

Department of Health and Human Services

**OFFICE OF
INSPECTOR GENERAL**

**NEW YORK SHOULD IMPROVE ITS
OVERSIGHT OF SELECTED NURSING
HOMES' COMPLIANCE WITH FEDERAL
REQUIREMENTS FOR LIFE SAFETY AND
EMERGENCY PREPAREDNESS**

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Office of Inspector General

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Report in Brief

Date: August 2019

Report No. A-02-17-01027

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



Why OIG Did This Review

In 2016, the Centers for Medicare & Medicaid Services (CMS) updated its life safety and emergency preparedness regulations to improve protections for all Medicare and Medicaid beneficiaries, including those residing in long-term care facilities (commonly referred to as nursing homes). Updates included requirements that nursing homes have expanded sprinkler systems and smoke detector coverage; an emergency preparedness plan that is reviewed, trained on, tested, and updated at least annually; and provisions for sheltering in place and evacuation.

Our objective was to determine whether New York State ensured that selected nursing homes in New York that participate in the Medicare or Medicaid programs complied with CMS requirements for life safety and emergency preparedness.

How OIG Did This Review

Of the 621 nursing homes in New York that participated in Medicare or Medicaid, we selected a non-statistical sample of 20 nursing homes for our review based on certain risk factors, including multiple high-risk deficiencies reported to CMS by New York.

We conducted unannounced site visits at the 20 nursing homes from January through April 2018. During the site visits, we checked for life safety violations and reviewed the nursing homes' emergency preparedness plans.

New York Should Improve Its Oversight of Selected Nursing Homes' Compliance With Federal Requirements for Life Safety and Emergency Preparedness

What OIG Found

New York did not ensure that selected nursing homes in the State that participated in the Medicare or Medicaid programs complied with CMS requirements for life safety and emergency preparedness. During our onsite inspections, we identified deficiencies in areas related to life safety and emergency preparedness at all 20 nursing homes that we reviewed. Specifically, we found 205 areas of noncompliance with life safety requirements related to building exits and fire barriers, fire detection and suppression systems, carbon monoxide detectors, hazardous storage, smoking policies and fire drills, and elevator and electrical equipment testing and maintenance. We found 219 areas of noncompliance with emergency preparedness requirements related to written emergency plans; emergency supplies and power; plans for evacuation, sheltering in place, and tracking residents and staff; emergency communications; and emergency plan training. As a result, nursing home residents at the 20 nursing homes were at increased risk of injury or death during a fire or other emergency.

The identified areas of noncompliance occurred because of several contributing factors: specifically, inadequate management oversight and staff turnover at the nursing homes. In addition, New York did not have a standard life safety training program for all nursing home staff (not currently required by CMS), generally performed comprehensive life safety surveys no more frequently than once every 9 to 15 months, and did not check to see whether carbon monoxide detectors were installed.

What OIG Recommends and New York's Comments

We made a series of recommendations to New York to improve its oversight of the nursing homes' compliance with Federal requirements for life safety and emergency preparedness.

In written comments on our draft report, New York generally agreed with our recommendations and described steps it has taken or plans to take to address them. New York disagreed with the timing of our audit, our audit objective, our sampling methodology, the qualifications of the audit team, and some of our findings. After reviewing New York's comments, we modified one recommendation to address its concerns. We maintain that our findings and recommendations, as revised, are valid.

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INTRODUCTION

WHY WE DID THIS REVIEW

In 2016, the Centers for Medicare & Medicaid Services (CMS) updated its life safety and emergency preparedness regulations to improve protections for all Medicare and Medicaid beneficiaries, including those residing in long-term care facilities (commonly referred to as nursing homes). The updates included requirements that nursing homes have expanded sprinkler systems and smoke detector coverage; an emergency preparedness plan that is reviewed, trained on, tested, and updated at least annually; and provisions for sheltering in place and evacuation.

As part of its oversight activities, the Office of Inspector General is conducting a series of reviews nationwide to assess compliance with these new life safety and emergency preparedness requirements. This review focuses on selected nursing homes in New York State.

OBJECTIVE

Our objective was to determine whether the New York State Department of Health (State agency) ensured that selected nursing homes in New York that participate in the Medicare or Medicaid programs complied with CMS requirements for life safety and emergency preparedness.

BACKGROUND

Medicare and Medicaid Coverage of Nursing Homes

The Medicare and Medicaid programs cover care in nursing homes for eligible beneficiaries. Sections 1819 and 1919 of the Social Security Act (the Act) establish requirements for CMS and States to perform surveys of nursing homes to determine whether they meet Federal participation requirements. For Medicare and Medicaid, these statutory participation and survey requirements are implemented in Federal regulations at 42 CFR part 483, subpart B, and 42 CFR part 488, subpart E, respectively.

Requirements for Life Safety and Emergency Preparedness

Nursing homes are required to comply with all Federal, State, and local laws, regulations, and codes, as well as accepted professional standards and principles (42 CFR § 483.70). Federal regulations on life safety (42 CFR § 483.90) require nursing homes to comply with standards set forth in the *Life Safety Code* (National Fire Protection Association (NFPA) 101) and *Health Care Facilities Code* (NFPA 99).¹ CMS lists applicable requirements on Form CMS-2786R, Fire Safety

¹ CMS adopted the 2012 edition of both publications in a final rule published in 81 Fed. Reg. 26872 (May 4, 2016).

Survey Report.² Federal regulations on emergency preparedness (42 CFR § 483.73) include specific requirements for nursing homes' emergency preparedness plans and reference the *Standard for Emergency and Standby Power Systems* (NFPA 110).³ CMS lists applicable requirements on its *Emergency Preparedness Surveyor Checklist*.⁴

The *Fire Safety Survey Report* and *Emergency Preparedness Surveyor Checklist* are used when CMS or a designated agency performs a nursing home survey. The results of each survey are reported and added to CMS's Automated Survey Processing Environment (ASPEN) system.

In addition to the Federal requirements for life safety and emergency preparedness, the New York Executive Law mandates that carbon monoxide detectors be installed in buildings that utilize fuel-burning appliances or have an attached garage (N.Y. Exec. Law § 378).

Responsibilities for Life Safety and Emergency Preparedness

In New York, the State agency oversees nursing homes and is responsible for ensuring that nursing homes comply with Federal, State, and local regulations. Under an arrangement known as a "section 1864 agreement" with CMS, the State agency is responsible for completing life safety and emergency preparedness surveys not later than once every 15 months at nursing homes that participate in the Medicare or Medicaid program.⁵ However, nursing homes with repeat deficiencies can be surveyed more frequently.⁶

Management and staff at nursing homes are ultimately responsible for ensuring the safety and well-being of the nursing home's residents and for complying with Federal, State, and local regulations. They are responsible for ensuring that facility systems such as furnaces, water heaters, kitchen equipment, generators, sprinkler and alarm systems, elevators, and other equipment are properly installed, tested, and maintained. They are also responsible for ensuring that the nursing home is free from hazards and for ensuring that emergency plans,

² Form CMS-2786R is available online at <https://www.cms.gov/Medicare/CMS-Forms/CMS-Forms/CMS-Forms-Items/CMS009335.html>.

³ CMS adopted the 2010 edition of NFPA 110 in a final rule published in 81 Fed. Reg. 63860, 63929 (September 16, 2016).

⁴ CMS provides online guidance for emergency preparedness at <https://www.cms.gov/medicare/provider-enrollment-and-certification/surveycertemergprep/emergency-prep-rule.html>.

⁵ The Act §§ 1819(g)(2)(A)(iii) and 1919(g)(2)(A)(iii). Under the agreement, the State agency agrees to carry out the provisions of sections 1864, 1874, and related provisions of the Act.

⁶ 42 CFR § 488.308(c). The State agency generally conducts comprehensive surveys every 9 to 15 months and will follow up on deficiencies either through a site visit or documentation submission depending on the nature and severity of the deficiency. For 17 of the 20 nursing homes we visited, the State agency conducted its three most recent comprehensive surveys no more frequently than every 9 to 15 months. For two nursing homes, the State agency conducted two surveys every 16 months, and for one nursing home, they were conducted every 6 months.

including fire escape plans and disaster preparedness plans, are updated and tested on a regular basis.

