

Department of Health and Human Services

**OFFICE OF
INSPECTOR GENERAL**

**MISSISSIPPI DID NOT COMPLY
WITH FEDERAL WAIVER AND
STATE REQUIREMENTS AT ALL
20 ADULT DAY CARE
FACILITIES REVIEWED**

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Office of Inspector General

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OFFICE OF AUDIT SERVICES FINDINGS AND OPINIONS

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

Report in Brief

Date: August 2018

Report No. A-04-17-00116

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



Why OIG Did This Review

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

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

How OIG Did This Review

Of the 133 facilities providing program services (providers) in Mississippi as of March 31, 2017, we selected 20 for review based on their geographic location and number of participants. We conducted unannounced site visits from September 11 through 22, 2017.

Mississippi Did Not Comply With Federal Waiver and State Requirements at All 20 Adult Day Care Facilities Reviewed

What OIG Found

Mississippi did not fully comply with Federal waiver and State requirements in overseeing providers that serve vulnerable adults receiving adult day care services through the program. All 20 of the providers that we reviewed did not comply with 1 or more State requirements. We found 564 instances of provider noncompliance, including 194 regarding health and safety requirements. The remaining 370 related to administrative requirements, some of which could significantly affect health and safety.

Mississippi did not fully comply with Federal waiver and State requirements because its annual inspections of facilities were insufficient to ensure a continuously safe and nonhazardous environment. According to Mississippi officials, budget reductions and low auditor staffing levels limited its oversight and monitoring of provider facilities, staffing, and training, and the lack of State licensing requirements contributed to provider noncompliance.

What OIG Recommends and Mississippi Comments

We recommend that Mississippi ensure that providers correct the 564 instances of provider noncompliance identified in this report; improve its oversight and monitoring of providers; and work with providers to improve their facilities, staffing, and training.

Mississippi agreed with our findings and recommendations and described corrective actions that it has taken and will take in response to our recommendations. However, Mississippi requested that we change the title of the report and amend the findings and recommendations to emphasize that the adult day care facility providers, not Mississippi, did not comply with Federal waiver and State requirements. After review and consideration of Mississippi's comments, we agree that the adult day care facility providers were responsible for the identified instances of noncompliance. However, we maintain that Mississippi did not fully comply with oversight and monitoring requirements. Therefore, our report title, findings, and recommendations remain unchanged.

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INTRODUCTION

WHY WE DID THIS REVIEW

The Office of Inspector General (OIG) has conducted health and safety reviews of adult foster care homes, Head Start grantees, and regulated childcare facilities. (Appendix B lists related OIG reports.) Those reviews identified multiple health and safety issues that put children and vulnerable adults at risk. We wanted to determine whether vulnerable adults participating in Mississippi's Elderly and Disabled (E & D) Waiver program (the program) were at risk.

The Mississippi Division of Medicaid (State agency) operates the program under a Federal waiver to its Medicaid State plan. The program funds home and community-based services (HCBS) for people aged 65 and older and individuals with disabilities aged 21 to 64 who are eligible for medical assistance and require the level of care provided in a nursing home but choose to live in the community. The program funds adult day care services for Medicaid beneficiaries who reside at home and attend adult day care facilities (facilities).

OBJECTIVE

Our objective was to determine whether the State agency complied with Federal waiver and State requirements in overseeing facilities that serve vulnerable adults who receive services through the program.

BACKGROUND

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

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

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

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

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

Mississippi Elderly and Disabled Waiver Program

The State agency administers and operates the program under a 1915(c) waiver to its Medicaid State plan. The program funds HCBS for people aged 65 and older and individuals with disabilities aged 21 to 64 who are eligible for medical assistance and require the level of care provided in a nursing home but choose to live in the community. The program funds adult day care services for Medicaid beneficiaries who reside at home and attend facilities.

Mississippi Adult Day Care Services

In Mississippi, adult day care services are defined as services for aged and disabled individuals and consist of the provision of services for part of a day at a day care program site. Adult day care is a structured, comprehensive program that provides a variety of health, social, and related supportive services in a protective setting during the daytime and early evening. It is designed to meet the needs of aged and disabled people through an individualized care plan, including personal care and supervision; provision of meals, medical care, and transportation to and from the site; and provision of social, health, and recreational activities.

The State agency must ensure the health and safety of vulnerable adults through standards in State statutes, provider enrollment standards, and details in its application for waiver services. Facilities providing program services (providers) must meet the physical and social needs of program participants and maintain compliance with State requirements, and the State agency must comply with Federal waiver and State requirements for overseeing and monitoring the health and welfare of program participants.¹

HOW WE CONDUCTED THIS REVIEW

Of the 133 providers in Mississippi as of March 31, 2017, we selected 20 for review. We selected these providers based on their geographic location and number of participants. To evaluate the State agency's oversight of facilities, we conducted unannounced site visits at the 20 selected facilities from September 11 through 22, 2017.

¹ Mississippi's *Administrative Code*, title 23, part 208, "Home and Community Based Services (HCBS), Long Term Care," Mississippi's *Home and Community-Based Elderly and Disabled Waiver Services Provider Proposal Criteria Adult Day Care Services*, and Mississippi's HCBS waiver application, Appendix C-1/C-3: "Provider Specifications for Service."

