



**COUNTY OF LOS ANGELES
DEPARTMENT OF AUDITOR-CONTROLLER**

KENNETH HAHN HALL OF ADMINISTRATION
500 WEST TEMPLE STREET, ROOM 525
LOS ANGELES, CALIFORNIA 90012-3873
PHONE: (213) 974-8301 FAX: (213) 626-5427

JOHN NAIMO
ACTING AUDITOR-CONTROLLER

August 27, 2014

TO: Supervisor Don Knabe, Chairman
Supervisor Gloria Molina
Supervisor Mark Ridley-Thomas
Supervisor Zev Yaroslavsky
Supervisor Michael D. Antonovich

FROM: John Naimo
Acting Auditor-Controller

SUBJECT: **DEPARTMENT OF PUBLIC HEALTH – NURSING HOME
INVESTIGATION FOLLOW-UP REVIEW (Board Agenda Item 49-A,
March 4, 2014)**

We have completed a follow-up review of the Department of Public Health's (DPH or Department) nursing home investigations. The follow-up review evaluated the quality and integrity of a selected sample of nursing home investigations.

Background

On March 4, 2014, your Board instructed the Auditor-Controller, in coordination with County Counsel and with the cooperation of DPH, to conduct an audit of the quality and integrity of nursing home investigations in Los Angeles County and report back to the Board of Supervisors in writing, in 30 days. The report shall include information on:

1. The current backlog of nursing home complaint investigations;
2. The reasons for the backlog;
3. The resources that would be needed to timely address the backlog; and,
4. The corrective action plan to timely address the backlog.

On April 4, 2014, we issued a report that focused on the current backlog of nursing home investigations, the reasons for the backlog, and DPH's plan to address the backlog. We also reported that federal privacy laws prevented us from accessing the case files and as such, we were unable to evaluate the quality and integrity of the nursing home investigations.

County Counsel worked on our behalf and on April 2, 2014, we were granted access to the nursing home investigation case files. As a result, we reviewed a selected sample of case files to evaluate the quality and integrity of the nursing home investigations.

Scope of Review

DPH's Health Facilities Inspection Division (HFID) investigates complaints involving 385 nursing homes operating in Los Angeles County. Our review focused on evaluating the quality and integrity of nursing home investigations and whether HFID is in compliance with applicable guidelines covering the following areas:

- Initiating the investigations
- Conducting the investigations
- Reviewing and closing the investigations

As part of our review, we interviewed HFID management and staff and reviewed 30 (3%) of the 1,124 cases files that were closed between July 1, 2012 and April 16, 2014. We also reviewed case files for 20 (1%) of the 3,044 investigations that were open as of March 14, 2014. At the time of our review, HFID management could not locate two additional closed case files requested for review.

Results of Review

Overall, DPH needs to improve their communication between staff conducting the investigations (surveyors), their supervisors/managers, and Consultant Unit Physicians to ensure the quality and integrity of their investigations. For example, we noted instances where HFID's supervisors downgraded deficiencies and citations recommended by the surveyors without documenting their justification for the downgrade or discussing the changes with the surveyors. The quality and integrity of investigations is impaired when surveyors' conclusions are changed without their knowledge. In addition, HFID did not always prioritize complaints and/or Entity Reported Incidents (ERIs) in accordance with State guidelines resulting in delays in initiating investigations. Following are some of the issues we noted:

- For six (12%) of the 50 complaint/ERI case files reviewed, HFID did not document the justification for designating a priority less severe than the priority recommended by the State. Three (50%) of the six cases involved complaints/ERIs that could be considered "Immediate Jeopardy" to the nursing home residents which would have required the surveyors to initiate the complaints/ERIs investigations within 24 hours. However, since the HFID managers selected a lower priority, the surveyors had up to ten days to initiate the complaints/ERIs investigations.

DPH's attached response indicates that the Department agrees with the recommendation, and that HFID supervisors and staff received training regarding the State guidelines for prioritizing complaints/ERIs.

- For 12 (40%) of the 30 closed case files reviewed, the surveyors' supervisors or the HFID's Consultant Unit's Physicians changed the surveyors' recommended deficiencies and citations. Nine (75%) of the 12 case files lacked documentation to support the supervisors or physicians justification to downgrade and/or delete the surveyors' recommended deficiencies and citations. We also noted that for four (33%) of the 12 downgraded cases, the supervisors did not discuss the changes with the surveyors as required.

DPH's attached response indicates that the Department agrees with the recommendation. HFID worked with the State to develop a new form that requires supervisors to document their justification for approving or changing the surveyors' recommended deficiencies and citations. DPH also acknowledged that they are in the process of developing a comprehensive audit review process to ensure supervisors and surveyors are using the new form.

As indicated in our report, changes to recommended deficiencies and citations are also made by HFID managers and Consultant Unit Physicians. DPH needs to ensure their corrective action addresses all changes to surveyors' recommended deficiencies and citations.

- For five (17%) of the 30 closed case files reviewed, HFID inappropriately closed the cases without conducting or completing the investigations when an onsite investigation was required.

DPH's attached response indicates that the Department agrees with the recommendation. However, their response does not indicate how they plan to ensure all investigations are appropriately completed before they are closed.

- For one (5%) of the 20 open cases reviewed, HFID did not reassign the investigation when the surveyor retired in January 2014. As of May 2014, HFID had not reassigned this case or any of this surveyor's other open cases.

DPH's attached response indicates that the Department agrees with the recommendation, but believes this was a one-time occurrence. However, this issue was identified when we requested to review an open case last assigned to the retired surveyor. At that time, we learned that none of the retired surveyor's open cases were reassigned upon her retirement. We did not perform additional steps to confirm this was a one-time occurrence.

