

Department of Health and Human Services

**OFFICE OF
INSPECTOR GENERAL**

**KENTUCKY DID NOT COMPLY
WITH FEDERAL WAIVER AND
STATE REQUIREMENTS AT 14 OF
20 ADULT DAY HEALTH CARE
FACILITIES REVIEWED**

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Office of Inspector General

<https://oig.hhs.gov>

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OFFICE OF AUDIT SERVICES FINDINGS AND OPINIONS

The designation of financial or management practices as questionable, a recommendation for the disallowance of costs incurred or claimed, and any other conclusions and recommendations in this report represent the findings and opinions of OAS. Authorized officials of the HHS operating divisions will make final determination on these matters.

Report in Brief

Date: July 2019

Report No. A-04-18-00123

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



Why OIG Did This Review

The Kentucky Home and Community-Based Services Waiver program (the program) funds home and community-based services for people aged 65 and older and individuals with disabilities aged 21 to 64 who are eligible for medical assistance and require the level of care provided in a nursing home but choose to live in the community. Kentucky operates the program under a Federal waiver to its Medicaid State plan. The program funds adult day health care services for Medicaid beneficiaries who reside at home and attend adult day health care facilities (facilities). We have conducted health and safety reviews at various types of facilities nation-wide and wanted to determine whether vulnerable adults participating in this program were at risk.

The objective of this review was to determine whether Kentucky complied with Federal waiver and State requirements in overseeing facilities that serve vulnerable adults who receive services through the program.

How OIG Did This Review

Of the 93 facilities providing program services (providers) in Kentucky as of March 31, 2018, we selected 20 for review based on their geographic location and number of participants. To evaluate Kentucky's oversight of facilities, we conducted unannounced site visits at the 20 selected facilities from July 30 through August 10, 2018.

Kentucky Did Not Comply With Federal Waiver and State Requirements at 14 of 20 Adult Day Health Care Facilities Reviewed

What OIG Found

Kentucky did not fully comply with Federal waiver and State requirements in overseeing providers that serve vulnerable adults receiving adult day health care services through the program. Of the 20 providers that we reviewed, 12 did not comply with 1 or more health and safety requirements, and 10 did not comply with 1 or more administrative requirements. We found 63 instances of provider noncompliance, including 26 instances of noncompliance with health and safety requirements. The remaining 37 instances related to administrative requirements, some of which could significantly affect health and safety.

Kentucky did not fully comply with Federal waiver and State requirements because its annual inspections of facilities were insufficient to ensure a continuously safe and nonhazardous environment. Officials stated, however, that Kentucky improved monitoring in April 2018 by modifying its provider recertification process to include annually reviewing all providers and completing a certification tool during an announced site visit to each provider.

What OIG Recommends and Kentucky Comments

We recommend that Kentucky ensure that providers correct the 63 instances of provider noncompliance identified in this report; improve its oversight and monitoring of providers by considering unannounced site visits and by enhancing its certification tool as it pertains to reviewing participant records; and work with providers to improve their facilities, staffing, and training.

Kentucky concurred with our second and third recommendations but did not indicate concurrence or nonconcurrence with our first recommendation. However, it described corrective actions that it had taken or would take in response to all three recommendations. Kentucky concurred with the majority of our findings, but it disagreed with two identified instances of noncompliance involving providers whose staff did not receive attendant care certification training. Kentucky commented that these providers did not provide services in the home and thus were not required to complete this training. Kentucky also commented that it is revising regulations and supplementing policy manuals to clearly define facilities, staffing, and training requirements. After review and consideration of Kentucky's comments, we maintain that the two identified instances of noncompliance are errors because the current regulation specifies that all staff are required to complete attendant care certification training initially and annually thereafter. Therefore, our findings remain unchanged.

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INTRODUCTION

WHY WE DID THIS REVIEW

The Office of Inspector General (OIG) has conducted health and safety reviews of adult day care and foster care homes and regulated childcare facilities. (Appendix B lists related OIG reports.) Those reviews identified multiple health and safety issues that put children and vulnerable adults at risk. We wanted to determine whether vulnerable adults participating in Kentucky's Home and Community-Based (HCB) waiver program (the program) were at risk.

OBJECTIVE

Our objective was to determine whether the Kentucky Department for Medicaid Services (State agency) complied with Federal waiver and State requirements in overseeing adult day health care (ADHC) facilities that serve vulnerable adults who receive services through the program.

BACKGROUND

The Medicaid program provides medical assistance to low-income individuals and individuals with disabilities. The Federal and State Governments jointly fund and administer the Medicaid program. At the Federal level, the Centers for Medicare & Medicaid Services (CMS) administers the Medicaid program. In Kentucky, the State agency administers its Medicaid program in accordance with a CMS-approved State plan. The State plan establishes which services the Medicaid program will cover.

