

Department of Health and Human Services

**OFFICE OF
INSPECTOR GENERAL**

**MISSOURI'S OVERSIGHT OF
CERTIFIED INDIVIDUALIZED
SUPPORTED LIVING PROVIDER
HEALTH AND SAFETY COULD BE
IMPROVED IN SOME AREAS**

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Office of Inspector General

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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: March 2023

Report No. A-07-21-03247

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



Why OIG Did This Audit

States operate home and community-based services (HCBS) waiver programs under a waiver to their respective Medicaid State plans. States must ensure the health and welfare of the recipients of the service. Media coverage nationwide has highlighted injuries and deaths of these individuals, which were caused by abuse, neglect, and medical errors.

Our objectives were to determine whether Missouri: (1) exercised adequate oversight of individualized supported living (ISL) providers to ensure the health and safety of Medicaid recipients with developmental disabilities residing in ISL settings and (2) established infection control and prevention standards to prepare ISL providers for an emergency situation similar to the COVID-19 pandemic.

How OIG Did This Audit

We identified 218 Missouri-certified ISL providers that claimed a total of \$132 million in Medicaid reimbursement during the quarter ended September 30, 2020. We selected 30 ISL providers and reviewed their most recent certification survey documentation and health and safety policies. We then selected 17 of those ISL providers for in-person site visits to their offices to review additional documentation.

Missouri's Oversight of Certified Individualized Supported Living Provider Health and Safety Could Be Improved in Some Areas

What OIG Found

Missouri exercised oversight of ISL providers to ensure the health and safety of Medicaid recipients with developmental disabilities residing in ISL settings; however, improvements could be made. The State could not locate some of the certification survey supporting documentation for some of the providers, and the State completed some of the providers' certification surveys several months after the expiration of the providers' 2-year certification period. Furthermore, Missouri did not require providers to perform periodic background screenings of staff after hire. In addition, most of the 17 providers that we selected for site visits were missing at least some documentation of staff training, staff background screenings, staff driver's licenses, recipient rights reviews, or recipient monitoring. For our second objective, Missouri had infection control and prevention guidelines in place, and all 30 ISL providers had related policies, but the State did not have guidelines for refresher training of provider staff periodically after hire. Although Missouri established health and safety requirements and guidelines for ISL providers and exercised related oversight, some of those requirements and guidelines could be strengthened and Missouri's oversight could be improved to ensure the health and safety of recipients.

What OIG Recommends and Missouri Comments

We recommend that Missouri: (1) maintain all supporting documentation for certification surveys, (2) work to improve completion timeliness of the surveys, (3) consider strengthening background screening requirements for ISL providers to include periodic screenings of staff after hire; (4) continue to monitor ISL providers to ensure that they maintain documentation to support recipient health and safety; and (5) consider strengthening infection control and prevention guidelines for ISL providers to include periodic training of staff after hire. Missouri agreed with our first recommendation, concurred in part with our fifth recommendation, and described corrective actions that it planned to implement. Missouri did not concur with our second and third recommendations and disagreed in part with our fourth recommendation. We revised part of one finding and our fourth recommendation, slightly revised the phrasing of our third and fifth recommendation, and maintain that the rest of our findings and recommendations remain valid. We commend Missouri for the corrective actions that it described. We also acknowledge that Missouri and the ISL providers and recipients faced significant challenges during our audit because of the COVID-19 pandemic.

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INTRODUCTION

WHY WE DID THIS AUDIT

State agencies operate home and community-based services (HCBS) waiver programs, including programs that provide services to individuals with developmental disabilities, under a 1915(c) waiver to their respective Medicaid State plans. In order to receive approval for a waiver, State agencies must ensure the health and welfare of the recipients of the service. Media coverage throughout the country has highlighted injuries and deaths of these individuals, which were caused by abuse, neglect, and medical errors.

As part of its oversight activities, the Office of Inspector General is auditing individualized supported living (ISL) settings for individuals with developmental disabilities. We selected Missouri because of a reported death that occurred in an ISL setting there in 2016, which was determined to be a result of abuse and neglect.¹

OBJECTIVES

The objectives of our audit were to determine whether the Missouri Department of Social Services, Missouri HealthNet Division (State agency), ensured that the Missouri Department of Mental Health (DMH): (1) exercised adequate oversight of ISL providers to ensure the health and safety of Medicaid recipients with developmental disabilities residing in ISL settings and (2) established infection control and prevention standards to prepare ISL providers for an emergency situation similar to the COVID-19 pandemic.

BACKGROUND

Medicaid Program

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 program. Each State administers its Medicaid program in accordance with a CMS-approved State plan. Although the State has considerable flexibility in designing and operating its Medicaid program, it must comply with applicable Federal requirements.

¹ The News Tribune, “Most culpable person in [recipient] death, cover-up gets 17.5 years in prison.” Available online at <https://www.newstribune.com/news/2020/sep/01/most-culpable-person-carl-debrodie-death-cover-ge/> (accessed on Oct. 24, 2022).

Home and Community-Based Services Waivers

The Social Security Act (the Act) authorizes the Medicaid HCBS waiver program (the Act § 1915(c)). The HCBS waiver program permits a State to furnish an array of services that assists members to live in the community and avoid institutionalization. Waiver services complement and supplement the services that are available through the Medicaid State plan and other Federal, State, and local public programs as well as the support services that families and communities provide to individuals. Each State has broad discretion to design its HCBS waiver program to address the needs of the HCBS waiver program's target population.

Federal regulations require States to provide certain assurances to CMS to receive approval for HCBS waivers, including that necessary participant safeguards have been taken to protect the health and welfare of the recipients who are receiving services. Those safeguards must include adequate standards for all types of providers that provide services under an HCBS waiver and assurance that the standards of any State licensure or certification requirements are met for services or for individuals furnishing services that are provided under the waiver (42 CFR § 441.302(a)).

Missouri Medicaid Program and Developmental Disabilities Comprehensive Waiver

In Missouri, the State agency administers the Medicaid program and DMH, Division of Developmental Disabilities, operates the HCBS Developmental Disabilities (DD), Comprehensive waiver through an interagency agreement with the State agency. The State agency and DMH are separate entities of the Missouri State Government. Although the details of our findings generally involve DMH in its operational role with respect to the DD waiver program, we are addressing our findings and recommendations to the State agency, which retains overall responsibility for the administration of the DD waiver program by exercising oversight of the performance of waiver functions by other State agencies.

Included under the DD waiver are ISL habilitation services, which provide assistance and necessary support to achieve personal outcomes that enhance individuals' ability to live in and participate in their communities. DMH describes the nature of ISL services as creative, flexible, responsive, and diverse, and tailors these services specifically to each recipient's needs and personal preferences. Examples of services can include, but are not limited to, assistance and support with activities of daily living (e.g., bathing, dressing, food preparation, and household cleaning) and with activities within the community (e.g., shopping, banking, social interaction, and leisure activities). These services are provided to individuals in private residences (house or apartment)—i.e., not in licensed facilities—and no more than four individuals receiving ISL services may share a residence. Each of these residences must be owned or leased by at least one of the individuals residing in the residence or by someone designated by one of those individuals, such as a family member or legal guardian (Missouri HCBS Waiver Application (Waiver Application), Appendix C, *Participant Services*, section C-1/C-3, "Service Specification").