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

Appendix A contains the details of our audit scope and methodology. Appendix C contains Federal regulations and specific State requirements related to health and safety and administration.

FINDINGS

The State agency did not fully comply with Federal waiver and State requirements in overseeing providers that serve vulnerable adults receiving adult day care services through the program. All 20 of the providers that we reviewed did not comply with 1 or more State requirements. We found 564 instances of provider noncompliance with health, safety, and administrative requirements. Providers did not always meet the physical and social needs of program participants or maintain compliance with State requirements, and the State agency's annual inspections of facilities were insufficient to ensure a continuously safe and nonhazardous environment. According to State agency officials, budget reductions and low auditor staffing levels limited its oversight and monitoring of provider facilities, staffing, and training, and the lack of State licensing requirements contributed to provider noncompliance. As a result, vulnerable adults were at risk in numerous instances. (See Appendices D and E.)

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

Providers must maintain compliance with State requirements regarding services provided and health and safety.² Providers must meet the physical and social needs of program participants by, among other things, providing a safe, nonhazardous environment.³ For example, providers must ensure that the facility and grounds are safe and clean; the facility is free of hazards including exposed electrical cords; and maintenance is sufficient to assure that the facility is clean, sanitary, and safe at all times.⁴

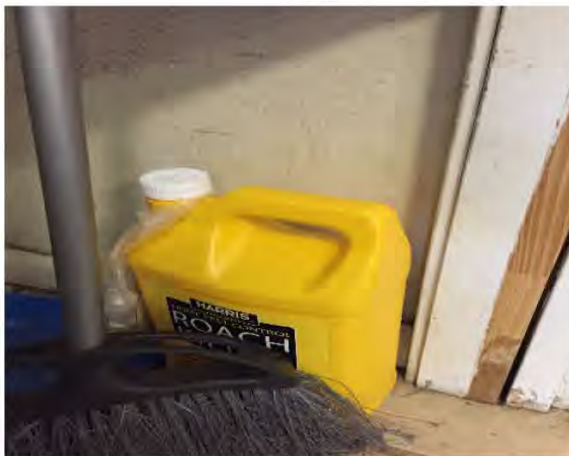
² Mississippi's *Administrative Code*, title 23, part 208, rule 1.3, "Provider Enrollment" and Mississippi's *Home and Community-Based Elderly and Disabled Waiver Services Provider Proposal Criteria Adult Day Care Services*.

³ Mississippi's *Administrative Code*, title 23, part 208, "Home and Community Based Services (HCBS), Long Term Care" and Mississippi's HCBS waiver application, Appendix C-1/C-3: "Provider Specifications for Service."

⁴ Mississippi's *Home and Community-Based Elderly and Disabled Waiver Services Provider Proposal Criteria Adult Day Care Services*.

All 20 of the providers we reviewed did not comply with 1 or more State requirements. We found 194 instances of provider noncompliance with State health and safety requirements.

Among other things, we found toxic chemicals in unlocked areas that were accessible to participants in 13 facilities (Photograph 1). We also found water damage (including some mold) in 12 facilities (Photograph 2), unclean facilities and grounds at 10 facilities (Photograph 3), exposed electrical wiring in 5 facilities (Photograph 4), a dead rodent in 1 facility (Photograph 5), and a knife on the outdoor activity area lawn at 1 facility (Photograph 6).⁵ (See Appendix E for additional photographs of noncompliance.)



Photograph 1: Unsecured toxic chemicals.



Photograph 2: Water damage and mold.



Photograph 3: Unclean facilities.



Photograph 4: Exposed electrical wiring.

⁵ Mississippi's Home and Community-Based Elderly and Disabled Waiver Services Provider Proposal Criteria Adult Day Care Services.



Photograph 5: Dead rodent in participant bathroom.



Photograph 6: Unsecured knife on outdoor activity area lawn.

ALL REVIEWED PROVIDERS DID NOT COMPLY WITH ONE OR MORE ADMINISTRATIVE REQUIREMENTS

Providers must maintain compliance with State requirements regarding administration.⁶ Providers must meet the physical and social needs of program participants by, among other things, having a sufficient number of employees with the necessary skills to provide essential administrative and direct care functions to waiver participants.⁷ For example, a provider must conduct a criminal background check on all employees prior to employment and maintain the record in the employee personnel file;⁸ ensure that all employees who have direct participant contact receive an annual physical examination, including a tuberculin skin test;⁹ ensure that all participants receive a tuberculin skin test and are free of communicable diseases prior to admission;¹⁰ and ensure that facility drivers have a valid State driver's license.¹¹

All 20 of the providers we reviewed did not comply with 1 or more State requirements. We found 370 instances of provider noncompliance with State administrative requirements.

Among other things, we found staffing issues at 15 facilities and training issues at 12 facilities. For example, some facilities did not have a qualified administrator, a program director, or a

⁶ Mississippi's *Administrative Code*, title 23, part 208, rule 1.3, "Provider Enrollment."

⁷ Mississippi's *Administrative Code*, title 23, part 208, "Home and Community Based Services (HCBS), Long Term Care" and Mississippi's HCBS waiver application, Appendix C-1/C-3: "Provider Specifications for Service."

⁸ Mississippi's *Administrative Code*, title 23, part 208, rule 1.3(B)(5).