Section 1915(c) of the Social Security Act authorizes the Secretary of Health and Human Services to waive certain Medicaid statutory requirements so that a State may offer HCB services to a State-specified target group of Medicaid beneficiaries who need a level of institutional care that is provided under the Medicaid State plan.

Before the enactment of section 1915(c), the Medicaid program provided limited coverage for long-term services and support in noninstitutional settings but offered full or partial coverage of institutional care. Section 1915(c) was enacted to enable States to address the needs of individuals who would otherwise receive costly institutional care by furnishing cost-effective services that allow them to remain in their households and communities.

Federal regulations for section 1915(c) waivers require States to provide assurances that they will implement safeguards, including adequate standards for provider participation, to protect the health and welfare of individuals served under the waiver and to assure financial accountability for funds expended for those services (42 CFR § 441.302).

As part of the waiver, the State agency must also provide assurances that State requirements are met for services or for individuals furnishing services that are provided under the waiver (42 CFR § 441.302(a)(2)).

Kentucky Home and Community-Based Services Waiver Program

The State agency administers and operates the program under a 1915(c) waiver to its Medicaid State plan. The program funds HCB services for people 65 and older and individuals with disabilities under 65 who are eligible for medical assistance and require the level of care provided in a nursing home but choose to live in the community. The program funds ADHC services for Medicaid beneficiaries 21 and older who reside at home and attend ADHC facilities.

Kentucky Adult Day Health Care Services

In Kentucky, ADHC services are defined as health-related services provided on a regularly scheduled basis that ensure optimal functioning of a participant who does not require 24-hour care in an institutional setting and may need 24-hour respite services when experiencing a short-term crisis due to the temporary or permanent loss of the primary caregiver.¹ ADHC services are provided at a licensed facility.² These services are designed to prevent institutionalization of aged or disabled individuals by offering effective individualized services that ensure the health, safety, and welfare of participants so they may remain in their own home and community.

The State agency must ensure the health and welfare of vulnerable adults through licensing standards in State statutes and regulations and the requirements in its application for waiver services.³ The State agency delegates daily oversight and administration of the program to its Department for Aging and Independent Living (DAIL), which performs first-line monitoring and identifies deficiencies. The State agency reviews monthly updates from DAIL and monitoring reports as they are completed. Facilities providing program services (providers) must meet the health care needs of program participants and maintain compliance with State requirements, and the State agency must comply with Federal waiver and State requirements for overseeing and monitoring the health and welfare of program participants.⁴

¹ 907 *Kentucky Administrative Regulations (KARs) 7:010, "Home and community based waiver services version 2,"* section 1(5).

² The Kentucky Office of Inspector General licenses ADHC facilities and inspects these facilities annually (902 KAR 20:066, "Operation and services; adult day health care programs," section 4(5)(d), and Kentucky's HCB waiver application, Appendix C-1/C-3: "Provider Specifications for Service" and Appendix C-2: "General Service Specifications").

³ In its waiver, the State agency assures that necessary safeguards have been taken to protect the health and welfare of persons receiving services under the waiver. These safeguards include adequate standards for all types of providers that provide services under the waiver.

⁴ 902 KAR 20:066, "Operation and services; adult day health care programs" and Kentucky's HCB waiver application, section 5(A) and (H)."

HOW WE CONDUCTED THIS REVIEW

Of the 93 ADHC providers in Kentucky as of March 31, 2018, we selected 20 for review. We selected these providers based on their geographic location and number of participants. To evaluate the State agency's oversight of facilities, we conducted unannounced site visits at the 20 selected facilities from July 30 through August 10, 2018, and we discussed with State officials how the State agency monitors its facilities.

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. Appendix C contains Federal regulations and specific State requirements related to health and safety and administration.

FINDINGS

The State agency did not fully comply with Federal waiver and State requirements in overseeing providers that serve vulnerable adults receiving ADHC services through the program. Of the 20 providers that we reviewed, 12 did not comply with 1 or more health and safety requirements, and 10 did not comply with 1 or more administrative requirements.⁵ We found 63 instances of provider noncompliance with health, safety, and administrative requirements. Providers did not always meet the needs of program participants or maintain compliance with State requirements, and the State agency's annual inspections of facilities were insufficient to ensure a continuously safe and nonhazardous environment.⁶ As a result, vulnerable adults were at risk in numerous instances during our audit period. (See Appendix D.)