- For one (20%) of the five closed cases reviewed, HFID closed the case before it was investigated. According to HFID, the case was closed because the complaint was withdrawn. However, the case file did not contain documentation to show who withdrew the complaint or when the complaint was withdrawn.

DPH's attached response indicates that the Department disagrees with the recommendation. DPH believes the level of documentation in the case file complied with State policy. However, DPH management has a responsibility to ensure the County operated program is properly managed. Although State policy does not expressly require such documentation, we believe it appropriately augments the State's policies.

Additionally, due to the increasing backlog of open investigations and significant concerns we identified in our two recent reports, we recommended that DPH hire an independent consultant to assist them in validating the State's staffing model and to help them ensure all recommendations from recent audit reports are addressed. DPH disagreed with our recommendation, stating that they have an executive oversight team responsible for ensuring recommendations move forward.

Review of Report

We discussed the results of our review with DPH and County Counsel. The Department's attached response (Attachment IV) indicates they agree with eight of our ten recommendations.

We thank DPH and County Counsel management and staff for their cooperation and assistance during our review. Please call me if you have any questions, or your staff may contact Don Chadwick at (213) 253-0301.

JN:AB:DC:EB:yp

Attachments

- c: William T Fujioka, Chief Executive Officer
Sachi A. Hamai, Executive Officer, Board of Supervisors
Jonathan E. Fielding, M.D., M.P.H., Director, Department of Public Health
Richard D. Weiss, Acting County Counsel
Public Information Office
Audit Committee
Health Deputies

**DEPARTMENT OF PUBLIC HEALTH
NURSING HOME INVESTIGATION FOLLOW-UP**

Background

The Department of Public Health's (DPH or Department) Health Facilities Inspection Division (HFID) has 146 staff responsible for re-licensing, certification, inspections, and investigating complaints and Entity Reported Incidents (ERIs) at the 2,525 health facilities in Los Angeles County, including:

- Skilled nursing facilities (nursing homes);
- Acute care hospitals;
- Homes for the intellectually impaired;
- Hospice programs;
- Ambulatory surgical centers;
- Dialysis clinics;
- Home health agencies;
- Community care clinics; and
- Congregated living facilities (i.e., for the catastrophic and severely disabled, ventilator dependent, and terminally ill).

HFID has approximately 56 staff located at four district offices responsible for investigating complaints/ERIs relating to the approximate 385 nursing homes that operate within Los Angeles County. Complaints/ERIs are reported by the nursing homes, patients, relatives, etc., to HFID via phone, fax, mail, e-mail, or in-person. Complaints/ERIs are logged into the Automatic Survey Processing Environment (ASPEN) Complaint Tracking System (ACTS), a federal system used to track complaints/ERIs involving all health care providers (including nursing homes). District supervisors review the complaints/ERIs reported, designate a priority level for each complaint/ERI, and assign cases to staff who investigate the complaints/ERIs (surveyors).

Surveyors are responsible for conducting investigations, which includes site visits and interviews with complainants and/or other relevant individuals. For "Immediate Jeopardy" complaints/ERIs, in which the facilities' noncompliance with one or more requirements has caused, or is likely to cause serious injury, harm, impairment, or death to a resident, surveyors are required to initiate the investigation by contacting the health care facility within 24 hours. For all other complaints/ERIs, surveyors are required to initiate an investigation within ten working days of notification of the incident.

Surveyors document the results of their complaints/ERIs investigations in case files and prepare draft reports summarizing their findings and recommendations regarding penalties/fines to be assessed to the nursing homes. Attachment III lists the fines and penalties that correspond to the deficiencies and the citations that the surveyors may recommend.

District supervisors and assistant supervisors are required to review the surveyors' findings and draft reports to confirm the accuracy of the findings and determine if the evidence supports the regulatory requirements. Supervisors must concur with the conclusions or discuss their concerns with the surveyors, at which time the supervisors may require the surveyors to obtain additional information to ensure all issues are properly investigated and supported by evidence. Supervisors and surveyors must come to a consensus on the recommended deficiencies and citations. Surveyors are called to testify when litigation occurs; therefore, it is critical that they are included in all discussions regarding their investigations, especially if their conclusions are changed.

When surveyors conclude the complaint/ERI is unsubstantiated and the district supervisors or assistant supervisors concur, the case is forwarded to clerical staff to upload the conclusion and close the case in ACTS. When surveyors conclude the complaint/ERI is substantiated, they document the findings in the complaint/ERI case file and may recommend deficiencies and/or citations. The surveyors' recommended deficiencies and/or citations may also be reviewed by the district managers (district supervisors' supervisor).

A deficiency is defined as a nursing home's failure to meet a participation requirement specified in the Social Security Act or in 42 Code of Federal Regulations Part 483 Subpart B (42 CFR 488.301). A citation is an imposition of prompt and effective civil sanctions against long-term health care facilities in violation of State and federal laws and regulations relating to patient care established by the California Health and Safety Code Section 1417.1.

For deficiencies and citations involving a death, a physician from HFID's Consultant Unit is required to review and approve the completed investigations before deficiencies and citations can be issued. If the physician does not agree with the surveyor's recommended deficiencies and citations, and a consensus could not be reached with the surveyor, the case is then referred to the State's Chief Medical Consultant for final determination. The final recommended deficiencies and citations are then submitted to the State of California's Office of Legal Services for review and to the HFID's Division Chief for review and approval. The report of the deficiencies and the citations (as applicable) are then sent to the nursing home.

Nursing homes are required to complete a Plan of Correction whenever surveyors note deficiencies. Once the completed Plan of Correction has been reviewed and approved by the surveyor, clerical staff will upload the Plan of Correction and close the case in ACTS. Citations can impact the overall rating of the nursing home, and in certain situations can result in the nursing home losing its license.

