>In addition to improving adherence to the agreement with U.S. Centers for Medicare and Medicaid Services, unexpected inspections may identify previously hidden deficiencies and infractions. Over the long term, the practice will encourage nursing homes to provide on a continuous basis the quality service which is HRLA's mission to promote.</p>
<p>10. The process for identifying and reporting DCMR infractions and the level of harm for federal deficiencies is generally effective, but to avoid errors, HRLA should design and implement procedures to ensure a supervisor reviews and approves State Forms before they are issued in complaint investigations. The procedure should designate a responsible party for each step. This will help HRLA ensure that the correct conclusion has been drawn from the evidence and that the State Form is free of errors.</p>	No	No	<p>Implementing the recommendations to review all State Forms before issuance to nursing homes will promote HRLA's mission to use an effective regulatory framework, which avoids errors, to build the safety and quality of nursing home facilities.</p>

Appendices

Appendix A

D.C. Nursing Homes in Operation in FY 2018

Appendix A: D.C. Nursing Homes in Operation in FY 2018

Nursing Home Name In Report	Working Name ⁴⁰	Ward	Beds
Bridgepoint Capitol Hill	Bridgepoint Sub-Acute and Rehab Capitol Hill	6	117
Bridgepoint National Harbor	Bridgepoint Subacute and Rehab National Harbor	8	62
Carroll Manor	Carroll Manor Nursing and Rehab	5	252
Deanwood	Deanwood Rehabilitation and Wellness Center	7	296
Forest Hills	Forest Hills of DC	3	50
Ingleside	Ingleside at Rock Creek	3	60
Inspire Rehabilitation	Inspire Rehabilitation and Health Center LLC	2	180
Jeanne Jugan	Jeanne Jugan Residence	5	40
Knollwood	Knollwood HSC	6	77
Lisner	Lisner-Louise-Dickson-Hurt Home	3	60
Serenity Rehabilitation	Serenity Rehabilitation and Health Center LLC	8	183
Sibley	Sibley Mem Hosp Renaissance	3	45
Stoddard Baptist	Stoddard Baptist Nursing Home	1	164
Thomas Circle	Health & Rehabilitation Center at Thomas Circle	2	53
Transitions Healthcare	Transitions Healthcare Capitol City	8	350
Unique Rehabilitation	Unique Rehabilitation and Health Center LLC	2	230
United Medical	United Medical Nursing Home	8	120
Washington Center	Washington Ctr for Aging Svcs.	5	259

Source: HRLA facility directory and HRLA FY 2017 performance hearing responses

The Washington Home, which closed December 15, 2016, was not included in the audit.

40 Ownership information for each nursing home is publicly available on the Nursing Home Compare website, <https://www.medicare.gov/nursinghomecompare/search.html>, by searching for nursing homes in D.C. and clicking on the name of an individual nursing home. CMS also posts some Statements of Deficiencies to Nursing Home Compare and calculates a general quality rating for each nursing home.

Appendix B

Methodology

Appendix B: Methodology

ODCA used samples for some work to allow for in-depth analysis. The size of the samples, the complete population from which they are drawn, and how they were selected are given in Figure 10.

Figure 10: Nursing Home Sample and Population Sizes and Sampling Methodology

Item	Sample	Population	Sampling Method
Complaints from FY 2018	20	54	Random.
Nursing home records about staffing from one day during FYs 2017–2018	5	18 nursing homes 730 days	Random. Nursing homes produce a staffing record each day. ODCA selected one day from each of 5 nursing homes.
Discharge and transfer notices	45	8,950 discharge, transfer, and relocation notices	Random.
Nursing Homes	6	18	Judgmental, with a goal of a non-profit group and a for-profit group that are similar otherwise
Federal provisions	7	N/A	Judgmental, based on risk to resident
Deficiencies, FY 2018	45: 30 from inspections, 15 from complaint investigations	305	Stratified random. Within each scope and severity level, a sample was randomly selected proportionate to the number of deficiencies with that scope and severity level in the population. When available, half of each sample came from complaint investigations.
Plans of Correction (Plans), FY 2018	45, of which 3 were not applicable		From sampled deficiencies (see above). 42 required a Plan, 3 did not.
Infractions, FY 2018	25	165	From sampled deficiencies (see above).

Specialist Review

ODCA contracted with a specialist, Carol Benner, Sc.M., for portions of the analysis. Ms. Benner was the Director of the Maryland Office of Health Care Quality for 16 years, where she implemented the 1987 Nursing Home Reform Act. The specialist reviewed complaint priority assessments, independently assigned a scope and severity rating for a sample of deficiencies, evaluated the acceptability of Plans of Correction, and reviewed the provision selected for D.C. infractions.

Annual inspections

ODCA compiled dates of completion (“Exit dates”) for annual inspections for all 18 nursing homes during FYs 2016-2018 and compared them to federal requirements for frequency and unpredictability.⁴¹

Complaints

For a sample of 20 of the 54 complaints HRLA recorded in FY 2018, ODCA reviewed the complaint record to determine the amount of time that elapsed between:

- 1) When a complaint was received and when the priority assessment was made, and
- 2) When the priority assessment was made and when HRLA staff initiated the on-site investigation.