TWELVE PROVIDERS DID NOT COMPLY WITH ONE OR MORE HEALTH AND SAFETY REQUIREMENTS

Providers must maintain compliance with State requirements regarding services provided and health and welfare.⁷ Providers must meet the health care needs of program participants by,

⁵ Eight providers did not comply with both health and safety and administrative requirements.

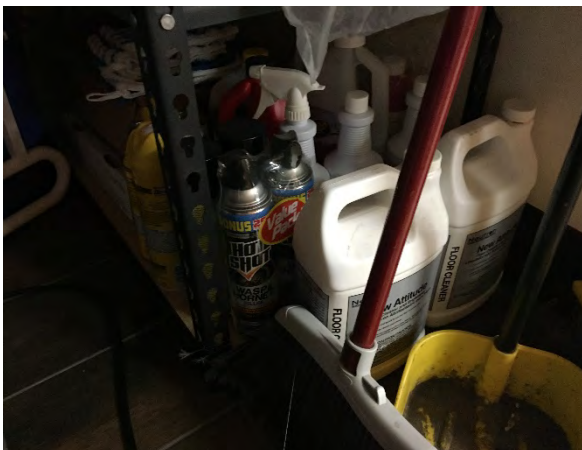
⁶ According to State agency officials, they improved monitoring during our audit. For example, effective April 2018, the State agency modified the provider recertification process to include annually reviewing all ADHC providers and completing a comprehensive certification tool during an announced site visit to each provider.

⁷ 902 KAR 20:066, "Operation and services; adult day health care programs," section 2(a), and Kentucky's HCB waiver application, section 5(A).

among other things, ensuring the health, safety, and welfare of participants.⁸ For example, providers must ensure that the facility is maintained in a safe and clean manner, free from offensive odors, safety hazards, and accumulations of dirt, rubbish, and dust.⁹

Of the 20 providers we reviewed, 12 did not comply with 1 or more State health and safety requirements. Specifically, we found 26 instances of provider noncompliance with State health and safety requirements.

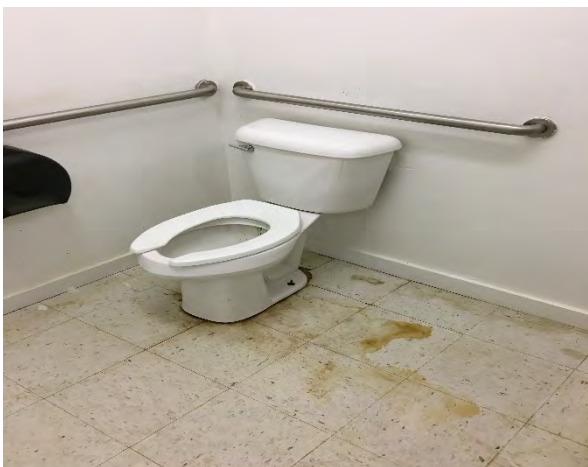
Among other things, we found cleaning supplies that are harmful, if swallowed, in unlocked areas that were accessible to participants in four facilities (Photograph 1). We also found four facilities needing repairs (Photograph 2), three unclean facilities (Photograph 3), and two facilities with water damage (including some mold) (Photograph 4).



Photograph 1: Unsecured cleaning supplies.



Photograph 2: Repairs needed.



Photograph 3: Unclean restroom.



Photograph 4: Water damage and mold.

⁸ Kentucky's HCB waiver application, Appendix C-1/C-3: "Provider Specifications for Service."

⁹ 902 KAR 20:066, "Operation and services; adult day health care programs," section 6(1), and Kentucky's HCB waiver application, section 2.

TEN PROVIDERS DID NOT COMPLY WITH ONE OR MORE ADMINISTRATIVE REQUIREMENTS

Providers must maintain compliance with State requirements regarding administration.¹⁰ Providers must meet the health care needs of program participants by, among other things, having a sufficient number of qualified personnel to provide the services required and indicated by the needs of the program's patients.¹¹ For example, a provider must conduct a criminal background check on all employees prior to employment,¹² ensure that all employees receive a tuberculin skin test prior to or within the first week of employment and annually thereafter,¹³ and ensure that chemical or physical restraints of participants are not allowed.¹⁴

Of the 20 providers we reviewed, 10 did not comply with 1 or more State administrative requirements. We found 37 instances of provider noncompliance with State administrative requirements, including 17 instances in which providers did not document either the dates and duration of service, services delivered, arrival and departure times, or monthly progress notes.¹⁵

Among other things, we found staffing issues at two providers and training issues at two providers. Specifically, at 1 provider, we observed 1 staff member monitoring 35 program participants at once, and another provider did not have a license documented for the social worker on staff.¹⁶ Additionally, two providers did not perform or document required training or new employee orientation.¹⁷ Finally, two providers had not completed all required criminal background checks; one provider had not completed all personnel drug tests prior to employment; and one provider had a policy allowing for physical restraint of participants, which is strictly prohibited.¹⁸

¹⁰ 902 KAR 20:066, "Operation and services; adult day health care programs," section 2(1)(b).