Scope of Review

Our review focused on evaluating the quality and integrity of nursing home investigations and whether HFID is in compliance with applicable guidelines covering the following areas:

- Initiating the investigations
- Conducting the investigations
- Reviewing and closing the investigations

As part of our review, we interviewed HFID management and staff, and reviewed the case files for 30 (3%) of the 1,124 cases that were closed between July 1, 2012 and April 16, 2014. We also reviewed case files for 20 (1%) of the 3,044 complaints/ERIs investigations that were open as of March 14, 2014. At the time of our review, HFID management could not locate two additional closed case files requested for review.

Nursing Home Investigations

Overall, DPH needs to improve their communication between surveyors, their supervisors/managers, and Consultant Unit Physicians to ensure the quality and integrity of their investigations. For example, we noted instances where HFID's supervisors downgraded deficiencies and citations recommended by the surveyors without documenting their justification for the downgrades or discussing the changes with the surveyors. The quality and integrity of investigations is impaired when surveyors' conclusions are changed without their knowledge. We also noted that HFID did not always prioritize complaints/ERIs in accordance with State guidelines, resulting in delays in initiating investigations. Lastly, we noted that HFID closed cases as unsubstantiated without conducting onsite investigations or interviews.

Initiating the Investigations

Updating ACTS

According to the California Department of Public Health's (State) Licensing and Certification Policy and Procedure Manual (Manual), "all complaints/ERIs will be entered into ACTS upon receipt." Compliance with this policy is critical to ensure that all complaints/ERIs investigations are initiated within the State required timeframes. However, according to HFID management, complaints/ERIs are entered into ACTS after they are "reviewed" by the assistant or district supervisors rather than upon receipt.

For the 50 open and closed complaint/ERI case files we reviewed, we noted four (8%) were entered into ACTS up to four workdays after receipt of the complaints/ERIs. The four complaints/ERIs were not prioritized as "Immediate Jeopardy," however, since they were all received on County business days, they should have been entered into ACTS on the day they were received. HFID management should ensure all complaints/ERIs are entered into ACTS upon receipt.

Recommendation

1. **HFID management ensure all complaints/ERIs are entered into ACTS upon receipt.**

Prioritizing Complaints/ERIs and Initiating Investigations

Based on documentation contained in the complaint/ERI case files and ACTS, HFID surveyors appropriately responded within 24 hours for the 12 cases reviewed that were prioritized as “Immediate Jeopardy” and within ten days for the 38 “Non-Immediate Jeopardy” cases we reviewed. However, we noted that HFID supervisors did not always prioritize complaints/ERIs in compliance with the Manual (Attachment II).

We reviewed 50 complaints/ERIs and noted six (12%) where HFID designated the incident as a lower priority than the priority recommended by the State. In addition, HFID did not document why they assigned a lower priority to the complaints/ERIs. Three (50%) of the six complaints/ERIs involved allegations that could be considered imminent danger to the nursing home residents, requiring the surveyors to initiate contact with the nursing home within 24 hours. For example, HFID prioritized one complaint/ERI involving a death as “Non-Immediate Jeopardy High.” According to the Manual, the complaint/ERI met the definition of “Immediate Jeopardy” which would require the investigation to be initiated within 24 hours. Due to the lower priority designated to this case, the surveyor did not initiate their investigation until ten days after the complaint/ERI was logged.

HFID needs to ensure that complaints/ERIs are prioritized in accordance with the State guidelines and the justification for prioritizing the complaints/ERIs is documented.

Recommendation

- 2. HFID management ensure that complaints/ERIs are prioritized in accordance with the State guidelines and the justification for prioritizing the complaints/ERIs is documented.**

Conducting the Investigations

Completing the Investigations

As noted in our Nursing Home Investigation Audit report dated April 4, 2014, 945 (31%) of HFID’s 3,044 open cases had been opened for more than two years. The report noted that insufficient staffing and a lack of an effective case management system were reasons that contributed to the backlog.

During our current review, we reviewed 30 closed cases and 20 open cases. We noted that the 30 closed cases reviewed were opened for an average of 17 months and that 19 (95%) of the 20 open cases reviewed have been opened for more than six months.

We also noted that for one (5%) of the 20 open cases reviewed, HFID did not reassign the investigation when the surveyor retired in January 2014. The case involved an incident that occurred in August 2012 and prior to her retirement, the surveyor noted in the case file that she would recommend that a citation be issued to the facility for

multiple violations. However, as of May 2014, HFID had not reassigned this case or any of this surveyors' other open cases.

To ensure that all complaints/ERIs investigations are completed timely, HFID management needs to reassign open investigations timely when surveyors retire or are transferred.

Recommendation

- 3. HFID management reassign open investigations timely when surveyors retire or are transferred.**

Reviewing and Closing the Investigations

Reviewing the Investigations

As previously mentioned, once the surveyors complete investigations, the districts' supervisors or assistant supervisors review the surveyors' findings and recommended deficiencies and citations. The district manager, the Consultant Unit's Physician, and Division Chief are also required to review and approve the investigations when deficiencies and/or citations are recommended on substantiated complaints/ERIs involving the death of the resident. According to HFID's Assistant Division Chief, the supervisors, district managers, and the HFID's Consulting Unit Physician may make changes to the surveyors' recommended deficiencies and citations; however, each of the changes must be discussed with the surveyors for a consensus on the outcome of the investigations. It is critical for a consensus to be reached because certain citations can lead to fines of up to \$100,000 or a nursing home losing their license. If a consensus cannot be reached, the case is referred to the State's Chief Medical Consultant for final determination. The final recommended deficiencies and citations are then submitted to the State's Office of Legal Services for review and to the HFID's Division Chief for review and approval.

