Department of Health and Human Services

OFFICE OF INSPECTOR GENERAL

FOUR STATES DID NOT COMPLY WITH FEDERAL WAIVER AND STATE REQUIREMENTS IN OVERSEEING ADULT DAY CARE CENTERS AND FOSTER CARE HOMES

Inquiries about this report may be addressed to the Office of Public Affairs at Public.Affairs@oig.hhs.gov.

Daniel R. Levinson
Inspector General

May 2019
A-05-19-00005

Office of Inspector General

https://oig.hhs.gov

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Report in Brief
Date: May 2019
Report No. A-05-19-00005

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

Four States Did Not Comply With Federal Waiver and State Requirements in Overseeing Adult Day Care Centers and Foster Care Homes

Why OIG Did This Review

Prior Office of Inspector General reviews of State agencies that serve vulnerable adults who receive services through waiver programs have identified multiple health and safety issues that put vulnerable adults at risk. These reviews included adult day care services received at adult day service centers (centers) in Minnesota, Illinois, Wisconsin, and Mississippi and services received at adult foster care homes (homes) in Minnesota. We continue to perform similar reviews in other States.

Our objectives were to (1) summarize the results of our previous reviews of States' compliance with Federal and State requirements for overseeing centers and homes and (2) identify actions that the Centers for Medicare & Medicaid Services (CMS) could take to help States comply with the requirements.

How OIG Did This Review

We reviewed Federal waiver and State requirements for centers and homes where vulnerable adults received services through programs in Minnesota, Illinois, Wisconsin, and Mississippi. We selected 20 centers in each State and 20 homes in Minnesota on the basis of their geographic location and other factors. This series of reviews began in January 2016 and ran through March 2017.

What OIG Found

The four States did not comply with Federal waiver and State requirements in overseeing centers and homes. Our reviews found violations of health and safety and administrative requirements at 96 of the 100 centers and homes reviewed. Specifically, we found 1,141 instances of noncompliance with health and safety and administrative requirements.

State officials in Minnesota, Wisconsin, and Mississippi said that most instances of noncompliance occurred because of low staffing levels that limited the States' oversight and monitoring of facilities and because of insufficient training on State requirements. State officials in Illinois and Minnesota said that the absence of templates for State-required administrative records and unclear State requirements contributed to noncompliance with numerous health and safety and administrative requirements. Noncompliance with health and safety and administrative requirements puts vulnerable adults in the care of the centers and homes at risk.

What OIG Recommends and CMS's Comments

We recommend that CMS work with the States reviewed to ensure that the instances of noncompliance with health and safety and administrative requirements identified in this report are corrected; assist all States in ensuring the health and safety of vulnerable adults by offering technical assistance on staffing models in centers, homes, and other home and community-based services (HCBS) settings; review current training the States provide to centers and homes; and ensure the health and safety of vulnerable adults by offering technical assistance on possible templates for administrative records in centers, homes, and other HCBS settings.

In written comments on our draft report, CMS concurred with our findings and recommendations and described corrective actions that it will take in response to our recommendations.

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INTRODUCTION

WHY WE DID THIS REVIEW

Many States operate programs for the elderly under a Federal waiver to their Medicaid State plan. These programs typically fund home and community-based services (HCBS) for people aged 65 and older who are eligible for medical assistance and may require the level of care provided in a nursing home but choose to live in the community. Such services may be received in an adult day care center (center) or provided in a family adult foster care home (home).

Prior Office of Inspector General reviews of State agencies that serve vulnerable adults who receive services through waiver programs have identified multiple health and safety issues that put vulnerable adults at risk. These reviews included adult day care services received at centers in Wisconsin, Mississippi, Illinois, and Minnesota, and adult foster care services received at homes in Minnesota. We continue to perform similar reviews in other States.

OBJECTIVES

The objectives of our audit were to (1) summarize the results of our previous reviews of four States' compliance with Federal waiver and State requirements for overseeing centers and homes and (2) identify actions that the Centers for Medicare & Medicaid Services (CMS) could take to help States comply with the requirements.

