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# **CMS Should Take Further Action To Address States With Poor Performance in Conducting Nursing Home Surveys**

**Christi A. Grimm**  
Principal Deputy Inspector General  
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# Office of Inspector General

## Report in Brief

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### Why OIG Did This Review

CMS oversees how State survey agencies (States) conduct surveys of nursing homes to assess the homes' compliance with Federal requirements. CMS provides training, funding, and other assistance to States for nursing home oversight and assesses their performance. Recent work by OIG has found problems with performance by some States—for example, one study found that States did not always verify whether nursing homes corrected deficiencies cited during the surveys. Another study found that several States fell far short in conducting timely surveys following serious complaints about nursing homes, such as complaints alleging serious injury. These findings raise questions about the effectiveness of CMS oversight of State performance in conducting nursing home surveys, and the ability of CMS to hold States accountable when problems arise.

### How OIG Did This Review

This review focused on CMS oversight of 52 States (including Puerto Rico and the District of Columbia) during FYs 2015–2018. We conducted interviews with CMS staff at the central office and 10 regional offices during February and March, 2020, to learn how they work with States to address serious problems with survey performance and any challenges that States may face. We also collected and analyzed documents from CMS about State performance and CMS imposition of remedies and sanctions on States with poor performance.

## CMS Should Take Further Action To Address States With Poor Performance in Conducting Nursing Home Surveys

### Key Takeaway

Just over half of States repeatedly failed to meet one or more performance measures—most commonly, timeliness requirements—for conducting nursing home surveys during FYs 2015–2018. CMS relied on corrective action plans, training, and informal communication to improve State performance, but these efforts did not always resolve problems. CMS raised concerns that it has few practical options to address intractable problems in some States.

### What OIG Found

Just over half of States—28 of 52—failed to meet the same performance measure or measures in 3 or 4 consecutive years during FYs 2015–2018. States most commonly missed performance measures related to survey timeliness, which CMS and States often attributed to staffing shortages. The remedy that CMS consistently imposed on States for missing performance measures was requiring them to submit corrective action plans, but 10 percent of plans were missing from CMS files and many others lacked substantive detail. In addition to requiring States to submit corrective action plans, CMS used other remedies, such as providing training and technical assistance, to address State performance problems.

Although CMS sometimes imposed financial penalties when States failed to meet the timeliness requirement for surveys, it frequently offset these penalties with one-time funding adjustments. In three States, CMS escalated concerns about performance to senior State officials, but it rarely imposed formal sanctions and has never initiated action to terminate any of its agreements with States for conducting surveys.

### What OIG Recommends

We recommend that CMS: (1) actively monitor States' corrective action plans, (2) establish guidelines for progressive enforcement actions, (3) engage with senior State officials earlier and more frequently to address problems, and (4) revise the State Operations Manual to reflect current CMS oversight practices. CMS concurred with these recommendations. We also recommend that CMS: (5) disseminate the results of State performance reviews more widely. In response, CMS stated that its current practices already fulfill the recommendation. We revised the recommendation to clarify the new and expanded dissemination of results we are recommending.

# TABLE OF CONTENTS

<b>BACKGROUND</b>	<b>1</b>
<b>FINDINGS</b>	<b>8</b>
Just over half of States repeatedly failed to meet requirements for conducting nursing home surveys, most commonly for failures of survey timeliness	8
CMS required States to develop corrective action plans to address performance failures, but 10 percent of plans were missing from CMS files and many lacked substantive detail	11
To help States improve survey performance, CMS relied on remedies such as training and technical assistance, and also on maintaining close communication with States	13
CMS sometimes imposed financial penalties when States failed to meet the timeliness requirement for standard surveys; however, CMS frequently offset these penalties with one-time funding adjustments	14
CMS escalated concerns about persistent poor performance to senior State officials in three States, but it rarely imposed formal sanctions and has never initiated action to terminate a State survey agency agreement	16
<b>CONCLUSION AND RECOMMENDATIONS</b>	<b>18</b>
Actively monitor the use and effectiveness of States' corrective action plans and other remedies, with a focus on making the remedies specific and outcome oriented	18
Establish guidelines for progressive enforcement actions, including the use of sanctions, when persistent or egregious performance problems emerge	19
Engage with senior State officials earlier and more frequently to address State performance problems	19
Disseminate results of State performance reviews more widely to ensure that stakeholders become aware of problems	20
Revise the State Operations Manual to reflect current CMS practices in overseeing State survey performance	20
<b>AGENCY COMMENTS AND OIG RESPONSE</b>	<b>21</b>
<b>DETAILED METHODOLOGY</b>	<b>23</b>
<b>APPENDICES</b>	<b>26</b>
<b>ENDNOTES</b>	<b>35</b>

# BACKGROUND

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## Objective

To identify the extent to which State survey agencies (States) repeatedly failed to meet performance standards for conducting nursing home surveys and to assess the Centers for Medicare & Medicaid Services' (CMS's) use of remedies, sanctions, and financial penalties to address State performance problems.

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## CMS oversight of nursing homes

CMS is responsible for the certification and oversight of most of the Nation's approximately 15,600 nursing homes.<sup>1, 2</sup> Federal law requires these nursing homes to protect the health, safety, welfare, and rights of nursing home residents, and to comply with the requirements for participation in Medicare and Medicaid.<sup>3</sup> To monitor nursing home compliance with the requirements for participation, CMS enters into agreements with States under section 1864 of the Social Security Act (1864 Agreements).<sup>4, 5</sup>

States' responsibilities under the 1864 Agreements with CMS include conducting standard surveys for each nursing home at least once every 15 months to certify compliance (or noncompliance) with requirements for participation in Medicare and Medicaid.<sup>6</sup> (CMS uses 15.9 months to evaluate whether States meet this requirement.)<sup>7</sup> Additionally, States conduct complaint surveys (abbreviated surveys used to investigate allegations of noncompliance) to investigate complaints about nursing homes, which is a critical safeguard to protect vulnerable residents.<sup>8</sup>

In 2016, CMS finalized a new rule for nursing homes that represents the first comprehensive update to nursing home regulations since 1991, including new requirements for staffing, antibiotic stewardship, and protection from abuse and neglect.<sup>9</sup> CMS also launched a new survey process for States to assess nursing home compliance.<sup>10</sup> The new process standardized nursing home survey efforts across States and placed new emphasis on identifying resident-specific concerns through resident observations and resident interviews.<sup>11</sup> The standardized data allow CMS to assess State performance on nursing home surveys more consistently. Training for the new process began in July 2017 and States began using the new survey in November 2017.<sup>12</sup>

In 2019, CMS announced a five-part plan aimed at improving the quality of care provided in nursing homes.<sup>13</sup> These steps include: (1) strengthening oversight of State survey agencies, such as revising guidance for State surveyors; (2) enhancing CMS enforcement practices and holding nursing homes accountable for the care provided; (3) increasing the transparency of information to empower consumers, families, and their caregivers in making decisions that best reflect their needs; (4) improving nursing home quality by developing quality measures based on patient outcomes and investments in programs focused on care; and (5) placing patients over paperwork by emphasizing care for the patient without placing financial or resource burdens on providers.<sup>14</sup>

### **CMS Response to Nursing Homes During the COVID-19 Pandemic**

CMS adjusted its approach to nursing home oversight in response to the COVID-19 pandemic. In March 2020, CMS temporarily suspended annual standard surveys and surveys in response to all complaints except for those categorized as the most serious, known as “immediate jeopardy,” and directed States to focus oversight activities on conducting targeted infection control surveys and responding to complaints and facility reported incidents that involve serious harm. In August 2020, CMS authorized States to resume normal operating procedures and conduct annual standard surveys and surveys in response to high-priority complaints. These changes are outside the scope of this evaluation.

## **CMS oversight of State survey agencies**

Pursuant to the 1864 Agreements and the Social Security Act, States conduct surveys to determine whether nursing homes meet the requirements for participation in Medicare and Medicaid.<sup>15</sup> During these surveys, States may concurrently assess State licensure requirements. Medicare surveys are funded by a discretionary appropriation from Congress and States receive 75-percent Federal matching funds for Medicaid surveys.<sup>16, 17</sup> CMS’s survey and certification budget to support these operations has remained flat since fiscal year (FY) 2014, at about \$397 million annually.<sup>18, 19</sup> Although CMS’s budget remained flat, it increased its allotment to States by about 4 percent during this same time period, from \$341 million in FY 2015 to \$354 million in FY 2018.<sup>20, 21</sup> (Note: After our review period, Congress appropriated approximately \$100 million in supplemental funds to cover costs for COVID-19-related survey and certification activities through the Coronavirus Aid, Relief, and Economic Security (CARES) Act.)<sup>22</sup>

CMS regional office staff are responsible for evaluating whether States fulfill their requirements under the 1864 Agreements. A primary method for accomplishing this is regional offices conducting annual assessments of States to identify “inadequate” performance in conducting nursing home oversight activities.<sup>23</sup> CMS may consider State survey performance to be inadequate if it finds a pattern of failure to conduct surveys in accordance with Federal requirements or a single failure to identify an immediate-jeopardy situation.<sup>24, 25</sup> When CMS regional offices determine that State

survey performance is inadequate, they may impose one or more remedies or sanctions on the State.<sup>26</sup> (See page 4 for more information about remedies and sanctions.)

## State Performance Standards System

CMS regional offices use the State Performance Standards System (SPSS) to evaluate whether States are meeting the requirements outlined in the 1864 Agreements and to identify areas for which States need to improve the management of their survey and certification programs.<sup>27, 28</sup> The SPSS establishes performance measures and thresholds that set minimum scores for meeting each performance measure.<sup>29</sup> CMS considers State performance to be “inadequate” when States do not meet an SPSS performance threshold.<sup>30</sup>

In 2006, CMS redesigned the SPSS framework to measure State performance along three dimensions (see Exhibit 1): (1) frequency, which monitors the number and timeframes of surveys conducted by States; (2) quality,

### Exhibit 1: The SPSS measures State performance along three dimensions

Frequency	Quality	Enforcement and Remedy
6 Performance Measures	9 Performance Measures	4 Performance Measures

Source: OIG analysis of SPSS performance measures.

which assesses the extent to which States conduct surveys in accordance with Federal standards and accurately identify deficiencies during surveys; and (3) enforcement and remedy, which evaluates the effectiveness of State enforcement on nursing homes.<sup>31</sup> As an example, one “frequency” measure assesses whether the State conducted a sufficient percentage of standard surveys during off-hours (i.e., on the weekends, in the early morning hours, in the evening hours, or on holidays).<sup>32</sup> The performance threshold for this measure is 10 percent, which means States must conduct at least 10 percent of their standard surveys off-hours to meet this performance measure. Conducting off-hours surveys allows for greater visibility into nursing home operations and increases the likelihood that surveyors will observe conditions and practices that are typically present.<sup>33</sup>

The SPSS measures State survey performance for several facility types, including nursing homes, non-accredited hospitals, and ambulatory surgical centers.<sup>34</sup> During FYs 2015–2018, the SPSS included 19 performance measures, 12 of which focused exclusively on State performance on nursing homes surveys.<sup>35, 36</sup> CMS suspended or placed on hold 4 of the 12 performance measures during the study period (3 were placed on hold for 1 year to allow surveyors to adjust to the survey process and the other was suspended for 2 years while CMS reassessed the metric). (See Appendix A for a list of the nursing home performance measures.) CMS may revise guidance each

year to adjust the performance measures, such as changing the threshold at which State performance is considered acceptable or suspending a performance measure. Following our study period, CMS made several changes to how it monitors State performance on the SPSS for FY 2020. These changes include collecting more current survey completion data to assess State progress in meeting survey frequency requirements, and the option to include additional measures of underlying issues such as staffing in the annual State assessment.<sup>37, 38</sup>

## CMS Actions for Inadequate State Survey Performance

The CMS State Operations Manual (SOM) describes the available enforcement actions that CMS may impose on States for inadequate survey performance. The SOM categorizes these enforcement actions into two groups: (1) remedies or alternative sanctions (remedies) and (2) sanctions.<sup>39</sup> CMS also imposes financial penalties for inadequate survey performance. CMS regional offices have significant discretion regarding whether to impose these enforcement actions and which to impose.