We noted that for 12 (40%) of the 30 closed case files reviewed, the surveyors' recommended deficiencies and citations were deleted or downgraded. Five (42%) of the 12 cases involved the deaths of residents as young as three years old. Relating to the 12 cases, we noted:

- Nine (75%) of the 12 cases lacked documentation to support the downgrading and/or deletions of the deficiencies and citations by the supervisors or HFID's Consultant Unit's Physicians.
- Four (33%) of the 12 cases, the supervisors did not discuss the changes with the surveyors, as required.
- Five (42%) of the 12 cases, the district manager, who deleted or downgraded the citations/deficiencies, could not provide justification for the changes. For two

cases, the district manager annotated “unable to support,” however, when questioned, he could not explain what additional information was necessary to substantiate the case.

Examples of surveyor conclusions in the cases we reviewed included issues such as the nursing homes did not comply with doctor’s orders, check to see if a patient had adverse reactions to medication based on their medical condition, or that the death could have been prevented if the plan of care (preventive measures to reduce injury) had been implemented.

State policy does not require HFID district offices to provide Consultant Unit Physicians with the entire case file for investigations that are referred to their Unit. The district offices only provide the physicians with the “District Office Approval and Civil Penalty Date Sheet” and the “Statement of Deficiencies and Plan of Correction” forms for review. However, physicians may request HFID district offices to provide additional documentation, including the entire case file for their review.

One Consultant Unit Physician we interviewed indicated that he can generally complete his review without reviewing the case file and that he generally does not document the results of his review. As a result, this physician was unable to provide documentation to support his decisions to downgrade several deficiencies/citations in the cases we reviewed, including cases involving deaths of patients. Without adequate documentation, it is very difficult to ensure that deficiencies and citations are handled in a consistent, thorough and equitable manner. In addition, Consultant Unit Physicians may be called to testify when litigation occurs, and they need to document the basis for their decisions.

HFID supervisory staff, managers, and physicians are responsible for ensuring the quality of the investigation by ensuring citations and/or deficiencies are supported by the evidence in the case file. According to HFID management, there are appropriate reasons why deficiencies and/or citations should be downgraded, including lack of evidence to support the proposed deficiencies and/or citations, or a need for the surveyor to conduct further investigation. We have expressed concern to DPH management that they need to ensure better communication between surveyors, supervisors, managers, and physicians to ensure proposed deficiencies and citations are only downgraded when the evidence does not support the surveyors’ conclusion. If surveyors need to gather additional information necessary to support their recommended deficiencies and/or citations, they should be given an opportunity to gather additional support before downgrades are made and cases are closed.

Due to the lack of available documentation, we were unable to determine why the deficiencies and/or citations were downgraded for the 12 cases reviewed. HFID management needs to ensure that individuals reviewing and approving the surveyors’ recommended deficiencies and citations appropriately document the justifications for approving or changing the surveyors’ results. In addition, HFID management needs to ensure that changes to the surveyors’ recommended deficiencies and citations are

appropriate and discussed with the surveyors and other applicable personnel as required.

Recommendations

HFID management:

- 4. Ensure that all staff who review and approve the surveyors' recommended deficiencies and citations appropriately document the justification for approving or changing the surveyors' results.**
- 5. Ensure that all changes to the surveyors' recommended deficiencies and citations are discussed and, as appropriate, surveyors gather missing evidence to support their results before downgrades are made and cases are closed.**

Reporting the Outcomes of the Investigations

According to the State's Licensing and Certification Policy and Procedure Manual, HFID is required to notify the complainant on the outcome of the investigation within ten business days of the formal exit regardless of whether a deficiency was cited or not.

Of the 30 closed case files reviewed, 20 (66%) complaints required HFID to notify the complainant of the outcome of the investigations. Ten closed cases were ERI, which do not require HFID to notify the results to complainants. HFID did not issue the Results of Complaint Investigation Letter (Letter) to three (15%) of the 20 complainants, as required. HFID also did not issue Letters to two (10%) complainants within the required timeframe.

HFID management needs to comply with State requirements and issue the Letter to the complainants within ten business days of the formal exit as required.

Recommendation

- 6. HFID management comply with State requirements and issue the Results of Complaint Investigation Letter to the complainants within ten business days of the formal exit as required.**

Closing Complaints/ERIs With No Investigation

HFID inappropriately closed five (17%) of the 30 closed case files reviewed without conducting or completing the investigations when an onsite investigation was required. Specifically:

- One of the five cases was inappropriately closed as part of the "Complaint-Workload Clean-Up Project" that allowed surveyors to close cases without conducting

investigations. According to HFID, the practice of allowing surveyors to close cases without conducting investigations lasted from August 2013 to February 2014.

- One of the five cases was closed before it was investigated because, according to HFID, the complaint was withdrawn. However, based on our review of the case file, we could not verify whether the person withdrawing the complaint was the same person who initially reported it. According to HFID, the State has not established guidelines relating to complaint withdrawals; therefore, HFID staff are not required to verify the appropriateness of withdrawn complaints.
- HFID could not explain why the remaining three cases were closed.

HFID should establish a policy requiring staff to validate that complaint withdrawals are appropriate before closing cases. In addition, HFID management needs to ensure onsite investigations are appropriately completed for all complaints in accordance with the State contract.

Recommendations

HFID management:

- 7. Establish a policy for staff to validate and document withdrawals of complaints and incidents.**
- 8. Ensure onsite investigations are appropriately completed for all complaints/ERIs in accordance with the State contract.**

Maintaining Closed Case File Inventory

We noted that HFID did not maintain an inventory of closed cases in accordance with the State requirements. Specifically, HFID could not locate two (6%) of the 32 closed case files that we originally requested.

According to HFID staff, one of the two missing case files, which was prioritized as “No Action Necessary,” was purged based on the date that the incident was received. According to the State’s Licensing and Certification Policy and Procedures Manual, case files are to be purged (destroyed) four years from the adjudication date or the investigation close date. The second missing case file, prioritized as an “Immediate Jeopardy,” could not be located. DPH management indicated that they subsequently located the “Immediate Jeopardy” case.