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, CMS administers the Medicaid program. Each State administers its Medicaid program in accordance with a CMS-approved State plan. The State plan establishes which services the Medicaid program will cover. Although the States have considerable flexibility in designing and operating their Medicaid programs, they must comply with applicable Federal requirements.

Medicaid Home and Community-Based Services Waiver

Section 1915(c) of the Social Security Act authorizes the U.S. Department of Health and Human Services to waive certain Medicaid statutory requirements so that a State may offer HCBS 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 assurance that necessary safeguards will be taken, including implementing 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).

The State agency must also provide assurances that State certification requirements will be met for services or for individuals furnishing services that are provided under the waiver (42 CFR § 441.302(a)(2)).

CMS recognizes that the design and operational features of a waiver program will vary depending on the specific needs of the target population, the resources available to the State, service delivery system structure, State goals and objectives, and other factors. A State has the latitude to design a waiver program that is cost-effective and employs a variety of service delivery approaches, including participant direction of services.

Elderly Waiver Program

A State agency administers and operates an elderly waiver program under a 1915(c) waiver to its Medicaid State plan.[1] An elderly waiver program funds HCBS for people aged 65 and older[2] who are eligible for medical assistance and require the level of care provided in a nursing home but choose to live in the community. Services may include adult day care or adult foster care.

Adult Day Care Services

Adult day care is a service provided for a partial day in a center that provides services that include health monitoring, medical care, transportation, meals, and social and recreational activities to the aged and disabled.

Adult Foster Care Services

Family adult foster care is a licensed living arrangement that provides food, lodging, supervision, and household services but may also provide personal care and medication assistance.[3] Providers are homeowners who are also the primary caregivers for Medicaid beneficiaries in their home.

[1] In Wisconsin, the program is called the Family Care Program.

[2] The Illinois program includes individuals aged 60 through 64 who are physically disabled, Mississippi's program includes individuals with disabilities aged 21 to 64, and Wisconsin's program includes older family members and adults with physical or developmental disabilities.

[3] We performed our adult foster care review in Minnesota.

State Requirements and Monitoring Activities

To protect the health and safety of vulnerable adults, State agencies must ensure that the centers and homes follow State requirements established in the application for waiver services. These requirements include health and safety and administrative requirements. Certain State agencies monitor centers and homes using certification or licensed inspectors who perform routine inspections. Although it is not a requirement, certain State agencies attempt to perform recertification or relicensing visits every 2 to 3 years, depending on the State.

HOW WE CONDUCTED THIS REVIEW

We reviewed Federal waiver and State requirements for centers and homes where vulnerable adults received services through programs in Wisconsin, Mississippi, Illinois, and Minnesota. We selected 20 centers in each State and 20 homes in Minnesota on the basis of their geographic location and other factors, such as center occupancy capacity and history of health- and safety-related violations. The reviews covered various periods ranging from January 2016 through March 2017.

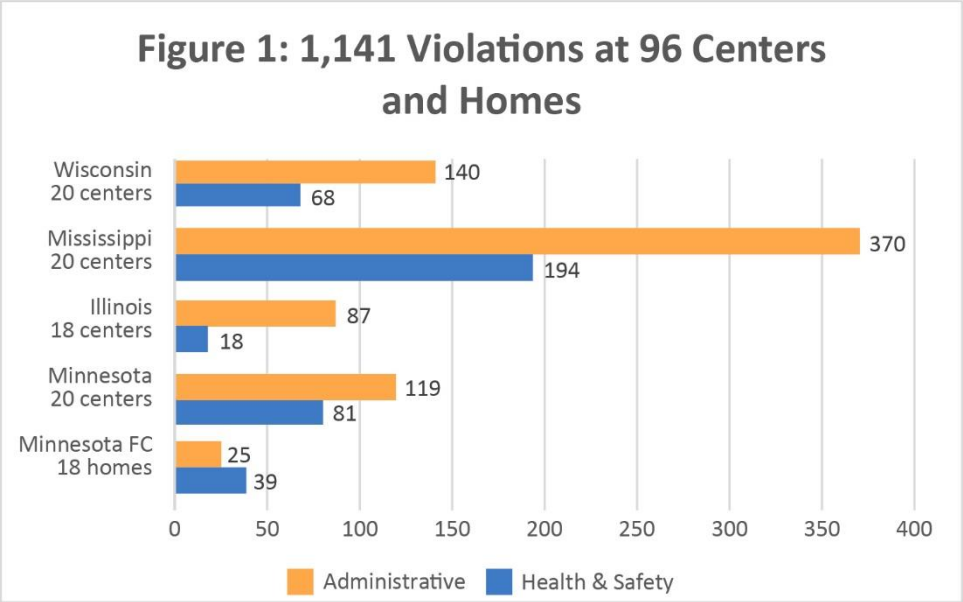
We conducted this performance audit in accordance with generally accepted government auditing standards. Those standards require that we plan and perform the audit to obtain sufficient, appropriate evidence to provide a reasonable basis for our findings and conclusions based on our audit objectives. 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, and Appendix B contains a list of the individual reports on each State covered in this report.

