

Department of Health and Human Services
Office of Inspector General



Office of Evaluation and Inspections

March 2025 | OEI-04-23-00030

State Survey Agencies Need Additional Guidance to Assess Nursing Home Emergency Preparedness Programs



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Why OIG Did This Review

- Nursing home failures, such as resident deaths during Hurricane Ida, demonstrate continued challenges in nursing home emergency preparedness. These failures raise questions about how effective the survey process is in overseeing nursing home emergency preparedness.
- State survey agencies, contracted and overseen by [CMS](#), are responsible for determining whether nursing homes comply with Medicare and Medicaid Requirements for Participation, including rules regarding emergency preparedness.
- Though CMS leads the oversight of nursing homes' compliance with Medicare and Medicaid program rules, [ASPR](#) and [CDC](#) fund efforts at State and local levels that support the emergency preparedness of health care facilities and health care systems, including nursing homes.

What OIG Found



A quarter of State survey agencies reported that surveyors typically lack emergency preparedness expertise when hired, and building and retaining this expertise is challenging.



CMS program guidance is more focused on documents to collect to demonstrate compliance with emergency preparedness rules than on assessing the content of those documents.



Nearly one-half of State survey agencies reported successes that go beyond CMS guidance, including (1) information sharing with emergency preparedness partners; and (2) additional tools and resources to enhance CMS guidance.

What OIG Recommends

To improve the survey process and support survey staff with limited expertise in the area, OIG recommends that CMS:

1. Provide surveyors with instructions for *how* to assess the contents of nursing home emergency preparedness documentation as a part of the survey process.
2. Issue guidance that encourages State survey agencies to collaborate and share information.

CMS concurred with both recommendations.

TABLE OF CONTENTS

BACKGROUND.....	1
Related Work	3
Methodology	4
Limitations	4
FINDINGS.....	6
A quarter of SAs reported challenges associated with surveyor emergency preparedness expertise.....	6
CMS guidance is focused on documents to collect to demonstrate compliance, rather than assessing the content of those documents.....	7
Nearly one-half of SAs reported successes within their States' survey processes that go beyond CMS's guidance	9
CONCLUSION AND RECOMMENDATIONS.....	12
Provide surveyors with instructions for <i>how</i> to assess the contents of nursing home emergency preparedness documentation as a part of the survey process.....	12
Issue guidance that encourages SAs to collaborate and share information	13
AGENCY COMMENTS AND OIG RESPONSE	15
DETAILED METHODOLOGY	16
Data Collection.....	16
Data Analysis.....	16
APPENDICES.....	17
Appendix A: Nursing Home Emergency Preparedness Requirements for Participation	17
Appendix B: Agency Comments	18
ABOUT THE OFFICE OF INSPECTOR GENERAL.....	22
ENDNOTES	23

BACKGROUND

OBJECTIVE

To assess State Survey Agency (SA) processes for overseeing nursing home emergency preparedness in accordance with CMS Requirements for Participation.

In 2017, the Centers for Medicare & Medicaid Services (CMS) took steps to bolster nursing home emergency preparedness and response through enhanced Requirements for Participation (RfPs).¹ Nursing homes must meet these RfPs to begin or continue participating in the Medicare and Medicaid programs. CMS contracts with and oversees 52 SAs to conduct oversight of nursing homes' compliance with the RfPs.²

Despite CMS's recent efforts, negative outcomes, such as nursing home resident deaths, have occurred during recent nursing home responses to emergencies. For example, in early September 2021, Louisiana officials confirmed five nursing home resident deaths and other unsuitable conditions at a temporary shelter in Louisiana where seven nursing homes had evacuated ahead of Hurricane Ida.³ In 2022, OIG excluded the nursing home owner from participating in Federal health care programs due to his ownership interest in these nursing homes that OIG previously excluded.^{4, 5}

These negative outcomes raise questions about the processes that SAs use to assess nursing home compliance and whether those processes are effective for ensuring that nursing homes are prepared for emergencies. After Hurricane Ida, for example, Louisiana's SA reported that, prior to the emergency, the seven nursing homes had adhered to the emergency preparedness RfPs and had no emergency planning deficiencies within the last three SA inspections.⁶ However, at the time of these events, Louisiana's SA stated that it was not responsible for assessing the contents of the nursing homes' plans and that it was unclear who had this responsibility.

Though CMS leads the oversight of nursing homes' compliance with the RfPs, the Administration for Strategic Preparedness and Response (ASPR) also funds the Hospital Preparedness Program, which encourages the development and sustainment of health care coalitions (HCCs).⁷ HCCs bring together individual health care and response organizations, such as nursing homes, in a defined geographic location to prepare health care delivery systems to respond to emergencies and disasters.

Nursing Home Emergency Preparedness Requirements

To participate in CMS programs, nursing homes must have emergency preparedness programs that meet the requirements outlined in the RfPs at 42 CFR § 483.73. The purpose of CMS's emergency preparedness requirements is to ensure "adequate planning for both natural and man-made disasters, and coordination with federal, state, tribal, regional, and local emergency preparedness systems."⁸

CMS specifies minimum elements that must be included in facilities' emergency preparedness program, including:

1. An all-hazards emergency plan built upon facility- and community-based risk assessments;
2. A communication plan for emergencies;
3. Policies and procedures to carry out the emergency and communications plans;
4. A training and testing (or exercising) program covering items 1 through 3 above;
5. Emergency and standby power systems;⁹ and
6. Integrated healthcare systems.¹⁰

See Appendix A for a complete list of the 26 nursing home emergency preparedness requirements that fall into these 6 minimum elements.

