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CMS Use of Staffing Data To Inform State Oversight of Nursing Homes

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Why OIG Did This Review

- Nursing home residents and families depend on nursing homes to maintain sufficient staffing to meet their needs. To that end, CMS has long required nursing homes to meet minimum staffing requirements, which include at least 8 hours of registered nurse (RN) services each day.

- This evaluation assesses the early experiences of States in leveraging new data and guidance provided by CMS to identify staffing deficiencies.

- Previously, CMS implemented the Payroll Based Journal (PBJ) to provide consumers with more accurate information about nursing home staffing. The PBJ is a system where nursing homes submit auditable information about the hours worked each day by different types of staff. Then in response to OIG recommendations, CMS began providing certain PBJ data to State survey agencies (States) along with guidance for using the data during nursing home inspections.

What OIG Found

Although States reported that the PBJ data have been useful, CMS did not provide States with all the information they need to effectively oversee the minimum requirement to provide 8 RN hours every day, as well as the broader requirement to provide sufficient staffing to meet residents' needs.

- CMS does not identify all nursing homes with fewer than 8 RN hours. Instead, CMS targets nursing homes with zero RN hours. States could better target their oversight if CMS identified all nursing homes that had more than zero but fewer than 8 hours of RN coverage.

- CMS does not explain to States which aspect(s) of staffing pose a risk for insufficient staffing, when it identifies nursing homes with a one-star staffing rating (the lowest rating on Care Compare, the public website for consumers). For example, States that we reviewed wanted to know specifically whether low staffing of nurse aides contributed to the potential insufficient staffing in nursing homes identified by CMS.

What OIG Recommends

1. CMS should inform States of nursing homes that appear from PBJ data to violate the required number of daily RN staffing hours.

2. CMS should provide States additional nursing home staffing analysis and guidance to identify potential insufficient staffing.

CMS nonconcurred with the first recommendation. For the second recommendation, CMS neither concurred nor nonconcurred but stated that it has already implemented it.

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BACKGROUND

OBJECTIVE

To assess States' early use of the Centers for Medicare & Medicaid Services (CMS) Payroll Based Journal (PBJ) data and related guidance to support the enforcement of Federal nursing home staffing standards.

Nursing home residents and families depend on nursing homes to have sufficient staffing to meet their needs. To that end, CMS requires nursing homes to meet specific staffing requirements. CMS relies on States to monitor nursing home compliance with these Federal staffing requirements and to issue citations to noncompliant nursing homes with staffing deficiencies. Effective oversight of nursing home staffing levels is critically important to ensure that residents receive high-quality care.

Key Terms in This Report

State: Refers to a State Survey Agency that has survey (i.e., inspection) and enforcement responsibilities for nursing homes.

PBJ: The Payroll Based Journal is a CMS system where nursing homes must submit information on a quarterly basis about the hours worked each day by different types of staff.

PBJ Staffing Data Report: Informs State surveyors when CMS identifies a nursing home with one or more flags on staffing; also known as the CASPER Report 1705D.

Flag: Identifies a specific area of concern in the PBJ Staffing Data Report.

Inspection: State surveyors conduct inspections of nursing homes, including an annual standard inspection to identify violations of Federal requirements.

Deficiency: Violation of requirements identified during a State inspection.

Deficiency citation rate: Evaluation metric that assesses how many nursing homes were cited for deficiencies by States (e.g., the deficiency citation rate among nursing homes flagged on PBJ Staffing Data Reports).

In October 2022, CMS began requiring States to use summaries of nursing home staffing data from PBJ Staffing Data Reports to inform annual standard inspections and assist with oversight of staffing requirements.[1]

This evaluation focuses on States' early efforts to use PBJ data and related CMS guidance to identify nursing homes warranting a staffing deficiency citation during standard inspections from November 2022 through April 2023.

Nursing Home Oversight by CMS and State Survey Agencies

CMS is responsible for the certification and oversight of each of the approximately 15,000 nursing homes that receive Medicaid or Medicare funding.[2, 3] Federal law requires that these nursing homes protect the health, safety, welfare, and rights of nursing home residents. To monitor nursing home compliance with these requirements, CMS enters into oversight agreements with States.[4] States rely on both State and Federal funding.[5]

State responsibilities include conducting onsite standard and complaint surveys (i.e., inspections) for each nursing home to certify compliance (or noncompliance) with requirements for participation in Medicare and Medicaid.[6] CMS requires that the average time between standard inspections not exceed 12 months statewide.[7] During these inspections, States assess nursing home compliance since the end of the prior standard inspection. Information is gathered through observations, staff and resident interviews, and record reviews including PBJ data provided by CMS.

CMS summarizes the results from nursing home inspections as part of its Five-Star Quality Rating System on Care Compare (the website for consumers). CMS's rating system—updated monthly—gives each nursing home an overall rating of between one and five stars.[8] In addition to information about health inspections, Care Compare provides ratings and information about staffing and quality measures.

Prior OIG work found that States sometimes fail to conduct timely inspections as required by CMS and accumulate inspection backlogs.[9] These States often cite their own staffing shortages as partially responsible for failing to conduct timely inspections, demonstrating the importance of an efficient inspection process.

Staffing Requirements and Deficiency Citations

Nursing homes must provide sufficient staff to meet residents' needs. During our review period, nursing homes at a minimum were required to have:

- sufficient staff with the appropriate competencies and skill sets to ensure resident safety and attain or maintain the highest practicable physical, mental, and psychosocial well-being of each resident;
- sufficient staff to provide 24-hour licensed nursing services; and
- a registered nurse (RN) working for at least 8 consecutive hours every day.