**Remedies.** The SOM lists five remedies that CMS may use to address inadequate survey performance from States.<sup>40</sup> The remedies include: training; technical assistance; CMS directed scheduling, which involves CMS scheduling surveys that the States conduct; directing States to include specific improvement activities in their quality improvement plans; and corrective action plans, in which States develop and implement written plans to address the underlying performance problem(s) for each SPSS performance measure that it failed to meet. Although most remedies are imposed at the discretion of the CMS regional offices, CMS requires States to complete a corrective action plan for each performance measure they fail to meet.<sup>41</sup> (For FY 2018, CMS did not always require States to develop corrective action plans for 2 of the 12 performance measures if the failure was due to implementation of the new survey process.)<sup>42</sup>

Remedies
<ul style="list-style-type: none"><li>• Training</li><li>• Technical assistance</li><li>• CMS directed scheduling</li><li>• Quality improvement plans</li><li>• Corrective action plans</li></ul>

**Sanctions.** CMS may also impose sanctions, typically after remedies have been tried and State performance remains inadequate. The SOM describes four sanctions CMS may use to address inadequate survey performance: meeting with the Governor and other responsible State officials (e.g., Director of Department of Health); placing the State on “compliance” for failing to follow the Medicaid State Plan; reducing Federal financial participation for survey and certification of nursing facilities; and termination of the State’s 1864 Agreement, either in whole or in part.<sup>43, 44</sup> CMS regional offices will notify the State in writing when it plans to impose a sanction and include the reasons for imposition.

Sanctions
<ul style="list-style-type: none"><li>• Meeting with Governor and other State officials</li><li>• Placing the State on “compliance”</li><li>• Reducing Federal financial participation</li><li>• Terminating the State’s 1864 Agreement</li></ul>

**Financial penalties.** In addition to remedies and sanctions described in the SOM, CMS may impose non-delivery deductions, a type of financial penalty, on States for not meeting the requirement to survey all nursing homes in the State at least once every 15 months. Non-delivery deductions are monetary deductions from a State’s Medicare Allocation for Survey and Certification because of “non-delivered surveys” in the prior year.<sup>45</sup> CMS may assess a non-delivery deduction on States equal to 75 percent of the estimated cost of surveys at nursing homes that did not receive a standard survey within 15 months.<sup>46</sup> Some CMS regional offices use an additional financial tool, known as “benchmarking,” which provides incentives to States for achieving performance goals (“benchmarks”). When benchmarks are in place, CMS may withhold a portion of a State’s allocated funds and release predetermined amounts as the State meets each performance benchmark. Benchmarking is sometimes used to address identified performance problems.

## Related work

Recent work by the Office of Inspector General (OIG) identified problems with the performance of some States in conducting surveys, including that States did not always follow up after surveys to verify whether nursing homes corrected deficiencies such as failure to provide necessary care. During 2015–2017, OIG released a series of nine reports assessing the extent to which individual States verified that nursing homes corrected deficiencies identified during surveys.<sup>47</sup> OIG found that seven of the nine States did not always verify nursing homes correction of deficiencies, as required, and recommended that States improve verification processes. Examples of deficiencies included a nursing home’s failure to adhere to proper infection control measures and staff failure to ensure appropriate supervision to prevent falls.<sup>48</sup> In a summary report, OIG recommended that CMS improve its guidance to States, improve the forms related to the survey and certification process, and work with States on maintaining supporting documentation.<sup>49</sup> The Government Accountability Office (GAO) raised additional concerns about CMS’s lack of oversight of Oregon’s

handling of abuse allegations.<sup>50</sup> These findings highlighted the need to evaluate CMS response to State performance problems.

Other related OIG work includes a 2019 report that found some States failed to report findings of substantiated abuse in nursing homes to local law enforcement.<sup>51</sup> The report identified 69 allegations of abuse and found that States did not report findings to local law enforcement for 67 of 69 incidents.<sup>52</sup> Additionally, OIG reports in 2017 and 2020 found that some States fell short in meeting required timeframes for investigating the most serious nursing home complaints.<sup>53, 54</sup> The report found that about half of complaints allege serious injury or harm and require a rapid response to address the complaint and ensure residents safety, but States investigated about 15 percent of these complaints late (i.e., after required timeframes).<sup>55</sup> States reported that staffing shortages contributed to the timeliness problems. To complement this report, OIG published an interactive map that illustrates State-by-State trends in nursing home complaints for 2016 through 2018.

Finally, in a report released in December 2020 about nursing home surveys during the COVID-19 pandemic, OIG found that States conducted onsite surveys at 31 percent of nursing homes from March 23 through May 30, 2020, which was fewer than during the same time period in 2019 when States and CMS were under normal operations and conducting standard and other surveys.<sup>56</sup> These surveys resulted in fewer deficiencies, but allowed States the opportunity to provide nursing homes with guidance and other support. States reported that the COVID-19 pandemic has exacerbated a longstanding challenge of maintaining sufficient staffing levels. Further, States expressed concern about the mounting backlogs of standard surveys and high-priority complaint surveys accumulating during the COVID-19 pandemic. Among OIG recommendations was that CMS should work with States to overcome staffing and other challenges and that CMS should clarify expectations for States to complete backlogs of standard surveys and high-priority complaint surveys. CMS concurred with OIG's recommendations and issued additional guidance on survey backlogs in November 2021. A complete listing of OIG evaluations and audits is available online at <https://www.oig.hhs.gov>.

## Abbreviated Methodology

We used multiple data sources to identify the extent to which States repeatedly failed to meet performance standards in conducting nursing home surveys and to assess CMS's use of remedies, sanctions, and additional enforcement actions to address State performance problems. The data sources for this study were interviews with CMS, CMS's public release of SPSS results, and documents from CMS and regional offices regarding oversight of State survey performance. The analysis focused on SPSS results for 52 States (including Puerto Rico and the District of Columbia) and the resulting actions by CMS during FYs 2015–2018.

To describe State performance, we analyzed SPSS results on 12 performance measures that were exclusive to State performance on nursing homes. (See

Appendix A for a list of the 12 performance measures.) To determine which States had performance problems, we first calculated the overall number of times each State failed to meet a performance measure. We then calculated how many years (during FYs 2015–2018) each State failed to meet a performance measure. Finally, we identified States with persistent performance problems by counting the number of States that missed at least one performance measure in 3 or more consecutive years. We counted all failures regardless of scale or magnitude.

We also reviewed corrective action plans, financial data, correspondence with States, and other documents that CMS provided to better understand oversight of States and CMS’s use of remedies and sanctions. We conducted interviews with CMS central office and leadership from the regional offices. We spoke with all 10 CMS regional offices about the regions use of corrective action plans, their response to persistent performance problems, challenges faced by the States in their geographic regions, and their coordination with CMS central office.

See the Detailed Methodology section on page 18 for additional information about our data collection and analysis.

## Limitations

We analyzed the 12 SPSS measures that were exclusive to State survey performance on nursing homes and did not analyze the other 7 SPSS measures that included State survey performance for other facilities. Using the data available, the figures for non-delivery deductions and benchmarks presented in the report include monies for inadequate performance on surveys of all facility types, not just nursing homes. The effect of this is that CMS may have imposed fewer financial penalties on States for performance exclusive to nursing home surveys than our findings suggest.

## Standards

We conducted this study in accordance with the *Quality Standards for Inspection and Evaluation* issued by the Council of the Inspectors General on Integrity and Efficiency.

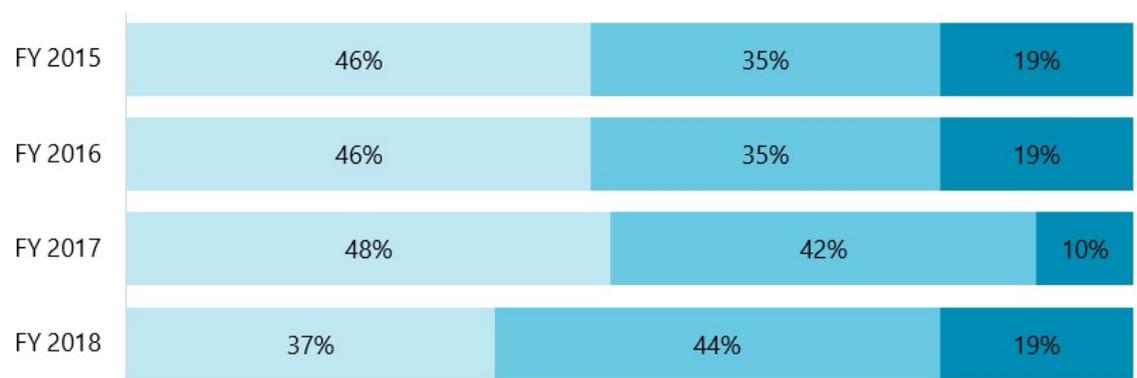
# FINDINGS

## Just over half of States repeatedly failed to meet requirements for conducting nursing home surveys, most commonly for failures of survey timeliness

State surveys are critical to ensuring the safety and quality of nursing home care. CMS uses the SPSS to conduct formal assessments of State survey performance, including how frequently States conduct standard surveys and how well they identify immediate jeopardy situations, in which residents' safety is severely compromised. When States fail to meet SPSS performance measures, nursing home residents may be at increased risk for poor care.

Each year during our study period, most States failed at least one of the SPSS performance measures that were exclusive to nursing homes and up to a one-fifth of States missed four or more measures. (See Exhibit 2 for the number of performance measures States failed to meet each year.) Due to changes in the SPSS performance measures over the years reviewed, we analyzed a different number of performance measures for individual years—12 in FYs 2015 and 2016, 11 measures in FY 2017, and 8 measures in FY 2018. (See Appendix A for a list of the nursing home performance measures.) The State that missed the most performance measures, Arizona, failed to meet 8 performance measures in 1 year and 21 performance measures over the 4 years. Only one State, Louisiana, did not miss a single performance measure over the 4-year review period.