HFID management needs to ensure closed case files are maintained in accordance with the State requirements.

Recommendation

9. **HFID management ensure that an inventory of closed cases is maintained and closed cases are purged in accordance with the State requirements.**

Additional Concerns

Since the 1960's, the State has contracted with DPH to provide re-licensing, certification, surveys (inspections), and investigations of the 2,525 health facilities in Los Angeles County. DPH's HFID provides the contracted services which includes investigations and inspections of acute care hospitals, nursing homes, homes for the intellectually impaired, hospice programs, ambulatory surgical centers, dialysis clinics, home health agencies, community care clinics, and congregated living facilities (i.e., for the catastrophic and severely disabled, ventilator dependent, and terminally ill).

The scope of our review was limited to reviewing the quality of nursing home investigations. We did not review HFID's abilities to effectively manage and oversee the inspections, investigations, and licensing of the other health care facilities. Currently, HFID has 146 staff responsible for overseeing the 2,525 health facilities. DPH recently reported to the State that to adequately address the workload to oversee the 2,525 health facilities, including ensuring investigations can be completed timely, HFID will require 306 staff. DPH anticipated that it will take approximately 52,000 hours to complete the backlog of approximately 3,400 nursing home investigations and approximately 41,000 hours to complete the backlog of 3,384 complaints/ERIs investigations of other health care facilities.

DPH management indicates they are using a staffing model developed by the State to request State funding that will ensure appropriate staffing levels are maintained to perform nursing home investigations. We recommend that the Department hire an independent consultant that can assist them in validating the State's staffing model and help them to ensure all recommendations from recent audit reports are addressed.

Recommendation

10. **DPH management hire an independent consultant that can assist them in validating the State's staffing model and help them ensure all recommendations from recent audit reports are addressed.**

PRIORITY¹

PRIORITY	DEFINED AS	EXAMPLES
A – IMMEDIATE JEOPARDY	Noncompliance has caused, or is likely to cause, serious injury, harm, impairment, or death to a resident.	<ul style="list-style-type: none"> • Injury or incident involving death or potential criminal activity. • Unexplained or unexpected death with circumstances indicating that there was abuse or neglect. • Abuse • Sexual assault • Environmental hazards • Elopement of a resident from the facility.
B – NON-IMMEDIATE JEOPARDY HIGH	Noncompliance may have caused harm that negatively impacts the individual's mental, physical and/or psychosocial status and are of such consequence to the person's well-being that a rapid response by the State Agency is indicated.	<ul style="list-style-type: none"> • A resident is intimidated or threatened. • Physically abused (condition no longer present and ongoing). • Falls resulting in a fracture. • Inappropriate use of restraints resulting in injury. • Failure to provide appropriate care or medical services (e.g., failure to respond to a significant change in a resident's condition). • Refusal to readmit a resident. • Elopement of a resident (subsequently found) resulting in harm, but not serious injury.
C – NON-IMMEDIATE JEOPARDY MEDIUM	Noncompliance caused or may cause harm that is limited consequence and does not significantly impair the individual's mental, physical and/or psychosocial status or function.	NONE PROVIDED
D – NON-IMMEDIATE JEOPARDY LOW	Noncompliance may have caused physical, mental and/or psychosocial discomfort that does not constitute injury or damage.	NONE PROVIDED
E – ADMINISTRATIVE REVIEW – OFFSITE INVESTIGATION	Onsite investigation is not necessary. An offsite administrative review of written/verbal communication or documentation to determine if further action is necessary.	NONE PROVIDED
F – REFERRAL – IMMEDIATE	Requires referral or reporting to another agency, board, or End Stage Renal Disease (ESRD) network without delay for investigation.	NONE PROVIDED
G – REFERRAL – OTHER	Referred to another agency, board or ESRD Network for investigation or informational purposes.	NONE PROVIDED
H – NO ACTION NECESSARY	Determination with certainty that the alleged noncompliance requires no further investigation, analysis, or action.	<ul style="list-style-type: none"> • No allegation of Immediate Jeopardy. • Previous survey investigated the same event. • Previous survey evaluated the appropriate individuals, including those identified in the intake. • Situation did not worsen.

¹ **Source:** State of California's Licensing and Certification Policy and Procedure Manual, Publication No. P&P 14-01, Section 100.2.01