¹¹ 902 KAR 20:066, "Operation and services; adult day health care programs," section 2(4)(a).

¹² 907 KAR 7:010, "Home and community based waiver services version 2," section 2(3)(j)(1)(a)(i).

¹³ 902 KAR 20:066, "Operation and services; adult day health care programs," section 2(4)(e).

¹⁴ 907 KAR 7:010, "Home and community based waiver services version 2," section 5(11)(e) and Kentucky's HCB waiver application, Appendix G: "Participant Safeguards."

¹⁵ 907 KAR 7:010, "Home and community based waiver services version 2," section 3(1)(b)(2)(j).

¹⁶ 902 KAR 20:066, "Operation and services; adult day health care programs," section 2(4)(a) & (c), and 907 KAR 7:010, "Home and community based waiver services version 2," section 1(29).

¹⁷ 902 KAR 20:066, "Operation and services; adult day health care programs," sections 2(4)(f-g), and 907 KAR 7:010, "Home and community based waiver services version 2," sections 2(3)(h)(1)(a-e).

¹⁸ 907 KAR 7:010, "Home and community based waiver services version 2," sections 2(3)(j)(1)(a)(i), 2(3)(h)(6), and 5(11)(e), and Kentucky's HCB waiver application, Appendix G: "Participant Safeguards."

CAUSES OF NONCOMPLIANCE WITH FEDERAL WAIVER AND STATE REQUIREMENTS

The State agency did not fully comply with Federal waiver and State requirements for overseeing and monitoring the health and welfare of Medicaid beneficiaries receiving ADHC services because its annual inspections of facilities were insufficient to ensure a continuously safe and nonhazardous environment. Specifically, annual inspections did not include unannounced site visits or sufficient review of participant records. According to State agency officials, they improved monitoring during our audit period. For example, in April 2018, the State agency modified the provider recertification process to include annually reviewing all ADHC providers and completing a certification tool¹⁹ during an announced site visit to each provider.

Providers did not always meet the needs of program participants or maintain compliance with State requirements, and the State agency's oversight and monitoring did not detect these instances of noncompliance. As a result, vulnerable adults were at risk in numerous instances.

RECOMMENDATIONS

We recommend that the Kentucky Department for Medicaid Services:

- ensure that providers correct the 63 instances of provider noncompliance identified in this report;
- improve its oversight and monitoring of providers by considering unannounced site visits and by enhancing its certification tool as it pertains to reviewing participant records; and
- work with providers to improve their facilities, staffing, and training.

STATE AGENCY COMMENTS AND OFFICE OF INSPECTOR GENERAL RESPONSE

STATE AGENCY COMMENTS

In written comments on our draft report, the State agency concurred with our second and third recommendations but did not indicate concurrence or nonconcurrence with our first recommendation. However, it described corrective actions that it had taken or would take in response to all three recommendations.

¹⁹ The current certification tool includes review of "Documentation," but it does not specifically require a review of participant records or identify related requirements. Without participant record review requirements to verify that dates and duration of service, services delivered, arrival and departure times, and monthly progress notes are documented (907 KAR 7:010 section 3(1)(b)(2)(j)), the tool is insufficient for identifying the types of participant record errors that we identified.

The State agency also commented that it concurs with the majority of our findings. However, it disagreed with two identified instances of noncompliance involving providers whose staff did not receive DAIL attendant care certification training. The State agency commented that these providers did not provide services in the home and thus were not required to complete this training. The State agency also commented that it is revising the KARs and supplementing them with policy manuals to clearly define facilities, staffing, and training requirements.

OFFICE OF INSPECTOR GENERAL RESPONSE

After review and consideration of the State agency's comments, we maintain that the two identified instances of noncompliance are errors because the current KARs specify that all staff are required to complete DAIL attendant care certification training initially and annually thereafter. Therefore, our findings remain unchanged.

The State agency's comments are included in their entirety as Appendix E.

APPENDIX A: AUDIT SCOPE AND METHODOLOGY

SCOPE

Of the 93 ADHC providers in Kentucky as of March 31, 2018, we selected 20 for review. We selected these providers based on their geographic location and number of participants.