Medicare and Medicaid Nursing Home Surveys and Procedures

Sections 1819 and 1919 of the Social Security Act establish requirements for CMS and States to perform surveys of nursing homes to determine whether they meet Federal RfPs.¹¹

Survey Overview

To determine whether nursing homes meet Federal emergency preparedness RfPs, the SA completes an **Emergency Preparedness Survey**, often in conjunction with one of the other two survey types:

- The **Standard Health Survey** assesses whether nursing homes meet standards to protect residents (e.g., the quality of care and services furnished and the effectiveness of the physical environment).
- The **Life Safety Code Survey** includes (1) a set of fire protection requirements designed to provide a reasonable degree of safety from fire; and (2) a set of requirements that provide minimum requirements for the installation,

inspection, testing, maintenance, performance, and safe practices for facilities, material, equipment, and appliances (i.e., the Health Care Facilities Code).¹²

Surveys typically include a tour of the facility; interviews with staff and residents; and the collection and review of documentation, as needed.

Survey team composition will vary, depending primarily on the surveys being conducted. Standard Health Survey teams must include a registered nurse and can also include social workers, registered dietitians, pharmacists, activity professionals, or rehabilitation specialists. Life Safety Code Survey teams are typically subcontractors through the State Fire Marshal office or other State agencies responsible for enforcing State fire code requirements. Because Emergency Preparedness Surveys are conducted in combination with either a Standard Health Survey or a Life Safety Code Survey, there are no additional requirements for the composition of teams that conduct Emergency Preparedness Surveys, other than the requirement that surveyors take CMS's Emergency Preparedness Basic Surveyor Training online course.

Survey Procedures for Nursing Home Emergency Preparedness Requirements

CMS provides SAs with guidance on the procedures to use when conducting surveys for all RfPs, including the 26 emergency preparedness requirements. For all CMS-certified health care facilities (including nursing homes), the guidance for the emergency preparedness requirements is found in Appendix Z of CMS's State Operations Manual.¹³ For other nursing home-related RfPs, the guidance is generally found in Appendix PP of CMS's State Operations Manual.¹⁴

For each of the 26 regulatory requirements, Appendix Z contains both (1) Survey Procedures, which SAs are required to use; and (2) Interpretive Guidance, which SAs can consider—but are not required to use—when assessing nursing home compliance with requirements. The Interpretive Guidance is intended to help nursing homes understand the requirements and is often more descriptive than the Survey Procedures.

Nursing homes (and other facility types) could also use CMS's guidance to understand compliance with the RfPs and prepare for a survey. While SAs use the Survey Procedures to oversee and ensure facility compliance with requirements, facilities are ultimately responsible for implementing their emergency preparedness program; ensuring the health and safety of residents during an emergency; evaluating the effectiveness of their plan; and updating the plan as necessary.

Related Work

This report builds on a body of OIG and Congressional work reviewing emergency preparedness at nursing homes and CMS oversight.^{15, 16, 17, 18} Most recently, in 2023, OIG highlighted nursing home challenges with preparedness activities—the most cited challenges were ensuring proper staffing and transporting residents during

evacuations.¹⁹ Also in 2023, OIG raised concerns about how effective the survey process is in preventing and mitigating the spread of infectious disease in nursing homes.²⁰ Finally, in May 2023, the U.S. Senate Aging Committee released a report highlighting the infrequencies of nursing home inspections, delayed responses to complaints, and high percentages of SA surveyor vacancy rates.²¹ This report recommended that Congress increase funding for survey and certification activities.

Methodology

Data Collection

We distributed an electronic survey to all 52 SAs and received a 100-percent response rate. We asked respondents to describe their processes for assessing nursing home compliance with the CMS emergency preparedness requirements. Within those processes, we asked respondents to identify where potential challenges and/or successes exist.

We also conducted interviews with and requested written responses from CMS headquarters staff. These interviews and written responses focused on CMS's expectations for SA use of Appendix Z and the role of surveys in overseeing nursing homes' emergency preparedness.

Data Analysis

We analyzed the survey data to identify themes among the reported challenges and successes. For both challenges and successes, we identified and reported the most frequent themes across all SAs.

Because one of the most frequent themes was challenges with CMS guidance, we conducted a content analysis of CMS's Survey Procedures in Appendix Z for all 26 emergency preparedness requirements. We also conducted a limited review of CMS's Appendix PP. The purpose of this analysis was to independently verify and better understand the SA-reported challenges with CMS guidance.

See Detailed Methodology for more information.

Limitations

Due to the nature of open-ended survey responses, we can quantify how many SAs *raised* each challenge on the survey but not how many SAs *experienced* each challenge but failed to mention it in their response. As a result, we may be underreporting how many SAs *experienced* some challenges.

Standards

We conducted this study in accordance with the *Quality Standards for Inspection and Evaluation* issued by the Council of the Inspectors General on Integrity and Efficiency.

FINDINGS

A quarter of SAs reported challenges associated with surveyor emergency preparedness expertise

Emergency preparedness expertise is not required for surveyors. A registered nurse is a required member of a survey team, while backgrounds in social work, engineering, and pharmacy, among other specialties, are recommended. Although prior clinical, medical, or safety knowledge and experience can indirectly help surveyors assess requirements related to emergency preparedness, a quarter of SAs (14) reported challenges related to surveyors' expertise in emergency preparedness. These challenges can impact surveyors' ability to assess the emergency preparedness level of nursing homes.