DEFICIENCY AND CITATION CLASSIFICATIONS

CATEGORY	DEFINITION	CLASS	DEFINED AS	FINES AND PENALTIES
DEFICIENCY ²	Skilled nursing facility's or nursing facility's failure to meet a participation requirement specified in the Act (Social Security Act) or in 42 CFR Part 483 Subpart B. (42 CFR 488.301)	D, E, F	<ul style="list-style-type: none"> The facility is not in substantial compliance. More than minimal physical, mental and/or psychosocial discomfort and: <ul style="list-style-type: none"> D = Isolated Incident E = Pattern F = Widespread 	<ul style="list-style-type: none"> No revisit is required. The facility must submit an acceptable plan of correction and provide evidence of compliance; otherwise there is an imposition of denial of payment for new admissions. Possible civil money penalty between \$50 and \$3,000 per day or a "per instance" civil money penalty between \$1,000 and \$10,000 for each deficiency.
		G, H, I	<ul style="list-style-type: none"> The facility is not in substantial compliance. Actual harm that is not Immediate Jeopardy and: <ul style="list-style-type: none"> G = Isolated Incident H = Pattern I = Widespread 	<ul style="list-style-type: none"> A revisit is required within 45-60 days. Denial of payment for new admissions. Possible civil money penalty between \$50 and \$3,000 per day or a "per instance" civil money penalty between \$1,000 and \$10,000 for each deficiency.
		J, K, L	<ul style="list-style-type: none"> The facility is not in substantial compliance. Immediate Jeopardy to resident health or safety and: <ul style="list-style-type: none"> J = Isolated Incident K = Pattern L = Widespread (most serious) 	<ul style="list-style-type: none"> A revisit is required within 45-60 days to verify demonstrated removal of Immediate Jeopardy. Acceptable plan of correction. Possible civil money penalty between \$3,050 and \$10,000 per day of Immediate Jeopardy or a "per instance" civil money penalty from \$1,000 to \$10,000 for each deficiency. Denial of payment for new admissions.
CITATION ³	Imposition (under the authority of the California Health and Safety Code) of civil sanctions against skilled nursing facilities in violation of State and federal laws and regulations relating to patient care.	AA	Violations that meet the criteria for a class "A" violation and that the State determines to have been a direct proximate cause of death of a patient or resident of a long-term health care facility.	<ul style="list-style-type: none"> Not less than \$25,000 and not exceeding \$100,000 for each citation. For each class "AA" citation within a 24-month period, the State department shall commence action to suspend or revoke the facility's license.
		A	Violations which the State department determines present either (1) imminent danger that death or serious harm to the patients or residents of the long-term health care facility would result therefrom, or (2) substantial probability that death or serious physical harm to patients or residents of the long-term health care facility would result there from.	<ul style="list-style-type: none"> Not less than \$2,000 and not exceeding \$20,000 for each and every citation.
		B	Violations that the State department determines have a direct or imminent relationship to the health, safety, or security of long-term health care facility patients or residents, other than class "AA" or "A" violations.	<ul style="list-style-type: none"> Not less than \$100 and not exceeding \$2,000 for each citation.

² Source: Centers for Medicare and Medicaid Services' (CMS) State Operations Manual, Chapter 7, and the State of California's Licensing and Certification Policy and Procedure Manual, Publication No. P&P 14-01, Section 100.2.01.

³ Source: California Health and Safety Code Section 1424.5.



JONATHAN E. FIELDING, M.D., M.P.H.
Director and Health Officer

CYNTHIA A. HARDING, M.P.H.
Chief Deputy Director

313 North Figueroa Street, Room 806
Los Angeles, California 90012
TEL (213) 240-8117 • FAX (213) 975-1273

www.publichealth.lacounty.gov

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August 22, 2014

TO: Each Supervisor

FROM: Jonathan E. Fielding, M.D., M.P.H. *JE Fielding MD*
Director and Health Officer

SUBJECT: **RESPONSE TO AUDITOR-CONTROLLER NURSING HOME
INVESTIGATION FOLLOW-UP REVIEW**

This is to provide you with the Department of Public Health's (DPH) response to the Auditor-Controller's Nursing Home Investigation Follow-Up Review. There were a total of ten recommendations in the Auditor-Controller's report of which seven have already been implemented. DPH agrees with all but two of the Auditor-Controller's recommendations.

On May 28, 2014, July 8, 2014, July 22, 2014, and August 21, 2014 DPH provided to the Board of Supervisors updates on actions DPH has taken to improve the overall functioning of HFID. Improvements made include: implementation of a new tracking log for complaints to closely monitor the status of complaints received; organizational restructuring of the program to provide improved oversight and managerial support; refresher trainings on intake, prioritization and assignment of complaints and Entity Reported Incidents; weekly update meetings with Program Managers and executive management; and the implementation of a workload plan that prioritizes surveys, complaints and ERIs and optimizes the most productive use of existing staff.

DPH's response to the Auditor-Controller's recommendations is provided in Attachment I.

If you have any questions or would like additional information, please let me know.

JEF:cb

Attachment

c: Chief Executive Officer
County Counsel
Executive Officer, Board of Supervisors

**LOS ANGELES COUNTY DEPARTMENT OF PUBLIC HEALTH RESPONSE TO
AUDITOR-CONTROLLER NURSING HOME INVESTIGATION FOLLOW-UP**

Introduction

This is the Department of Public Health's (DPH) response to the Auditor-Controller's follow-up review of the Health Facilities Inspection Division's (HFID) nursing home investigations. The initial report was issued by the Auditor-Controller on April 4, 2014. In this second phase of the audit, the Auditor-Controller reviewed a very small sample of case files: 3% of the cases closed between July 1, 2012 and April 16, 2014, and 1% of cases that were open as of March 14, 2014. Their review focused on case file documentation to demonstrate the initiation, review and closure of these cases. Seven of the ten recommendations in this current audit have already been implemented, as is noted below in our response to each recommendation.

The Auditor-Controller's findings were not based on a clinical review of the nursing home investigation files which, we believe, hindered their reviewers' ability to comprehensively understand the medical context of the actions taken. DPH Audit and Investigation Division (AID) conducted an internal review of the same case files, using reviewers with clinical backgrounds.

DPH AID auditors and Auditor-Controller's staff did not reach the same conclusions about HFID's compliance with case file documentation. While DPH agrees that case file documentation was lacking in some instances, the Auditor-Controller stated documentation was not sufficient for some case files, where DPH AID found documentation in support of compliance with State practices and policies. It should be noted that for any A or AA citation case, HFID consulted with both the State's administration and Office of Legal Services to determine the final level of citation. In most cases, this consultation was conducted via email or orally and documentation in the case files was not maintained, as it should have been.

The Auditor-Controller's report of their follow-up review, completed at the end of June 2014, does not mention that since March 2014, HFID has, and is in the progress of, implementing numerous operational improvements. On May 28, 2014, July 8, 2014, July 22, 2014, and August 21, 2014, DPH provided to the Board of Supervisors updates on actions taken to improve the overall functioning of HFID.