⁹ Mississippi's *Administrative Code*, title 23, part 208, rule 1.3(C)(1).

¹⁰ Mississippi's *Home and Community-Based Elderly and Disabled Waiver Services Provider Proposal Criteria Adult Day Care Services*.

¹¹ Mississippi's *Administrative Code*, title 23, part 208, rule 1.3(C)(3)(b)(16).

licensed social worker on staff.¹² Additionally, some facilities did not perform or document required annual training or new employee orientation.¹³ Finally, nine providers had not completed all required criminal background checks, nine providers had not completed all personnel or participant tuberculin screening tests prior to employment or admission, and one provider had a driver with an expired driver's license transporting program participants.

CAUSES OF NONCOMPLIANCE WITH FEDERAL WAIVER AND STATE REQUIREMENTS

The State agency did not fully comply with Federal waiver and State requirements for overseeing and monitoring the health and welfare of Medicaid beneficiaries receiving adult day care services because its annual inspections of facilities were insufficient to ensure a continuously safe and nonhazardous environment. According to State agency officials, budget reductions and low auditor staffing levels limited its oversight and monitoring of provider facilities, staffing, and training, and the lack of State licensing requirements contributed to provider noncompliance.¹⁴

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

RECOMMENDATIONS

We recommend that the State agency:

- ensure that providers correct the 564 instances of provider noncompliance identified in this report;
- improve its oversight and monitoring of providers; and
- work with providers to improve their facilities, staffing, and training.

¹² Mississippi's *Administrative Code*, title 23, part 208, rule 1.3(C)(3)(b)(8), (C)(3)(b)(9), and (C)(3)(b)(10).

¹³ Mississippi's *Home and Community-Based Elderly and Disabled Waiver Services Provider Proposal Criteria Adult Day Care Services*.

¹⁴ Mississippi defines an institution for the aged or infirm as "nursing homes, pediatric skilled nursing facilities, psychiatric residential treatment facilities, convalescent homes, homes for the aged and adult foster care facilities" Because adult day care facilities are excluded from this definition, they are not subject to State licensing requirements (*Mississippi Code* § 43-11-1 and § 43-11-7).

STATE AGENCY COMMENTS AND OFFICE OF INSPECTOR GENERAL RESPONSE

STATE AGENCY COMMENTS

In written comments on our draft report, the State agency agreed with our findings and recommendations and described corrective actions that it had taken and will take in response to our recommendations. However, the State agency requested that we change the title of the report and amend the findings and recommendations to emphasize that the adult day care facility providers, not the State agency, did not comply with Federal waiver and State requirements.

OFFICE OF INSPECTOR GENERAL RESPONSE

After review and consideration of the State agency's comments, we agree that the adult day care facility providers were responsible for the identified instances of noncompliance. However, we maintain that the State agency did not fully comply with oversight and monitoring requirements. Therefore, our report title, findings, and recommendations remain unchanged.

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

APPENDIX A: AUDIT SCOPE AND METHODOLOGY

SCOPE

Of the 133 providers in Mississippi as of March 31, 2017, we selected 20 for review. We selected these providers based on their geographic location and number of participants.

To evaluate the State agency's oversight of facilities, we conducted unannounced site visits at the 20 selected facilities from September 11 through 22, 2017. We conducted fieldwork in the Mississippi cities of Biloxi, Booneville, Byram, Clarksdale, Cleveland, Corinth, Florence, Greenville, Greenwood, Hattiesburg, Jackson, Laurel, Marks, Richton, and Tupelo.

METHODOLOGY

To accomplish our objective, we:

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

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

APPENDIX B: RELATED OFFICE OF INSPECTOR GENERAL REPORTS

Report Title	Report Number	Date Issued
<i>Illinois Did Not Comply With Federal Waiver and State Requirements at 18 of 20 Adult Day Service Centers Reviewed</i>	<u>A-05-17-00028</u>	7/24/2018
<i>Minnesota Did Not Comply With Federal Waiver and State Requirements for All 20 Adult Day Care Centers Reviewed</i>	<u>A-05-17-00009</u>	5/30/2018
<i>Minnesota Did Not Comply With Federal Waiver and State Requirements for 18 of 20 Family Adult Foster Care Homes Reviewed</i>	<u>A-05-16-00044</u>	10/31/2017
<i>Some Minnesota Childcare Home Providers Did Not Always Comply With State Health and Safety Licensing Requirements</i>	<u>A-05-14-00021</u>	3/6/2015
<i>Some Minnesota Childcare Centers Did Not Always Comply With State Health and Safety Licensing Requirements</i>	<u>A-05-14-00022</u>	3/6/2015
<i>Review of 24 Head Start Grantees' Compliance With Health and Safety Requirements</i>	<u>A-01-11-02503</u>	12/12/2011

APPENDIX C: FEDERAL REGULATIONS AND STATE REQUIREMENTS

FEDERAL REGULATIONS

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

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

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

As part of the waiver, the State agency is required to assure the health and welfare of participants, including a safe and nonhazardous environment, through oversight and monitoring of providers.

STATE REQUIREMENTS

The State identifies provider qualifications in its *Administrative Code*, title 23, part 208, chapter 1, “HCBS Elderly and Disabled Waiver.” The State agency’s *Home and Community-Based Elderly and Disabled Waiver Services Provider Proposal Criteria Adult Day Care Services* identifies additional State requirements for target population, administration and organization, individual plan of services and supports, services, staffing, and facility.