HOW WE CONDUCTED THIS REVIEW

As of November 2017, there were 621 nursing homes in New York that participated in the Medicare or Medicaid programs. We selected a non-statistical sample of 20 of these nursing homes for our review based on risk factors, including multiple high-risk deficiencies reported to CMS's ASPEN system by the State agency (17 nursing homes had multiple high-risk deficiencies, and 3 nursing homes had deficiencies related to sprinkler system coverage or emergency preparedness).⁷

We conducted unannounced site visits at the 20 nursing homes from January through April 2018. During the site visits, we checked for life safety violations and reviewed the nursing homes' emergency preparedness plans.

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

Appendix A contains the details of our audit scope and methodology.

FINDINGS

The State agency did not ensure that selected nursing homes in New York that participated in the Medicare or Medicaid programs complied with CMS requirements for life safety and emergency preparedness. During our onsite inspections, we identified deficiencies in areas related to life safety and emergency preparedness at all 20 nursing homes that we reviewed. Specifically, we found 205 areas of noncompliance with life safety requirements related to building exits and fire barriers, fire detection and suppression systems, carbon monoxide detectors, hazardous storage, smoking policies and fire drills, and elevator and electrical equipment testing and maintenance. We found 219 areas of noncompliance with emergency preparedness requirements related to written emergency plans; emergency supplies and power; plans for evacuation, sheltering in place, and tracking residents and staff; emergency communications; and emergency plan training. As a result, nursing home residents at the 20 nursing homes were at increased risk of injury or death during a fire or other emergency.

The identified areas of noncompliance occurred because management oversight at nursing homes was inadequate, and nursing homes had high staff turnover. In addition, the State

⁷ We defined high-risk deficiencies based on (1) widespread and had the potential for more than minimal harm, (2) potential for actual harm, or (3) immediate jeopardy to resident life and safety.

agency did not have a standard life safety training program for all nursing home staff (not currently required by CMS), generally performed comprehensive life safety surveys no more frequently than once every 9 to 15 months, and did not check to see whether carbon monoxide detectors were installed.

Appendix B summarizes the areas of noncompliance that we identified at each nursing home.

SELECTED NURSING HOMES DID NOT COMPLY WITH LIFE SAFETY REQUIREMENTS

CMS's *Fire Safety Survey Report*, described above, lists the Federal regulations on life safety that nursing homes must comply with and references each with an identification number referred to as a "K-Tag" (K-100 through K-933). New York nursing homes are also required to install carbon monoxide detectors in buildings that utilize fuel-burning appliances or have an attached garage.

Building Exits and Fire Barriers

In case of fire or emergency, nursing homes are required to have unobstructed exits, self-closing doors in exit passageways that do not require tools or keys to open and are not manually propped open, discharges from exits that are free from hazards, illuminated exit signs, and sealed smoke and fire barriers (K-Tags 211, 222, 223, 271, 293, 372).

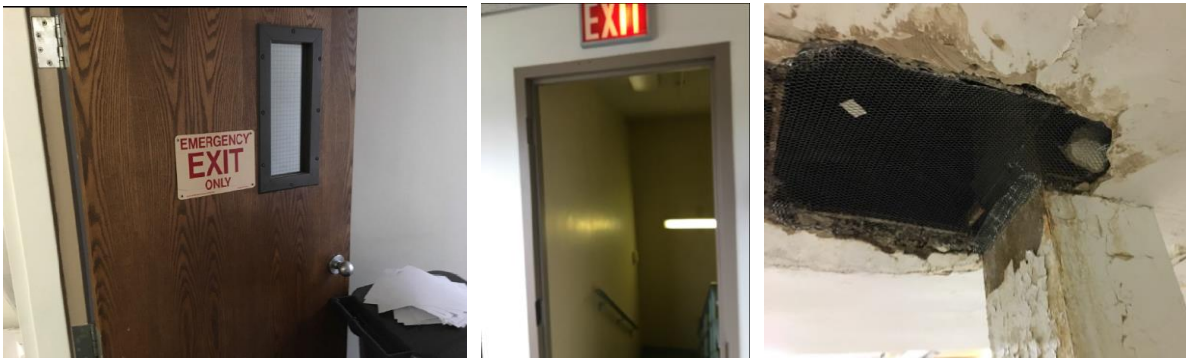
Of the 20 nursing homes we visited, 18 had 1 or more deficiencies related to building exits and fire barriers.⁸ Specifically, emergency exit doors at two facilities could not be opened, pathways leading to exit doors at six facilities were blocked or impeded, and, at nine facilities, the discharge area from the exit door was blocked or impeded. In addition, eight facilities had self-closing doors that were propped open or missing altogether, and five facilities had missing or non-illuminated exit signs. Finally, 15 facilities had missing or damaged smoke and fire barriers, including broken ceiling tiles and openings that could contribute to the spread of smoke and fire. The photographs on the following page depict some of the deficiencies we identified during our site visits.

⁸ Among the 18 nursing homes, there were a total of 45 deficiencies related to building exits and fire barriers.



Photograph 1 (left): Fire department access road to the rear of the building blocked by snow several days after storm.

Photograph 2 (right): Discharge area blocked by snow.



Photograph 3 (left): Emergency exit door propped open with garbage can.

Photograph 4 (center): Exit stairwell with no fire exit door.

Photograph 5 (right): Ceiling smoke/fire barrier in disrepair.

Fire Detection and Suppression Systems

Nursing homes are required to have a fire alarm system that has an alternate power supply and is tested and maintained in accordance with NFPA requirements. Sprinkler systems must be installed, inspected, and maintained in accordance with NFPA requirements, and high-rise buildings must be sprinklered throughout. Cooking equipment, including special fire suppression systems, must be maintained and repairs performed on all components at intervals necessary to maintain good working condition. Nursing homes must also have fire watch procedures for times when the fire alarm or sprinkler system is out of service, and portable fire extinguishers must be inspected monthly. Smoke detectors are required in patient rooms, spaces open to corridors, and other areas (K-Tags 324, 342, 344, 345, 346, 347, 351, 352, 353, 354, 355, 421).

Of the 20 nursing homes we visited, 19 had 1 or more deficiencies related to their fire detection and suppression systems.⁹ Specifically, one facility had an inadequate alternate power supply for its fire alarm system,¹⁰ and five failed to have their fire alarm system routinely tested and maintained.¹¹ In addition, 10 facilities had sprinkler system heads that were blocked or obstructed, 4 facilities failed to have their sprinkler system tested and maintained, and 1 high-rise facility was not yet fully sprinklered.¹²

At 13 facilities, the hoods on cooking equipment had not been serviced, or the fire suppression system was not checked on a monthly basis. Also, 13 facilities had inadequate policies and procedures for fire watches.¹³ In addition, 13 facilities did not inspect their portable fire extinguishers (see photograph below) on a monthly basis, and 7 facilities did not have smoke detectors in all spaces open to corridors and other areas.



Photograph 6: Fire extinguisher did not have February and March 2018 inspections documented. New annual tag attached in October 2017. Photograph taken on April 4, 2018.

⁹ Among the 19 nursing homes, there were a total of 67 deficiencies related to fire detection and suppression systems.

¹⁰ One of two fire alarm panels did not have a backup battery.

¹¹ At three facilities, some inspections and testing reports were missing. At one facility, a problem noted by the inspector was not corrected between inspections (multiple third-party fire alarm inspection reports noted that an automatic-closing fire door connected to the fire alarm system was not working properly, and there was no evidence that it was repaired). At another facility, it was unknown whether all fire alarm functions worked properly because there was no documentation that the system had ever been tested or maintained.

¹² The two floors occupied by the nursing home were fully sprinklered; however, the remaining part of the building was not, and there were no written plans to do so in the required timeframe (12 years from the July 5, 2016, effective date of 42 CFR § 483.90).

¹³ When fire alarms or sprinkler systems are out of service, individuals are assigned areas to patrol to watch for fire or smoke until the systems are back in service. If a fire watch is not done, the building must be evacuated.

Carbon Monoxide Detectors

Carbon monoxide is a colorless, odorless deadly gas produced by fuel-burning appliances and motor vehicles. New York State law mandates detectors that can quickly sense a carbon monoxide leak for any building that utilizes fuel-burning appliances or has an attached garage where motor vehicles may be present (N.Y. Exec. Law § 378).