Missouri Certification Standards and Oversight for Individualized Supported Living Health and Safety

Within DMH, the Office of Licensure and Certification provides regulatory oversight to certified ISL providers and monitors providers for compliance with applicable Federal and State standards. State regulations incorporated under the Waiver Application require ISL providers to seek certification from DMH before the expiration of their existing certification and generally require DMH to issue 2-year certificates to providers upon successful completion of the certification process; however, this requirement does not apply to providers that are accredited by certain accrediting bodies recognized by DMH (9 Code of State Regulations (CSR) 45-5.060). For this audit we focused only on DMH-certified ISL providers.

State regulations require DMH to develop certification standards for ISL providers in the State's waiver program and to conduct a certification survey for the purpose of determining compliance with those certification standards, standards of care, and other requirements (9 CSR 45-5.060(1) and (3)). DMH developed the DD Medicaid Waiver Certification Survey Instrument (the Certification Instrument) to establish guidelines for the provider certification standards.^{2, 3}

During our audit, DMH staff described for us the nature and conduct of DMH's certification surveys. These surveys include reviews of the providers' policies and procedures (for various areas such as background screenings and infection control), staff documentation (e.g., background screenings and training), and recipient documentation (e.g., individual support plans and annual rights reviews). The certification surveys also include environmental site reviews during which DMH observes the recipients in their own homes and monitors for attributes such as home cleanliness and adequate food supply, among others. DMH uses written forms, which it refers to as "tools," to document the survey work performed during the certification surveys.⁴ If DMH notes deficiencies during the certification surveys, providers must submit a corrective action plan before DMH will issue a certification.

Additional oversight for ISL recipient health and safety includes periodic in-person monitoring of recipients from both a registered nurse and a support coordinator (Waiver Application, Appendix G: *Participant Safeguards*, section G-3: "Medication Management and Administration

² The 2016 version of the Certification Instrument was in effect during the early part of our fieldwork. DMH implemented an updated version later in our audit period, in calendar year 2021. The most recent version is publicly available on the DMH [website](#) (accessed on Oct. 24, 2022).

³ Although the State regulations cited above use the term "site survey," for clarification and consistency in this report we refer to this activity as "certification survey," which is the term used in both the Certification Instrument and the Waiver Application.

⁴ DMH has four such tools, which it calls "personnel record review," "individual record review," "environmental review," and "policies and procedures."

(1 of 2);” and Waiver Application, Appendix D: *Participant-Centered Planning and Service Delivery*, section D-1: “Service Plan Development”).

Missouri Infection Control and Prevention Standards

State regulations require ISL providers to protect recipient health through measures typically taken to prevent communicable diseases for persons with similar health status (9 CSR 45-5.010(3)(D)1.I).

DMH’s Certification Instrument (footnote 2) establishes infection control and prevention guidelines for ISL providers. Specifically, the Certification Instrument includes guidelines for establishing infection control and prevention policies in accordance with Centers for Disease Control and Prevention (CDC) recommendations, and guidelines for staff training on those policies during orientation (i.e., upon hire). The 2021 version of the Certification Instrument included updated pandemic-related guidance for both infection control and emergency procedures.

HOW WE CONDUCTED THIS AUDIT

We used the paid claims data provided by the State agency for the quarter ended September 30, 2020, to identify the DMH-certified ISL providers. We identified 218 DMH-certified ISL providers that claimed a total of approximately \$132 million in Medicaid reimbursement on behalf of 3,674 recipients during this period. From the 218 DMH-certified ISL providers, we judgmentally selected 30 providers that had deficiencies noted on 1 or more of their most recent DMH certification surveys. Our selection included a mix of various sized providers (based on Medicaid reimbursement amounts) and providers from various geographic locations throughout the State. We reviewed the most recent certification survey documentation that DMH gave us for each of the 30 providers, and we obtained and reviewed from each provider its most recent health and safety policies; we refer to these reviews as “desk reviews.”

After completing our desk reviews, we judgmentally selected 17 of those 30 providers and conducted in-person site visits to their administrative offices.⁵ We based our selection on geographic locations that contained multiple providers in the same area, which allowed us to visit multiple providers during the same trip and minimize audit resources. During each site visit we reviewed staff and recipient documentation, examples of which included evidence of

⁵ For safety reasons because of the COVID-19 pandemic, we did not perform site visits to the 17 selected providers’ ISL recipient homes. In instances when the provider administrative office was located within an ISL recipient home, we minimized contact with the recipients by using physical distancing and personal protective equipment when necessary.

current staff background screenings and training as well as evidence of current recipient individual support plans and monthly service coordinator visits.⁶

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 details of our audit scope and methodology and Appendix B contains details on the Federal and State requirements related to ISL health and safety. Appendix C contains a summary of the deficiencies and other conditions, and of the periodic background screening timeframes, noted from our 30 provider desk reviews and 17 provider site visits.

FINDINGS

The State agency ensured that DMH exercised oversight of ISL providers to ensure the health and safety of Medicaid recipients with developmental disabilities residing in ISL settings; however, improvements could be made with respect to provider certification survey documentation and timeliness and provider background screening requirements. Specifically, DMH could not locate some of the completed tools and corrective action plan documentation to support some of the providers' certification surveys, and DMH completed some of the providers' certification surveys several months after the expiration of the providers' 2-year certification period. Furthermore, DMH did not require providers to perform periodic background screenings of staff after the initial background screening requirement upon hire.

In addition, although DMH monitors ISL providers through the certification survey reviews, providers did not always ensure that documentation related to recipient health and safety was maintained. Specifically, for the 17 providers that we judgmentally selected for in-person site visits, we found that most providers were missing at least some documentation related to staff training, staff background screenings, staff driver's licenses, recipient individual rights reviews, or recipient support coordinator monitoring.

With respect to our second objective, DMH had infection control and prevention guidelines in place prior to the COVID-19 pandemic, and all 30 ISL providers that we judgmentally selected for our desk reviews had related policies that were in accordance with those guidelines. However, although DMH had guidelines for training of provider staff on infection control and prevention policies upon hire, it did not have guidelines for refresher training of provider staff periodically after hire.

⁶ Our site visit to one provider was cancelled because of a winter storm; however, the provider was able to give us digital copies of the requested documentation. We determined that no additional site visit was needed, and we counted it as 1 of the 17 site visits.

Thus, although DMH established health and safety requirements and guidelines for ISL providers and exercised related oversight, some of those requirements and guidelines could be strengthened and DMH's oversight could be improved to ensure the health and safety of ISL recipients. On the basis of its overall responsibility for the administration of the Medicaid program, including the DD waiver program, the State agency is well positioned to take steps to ensure that DMH strengthens these standards and improves its oversight of ISL providers.

Furthermore, with respect to the providers that had deficiencies noted during our in-person site visits, the providers had policies and procedures in place that, if followed, would have prevented most if not all of the deficiencies that we noted.