General Statutes

Administrative Code Rule 1.3(B)

“To become a HCBS Elderly & Disabled Waiver Provider, the prospective provider must . . . Conduct a criminal background check on all employees prior to employment and maintain the record in the employee personnel file”

Administrative Code Rule 1.3(C)—Provider Qualifications

1. All providers of E & D waiver services must ensure that all employees who have direct participant contact receive an annual physical examination, including a [tuberculin] skin test.
2. Providers of Adult Day Care . . . must satisfy the applicable qualifications to render services.
3. Qualifications for Adult Day Care services:
 - a) Adult day care services must be provided by an established, qualified facility/agency.
 - b) Each adult day care service must meet the following requirements:
 1. The facility must be compliant with applicable [S]tate and local building restrictions as well as all zoning, fire, and health codes/ordinances.
 2. The facility must meet the requirements of the American Disabilities Act of 1990.
 3. The facility must have a sufficient number of employees with the necessary skills to provide essential administrative and direct care functions to meet the needs of the waiver participants.
 4. The facility must meet the physical and social needs of each waiver participant and maintain compliance with [S]tate and [F]ederal guidelines regarding services provided.
 5. The facility must have a governing body with full legal authority . . . for the overall operation of the program in accordance with applicable [S]tate and [F]ederal requirements.
 6. The facility must have an advisory committee representative of the community and participant population.
 7. The facility must have a written plan of operation that is reviewed, approved, and revised as needed by the governing board.
 8. The facility must have a qualified administrator, either a chief executive officer or president, responsible for the development, coordination, supervision, fiscal management, and evaluation of services provided through the adult day care services program. The administrator must

have a master's degree and one (1) year supervisory experience . . . in a social or health service setting; or a bachelor's degree and three (3) years supervisory experience . . . in a social or health service setting; or comparable technical and human service training with demonstrated competence and experience as a manager in a health or human service setting.

9. The facility must have a program director . . . responsible for the organization, implementation, and coordination of the daily operation of the adult day care services program in accordance with the participant's needs and any mandatory requirements. The program director must have a bachelor's degree in health, social services, or a related field and one (1) year supervisory experience . . . or comparable technical and human services training with demonstrated competence and experience as a manage[r] in a health or human services setting. The program director must be under the direction of the administrator.
10. The facility must have a qualified social service staff person. The staff person must be a licensed social worker (LSW) and have a master's degree in social work and at least one (1) year of professional work experience . . . in a human services setting; or a bachelor's degree in social work and two (2) years of professional work experience . . . in a human services setting; or a bachelor's degree in a health or social services related field and two (2) years' experience . . . in a human services field In lieu of a licensed social worker, the functions must be carried out by other health service professionals such as certified rehabilitation counselors, licensed gerontologists, licensed professional counselors, or licensed/certified mental health workers.
11. The facility must have a registered nurse (RN) on staff if the facility provides nursing services. The RN must have a valid [S]tate license and a minimum of one (1) year applicable experience
12. The facility must have an activities coordinator. The activities coordinator must have a bachelor's degree and at least one (1) year of experience . . . in developing and conducting activities for the type population to be served or an associate's degree in a related field and at least two (2) years of appropriate experience
13. The facility must have a program assistant. The program assistant must have a high school diploma or the equivalent and at least one (1) year experience . . . working with adults in a health care or social service setting. The program assistant must receive training in working with older adults and conducting activities for the population served.

14. If the facility prepares food on site, there must be a food service director. The food service director must be a registered dietician (RD), dietetic technician registered (DTR), RD eligible, DTR eligible, or a four (4) year graduate of a baccalaureate program in nutrition/dietetics/food service. In addition, the food service director must have a minimum of one (1) year experience, either full-time or an equivalent, in working with adults in a health care or social service setting. If the food is not prepared on site, the facility must contract with a reputable food service provider/caterer.
15. The facility must have a secretary/bookkeeper. The secretary/bookkeeper must, at a minimum, have a high school diploma or equivalent and the skills and training to carry out the responsibilities of the position.
16. The facility must have a driver. The driver must have a valid [S]tate driver's license, a safe driving record, and training in first aid and cardiopulmonary resuscitation (CPR). The driver must maintain compliance with all [S]tate requirements for licensure/certification. The driver must be trained in basic transfer techniques and safe ambulation.
17. The facility must record volunteer hours and activities if the facility utilizes volunteers Volunteers must successfully complete an orientation/training program

State Agency Health and Safety Requirements for Adult Day Care Services

We cite the following State requirements, as included in the State agency's *Home and Community-Based Elderly and Disabled Waiver Services Provider Proposal Criteria Adult Day Care Services*, for the 194 identified instances of health and safety noncompliance:

11. A written plan for handling emergencies must be easily accessible in the [facility] and in all [facility] vehicles. [Facilities] should also have:
 - staff training to ensure smooth implementation of the emergency plan,
 - equipment available to support implementation of the emergency plan, and
 - sufficient staff trained in CPR and first aid to assure at least two staff members (one who is trained in CPR) are in the [facility] at all times during hours of operation when more than one participant is present. Two staff members are required so that one can attend to the emergency and the second to the other participant(s) in the [facility].
12. Plans for evacuation and relocation of participants must be in place in the event of a power outage or other emergency situation