Of the 20 nursing homes we visited, 11 facilities had deficiencies related to carbon monoxide detectors. Specifically, two facilities did not have any carbon monoxide detectors, and nine facilities had inadequate detector coverage, including one facility that did not properly install its detectors by removing a factory-provided battery tab to provide power to the detector. (See photograph below for an example of an improperly installed carbon monoxide detector.) As of the date of our site visits, the State agency did not check for carbon monoxide detectors when conducting life safety surveys.



Photograph 7: Carbon monoxide detector installed without removing the factory-provided battery tab.

Hazardous Storage Areas

In hazardous storage areas, nursing homes must install a fire barrier or an automatic fire extinguishing system with smoke-resistant partitions and self-closing doors. Hazardous chemicals must be stored in a safe manner, and general upkeep should be maintained to limit unnecessarily large amounts of combustible materials that present a fire hazard (known as fire load). In addition, garbage and laundry containers must not occupy more than one-half gallon per square foot of floor space. Oxygen systems must be maintained and inspected, and rooms with oxygen cylinders must be properly placarded, including a sign indicating that the room is used for oxygen storage, a no-smoking sign, and separately labeled storage spaces for full and empty cylinders. Oxygen cylinders must be stored in a safe manner so as not to damage or tip over the cylinder, which could cause a dangerous pressurized oxygen release (K-Tags 321, 322, 500, 541, 754, 905, 908, 923).

Of the 20 nursing homes we visited, 15 had 1 or more deficiencies related to hazardous storage areas.¹⁴ Specifically, we found 5 facilities with unnecessarily high fire loads in storage areas; 4 facilities with excessive amounts of garbage and laundry stored in rooms near patient wings; 14 facilities with doors to hazardous storage areas propped open, and gasoline cans or other hazardous chemicals not stored in approved flammable storage cabinets; and 10 facilities with oxygen cylinders stored in an unsecure manner or in rooms that were improperly placarded. The following photographs depict some of the deficiencies we identified during our site visits.



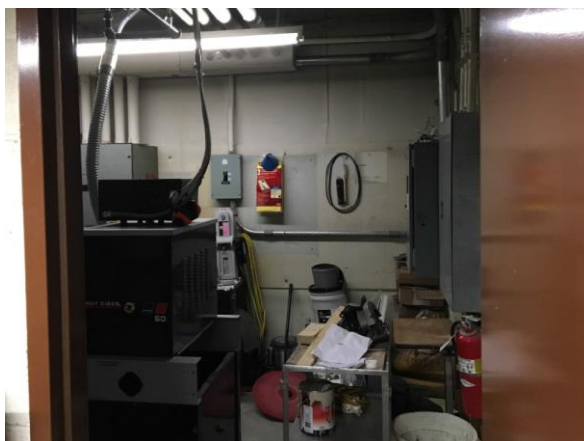
Photograph 8 (left): Bags of garbage in storage room on patient wing.



Photograph 9 (center): Bags of laundry in storage room on patient wing.

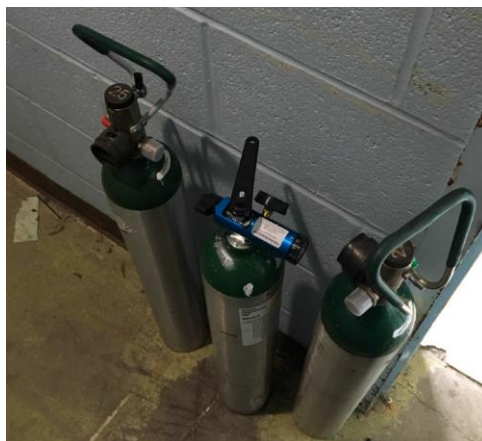


Photograph 10 (right): Unsecured gasoline cans left outside a flammables storage cabinet.



Photograph 11 (left): Door to generator room left open.

Combustible materials stored next to the generator.



Photograph 12 (right): Oxygen cylinders stored in an unsafe manner.

Smoking Policies and Fire Drills

Nursing homes are required to establish smoking policies for residents and staff. Smoking may only be permitted in authorized areas where ash receptacles are provided. Smoking is not allowed in resident rooms or hazardous storage areas. Further, no-smoking areas must include signage. Nursing homes are also required to conduct fire drills each calendar quarter that cover

¹⁴ Among the 15 nursing homes, there were a total of 33 deficiencies related to hazardous storage.

each work shift. Participation by staff members is required, and the drills must be planned and conducted by a qualified individual designated by the nursing home. The drills must be unannounced and include the transmission of a fire alarm signal and simulation of emergency fire conditions (K-Tags 712, 741, 925).

Of the 20 nursing homes we visited, 14 had 1 or more deficiencies related to smoking policies or fire drills.¹⁵ Specifically, 12 facilities were not following their smoking policies, such as banning smoking except in allowable marked areas. In addition, we found that eight facilities did not ensure that fire drills were conducted each quarter covering all work shifts, did not document fire drill attendance to verify staff participation, or did not document fire drills at all. The following photographs depict some of the conditions we identified during our site visits.



Photograph 13 (left): Cigarette butts in a designated no-smoking area.

Photograph 14 (right): Cigarette butts (circled) in a grassy area next to a natural gas meter.

Elevator and Electrical Equipment Testing and Maintenance

If a nursing home has an elevator, it must be tested and maintained on a regular basis. Nursing homes must also keep a record of tests and repairs of other electrical equipment, such as patient beds and lifts. If power strips, extension cords, and portable space heaters are used, they must meet Underwriters Laboratories (UL) requirements and be used in a safe manner (K-Tags 531, 781, 920, 921).

Of the 20 nursing homes we visited, 17 had 1 or more deficiencies related to elevator or electrical equipment testing and maintenance.¹⁶ Specifically, we found that 10 facilities did not adequately document that their elevator was tested or maintained because detailed testing reports from the elevator maintenance company were not retained. In addition, eight facilities

¹⁵ Among the 14 nursing homes, there were a total of 20 deficiencies related to smoking policies and fire drills.

¹⁶ Of the 20 nursing homes we visited, 15 had elevators. Among the 17 nursing homes with findings, there were a total of 29 deficiencies related to elevator or electrical equipment testing and maintenance.

did not keep a record of repairs to patient beds and lifts. Finally, nine facilities used power strips and extension cords that did not meet UL requirements or were unsafely connected to appliances, and two facilities connected portable space heaters in office areas to extension cords in an unsafe manner.

Life Safety Training

While conducting our onsite inspections, we found that there was a frequent turnover of nursing home management and staff. We noted that, although not required by CMS, there was no existing State agency training program that nursing home management could use to educate newly hired staff on how to comply with CMS requirements for life safety. For example, there was no standardized training program to teach newly hired maintenance staff about fire extinguisher inspections, fire suppression, alarm system, and elevator maintenance requirements, or the proper way to conduct and document fire drills.

SELECTED NURSING HOMES DID NOT COMPLY WITH EMERGENCY PREPAREDNESS REQUIREMENTS

CMS's Emergency Preparedness Surveyor Checklist, described earlier, lists the Federal regulations on emergency preparedness that nursing homes must comply with, and references each with an identification number referred to as an "E-Tag" (E-0001 through E-0042).

Emergency Plan

Nursing homes are required to have an emergency plan in place, and the plan must be easily located. Nursing homes are also required to update the plan at least annually; include a facility and community all-hazards risk assessment; address emergency events and resident population needs; include a continuity of operations plan; address coordination with Federal, State, and local government emergency management officials; and have policies and procedures for emergency events based on the risk assessment (E-Tags 0001, 0004, 0006, 0007, 0009, and 0013).

Of the 20 nursing homes we visited, 13 had 1 or more deficiencies related to their emergency plan.¹⁷ Specifically, we found that one facility did not have an official plan in place and that four facilities did not update their emergency plans annually. In addition, the plans at nine facilities did not include a facility and community all-hazards risk assessment, nine facilities did not address emergency events, six facilities did not address resident population needs, five facilities did not address continuity of operations, five facilities did not provide for coordination with all government emergency management officials, and one facility did not have policies and procedures for emergency events based on the risk assessment.

¹⁷ Among the 13 nursing homes, there were a total of 40 deficiencies related to emergency plan requirements.