These SAs reported challenges with hiring and retaining surveyors with expertise in emergency preparedness and challenges with turnover resulting in the loss of expertise. SAs noted that because this expertise is not a hiring or employment requirement for their surveyors, surveyors often do not have this expertise when hired, so it is developed over time and difficult to replace.

SAs also noted the challenges developing specific expertise in multiple regulatory areas. One SA stated that it was unrealistic to expect surveyors to have expertise in all regulatory areas covered in the survey process (e.g., emergency preparedness, life safety from fire, staffing).

Previous reports also highlight low staffing levels at SAs, which SAs noted further compound their challenges in this area.²² SAs reported that low staffing levels limit SA capacity to (1) focus on recruitment of surveyors with specific areas of expertise and/or (2) develop this expertise in existing surveyors. One SA said, "[We] need to increase the staff levels to be able to train more surveyors in the emergency preparedness survey process and actively search for staff with emergency preparedness expertise."

"[A] limitation would be that we are not prepared nor [have] the experience to evaluate the [emergency preparedness] plan for quality in an emergency." – SA

CMS guidance is focused on documents to collect to demonstrate compliance, rather than assessing the content of those documents

Thirty-five SAs reported challenges with CMS's emergency preparedness guidance in Appendix Z, and many of these reported a lack of detail in the guidance. OIG's review of CMS's Survey Procedures within Appendix Z confirmed that most lacked detail on *how* to assess compliance.

SAs explained that the lack of detailed instruction within Appendix Z has some negative consequences. These reported negative consequences include inconsistencies among surveyors; lack of direction by which to assess the quality or contents of the information; and lack of clarity around the threshold for determining if nursing homes are compliant or deficient on the emergency preparedness requirements. Though broad guidance has the advantage of giving nursing homes flexibility in how best to comply with the requirements based on unique needs, broad guidance also allows for different interpretation and application among surveyors, resulting in nursing homes being held to different standards.

"CMS guidance and support could be improved by digging deeper into the hows and whys of the requirements."

– SA

This lack of detailed guidance might explain how some nursing homes that are unable to protect the health and well-being of residents during an emergency response have not previously been cited for any deficiencies. For example, lack of detailed guidance could result in multiple nursing homes planning to evacuate to the same temporary shelter, when the shelter is not able to safely accommodate all of them (i.e., what happened in Louisiana during Hurricane Ida).

This lack of detail stands out compared to guidance for other survey types. Four SAs specifically requested that CMS improve its guidance through additional probes and guidance, such as Critical Element Pathways, within Appendix Z. Two of these SAs suggested that these improvements would make the emergency preparedness survey better align with other survey types. For example, one SA stated that "Appendix Z should contain more guidance similar to the probes and guidance provided in Appendix PP, including a Critical Element Pathway, to assist surveyors in determining compliance."²³ We independently verified the existence of these additional probes and guidance, as well as references to using Critical Element Pathways within Appendix PP.

Upon reviewing CMS's Survey Procedures for the 26 emergency preparedness requirements, OIG found that most (25) contain at least one gap. While all 26 requirements have Survey Procedures that direct surveyors on *what* information and documentation to *collect*, 25 requirements have at least one Survey Procedure that does not direct surveyors on *how* to assess the information provided by nursing homes.

We offer two examples of our analysis below.

Example 1: Survey Procedures for the exercise requirement contain gaps.

Our content analysis found that the Survey Procedures for assessing compliance with the exercise requirement generally only provide instructions for *collecting* information, as outlined below:

- **Ask leadership to explain** the participation of management and staff during scheduled exercises.
- **Ask to see documentation** of the exercises. **Documentation must demonstrate** that the facility has conducted the exercises described in the standard.
- **Ask to see the documentation** of the facility's efforts to identify a full-scale community-based exercise if it did not participate in one (i.e., date; personnel and agencies contacted; and the reasons for the inability to participate).
- **Request documentation** of the facility's analysis and response and how the facility updated its emergency program on the basis of this analysis.

These Survey Procedures generally do not direct surveyors on how to review the contents of the provided materials to ensure compliance with the intent of the requirement. Further, the Survey Procedures for this requirement do not provide direction on how a surveyor should cite a deficiency based on any concerns a surveyor has with the content of the materials provided. As a result, nursing homes may be found to be compliant on the basis of the existence of the materials rather than the content of the materials.

Within Appendix Z, CMS states that "the intent [of the exercise requirement] is [for nursing homes] to identify gaps in [their] emergency preparedness programs." While the second Survey Procedure indicates (in a nonspecific way) that the surveyor should conduct some type of review of the collected documentation, the other three Survey Procedures lack this direction.²⁴ For example, Survey Procedures could direct surveyors to review a nursing home's analysis to ensure that it identifies and addresses gaps from the exercise, but the Survey Procedures do not direct them to do so.

CMS also states within Appendix Z that "in the event gaps are identified [during exercises], facilities should update their emergency programs."²⁵ However, the Survey Procedures do not give surveyors instructions about how to assess whether nursing homes thoroughly updated their emergency programs on the basis of gaps from exercises. Survey Procedures could, for example, pointedly instruct surveyors to ensure that all gaps identified during an exercise are documented as updates in programs.

Example 2: Survey Procedures for the cooperation and collaboration

requirement contain gaps. Our content analysis found that the Survey Procedure

for assessing compliance with the cooperation and collaboration requirement also only provides instructions for *collecting* information, as outlined below:

- **Interview facility leadership and ask them to describe** their process for ensuring cooperation and collaboration with local, tribal, regional, State, and Federal emergency preparedness officials' efforts to ensure an integrated response during a disaster or emergency situation.