**Exhibit 2: Each year, most States failed at least one SPSS performance measure**



Percentage of States that failed to meet:

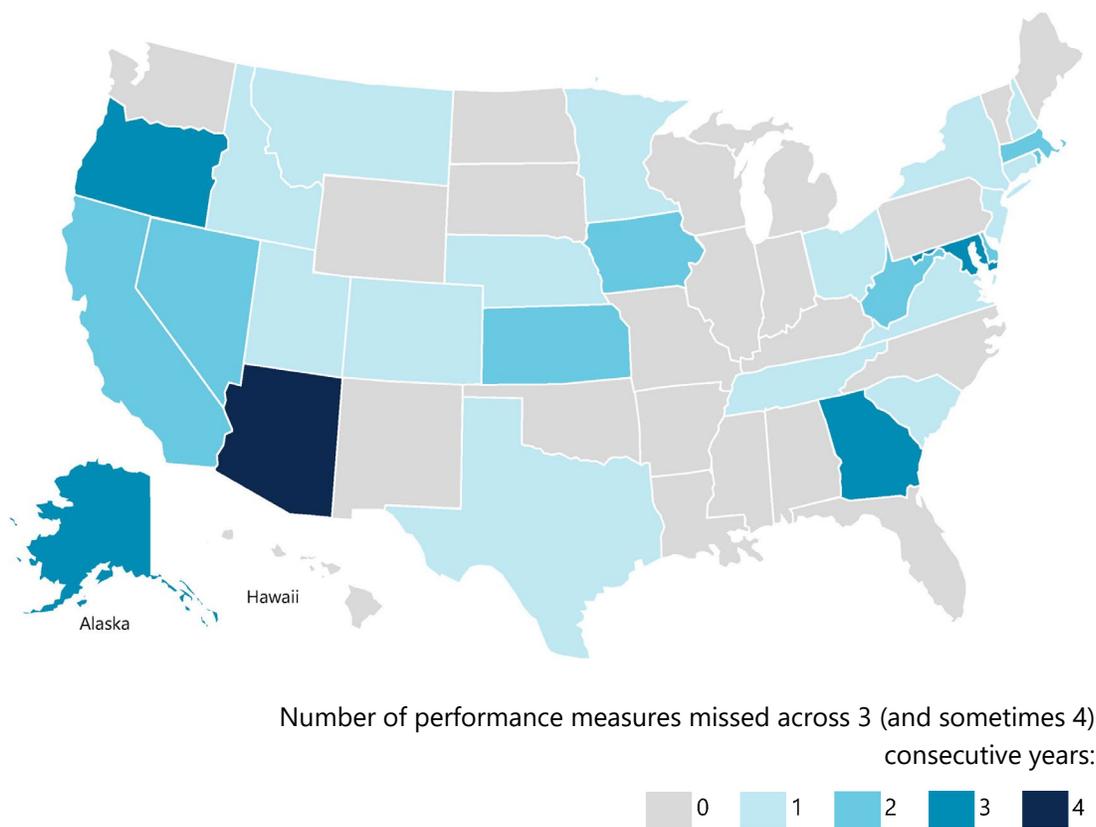
■ 0–1 Performance Measures ■ 2–3 Performance Measures ■ 4+ Performance Measures

Source: OIG analysis of SPSS results for the measures exclusive to nursing homes, FYs 2015–2018.

## Over half of States failed to meet the same SPSS performance measure or measures over 3 or 4 consecutive years

We identified 28 States that missed the same SPSS performance measure or measures over 3 or 4 consecutive years. Thirteen of the 28 States repeatedly failed to meet the targets for multiple performance measures in 3 or 4 consecutive years; see Exhibit 3. For example, eight States missed the same two performance measures in all 4 years, and two States missed the same three performance measures in all 4 years.

**Exhibit 3: Over half of States failed to meet the same SPSS performance measure or measures over 3 (and sometimes 4) consecutive years.**



Source: OIG analysis of SPSS results for 12 measures exclusive to nursing homes, FYs 2015–2018.

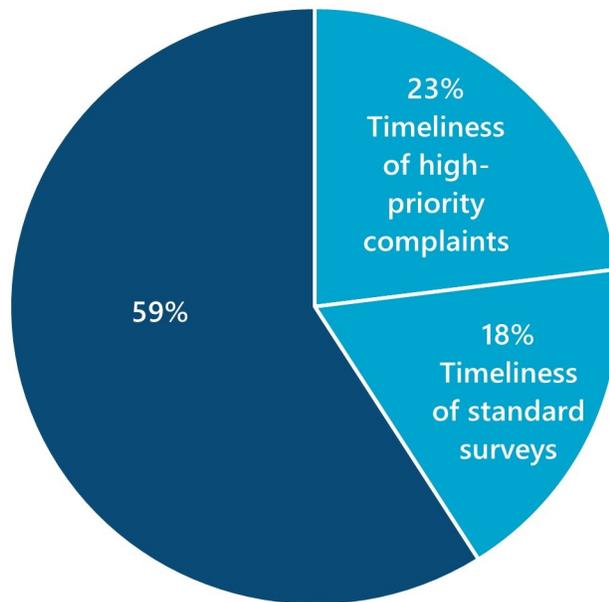
Several States not only failed to meet the same performance measure in each year, but their scores were far below the performance threshold. For example, Massachusetts failed to meet the 95-percent threshold to initiate surveys of high-priority complaints within 10 days by a large margin in all 4 years of the study period. In FY 2015, the State conducted only 31 percent of required surveys and then dropped to 17 percent in FY 2016. In FY 2017, the State score improved to 36 percent, still well below the 95-percent performance threshold. In FY 2018, Massachusetts' score for this requirement fell to 19 percent.

Arizona failed to meet four performance measures in 3 consecutive years and missed two of these in all 4 years reviewed. Overall, Arizona missed almost half of the performance measures (21 of the 43 measures) that were exclusive to nursing homes during the 4-year review period.<sup>57</sup> Further, Arizona missed some of these performance measures by a large margin. For example, it missed the threshold to initiate surveys of high-priority complaints within 10 days in each of the 4 years. CMS expects States to meet the 10-day timeframe for 95 percent of applicable complaints, but Arizona met the timeframe for less than 32 percent of complaints in all 4 years.

### Measures of survey timeliness were the most common type of State performance failure, which CMS and States often attributed to shortages of surveyors and other staff

Forty-one percent of the SPSS performance measures that States failed to meet were the result of States not conducting high-priority complaint surveys or standard surveys within required timeframes. (These timeliness failures correspond to 2 of the 12 measures reviewed.) CMS relies on States to conduct complaint surveys and standard surveys in response to health and safety concerns about nursing home residents and to gather information about the quality of services in nursing homes. Exhibit 4 shows the percentage of performance failures that were for survey timeliness. States not initiating enough high-priority complaint surveys within 10 days of the allegation accounted for 23 percent of State performance failures, and States not conducting standard surveys of all nursing homes within required

**Exhibit 4: Forty-one percent of State performance failures were for two SPSS measures relating to survey timeliness.**



Source: OIG analysis of CMS data, FYs 2015–2018.

timeframes accounted for 18 percent of the failures. (Statutory timeframes for standard surveys require the State to survey every nursing home at least every 15 months and have a Statewide average interval not greater than 12 months between standard surveys of all nursing homes.<sup>58</sup>) States also repeatedly missed measures of survey timeliness more than other measures. A total of 17 States failed to meet the performance measure to initiate enough high-priority complaint surveys within required timeframes in all 4 years and 6 States did not conduct standard surveys within required timeframes in all 4 years. For the other 10 of the 12 performance

measures, State performance was better; the highest number of States to miss a measure in all 4 years was 4 States.

Of the performance failures related to survey timeliness (41 percent of all performance failures), nearly half had corrective action plans or other correspondence identifying staffing as the root cause or posed increased staffing as a solution to the performance failure. The most common staffing-related description centered on the inability to attract and retain surveyors, often due to not being able to offer high enough salaries to compete in local markets. As one example, Colorado had difficulty conducting recertification surveys within required timeframes and explained that 15 of the 47 surveyor positions were vacant. The corrective action plan cited long hours and low pay as the most common reasons for surveyor resignations, but a proposal was before the State legislature for a 3-percent salary increase, which it hoped would close the salary gap with the private sector.<sup>59</sup>

Interviews with CMS and letters to States also described staffing shortages as a root cause of State survey performance problems. CMS staff from one region explained that many of the staffing shortages occur in States with widespread nurse shortages and that these States have difficulty attracting and retaining nurses to conduct surveys. CMS reported that addressing the State policies that lead to surveyor shortages is out of their purview; however, in one State the staffing situation was so problematic that CMS assisted the State with additional funding to support new surveyor positions.

## **CMS required States to develop corrective action plans to address performance failures, but 10 percent of plans were missing from CMS files and many lacked substantive detail**

CMS relied on States to develop and implement corrective action plans to correct performance problems. All CMS regional offices confirmed that each year, they submit reports to States containing their SPSS scores along with a requirement to develop and implement a corrective action plan addressing the underlying performance problem(s) for each performance measure that it failed to meet. CMS regional offices reported that, on occasion, they work alongside States to develop corrective actions or direct States to include specific actions in the corrective action plan, but typically, they rely on States to develop the plans.

Although CMS requires States to submit corrective action plans for each SPSS performance measure they failed to meet, 10 percent of the plans were missing (either the State did not submit a plan to CMS or CMS did not submit it to OIG.)<sup>60</sup> Twelve States were missing corrective action plans. One of these States was missing eight plans in a single year and another State was missing seven plans across 3 years. CMS relies on its regional offices to review and approve corrective action plans, and to monitor the plans at least quarterly to assess progress toward improved performance.<sup>61</sup>

In addition, responses in States’ corrective action plans often failed to include substantive details about actions that would address the performance problem. For example, the CMS regional office required Rhode Island to “develop and implement a corrective action plan” for each of the three missed performance measures. In its response to the CMS regional office, Rhode Island indicated it would “work to achieve 100 percent in [FY] 2017” in all three corrective action plans. (See Exhibit 5.)

**Exhibit 5: Example of corrective action plans lacking substantive details.**

Failed Performance Measure	Corrective Action Plan Response
Q1: Documentation of Deficiencies for Nursing Homes	Our Center accepts this determination, and we will work to achieve 100 percent in [FY] 2017.
Q6: Prioritizing Complaints and Facility Self-Reported Incidents	Our Center accepts this determination, and we will work to achieve 100 percent in [FY] 2017.
Q7: Timeliness of Investigations for Non-Immediate Jeopardy, High Priority	Our Center accepts this determination, and we will work to achieve 100 percent in [FY] 2017.

Source: OIG analysis of States’ corrective action plans, FY 2016.  
 \*See Appendix A for performance measure descriptions.

In several other States, corrective action plans were nearly identical to plans submitted for the previous year, which raises concern that either the plan was insufficient to address the problem or that the original plan was not fully implemented. As an example, Delaware had progressively worsening performance, initiating surveys within 10 days for 79 percent of high-priority complaints in FY 2016, 16 percentage points short of the 95-percent requirement. In FY 2017, they initiated surveys within 10 days for only 36 percent of the high-priority complaints but used the exact same wording in its corrective action plan as it did in FY 2016. Following this repeated corrective action plan in FY 2017, their performance fell another 5 percentage points in FY 2018, initiating surveys within 10 days for only 31 percent of high-priority complaints.

Given these issues, it is likely that CMS is missing opportunities to address performance issues through corrective action plans. CMS rarely requires States to include specific elements in their corrective action plans other than to describe the actions they will take to address the problems.<sup>62</sup> This lack of guidance leaves States with significant discretion about what to include in their plans and may limit the effectiveness of these plans for improving performance.

In the few instances where CMS did require specific actions, it typically encouraged the State to work harder to identify improvement opportunities. As an example of a directed action, one CMS regional office required a State to review their corrective action plan from the previous year, determine why that plan did not resolve the performance problem, and provide a new plan using this information. The letter also directed the State to include specific milestone dates for improvement. Other types of directed actions included requirements for completing specific trainings to address performance problems.

CMS may also be missing opportunities to ensure that planned corrections are implemented and identify innovative solutions to performance problems. CMS does not systematically track States' submissions of corrective action plans across regional offices. Without analysis of these data at the national level, CMS has limited insight about the effectiveness of State corrective actions or whether States fulfill the requirement to complete a corrective action plan.

## **To help States improve survey performance, CMS relied on remedies such as training and technical assistance, and also on maintaining close communication with States**

In addition to corrective action plans, CMS largely relied on remedies, such as training and technical assistance, to assist States in overcoming problems with survey performance. CMS regional office staff did not track these efforts and were unable to provide many supporting documents describing the training and assistance as a part of routine interactions with States. These remedies were likely useful in many cases, but given continual problems in some States, they appear to have been insufficient in bringing improvement for States with persistent performance problems.

CMS regional offices emphasized the importance of strong working relationships with States to improve State survey performance. Regional offices reported they were often in constant communication with States, including those that were struggling, and one regional office reported having daily check-ins with some States. CMS staff reported that these relationships allowed for open communication about challenges, which made it easier to tailor remedies to address specific needs. One CMS official reported that open communication with States led to more complete information about the sources of their challenges and made it easier to have frank discussions when performance fell below expectations. Another official explained that they view their relationship with States as more of a partnership and collaboration than as traditional overseers.