STATE AGENCY AND DEPARTMENT OF MENTAL HEALTH OVERSIGHT OF INDIVIDUALIZED SUPPORTED LIVING PROVIDERS

The State agency ensured that DMH exercised oversight of ISL providers to ensure the health and safety of Medicaid recipients with developmental disabilities residing in ISL settings. For all 30 providers that we judgmentally selected for desk reviews, we reviewed the most recent certification survey documentation (from DMH) and each provider's most recent health and safety policies (from the providers). We found that improvements could be made with respect to provider certification survey documentation and timeliness and provider background screening requirements. Specifically, DMH could not locate some of the certification survey supporting documentation for some of the providers, and DMH completed some of the providers' certification surveys several months after the expiration of the providers' 2-year certification period. In addition, we found that DMH did not require providers to perform periodic background screenings of staff after hire.

Supporting Documentation of Individualized Supported Living Provider Certification Surveys Not Maintained

State regulations incorporated under the Waiver Application require DMH to conduct a certification survey for the purpose of determining compliance with certification standards, standards of care, and other requirements (9 CSR 45-5.060(1) and (3)). In addition, if deficiencies are discovered during a DMH certification survey, State regulations require the provider to submit a corrective action plan to DMH within 30 calendar days of receiving a notice of deficiencies from DMH (9 CSR 45-5.060(4)(F)). Furthermore, the Waiver Application also discusses the certification process and notes that if providers fail to meet certification standards, they must complete a corrective action plan within 30 days of receipt of a written survey report (Waiver Application, Appendix C: *Participant Services Quality Improvement: Qualified Providers*).

We requested from DMH the most recent certification survey documentation for the 30 providers that we judgmentally selected for desk reviews. DMH was able to provide the supporting documentation for most of the reviews; however, DMH was unable to locate in its

records some of the completed tools documents for two providers and corrective action plans for three other providers.

For example, DMH could not locate any of the certification survey tools documents to support the completion of one provider's certification survey. DMH officials attributed this issue to turnover within DMH's staff, and explained that the staff member who completed the survey did not save the tools documents and also left employment with DMH in 2019; therefore, DMH could not follow up with that former employee about the missing tools documents. Without these missing tools documents, we could not verify that the related survey work had been completed; therefore, potential health and safety issues may not have been identified.

Individualized Supported Living Provider Certification Surveys Completed Months After Certification Expiration Date

Under the State's certification process, a compliance status is awarded to providers for a period of 2 years following a certification survey by DMH that determines that the provider meets applicable standards, including those relating to health and safety. However, there is no requirement that DMH complete these certification surveys prior to the expiration date, but instead may issue a temporary certification with no penalty to the provider (9 CSR 45-5.060(5)).

For the 30 providers that we judgmentally selected for the desk reviews, we compared the DMH certification survey completion dates to the corresponding providers' certification expiration dates. We determined that DMH completed 16 of the 30 providers' certification surveys after the providers' certification expiration dates.

Table 1 on the following page presents information on the certification surveys that DMH performed after the certification expiration date. All of the certification expiration dates and related certification survey dates in Table 1 occurred after the start of the public health emergency for the COVID-19 pandemic.⁷

⁷ The Department of Health and Human Services declared a public health emergency for COVID-19 on January 31, 2020 (HHS, Determination that a Public Health Emergency Exists. Accessed at <https://www.phe.gov/emergency/news/healthactions/phe/Pages/2019-nCoV.aspx> on Oct. 24, 2022).

Table 1: Certification Surveys Performed After the Certification Expiration Date

Provider	Certification Expiration Date	Certification Survey Date	Days Past Expiration
1	4/30/2020	9/14/2020	137
2	5/31/2020	11/24/2020	177
3	5/31/2020	11/20/2020	173
4	4/30/2020	9/18/2020	141
5	8/31/2020	2/26/2021	179
6	5/31/2020	9/11/2020	103
7	3/31/2020	8/27/2020	149
9	5/31/2020	9/28/2020	120
11	4/30/2020	7/31/2020	92
15	7/31/2020	10/1/2020	62
16	8/31/2020	11/13/2020	74
18	6/30/2020	9/21/2020	83
20	5/31/2020	12/3/2020	186
21	4/30/2020	8/20/2020	112
23	6/30/2020	12/9/2020	162
30	10/31/2020	1/13/2021	74

DMH officials told us that this delay occurred because DMH transitioned from on-site certification surveys to virtual site surveys shortly after the beginning of the COVID-19 pandemic. This transition caused some DMH certification surveys to be delayed while the new procedures were being implemented. Although State regulations do not require DMH to complete these certification surveys prior to the expiration of the providers' 2-year certification period and allow DMH to grant a temporary status certification, delaying the certification surveys could delay both the identification of potential recipient health and safety issues through these surveys (e.g., a provider that was not conducting required background screenings of its staff) and the development and implementation of the related corrective actions.

Background Screening Requirements Did Not Address Periodic Background Screenings

State regulations incorporated under the Waiver Application require ISL providers to initiate background screenings of employees, volunteers, and household members over the age of 18, no later than 2 working days from the date of hire, to verify that those individuals are free from any disqualifying crimes (9 CSR 10-5.190). Further, the Waiver Application notes that criminal background screening is required for all provider staff who have contact with recipients (Waiver Application, Appendix C, *Participant Services*, section C-2, "General Service Specifications").

However, neither the State regulations nor the Waiver Application require periodic background screenings after the date of hire.⁸

All of the ISL providers that we judgmentally selected for our desk reviews had policies that were in accordance with current DMH requirements for background screenings of staff upon the date of hire. However, because DMH requirements do not specify a timeframe for periodic background screenings of staff after the date of hire, the related policies were inconsistent among our 30 selected providers. For example, 9 of the 30 providers' policies that we reviewed did not specify that periodic background screenings were required to be performed at all. Appendix C contains a summary of the periodic background screening policy timeframes noted for our sampled providers.

In addition, during our 17 provider site visits, we found that 5 ISL providers did not have documentation of a current, periodic background screening, for 1 or more staff members, that was initiated within the timeframes established by those providers' own policies. For example, one provider had five staff members who had not been screened in over 2 years, even though that provider's policy required periodic screenings annually.

In the absence of a State requirement for timely periodic background screenings, there is an increased risk that some providers are not performing these screenings and that care is being provided by staff who have committed disqualifying crimes or adverse actions since the required screening they underwent when hired.

DEPARTMENT OF MENTAL HEALTH MONITORING OF INDIVIDUALIZED SUPPORTED LIVING PROVIDER HEALTH AND SAFETY

State regulations require that if deficiencies are discovered during an ISL provider's DMH certification survey, the provider must submit a corrective action plan to DMH within 30 calendar days of receiving a notice of deficiencies from DMH (9 CSR 45-5.060(4)(F)). These regulations also state: "In the event that the provider has not submitted a plan of correction acceptable to [DMH] within sixty (60) days of the original date that written notice of deficiencies was presented by certified mail to the provider, it [i.e., the provider] shall be subject to expiration of certification" (9 CSR 45-5.060(4)(F)(4)).