As with the prior example, the Survey Procedures do not provide instructions about how surveyors should assess the described process against the intent of the requirement when determining compliance. Further, the Survey Procedures do not provide direction on how a surveyor should cite a deficiency based on any concerns a surveyor has with the described process. As a result, SAs may not be reviewing whether nursing homes have a process for cooperating and collaborating that meets the intent of the requirement, but the nursing homes may still be found to be compliant using CMS's Survey Procedures.

Within Appendix Z, CMS states that the intent of this requirement is to ensure that the facility is coordinated with the community. CMS also states that "it is expected that the facility has documented sufficient details to support verification of the process." However, these Survey Procedures indicate that if a surveyor receives a description of a process, the nursing home could be compliant. The Survey Procedures do not provide instruction for how to assess whether the described process demonstrates that the facility is coordinated with the community. For example, surveyors could verify that nursing home participation in an HCC is a sufficient process to ensure coordination, but the Survey Procedures do not direct them to do so.

Nearly one-half of SAs reported successes within their States' survey processes that go beyond CMS's guidance

While most of the 52 SAs noted at least one challenge with their processes for overseeing nursing home emergency preparedness, 24 SAs also noted successes within their States' survey processes that go beyond CMS's guidance. These reported successes include proactive information sharing between SAs and other State and local partners. Successes also include SA-established guidance and training to enhance the Survey Procedures that CMS provides. While some of these were SA-initiated successes and others were not, many SAs noted the positive effects that these successes have on the survey process and nursing home preparedness within their States.

Eighteen SAs reported proactive information sharing between SAs and other State and local emergency preparedness partners

Eighteen SAs reported proactive (i.e., as a part of preparedness instead of response) information sharing between SAs and other emergency preparedness partners.²⁶

Experts state that information sharing during planning can improve situational awareness and operational readiness, as well as assisting in better managing disaster risk reduction, response, and recovery efforts.²⁷

CMS requires that SAs maintain effective communication and coordination with CMS during an emergency response. However, CMS stated that it does not have the authority to require that SAs proactively collaborate with other State or local emergency preparedness partners to exchange emergency preparedness information related to nursing homes during *planning*.

Among the 18 SAs that reported proactive information sharing, some of these information-sharing practices were SA-initiated, whereas in other cases, another State or local partner initiated it. The SA-reported examples of proactive information sharing include:

- General information sharing, such as training, strong partnerships, and situational awareness (11 SAs)
- Sharing information and/or making referrals to partners about facility resources and issues with planning (4 SAs)
- Review of facility-level plans by multiple partners (in addition to the SA) (3 SAs)
- Sharing information related to facility participation in exercises (3 SAs)
- Debriefing and lessons learned (1 SA)

In one example, State law requires that each facility's full emergency preparedness planning be reviewed by the SA and other entities that make up the Emergency Preparedness Internal Review Team. These other entities include, for example, the Governor's Office of Homeland Security and Emergency Preparedness and the local office of emergency preparedness in which an evacuation site is located. In this example, the SA reported that surveyors, along with the Emergency Preparedness Internal Review Team, are trained to thoroughly review each plan that is submitted, determine feasibility, and request changes, if necessary, to make the plans successful.

"Other agencies and stakeholder groups work with nursing homes to improve their preparedness. We have relationships with those agencies and groups and work collaboratively."
– SA

In another example, State law requires nursing homes to submit their plans to the SA as well as the county emergency management agency. The county emergency management agency reviews the plans and provides feedback directly to the nursing home. This feedback is subsequently made available to surveyors when they are assessing nursing home compliance with the emergency preparedness requirements.

Eleven SAs reported developing additional tools and resources to enhance CMS's guidance

Eleven SAs reported establishing their own training and guidance. These enhancements appear to be intended to address the lack of detail in CMS's Survey Procedures.

- Eight SAs reported that they provide additional training for surveyors, beyond what CMS requires.
- Three SAs reported developing additional documentation (e.g., tools and checklists) for surveyors that include supplemental probes and questions.

For example, one SA reported that its surveyors are taught to go beyond CMS Survey Procedures, such as by considering resources such as transportation or food distributors that the nursing home is planning to use and whether such plans might compete with other entities' plans in the community. If the only local grocery store agrees to maintain a certain amount of water for one nursing home, the SA would assess whether other demands within the community would jeopardize this agreement.

In another example, the SA reported that surveyors use "Review Team Questions for Emergency Preparedness Plans" to guide their reviews. This list provides additional items for surveyors to ask that are not listed in the Survey Procedures. For example, one additional item prompts surveyors to attempt to determine if the shelter-in-place procedures are sufficient. To do this, the surveyor reviews whether the plan identifies that 7 days of necessary supplies are on hand or whether the facility has written agreements, including timelines, to have the supplies delivered prior to the event.

CONCLUSION AND RECOMMENDATIONS

CMS's emergency preparedness requirements, effective in 2016, were a significant step toward addressing historical challenges with nursing home preparedness. These requirements are crucial for nursing homes to ensure the safety and well-being of their residents during emergencies.

Emergency preparedness surveys are an annual, point-in-time assessment of nursing home compliance with CMS's requirements. However, they are a critical oversight tool for ensuring that nursing homes, wherever they are located, can better anticipate and plan for needs; rapidly respond; and integrate with local public health and emergency management agencies.