To evaluate the State agency's oversight of facilities, we conducted unannounced site visits at the 20 selected facilities from July 30 through August 10, 2018. We conducted fieldwork in the Kentucky cities of Bardstown, Clay, Columbia, Edmonton, Falmouth, Ft. Thomas, Glasgow, Lexington, London, Louisville, Manchester, Mt. Vernon, Munfordville, Paris, Richmond, and Whitley City.

During our audit, we did not review the overall internal control structure of the State agency or the Medicaid program. Rather, we reviewed only the internal controls that pertained directly to our objective.

METHODOLOGY

To accomplish our objective, we:

- reviewed applicable Federal laws, State statutes, and regulations for facilities;
- discussed with State officials how the State agency monitors its facilities;
- developed a health, safety, and administrative requirement checklist, from State requirements, as a guide for conducting site visits;
- conducted unannounced site visits at the 20 providers selected for review;
- evaluated provider compliance using the health, safety, and administrative requirement checklist; and
- discussed the results of our review with State 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: RELATED OFFICE OF INSPECTOR GENERAL REPORTS

Report Title	Report Number	Date Issued
<i>Wisconsin Did Not Comply With Federal Waiver and State Requirements at All 20 Adult Day Care Centers Reviewed</i>	<u>A-05-17-00030</u>	10/15/2018
<i>Mississippi Did Not Comply With Federal Waiver and State Requirements at All 20 Adult Day Care Facilities Reviewed</i>	<u>A-04-17-00116</u>	8/20/2018
<i>Illinois Did Not Comply With Federal Waiver and State Requirements at 18 of 20 Adult Day Service Centers Reviewed</i>	<u>A-05-17-00028</u>	7/24/2018
<i>Minnesota Did Not Comply With Federal Waiver and State Requirements for All 20 Adult Day Care Centers Reviewed</i>	<u>A-05-17-00009</u>	5/30/2018
<i>Minnesota Did Not Comply With Federal Waiver and State Requirements for 18 of 20 Family Adult Foster Care Homes Reviewed</i>	<u>A-05-16-00044</u>	10/31/2017

APPENDIX C: FEDERAL REGULATIONS AND STATE REQUIREMENTS

FEDERAL REGULATIONS

Section 1915(c) of the Social Security Act authorizes the Secretary of Health and Human Services to waive certain Medicaid statutory requirements so that a State may offer HCB services to a State-specified target group of Medicaid beneficiaries who need a level of institutional care that is provided under the Medicaid State plan.

Prior to the enactment of section 1915(c), the Medicaid program provided limited coverage for long-term services and support in noninstitutional settings but offered full or partial coverage of institutional care. Section 1915(c) was enacted to enable States to address the needs of individuals who would otherwise receive costly institutional care by furnishing cost-effective services while the individuals remain in their households and communities.

Federal regulations for section 1915(c) waivers require States to provide assurance that necessary safeguards will be taken, including adequate standards for provider participation, to protect the health and welfare of individuals serviced under the waiver and to assure financial accountability for funds expended for those services.

As part of the waiver, the State agency is required to ensure the health, safety, and welfare of participants through oversight and monitoring of providers.

STATE REQUIREMENTS

The State identifies provider licensure requirements for the operation of adult day health care programs and the services to be provided by ADHC programs in its KAR, title 902, chapter 20, part 066, "Operation of services; adult day health care programs." Additionally, the State identifies coverage provisions and requirements for HCB waiver services in its KAR, title 907, chapter 7, part 010, "Home and community based waiver services version 2."

General Statutes

902 KAR 20:066

Section 1. Definitions . . .

(8) "Registered nurse" means a person who is currently licensed pursuant to KRS 314.011(5)

Section 2. Administration and Operation.

(1) Licensee.

(a) The licensee shall be legally responsible for the operation of the program and for compliance with federal, state, and local laws pertaining to the operation of the program.

(b) The licensee shall ensure policies, consistent with state or local laws, for the administration and operation of the program are established in writing and enforced including: . . .

5. A procedure which assures the reporting of abuse, neglect, or exploitation of adults and children to the Cabinet for Families and Children pursuant to KRS Chapters 209 and 620;

6. A policy to ensure that a patient of the program is protected and accounted for while in the care of the program;

(4) Personnel.

(a) The program shall employ or have access to a sufficient number of qualified personnel as may be required to provide the services required by this administrative regulation and indicated by the need of the program's patients

(c) Current employee records shall be maintained and shall include a resume of an employee's training and experience, evidence of current licensure or registration if required by law, health records and evaluation of performance, along with an employee's name, address, and Social Security number

(f) The program shall conduct an orientation for new employees.