For the 17 providers that we judgmentally selected for in-person site visits, we evaluated some of the same health and safety areas that DMH reviews during its certification surveys, and we reviewed the same staff and recipient documentation that DMH reviews for those areas. In addition, we reviewed documentation of recipient support coordinator monitoring. We found that most providers were missing at least some documentation related to staff training, staff

⁸ The 2021 Certification Instrument addresses periodic background screenings by stating that providers are following their policies inclusive of periodic review of screenings to ensure that staff are free from disqualifying crimes or adverse actions (2021 Certification Instrument, "General Program Procedures" section, "Background Screening of Employees and Volunteers" subsection).

background screenings, staff driver’s licenses, recipient individual rights reviews, or recipient support coordinator monitoring. During the certification process, the provider must provide information and documentation used to determine compliance with requirements. When DMH finds deficiencies during its certification surveys, providers must submit a corrective action plan before DMH will issue a certification.

Evidence of Timely Staff Training Not Provided

State regulations incorporated under the Waiver Application require ISL providers to conduct staff training in preventing, detecting, and reporting abuse and neglect; as well as medication-related training for staff administering medication, supervising self-administration of medications, or both (9 CSR 45-5.010(3)(C)2.F.; 9 CSR 45-3.070(14); and Waiver Application, Appendix C, *Participant Services*, section C-1/C-3, “Provider Specifications for Service”). DMH reviews provider staff documentation for these required trainings as well as additional trainings, certifications, and policy reviews, that are included on DMH’s personnel record review tool.⁹

From the 17 providers that we selected for in-person site visits, we requested documentation of required training for a sample of each provider’s staff. We found that six ISL providers did not have documentation, for one or more staff members, of training required by State regulation and the Waiver Application. For example, one ISL provider said that all staff had taken the required abuse and neglect training, but during our site visit the provider was unable to locate documentation of the training for one staff member.

Without evidence of completed training, there is an increased risk that care is being provided by staff members who do not have adequate and up-to-date health- and safety-related training.

Evidence of Timely Staff Background Screenings Not Provided

State regulations incorporated under the Waiver Application require ISL providers to initiate criminal background screenings of employees, volunteers, and members of the provider’s household over the age of 18 who will have contact with recipients, no later than 2 working days from the date of hire, to verify that those individuals are free from any disqualifying crimes (9 CSR 10-5.190 and Waiver Application, Appendix C, *Participant Services*, section C-2, “General Service Specifications”). DMH reviews provider staff documentation for evidence of these screenings and includes this review on its personnel record review tool (footnote 4).

⁹ See footnote 4. The personnel record review tool notes staff training in the areas of abuse and neglect, medication, infection control, and emergency procedures; staff certification in the areas of first aid and cardiopulmonary resuscitation; and staff review of policies and procedures in the areas of confidentiality and the Health Insurance Portability and Accountability Act of 1996.

From the 17 providers that we selected for in-person site visits, we requested documentation of background screenings for a sample of each provider's staff. We found that six ISL providers did not have documentation, for one or more staff members, of a background screening that was initiated within 2 working days of the staff member's hire date, as required by State regulation and the Waiver Application. For example, one provider could not locate documentation of these screenings for five employees with hire dates that occurred after the provider's most recent DMH certification survey.

Without evidence of timely background screenings, there is an increased risk that care is being provided by staff members who have committed disqualifying crimes or adverse actions.

Verification of Staff Driver's Licenses Not Maintained

State regulations require ISL providers to assure recipient safety, including ensuring that recipients are transported safely (9 CSR 45-5.010(3)(D)2.F). DMH reviews the driver's licenses of staff members who transport recipients and includes this review on its personnel record review tool (footnote 4).

From the 17 providers that we selected for in-person site visits, we requested documentation of a current driver's license for a sample of provider staff members who transport recipients. We noted two providers that did not have documentation of a current driver's license for one or more staff members who transport recipients.

For example, the employee file of one of the identified staff members had a copy of a State-issued identification that specified that the employee was a "non-driver." The provider's assistant administrator verified that the individual had provided direct care and had transported recipients residing in ISL settings during their employment, starting in October 2020 and up to the time of our November 2021 site visit. In addition, the same employee's background screening, which was on file with the ISL provider, noted instances of driving with a suspended license; however, the charges were not State statute violations and were therefore not technically disqualifying for employment.

ISL providers that do not verify current driver's licenses for staff members who transport recipients run an increased risk that Medicaid recipients in their care are not being transported safely.

Evidence of Recipient Rights Review and Support Coordinator Monitoring Not Maintained

Recipients are to receive an annual review of the DMH individual rights brochure (Waiver Application, Appendix F, *Participant Rights*, section Appendix F-1: "Opportunity to Request a Fair Hearing"). DMH reviews recipient documentation for evidence of this annual review and includes a related field on its individual record review tool (footnote 4).

Additionally, recipients in residential placement are to receive a monthly visit from a support coordinator to monitor their well-being. Although DMH does not include a review of this monthly visit on one of its tool documents, we included this in our review because the Waiver Application requires a monthly face-to-face contact from a support coordinator for individuals in residential placement. The Waiver Application also states that progress notes document the contact and whether the outcomes stated in the individual's service plan are occurring (Waiver Application, Appendix D, *Participant-Centered Planning and Service Delivery*, section D-1: "Service Plan Development").¹⁰

From the 17 providers that we selected for in-person site visits, we requested documentation, for a sample of each provider's recipients, of the most recent annual review of individual rights and documentation of the most recent support coordinator visit.¹¹ We noted the following:

- Five ISL providers did not have evidence of an annual review of individual rights for one or more recipients. For example, one provider told us that it had overlooked performing these reviews the previous year.
- Four ISL providers did not have evidence of the most recent support coordinator visits for one or more recipients in residential placement. For example, one provider told us that its support coordinators did not furnish documentation of their visits unless issues were noted.

The Medicaid recipients who receive services from the ISL providers that were missing any evidence of this documentation are at an increased risk of not knowing all of their individual rights and of not receiving timely monitoring of their well-being from their support coordinators.

Individualized Supported Living Providers' Adherence to Their Policies and Procedures

The 17 ISL providers that we judgmentally selected for in-person site visits had policies and procedures in place that, if followed, would have prevented most if not all of the deficiencies that we noted. At the conclusion of each of our 17 site visits, we shared information on the deficiencies we identified with the ISL provider staff so that immediate corrective actions could be taken; in some cases, corrective action was taken while we were still on site. Although DMH monitors for similar deficiencies during the certification survey reviews, it is the responsibility of the providers to prevent these deficiencies.

¹⁰ During the COVID-19 pandemic, support coordinators were given the flexibility to conduct visits using non-face-to-face methods such as telephone, video, text, and email (Waiver Application, Appendix K Addendum: *COVID-19 Pandemic Response*).

¹¹ Two ISL providers had deficiencies in both of the areas discussed just below.