ODCA then compared the results to federal requirements for timely investigation.⁴² The specialist determined the accuracy of a sample of complaint priority assessments using federal requirements. ODCA reviewed internal controls for processes and practices for all complaint intake methods available, to determine if HRLA was able to account for each complaint and ensure it had been investigated.

Staffing

ODCA reviewed a small sample of staffing sheets that HRLA had obtained from nursing homes during annual on-site inspections, and recalculated staffing ratios for all direct care and for direct care provided by an RN or APRN.

⁴¹ CMS. (7205.2 and 7207.2).

⁴² CMS. (5075.9).

Figure 11: Nursing Homes and Dates Reviewed for Staffing Ratios

Nursing Home	Date of Staffing Record
Lisner	June 9, 2018
Transitions Healthcare	November 19, 2018
Carroll Manor	August 19, 2018
Serenity Rehabilitation	July 8, 2018
Bridgepoint Capitol Hill	May 30, 2017

Discharges and transfers

ODCA selected a sample of 45 written notices made up of 17 discharges and 28 transfers sent to HRLA in FY 2018. ODCA excluded relocations within the same nursing home because moves out of the nursing home constitute a higher risk to resident well-being. ODCA reviewed the discharge and transfer notices to determine if the residents had been informed of their rights and the details of the upcoming moves in compliance with D.C. Code.⁴³ ODCA also reviewed HRLA’s internal controls for the oversight of discharge and transfer notices.

Deficiencies (related to federal requirements)

For a sample of 45 deficiencies that HRLA identified during FY 2018, the specialist reviewed the Statement of Deficiencies for each, and independently assigned a scope and severity rating to each deficiency. ODCA reviewed the scope and severity ratings assigned by HRLA and the specialist for each sampled deficiency to determine if HRLA had failed to detect harm.

Infractions (against D.C. regulations)

For a sample of 25 infractions HRLA identified at nursing homes in FY 2018, the specialist reviewed the infraction descriptions in the Statement of Deficiencies State Forms, and evaluated the appropriateness of the D.C. Municipal Regulations (DCMR) provision HRLA selected.

Repeated deficiencies

ODCA selected a limited number of nursing homes and problems for an in-depth review of deficient practices from FY 2016 to FY 2018 to determine if nursing homes repeatedly failed in the same way to provide adequate resident care during FYs 2016-2018.

⁴³ D.C. Code §44–1003.02 (a) and (d).

The citation of these high-risk deficiencies is warranted when the nursing home fails to meet one of the following requirements:

1. The nursing home must ensure that residents is free from misappropriation of their property and from exploitation (Referenced as “F602”).
2. The nursing home must provide the necessary care and services to attain or maintain the highest practicable physical, mental, and psychosocial well-being (F675).
3. A resident who is unable to carry out activities of daily living receives the necessary services to maintain good nutrition, grooming, and personal and oral hygiene (F677).
4. The nursing home must ensure that residents receive treatment and care in accordance with professional standards of practice (F684).
5. The nursing home must ensure that residents receive care to prevent or heal pressure ulcers (F686).
6. The nursing home must ensure that the resident environment remains free from accident hazards and that each resident receives adequate supervision to prevent accidents (F689).
7. Each resident’s drug regimen must be free from unnecessary drugs (F757).⁴⁴

ODCA examined two groups of nursing homes: three for profit and three nonprofit, making sure the two groups were similar in terms of Ward, size, and relationship to a larger facility (see Figure 12).

Figure 12: Nursing Homes Examined for Repeated Deficient Practices

Nursing Homes	Facility Setting	Ward	Size (Beds)	Years in Operation⁴⁵
For Profit				
Thomas Circle	CCRC ⁴⁶	2	Small (27)	30
Bridgepoint Capitol Hill	Within Hospital	6	Medium (117)	26
Deanwood	Other	7	Large (296)	34
Nonprofit				
Ingleside	CCRC ⁴⁷	3	Small (60)	25
United Medical	Within Hospital	8	Medium (120)	9
Washington Center	Other	5	Large (259)	36

Plans of Correction

The specialist reviewed the Plans of Correction from each of the sampled deficiencies (from FY 2018) that required a Plan of Correction. The resulting sample size was 42, as 3 of the 45 deficiencies did not require a Plan of Correction.

44 CMS. (Appendix PP).

45 Years in operation through 2018.

46 CCRC is a Continuing Care Retirement Community

47 CCRC is a Continuing Care Retirement Community

About ODCA

The mission of the Office of the District of Columbia Auditor (ODCA) is to support the Council of the District of Columbia by making sound recommendations that improve the effectiveness, efficiency, and accountability of the District government.

To fulfill our mission, we conduct performance audits, non-audit reviews, and revenue certifications. The residents of the District of Columbia are one of our primary customers and we strive to keep the residents of the District of Columbia informed on how their government is operating and how their tax money is being spent.

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