We assessed SA processes for overseeing nursing home emergency preparedness in accordance with CMS RfPs. Surveyors often lack emergency preparedness expertise when hired, and staffing challenges further compound this issue. Further, CMS's guidance on how to conduct the surveys often lacks detail and focuses on the collection of materials rather than how to assess the materials to determine compliance. As a result, SAs may find nursing homes to be compliant on the basis of the existence of the materials rather than of the content.

SA-reported successes demonstrate some ways in which SAs are proactively improving their oversight of nursing home preparedness.

CMS can build upon these challenges and successes, taken together, to make the survey process more meaningful with less variation. CMS actions may also reduce the burden on SAs to use their own time and resources to make enhancements. Because nursing homes (and other facility types) can also use CMS's guidance, CMS action could also help make the survey process more meaningful for all CMS-certified health care facilities.

To strengthen the effectiveness of the survey process for emergency preparedness requirements, CMS should:

Provide surveyors with instructions for *how* to assess the contents of nursing home emergency preparedness documentation as a part of the survey process

While nursing homes are ultimately responsible for having an effective and implementable emergency preparedness program, the survey process is a critical oversight tool for CMS and, as such, must be meaningful at its minimum standard. Surveys must be able to identify problems within a nursing home that put residents at

risk during an emergency response. This is particularly important considering that surveyors typically lack emergency preparedness expertise.

Survey Procedures should more effectively identify problems that put nursing home residents at risk during an emergency response. CMS should do this by embedding more instruction within the Survey Procedures about *how* surveyors should assess documentation and information provided by the nursing home to ensure compliance with the emergency preparedness requirements. This additional instruction should focus on ensuring that nursing homes are achieving the intent of the requirements through the documentation of their emergency preparedness programs. CMS should also provide additional instruction for how a surveyor should determine if there is a deficiency for each requirement.

These additional instructions will enhance SA oversight of whether nursing homes are compliant with the intent of CMS's emergency preparedness requirements. These additional instructions will also help improve consistency among surveyors and address limitations in emergency preparedness experience and expertise across surveyors.

Issue guidance that encourages SAs to collaborate and share information

SAs are one of several types of HHS-funded agencies with information on the preparedness capabilities of health care facilities, such as nursing homes, that could be used to help support the preparedness of the surrounding community. Proactively exchanging information across community emergency preparedness partners, as well as with other SAs, could help coordinate efforts among HHS-funded entities with similar preparedness goals; develop effective and integrated emergency management plans and procedures; improve the effectiveness of the survey process; and ease the burden on surveyors with limited emergency preparedness expertise and guidance.

CMS is an integral part of the Department's efforts to support, strengthen, and grow facility-level emergency preparedness capabilities. CMS stated that it lacked authority to require SAs to collaborate and share information. However, given its vast experience overseeing nursing homes and ability to issue guidance to SAs, CMS is uniquely positioned to both lead improved information sharing between SAs and other partners and support other agencies (e.g., ASPR) in related efforts.

To ensure better facility preparedness for an emergency response, CMS should issue guidance that encourages SAs to collaborate and share information with other State and local emergency partners within their own State during *planning*. This guidance could complement the already existing *State Survey Agency Guidance: Emergency Preparedness for Every Emergency* on CMS's website.²⁸

This guidance should highlight SA-reported successes, such as SAs being alerted by partners about whether a facility has had access to or participated in a community-

based exercise or whether a facility is an active member of an HCC, as well as CMS identified successes. This guidance could also advise SAs on the distribution of survey information to other partners after surveys are complete (i.e., alerting partners about particularly low-quality emergency preparedness programs).

This guidance should also encourage collaborating and sharing information among SAs. Such guidance could facilitate the sharing of resources (e.g., additional guidance and training) that some SAs have proactively developed to enhance the Survey Procedures that CMS provides. These resources could benefit those SAs that have not yet developed their own enhancements or do not have the resources to do so.

AGENCY COMMENTS AND OIG RESPONSE

CMS concurred with both of OIG's recommendations. In its comments, CMS highlighted the various ways in which it supports surveyors with assessing compliance with emergency preparedness requirements, including Appendix Z, Emergency Preparedness Basic Surveyor Training, and the Surveyor Skill Review.

In response to both recommendations, CMS stated that it will explore the most effective and efficient way to implement the recommendation.

For the full text of CMS's comments, see Appendix B.

DETAILED METHODOLOGY

Data Collection

State Survey Agency Information Request

For our electronic survey, we asked CMS to provide contact information for individuals within each SA who oversee nursing home surveys. At the beginning of the survey, we provided an overview of the survey topics so that the SA could consider who would be most knowledgeable to respond. We also encouraged SAs to collaborate with other SA employees or other State or local health department officials, as needed, to answer each question completely and accurately.

Our respondents included SA Directors and Deputy Directors; Long-Term Care Survey Directors and Deputy Directors; Life Safety Code Surveyor Supervisors; SA Commissioners and Administrators; Nursing Managers; State Fire Marshal Office Inspectors; Health Care Facility Licensure/Standards Directors; and some surveyors.

Data Analysis

To perform the content analysis of CMS's Survey Procedures in Appendix Z for all 26 emergency preparedness requirements, we reviewed the Survey Procedures for each of the 26 requirements. In response to challenges reported by SAs, we reviewed each Survey Procedure and determined whether it directs surveyors on *how* to assess the collected information and documentation to determine compliance. When a requirement had multiple Survey Procedures, we determined whether each Survey Procedure had this component. If a requirement had at least one Survey Procedure with a gap, we concluded that the whole requirement had a gap. We illustrate gaps in the Survey Procedures through two specific examples in our findings.