CMS also used third-party contractors to provide additional support to a few States that were struggling with survey performance. For these States, CMS provided support contracts each FY to assist certain States having difficulty meeting requirements. A support contract involves hiring a third party to provide additional support to States for their survey and certification functions. Support contractors may

provide a range of services, including conducting required surveys for the State, leading training sessions for State surveyors, or assisting States with developing more efficient processes. CMS staff indicated that the agency has very limited funding for support contracts and typically offers this type of contract to only one to three States per year.

## **CMS sometimes imposed financial penalties when States failed to meet the timeliness requirement for standard surveys; however, CMS frequently offset these penalties with one-time funding adjustments**

CMS imposed the financial penalty of a non-delivery deduction for approximately 60 percent of the applicable State failures to meet SPSS performance measures (16 of 27).<sup>63</sup> For the performance measures in this study, CMS imposed non-delivery deductions only when States failed to meet the statutory requirement to survey all nursing homes at least once every 15 months.<sup>64, 65</sup> This requirement accounted for about 11 percent of all State performance failures during FYs 2015–2018.

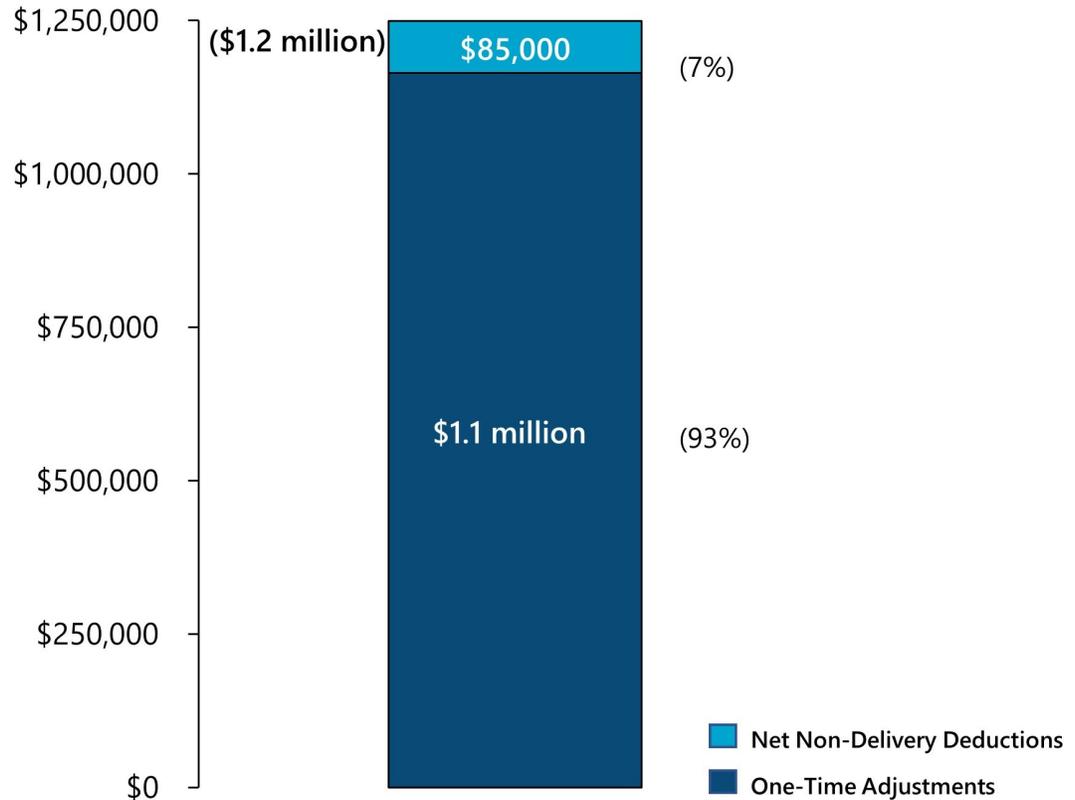
### **CMS used one-time adjustments to alleviate financial strain associated with non-delivery deductions**

During FYs 2015–2018, CMS withheld \$5.1 million in non-delivery deductions and awarded \$3 million in one-time funding adjustments to these States (59 percent of the non-delivery deduction amount).<sup>66</sup> CMS sometimes provides money, in the form of one-time adjustments, to selected States for specific purchases, such as distance learning equipment for surveyors, with the goal of helping States meet their performance requirements.<sup>67</sup>

CMS reported that it awarded these one-time monetary adjustments to help offset the financial losses from non-delivery deductions during our review period because they were concerned that the financial losses could compound the financial strain associated with years of flat funding. CMS officials explained that States were already struggling with higher operational costs due to inflation and a higher number of complaints, making it difficult to ensure they staffed the necessary number of surveyors to complete required work. They believed that further financial losses could have the unintended consequence of further worsening State performance.

CMS awarded nearly the same amount of money in one-time adjustments as it imposed in non-delivery deductions in FY 2017. (See Exhibit 6.) During this year, 93 percent of the \$1.2 million in non-delivery deductions was offset by the \$1.1 million in one-time adjustments.<sup>68</sup>

**Exhibit 6: One-time CMS adjustments offset 93 percent of the \$1.2 million in non-delivery deductions during FY 2017.**



Source: OIG analysis of *State Medicare Allocations for Survey and Certification*, FYs 2015–2018.

### **CMS regional offices sometimes used performance benchmarks as an incentive for States to improve performance and recoup non-delivery deductions**

CMS regional offices sometimes allowed States to recoup some or all non-delivery deductions by achieving certain performance goals, or benchmarks. As an example of performance benchmarks, one CMS regional office withheld 25 percent of the survey and certification funding to a State until it met six performance benchmark goals, including completing a certain number of standard surveys and complaint surveys by a specified date. CMS required the State to meet all six benchmark goals before it released the benchmarked funds.

Eight of the 10 CMS regional offices used performance benchmarks at 15 States (21 times) during our review period. One regional representative who was a proponent of performance benchmarks explained that benchmarks had been a highly effective tool, stating that “when we do ‘benchmark’ them, they’re usually not only able to come into compliance—but meet what they initially failed at and even

exceed.” In one State where benchmarks appeared to be successful, CMS withheld \$668,000 in funding until the State met several benchmark goals, such as requiring that no more than 11 standard surveys exceed the 15-month timeliness interval between nursing home surveys. The State improved from 113 surveys that failed to meet the 15-month requirement in FY 2015 to only 1 that missed it in FY 2016.

## **CMS escalated concerns about persistent poor performance to senior State officials in three States, but it rarely imposed formal sanctions and has never initiated action to terminate a State survey agency agreement**

In three States, CMS sent letters about persistently poor State performance to senior State officials (e.g., Governor, Directors of Department of Health), and in one of these States it also met with the State Health Commissioner, but CMS did not impose any other formal sanctions described in the SOM during our review period. The CMS letters escalated concerns in 2 of the 28 States that failed to meet the same SPSS performance measure over 3 or 4 consecutive years; the third letter was the result of State performance prior to our review. CMS directed a letter to the Governor in one State and to the Directors of the State Health Department in the other two States. In the letters, CMS described the performance problems in detail and underscored that State performance fell far short of the requirements in the 1864 Agreement. CMS reported that these letters were effective in getting the attention of senior State officials and that they have led to some performance improvements. In FY 2019—outside of the study period—CMS developed a protocol for escalating concerns, but CMS reported that it implements the protocol only as a last resort after they have been unsuccessful in helping the State resolve performance problems through other methods.

Although CMS has the authority to initiate action to terminate an 1864 Agreement, either in whole or in part, it did not do so with any State during our review period.<sup>69</sup> In the escalation letters for two of the three States, CMS raised the possibility of terminating the 1864 Agreement if the State was unable to improve performance but did not go forward with the termination. In a 2016 letter to the Governor of Georgia, CMS explained that it would recommend to the Secretary of HHS to initiate action to terminate the State’s 1864 Agreement within 60 days of the letter if the Office of the Governor did not provide assurances that it would address the performance problems. For context, Georgia failed to meet 47 percent of the SPSS performance measures that were exclusive to nursing homes during our 4-year review period, including failing the same three performance measures in all 4 years.<sup>70</sup> In a letter sent to the Secretary of the Kansas Department of Health and Environment and the Governor in 2015, CMS explained that it could revoke the State’s 1864 Agreement if Kansas was unable to correct the problems and that it needed to inform CMS of their planned actions within 30 days. These States improved some aspects of their

performance following the letters and CMS did not take action to terminate the 1864 Agreement in either of these cases.

CMS and regional offices reported that terminating the 1864 Agreements is the option of last resort for addressing problems in States. CMS staff explained that terminating the Agreement could likely lead to significant gaps in oversight of nursing homes (and other provider types.) They explained that any new entity taking on survey responsibilities would need to replace the expertise of administrative and support staff in addition to the surveyors who conduct the work. The amount of time it would take to onboard and train new staff, they explained, would result in a further decline in nursing home oversight, with no surveys conducted for a period of time during the transition. Therefore, they saw terminating the 1864 Agreements as “unpractical” in the current environment.

# CONCLUSION AND RECOMMENDATIONS

State surveys are critical to ensuring the safety and quality of nursing home care, yet some States repeatedly failed to meet requirements for conducting the surveys. When faced with these problems, CMS largely relied on remedies, such as corrective action plans, training, and technical assistance, to improve State performance. However, these actions did not resolve performance problems in some States. CMS rarely contacted senior State officials about performance concerns and did not impose any other formal sanctions. CMS and States reported that foundational issues, such as shortages of surveyors and other staff, were root causes for many of the performance problems and that CMS has few options to address these problems. Recognizing these broad and sometimes entrenched challenges, we encourage CMS to collaborate with other agencies in HHS with relevant expertise, such as the Office of Assistant Secretary for Health or the Health Resources and Services Administration, to develop strategies to address entrenched problems and bring about long-term improvements.

In addition, we make five recommendations to CMS for actions it can take more immediately within its oversight role to strengthen this crucial protection for nursing home residents. Without effective oversight of nursing homes by the States, residents may be at increased risk for harm and poor care. CMS has pursued new initiatives to improve nursing home care and State oversight of that care, but our findings suggest that CMS's response to States with persistent problems in survey performance has often been ineffective in improving their performance. Further, OIG evaluation of nursing home onsite surveys from March 23 to May 30, 2020, found that the COVID-19 pandemic exacerbated State survey agencies longstanding challenges with staffing. In addition, we found that States faced mounting backlogs of standard surveys and high-priority complaint surveys that had been suspended for several months during 2020.<sup>71</sup> Considering the added challenges stemming from the pandemic, combined with the persistent poor performance of many States prior to the pandemic, it is likely that CMS will continue to face challenges ensuring that some States conduct nursing home surveys timely and effectively.

## **We recommend that CMS:**

### **Actively monitor the use and effectiveness of States' corrective action plans and other remedies, with a focus on making the remedies specific and outcome oriented**

CMS's use of remedies, such as corrective action plans, training, and technical assistance, did not lead to needed improvements in survey performance in many

States. Despite relying heavily on remedies to improve performance, CMS did not actively track and analyze these efforts or their outcomes. CMS required States to develop corrective action plans that address underlying performance problems for each SPSS performance measure that they failed to meet; however, many plans were missing from CMS's files and CMS did not hold States accountable for ensuring that plans have clear and actionable language. For other remedies such as training and technical assistance, CMS communicated often with States and tailored its assistance to State needs but did not systematically create or track what it provided to States.