FINDINGS

All four States we reviewed did not comply with Federal waiver and State requirements in overseeing centers and homes.

We found violations of health and safety and administrative requirements at 96 of the 100 centers and homes reviewed. Specifically, we found 1,141 instances of noncompliance with health and safety and administrative requirements (Figure 1).



FC = foster care.

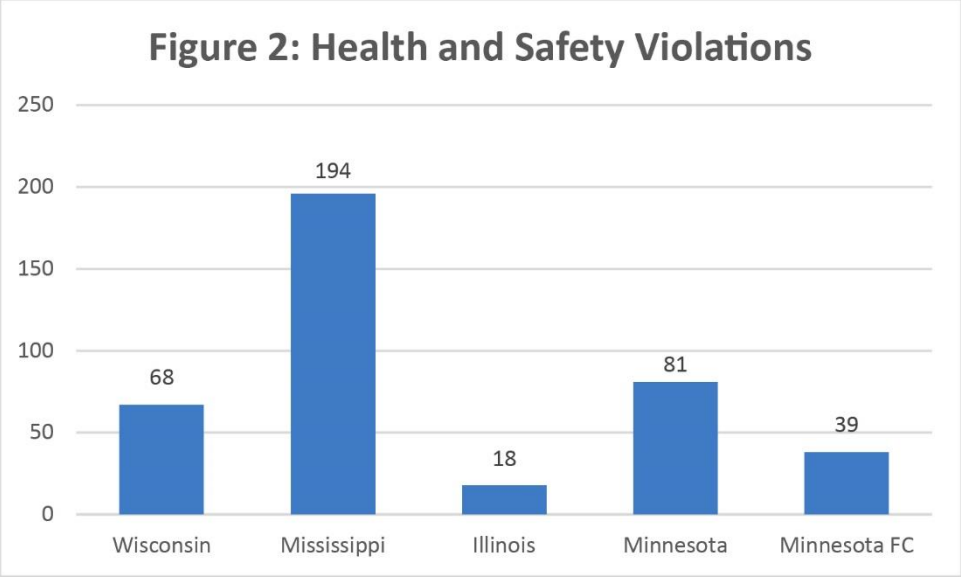
State officials in Minnesota, Wisconsin, and Mississippi said that instances of noncompliance occurred in part because of low staffing levels that limited the States' oversight and monitoring of facilities, while officials in all four States indicated that insufficient training on State requirements also contributed to noncompliance. State officials in Illinois and Minnesota said that the absence of templates for State-required administrative records and unclear State requirements contributed to noncompliance with numerous health and safety and administrative requirements. Noncompliance with health and safety and administrative requirements puts vulnerable adults in the care of the centers and homes at risk.