We focused our review on the Survey Procedures in Appendix Z and did not review the Interpretive Guidance. While the Interpretive Guidance provides more information than do the Survey Procedures, surveyors are not required to apply the Interpretive Guidance during the survey process.

APPENDICES

Appendix A: Nursing Home Emergency Preparedness Requirements for Participation

CMS organizes the 26 requirements for nursing home emergency preparedness into six broad areas.

Emergency Plan

1. Establishment of the Emergency Program
2. Develop and Maintain Emergency Program
3. Maintain and Annual Emergency Program Updates
4. Emergency Program Patient Population
5. Process for Emergency Preparedness Collaboration

Policies and Procedures

6. Development of Emergency Preparedness Policies and Procedures
7. Subsistence Needs for Staff and Patients
8. Procedures for Tracking Staff and Patients
9. Evacuation Policies and Procedures
10. Sheltering Policies and Procedures
11. Medical Documentation Policies and Procedures
12. Volunteer Policies and Procedures
13. Arrangements with Other Facilities
14. Roles Under a Waiver Declared by the Secretary

Communication Plan

15. Development of Communication Plan
16. Names and Contact Information
17. Emergency Officials Contact Information
18. Primary/Alternate Means for Communication
19. Methods for Sharing Information
20. Sharing Information on Occupancy and Needs
21. Family Notifications

Training and Testing

22. Emergency Preparedness Training and Testing
23. Emergency Preparedness Training Program
24. Emergency Preparedness Testing Program

Emergency and Standby Power

25. Emergency Power

Integrated Health Systems

26. Integrated Health Systems

Source: CMS, *Surveyor Tool EP Tags*. Accessed at [CMS Surveyor Tool EP Tags](#) on December 23, 2024.

Appendix B: Agency Comments


Following this page are the official comments from CMS.

*Administrator*

Washington, DC 20201

Date: February 20, 2025

To: Ann Maxwell
Deputy Inspector General for Evaluations and Inspections

From: 
Stephanie Carlton
Acting Administrator
Centers for Medicare & Medicaid Services

Subject: Office of Inspector General Draft Report: State Survey Agencies Need Additional Guidance to Assess Nursing Home Emergency Preparedness Programs, OEI-04-23-00030.

The Centers for Medicare & Medicaid Services (CMS) appreciates the opportunity to review and comment on the Office of Inspector General (OIG) draft report.

CMS is charged with developing and enforcing quality and safety standards across the nation's health care system, a responsibility we take seriously. This duty is especially important when it comes to the care provided for people covered by Medicare and Medicaid who live in nursing homes.

CMS shares management of nursing home oversight with State Survey Agencies (SAs), which conduct onsite surveys to assess compliance with federal requirements and investigate facility complaints. SAs serve as the front-line responders to address health and safety concerns raised by residents, their families, and facility staff. CMS outlines the survey and certification processes in the State Operations Manual (SOM), which guides the SAs in determining a nursing home's compliance with federal requirements, including emergency preparedness.

CMS has taken numerous actions to assist SAs and provide guidance on survey expectations. For example, CMS has collaborated with the Assistant Secretary for Preparedness and Response (ASPR) to develop guidance specifically to address CMS's regulations on emergency preparedness. In Appendix Z of the SOM, CMS provides specific interpretive guidance that helps SAs when they survey compliance with federal requirements on emergency preparedness. For example, Appendix Z explains that, under 42 C.F.R. §483.73(a)(1), nursing homes must develop and maintain an emergency preparedness plan that is based on and includes a documented facility-based and community-based risk assessment, utilizing an all-hazards approach, including missing residents. The manual describes that an example consideration may include, but is not limited to, natural disasters prevalent to a facility's geographic region such as wildfires, tornados, flooding, etc.¹ An all-hazards approach is an integrated approach to emergency preparedness planning that focuses on capacities and capabilities that are critical to

¹ CMS State Operations Manual, Appendix Z – Emergency Preparedness for All Provider and Certified Supplier Types Interpretive Guidance (2019)

the preparedness for a full spectrum of emergencies or disasters.² This approach is specific to the location of the facility considering the types of hazards most likely to occur in the area.³ Thus, an all-hazards planning does not specifically address every possible threat or risk but ensures the facility will have the capacity to address a broad range of related emergencies.⁴ Facilities are encouraged to utilize the concepts outlined in the National Preparedness System published by the United States Department of Homeland Security's Federal Emergency Management Agency (FEMA), as well as guidance provided by the Agency for Healthcare Research and Quality (AHRQ).⁵

In partnership with ASPR, CMS developed the Emergency Preparedness Basic Surveyor Training, which is intended to establish a surveyor's knowledge of federal emergency preparedness regulations for each affected provider and supplier type. The training focuses on the use of the electronic Code of Federal Regulations and the survey process in SOM Appendix Z, Emergency Preparedness for All Provider and Certified Supplier Types.⁶ The course takes 24 hours to complete, and its objective is to help surveyors identify background events and initiatives that led to development of the emergency preparedness rule and the four core elements central to its requirements, and to identify emergency preparedness requirements and the survey procedures for assessing compliance with those requirements for all provider and supplier types.⁷ Beginning in 2023, CMS also requires surveyors to take the annual Surveyor Skill Review (SSR), which is a yearly measure of competency and knowledge surveyors need for consistent and effective survey processes.⁸ The SSR is a scenario-based assessment that measures surveyors' ability to identify situations encountered during a survey accurately.⁹

CMS thanks the OIG for its efforts on this issue and looks forward to working collaboratively on this and other issues in the future. OIG's recommendations and CMS's responses are below.