95. Staff must be in number and skills to provide essential administrative and service functions
126. The facility must provide at least sixty (60) square feet of program space for multi-purpose use for each . . . participant
133. Space must be available for the safe arrival and departure of participants There must be sufficient, lighted parking available to accommodate family/caregivers, visitors, and staff
134. Outside space that is used for outdoor activities must be safe, accessible to indoor areas and accessible to those with a disability This area should include smooth walkways, seating for resting or watching activities, recreational space, and a garden area. The area should have a fence or landscaping to create a boundary in order to prevent participants from wandering away, and it should be easily supervised by staff. Outside furniture should be sturdy and safely arranged
136. Illumination in all areas must be adequate and glare must be avoided Attention should be paid to lighting in transitional areas, such as doorways from outside to inside and hallways between different areas of the [facility]
138. Conditions must be maintained within a comfortable temperature range to accommodate the population served
139. Sufficient furnishings must be available for the entire participant population present Furnishings should accommodate the needs of participants and be attractive, comfortable and homelike, while being sturdy and safe
140. [The] . . . facility must be visible, and the entrance to the [facility] must be clearly identified All signage must comply with local requirements. Signs must be visible from the road, appropriate for a service for adults, and printed in large lettering. The entrance must be well lighted, accessible to individuals with a disability, and located a short distance from the point of arrival.
141. A telephone must be available for participant use to make private calls
142. The facility and grounds must be safe, clean, and accessible to all participants
144. Safe and sanitary handling, storing, preparation, and serving of food must be assured If meals are prepared on the premises, kitchen appliances,

procedures, and equipment must meet [S]tate and local requirements. Food Service Permit must be displayed in a visible area.

145. Toxic substances, whether for activities . . . or cleaning, must be stored in a locked area not accessible to participants.

146. At least two well-identified exits must be available with doors opening to the outside.

147. Signaling devices must be installed or placed in the rest areas, restroom stalls, and showers Alarm/warning systems are necessary to ensure the safety of the participants in the [facility] and to alert staff to potentially dangerous situations.

148. The [facility] must provide a secure environment An alarm system must be used for participants who wander. An alarm/warning system must be installed at exit ways not regularly used by participants.

149. Universal precautions must be used by all staff This means that all participants should be considered infected. Staff, including volunteers should consistently use Universal Body Substance Precautions that presume that any participant may harbor infectious agents in moist secretions and blood. Precautions dictate that protective measures, such as proper hand washing and the proper use of gloves, gowns and goggles be used consistently with all participants.

150. An evacuation plan must be posted in each room.

151. The facility must be free of hazards Hazards include, for example, high steps, steep grades, and exposed electrical cords. Steps and curbs should be painted and the edges of stairs marked appropriately to highlight them.

152. All stairs, ramps, and bathrooms accessible to those with a disability must be equipped with properly anchored handrails

154. Procedures for fire safety as approved by the [S]tate or local fire authority must be adopted and posted Included are provisions for fire drills, inspections and maintenance of fire extinguishers, periodic inspection and training by fire department personnel. The [facility] should conduct and document quarterly fire drills and keep reports of drills on file. Improvements should be made based on the fire drill evaluation. Smoke detectors are mandatory

156. There must be sufficient maintenance and housekeeping personnel to assure that the facility is clean, sanitary, and safe at all times

158. Equipment must be adequately and safely maintained. A sufficient budget must be provided for equipment maintenance, repair, or replacement

State Agency Administrative Requirements for Adult Day Care Services

We cite the following State requirements, as included in the State agency's *Home and Community-Based Elderly and Disabled Waiver Services Provider Proposal Criteria Adult Day Care Services*, for the 370 identified instances of administrative noncompliance:

9. The advisory committee must be representative of the community and participant population The advisory committee should include family members of current or past participants and non-voting staff representatives. The advisory committee should include professionals and/or consumer representatives with knowledge of the population served, including representatives of participants with special needs, with cognitive impairments, or of diverse cultures

10. The governing body must review, approve, and revise a current, written plan of operation

15. The administrator or . . . designated [representative] must be on site to provide the [facility's] day-to-day management during hours of operation If the administrator is responsible for more than one site, or has duties not related to adult day services administration or provision of services, a program director should be designated for each additional site, should be on site, and should report to the administrator

29. The [facility] must comply with the [S]tate mandatory or voluntary procedure for reporting suspected adult abuse to the Department of Human Services and/or Attorney General's Office. Staff must be trained in signs and indicators of potential abuse [Facility] policy should include a provision that staff must observe participants for signs of potential abuse, including verbal abuse, physical abuse, sexual abuse, emotional or psychological abuse, neglect, and financial or material exploitation

32. The [facility] must maintain a record for each participant This record should include, but is not limited to, . . . application and enrollment forms; medical history and functional assessment (initial and ongoing); . . . individual plan of services and supports (initial and reviews) and revisions; service contract; . . . daily attendance and daily service records; transportation plans; results of physical examination (completed within six months prior to admission) including

diagnosis, medication, other treatment recommendations and verification of the absence of communicable disease; client must have current tuberculosis screening or treatment as indicated prior to admission; . . . treatment, therapy, medication, and professional notes; progress noted (chronological and timely); . . . reviews of individual plans of services and supports; discharge plan; . . . emergency contacts; and advance directive form or a statement that none has been signed