STATE AGENCIES DID NOT ENSURE THAT CENTERS AND HOMES COMPLIED WITH HEALTH AND SAFETY REQUIREMENTS

Centers and homes must comply with State requirements to ensure the health and safety of vulnerable adults receiving services there. Although requirements vary from State to State, centers and homes must provide a safe, nonhazardous environment. Providers generally must ensure that their facilities and grounds are safe and clean and free of hazards and that hazardous chemicals are stored in areas not accessible to Medicaid beneficiaries. In Illinois, centers must ensure that exit areas are always clear of equipment and debris and are equipped with monitoring or signaling devices to alert staff to vulnerable adults leaving the center unattended. In Minnesota, a provider generally must ensure that knives are inaccessible to vulnerable adults, unless used with appropriate supervision; the home is free of structural hazards; the home is clean; and weapons are stored separately in locked areas.

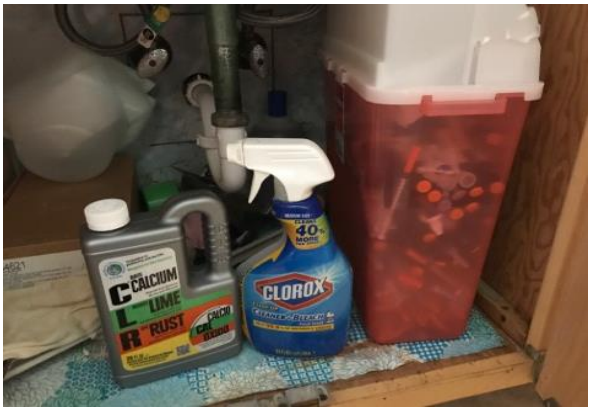
We determined that centers and homes in all States we reviewed did not comply with health and safety requirements. Specifically, we found a total of 400 instances of noncompliance with

State requirements on health and safety. Findings ranged from 18 instances in Illinois to 194 instances in Mississippi (Figure 2).



For example, in Mississippi, we found water damage and mold in a participant bedroom (Photograph 1); in Minnesota and Wisconsin, we found chemicals and a sharps biohazard container accessible to vulnerable adults (Photograph 2). In Mississippi and Illinois, we also found unsecured chemicals.

Photograph 1: A bedroom had water damage and mold (MS).



Photograph 2: Chemicals and a sharps biohazard container were accessible (WI).

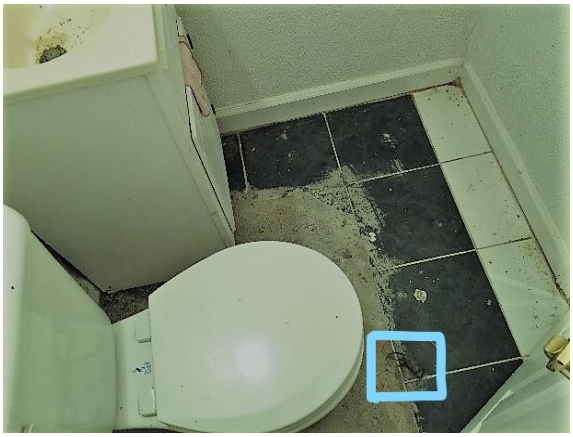
In Minnesota, we found knives left out in the open to at least one vulnerable adult residing in the foster home who had either a physical aggression towards others or had a medical condition (i.e., dementia) that could pose a danger to self or others when kitchen knives are

easily accessible (Photograph 3). In Illinois, several pieces of equipment blocked an exit, making it difficult for participants to leave, if necessary (Photograph 4).

Photograph 3: Knives were easily accessible in a home (MN).

Photograph 4: Several pieces of equipment blocked an exit at a center (IL).

In Mississippi, we found a dead rodent on the floor of a center's bathroom (Photograph 5), and in Minnesota, we found multiple carbon dioxide-powered handguns[4] that were accessible just outside a vulnerable adult's bedroom in a foster care home (Photograph 6).



Photograph 5: A dead rodent was in a center's bathroom (MS).

Photograph 6: CO_2 handguns were easily accessible outside a bedroom in a home (MN).