THE DEPARTMENT OF MENTAL HEALTH INFECTION CONTROL AND PREVENTION GUIDELINES DID NOT ADDRESS PERIODIC STAFF REFRESHER TRAINING

DMH had infection control and prevention guidelines in place prior to the COVID-19 pandemic, and all 30 ISL providers that we judgmentally selected for our desk reviews had related policies that were in accordance with those guidelines. Specifically, we requested the DMH infection control and prevention guidelines that were in place prior to the COVID-19 pandemic. We found that the DMH Certification Instrument established related guidelines, which included guidelines for providers to establish infection control and prevention policies in accordance with CDC recommendations as well as guidelines for provider staff training on those policies upon hire. Additionally, we found that all 30 ISL providers that we judgmentally selected for desk reviews had infection control and prevention policies that were in accordance with DMH guidelines.

Although DMH had guidelines for training of provider staff on infection control and prevention policies upon hire, it did not have guidelines for refresher training of provider staff periodically after hire. If ISL providers do not require periodic refresher training of their infection control policies, as well as any other health and safety policies, there is an increased risk that staff members who were hired prior to any policy updates will not be trained on the most current policies. There is also an increased risk that staff members who have been employed with the provider for many years may forget some or all of the policies from their initial training. Furthermore, the ongoing public health emergency amplifies the need to train provider staff to the maximum extent possible as they continue working to protect the vulnerable recipients in their care.

RECOMMENDATIONS

We recommend that the Missouri Department of Social Services, Missouri HealthNet Division, ensure that the Missouri Department of Mental Health:

- maintains all supporting documentation of the ISL provider certification surveys;
- works to improve the completion timeliness of the certification surveys;
- consider strengthening its background screening requirements for ISL providers to include periodic background screenings of staff after the date of hire and establish a timeframe for doing so;
- continues to monitor ISL providers to ensure that providers maintain documentation to support that:
 - ISL provider staff have taken all required trainings,

- background screenings of all ISL provider staff have been performed in a timely manner,
- all ISL provider staff who transport recipients possess current and valid driver’s licenses, and
- all recipients have received an annual review of the DMH individual rights brochure and a monthly visit from a service coordinator; and
- consider strengthening its infection control and prevention guidelines for ISL providers to include periodic training of staff after the date of hire.

STATE AGENCY COMMENTS AND OFFICE OF INSPECTOR GENERAL RESPONSE

In written comments on our draft report, the State agency (responding on behalf of both itself and DMH) agreed with our first recommendation, concurred in part with our fifth recommendation, and described corrective actions that it planned to implement to address these recommendations. For our first recommendation, the State agency said that DMH would be implementing a new automated document management system “that will help the agency preserve and locate all relevant documentation of ISL provider certification surveys and corrective action plans.” The State agency added that DMH would be transitioning to this electronic document management system, “in which all documentation of certification surveys and corrective action plans will be uploaded and stored,” effective July 1, 2023.

For our fifth recommendation, the State agency said that beginning in calendar year 2023, all registered nurses employed by or under contract with ISLs would be required to complete mandatory annual training that would include infection control and prevention training. In addition, the State agency stated that it had submitted 1915(c) waiver amendments, for all DD waivers, to CMS; these amendments would, effective January 1, 2023, “provide incentive payments to providers, including ISL providers, if their direct care staff undergo additional training after the date of hire.” The additional training would include infection control and prevention training.

The State agency did not concur with our second and third recommendations and disagreed in part with our fourth recommendation. In addition, the State agency emphasized that we conducted our audit “during the height of state and provider response to an emerging pandemic and federal public health emergency” and said that we should have acknowledged that fact in our draft report.

After reviewing the State agency’s comments, we removed, for this final report, the portion of our finding on “Timely Staff Training” that related to training, certification, and policy reviews that were not required by State regulations or the Waiver Application, and we revised our fourth recommendation accordingly. We also slightly revised the phrasing of our third and fifth recommendations. We maintain that the rest of our findings and our fourth recommendation,

as revised, are valid. We also maintain that our other recommendations remain valid, and we commend the State agency and DMH for the corrective actions they described to address our first and fifth recommendations.

We acknowledge that we conducted part of our audit fieldwork during the height of the COVID-19 pandemic, and acknowledge as well that the State agency, DMH, ISL providers, and ISL recipients faced significant challenges during this period. It is for that reason that we chose not to perform site visits to providers' ISL recipient homes during this period; instead, we conducted in-person site visits to the providers' administrative offices to ensure the safety of the ISL recipients and provider staff (footnote 5). In addition, our report states that the ISL certification survey timeliness issues occurred after the declaration of the public health emergency.

A summary of the State agency's comments on our second, third, and fourth recommendations and our responses appears below. The State agency's comments appear in their entirety as Appendix D.

RECOMMENDATION TO IMPROVE THE COMPLETION TIMELINESS OF INDIVIDUALIZED SUPPORTED LIVING PROVIDER CERTIFICATION SURVEYS

State Agency Comments

The State agency said that it and DMH did not concur with our second recommendation but added that both agencies "agree that it is important to timely complete certification surveys of ISL providers, and DMH devotes considerable time and resources to ensuring timely certification surveys." The State agency also stated that "[a]s a result of DMH's efforts, the overwhelming majority of ISL providers are surveyed and re-certified before the end of their two-year certification period."

With respect to the 16 (of 30) provider certification surveys that DMH completed after the end of the providers' certification expiration dates, the State agency pointed out that these surveys "involved certification periods that ended during the height of the COVID-19 pandemic (between April 30, 2020 and October 31, 2020)." The State agency said that during this period it was "impossible for DMH to timely conduct in-person certification surveys for all ISL providers," and for this reason, "DMH exercised its authority to extend temporary certifications to many ISL providers pursuant to 9 CSR 45-5.060(5) and delay, by a few months, the full in-person certification surveys." The State agency added that "[t]his decision was fully consistent with state and federal law and policy, and it was appropriate and necessary to protect the health and safety of individuals receiving ISL services and staff providing those services during a federal public health emergency."

Additionally, the State agency said that it and DMH strongly disagreed with our report's implication that it was inappropriate to delay the in-person certification surveys during the height of the pandemic. The State agency cited the example of CMS temporarily suspending

revalidation surveys and non-statutory recertification surveys for certain provider types “to allow inspectors and facilities to focus on infection control and preparing for” the pandemic,¹² and also pointed out, quoting from this report (footnote 5), that we did not perform certain site visits for this audit “[f]or safety reasons because of the COVID-19 pandemic.”

Finally, the State agency said that DMH does not use its temporary certification authority as frequently now as it did during the first year of the COVID-19 public health emergency.

Office of Inspector General Response

We recognized (as stated in this report) that the 16 provider certification surveys that we identified in our second finding involved timeframes that coincided with the height of the COVID-19 pandemic. Additionally, we agree that it was appropriate for DMH to temporarily suspend in-person certification surveys during the pandemic, in order to better protect the health of ISL recipients, providers, and DMH staff. At the same time, though, we note that at no point—either during our audit or in this report—did we posit that certification surveys should be conducted in-person during this timeframe. Indeed, our report notes that DMH transitioned from in-person certification surveys to virtual site surveys shortly after the beginning of the COVID-19 pandemic. Further, in the report we acknowledge that State regulation does not require DMH to complete a certification survey prior to the expiration of a certification, and we agree with the State agency’s comments that the delay was consistent with State law. Rather, the thrust of our finding and our second recommendation was to draw attention to the fact that DMH took nearly 6 months after the certifications’ expiration to conduct some of these certification surveys—whether in-person or virtual—which could delay the identification of recipient health and safety issues and related corrective actions.