33. The [facility] must maintain administrative records Administrative records must include . . . personnel records (including personnel training) . . . and historical record of policies and procedures

73. Social services must be provided to participants and their families. Appropriately trained staff shall assess the participants' and families' psychosocial needs, and assist them in gaining access to additional services as needed

80. The [facility] must have a transportation policy that includes routine and emergency procedures, with a copy of the relevant procedures located in all vehicles

96. There must be at least (2) responsible persons (one a paid staff member) at the [facility] at all times when there are two or more participants in attendance

97. The staff-participant ratio must be sufficient to meet the needs of the participants in attendance The staff-participant ratio must be a minimum of one to six (1:6) in a program

104. References must be checked and job histories verified for all staff and volunteers serving as staff. National criminal background checks are required and must be conducted prior to employment

105. Each staff member must have a physical examination, including tuberculosis screening, within twelve (12) months prior to employment, and a copy of the report of the examination must be filed in personnel records prior to or on the first day the staff member reports for work

111. All personnel, paid and volunteer, must be provided training Ongoing training includes at least four (4) in-service training sessions per year to enhance quality of care and job performance

123. The volunteers must be individuals or groups who want to work with adult day service participants and must take part in program orientation and training

Appendix A (Failure to exhibit the following will result in an automatic denial.)

4. [O]peration hours clearly posted

11. [T]oilets for male and female participants (one toilet per gender for each 10 participants)

17. Organizational Chart posted and accessible to participants

32. Rest area to provide privacy and/or isolate participants who become ill

48. Current copy of their policies and procedures Policy and procedural manual is accessible to staff, . . . defines target population, . . . defines the admission and discharge criteria, . . . includes medication policy, . . . defines participants rights, . . . includes confidentiality policy, [and] . . . includes grievance procedures for participants[.]

49. Current copy of the [Division of Medicaid] Adult Day Care Quality Assurance Standards[.]

50. Current copy of the [Division of Medicaid] Administrative Code Title 23: Part 208[.]

Appendix B

Staff records should contain the following items: Job description, . . . In-service hours, . . . Confidentiality agreement, . . . [and] Evaluation schedule

Appendix C

Participant records must be organized, easily reviewed, and contain the following items: enrollment forms; a consent to bill Medicaid; an individualized plan of care updated semiannually; an advance directive; a medical history; a current physical exam; a service contract; a transportation agreement; daily progress notes signed by staff that include the participant's signature verifying the accuracy of the documentation, date of services, time of day services were provided, and a summary of what transpired during service delivery; and a referral form from the case management agency.

APPENDIX D: INSTANCES OF NONCOMPLIANCE AT EACH FACILITY

	Health and Safety		Administrative			
Provider	Physical Environment	Health and Safety	Staffing and Policies	Personnel Records	Participant Records	Total
1	7	1	3	0	3	14
2	7	1	4	0	0	12
3	5	4	12	2	1	24
4	2	1	2	0	2	7
5	13	3	17	8	9	50
6	2	0	9	0	5	16
7	5	4	17	10	14	50
8	19	5	17	6	7	54
9	5	2	3	0	2	12
10	8	2	17	4	12	43
11	5	3	12	0	0	20
12	4	4	7	2	2	19
13	2	1	10	0	0	13
14	17	6	12	2	9	46
15	7	3	6	8	1	25
16	11	3	16	4	7	41
17	13	3	7	3	2	28
18	1	0	1	0	0	2
19	3	1	18	11	16	49
20	9	2	13	7	8	39
Total	145	49	203	67	100	564

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

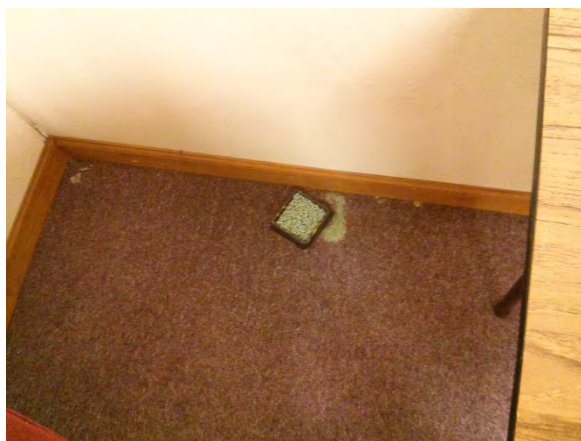
APPENDIX E: ADDITIONAL PHOTOGRAPHS OF NONCOMPLIANCE



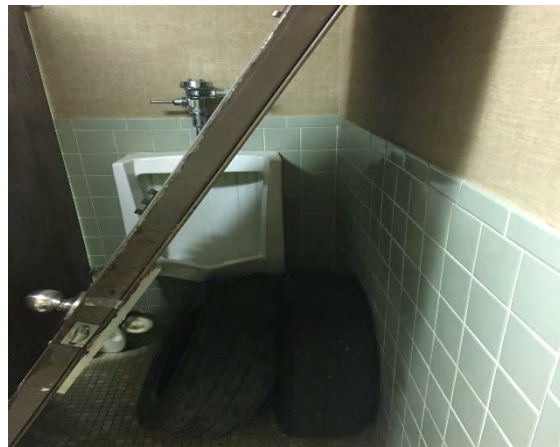
Photograph 7: Water damage and mold.