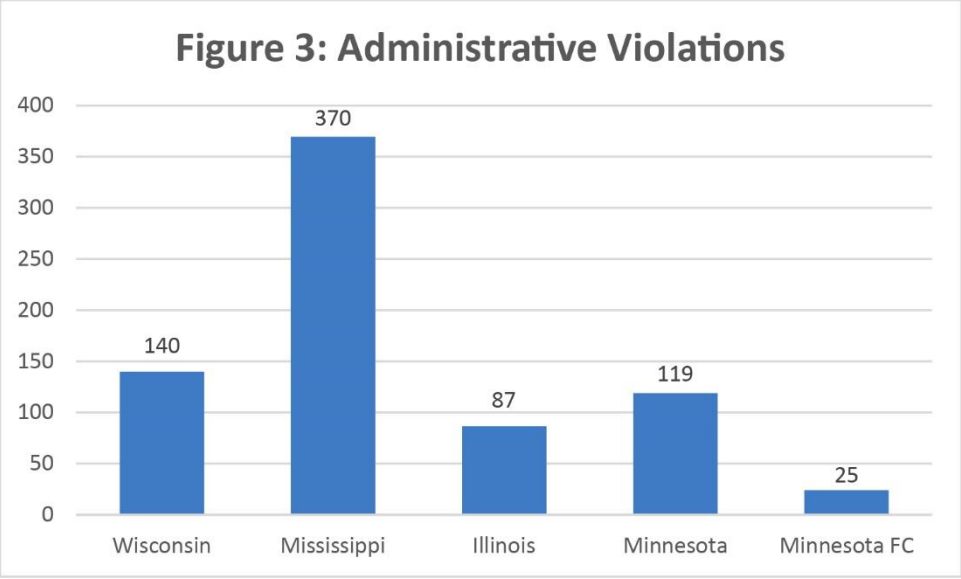
In addition, Appendix C contains photographs of other health and safety violations identified in the four States.

[4] The manufacturer cautions that the handguns are not toys, adult supervision is required, and that misuse or careless use may cause serious injury or death.

STATE AGENCIES DID NOT ENSURE THAT CENTERS AND HOMES COMPLIED WITH ADMINISTRATIVE REQUIREMENTS

Centers and homes must comply with State requirements on administration. Among other requirements, centers must have a sufficient number of employees with the necessary skills to provide essential administrative and direct care functions to participants. States also require background checks on employees before they have direct contact with adults served by the program. In addition, Illinois requires that centers maintain records of employees with direct participant contact who have received flu vaccines, and Mississippi requires participants and employees to receive a tuberculin skin test prior to admission or employment. Other requirements are that centers maintain job descriptions for employees and ensure that employees receive orientation and training that is pertinent to their job responsibilities within required timeframes. Additionally, in Minnesota, centers and homes must generally complete a program abuse-prevention plan and review it annually, while Illinois requires centers to maintain quality improvement systems, which they must review at least annually, through staff and community agency surveys.

We determined that centers and homes in all States we reviewed did not comply with administrative requirements. Specifically, we found a total of 741 instances of noncompliance with State requirements on administration. Findings ranged from 25 instances in Minnesota homes to 370 instances in Mississippi centers (Figure 3).



We found violations of staffing and training requirements at many of the centers and homes in all States. For example, in Mississippi, some facilities did not have a qualified administrator, program director, or licensed social worker on staff. All States had at least one center that did not have proper background checks on file for at least one employee before the employee had direct contact with vulnerable adults. Illinois did not ensure that centers maintained proper

documentation of whether employees received flu vaccines before having direct contact with participants, and Mississippi did not ensure that all centers had employees or beneficiaries complete tuberculin screening tests prior to employment or admission. Additionally, some centers in all States did not provide orientation or annual training within the required timeframe. Minnesota did not ensure that all centers and homes completed program abuse-prevention plans or reviewed program abuse-prevention plans within the required timeframe. Finally, Illinois did not ensure that all centers followed the requirement that staff and agency surveys be taken and used to conduct reviews of their quality improvement systems.