Additionally, with respect to the CMS memorandum that the State agency cited in its written comments (footnote 12), CMS officials told us that it applied only to certified providers and suppliers that are surveyed by State survey agencies or accrediting organizations. These officials added that any related flexibilities were not applicable to Missouri ISLs.

Having said this, we commend DMH for reducing the use of its temporary certification authority since the first year of the COVID-19 pandemic.

¹² CMS, “Frequently Asked Questions for State Survey Agency and Accrediting Organization Coronavirus Disease 2019 (COVID-19) Survey Suspension” (Mar. 13, 2020), <https://www.cms.gov/files/document/covid19survey-activity-suspension-fags.pdf>. Accessed on Feb. 23, 2023. The State agency cited this memorandum in footnote 2 of its written comments.

RECOMMENDATION TO STRENGTHEN BACKGROUND SCREENING REQUIREMENTS

State Agency Comments

The State agency commented on our third recommendation and stated that it and DMH did not concur with that recommendation's reference to the establishment of a specific timeframe for the performance of periodic background screenings of staff after hire. The State agency cited State regulations at 9 CSR 10-5.190(7)(A), and said that DMH interprets those regulations to require ISL providers to "periodically conduct background checks of staff after the date of hire . . . and DMH has conveyed that interpretation to ISL providers." The State agency added that neither Congress nor CMS has required States to impose on providers a requirement for the establishment of a specific timeframe for post-hire background screenings of staff, "and [the State agency] and DMH do not believe it is necessary to do so."

Office of Inspector General Response

The State agency cited the same State regulation (9 CSR 10-5.190) that we cite in the finding that is associated with our third recommendation. Subsection (7)(A) of this regulation states: "Each agency shall develop policies and procedures regarding the implementation of this rule and the disposition of information provided by the criminal record review. At a minimum the policies and procedures shall include: (A) Procedures for obtaining the criminal record review."

We recognize that State regulation requires background screenings of staff within 2 working days of hire but does not explicitly require periodic updates. Thus, we continue to recommend that the State agency work with DMH to require periodic background screenings to ensure that staff remain free from disqualifying crimes or adverse actions. In addition, we agree that the State agency is not required by statute or CMS to establish a timeframe for periodic background screenings. However, we maintain that establishing such a timeframe requirement, in keeping with our recommendation, would help reduce the risk of some ISL providers establishing unreasonable timeframes or not establishing any timeframes at all.

RECOMMENDATION TO CONTINUE MONITORING INDIVIDUALIZED SUPPORTED LIVING PROVIDERS WITH RESPECT TO MAINTENANCE OF DOCUMENTATION

State Agency Comments

For our fourth recommendation, the State agency stated that it and DMH agree that "it is important for ISL providers to maintain all documentation required by state or federal law or policy," and said that DMH would continue to monitor ISL providers' compliance with these requirements.

However, the State agency also said that it and DMH "do not believe that ISL providers should be required to maintain documentation of trainings or certifications that are not required by state or federal law or policy, because adding that burden to ISL providers would discourage

providers from encouraging staff to undergo voluntary training.” In this context, the State agency referred to one of the findings in our draft report, that 11 ISL providers “did not have documentation, for one or more staff members, of additional training, certification, or policy review that was noted on the personnel record review tool but was not required by State regulation or the Waiver application.”¹³

Office of Inspector General Response

We commend the State agency and DMH for the continued monitoring of ISL providers’ compliance with documentation requirements.

In addition, we acknowledge that some of the training, certification, and policy review conditions noted in our draft report were and are not required by State regulations or the Waiver Application. We included a finding on these trainings, certifications, and policy reviews in our draft report because DMH reviewed for documentation of the same trainings, certifications, and policy reviews during its certification surveys. Moreover, each of these was specifically listed on the DMH personnel record review tool (footnote 9) that DMH staff used during the certification surveys. Additionally, during our audit we noted specific instances in which DMH considered lack of documentation for these same trainings, certifications, and policy reviews as deficiencies that required corrective action before that provider would be certified. However, because neither State regulations nor the Waiver Application specifically required these trainings, certifications, and policy reviews, for this final report we: (1) removed the portion of the finding that related to those 11 ISL providers and (2) revised our fourth recommendation accordingly.

¹³ As stated in the “Evidence of Timely Staff Training, Certification, or Policy Review Not Provided” section of our draft report.

APPENDIX A: AUDIT SCOPE AND METHODOLOGY

SCOPE

We used the paid claims data provided by the State agency for the quarter ended September 30, 2020, to identify the DMH-certified ISL providers. We identified 218 DMH-certified ISL providers that claimed a total of approximately \$132 million in Medicaid reimbursement on behalf of 3,674 recipients during this period. From the 218 DMH-certified ISL providers, we judgmentally selected 30 providers that had deficiencies noted on 1 or more of their most recent DMH certification surveys. Our selection included a mix of various sized providers (based on Medicaid reimbursement amounts) and providers from various geographic locations throughout the State. Because of the COVID-19 pandemic, we performed desk reviews of the most recent certification survey documentation that DMH gave us, and the most recent health and safety policies for the 30 selected providers, from April to August 2021.

After completing our desk reviews, we judgmentally selected 17 of those 30 providers and conducted in-person site visits to their administrative offices (footnote 5). We based our selection on geographic locations that contained multiple providers in the same area, which allowed us to visit multiple providers during the same trip and minimize audit resources. We conducted site visits to those 17 providers from September 2021 to March 2022 (footnote 6). During each site visit we reviewed staff and recipient documentation, examples of which included evidence of current staff background screenings and training as well as evidence of current recipient individual support plans and monthly service coordinator visits.

We assessed internal controls necessary to satisfy the audit objectives. In particular, we assessed the control activities related to DMH's oversight of ISL provider compliance with Federal and State health and safety requirements.

We performed our audit work, which included contacting the State agency in Jefferson City, Missouri, and performing site visits at selected ISL providers, from January 2021 to November 2022.

METHODOLOGY

To accomplish our objectives, we:

- reviewed applicable Federal and State requirements and guidelines;
- held discussions with a CMS official to gain an understanding of the State's HCBS waiver health and safety requirements;
- held discussions with DMH officials to gain an understanding of the State's health and safety requirements and guidelines as well as DMH's provider oversight;

- obtained the paid claims data for the DD waiver from the State agency for the quarter ended September 30, 2020, reconciled it to the standard Form CMS-64, Quarterly Medicaid Statement of Expenditures for the Medical Assistance Program, and used it to construct a list of ISL providers and recipients;
- obtained a list of the provider certification surveys performed by DMH and compared it to the list of providers from the claims data to verify completeness and accuracy;
- selected a judgmental sample of 30 DMH-certified ISL providers and performed desk reviews of each provider to:
 - determine whether DMH completed a recent survey of the provider before the provider’s certification expiration date and
 - determine whether the provider had current health and safety policies and procedures, including those specific to infection control and prevention, that were in accordance with Federal and State requirements and guidelines;
- selected a judgmental sample of 17 DMH-certified ISL providers from the 30 providers that we selected for desk reviews, and conducted in-person site visits to their administrative offices; during the site visits we reviewed additional supporting documentation to:
 - determine whether providers had evidence of current staff background screenings, training, and current driver’s licenses for those staff members who transported recipients and
 - determine whether providers had evidence of current recipient individual support plans, health care visits, monthly service coordinator visits, monthly registered nurse visits, and annual reviews of the DMH individual rights brochure; and
- discussed the results of our audit with State agency and DMH officials on April 8, 2022.