Emergency Supplies and Power

Nursing homes must have an emergency plan that addresses emergency supplies and power and are required to have adequate supplies of emergency food, water, and pharmaceuticals readily available. (As a best practice, the Federal Emergency Management Agency (FEMA) considers 3 days of emergency supplies to be sufficient.)¹⁸ Nursing homes are also required to provide an alternate source of energy (usually a generator) to maintain temperatures to protect residents' health and safety, as well as for food storage, emergency lighting, fire protection, and sewage disposal (if applicable). Further, facilities must establish policies and procedures that determine how required heating and cooling of their facility will be maintained during an emergency situation, if there were a loss of the primary power source. Nursing homes that have generators must have them installed in a safe location and are required to perform weekly maintenance checks, monthly load tests, and annual fuel quality tests (if the generator operates on diesel fuel). Generators that operate on diesel fuel or propane gas are generally designed with a minimum fuel tank capacity to last for 3 days at half load, which factors in an emergency fuel stock and lead time for refueling with time built in for unanticipated delays. Nursing homes should also have a plan in place to keep generators fueled "as necessary" and an evacuation plan if emergency power is lost (E-Tags 0015 and 0041).

Of the 20 nursing homes we visited, 19 had 1 or more deficiencies related to emergency supplies and power.¹⁹ Specifically, 18 of the facilities did not adequately address the availability of emergency supplies or emergency power in their emergency plans. In addition, nine facilities did not have sufficient water on hand (FEMA recommends 1 gallon per person, per day, for 3 days),²⁰ and five facilities did not have a generator system sufficient to power their air conditioning system (or other alternate means of air conditioning or a plan that specified at which indoor air temperature the facility should be evacuated if it is too hot). Five facilities had generators located in an area susceptible to flooding,²¹ 1 facility had its generator located in a garage with a high fire load, and 14 facilities had not properly tested and maintained their generator. Seven facilities did not have sufficient generator fuel on hand to last 3 days, or sufficient plans to obtain emergency fuel or evacuate the facility when fuel levels reached a specified low level. Photograph 15 (following page) depicts one of the deficiencies we identified during our site visits.

¹⁸ The 3-day standard is a best practice recommendation, as CMS does not have a specific standard regarding what constitutes a sufficient amount of emergency supplies to have on hand. We did not audit compliance to this standard. Rather, our findings regarding a sufficient amount of generator fuel or other emergencies supplies are based on a totality of the applicable criteria.

¹⁹ Among the 19 nursing homes, there were a total of 59 deficiencies related to emergency supplies and power.

²⁰ As noted earlier, this 3-day standard is a best practice recommendation, as CMS does not have a specific standard regarding what constitutes a sufficient amount of water to have on hand.

²¹ The generators located in areas susceptible to flooding are not required to be moved to a safer location until a new generator system is installed (NFPA 110), although it would be a best practice to do so.



Photograph 15: Generator fuel gauge indicating low fuel level warning.

Plans for Evacuations, Sheltering in Place, and Tracking Residents and Staff During and After an Emergency

Nursing homes are required to have a plan for evacuations, sheltering in place, and tracking residents and staff during and after an emergency. Nursing homes must also have a plan for transferring medical records, using volunteers, and transferring residents, and procedures for waivers when providing care at alternate sites during emergencies (E-Tags 0018, 0020, 0022, 0023, 0024, 0025, 0026, 0033).

Of the 20 nursing homes we visited, 16 had 1 or more deficiencies related to their emergency plans for evacuations, sheltering in place, and tracking residents and staff during and after emergencies.²² Specifically, we found that emergency plans for 2 facilities did not address evacuations, 13 did not address sheltering in place, 3 did not address tracking residents and staff, 5 did not address transferring medical records, 4 did not address using volunteers, 3 did not address transferring residents during disasters, and 10 did not address obtaining waivers when providing care at alternate sites during emergencies.

Emergency Communications Plans

Nursing homes are required to have a communications plan that includes names and contact information for staff, entities providing services, residents' physicians, other nearby nursing homes, volunteers, government emergency management offices, and the State agency, among others. The plan must be updated at least annually. Nursing homes are also required to have primary and alternate means of communication, such as cell phones or radios; a means to communicate residents' condition information and location in the event of an evacuation; and

²² Among the 16 nursing homes, there were a total of 40 deficiencies related to tracking residents and staff.

methods to share emergency plan information with residents and their families (E-Tags 0029, 0030, 0031, 0032, 0034, 0035).

At all 20 nursing homes, we identified 1 or more deficiencies related to the adequacy of the emergency communications plans.²³ Specifically, we found that six facilities did not have an official emergency communications plan but had contact information in other locations. We found that 19 facilities did not have required name and contact information, 8 did not update their plans annually, 8 had insufficient alternate means of communication, 2 did not have procedures for recording resident condition and location information, and 13 did not have procedures for sharing emergency plan information with residents and their families.

Emergency Plan Training

Nursing homes are required to have a training and testing program related to their emergency plan and to provide updated training at least annually. Initial training must be provided to new staff members, independent contractors (e.g., contracted cleaning staff), and volunteers. The training, as well as annual refresher training required for all staff, must be designed to demonstrate knowledge of emergency procedures and must be documented. Nursing homes must also conduct an annual community-based, full-scale testing exercise.²⁴ In addition, a second training exercise (full-scale testing exercise, facility-based exercise, or “tabletop” exercise) must be completed annually. An analysis of all training exercises (and actual events) must be completed and documented and the emergency plan revised, if necessary (E-Tags 0036, 0037, 0039).

Of the 20 nursing homes we visited, 11 had 1 or more deficiencies related to emergency plan training.²⁵ Specifically, four facilities did not update their training plan annually, two did not provide adequate initial training, eight provided annual refresher training that was not adequate because not all emergency plan elements were included or documented in the training, two did not conduct annual full-scale training exercises, three did not conduct a second training exercise, and five did not conduct analyses of their training exercises.

CONCLUSION

At the conclusion of our inspections, we shared the deficiencies we identified with nursing home management and staff so that immediate corrective actions could be taken. We also immediately shared the identified deficiencies with the State agency and CMS for follow-up, as appropriate.

²³ Among the 20 nursing homes, there were a total of 56 deficiencies related to emergency communications.

²⁴ The exercise can be facility based if a community-based exercise is not possible. Further, nursing homes are exempt from this requirement if they activated their emergency plan during the year.

²⁵ Among the 11 nursing homes, there were a total of 24 deficiencies related to emergency plan training.

While nursing home management and staff are ultimately responsible for ensuring resident safety, we maintain that the State agency can reduce the risk of resident injury or death by improving its oversight. For example, the State agency could explain CMS requirements for life safety and emergency preparedness to nursing homes by providing standardized life safety training and conducting more frequent comprehensive life safety and emergency preparedness surveys at facilities with a history of multiple high-risk deficiencies.²⁶

RECOMMENDATIONS

We recommend that the New York State Department of Health:

- follow up with the 20 nursing homes to ensure corrective actions have been taken regarding the life safety and emergency preparedness deficiencies identified in this report,
- work with CMS and other States' survey agencies to develop standardized life safety training for nursing home staff,
- conduct more frequent surveys at nursing homes with a history of multiple high-risk deficiencies, and
- instruct all nursing homes to install carbon monoxide detectors as required by New York State law and modify its survey procedures to include a check for carbon monoxide detectors.

STATE AGENCY COMMENTS AND OFFICE OF INSPECTOR GENERAL RESPONSE

In written comments on our draft report, the State agency agreed with our first recommendation and generally agreed with our second and third recommendations. The State agency also described steps it has taken or plans to take to address the recommendations, including training nursing home staff throughout New York.²⁷ The State agency requested that we modify our second recommendation to include other States' survey agencies when working with CMS to develop a standard life safety training program for all nursing home staff. The State agency indicated that it will consider implementing our final recommendation (to install carbon monoxide detectors) after consulting with other State agencies. The State agency disagreed with the timing of our audit, our audit objective, our sampling methodology, the

²⁶ While CMS does not specifically require comprehensive life safety training, under the State agency's section 1864 agreement with CMS (described on page 2), the State agency agreed to perform certain functions, including explaining Federal requirements to providers to enable them to maintain standards of health care consistent with Medicare and Medicaid participation requirements (CMS *State Operations Manual* § 1010). Also, as mandated by §§ 1819(g)(1)(B) and 1919(g)(1)(B) of the Act, States must conduct periodic educational programs for the staff and residents of nursing homes in order to present current regulations, procedures, and policies.