(g) A planned in-service training program shall be provided to employees covering policies and procedures pertinent to their roles within the program

(5) Patient's records.

(a) The facility shall maintain an individual record for a patient

(b) A progress record shall be maintained stating goals for a patient and shall indicate changes in the patient's condition, behavior, responses, attitude,

appetite, and other changes as noted by staff, and shall include a discharge summary. An entry in the record shall be signed and dated

(f) A full written report of an incident or accident involving a patient or employee shall be made and signed by the administrator or his designee and shall include the names of any witnesses

(i) If nursing services are provided . . . the record shall indicate a description of the nursing service provided, the date the service was provided, and pertinent information relating to the delivery of the service

(7) Equipment and supplies. The program shall have equipment and supplies of sufficient quality and quantity to meet patients' needs.

Section 3. Health services.

(1) Health care services shall include:

(a) Supervision and monitoring of the patients to assure that health care needs are being met including supervision of self-administration of medications

Section 4. Nursing Services.

(1) A program that provides nursing services shall obtain a license to provide nursing services pursuant to subsection (5) of this section . . .

(4) Nursing services, other than the delivery of oral medications, shall be provided in a treatment room.

(5) Special licensing provisions for a program providing nursing services:

(a) A program currently licensed by the cabinet may complete a revised form OIG 144 indicating that nursing services shall be provided.

(b) The Office of the Inspector General may conduct a survey as defined in 902 KAR 20:008 to ensure the requirements for providing nursing services are met.

(c) The program shall be issued an amended license reflecting the authority to provide nursing services.

(d) A program that is applying for an initial license shall indicate on the form OIG 144 that nursing services shall be provided and the initial license issued by

the Office of the Inspector General shall reflect the authority to provide nursing services

Section 6. Facility Requirements.

- (1) The facility shall be maintained in a safe and clean manner, free from offensive odors, safety hazards, and accumulations of dirt, rubbish and dust.
- (2) A deodorizer shall not be used to conceal an odor caused by unsanitary conditions or poor housekeeping practices
- (10) A program that provides nursing services shall have a treatment room . . .
 - (b) The treatment room shall contain:
 - 1. A lavatory or sink equipped for hand washing;
 - 4. Adequate furnishings to safely and comfortably provide nursing services.
- (11) A program that provides nursing services shall have a workroom or closet that contains . . . [a] sink equipped for hand washing

907 KAR 07:010

Section 1. Definitions . . .

- (5) “ADHC services” means health-related services provided on a regularly-scheduled basis that ensure optimal functioning of a participant who . . . [d]oes not require twenty-four (24) hour care in an institutional setting;
- (15) “DAIL” means the Department for Aging and Independent Living
- (41) “Participant” means a recipient who meets the:
 - (a) [Nursing facility (NF)] level of care criteria established in 907 KAR 1:022; and
 - (b) Eligibility criteria for HCB waiver services established in Section 4 of this administrative regulation
- (44) “Person-centered service plan” means a written individualized plan of services for a participant

(46) “Physical restraint” means any manual method or physical or mechanical device, material, or equipment that . . . [i]mmobilizes or reduces the ability of a person to move his or her arms, legs, body, or head freely

Section 2. Provider Participation Requirements Excluding Participant-Directed Services . . .

(3) An HCB waiver provider: . . .

- (d) 1. Shall implement a procedure to ensure that critical incident reporting is done in accordance with Section 9 of this administrative regulation;
- 2. Shall implement a process for communicating the critical incident, the critical incident out-come, and the critical incident prevention plan to the participant, a family member of the participant, or participant’s guardian or legal representative; and
- 3. Shall maintain documentation of any communication provided in accordance with subparagraph 2 of this paragraph by:
 - a. Entering a record of the communication in the:
 - (i) MWMA [the Kentucky Medicaid Waiver Management Application]; and
 - (ii) Participant’s case record; and
 - b. Having the documentation signed and dated by the staff member making the entry;

(h) Shall ensure that each staff person:

- 1. Prior to independently providing a direct service, is trained regarding:
 - a. Abuse, neglect, fraud, and exploitation;
 - b. The reporting of abuse, neglect, fraud, and exploitation;
 - c. Person-centered planning principles;
 - d. Documentation requirements; and
 - e. HCB services definitions and requirements;
- 2. Receives DAIL attendant care certification training initially and then annually thereafter; . . .

6. Prior to the beginning of employment, has successfully passed a drug test with no indication of prohibited or illicit drug use;

(i) Shall maintain documentation . . . [o]f the results of a drug test for each staff;

(j) 1. Shall:

a. Prior to hiring an individual, obtain . . . [t]he results of a Caregiver Misconduct Registry check . . . ;

b. Within thirty (30) days of the date of hire, obtain the results of a Central Registry check

Section 3. Maintenance of Records.