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: FEDERAL AND STATE REQUIREMENTS

FEDERAL AND STATE REQUIREMENTS

Federal Regulations

Federal regulations require States to provide certain assurances to CMS to receive approval for HCBS waivers, including that necessary participant safeguards have been taken to protect the health and welfare of the recipients who are receiving services. Those safeguards must include adequate standards for all types of providers that provide services under an HCBS waiver and assurance that the standards of any State licensure or certification requirements are met for services or for individuals furnishing services that are provided under the waiver (42 CFR § 441.302(a)).

State Regulations

State regulations require ISL providers to initiate background screenings of employees, volunteers, and household members over the age of 18, no later than 2 working days from the date of hire, to verify that those individuals are free from any disqualifying crimes (9 CSR 10-5.190).

State regulations require certain ISL staff to have medication training every 2 years (9 CSR 45-3.070(14)).

State regulations require ISL staff to be trained in abuse and neglect (9 CSR 45-5.010(3)(C)2.F. and G.).

State regulations require ISL providers to seek certification from DMH before the expiration of their existing certification and generally require DMH to issue 2-year certificates to providers upon successful completion of the certification process; however, this does not include providers that are accredited by certain accrediting bodies recognized by DMH (9 CSR 45-5.060).

State regulations mandate DMH to develop certification standards (9 CSR 45-5.060(1)).

State regulations require DMH to conduct a certification survey for the purpose of determining compliance with certification standards, standards of care, and other requirements (9 CSR 45-5.060(1) and (3)).

If deficiencies are discovered during a DMH certification survey, State regulations require the provider to submit a corrective action plan to DMH within 30 calendar days of receiving a notice of deficiencies from DMH (9 CSR 45-5.060(4)(F)).

The Home and Community-Based Services Waiver Application

The Waiver Application requires ISL provider staff to have Abuse/Neglect training and medication training for staff members who administer medication (Waiver Application, Appendix C, *Participant Services*, section C-1/C-3: “Provider Specifications for Service”).

The Waiver Application requires providers to comply with State regulations at 9 CSR 10-5.190 and states that both the DMH certification process and Division of DD Provider Relations review process look for evidence that background investigations are completed as required (Waiver Application, Appendix C, *Participant Services*, section C-2: “General Service Specifications (1 of 3)”).

The Waiver Application requires support coordinators to maintain monthly face-to-face contact with recipients in residential placement, which includes ISL settings (Waiver Application, Appendix D, *Participant-Centered Planning and Service Delivery*, section D-1: “Service Plan Development”).

The Waiver Application requires that recipients be provided with information on rights upon entry to the waiver and annually during the person-centered planning process. On at least an annual basis, information from the individual rights brochure is explained and discussed during the person-centered planning process. DMH has published a brochure that support coordinators give to recipients (Waiver Application, Appendix F, *Participant Rights*, Appendix F-1: “Opportunity to Request a Fair Hearing”).

APPENDIX C: SUMMARY OF DEFICIENCIES AND OTHER CONDITIONS, AND PERIODIC BACKGROUND SCREENING TIMEFRAMES, FROM 30 PROVIDER DESK REVIEWS AND 17 PROVIDER SITE VISITS

Table 2: Deficiencies and Other Conditions, and Periodic Background Screening Timeframes, Identified During 30 Provider Desk Reviews and 17 Provider Site Visits

Provider	30 Provider Desk Reviews			17 Provider Site Visits ¹⁴				
	Certification Survey Supporting Documentation	Certification Survey Timeliness	Periodic Background Screening Timeframe	Staff Training	Staff Background Screening	Staff Driver's License	Recipient Individual Rights Review	Recipient Service Coordinator Monitoring
1		X	1 Year					
2	X	X	1 Year	X			X	X
3		X	1 Year					
4		X	Did not specify	X				
5		X	1 Year	X	X			
6		X	Did not specify					
7		X	Periodically					
8			1 Year					
9		X	1 Year		X	X		
10	X		2 Year	X	X		X	X
11		X	Did not specify			X		
12			1 Year		X			
13			1 Year					
14	X		Did not specify					
15	X	X	Did not specify					
16		X	1 Year	X				
17			1 Year				X	
18		X	1 Year				X	
19			1 Year				X	

¹⁴ The 13 providers for which we did not perform site visits are blacked out.

Provider	30 Provider Desk Reviews			17 Provider Site Visits									
	Certification Survey Supporting Documentation	Certification Survey Timeliness	Periodic Background Screening Timeframe	Staff Training	Staff Background Screening	Staff Driver's License	Recipient Individual Rights Review	Recipient Service Coordinator Monitoring					
20		X	1 Year					X					
21		X	Did not specify										
22			Did not specify						X	X			
23		X	Did not specify										
24			Periodically										
25	X		1 Year										
26			2 Year										
27			Did not specify										
28			1 Year		X			X					
29			1 Year										
30		X	1 Year										
Totals	5	16	N/A	6	6	2	5	4					



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December 22, 2022

James Korn
 U.S. Department of Health and Human Services
 Office of Inspector General
 Office of Audit Services, Region VII
 601 East 12th Street, Room 0429
 Kansas City, MO 64106

RE: Draft Report, *Missouri's Oversight of Certified Individualized Supported Living Provider Health and Safety Could Be Improved in Some Areas*, A-07-21-03247

Dear Mr. Korn:

This letter is in response to your letter dated November 17, 2022 and the draft audit report entitled, *Missouri's Oversight of Certified Individualized Supported Living Provider Health and Safety Could Be Improved in Some Areas*, A-07-21-03247 ("Draft Audit Report").

The Missouri Department of Social Services (DSS) and the Missouri Department of Mental Health (DMH) feel strongly that the Office of Inspector General (OIG) should have acknowledged in the Draft Audit Report that this audit was conducted during the height of state and provider response to an emerging pandemic and federal public health emergency. Please find below the agencies' responses to OIG's specific draft recommendations.

OIG Recommendation #1: DSS ensure that DMH "maintains all supporting documentation of the ISL provider certification surveys."

DSS/DMH Response to Recommendation #1: While OIG concluded that DMH maintained the overwhelming majority of documentation relating to certification surveys and related corrective action plans, OIG also found that DMH was unable to locate a few of the completed tool documents for two of the 30 ISL providers reviewed and the corrective action plans for three of the 30 ISL providers reviewed.

DSS and DMH agree that DMH should maintain documentation supporting ISL provider certification surveys and corrective action plans, and DMH's document retention schedule requires the agency to retain this documentation.