Photograph 8: Water damage and mold.



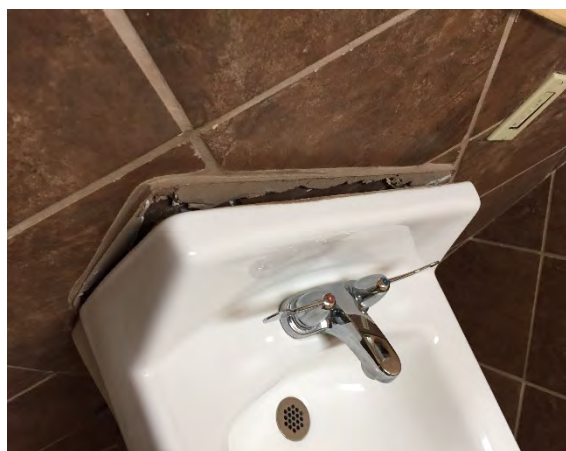
Photograph 9: Unsecured toxic chemicals.



Photograph 10: Hazardous environment.



Photograph 11: Hazardous environment.



Photograph 12: Hazardous environment.



Photograph 13: Exposed electrical wiring.



Photograph 14: Exposed electrical wiring.



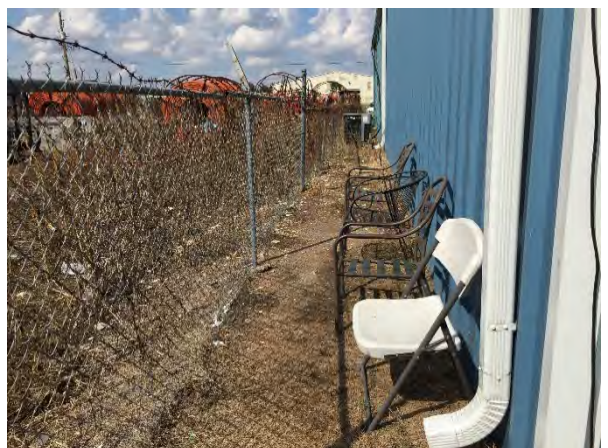
Photograph 15: Unsanitary food service area.



Photograph 16: Unsanitary environment.



Photograph 17: Unsafe participant unloading area.



Photograph 18: Insufficient outdoor activity area for participants.

APPENDIX F: STATE AGENCY COMMENTS

OFFICE OF THE GOVERNOR

Walter Sillers Building | 550 High Street, Suite 1000 | Jackson, Mississippi 39201



MISSISSIPPI DIVISION OF
MEDICAID

July 19, 2018

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

Dear Ms. Pilcher:

The Mississippi Division of Medicaid (DOM) received the draft report entitled *Mississippi Did Not Comply With Federal Waiver and State Requirements at All 20 Adult Day Care Facilities Reviewed* produced by the U.S. Department of Health and Human Services, Office of Inspector General (OIG).

As requested we have provided you with written comments regarding findings contained in the draft report. Enclosed please find DOM's comments and corrective actions taken or planned for implementation to address each of the draft report's recommendations.

Thank you for the professional manner in which this review of adult day care facilities was conducted and for the opportunity to provide comments. DOM welcomes any effort to ensure that providers serve Mississippians responsibly and to improve the quality of care Medicaid beneficiaries receive.

Sincerely,

Drew L. Snyder
Executive Director

cc: Dorthy K. Young, PhD, MHSA, Deputy Administrator
Paulette Johnson, Office of Long Term Care
Manuel Pilgrim, Office of Financial and Performance Review
Alwin Dockins, Office of Program Integrity
Bob Anderson, JD, Deputy Administrator

Toll-free 800-421-2408 | Phone 601-359-6050 | Fax 601-359-6294 | medicaid.ms.gov

Responsibly providing access to quality health coverage for vulnerable Mississippians

MEMO

MISSISSIPPI DIVISION OF
MEDICAID

To: Office of the Inspector General

From: Mississippi Division of Medicaid

Date: July 19, 2018

Re: Response to Office of the Inspector General's report on Adult Day Care Facilities

In response to the draft report produced by the U.S. Department of Health and Human Services, Office of the Inspector General titled *Mississippi Did Not Comply With Federal Waiver And State Requirements At All 20 Adult Day Care Facilities Reviewed*, the Mississippi Division of Medicaid ("State agency") would like to emphasize two key comments:

- To more precisely reflect the stated scope of the audit, the title of the report should be amended to "Mississippi Adult Day Care Facilities Did Not Comply with Federal Waiver and State Requirements At All 20 Adult Day Care Facilities Reviewed." During the entrance conference, it was stated that the scope of this audit was to include adult day care facilities, not the State's waiver management. This scope of work was affirmed by Office of the Inspector General staff during the February 16, 2018, conference call. During the call the State agency requested a point of clarity regarding the scope of the audit only focusing on adult day care facility compliance and not of the State's waiver itself. It was conveyed to the State that the audit was of the adult day care facilities. Therefore, findings of noncompliance observed in adult day care facilities are of the facilities' noncompliance with waiver and state requirements and not of the State's noncompliance with waiver and state requirements.
- Page one of the draft report states that, "Our objective was to determine whether the State agency complied with Federal waiver and State requirements in overseeing facilities that serve vulnerable adults who receive services through the program." This objective is not reflective of the information discussed with the State agency during the entrance conference or the February 16, 2018, conference call. The audit activities conducted by Office of the Inspector General staff focused on review of provider locations, documentation and activities through physical observation and interviews. The audit did not include review of the State agency's audit processes, documentation or interviews with State agency staff. The State agency requests that all instances that reflect that the State of Mississippi did not fully comply with federal waiver and state requirements in overseeing providers be amended to reflect that the adult day care facility providers did not comply with