CMS should work to make remedies more effective tools, including systematically tracking their use, monitoring implementation, and assessing effectiveness. As part of this effort, CMS must ensure that States' corrective action plans address all failures to meet performance measures, describe specific actions that States plan to take, and are designed to promote improved survey performance. CMS should direct States to take specific actions in their corrective action plans, such as specifying particular training, when appropriate. CMS could also require States that miss performance measures 2 or more years in a row to include an evaluation of the previous corrective action plan and explain why it did not lead to adequate survey performance. Further, CMS should look for opportunities to identify innovative or particularly effective plans and share those lessons with other States.

## **Establish guidelines for progressive enforcement actions, including the use of sanctions, when persistent or egregious performance problems emerge**

Although CMS is responsible for oversight of most of the nation's nursing homes, it relies primarily on States to conduct surveys and certify their compliance with Federal requirements. When States demonstrate persistent or egregious performance problems, CMS should hold these States accountable using progressive enforcement actions. CMS currently has significant discretion regarding use of remedies and sanctions and has rarely opted to use higher-level sanctions even when States exhibited persistent problems. Understanding that the circumstances for each State are unique, CMS should establish guidelines for the use of remedies and sanctions when performance problems do not improve over time. For example, CMS could set a required timeframe for correcting performance. The guidelines should also include principles for determining the circumstances in which an 1864 Agreement might be terminated and describe the procedures for doing so.

## **Engage with senior State officials earlier and more frequently to address State performance problems**

Despite 28 States failing the same performance measure in 3 or 4 consecutive years and anecdotes of significant and intractable performance problems, CMS rarely reached out to senior State officials, such as Governors or Department of Health Directors, to raise concerns about State survey performance. At the same time, CMS

reported few options for addressing States with persistent performance problems. CMS should engage with senior State officials earlier and more frequently when it identifies persistent or egregious performance problems. This could include developing guidelines for circumstances that prompt contact with senior State officials. Earlier and more frequent contact may underscore the importance of requirements for protecting the health and safety of nursing home residents, build a greater understanding about the urgency to resolve performance problems and their implications for nursing home residents, and provide opportunities for State officials or other stakeholders to develop solutions before problems become critical.

## **Disseminate results of State performance reviews more widely to ensure that stakeholders become aware of problems**

Although CMS distributes SPSS results to States through memorandums that are publicly available, CMS should actively share this information with other stakeholders. These stakeholders could include State offices of the Long-Term Care Ombudsman, nursing home provider organizations, and patient advocacy groups. Increased attention to SPSS results may encourage States to place a higher priority on corrections. CMS could report and discuss SPSS results in outreach materials and at conferences and meetings, such as CMS's National Nursing Home Stakeholder Calls. CMS could also publish the results on a platform with other provider data, such as the Quality, Certification, and Oversight Report website.

## **Revise the State Operations Manual to reflect current CMS practices in overseeing State survey performance**

CMS indicated that its regional offices use the SOM to determine which remedies and sanctions to impose for inadequate survey performance by States. The SOM does not currently address the use of non-delivery deductions or benchmarking. Further, the practice of notifying senior State officials by letters is not clearly aligned with a sanction in the SOM. CMS should revise the SOM to reflect all current practices for responding to States with inadequate survey performance.

# AGENCY COMMENTS AND OIG RESPONSE

In its comments to this report, CMS affirmed its commitment to the health and safety of nursing home residents and described efforts to improve State performance, including close communication with States, improvements to the SPSS, and a reorganization within CMS. CMS concurred with four of our five recommendations and did not concur or nonconcur with the remaining recommendation.

Responding to our findings, CMS suggested that an SPSS failure may not always be a good indicator of State performance overall. CMS pointed to one of the measures of survey timeliness and noted that States would fail this measure if they miss a single survey, which would not necessarily indicate a systematic failure. Although that may be possible, OIG's work has found that many States do have significant and sustained problems in meeting timeliness requirements for investigating the most serious complaints.<sup>72</sup> Further, OIG has found that States have faced substantial backlogs for conducting standard surveys following the temporary suspension of standard surveys in 2020 due to the COVID-19 public health emergency.<sup>73</sup> CMS also made the point that for some measures involving small sample sizes, poor performance on a single survey can lead to failing the measure. Further, CMS suggested that when States are in the process of making corrections, it may take more than a year to make sufficient progress to pass a measure.

CMS also explained that State performance may be hampered by foundational issues, such as staffing, that can frequently be tied to inadequate budgets. CMS further stated that survey workloads have increased since 2015 while the level of Federal funding has remained flat, and that without adequate funding, these foundational issues will persist and continue to affect State performance.

Specific to the four recommendations with concurrence, CMS confirmed that it would explore additional ways to monitor the use and effectiveness of States' corrective action plans and other remedies. CMS also stated that it has developed an escalation protocol for use when States have serious performance problems and that it will establish further guidelines for progressive enforcement actions when persistent or egregious performance problems emerge. Additionally, CMS noted that it typically meets with senior State officials late in the process after attempts to improve have been unsuccessful and that it will engage State officials earlier and more frequently to address performance problems. Finally, CMS stated that it will revise the State Operations Manual, as appropriate, to reflect current CMS practices in overseeing SA performance.

Regarding the recommendation to disseminate results of State performance reviews more widely, CMS stated that it agrees with the importance of disseminating the information to stakeholders, but that its current practices already fulfill the recommendation. CMS reported that, since 2018, all stakeholders have had public

access to State performance reviews dating back to 2015, including nursing home provider organizations, patient advocacy groups, State Ombudsmen, and the general public. Although SPSS results are publicly available on its website, CMS currently distributes SPSS results only to Directors of State Survey Agencies. The OIG recommendation is intended to enhance these current practices and engage stakeholders more deliberately.

New activities that could fulfill this recommendation include reporting and discussing SPSS results in outreach materials and at conferences and meetings, such as CMS's National Nursing Home Stakeholder Calls. CMS could also publish the results on a platform with other provider data, such as the Quality, Certification and Oversight Report website. We revised the recommendation to provide additional clarification and detail about suggested actions and ask that CMS clarify its concurrence or nonconcurrence in its Final Management Decision.

CMS stated that it will continue to work closely with its colleagues throughout CMS and at States to ensure that nursing home residents receive high-quality care and to work with OIG on issues related to States with poor performance in conducting nursing home surveys. We appreciate CMS's continued commitment to the health and safety of nursing home residents and its work to monitor State performance and hold States accountable for meeting nursing home survey standards. For the full text of CMS's comments, see Appendix C.

# DETAILED METHODOLOGY

## Methodology

This report identifies the extent to which States repeatedly failed to meet SPSS performance measures in conducting nursing home surveys and assesses CMS's use of remedies, sanctions, and additional enforcement actions to address State performance problems. The data sources for this study were: (1) CMS's public release of SPSS performance data, (2) interviews with CMS officials, and (3) documents from CMS headquarters and their regional offices regarding oversight of State survey performance. We analyzed performance data and documentation for all 52 State survey agencies (including Puerto Rico and the District of Columbia) during FYs 2015–2018, and the resulting actions by CMS.

### State performance data

To assess State performance, we used data from two sources: (1) CMS's public release of SPSS results for FYs 2015–2018 and (2) CMS regional office SPSS scoresheets.<sup>74, 75</sup> We analyzed 12 SPSS performance measures during FYs 2015–2018 that were exclusive to nursing homes. CMS suspended or placed on hold 4 of the 12 performance measures during the study period (one was suspended for 2 years). (See Appendix A for a list of the 12 performance measures.) We used CMS's public releases of SPSS results to analyze 11 of the performance measures and the CMS regional office scoresheets to analyze one performance measure because it was combined with other facility types in the CMS public releases.

To determine which States had persistent performance problems, we first calculated the number of times each State failed to meet a performance measure. We then calculated how many years a State failed to meet each performance measure. Finally, we identified States with persistent performance problems by counting the number of States that missed at least one performance measure in three or more consecutive years. We counted all failures regardless of scale or magnitude.

Note: A previously published OIG study (OEI-01-19-00421) also reported State failures to meet performance measures related to complaints. This report used a different underlying data set, the Automated Survey Processing Environment Complaint/Incident Tracking System (ACTS), from this report. The prior report analyzed the ACTS data using calendar years (as opposed to fiscal years) and ACTS does not have the same reconciliation process that CMS conducts on SPSS performance measures. As a result of these differences, there are minor inconsistencies between the underlying data in the two reports.

## CMS interviews

We interviewed officials and staff from the 10 CMS regional offices and CMS central office about their approach to oversight and enforcement of the SPSS standards. All interviews were conducted by telephone between February 3 and March 4, 2020. We conducted qualitative analysis of the interview transcripts to identify themes and areas for additional analysis. We additionally accepted responses to some followup questions in writing.

The interviews with CMS regional offices typically included branch, division, and regional managers and directors from the CMS Survey and Operations Group. Although all locations were represented, some interviews involved two regions (and in once case three locations). We asked about the regions use of corrective action plans, their response to persistent performance problems, challenges faced by the States in their geographic regions, and their coordination with CMS Central Office. To further our understanding of the data, we also asked for context about some State performance and CMS actions regarding that performance.

We conducted one interview with CMS Central Office; it included key leadership from the Quality, Safety and Oversight Group (QSOG) and the Survey and Operations Group (SOG). In this interview, we discussed roles and responsibilities for overseeing State performance, tools for addressing performance problems, and some of the underlying causes of persistent performance problems.

## CMS data submission

We requested from CMS documentation about their imposition of remedies and sanctions on States for inadequate performance during FYs 2015–2018. CMS submitted the following documentation:

State Performance Review Packets for each State during FYs 2015–2018. These packets contained multiple documents, including: (a) SPSS scoresheets, (b) letters from CMS to States notifying them of SPSS results and any additional requirements based on those results, (c) State responses to notification of results, (d) and any additional correspondence between CMS and the State such as letters to senior State officials about poor performance; State corrective action plans required by CMS for each SPSS performance measure they failed to meet; and supplemental documents describing additional enforcement actions CMS took to improve State survey performance, including letters to senior State officials and financial penalties.

From these documents, we assessed how CMS worked with States to address inadequate survey performance. We based our analysis of remedies and sanctions on Chapter 8 of the CMS SOM and 42 CFR § 488.320.<sup>76</sup>

We reviewed State corrective action plans and the associated correspondence between CMS and States. We used letters from CMS to States notifying States of their SPSS results to determine whether CMS required a corrective action plan. If CMS

did not indicate, in the letters, the specific performance measures for which States should develop corrective action plans, we considered the corrective action plan to be required when both the public SPSS results and regional office's SPSS scoresheet indicated the State failed to meet a performance measure. For each required corrective action plan, we determined whether the plan was submitted as required and assessed the content of the individual corrective action plans.

We reviewed all sanction and enforcement action information provided by CMS. We considered CMS letters to senior State officials that raised serious concerns about State performance to be the formal sanction of meeting with the Governor and other responsible State officials. We reviewed letters from CMS to States that established performance benchmarks and CMS funding associated with these benchmarks. We also analyzed State Medicare Allocations to gain insight into the dollar amount of non-delivery deductions and allocations to States for one-time awards.

# APPENDIX A

## Summary of State Performance Measures Exclusive to Nursing Homes

For this study, we analyzed State outcomes on 12 SPSS performance measures that were exclusive to nursing homes, FYs 2015–2018.