²⁷ Specifically, the State agency provided times, dates, and locations of trainings it has conducted.

qualifications of the audit team, and some of our findings. Finally, the State agency commented on several “best practice findings” that we identified and documented on inspection worksheets that we provided to the State agency and CMS immediately after our site visits but did not include in our draft report.

After reviewing the State agency’s comments, we modified our second recommendation consistent with the State agency’s request. We maintain that our findings and recommendations, as revised, are valid. The State agency’s comments are included in their entirety as Appendix C.

TIMING AND AUDIT OBJECTIVE

State Agency Comments

The State agency took issue with the timing and objective of our audit. Specifically, the State agency indicated that it did not believe that the timing of our audit and audit objective allowed it ample time to ensure that nursing homes complied with CMS requirements for life safety and emergency preparedness. Specifically, the State agency noted that the requirements became effective November 15, 2017—less than 2 months prior to the start of our fieldwork. According to the State agency, it is “impossible to expect that [it] would have surveyed, or even been able to survey, all 20 nursing homes” between November 2017 and the start of our audit. In addition, the State agency indicated that the timing of our audit was significantly premature to accurately achieve our audit objective.

Office of Inspector General Response

CMS’s requirements for life safety (42 CFR § 483.90) became effective July 5, 2016, and its requirements for emergency preparedness (42 CFR § 483.73) became effective November 15, 2016, with an implementation date of November 15, 2017. Therefore, we disagree with the State agency’s assertion that the timing of our audit and audit objective did not allow it ample time to ensure that nursing homes complied with CMS requirements for life safety and emergency preparedness. In addition, we noted that the State agency surveyed 18 of the 20 sampled nursing homes after the November 15, 2016, effective date for the emergency preparedness regulation, including 3 that were surveyed after the November 15, 2017, implementation date.

SAMPLING METHODOLOGY

State Agency Comments

The State agency asserted that we drew conclusions based on a nonstatistical sample of 20 nursing homes rather than a formal statistical sample. According to the State agency, by employing a risk-based sampling methodology, we are unable to draw conclusions about the State agency’s overall oversight practices.

Office of Inspector General Response

Throughout our report, including the title, Objective, Scope, Methodology, and Findings, we make clear that our review focused only on selected nursing homes in New York State. As described in the report, we selected a nonstatistical sample of 20 nursing homes for our review and did not draw conclusions about the State agency's overall oversight practices.

AUDITOR QUALIFICATIONS

State Agency Comments

The State agency asserted that the audit team was not qualified to perform the audit because the auditors had not completed an approved training and testing program in survey certification techniques, as required by section 1919(g)(2) of the Act. As a result, the auditors may have misunderstood or misinterpreted regulatory requirements and, therefore, reported inaccurate findings.

Office of Inspector General Response

The section of the Act cited by the State agency refers to staff qualifications for a formal nursing home survey performed by CMS or its designee. We conducted a performance audit in accordance with generally accepted government auditing standards. Such audits cover a wide range of topics and require the audit team to have a "general knowledge of the environment in which the audited entity operates and the subject matter." The audit team met the requirements as set forth in the auditing standards and had previously performed similar reviews. Further, the lead auditor on this review was a certified Fire Fighter, Fire Instructor, Fire Officer, and Safety Officer by the National Board on Fire Service Professional Qualifications. Therefore, we maintain that the audit team was well qualified to conduct this audit.

Moreover, we provided the State agency and CMS with copies of our inspection worksheets immediately after each site visit. In addition, prior to issuing our draft report, we met with State agency officials several times to discuss the audit team's findings.

INSTANCES OF NONCOMPLIANCE

The State agency disagreed with several findings related to alternative fuel and emergency power, generator location, air conditioning systems, fire detection and suppression systems, and building exits and fire barriers.

Alternative Fuel and Emergency Power

State Agency Comments

The State agency asserted that we erroneously interpreted CMS's regulations to mean that generators should have an alternate fuel source and 3 days of fuel.

Office of Inspector General Response

With regards to an alternate fuel source for certain generators, the State agency commented on a "best practice finding" that we identified and documented on our inspection worksheet but did not include in our report. For example, although it is not required, it would be a best practice for a nursing home to have an alternate fuel source (e.g., propane) for a natural-gas-powered generator in case the natural gas supply is disrupted.

Regarding fuel levels, our finding related only to facilities that did not have sufficient generator fuel on hand to last 3 days, or sufficient plans to obtain emergency fuel or evacuate the facility when fuel levels reached a specified low level. Our finding reflects the totality of the criteria and, in most instances, the nursing home could have corrected the deficiency by filling its fuel tank. We would not have cited a nursing home for having less than 3 days of generator fuel on hand if it had sufficient plans to obtain emergency fuel or evacuate the facility.

Generator Location

State Agency Comments

According to the State agency, CMS's regulation regarding the location of generators applies to those installed in new or renovated buildings; therefore, it does not apply to the facilities we identified in our draft report, all of which were constructed prior to the regulation's implementation date.

Office of Inspector General Response

We agree with the State agency's comments regarding the application of CMS's regulation. As described in footnote 21 (page 11), the generators "are not required to be moved to a safer location until a new generator system is installed (NFPA 110), although it would be a best practice to do so."

Air Conditioning Systems

State Agency Comments

According to the State agency, air conditioning is not considered an essential service and not specifically referenced in CMS's regulations. Rather, facilities must provide comfortable and safe temperatures ranging from 71 to 81 degrees Fahrenheit. The State agency stated that it does not tell facilities how to maintain comfortable temperatures but it expects that, if a facility cannot maintain the proper temperatures, it will evacuate.

Office of Inspector General Response

The State agency correctly cited the need for nursing homes to maintain temperatures between 71 to 81 degrees Fahrenheit. Our report reflects the totality of the criteria, including nursing homes' inability to maintain temperatures (with a generator) and have an adequate evacuation plan for when the indoor air temperature in the nursing home is too hot.

Fire Detection and Suppression Systems

State Agency Comments

The State agency questioned our finding related to smoke detection systems because of a lack of sufficient information, including room locations and designated use of the space involved.

Office of Inspector General Response

We discussed our findings related to smoke detection systems with State agency officials prior to issuing our draft report. During these discussions, we provided the officials photographic evidence of our findings, described the use of the space involved, and asked the officials to make a final determination after following up with several nursing homes.²⁸

Building Exits and Fire Barriers

State Agency Comments

The State agency stated that, as a result of our having misinterpreted CMS requirements, one facility purchased and installed an exit sign for a door that was not designated as a fire exit door. The facility also paid to have a fire-rating tag added to another door that required a smoke-resistance rating.

²⁸ We did not include findings identified for follow-up by the State agency in our report. We noted this on our inspection worksheets.

Office of Inspector General Response

We disagree with the State agency's assertion that the door in question should not be designated an emergency exit door. The door was in a laundry room and led directly outside, which would be the safest exit path from that room in the event of a fire. Regarding the door for which the nursing home affixed a fire-rating tag, we maintain that the nursing home and State agency had ample time to discuss purchasing a tag before taking a final course of action, as we provided both parties a copy of our inspection worksheet. We discussed this with the State agency and did not include it in our report.

APPENDIX A: AUDIT SCOPE AND METHODOLOGY

SCOPE

As of November 2017, there were 621 nursing homes in New York State that participated in the Medicare or Medicaid programs. Of these 621 nursing homes, we selected a nonstatistical sample of 20 nursing homes for our review based on risk factors, including multiple high-risk deficiencies reported to CMS's ASPEN system by the State agency.

We did not assess the State agency's or nursing homes' overall internal control structures. Rather, we limited our review of internal controls to those applicable to our audit objective.

We performed our fieldwork at the State agency's offices in Albany, New York, and conducted unannounced site visits at the 20 nursing homes throughout New York State from January through April 2018.