OIG Recommendation

Provide surveyors with instructions for how to assess the contents of nursing home emergency preparedness documentation as part of the survey process.

CMS Response

CMS concurs with this recommendation and will explore the most effective and efficient way to provide surveyors with more information.

OIG Recommendation

Issue guidance that encourages SAs to collaborate and share information.

² Id.

³ Id.

⁴ Id.

⁵ Id.

⁶ CMS Quality, Safety, & Education Portal, Emergency Preparedness Basic Training (EP) Training Information (2024)

⁷ Id.

⁸ CMS Admin-23-15-ALL, Annual Surveyor Skill Review Competency Assessment Completion Requirement (2023)

⁹ Id.

CMS Response

CMS concurs with this recommendation and will explore the most effective and efficient way to encourage state agencies to collaborate and share information.

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ENDNOTES

¹ On September 8, 2016, CMS published in the Federal Register the Emergency Preparedness Requirements for Medicare and Medicaid Participating Providers and Suppliers Final Rule. The regulation became effective November 16, 2016. Health care providers and suppliers affected by this rule were to be compliant and implement all regulations one year after the effective date, on November 15, 2017. CMS updated these requirements in 2019 via the Regulatory Provisions To Promote Program Efficiency, Transparency, and Burden Reduction; Fire Safety Requirements for Certain Dialysis Facilities; Hospital and Critical Access Hospital (CAH) Changes To Promote Innovation, Flexibility, and Improvement in Patient Care Final Rule. CMS, *Emergency Preparedness Rule*, last updated December 1, 2021. Accessed at <https://www.cms.gov/Medicare/Provider-Enrollment-and-Certification/SurveyCertEmergPrep/Emergency-Prep-Rule> on March 20, 2023.

² The 52 SAs include the 50 States, Puerto Rico, and the District of Columbia.

³ CNN, *Louisiana officials confirm 7 deaths of nursing home residents who were evacuated to hurricane shelter*, September 4, 2021. Accessed at <https://www.cnn.com/2021/09/04/us/ida-louisiana-nursing-home-deaths-saturday/index.html> on November 10, 2021.

⁴ HHS OIG, *HHS-OIG Issues Notice of Exclusion to Owner of 7 Louisiana Nursing Homes*, May 23, 2022. Accessed at <https://oig.hhs.gov/newsroom/news-releases-articles/nursing-home-exclusion/> on August 8, 2024.

⁵ The Attorney Generals' office charged the nursing home owner with eight counts of cruelty to the infirmed, two counts of obstruction of justice, and five counts of Medicaid fraud. This resulted in a July 2024 sentencing of three years of probation and at least \$2 million in fines and restitution. WDSU, *Bob Dean pleads no contest to criminal charges connected to Hurricane Ida nursing home evacuation*, July 23, 2024. Accessed at <https://www.wdsu.com/article/bob-dean-pleads-no-contest-hurricane-ida-nursing-home-evacuation/61664758#:~:text=A%20judge%20sentenced%20Bob%20Dean,at%20the%20site%20in%20Independence> on August 2, 2024.

⁶ NBC News, *U.S. scrutinizes nursing home evacuation rules after Hurricane Ida deaths*, September 30, 2021. Accessed at <https://www.nbcnews.com/news/us-news/u-s-scrutinizes-nursing-home-evacuation-rules-after-hurricane-ida-n1280492> on January 27, 2022.

⁷ ASPR, *About the Hospital Preparedness Program*. Accessed at <https://aspr.hhs.gov/HealthCareReadiness/HPP/Pages/about-hpp.aspx> on June 26, 2024.

⁸ CMS, *Emergency Preparedness Rule*, September 10, 2024. Accessed at <https://www.cms.gov/medicare/health-safety-standards/quality-safety-oversight-emergency-preparedness/emergency-preparedness-rule> on December 23, 2024.

⁹ The emergency and standby power systems requirements include compliance with requirements under the Life Safety Code, NFPA 110, and the Health Care Facilities Code.

¹⁰ The Integrated Healthcare Systems area only applies to nursing homes that are a part of an integrated health care system that elects to have a unified and integrated emergency preparedness program (rather than have each facility conduct its own emergency preparedness program). These nursing homes are, therefore, required to adhere to the integrated health care system requirements. ASPR Tracie, *CMS Emergency Preparedness Rule Integrated Healthcare Systems Implications*, updated July 2023. Accessed at <https://files.asprtracie.hhs.gov/documents/aspr-tracie-cms-ep-rule-integrated-health-systems-implications-6-5-23.pdf> on June 18, 2024.

¹¹ These regulations are at 42 CFR Part 483, subpart B, and 42 CFR Part 488, subpart E.

¹² The Life Safety Code and Health Care Facilities Code, which are revised periodically, are a publication of the National Fire Protection Association (NFPA). NFPA was founded in 1896 to promote the science and improve the methods of fire protection. CMS, *Life Safety Code & Health Care Facilities Code Requirements*, September 6, 2023. Accessed at

<https://www.cms.gov/medicare/health-safety-standards/certification-compliance/life-safety-code-health-care-facilities-code-requirements> on May 15, 2024.

¹³ CMS, *Updated Guidance for Emergency Preparedness – Appendix Z of the State Operations Manual*, March 26, 2021. Accessed at <https://www.cms.gov/files/document/qso-21-15-all.pdf> on May 15, 2024.