Additionally, HFID has developed an updated staffing model identifying the need for an additional 183 positions. DPH worked with the State on the development of this model,

which is based on the same staffing model that the State uses in offices outside of Los Angeles County. The model clearly demonstrates that the Los Angeles County HFID is severely understaffed. As the jurisdiction responsible for 33% of licensed health facilities that require inspections in the State, the County of Los Angeles receives only 15% of the CDPH Licensing & Certification budget. In May 2014, Los Angeles County submitted a request for additional resources to the State in order to adequately manage the workload.

While we concur with the Auditor-Controller that case file documentation was sometimes lacking and that operational improvements were necessary, it must be reiterated that HFID's chronic lack of funding and subsequent understaffing have led to less than optimal program operations and overburdened staff. HFID has implemented numerous operational and administrative changes that have measurably improved the program, yet without additional funding, HFID will not have the capacity to complete the annual workload without adding to the current backlog.

DPH has been working with both the State and the U.S. Centers for Medicaid & Medicare Services to resolve the workload and funding issues to ensure the highest quality of facility inspections going forward. If we are unable to resolve these issues, we will be forced to recommend that the Board terminate the contract with the State.

Recommendation 1

HFID management ensure all complaints/ERIs are entered into ACTS upon receipt.

DPH Response to Recommendation 1:

Agree. Recommendation was implemented prior to the completion of this audit. The CDPH Licensing and Certification Policy and Procedure No 14-01, Abbreviated Standard Survey (Federal Complaint Process) in Skilled Nursing/Nursing Facilities, Section 100.2.01 was discussed with all supervisors on June 25, 2014, and all Senior Nurses and support staff on July 1, 2014.

On July 1, 2014, a new Complaint Tracking Log was implemented in all District Offices. The newly developed tracking log identifies the facility name, complaint intake number, name of the complainant, resident name, assigned evaluator; date complaint was received, date due, complaint investigation initiation/start date, exit date, and supervisor review date.

To ensure all complaints and entity related incidents (ERIs) are entered into the Automated Survey Processing Environment (ASPEN) Complaint Tracking System (ACTS) upon receipt, on a daily basis, supervisors compare the receipt date on the new Complaint Tracking Log with the date the complaint/ERI was entered into ACTS. The Program Manager generates an ACTs report for all

complaints/ERIs received during the week, compares the Complaint Tracking Log with the ACTs report, and discusses the findings in the weekly Program Manager meeting.

A comprehensive audit review process is in the development stage and will be implemented by December 31, 2014. This audit review process will include a component to verify that all complaints/ERIs are entered into ACTS upon receipt.

Recommendation 2

HFID management ensure that complaints/ERIs are prioritized in accordance with the State guidelines and the justification for prioritizing the complaints/ERIs is documented.

DPH Response to Recommendation 2:

Agree. Recommendation was implemented prior to the completion of this audit. By July 1, 2014, all HFID supervisors reviewed the CDPH Licensing and Certification Policy and Procedure No 14-01, Abbreviated Standard Survey (Federal Complaint Process) in Skilled Nursing/Nursing Facilities, with emphasis on procedures related to intake, prioritization, and assignment of complaints and ERIs with support staff. Acknowledgement Sheets were signed by support staff in each district office, acknowledging that the policy was distributed, reviewed, and discussed with them. This policy and procedure will be reviewed annually with support staff.

In addition, on June 25, 2014, the HFID training coordinator provided training to all HFID supervisors, and on July 1, 2014, to all Senior Nurses and support staff. Both of these training sessions covered the prioritization and assignment of all complaint/entity reported incidents at intake including complaints and entity reported incidents that constitute an immediate jeopardy situation.

The comprehensive audit review process currently being developed includes a verification component that will ensure all complaints/ERIs are prioritized correctly.

Recommendation 3

HFID management reassign open investigations timely when surveyors retire or are transferred.

DPH Response to Recommendation 3:

Agree. It should be noted that the specific case in the Auditor-Controller's review refers to a one-time occurrence. However, in HFID's own investigation into this matter it became apparent that HFID does not have a uniform practice regarding

reassignment of investigations. Therefore, effective September 1, 2014, all surveyor reassignments will be included in the new Complaint Tracking Log. This log is updated daily by supervisors to closely monitor the status of all complaints received.

Recommendation 4

HFID management ensure that all staff who review and approve the surveyors' recommended deficiencies and citations appropriately document the justification for approving or changing the surveyors' results.

DPH Response to Recommendation 4:

Agree. Recommendation was implemented prior to the completion of this audit. On June 5, 2014, supervisors were directed to use a documentation verification form titled, Supervisor Worksheet for Survey and Complaint/ERI Investigation by Surveyor. DPH assisted the State with revising the form which will now be used statewide. The previous form did not require signatures indicating consensus after discussions took place between the surveyor and the supervisor. The new form requires supervisors to appropriately document the justification for approving or changing the surveyor's results. This form verifies that supervisors are conferring with the surveyors before any changes are implemented. The Supervisors Worksheet contains the following information: components of a deficient practice statement; findings that address all factual aspects of the investigation; sources of evidence (observation/interview/record review); sufficient supporting evidence; correct regulations cited; supportive documentation for violations; impact on the residents involved; and the appropriate scope and severity.

The comprehensive audit review process currently in development includes a verification component to ensure that supervisors and managers are appropriately using this worksheet.

Recommendation 5

HFID management ensure that all changes to the surveyors' recommended deficiencies and citations are discussed and, as appropriate, surveyors gather missing evidence to support their results before downgrades are made and cases are closed.

DPH Response to Recommendation 5:

Agree. Recommendation was implemented prior to the completion of this audit. See DPH response to Recommendation 4. When a manager or supervisor documents and recommends a change to the surveyor's

recommended deficiencies and citations, the Supervisor Worksheet for Survey and Complaint/ERI Investigation by Surveyor form is completed and discussed with the surveyor. The form is signed by both the surveyor and Supervisor/Manager to verify discussion.