(1)(a) Regarding each participant, an HCB waiver provider shall maintain . . . [c]ritical incident reports.

(b) A case record shall: . . .

2. Contain: . . .

j. Documentation of each service provided, which shall include:

(i) The date the service was provided;

(ii) The duration of the service; . . .

(iv) Itemization of each service delivered;

(v) The participant's arrival and departure time, excluding travel time, if the service was provided at the ADHC center;

(vi) A monthly progress note each month, which shall include documentation of changes, responses, and services utilized to evaluate the participant's health, safety, and welfare needs

Section 4. Participant Eligibility Determinations and Redeterminations.

(1)(a) To be eligible to receive HCB waiver services, an individual:

1. Shall be determined by the department to meet NF level of care requirements;

2. Without waiver services may be admitted by a physician's order to an NF; . . .
4. Shall meet the Medicaid eligibility requirements established in 907 KAR 20:010

Section 5. Covered Services and Related Requirements.

(1) (a) HCB waiver services shall include . . . ADHC services; . . .

(9) (a) An ADHC service shall:

1. Be provided to a participant who is at least twenty-one (21) years of age;
2. Include the following basic services and necessities provided to participants during the posted hours of operation:
 - a. Skilled nursing services provided by an RN or LPN, including ostomy care, urinary catheter care, decubitus care, tube feeding, venipuncture, insulin injections, tracheotomy care, or medical monitoring;
 - b. Meal service corresponding with hours of operation with a minimum of one (1) meal per day and therapeutic diets as required;
 - c. Snacks;
 - d. The presence of an RN or LPN;
 - e. Age and diagnosis appropriate daily activities; and
 - f. Routine services that meet the daily personal and health care needs of a participant, including:
 - (i) Monitoring of vital signs;
 - (ii) Assistance with activities of daily living; and
 - (iii) Monitoring and supervision of self-administered medications, therapeutic programs, and incidental supplies and equipment needed for use by a participant

(d) 1. An ADHC center shall maintain a sign in and out log documenting the provision of services to participants.

2. Documentation shall include:

- a. The date the service was provided;
- b. The duration of the service;
- c. The arrival and departure time of the participant;
- d. A description of the service provided; and
- e. The title, name, and signature of the staff who provided the service.

(11) Goods and services shall . . . [n]ot include chemical or physical restraints

APPENDIX D: INSTANCES OF NONCOMPLIANCE AT EACH FACILITY

Provider	Health and Safety		Administrative			Total
	Physical Environment	Participant Welfare	Staffing and Policies	Personnel Records	Participant Records	
1	0	0	0	0	4	4
2	1	1	0	0	0	2
3	0	1	1	0	0	2
4	0	2	0	0	5	7
5	0	1	1	0	0	2
6	1	0	0	1	4	6
7	2	1	1	0	0	4
8	0	0	0	9	4	13
9	2	1	0	0	0	3
10	5	0	0	1	0	6
11	0	0	0	0	0	0
12	0	0	0	0	0	0
13	0	0	0	0	0	0
14	2	0	0	0	0	2
15	0	3	1	3	0	7
16	0	0	0	0	0	0
17	2	0	1	1	0	4
18	1	0	0	0	0	1
19	0	0	0	0	0	0
20	0	0	0	0	0	0
Total	16	10	5	15	17	63

Notice: We provided to the State agency under a separate cover the specific facilities reviewed and their specific violations.



**CABINET FOR HEALTH AND FAMILY SERVICES
DEPARTMENT FOR MEDICAID SERVICES**

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June 3, 2019

Ms. Lori S. Pilcher
Regional Inspector General for Audit Services
Office of the Inspector General
Office of Audit Services, Region IV
61 Forsyth Street, SW, Suite 3T41
Atlanta, GA 30303

Re: Report Number A-04-18-00123

Dear Ms. Pilcher:

Thank you for providing the Department for Medicaid Services (the Department) with the opportunity to respond to the audit titled "Kentucky Did Not Comply With Federal Waiver and State Requirements at 14 of 20 Adult Day Health Care Facilities Reviewed". The Department would like to thank you and your staff for your audit and for the opportunity to respond and identify areas for improvement, as well as areas where the Department does not concur with findings. The Department understands that our response will be published in the Office of the Inspector General's final audit report. Our responses regarding the recommendations contained in the report follow below.