¹⁴ CMS, *Appendix PP – Guidance to Surveyors for Long-Term Care Facilities*, February 3, 2023. Accessed at <https://www.cms.gov/medicare/provider-enrollment-and-certification/guidanceforlawsandregulations/downloads/appendix-pp-state-operations-manual.pdf> on August 6, 2024.

¹⁵ A 2022 OIG report revealed that some SAs did not conduct timely reviews of nursing homes, which CMS and States often attributed to staffing shortages. *CMS Should Take Further Action To Address States With Poor Performance in Conducting Nursing Home Surveys* (OEI-06-19-00460) January 2022.

¹⁶ In a 2006 report, following Hurricanes Katrina and Rita, OIG found that most of the selected nursing homes met Federal requirements for emergency plans; however, nursing home administrators and staff did not always follow the plans, and many plans lacked suggested provisions. In a 2012 follow-up report, OIG found that nursing home emergency plans lacked relevant information, and nursing homes faced challenges with unreliable transportation contracts, lack of collaboration with local emergency management, and residents who developed health problems. *Nursing Home Emergency Preparedness and Response During Recent Hurricanes* (OEI-06-06-00020) August 2006 and *Gaps Continue To Exist in Nursing Home Emergency Preparedness and Response During Disasters: 2007-2010* (OEI-06-09-00270) April 2012.

¹⁷ In a 2020 report, OIG also found that HCCs had challenges expanding memberships to entities such as nursing homes, as the HCCs had limited resources to meet both HCC priorities and help new members, such as nursing homes, develop their emergency preparedness plans. *Selected Health Care Coalitions Increased Involvement in Whole Community Preparedness But Face Developmental Challenges Following New Requirements in 2017* (OEI-04-18-00080) April 2020.

¹⁸ In a series of audits, OIG found that some States did not ensure that selected nursing homes complied with certain CMS RfPs for emergency preparedness. *Audits of Nursing Home Life Safety and Emergency Preparedness in Eight States Identified Noncompliance With Federal Requirements and Opportunities for the Centers for Medicare & Medicaid Services to Improve Resident, Visitor, and Staff Safety* (A-02-21-01010) July 2022.

¹⁹ *Nursing Homes Reported Wide-Ranging Challenges Preparing for Public Health Emergencies and Natural Disasters* (OEI-06-22-00100) September 2023.

²⁰ OIG found that the survey process did not identify any deficiencies in infection control for the majority of the nursing homes with extremely high infection rates. OIG recommended that CMS improve how surveys identify infection control risks to nursing home residents and strengthen guidance on assessing the scope and severity of those risks. CMS neither concurred nor nonconcurred with OIG's recommendation to improve the survey process to more effectively identify infection control problems in nursing homes. *More Than a Thousand Nursing Homes Reached Infection Rates of 75 Percent or More in the First Year of the COVID-19 Pandemic; Better Protections Are Needed for Future Emergencies* (OEI-02-20-00491) January 2023.

²¹ United States Senate, *Uninspected and Neglected: Nursing Home Inspection Agencies are Severely Understaffed, Putting Residents Risk*, May 2023. Accessed at <https://www.aging.senate.gov/imo/media/doc/UNINSPECTED%20&%20NEGLECTED%20-%20FINAL%20REPORT.pdf> on February 14, 2024.

²² The U.S. Senate Special Committee on Aging found that 31 States and the District of Columbia have SA vacancy rates of 20 percent or more among the staff responsible for inspecting nursing homes, and 9 States have vacancy rates of 50 percent or more. Moreover, a large proportion of the inspection staff on payroll are inexperienced, reducing their effectiveness. United States Senate, *Uninspected and Neglected: Nursing Home Inspection Agencies are Severely Understaffed, Putting Residents Risk*, May 2023, p. 1.

²³ Critical Elements Pathways (or Survey Pathways) are survey resources for nursing home health surveys. Health surveyors are required to use these pathways. Pathways generally state when they are to be used; walk the surveyor through all elements related to the requirements; identify guidance to review in advance; identify activities and processes to observe that might be relevant; identify individuals who could be interviewed and areas to probe during the interview; provide additional

probing questions to determine other concerns that may need to be explored; identify records to be reviewed; and provide decision-making questions to identify what deficiencies to cite based on the survey findings.

²⁴ The third Survey Procedure implies that the surveyor should review the documentation to ensure that it references the date, personnel, and agencies contacted and the reasons for the inability to participate. While this Survey Procedure implies that the surveyor should go beyond merely collecting the documentation, this direction is not as directive as the second Survey Procedure. Further, this Survey Procedure still only directs the surveyor to verify that these components exist, rather than verify their accuracy. For example, the Survey Procedure could, but does not, direct the surveyor to assess whether the provided reasons for nonparticipation in the exercise were compliant.

²⁵ 42 CFR 483.73(d)(2)(iii).

²⁶ SA deficiency data is publicly available via CMS. When we asked SAs about proactive information sharing, we asked them to refer to practices other than CMS's public reporting of deficiency data.

²⁷ Federal Emergency Management Agency, *Information Sharing: Guide for Private-Public Partnerships*, September 2023. Accessed at https://www.fema.gov/sites/default/files/documents/fema_information-sharing_guide.pdf on October 2, 2024.

²⁸ CMS, *State Survey Agency Guidance: Emergency Preparedness for Every Emergency*, last updated on January 2, 2025. Accessed at <https://www.cms.gov/medicare/health-safety-standards/state-survey-agencies> on November 22, 2024.

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