Frequency Dimension	
Performance Measure	Threshold Criterion Summary
F1: Off-Hours Nursing Home Surveys	The State must achieve a score of 10 percent or higher in conducting standard surveys either on the weekend, in the early morning hours prior to 8 a.m., or in the evening hours after 6 p.m., or on holidays. Additionally, health survey teams must enter the facility together.
F2: Frequency of Nursing Home Surveys	All Standard health surveys conducted must not exceed 15.9 months after the last day of the previous standard health survey. Additionally, the statewide average interval of standard health surveys must not exceed 12.9 months.
F4: Timeliness of Upload Into Certification and Survey Provider Enhanced Reporting (CASPER) System of Standard Surveys for Nursing Homes	The average number of days between the final State survey to the date data are entered into CASPER must not exceed 70 days.
Quality Dimension	
Performance Measure	Threshold Criterion Summary
Q1: Documentation of Deficiencies for Nursing Homes	For nursing homes, the State must achieve a score of 85 percent or higher on seven criteria. These criteria evaluate whether the State documents all deficiencies on the form CMS-2567, Statement of Deficiencies, in accordance with the Principles of Documentation and the State Operations Manual.
Q2: Conduct of Nursing Home Health Surveys in Accordance With Federal Standards, as Measured by Federal Oversight Support Surveys (FOSS) (on hold for FY 2018)	The State must achieve an average score of 3.0 or higher for nursing home health surveys on six criteria. These six criteria are FOSS measures.

## Quality Dimension

Performance Measure	Threshold Criterion Summary
<b>Q3:</b> Documentation of Noncompliance in Accordance with Federal Standards for Nursing Home Health FOSS Surveys (on hold for FY 2018)	The State must achieve a score of 80 percent or higher for the agreement rate between deficiencies identified onsite and deficiencies cited on CMS-2567 for nursing home health FOSS surveys.
<b>Q4:</b> Identification of Health, Life Safety Code (LSC) and Emergency Preparedness (EP) Deficiencies on Nursing Home Surveys as Measured by Federal Comparative Survey Results (on hold for FY 2018)	The State must achieve a score of 90 percent or higher for deficiencies cited on regional office comparative surveys at immediate jeopardy or actual harm levels or that resulted in substandard quality of care, and for surveys as the same or higher levels or severity, the State must not miss citing similar findings.
<b>Q6:</b> Prioritizing Complaints and Facility Self-reported Incidents	For nursing homes, the State must achieve a score of 90 percent or higher for sampled surveys in which the State follows CMS guidelines in prioritizing Federal complaints and incidents that require Federal onsite surveys.
<b>Q7, Threshold 3:</b> Timeliness of Complaint and Facility Self-Reported Incident Investigations, Non-Immediate Jeopardy High-Priority	The State must achieve a score of 95 percent or higher for initiating complaint surveys within 10 working days of the received date of complaints and incidents where the State prioritizes the intake as "Non-Immediate Jeopardy High-Priority."
<b>Q9:</b> Quality of Complaint Investigation (suspended in FYs 2017 and 2018)	The State must achieve a score of 85 percent or higher in criteria assessing how State nursing home complaint surveys follow protocols outlined by CMS.

## Enforcement and Remedy Dimension

Performance Measure	Threshold Criterion Summary
<b>E2:</b> Timeliness of Mandatory Denial of Payment for New Admissions (DPNA) Notifications for Nursing Homes	The State must achieve a score of 80 percent or higher for sending imposition notices to the facility or transferring enforcement cases to CMS by the 70th day. Cases involving Medicaid-only nursing homes are excluded.
<b>E4:</b> Special Focus Facilities (SFFs) for Nursing Homes	The State must achieve a score of 100 percent with each State identifying and conducting standard surveys at SFFs twice a year. Additionally, the State recommendations for enforcement remedies to the regional office or State Medicaid Agency must follow survey and certification criteria.

# APPENDIX B

## Number of States That Failed To Meet Each Performance Measure by Year, FYs 2015–2018

Exhibit B-1: Number of States That Failed To Meet Each SPSS Performance Measure by Year, FYs 2015–2018

Performance Measure	FY 2015	FY 2016	FY 2017	FY 2018	Total
F1: Off-Hours Surveys for Nursing Home	2	1	1	2	6
F2: Frequency of Nursing Home Surveys	16	17	12	28	73
F4: Timeliness of Upload Into Certification and Survey Provider Enhanced Reporting (CASPER) System of Standard Surveys for Nursing Homes	5	6	5	5	21
Q1: Documentation of Deficiencies for Nursing Homes	7	5	7	6	25
Q2: Conduct of Nursing Home Health Surveys in Accordance With Federal Standards, as Measured by Federal Oversight Support Surveys (FOSS) (on hold for FY 2018)	1	2	1	N/A	4
Q3: Documentation of Noncompliance in Accordance With Federal Standards for Nursing Home Health FOSS Surveys (on hold for FY 2018)	0	1	0	N/A	1
Q4: Identification of Health, Life Safety Code (LSC) and Emergency Preparedness (EP) Deficiencies on Nursing Home Surveys as Measured by Federal Comparative Survey Results (on hold for FY 2018)	7	7	8	N/A	22
Q6: Prioritizing Complaints and Facility Self-Reported Incidents	15	15	15	17	62
Q7, Threshold 3: Timeliness of Complaint and Facility Self-Reported Incident Investigations, Non-Immediate Jeopardy High-Priority	21	20	23	29	93
Q9: Quality of Complaint Investigation (suspended in FYs 2017 and 2018)	17	13	N/A	N/A	30
E2: Timeliness of Mandatory Denial of Payment for New Admissions (DPNA) Notifications for Nursing Homes	12	16	12	13	53
E4: Special Focus Facilities (SFFs) for Nursing Homes	3	5	3	5	16
<b>Total</b>	<b>106</b>	<b>108</b>	<b>87</b>	<b>105</b>	<b>406</b>

# AGENCY COMMENTS



DEPARTMENT OF HEALTH & HUMAN SERVICES

Centers for Medicare & Medicaid Services

*Administrator*

Washington, DC 20201

**DATE:** December 3, 2021

**TO:** Christi A. Grimm  
Principal Deputy Inspector General  
Office of Inspector General

**FROM:** Chiquita Brooks-LaSure *Chiq B LaS*  
Administrator  
Centers for Medicare & Medicaid Services

**SUBJECT:** Office of Inspector General Draft Report: CMS Should Take Further Action to Address States With Poor Performance in Conducting Nursing Home Surveys, OEI-06-19-00460

The Centers for Medicare & Medicaid Services (CMS) appreciates the opportunity to review and comment on the Office of Inspector General's (OIG) draft report.

CMS is charged with developing and enforcing quality and safety standards across the nation's health care system, a responsibility that the Agency takes seriously. CMS is committed to the health and safety of all nursing home residents and shares responsibility of nursing home oversight with State Survey Agencies (SAs), which conduct onsite surveys at Medicare and Medicaid certified facilities to assess compliance with Federal regulations. CMS works with the SAs to strengthen oversight so that the care provided in nursing homes is of the highest quality.

As outlined in Section 1864 of the Social Security Act, CMS enters into agreements with SAs (1864 Agreements) to carry out surveys of all Medicare and Medicaid certified facilities for the purpose of certifying compliance or non-compliance with CMS's conditions of and requirements for participation. CMS outlines the survey process in the State Operations Manual, which guides the SAs in determining a nursing home's compliance with Federal requirements. SAs also serve as the front-line responders to address health and safety concerns raised by residents, their families, and nursing home staff.

CMS conducts a yearly formal assessment of whether SAs fulfill their responsibilities, as outlined under each SA's 1864 Agreement. During the formal assessment, CMS evaluates each SA's performance on a number of measures through the State Performance Standard System (SPSS) program. The SPSS is a three-dimensional structure (frequency, quality, and enforcement and remedy) that provides a framework to organize and measure important aspects of SA survey activities. The three dimensions also support efforts to standardize and promote consistency among SAs.

Over the years, CMS has made updates to the SPSS program to improve oversight of SA performance. For example, in 2006, CMS redesigned the SPSS to emphasize that the value of the survey program stems not only from completing surveys timely, but also from the quality of the surveys themselves, with an emphasis on the proper identification of deficiencies, and the enforcement and remedy of identified problems. In 2017, CMS assessed whether revisions were needed to improve the performance metrics and implemented a new long-term care survey process (LTCSP). In 2018, CMS launched an initiative to evaluate the SPSS process and identify ways to improve how the agency monitors and evaluates SA performance. Since implementing the new LTCSP, CMS now has more robust data that can be used to monitor and improve SA performance. These changes reflect recommendations from both CMS and SAs.

In responding to the OIG's findings, CMS notes that SPSS results are a report of whether a SA met the measurement criteria, but may not reflect the broader context of SA performance. For example, OIG states that survey timeliness is the most commonly missed measure, but we note that some measures are absolute, such as the nursing home standard survey timeliness requirement, and SAs can fail this measure by missing one survey out of hundreds of surveys conducted over a year. While SAs may have failed the performance measure, the single failure is not evidence of a systematic failure on the part of the SA. Additionally, some measures include small sample sizes, and a single failure in these cases could lead to a failure of the SPSS measure. As such, CMS measures not only the timeliness of surveys, but also the quality of the surveys themselves and the proper identification of deficiencies. For example, in 2015, sixteen states failed the quality measure for the adequacy of documentation; however, after CMS worked directly with individual states, fewer started failing this measure, and in 2019 all states met the measure requirements. CMS evaluates SA survey performance in addition to the SPSS by evaluating their completion rate of Federal workload requirements and whether or not 100 percent of cases that require enforcement were reviewed, and by considering internal metrics.

SAs with recurring SPSS performance issues work with their CMS Locations to improve performance. CMS and SAs work together to determine the root causes driving SA performance problems, and CMS engages in vigorous oversight efforts to drive improvements as quickly as possible. The nature of the enhanced oversight is driven by what factors are causing continued performance shortcomings, and therefore may vary in oversight activities. CMS is in constant communication with SAs, and CMS may offer training, help develop action plans, or provide technical assistance. In a limited number of cases, CMS engages third-party consultants to assess an SA's current state of operations, provide recommendations for improvements, and provide technical training for a more standardized and efficient operational approach. Due to funding limitations, CMS may offer this type of third-party assistance to only one to three states per year.

While CMS has taken a number of actions to help SAs improve performance, as OIG noted, CMS has few practical options to address intractable problems, such as chronic staffing shortages. There are multiple factors that can affect survey performance, such as training, staffing vacancies, the volume of complaint surveys, staff tenure, and others, which the SPSS does not consider. Foundational issues, such as staffing, can frequently be tied to inadequate budgets. Many SAs are unable to offer salaries that are competitive with local private sector salaries, which weakens their ability to attract employment candidates. It also is important to note that survey workloads, especially complaint surveys, have increased rapidly since 2015 (complaint investigations grew by over 5,500 cases between FY 2015 and FY 2019), while the level of funding has remained flat at \$397 million since FY 2015. The ongoing growth in complaints and associated survey workload inhibit the SAs' ability to address issues proactively through standard surveys. In some cases, issues that could be easily identified during standard surveys go unaddressed and become more difficult and expensive to correct. Without adequate funding, these foundational state issues will persist.

CMS can impose sanctions against SAs for inadequate survey performance (42 CFR 488.320). However, given that SAs have been underfunded for years despite growing workloads, further restricting funds would be counterproductive towards ensuring the health and safety among nursing home residents. CMS continues to work with SAs individually to address their unique issues, for example, by providing training or sharing best practices when needed. When SAs have persistent performance issues, CMS may grant a one-time monetary adjustment to establish key benchmarks to drive performance. These one-time

monetary adjustments are in recognition that the SAs have been underfunded for years despite increased workloads. CMS has found the one-time adjustment often improves SA performance and recognizes that changes and improvements within a SA can take time. Therefore, evidence of incremental improvements does not justify revoking an 1864 Agreement, which would impact all provider types, not only nursing homes. For example, a SA struggling with the timeliness of survey completion had a non-delivery deduction (financial penalty) imposed for their failure to complete required workloads. An assessment of the SA identified 17 surveyor vacancies that significantly contributed to this lapse. CMS awarded a one-time monetary adjustment that was tied to hiring surveyors, so every time the SA filled a vacancy, a portion of the money was released, which resulted in improved SA performance.