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DMH will be implementing a new document management system that will help the agency preserve and locate all relevant documentation of ISL provider certification surveys and corrective action plans. Specifically, effective July 1, 2023, DMH is transitioning from its current paper file system to the ConneXion electronic document management system, in which all documentation of certification surveys and corrective action plans will be uploaded and stored.

OIG Recommendation #2: DSS ensure that DMH “works to improve the completion of timeliness of the certification surveys.”

DSS/DMH Response to Recommendation #2: DSS and DMH do not concur with this recommendation.

DSS and DMH agree that it is important to timely complete certification surveys of ISL providers, and DMH devotes considerable time and resources to ensuring timely certification surveys. As a result of DMH’s efforts, the overwhelming majority of ISL providers are surveyed and re-certified before the end of their two-year certification period.

OIG concluded that 16 of the 30 providers’ certifications were completed after the end of the two-year period for which the providers were previously certified. However, as OIG acknowledges, all of the certifications at issue involved certification periods that ended during the height of the COVID-19 pandemic (between April 30, 2020 and October 31, 2020), during which time it was impossible for DMH to timely conduct in-person certification surveys for all ISL providers consistent with public health rules and guidance.¹ For that reason, DMH exercised its authority to extend temporary certifications to many ISL providers pursuant to 9 CSR 45-5.060(5) and delay, by a few months, the full in-person certification surveys. This decision was fully consistent with state and federal law and policy, and it was appropriate and necessary to protect the health and safety of individuals receiving ISL services and staff providing those services during a federal public health emergency.

To the extent OIG believes it was inappropriate to delay the in-person certification surveys during the height of the pandemic, DSS and DMH strongly disagree. In fact, both the Centers for Medicare and Medicaid Services (CMS) and OIG have recognized that delaying or suspending otherwise required in-person visits to providers was necessary during the pandemic. For example, CMS temporarily suspended “revalidation surveys and non-statutory recertification surveys” for certain provider types “to allow inspectors and facilities to focus on infection control and preparing for [COVID-19],”² and OIG, in conducting this very audit, did not perform certain site visits “[f]or safety reasons because of the COVID-19 pandemic,” *see* OIG, Draft Audit Report, at 4 n.5.

¹ *See* DMH, Memorandum for Office of Licensure and Certification Onsite Reviews (Mar. 23, 2020), <https://dmh.mo.gov/media/pdf/suspending-site-surveys-dmh-olc>.

² CMS, *Frequently Asked Questions for State Survey Agency and Accrediting Organization Coronavirus Disease 2019 (COVID-19) Survey Suspension* (Mar. 13, 2020), <https://www.cms.gov/files/document/covid19survey-activity-suspension-faqs.pdf>

DMH does not use its temporary certification authority nearly as frequently now as it did in the first year of the COVID-19 public health emergency. In fact, DMH now uses this authority only occasionally, and it only exercises this authority when appropriate under 9 CSR 45-5.060(5).³

OIG Recommendation #3: DSS ensure that DMH “strengthens its background screening requirements for ISL providers to include periodic background screenings of staff after the date of hire and establish a timeframe for doing so.”

DSS/DMH Response to Recommendation #3: DMH interprets state regulations to require ISL providers to periodically conduct background checks of staff after the date of hire, 9 CSR 10-5.190(7)(A), and DMH has conveyed that interpretation to ISL providers. DSS and DMH do not concur with OIG’s recommendation that the State should establish a specific timeframe for these periodic, post-hire background checks. Neither Congress nor CMS has required States to impose such a requirement on providers, and DSS and DMH do not believe it is necessary to do so.

OIG Recommendation #4: DSS ensure that DMH “continues to monitor ISL providers to ensure that providers maintain documentation to support that: ISL provider staff have taken all trainings, certifications, and policy reviews”; “background screenings of all ISL provider staff have been performed in a timely manner”; “all ISL provider staff who transport recipients possess current and valid driver’s licenses”; and “all recipients have received an annual review of the DMH individual rights brochure and a monthly visit from a service coordinator.”

DSS/DMH Response to Recommendation #4: DSS and DMH agree that it is important for ISL providers to maintain all documentation required by state or federal law or policy, and DMH will continue to monitor ISL providers’ compliance with these requirements.

OIG noted that “[e]ven ISL providers did not have documentation, for one or more staff members, of additional training, certification, or policy review that was noted on the personnel record review tool but was not required by State regulation or the Waiver application.” DSS and DMH do not believe that ISL providers should be required to maintain documentation of trainings or certifications that are not required by state or federal law or policy, because adding that burden to ISL providers would discourage providers from encouraging staff to undergo voluntary training.

OIG Recommendation #5: DSS ensure that DMH “strengthens its infection control and prevention guidelines for ISL providers to include periodic training of staff after the date of hire.”

DSS/DMH Response to Recommendation #5: DSS and DMH concur in part with this recommendation.

As the OIG explained, DMH certification requirements “included guidelines for providers to establish infection control and prevention policies in accordance with CDC recommendations as

³ DMH may occasionally use this authority for very short extensions when, for example, a winter snowstorm delays a survey visit, just as OIG “cancelled [a site visit] because of a winter storm” in conducting this audit, *see* OIG, Draft Audit Report, at 5 n.6.

well as guidelines for provider staff training on those policies upon hire,” and OIG “found that all 30 ISL providers . . . had infection control and prevention policies that were in accordance with DMH guidelines.” However, the OIG found that DMH “did not have guidelines for refresher training [about infection control and prevention] of provider staff periodically after hire.” That is changing in calendar year 2023.

First, all RNs employed or under contract with ISLs “must complete a mandatory annual state-sponsored RN Oversight training”⁴ that, starting in 2023, will include infection control and prevention training. Starting in 2023, this training will be a recorded webinar that is publicly available and can be referenced by all ISL provider staff at any time.

Second, DSS has submitted Section 1915(c) waiver amendments for all waivers operated by Division of Developmental Disabilities (DD) to CMS that would, effective January 1, 2023, provide incentive payments to providers, including ISL providers, if their direct care staff undergo additional training after the date of hire.⁵ This additional training will include infection control and prevention training. Specific training modules can be found at: <https://dmh.mo.gov/media/pdf/dsp-training-path>.

Thank you for allowing us time to respond to the findings presented in this draft audit report. Please contact Alicia Kolb, DSS Compliance Services Director, at (573) 751-2432 or at Alicia.M.Kolb@dss.mo.gov with any questions regarding this response.

Sincerely,

/s/

Patrick Luebbering
Chief Financial Officer

PL:bsb

cc: Charlie Arnold, Acting Director Audit & Review Branch
Alicia Kolb, Compliance Services Director
Todd Richardson, DSS MHD Director
Marissa Crump

⁴ See DMH, *Purchase of Service Contract for Services Sample*, available at <https://dmh.mo.gov/media/pdf/purchase-service-contract-services-sample>.

⁵ The proposed changes can be found on pages 300-02 of the pending waiver amendment, which is available here: <https://dss.mo.gov/mhd/files/comprehensive-waiver-vbp-amendment-08252.pdf>.