CAUSES OF NONCOMPLIANCE WITH STATE REQUIREMENTS

State officials in Minnesota, Wisconsin, and Mississippi said that instances of noncompliance occurred in part because of low staffing levels that limited the States' oversight and monitoring of facilities, while officials in all four States indicated insufficient training on State requirements also contributed to noncompliance. State officials in Illinois and Minnesota said that the absence of templates for State-required administrative records and unclear State requirements contributed to noncompliance with numerous health and safety and administrative requirements. Noncompliance with health and safety and administrative requirements puts vulnerable adults in the care of the centers and homes at risk.

RECOMMENDATIONS

We recommend that CMS:

- work with the States reviewed to ensure that the instances of noncompliance with health and safety and administrative requirements identified in this report are corrected;

- assist all States to ensure the health and safety of vulnerable adults by offering technical assistance to look at staffing models in centers, homes, and other HCBS settings;

- work with all States to review current training the States provide to centers and homes; and

- assist all States to ensure the health and safety of vulnerable adults by offering technical assistance to look at possible templates for administrative records in centers, homes, and other HCBS settings.

CMS COMMENTS

In written comments on our draft report, CMS concurred with our findings and recommendations and described corrective actions that it will take in response to our recommendations. CMS's comments are included in their entirety as Appendix D.

APPENDIX A: AUDIT SCOPE AND METHODOLOGY

SCOPE

We reviewed Federal waiver and State requirements for centers and adult foster homes where vulnerable adults received services through the programs in Wisconsin, Mississippi, Illinois, and Minnesota. We selected 20 centers in each State and 20 adult foster homes in Minnesota on the basis of their geographic locations and other factors, such as center occupancy capacity and history of health and safety-related violations. The reviews covered various periods ranging from January 2016 through March 2017.

To evaluate the State agencies' oversight of State requirements for centers and homes, we conducted unannounced site visits at the selected facilities in each State.[5] We conducted fieldwork at the entities in all four States beginning in June 2016 in Minnesota through October 2017 in Wisconsin.

METHODOLOGY

To accomplish our objectives, we:

- reviewed applicable Federal laws and State regulations for centers and adult foster care homes,
- discussed with State officials how the States monitor their centers and adult foster care homes,
- developed a health and safety checklist from State requirements as a guide for conducting site visits,
- conducted unannounced site visits at the 20 centers in each State we selected for review,
- interviewed State officials to inquire about the causes of center noncompliance, and
- discussed the results of our reviews with State 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.

[5] In Wisconsin, we conducted an announced site visit at one center because the center had intermittent closures due to limited participant attendance.

APPENDIX B: RELATED OFFICE OF INSPECTOR GENERAL REPORTS

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

APPENDIX C: ADDITIONAL PHOTOGRAPHS OF NONCOMPLIANCE

Photograph 7: Electrical wiring was exposed (MS).

Photograph 8: Smoke detector wiring was uncovered (MN).

Photograph 9: Participants were exposed to an unsanitary environment (MS).

Photograph 10: Participants were exposed to a dirty kitchen area (MN).

Photograph 11: An insufficient outdoor activity area was provided for participants (MS).

Photograph 12: A game table partially blocked an exit (IL).

Photograph 13: A rust-covered floor drain and peeling paint in a bathroom (MN).

Photograph 14: A participant unloading area was unsafe (MS).

Photograph 15: A wall in a bathroom had holes (WI).

Photograph 16: Rust covered a bathroom radiator (WI).

Photograph 17: Facilities were not safe and clean (MS).

Photograph 18: One area contained exposed nails (MS).

APPENDIX D: CMS COMMENTS

DEPARTMENT OF HEALTH & HUMAN SERVICES

Centers for Medicare & Medicaid Services

Administrator
Washington, DC 20201

Date: MAR 28 2019

To: Daniel R. Levinson
Inspector General
Office of Inspector General

From: Seema Verma
Administrator
Centers for Medicare & Medicaid Services

Subject: Office of Inspector Draft Report: "Four States Did Not Comply With Federal Waiver and State Requirements in Overseeing Adult Day Centers and Foster Care Homes" (A-05-19-00005)

The Centers for Medicare & Medicaid Services (CMS) appreciates the opportunity to review and comment on the OIG draft report on states' compliance with federal waiver and state requirements for overseeing adult day service centers and foster care homes. CMS expects states to be in compliance with health and safety requirements and is committed to supporting the health and welfare of beneficiaries that receive these services under Medicaid Home and Community Based Services (HCBS) waivers.