Additionally, not only does CMS try to address each SA's unique issues, CMS also reviewed its own internal structure to determine how best to improve survey and certification functions. In the spring of 2020, CMS implemented a reorganization to align CMS Location staff responsible for state oversight to more closely align with the CMS headquarters staff to ensure consistency in approach and process improvement. CMS will continue to work closely with our colleagues throughout CMS and the SAs to ensure that the care provided in nursing homes is of the highest quality.

CMS thanks OIG for its efforts on this important issue and looks forward to working with OIG on this and other issues in the future. OIG's recommendations and CMS's responses are below.

#### **OIG Recommendation**

Actively monitor the use and effectiveness of States' corrective action plans and other remedies, with a focus on making the remedies specific and outcome oriented.

#### **CMS Response**

CMS concurs with OIG's recommendation. OIG noted in its report that to help SAs improve survey performance, CMS relies on remedies and maintaining close communications with SAs. CMS believes in close working relationships with SAs with open communication to collaborate on responding to the unique issues of each state. For example, CMS previously held quarterly meetings with a SA to review progress toward its goals and helped the SA revise plans as needed. While CMS assesses SAs' progress with corrective action plans through the annual SPSS review, CMS will explore additional ways to monitor the use and effectiveness of states' corrective action plans and other remedies, with a focus on making the remedies specific and outcome oriented.

#### **OIG Recommendation**

Establish guidelines for progressive enforcement actions, including the use of sanctions, when persistent or egregious performance problems emerge.

#### **CMS Response**

CMS concurs with OIG's recommendation. CMS developed an escalation protocol that it uses when SAs have serious performance problems, and a part of that process includes an escalation letter that is sent to senior state government officials. For example, CMS has met with the governors and health agency commissioners of states to discuss an SA's continued lack of improvement in performance. While CMS believes it is important to maintain flexibility in responding to each state's unique issues, within those bounds, CMS will establish guidelines for progressive enforcement actions, including the use of sanctions, when persistent or egregious performance problems emerge.

**OIG Recommendation**

Engage with senior State officials earlier and more frequently to address State performance problems.

**CMS Response**

CMS concurs with OIG's recommendation. In CMS's escalation protocol, CMS typically meets with senior state government officials as a last resort. However, CMS has also encouraged SAs to meet with their state commissioner to ask for state funding of SA programs to improve timeliness of surveys and decrease the backlog. CMS will engage with senior state officials earlier and more frequently to address state performance problems.

**OIG Recommendation**

Disseminate results of State performance reviews more widely to ensure that stakeholders become aware of problems.

**CMS Response**

CMS agrees with OIG that providing stakeholders with access to results of state performance reviews is important in ensuring awareness of problems, which is why CMS has been publishing state performance reviews annually on its public website. Since 2018, all stakeholders have had public access to the states' performance dating back to 2015.<sup>1</sup> Considering CMS's ongoing commitment to transparency of these reviews posted on the CMS website, available to nursing home provider organizations, patient advocacy groups, state Ombudsman, and the general public, CMS believes this recommendation to be implemented, but the Agency will consider whether additional opportunities exist to further disseminate this information.

**OIG Recommendation**

Revise the State Operations Manual to reflect current CMS practices in overseeing State survey performance.

**CMS Response**

CMS concurs with OIG's recommendation. As both OIG's report and this response have highlighted, CMS engages with SAs using all the tools at our disposal. CMS will review and as appropriate, revise the State Operations Manual to reflect current CMS practices in overseeing SA performance.

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<sup>1</sup> [FY2017 \(published 2018\)](#); [FY2018 \(published 2019\)](#); [FY 2019 & 2020 Results, FY 2021 Guidance](#); [Archived Administrative Memos](#)

# Acknowledgments and Contact

## Acknowledgments

Ben Gaddis served as the team leader for this study and Karl Mari Santos served as the lead analyst. Others in the Office of Evaluation and Inspections who conducted the study include Troy Yamaguchi. Office of Evaluation and Inspections staff who provided support include Joseph Chiarenzelli, Kevin Farber, and Christine Moritz.

This report was prepared under the direction of Ruth Ann Dorrill, Regional Inspector General for Evaluation and Inspections in the Dallas Regional Office, and Amy Ashcraft, Deputy Regional Inspector General.

## Contact

To obtain additional information concerning this report, contact the Office of Public Affairs at. OIG reports and other information can be found on the OIG website at [oig.hhs.gov](http://oig.hhs.gov).

Office of Inspector General  
U.S. Department of Health and Human Services  
330 Independence Avenues, SW  
Washington, DC 20201

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# ENDNOTES

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<sup>1</sup> Sections 1819(f)(1) and 1919(f)(1) of the Social Security Act.

<sup>2</sup> CMS, *Action Plan for Further Improvement of Nursing Home Quality*. Accessed at <https://www.cms.gov/Medicare/Provider-Enrollment-and-Certification/CertificationandCompliance/Downloads/2016-2017-Nursing-Home-Action-Plan.pdf> on August 11, 2019. Additionally, when we refer to nursing homes, we are referring to facilities that are both Medicare Skilled Nursing Facilities (SNFs) and Medicaid Nursing Facilities.

<sup>3</sup> Sections 1819(f)(1) and 1919(f)(1) of the Social Security Act; 42 CFR part 483, subpart B, including 42 CFR § 483.70.

<sup>4</sup> Social Security Act §§ 1864(a) and 1902(a)(33); 42 CFR § 488.330; CMS, State Operations Manual (SOM), Pub. No. 100-07, Ch. 1 – Program Background and Responsibilities, Sections 1002 and 1004 (Rev. 123, 10-03-14).

<sup>5</sup> Social Security Act §§ 1819(g) and 1919(g).

<sup>6</sup> Sections 1819(g)(2)(A)(iii) and 1919(g)(2)(A)(iii) of the Social Security Act; 42 CFR § 488.308 and 488.330. The State must also have a state-wide average interval between standard surveys at a nursing home of 12 months or less.

<sup>7</sup> CMS, “FY 2018 State Performance Standards System Guidance,” Admin Info: 18-02-ALL, October 17, 2017. CMS also uses 12.9 months for the statewide average interval between standard surveys at a nursing home.

<sup>8</sup> 42 CFR § 488.301 and 488.332; CMS State Operations Manual (SOM), Pub. No. 100-07, Ch. 5–Complaint Procedures, Section 5300 (Rev. 191, 07-19-19). States do not conduct a survey if the complaint raises issues that are outside the purview of Federal participation requirements.

<sup>9</sup> Testimony of CMS Chief Medical Officer, Dr. Kate Goodrich, to the U.S. House Energy and Commerce Committee, Subcommittee on Oversight and Investigations, September 6, 2018; Medicare and Medicaid Programs; Reform of Requirements for Long-Term Care Facilities, 81 Fed. Reg. 68688 (October 4, 2016).

<sup>10</sup> CMS, “Preparation for Launch of New Long-Term Care Survey Process (LTCSP),” November 24, 2017. Accessed at <https://www.cms.gov/Medicare/Provider-Enrollment-and-Certification/SurveyCertificationGenInfo/Policy-and-Memos-to-States-and-Regions-Items/Survey-and-Cert-Letter-18-05> on February 1, 2021.

<sup>11</sup> CMS, “New Long-Term Care Survey Process.” Accessed at <https://www.cms.gov/Medicare/Provider-Enrollment-and-Certification/GuidanceforLawsAndRegulations/Downloads/New-Long-term-Care-Survey-Process%E2%80%93Slide-Deck-and-Speaker-Notes.pptx> on August 20, 2019.

<sup>12</sup> *Ibid.*

<sup>13</sup> CMS, “Ensuring Safety and Quality in America’s Nursing Homes,” April 15, 2019. Accessed at <https://www.cms.gov/blog/ensuring-safety-and-quality-americas-nursing-homes> on December 29, 2020. As of July 9, 2021, the previous link was not available on CMS’s website. OIG retained a copy of the original blog post for internal documentation. Compliance Group, Inc., a private consulting firm, published the text of CMS’s blog post on their website.

<sup>14</sup> *Ibid.*

<sup>15</sup> Social Security Act §§ 1902(a)(33).

<sup>16</sup> 42 United States Code § 1396b (a)(2)(D).

<sup>17</sup> CMS, “HHS FY 2018 Budget in Brief-CMS-Program Management,” Accessed at <https://www.hhs.gov/about/budget/fy2018/budget-in-brief/cms-program-management/index.html>, on April 1, 2021.

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<sup>18</sup> CMS, "HHS FY 2018 Budget in Brief-CMS-Program Management," Accessed at <https://www.hhs.gov/about/budget/fy2018/budget-in-brief/cms/program-management/index.html>, on April 1, 2021.

<sup>19</sup> CARES Act Financial Guidance to State Survey Agencies," April 20, 2020. Accessed at <https://www.cms.gov/files/document/cares-act-financial-guidance-state-survey-agencies.pdf> on December 9, 2020.

<sup>20</sup> CMS, "Final Fiscal Year (FY) 2016 State Medicare Allocations for Survey & Certification (S&C)," Admin Info: 16-23-ALL, April 1, 2016.

<sup>21</sup> CMS, "Final Fiscal Year (FY) 2018 State Medicare Allocations for Survey & Certification (S&C)," Admin Info: 18-12-ALL, June 8, 2018.

<sup>22</sup> The CARES Act provided \$200 million to CMS for "Program Management", on the condition that not less than \$100 million be made available for necessary survey and certification expenses, prioritizing nursing home facilities in areas where there is community transmission of "coronavirus." CARES Act, P.L. No. 116-136, Division B, Emergency Appropriations for Coronavirus Health Response and Agency Operations, Title VIII (March 27, 2020).

<sup>23</sup> 42 CFR § 488.320(a).

<sup>24</sup> 42 CFR § 488.318(a); CMS State Operations Manual (SOM), Pub. No. 100-07, Ch. 8-Standards and Certification, Section 8000H (Rev. 1, 05-21-04). 42 CFR §488.301 defines immediate jeopardy as a situation in which the provider's noncompliance with one or more requirements of participation has caused, or is likely to cause, serious injury, harm, impairment, or death to a resident.

<sup>25</sup> CMS provides several circumstances for which it will determine State performance to be inadequate in Section 8000C of the SOM. For example, CMS considers State performance to be inadequate when the State demonstrates a pattern of failure to utilize enforcement actions to assure continued compliance or when it fails to identify an immediate jeopardy situation.

<sup>26</sup> Sections 1819(g)(3)(C) and 1919(g)(3)(C) of the Social Security Act; 42 CFR §§ 488.320; CMS, SOM, Pub. No. 100-07, Ch. 8-Standards and Certification, Section 8000G (Rev. 1, 05-21-04).

<sup>27</sup> 42 CFR § 488.320(a); CMS State Operations Manual (SOM), Pub. No. 100-07, Ch. 8-Standards and Certification, Section 8000H (Rev. 1, 05-21-04).

<sup>28</sup> CMS, "Fiscal Year (FY) 2016 to FY 2017 Nursing Home Action Plan," Ref: S&C: 16-26-NH, May 20, 2016. Accessed at <https://www.cms.gov/Medicare/Provider-Enrollment-and-Certification/CertificationandCompliance/Downloads/2016-2017-Nursing-Home-Action-Plan.pdf> on June 1, 2021.

<sup>29</sup> CMS, "FY 2018 State Performance Standards System Guidance," Admin Info: 18-02-ALL, October 17, 2017.

<sup>30</sup> CMS SOM, Pub. No. 100-07, Ch. 8-Standards and Certification, Section 8000F (Rev. 1, 05-21-04); CMS response to OIG informational questions on August 30, 2019; and CMS, "FY 2018 State Performance Standards System Guidance," Admin Info: 18-02-ALL, October 17, 2017.