METHODOLOGY

To accomplish our objective, we:

- reviewed applicable Federal and State requirements;
- held discussions with CMS and State agency officials to gain an understanding of the process for conducting nursing home life safety and emergency preparedness surveys;
- obtained from CMS a list of all 621 active nursing homes in New York that participated in the Medicare or Medicaid programs as of November 2017;
- compared the list provided by CMS with the State agency Directory of Nursing Homes to verify completeness and accuracy;
- obtained from CMS's ASPEN system a list of 83 nursing homes that had 1 or more deficiencies in the previous 3 years that were considered high-risk as follows: (1) widespread and had the potential for more than minimal harm, (2) potential for actual harm, or (3) immediate jeopardy to resident life and safety;
- from the 83 nursing homes identified in ASPEN, selected 20 nursing homes for onsite inspections (17 that had multiple high-risk deficiencies and 3 that had deficiencies related to sprinkler system coverage or emergency preparedness) and, for each:
 - reviewed the deficiency reports prepared by the State agency for the nursing home's three most recent surveys and

- conducted unannounced onsite inspections to check for life safety violations and review the emergency preparedness plan; and
- discussed the results of our inspections with nursing home, State agency, and CMS officials.

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

APPENDIX B: AREAS OF NONCOMPLIANCE AT EACH NURSING HOME

Life Safety Deficiencies

| Nursing Home | Building Exits and Fire Barriers | Fire Detection and Suppression Systems | Carbon Monoxide Detectors | Hazardous Storage | Smoking Policies and Fire Drills | Elevator and Electrical Equipment Testing and Maintenance | Total |
|--------------|----------------------------------|--|---------------------------|-------------------|----------------------------------|---|------------|
| 1 | 2 | 1 | - | 2 | - | - | 5 |
| 2 | 1 | - | - | 2 | 1 | 1 | 5 |
| 3 | 1 | 3 | 1 | 1 | 1 | 1 | 8 |
| 4 | 3 | 2 | 1 | 2 | 1 | 1 | 10 |
| 5 | 3 | 5 | - | - | 1 | 1 | 10 |
| 6 | 1 | 4 | - | 2 | 2 | 3 | 12 |
| 7 | - | 5 | - | - | 1 | 1 | 7 |
| 8 | 3 | 3 | - | 2 | 1 | 2 | 11 |
| 9 | 2 | 5 | - | 2 | - | 1 | 10 |
| 10 | 4 | 5 | 1 | 3 | 2 | 2 | 17 |
| 11 | - | 3 | 1 | - | - | - | 4 |
| 12 | 2 | 2 | 1 | - | - | - | 5 |
| 13 | 2 | 5 | 1 | 3 | 1 | 2 | 14 |
| 14 | 3 | 4 | 1 | 2 | 2 | 1 | 13 |
| 15 | 4 | 2 | - | 2 | 1 | 3 | 12 |
| 16 | 2 | 3 | - | 3 | 2 | 2 | 12 |
| 17 | 2 | 4 | 1 | - | - | 1 | 8 |
| 18 | 1 | 2 | 1 | 2 | - | 2 | 8 |
| 19 | 4 | 4 | 1 | 3 | 2 | 2 | 16 |
| 20 | 5 | 5 | 1 | 2 | 2 | 3 | 18 |
| Total | 45 | 67 | 11 | 33 | 20 | 29 | 205 |

Emergency Preparedness Deficiencies

| Nursing Home | Emergency Plan | Emergency Supplies and Power | Evacuations, Sheltering in Place, and Tracking Residents and Staff During and After an Emergency | Emergency Communications | Emergency Plan Training | Total |
|--------------|----------------|------------------------------|--|--------------------------|-------------------------|------------|
| 1 | 4 | 1 | 4 | 3 | 2 | 14 |
| 2 | 1 | 4 | 1 | 2 | - | 8 |
| 3 | 2 | 4 | 1 | 2 | - | 9 |
| 4 | 6 | 5 | 2 | 6 | 3 | 22 |
| 5 | - | 2 | - | 5 | 4 | 11 |
| 6 | 3 | 4 | 2 | 5 | - | 14 |
| 7 | - | 2 | - | 4 | - | 6 |
| 8 | - | 5 | 2 | 3 | - | 10 |
| 9 | - | 4 | 1 | 2 | 2 | 9 |
| 10 | 3 | 1 | 5 | 1 | 1 | 11 |
| 11 | 2 | 4 | 2 | 2 | - | 10 |
| 12 | 2 | 3 | 2 | 2 | - | 9 |
| 13 | 2 | 5 | 5 | 4 | 3 | 19 |
| 14 | - | 1 | - | 1 | 2 | 4 |
| 15 | - | 3 | 1 | 1 | 1 | 6 |
| 16 | 1 | 3 | - | 1 | - | 5 |
| 17 | - | 3 | 1 | 1 | - | 5 |
| 18 | 4 | 1 | 3 | 2 | 3 | 13 |
| 19 | 4 | - | 3 | 4 | 1 | 12 |
| 20 | 6 | 4 | 5 | 5 | 2 | 22 |
| Total | 40 | 59 | 40 | 56 | 24 | 219 |

Notice: Under separate cover, we provided to the State agency and CMS the detailed inspection worksheets for each of the nursing homes we reviewed.

APPENDIX C: STATE AGENCY COMMENTS



ANDREW M. CUOMO
Governor

Department
of Health

HOWARD A. ZUCKER, M.D., J.D.
Commissioner

SALLY DRESLIN, M.S., R.N.
Executive Deputy Commissioner

May 7, 2019

Ms. Brenda Tierney
Regional Inspector General for Audit Services
Department of Health and Human Services - Region II
Jacob Javitz Federal Building
26 Federal Plaza
New York, New York 10278

Ref. No: A-02-17-01027

Dear Ms. Tierney:

Enclosed are the New York State Department of Health's comments on the United States Department of Health and Human Services, Office of Inspector General's Draft Audit Report A-02-17-01027 entitled, "New York Should Improve Its Oversight of Selected Nursing Homes' Compliance With Federal Requirements for Life Safety and Emergency Preparedness."

Thank you for the opportunity to comment.

Sincerely,

Sally Dreslin

Sally Dreslin, M.S., R.N.
Executive Deputy Commissioner

Enclosure

cc: Marybeth Hefner
Diane Christensen
Dan Sheppard
Jennifer Treacy
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**Department of Health
Comments on the
Department of Health and Human Services
Office of Inspector General
Draft Audit Report for A-02-17-01027 Entitled
"New York Should Improve Its Oversight of Selected Nursing Homes'
Compliance With Federal Requirements for Life Safety and
Emergency Preparedness"**

The following are the New York State Department of Health's (Department) comments in response to the Department of Health and Human Services, Office of Inspector General's (OIG) Draft Audit Report A-02-17-01027 entitled, *"New York Should Improve Its Oversight of Selected Nursing Homes' Compliance With Federal Requirements for Life Safety and Emergency Preparedness."*

Overview:

The Department is committed to ensuring the health and safety of all residents of nursing homes receiving services in New York. The Department, through an agreement with the Centers for Medicare and Medicaid Services (CMS), thoroughly inspects nursing home operations and investigates complaints against nursing homes to ensure compliance with federal and state regulatory requirements. Those requirements are intended to ensure that nursing homes provide care and services, and maintain an environment, in a way that meets each individual resident's needs and maximizes quality of life.

The Department, consistent with the federally-prescribed surveillance process that all states must follow, issues citations against nursing homes that do not comply with requirements and ensures that nursing homes correct any noncompliant practice. Every year, the Department issues necessary citations for issues related to the provision of health care and related to life safety noncompliance.

General Comments:

While the Department appreciates the original intent of the audit – to determine if Long-Term Care (LTC) facilities that received Medicare and/or Medicaid funds comply with Federal requirements for life safety and emergency preparedness – the timing of the amended audit scope – to determine if New York State ensured that selected nursing homes in New York that participate in Medicare or Medicaid programs complied with CMS requirements for life safety and emergency preparedness, was significantly premature to accurately achieve the amended objective.

The Department was directed by CMS, as were all states' survey agencies, to include updated federal life safety and emergency preparedness requirements in its survey activities effective November 15, 2017. As OIG noted in its report, state survey agencies are required to survey each nursing home within a 16-month interval. Based on the timeline set forth by CMS, it is impossible to expect that the Department would have surveyed, or even been able to survey, all 20 nursing homes that the OIG selected as the audit sample, between November 15, 2017 and the start of the audit in January 2018 even using a risk-based approach. Fifteen of the 20 nursing

homes audited by OIG were last surveyed by the Department before the Emergency Preparedness regulations became effective in November 2017. The Department, therefore, had no opportunity to inspect and evaluate the providers' compliance with the new requirements prior to the start of the audit.