Monitoring patient safety and quality of care provided through home and community-based services is an essential part of CMS's oversight efforts and requires coordinated efforts between the federal government and the states. Although requirements vary across states, HCBS providers must provide a safe, nonhazardous environment. To protect the health and safety of vulnerable adults, state agencies must ensure that the centers and homes follow state and federal requirements established in the application for waiver services. State agencies monitor providers such as centers and homes using certification and licensed inspectors who perform routine inspections.

To assist with monitoring for compliance with federal requirements, HHS issued an informational bulletin in 2014 that identified four areas related to the Health and Welfare assurances within 1915 (c) HCBS waivers[1]. The bulletin outlined assurances that states need to include in new waivers and renewals submitted after June 1, 2014, such as that states must identify and seek to prevent instances of abuse, neglect, exploitation, and unexplained death, that an incident management system is in place, that state policies and procedures for the use or prohibition of restrictive interventions are followed, and that providers are monitored against a

[1] https://www.medicaid.gov/medicaid-chip-program-information/by-topics/waivers/downloads/3-cmcs-quality-memo-narrative.pdf

state's overall health care standards. CMS updated the Waiver Application and Technical Guide consistent with this guidance.

In addition, the HCBS settings regulation[2], finalized in 2014, also enhanced the quality of home and community-based services and provided additional protections to individuals that receive services under these Medicaid authorities through compliance actions including initiating a moratorium on waiver enrollment, withholding of a portion of Federal payments for waiver services until compliance is achieved, or other actions determined necessary by the Secretary to address non-compliance and ensure health and welfare of waiver recipients[3]. HHS also continues to provide technical assistance to states as they develop HCBS 1915(c) waiver or renewal applications to assist in compliance with federal requirements.

Further, CMS will be conducting a national survey regarding incident management systems used for home and community-based services. The purpose of this survey is to help identify best practices that states have adopted in identifying and reporting incidents, responding to reported incidents, collecting information, training individuals involved in incident management, and employing tactics to prevent incidents. CMS will use this information to inform the provision of future training activities and technical assistance.

OIG's recommendations and CMS' responses are below.

OIG Recommendation

CMS should work with the states reviewed to ensure that the instances of noncompliance with health and safety and administrative requirements identified in this report are corrected.

CMS Response

CMS concurs with this recommendation. CMS will work with the states reviewed to ensure that the instances of noncompliance with health and safety and administrative requirements identified in this report are corrected. When deemed appropriate, CMS has the ability to utilize compliance actions including initiating a moratorium on waiver enrollment, or withholding a portion of federal payments for waiver services until compliance is achieved.

OIG Recommendation

CMS should assist all states to ensure the health and safety of vulnerable adults by offering technical assistance to look at staffing models in centers, homes, and other HCBS settings.

CMS Response

CMS concurs with this recommendation. CMS will continue to offer technical assistance to states, as requested, regarding staffing models in centers, homes, and other HCBS settings.

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[2] 79 FR 2948

[3] 42 C.F.R. § 441.304(g)(3)

OIG Recommendation

CMS should work with all states to review current training the states provide to centers and homes.

CMS Response

CMS concurs with this recommendation. CMS will offer technical assistance to states, as requested, regarding current state-provided training to centers and homes. In addition, based on the results of the national survey described above, CMS will share best practices states have utilized regarding training activities conducted.

OIG Recommendation

CMS should assist all states to ensure the health and safety of vulnerable adults by offering technical assistance to look at possible templates for administrative records in centers, homes, and other HCBS settings.

CMS Response

CMS concurs with this recommendation. CMS will continue to offer technical assistance to states as requested. Additionally, based on the results of the national survey described above, CMS will share best practices states have utilized regarding identifying, collecting and reporting incidents.