Recommendation: *Ensure that providers correct the 63 instances of provider noncompliance identified in this report*

The Department concurs with the majority of the report findings. In two (2) instances in which HHS OIG identified that providers did not have the appropriate Department for Aging and Independent Living (DAIL) training and certification to provide attendant care. The Department identified that the providers did not provide services in the home, and thus were not required to complete the DAIL training and certification.

The Department has contacted each of the 20 providers identified by HHS OIG and discussed report findings. The Department is following up with correspondence documenting the phone discussions and formally requesting documents to demonstrate compliance. Of the fourteen

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(14) providers identified as non-compliant, the Department requested documentation to confirm the providers are now in compliance. The Department has requested pictures, policies and procedures, facility logs, attestations and other documents as needed to determine if provider is now in compliance. The Department have already received documentation from 9 providers and is currently reviewing the documentation. The Department is actively committed to working with the remaining providers to correct outstanding areas of non-compliance. The fourteen agencies found to be noncompliant will have at least one (1) unannounced visit by the end of Calendar Year 2019 by the Department. Providers who do not correct the Office of Inspector General findings will be subject to additional sanctions including up to and including possible termination.

Recommendation: *Improve its oversight and monitoring of providers by considering unannounced site visits and by enhancing its certification tool as it pertains to reviewing participant records*

DMS concurs with this recommendation. The Department had already began unannounced on-site visits and providing technical assistance of the Adult Day Health Care agencies earlier in the calendar year 2019. Upon completion of on-site reviews, DMS will work with providers to make sure providers correct any instances of non-compliance. As the Department has done with the fourteen (14) non-compliant providers identified by HHS OIG, DMS will request provider resolve issues within appropriate timeframes, and will institute corrective action plans as necessary depending on the identified areas of non-compliance

As part of a broader agency-wide initiative that began in late 2018, DMS is streamlining its approach to provider certification and monitoring across all of its 1915(c) home and community-based services (HCBS) waivers. DMS's new approach to provider certification and monitoring is anticipated to be fully implemented by early 2020. To implement an improved waiver provider monitoring process, DMS is completing the following tasks:

- **Developing a standard process and approach to certify waiver provider across all 1915(c) waivers:** DMS is developing a standard process and approach that leverages DMS' current resources to effectively monitor waiver providers, including coordinating between ADHC licensure activities conducted by Kentucky Office of the Inspector General (OIG) and certification activities conducted by DMS. The standard process will allow DMS the opportunity to perform consistent monitoring activities across all HCBS waiver providers to evaluate compliance with Federal waiver and State requirements.
- **Streamlining State regulations related to certification:** DMS is in the process of revising current Kentucky Administrative Regulations (KARs), and supplementing them with policy manuals, to clearly define the waiver provider requirements and reduce waiver provider confusion regarding certification and licensure requirements. The waiver provider requirements currently outlined in the KARs are not easily identifiable and create misunderstanding among waiver providers. The revised KARs and policy manuals will clearly outline the comprehensive list of waiver provider requirements and improve the waiver providers' understanding of the items that DMS will review during monitoring visits.
- **Developing a standard tool to certify waiver providers across all 1915(c) waivers:** DMS is developing a standardized tool for DMS staff to use during the certification process that comprehensively evaluates all Federal waiver and State requirements. The standardized tool will promote a consistent monitoring process across all waiver

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providers and confirm that waiver providers are complying with all requirements outlined in the KAR. DMS expects to use a revised certification tool across all 1915(c) waivers by early 2020.

- **Developing a standard tool and approach for waiver provider corrective action plans across all 1915(c) waivers:** DMS is standardizing its approach to issuing and tracking waiver provider corrective actions plans to support quality improvement and to ensure that compliance gaps identified during the certification process are appropriately addressed. DMS expects to use a revised corrective action plan approach and tool by late 2019.

Recommendation: *Work with providers to improve their facilities, staffing, and training*

DMS concurs with this recommendation. The proposed DMS actions listed above will help waiver providers understand what is required and improve the ability of DMS staff to monitor the compliance of waiver providers. Specifically, the revised KARs and policy manuals will clearly define facility, staffing and training requirements to improve waiver providers' understanding of what is needed to reach compliance. In addition, the standardized certification tool will help staff easily identify provider deficiencies and alert providers when corrections are needed. The Department is in the process of drafting new trainings and updated current trainings to increase clarity and compliance with requests. We have begun conducting new trainings related to critical incident reporting and have received very positive feedback from providers. We solicited and included stakeholder suggestions as we developed the trainings. We are working to implement a training platform that will allow the Department to offer on-line trainings and to track provider compliance with trainings.

Although we did not receive your draft report until May 3, we have already implemented several processes in the last year that we are using to address the issues identified in your report.

Sincerely,



Pam Smith
Director