<sup>31</sup> CMS, "FY 2016 to FY 2017 Nursing Home Action Plan," May 2016, page 11. Accessed at <https://www.cms.gov/Medicare/Provider-Enrollment-and-Certification/SurveyCertificationGenInfo/Downloads/Survey-and-Cert-Letter-16-26.pdf> on August 20, 2019.

<sup>32</sup> CMS, "FY 2018 State Performance Standards System Guidance," Admin Info: 18-02-ALL, October 17, 2017.

<sup>33</sup> CMS SOM, Pub. No. 100-07, Ch. 7-Survey and Enforcement Process for Skilled Nursing Facilities and Nursing Facilities, Section 7207.2 (Rev. 185, 11-16-18).

<sup>34</sup> CMS, "FY 2018 State Performance Standards System Guidance," Admin Info: 18-02-ALL, October 17, 2017.

<sup>35</sup> The public SPSS results aggregated one of these 12 performance measures with other facility types and we used data collected from CMS to identify State performance at nursing homes for this performance measure.

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- <sup>36</sup> CMS, “FY 2018 State Performance Standards System Guidance,” Admin Info: 18-02-ALL, October 17, 2017; “FY 2015 State Performance Standards Guidance”; “FY 2016 State Performance Standards Guidance”; “FY 2017 State Performance Standards Guidance.”
- <sup>37</sup> CMS, “FY 2020 State Performance Standards System Guidance,” Admin Info: 20-02-ALL, October 17, 2019.
- <sup>38</sup> CMS, “Trump Administration Strengthens Oversight of Nursing Home Inspections To Keep Patients and Residents Safe,” October 17, 2019. Accessed at <https://www.cms.gov/newsroom/press-releases/trump-administration-strengthens-oversight-nursing-home-inspections-keep-patients-and-residents-safe> on June 1, 2021.
- <sup>39</sup> CMS SOM, Pub. No. 100-07, Ch. 8—Standards and Certification, Section 8000B (Rev. 1, 05-21-04). 42 CFR § 488.320 also outlines various sanctions that CMS can impose on States for inadequate survey performance.
- <sup>40</sup> CMS SOM, Pub. No. 100-07, Ch. 8—Standards and Certification, Section 8000G (Rev. 1, 05-21-04).
- <sup>41</sup> CMS, “FY 2018 State Performance Standards System Guidance,” Admin Info: 20-02-ALL, October 17, 2017; “FY 2015 State Performance Standards Guidance,” “FY 2016 State Performance Standards Guidance,” and “FY 2017 State Performance Standards Guidance.”
- <sup>42</sup> One of the suspended performance measures was for not meeting the statutory timeframe to survey every nursing home in the State at least every 15 months and have a Statewide average interval not greater than 12 months between standard surveys of all nursing homes. The other suspended performance measure was for not initiating enough high-priority complaint surveys within 10 days of the allegation. For more information see: CMS, “FY 2018 State Performance Standards System Guidance,” Admin Info: 20-02-ALL, October 17, 2017.
- <sup>43</sup> CMS SOM, Pub. No. 100-07, Ch. 8—Standards and Certification, Section 8000B (Rev. 1, 05-21-04).
- <sup>44</sup> CMS SOM, Pub. No. 100-07, Ch. 8—Standards and Certification, Sections 8000G and 8000 H (Rev. 1, 05-21-04); CMS, Corrective Action Plan Monitoring Response; CMS HQ and Regional Office Interview Transcripts.
- <sup>45</sup> CMS, “Final Fiscal Year (FY) 2015 State Medicare Allocations for Survey & Certification,” Admin Info: 15-26-ALL, March 27, 2015; “Final Fiscal Year (FY) 2016 State Medicare Allocations for Survey & Certification,” Admin Info: 16-23-ALL, April 1, 2016; “Final Fiscal Year (FY) 2017 State Medicare Allocations for Survey & Certification,” Admin Info: 17-17-ALL, June 16, 2017; “Final Fiscal Year (FY) 2018 State Medicare Allocations for Survey & Certification,” Admin Info: 18-12-ALL, June 8, 2018.
- <sup>46</sup> CMS, “FY 2010 Online Performance Appendix,” 2011. <https://www.cms.gov/About-CMS/Agency-Information/PerformanceBudget/downloads/cmsopafy2011.pdf> on February 1, 2021.
- <sup>47</sup> OIG’s State audit reports for Arizona (A-09-16-02013), Florida (A-04-17-08052), Kansas (A-07-17-03218), Missouri (A-07-1603217), Nebraska (A-07-17-03224), New York (A-02-15-01024), North Carolina (A-04-17-02500), Oregon (A-09-16-02007), and Washington (A-09-13-02039).
- <sup>48</sup> OIG, *Nebraska Did Not Always Verify Correction of Deficiencies Identified During Surveys of Nursing Homes Participating in Medicare and Medicaid*, A-07-17-03224. Accessed at <https://oig.hhs.gov/oas/reports/region7/71703224.asp> on August 20, 2019.
- <sup>49</sup> OIG, *CMS Guidance to State Survey Agencies on Verifying Correction of Deficiencies Needs To Be Improved To Help Ensure the Health and Safety of Nursing Home Residents*, A-09-18-02000, February 2019. Accessed at <https://oig.hhs.gov/oas/reports/region9/91802000.pdf> on March 5, 2019.
- <sup>50</sup> GAO, *Management Report: CMS Needs To Address Gaps in Federal Oversight of Nursing Home Abuse Investigations That Persisted in Oregon for at Least 15 Years*, GAO-19-313R, April 2019. Accessed at: <https://www.gao.gov/assets/700/698539.pdf> on August 20, 2019.
- <sup>51</sup> OIG, *Incidents of Potential Abuse and Neglect at Skilled Nursing Facilities Were Not Always Reported and Investigated*, A-01-16-00509, June 2019. Accessed at <https://oig.hhs.gov/oas/reports/region1/11600509.pdf> on July 8, 2019.
- <sup>52</sup> *Ibid.*

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<sup>53</sup> OIG, *States Continued To Fall Short in Meeting Required Timeframes for Investigating Nursing Home Complaints: 2016–2018*, OEI-01-19-00421, September 2020. Accessed at <https://oig.hhs.gov/oei/reports/OEI-01-19-00421.pdf> on December 5, 2020.

<sup>54</sup> OIG, *A Few States Fell Short in Timely Investigation of the Most Serious Nursing Home Complaints: 2011–2015*, OEI-01-16-00330, September 2017. Accessed at <https://oig.hhs.gov/oei/reports/oei-01-16-00330.pdf> on March 5, 2019.

<sup>55</sup> OIG, *States Continued To Fall Short in Meeting Required Timeframes for Investigating Nursing Home Complaints: 2016–2018*, OEI-01-19-00421, September 2020. Accessed at <https://oig.hhs.gov/oei/reports/OEI-01-19-00421.pdf> on December 5, 2020.

<sup>56</sup> OIG, *Onsite Surveys of Nursing Homes During the COVID-19 Pandemic: March 23–May 30, 2020*, OEI-01-20-00430, December 2020. Accessed at <https://oig.hhs.gov/oei/reports/OEI-01-20-00430.pdf> on January 7, 2020.

<sup>57</sup> CMS suspended or placed on hold 4 of the 12 SPSS performance measures that were exclusive to nursing homes during the study period (one was suspended for 2 years). Consequently, the number of performance measures assessed over the 4-year period was 43 as opposed to 48.

<sup>58</sup> Sections 1819(g)(2)(A)(iii) and 1919(g)(2)(A)(iii) of the Social Security Act; 42 CFR § 488.308 and 488.330.

<sup>59</sup> OIG analysis of CMS States' Corrective Action Plans from FYs 2015–2018.

<sup>60</sup> This analysis is based on 386 missed performance measures. States missed an additional 20 but they were excluded from the analysis because CMS did not require the State to submit a corrective action plan.

<sup>61</sup> CMS response to OIG informational questions on August 30, 2019.

<sup>62</sup> CMS, "FY 2018 State Performance Standards System Guidance," Admin Info: 18-02-ALL, October 17, 2017. Accessed at <https://www.cms.gov/Medicare/Provider-Enrollment-and-Certification/SurveyCertificationGenInfo/Downloads/Admin-Info-Letter-18-02.pdf> on June 1, 2021.

<sup>63</sup> This analysis includes non-delivery deductions for only 3 of the 4 years of our study period. CMS makes non-delivery deductions on the basis of State performance in the prior year and we did not collect information on non-delivery deductions imposed in FY 2019, which is associated with State survey performance in FY 2018. However, CMS indicated in email correspondence that it imposed non-delivery deductions on only a few States in FY 2019, while 19 States failed the 15-month requirement in the corresponding FY 2018 time period.

<sup>64</sup> Sections 1819(g)(2)(A)(iii) and 1919(g)(2)(A)(iii) of the Social Security Act; 42 CFR §§ 488.308(a).

<sup>65</sup> CMS also imposes non-delivery deductions when States fail to meet survey timeliness standards at other facilities (e.g., home health agencies) and aggregates these deductions at States each fiscal year. We cannot determine with certainty whether non-delivery deductions were exclusively for State performance in conducting nursing home surveys versus surveys of nursing homes and other types of facilities combined.

<sup>66</sup> CMS awarded \$5.5 million in one-time adjustments to all States; \$3 million of these one-time adjustments went to States during years in which they received a non-delivery deduction.

<sup>67</sup> CMS, "Final Fiscal Year (FY) 2017 State Medicare Allocations for Survey & Certification," Admin Info: 17-17-ALL, June 16, 2017.

<sup>68</sup> We did not round the percentage of offsets for one-time adjustments. Total one-time adjustments for FY 2017 were \$1,164,600 and non-delivery deductions were \$1,249,600 (93 percent).

<sup>69</sup> Under 42 CFR § 488.320(d)(5), for all survey inadequacies in Medicare facilities, CMS may initiate action to terminate the 1864 agreement with the State, either in whole or in part.

<sup>70</sup> CMS suspended or placed on hold 4 of the 12 SPSS measures during the study period (one was suspended for 2 years); therefore, the total number SPSS measures that were exclusive to nursing homes during the 4 years was 43 instead of 48.

<sup>71</sup> OIG, *Onsite Surveys of Nursing Homes During the COVID-19 Pandemic: March 23–May 30, 2020*, OEI-01-20-00430, December 2020. Accessed at <https://oig.hhs.gov/oei/reports/OEI-01-20-00430.pdf> on April 28, 2021.

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<sup>72</sup> OIG, *States Continued To Fall Short in Meeting Required Timeframes for Investigating Nursing Home Complaints: 2016–2018*. Accessed at <https://oig.hhs.gov/oei/reports/OEI-01-19-00421.asp> on December 8, 2021.

<sup>73</sup> OIG, *States' Backlogs of Standard Surveys of Nursing Homes Grew Substantially During the COVID-19 Pandemic*. Accessed at <https://oig.hhs.gov/oei/reports/OEI-01-20-00431.pdf> on December 8, 2021.

<sup>74</sup> CMS, "Release of Fiscal Year (FY) 2017 State Performance Standards System (SPSS) Results," June 8, 2018. Accessed at <https://www.cms.gov/Medicare/Provider-Enrollment-and-Certification/SurveyCertificationGenInfo/Downloads/Admin-Info-Letter-18-13.pdf> on November 11, 2020.

<sup>75</sup> CMS, "Release of Fiscal Year (FY) 2018 State Performance Standards System (SPSS) Results," October 17, 2019. Accessed at <https://www.cms.gov/Medicare/Provider-Enrollment-and-Certification/SurveyCertificationGenInfo/Downloads/AdminInfo-20-01-ALL.pdf> on November 11, 2020.

<sup>76</sup> CMS SOM, Pub. No. 100-07, Ch. 8—Standards and Certification (Rev. 1, 05-21-04).