When further evidence is required to support a finding, the following survey evidence is requested by the supervisor to support the deficiency/citation and supervisor determination as indicated on the compliance determination worksheet for Supervisors:

- a) Survey Field Notes (observations and interviews)
- b) Residential Medical Records
- c) Facility Policies and Procedures

Recommendation 6

HFID management comply with State requirements and issue the Results of Complaint Investigation Letter to the complainants within ten business days of the formal exit as required.

DPH Response to Recommendation 6:

Agree. Recommendation was implemented prior to the completion of this audit. HFID Supervisors, Senior Nurses, and support staff participated in training on June 25, 2014, and July 1, 2014. The training addressed all components of the CDPH complaint policy and procedure with emphasis on the timely issuance of the final complaint notification letter no later than ten business days. Refresher training will be conducted on an annual basis.

The comprehensive audit review process currently in development includes a verification component regarding the timely issuance of the final complaint notification letter.

Recommendation 7

HFID management establish a policy for staff to validate and document withdrawals of complaints and incidents.

DPH Response to Recommendation 7:

Disagree. The specific case the Auditor Controller is referring to contained documentation within the file that the case had been withdrawn, which is in accordance with State policy. The HFID program is implemented as a contract with the State and therefore, staff must follow the existing State policies and procedures. A separate policy for handling withdrawals is not necessary at this

time. In addition, the newly developed Complaint Tracking Log will be used to improve tracking of complaints and ERIs that have been withdrawn.

Recommendation 8

HFID management ensure onsite investigations are appropriately completed for all complaints/ERIs in accordance with the State contract.

DPH Response to Recommendation 8:

Agree. Recommendation was implemented prior to the completion of this audit. On June 27, 2014, HFID submitted to the State a three-month workload plan describing HFID's plan for appropriately completing complaints and ERIs. The workload plan examines the amount of work that can be completed given the current staffing levels. HFID will complete all complaints and ERIs according to the workload plan agreed upon by the State. HFID continues to request additional resources to be able to complete all mandated work and will continue to collaborate with the State on future workload plans.

The Complaint Tracking Log will be used to ensure that all complaints and ERIs are initiated and completed timely in accordance with the workload plan.

The comprehensive audit review process currently in development includes a verification component to ensure that complaints/ERIs are investigated and completed according to the workload plan.

Recommendation 9

HFID management ensure that an inventory of closed cases is maintained and closed case are purged in accordance with the State requirements.

DPH Response to Recommendation 9:

Agree. Recommendation was implemented prior to the completion of this audit. HFID will maintain a current inventory of all closed cases utilizing the ACTS system. According to the State's Licensing and Certification Policy and Procedure Manual, case files are to be purged four years from the adjudication date or the investigation close date. HFID staff participated in CDPH training on June 25, 2014, and July 1, 2014, which included training on the record retention policy. Refresher training will be provided on an annual basis.

The comprehensive audit review process currently in development includes a verification component to ensure that the retention policy is being correctly enforced.

Recommendation 10

DPH management hire an independent consultant that can assist them in validating the State’s staffing model and help them ensure all recommendations from recent audit reports are addressed.

DPH Response to Recommendation 10:

Disagree. DPH worked closely with the State using the staffing model they provided to us and that they currently use to allocate resources statewide. DPH arrived at the recommended staffing level by applying the State staffing factors to the annual projected DPH workload. The request for additional funding was submitted in accordance with State budget request deadlines for FY2015-16, including an urgent request for additional funding for FY2014-15.

Los Angeles County is responsible for 33% of all facilities in the State, yet is allocated only 15% of the statewide funding allocation (See Table I). The State is currently providing staffing assistance to complete the mandated workload while they review and process our request for additional funding.

Table I

LAC HFID vs. State: Facility and Budget Comparison						
	Facility Comparison*		HFID Share of CDPH Budget**			
	Facilities	% of Facilities	FY 2012-13	% of Budget	FY 2013-14	% of Budget
LAC HFID	2,525	33.3%	\$26,951,000	14.8%	\$26,951,000	14.4%
CDPH L&C	7,574	100%	\$182,636,000	100%	\$186,902,000	100%

* Data provided by the State

** Data obtained from CDPH L&C website

The recommendations from the recent California Department of Public Health's quality review and phase I of the Auditor-Controller's audit have all been addressed, many of them prior to the issuance of the reports. Two policies are pending review, however the procedures have already been implemented, and a comprehensive audit review process is currently in the development stage to provide a secondary layer of oversight.

Additionally, in early April, HFID was transferred to Environmental Health (EH). Under the leadership of Terri Williams, Assistant Director, an executive level management team was put in place to provide operational oversight, independent assessment, and recommendations to DPH management. Subsequently, Nwamaka Oranusi, from within EH, was appointed as Acting Chief of the program.

The State has provided a deputy level management team to work directly with Los Angeles County to identify additional areas of improvement and to prioritize workload. They have also provided four full time management level staff to work with Ms. Oranusi to provide additional assessment, monitoring and oversight.

With the support of the State, the U.S. Centers for Medicaid & Medicare Services, and the management team from EH, a thorough evaluation of HFID has been completed, improvements have been identified, and most corrections have already been implemented. Most importantly, HFID has clarified with the State and CMS the workload that our current resources can address in order to ensure the appropriate quality of the investigations.

HFID has undergone four audits in the past six months, including an internal audit, which has taken resources away from addressing the key workload of inspections and investigations. DPH has been providing regular updates to the Board on progress of implementation of recommendations from audit reports and has an executive level oversight team to ensure that recommendations are moving forward.

If however, the State does not provide sufficient resources in the near future to adequately run the program in LA County, DPH will be forced to recommend termination of the contract to the Board. At that point, it may be prudent to hire a consultant to assist with a smooth transition of the program back to the State.