Responsibly providing access to quality health coverage for vulnerable Mississippians 1

federal waiver and state requirements. Additionally, the State agency requests that potential recommendations to ensure compliance include changes to federal waiver and state requirement oversight instead.

In the following pages, the State agency addresses the findings and recommendations that the Office of the Inspector General has included in the draft report. Please see the State agency's responses below, as well as the corrective actions planned or already taken..

State Agency's Response and Actions Taken or Planned

OIG Recommendation 1

The state should ensure that providers correct the 564 instances of provider noncompliance identified in this report.

The State agency concurs.

The State agency reviewed each facility deficit in the Office of the Inspector General draft report. "Detailed Findings by Provider," included in the OIG report, A-04-07-00116, will be sent to each provider and a corrective action plan for each of the findings will be completed. The State agency will audit each identified provider to ensure that the findings have been corrected. The audit will include an unannounced site visit to inspect the adult day care facility. Providers who do not correct the Office of Inspector General findings will be referred to the Division of Medicaid Office of Program Integrity for possible termination.

OIG Recommendation 2

The state should improve its oversight and monitoring of providers.

The State agency concurs.

To improve oversight and monitoring of adult day care facilities enrolled as Medicaid waiver providers, the Mississippi Administrative Code Title 23 Division of Medicaid , Part 208: Home and Community Based Services (HCBS), Long Term Care, Chapter 1: Elderly & Disabled Waiver, Rule 1.3 will be updated to address provider enrollment requirements including:

- business governing structure,
- clear staffing requirements,
- financial management,
- national criminal fingerprint background checks,
- monthly checks of state and federal abuse registries and exclusion lists,
- staff training requirements, and
- facility physical requirements.

Additionally, Administrative Code language regarding authority to suspend/terminate an enrolled provider will be enhanced. The Administrative Code is available at <https://medicaid.ms.gov/providers/administrative-code/>.

The State agency has completed 109 audits of adult day care facilities from April 2018 through July 2018. As of July 2018, 13 adult day care facilities have been issued termination notices as a result of the audit findings. During 2019, the State agency is committed to auditing all adult day facility providers which submitted claims for waiver services and are not under active investigation by the Attorney General Medicaid Fraud Control Unit. The State agency will also conduct adult day care facility audits unannounced. This ensures that facilities are reviewed in a similar manner to the audit conducted by the Office of the Inspector General. During the provider audits, the State agency will utilize a revised audit checklist which will include the updated regulatory and policy changes being made and also incorporate areas of concern from the Office of Inspector General report.

State Agency's Response and Actions Taken or Planned

When noncompliant findings are identified during an audit the provider will be sent a letter, as is standard operating procedure, and any applicable federal waiver and state regulations. This will ensure that adult day care providers have the information to educate staff and correct findings. The State agency will also include contracted services in the scope of future audits. In instances in which a contract for services is claimed by a provider, such as for social services or food services, we will include a request for verification of payments for those services to assure that the contracts have been utilized. This will help to ensure that services are being provided by qualified entities.

Adult day care facilities in the state of Mississippi are not required by state law to obtain a license to operate. The State agency will recommend to the Legislature that licensure be considered for this facility type to ensure oversight and monitoring occur on a regular and consistent basis by an entity appropriately trained in health care facility standards.

OIG Recommendation 3

The state should work with providers to improve their facilities, staffing, and training.

The state agency concurs.

To improve the quality of physical locations, staffing and training for adult day care facilities enrolled as Medicaid providers, the Adult Day Care Provider Proposal Packet submitted by providers prior to initial enrollment in the waiver program will incorporate the following changes:

- Additional documentation requirements for providers.
- Updated to address Final Rule conflicts and waiver updates.
- Added language regarding record retention and documentation requirements and DOM record audit authority with references to the Administrative Code to ensure provider understanding prior to approval/enrollment.
- Additional language surrounding national criminal fingerprint background checks, monthly checks of state and federal abuse registries and exclusion lists, and training of staff.
- Additional safety requirements regarding safe furnishings and required exits as well as the addition of Toxic Substance Storage to the on-site visit checklist utilized for pre-approval site reviews.
- Requirement of facility plans of care to be updated at least annually.

The updated Adult Day Care Provider Proposal Packet will be posted to the Division of Medicaid's public website to ensure reference access for all potential and current providers.

The State agency will educate enrolled adult day care facility providers at scheduled Division of Medicaid provider workshops held throughout the state. Provider Bulletin articles on appropriate implementation of requirements to ensure beneficiary health and safety, and include targeted training regarding record retention policies and documentation requirements to prevent future administrative findings, will be published regularly to ensure continuing education of staff.