In addition, the selection of the sample is flawed if the intent of the audit is to develop a generalizable finding about the degree of compliance by all nursing homes in New York with the target requirements or the quality and effectiveness of the Department's oversight. By intentionally selecting nursing homes with a record of poor compliance, the audit is biased from the start.

While we appreciate that OIG acknowledged the Department's assistance during the audit period, we recognize that the lack of anyone on the audit team with certified training in surveillance, which is required for any state surveyor, may have led to misunderstandings or misinterpretation of specific regulatory requirements and subsequent inaccurate audit findings. Our specific comments are found later in this response.

With respect to the audit's recommendations, the Department agrees with the goals of the recommendations and will consider implementing them as appropriate. However, we have concerns with the basis for some recommendations and comments on the practical application of the recommendations. Those comments are found later in this response.

The Department requests that the final audit report acknowledge and recognize that the amendment of the audit objective and the timing of the audit, taken together, dilute the ability to accurately comment on the audit's objective: to determine if the Department ensured that New York State nursing homes comply with the life safety and emergency preparedness requirements.

We also request that our comments regarding specific findings be considered in the development of the audit's final report and that the audit's recommendations be amended as appropriate based on the Department's response.

The Department shares OIG's goal to protect the health and safety of all nursing home residents, and the Department will continue to thoroughly inspect all nursing home operations, investigate complaints against nursing homes, issue citations when we find noncompliance, and ensure that corrective actions are implemented to prevent recurrence.

Specific Comments:

Timing and Objectives of the Audit

As stated above, the amendment of the audit objective and the timing of the audit does not allow OIG to determine if the Department ensured that New York State nursing homes comply with the life safety and emergency preparedness requirements. Details are outlined below.

On October 30, 2017 representatives from both the Department and OIG met for an entrance conference regarding an upcoming "Emergency Preparedness Audit." During the entrance conference it was explained that due to a recent incident in a Florida nursing home, OIG was expediting an audit of life safety and emergency preparedness to be conducted in nursing homes nationally. The Department agreed to assist the work of OIG, including offering expertise and information.

The initial notification letter attached to an email from the senior auditor dated October 20, 2017 clearly stated, "the objective of our audit is to determine if LTC facilities that received Medicare and/or Medicaid funds complied with Federal requirements for life safety and emergency preparedness."

During the audit's exit conference, the Department was told that the draft report was being issued that day and that the "wording and objectives had changed."

After the exit conference on March 13, 2019, we received the new objective "...to determine whether the New York State Department of Health (State agency) ensured that selected nursing homes in New York that participate in the Medicare or Medicaid programs complied with CMS requirements for life safety and emergency preparedness."

The Department strongly objects to the timing of the audit, considering the amendment of the objective. At the start of the audit period, the Department had last surveyed 15 of the 20 sample nursing homes prior to November 15, 2017 – the first date on which nursing homes' compliance with the new requirements could be evaluated, per CMS direction.

As described in the "Introduction: Why We Did This Review," section of the draft audit draft, in 2016 CMS updated life safety and emergency preparedness regulations. While the updates were adopted in 2016, it is important to note that CMS directed State Agencies (SA) to begin surveying for compliance with these regulations as of November 15, 2017. Therefore, to cite New York State for not enforcing regulations that did not exist during the time under review is factually inaccurate.

As described in "How We Conducted This Review," the OIG utilized a "non-statistical" sample. Non-statistical sampling is the selection of a test group that is based on the examiner's judgment, rather than a formal statistical method. OIG selected a sample of twenty (20) nursing homes based on certain risk factors, including multiple high-risk deficiencies reported to CMS. By employing a risk-based sampling methodology, OIG is unable to draw conclusions about the Department's overall oversight practices. New York has been diligent in identifying issues with non-compliant nursing homes. The Department averaged 5.4 Life Safety Code (LSC) citations in 2018, an increase from 3.4 LSC citations in 2017.

Furthermore, if the objective of the audit was truly to ascertain whether proper oversight of nursing home compliance is taking place, it is unclear why the OIG would begin their audit in January 2018; less than two months after survey activities for the regulations went into effect.

Identified Instances of Non-Compliance

Section 1919(g)(2) of the Social Security Act provides that nursing home surveys must be conducted by "a multidisciplinary team of professionals and "[n]o individual shall serve as a member of a survey team unless the individual has successfully completed a training and testing program in survey certification techniques that has been approved by the Secretary." The audit team completing this review did not have such qualifications. As a result, the team misinterpreted observations and made several erroneous conclusions in the written draft report.

The following are some of the examples of these erroneous interpretations of the Federal requirements for Emergency Preparedness and LSC by the auditor whereby "criteria not met" were marked:

§482.15(e)(3), §483.73(e)(3), §485.625(e)(3)

Emergency generator fuel [Hospital, Critical Access Hospital (CAH) and LTC facilities] that maintain onsite fuel to power emergency generators must have a plan for how it will keep emergency power systems during the emergency, unless it evacuates; and §483.73(e), §485.625(e). Emergency and standby power systems. The [LTC facility and the CAH] must implement emergency and standby power systems based on the emergency plan set forth in paragraph (a) of this section.

- The auditors interpreted the regulation to mean the generator should have an alternate fuel source and for two facilities recommended they determine if the generator can be converted to run on an alternative fuel. The regulation states the facilities should have emergency and standby power systems, in other words, "a generator." There is no requirement for a generator to operate with more than one fuel source.
- The regulation does not specify how many days of fuel a facility must have on hand. Seven facilities were marked criteria not met for not having a three-day supply of generator fuel on hand. The Inspection Checklist used by the auditor noted "3 days fuel best practice...." While 3 days of fuel on hand may be best practice, that is not the regulatory standard that State Agencies survey against.

§482.15(e)(1), §483.73(e)(1), §485.625(e)(1)

Emergency generator location. The generator must be located in accordance with the location requirements found in the Health Care Facilities Code (NFPA 99 and Tentative Interim Amendments TIA 12-2, TIA 12-3, TIA 12-4, TIA 12-5, and TIA 12-6), Life Safety Code (NFPA 101 and Tentative Interim Amendments TIA 12-1, TIA 12-2, TIA 12-3, and TIA 12-4), and NFPA 110, *when a new structure is built or when an existing structure or building is renovated*.

- Five facilities were marked criteria not met for "safe generator location." This regulation applies to new or renovated buildings which was not the case for these five facilities, all of which were constructed prior to the November 15, 2017 CMS implementation date.

2012 LSC Tag K915

Electrical Systems-Essential Electrical System Categories

- Four facilities were marked criteria not met for the inability of the generator to power the entire building including air conditioning. Again, this is an erroneous interpretation by an

auditor unfamiliar with the regulations. There is no requirement for the generator to power the entire building, only essential services. Air conditioning is not considered an essential service. The only reference to a generator powering heating, ventilation or air conditioning is found in NFPA 99 at 6.4.2.2.5.4(2), which specifies that heating of general patient (resident) rooms is only required under very specific circumstances. There is no reference to air conditioning.

- From the federal regulations, §483.10(i)(6) Comfortable and safe temperature levels. What a facility must provide are comfortable and safe temperatures and for facilities certified after October 1, 1990, they must maintain temperature range of 71 to 81 °F. We do not tell facilities how to maintain comfortable temperatures. The expectation is that if a facility cannot maintain the proper temperatures they will evacuate.

2012 LSC Tag K 347: Smoke detection systems are provided in spaces open to corridors as required by 19.3.6.1.

- Seven facilities were marked as criteria not met. As specified in the regulations smoke detection is required in a room open to the corridor. This finding is questionable due to the lack of sufficient information including location of the room and designate use of the space involved.

2012 LSC Tag K 321: Fire rating of doors for hazardous areas – Hazardous areas are protected by a fire barrier having a 1-hour fire resistance rating (with ¾ hour fire rated doors) or an automatic fire extinguishing system in accordance with 8.7.1. When the approved automatic fire extinguishing system option is used, the areas shall be separated from other spaces by smoke resisting partitions and doors in accordance with 8.4.

- For at least one facility marked criteria not met, the facility spent money to “correct” an OIG identified finding that was not out of compliance. The facility purchased and installed an exit sign for a door that was not designated as a fire exit door. They also paid to have a fire-rating tag added to a door that required a smoke resistance rating.

Recommendation #1

Follow up with the 20 nursing homes to ensure corrective actions have been taken regarding the life safety and emergency preparedness deficiencies identified in this report.

Response #1

The Department concurs with this recommendation: follow-up occurs through the standard operating protocols of surveillance.

The Department, through its normal course of surveillance, has verified that corrective actions have been completed by the 20 nursing homes. As noted in the draft report, there is a nursing home that occupies two floors of a high-rise building that has a fully operational sprinkler system. The remaining floors of the building do not have a sprinkler system at this time. There is a 12-year required timeframe dating back to July 5, 2016 for the entire building to have a fully operational sprinkler system.

Therefore, no further action is required to implement this recommendation.

Recommendation #2

Work with CMS to develop life safety training for nursing home staff.

Response #2

The Department suggests that this recommendation be amended as follows: Assist CMS in developing a national standard life safety training for nursing home staff, if requested by CMS and with the participation of other states' survey agencies.

The Department requests that the audit recognize the significant educational efforts it carried out to facilitate nursing home staff's understanding of the new emergency preparedness and life safety requirements. The audit's lack of such recognition may give the impression that the Department did nothing to prepare nursing homes for the new requirements, which would not be accurate.

CMS issued S&C:16-29-LSC to providers on June 20, 2016 notifying them of the adoption of the 2012 edition of the National Fire Protection Association (NFPA) 101-Life Safety Code (LSC) and 2012 edition of the NFPA 99-Health Care Facilities Code (HCFC) and its intent to begin surveying facilities for compliance on November 15, 2017.

The Department provided additional guidance to nursing home facilities on these requirements through a Dear Administrator Letter on January 26, 2017 reminding them that CMS had adopted by regulation the 2012 edition of the National Fire Protection Association (NFPA) 101- Life Safety Code (LSC), and all its referenced standards.

The Department also reinforced its guidance by conducting in person Life Safety Technical Assistance and Emergency Preparedness workshops for providers in collaboration with New York State Long Term Care associations to assist nursing homes to be compliant with new life safety code requirements. The following are examples of these workshops and training sessions:

Nursing Home Emergency Preparedness and Life Safety Technical Assistance Workshop
577 attendees; NH Administrators received 6 CEUs for full day; 3 CEUs for half day attendance

| Date | Location | Program Length |
|-------------|-------------------------|--------------------------|
| 10/10/2017 | Rensselaer, NY 12144 | Full Day; (9am - 3:30pm) |
| 10/23/2017 | New Hyde Park, NY 11040 | Full-Day (9am - 3:30pm) |
| 10/26/2017 | New York, NY 10019 | Half-Day (10am - 1pm) |
| 11/03/2017 | Buffalo, NY 14202 | Full-Day (9am - 3:30pm) |
| 11/13/2017 | Lake Placid, NY 12946 | Full-Day (9am - 3:30pm) |
| 11/8/2017 | Syracuse, NY 13202 | Full-Day (9am - 3:30pm) |
| 11/29/2017 | Uniondale, NY 11553 | Full-Day (9am - 3:30pm) |
| 12/08/2017 | Poughkeepsie, NY 12601 | Half-Day |

The following are examples of more recent Emergency Preparedness Training Opportunities for Nursing Homes with training scheduled through May 2019.

1. Comprehensive Emergency Management Plan (CEMP)

Training on New York State Plan Template developed specifically for Nursing Homes; All day sessions (9am -5pm); CEUs for Administrators attending: 6

March 19, 2019 - Albany, NY
 April 3, 2019 - Henrietta, NY
 April 11, 2019 - Buffalo, NY
 April 16, 2019 - New Paltz, NY
 April 24, 2019 - East Syracuse, NY
 May 8, 2019 - Hastings on the Hudson, NY
 May 13, 2019 - Melville, NY
 May 15, 2019 - Bethpage, NY

2. Evacuation of Facilities in Disaster Situations

Patient/resident tracking system; exclusively nursing homes

2019 sessions

| Date | Time | Number Registered |
|----------------|----------------|-------------------|
| April 16, 2019 | 1pm to 3:30pm | 13 |
| April 17, 2019 | 9:30am to 12am | 8 |
| April 17, 2019 | 1pm to 3:30pm | 9 |

2018 Sessions: total of 137 attendees

| Date | Time | Number Attendees |
|-------------------|-----------------|------------------|
| February 26, 2018 | 10am until 12pm | 35 |
| February 26, 2018 | 1pm until 3pm | 24 |
| March 5, 2018 | 10am until 12pm | 37 |
| March 5, 2018 | 1pm until 3 pm | 41 |

3. Facility Evacuation Planning Application (FEPA)

Planning for send/receive arrangements, shelter in place; facilities receive attestation document of their work once completed.

2019 Webinars: 108 participants

| Section Name | Date | Number Participating |
|------------------|----------------------------|----------------------|
| Recorded Webinar | Always available | 35 to date |
| Live Webinar | 1/16/2019 – 10am - 12:30pm | 49 |
| Live Webinar | 1/10/2019 – 10am - 12:30pm | 24 |

FEPA in person training for NHs

New York City: Friday, March 15, 2019 – 83 trained; two 2-hour sessions.

| Section Type | Time | Number Participating |
|----------------|------------|----------------------|
| Live session 1 | 9am - 11am | 52 |
| Live session 2 | 12pm -2pm | 31 |

2018:

| Section Name | Date | Number Participating |
|--------------|-------------------------|----------------------|
| Live Webinar | 2/7/2018; 9:30am – 12pm | 58 |
| Live Webinar | 1/31/2018; 1:30pm – 4pm | 28 |

Live Webinar 1/26/2018; 9:30am – 12pm 13

C. Auris Live Training Webinar for Nursing Homes:

| Section | Time | Number Participating |
|------------|------------|----------------------|
| 12/14/2017 | 10-11:30am | 115 |

Facilities are expected to comply with all applicable nursing home regulations. Facilities seeking Department regulatory guidance may and do contact the Department's appropriate Regional Office.

The Department supports the intent of the OIG recommendation. However, to ensure consistency across all states in the administration of the survey process, the Department strongly suggests that this recommendation be made to CMS, which is responsible party for ensuring nationwide consistency. New York stands ready to assist CMS in the development and refinement of training programs.

Recommendation #3

Conduct more frequent surveys at nursing homes with a history of multiple high-risk deficiencies.

Response #3

The Department already carries out its surveillance activities consistent with the recommendation. CMS surveillance protocols – acknowledged in the audit report – allow state survey agencies to conduct full surveys within a 9 to 15-month interval, and more frequently if needed. The Department conducts its surveys consistent with the federal protocol.

The State Operations Manual, specifically Chapter 7, Section 7205 states "The State may conduct surveys as frequently as necessary to determine if a facility complies with the participation requirements as well as to determine if the facility has corrected any previously cited deficiencies. There is no required minimum time which must elapse between surveys." We will continue to follow this guidance.

Therefore, no further action is required to implement this recommendation.

Recommendation #4

Instruct all nursing homes to install carbon monoxide detectors as required by New York State Law and modify its survey procedures to include a check for carbon monoxide detectors.

Response #4

The Department will consider this recommendation; however, we disagree with the way this audit was conducted.

As stated in the draft report, the updated objective of the OIG audit "was to determine if New York State ensured that selected nursing homes in New York that participate in the Medicare or Medicaid programs complied with *CMS requirements for life safety and emergency preparedness*."

Verification of carbon monoxide detectors is not part of CMS requirements for life safety and emergency preparedness. Although it is unclear how this verification falls within the scope of the audit, the Department recognizes that nursing home compliance with this aspect of building code is an important resident safety protection.

These facility buildings are subject to the New York State Uniform and Fire Codes and should receive regular inspections from their local code enforcement officer who would check for carbon monoxide detection among other things. The Department will, however, consider adding this to our survey activity and will discuss the recommendations with other appropriate state agencies that may also have jurisdiction.