State surveyors use PBJ data, as well as other data and guidance from CMS, to determine whether a staffing or other deficiency occurred, the scope and severity of any deficiency, and appropriate corrective actions including penalties. When a deficiency is issued, State surveyors use F-tags to identify specific health deficiencies, including staffing issues.[10]

Nursing homes have flexibility in determining the levels of nursing services that are sufficient to meet residents' needs. CMS requires nursing homes to conduct individual resident assessments and a facilitywide assessment about the level of care needed by residents, and CMS expects the facilitywide assessment to be used in making staffing decisions.

Many States also have their own minimum staffing requirements that exceed the Federal requirements to provide at least 24-hour licensed nursing and 8 RN hours.[11] Some of these State-specific staffing requirements are not directly comparable to the staffing time reported in the PBJ. For example, some States require different staffing levels during the day, evening, and night, while the PBJ captures staffing time on a per-day basis.

Payroll-Based Journal Data Use in Nursing Home Surveys

CMS implemented the PBJ as a way for nursing homes to self-report detailed staffing information. Nursing homes report data to the PBJ about staffing levels for each day, including the hours and categories of work performed by employee type (e.g., RN, licensed practical nurse, and certified nurse aide).[12] PBJ data can be verified using nursing home payment records.

CMS shares reported staffing information with the public and States.[13] CMS leverages the PBJ to help States enforce nursing home staffing requirements. For example, since January 2019, CMS has provided States with a list of nursing homes that had low weekend staffing. CMS requires that States conduct 5 percent of standard inspections during weekends, and PBJ data are used by States to target weekend inspections toward nursing homes with low weekend staffing.[14]

Since October 24, 2022, State surveyors have been required to use the Certification and Survey Provider Enhanced Reports (CASPER) system to obtain quarterly staffing reports of PBJ data, called PBJ Staffing Data Reports. These reports include data for individual nursing homes covering the five most recent quarters of data. Each report includes flags that identify potential areas of concern at a nursing home, such as failure to submit staffing data or reporting low staffing hours.[15, 16]

CMS instructs States to use the most recent quarter of PBJ data to review for potential noncompliance with staffing rules. The report flags the following five areas of concern during a quarter:
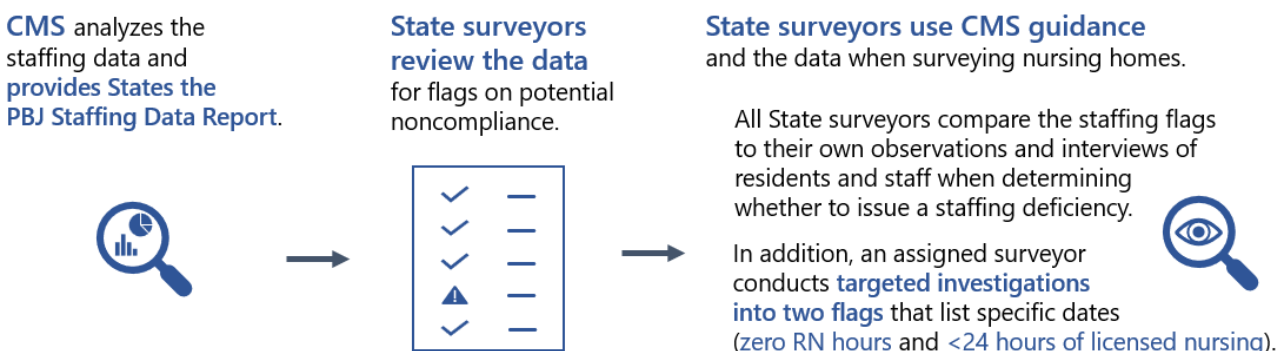
- **Zero RN hours** (on at least 4 days)
- **Failure to have licensed nursing coverage 24 hours a day** (on at least 4 days)

- **Failure to submit PBJ data** (within 45 days of the end of a quarter)
- **Excessively low weekend staffing** (e.g., in the bottom 20 percent for a given State)
- **The lowest (one-star) staffing rating on Care Compare**

In addition to the flags, the report also lists any dates that the nursing home reported zero RN hours or fewer than 24 hours of licensed nursing coverage. CMS guidance instructs State surveyors to review whether nursing homes failed to meet staffing requirements on these specific dates.

When CMS instructed States to use the PBJ Staffing Data Reports, the agency also updated various nursing home staffing guidance documents.[17] CMS announced these changes in June 2022 and provided training materials to States before implementing the new survey procedure in October 2022.[18] The revisions focused on how to use flags for nursing homes in the PBJ Staffing Data Report indicating that the nursing home: (1) had days with zero RN hours, (2) had days with fewer than 24 hours of licensed nursing, or (3) failed to submit PBJ data for the quarter. In October 2023, CMS revised its guidance so that State surveyors can more efficiently cite deficiencies of nursing homes that failed to submit PBJ data. See Exhibit 1 for a summary of how State surveyors use the PBJ Staffing Data Report and CMS guidance.

Exhibit 1: How State surveyors use the PBJ Staffing Data Report and CMS guidance

CMS analyzes the staffing data and **provides States the PBJ Staffing Data Report**.

State surveyors review the data for flags on potential noncompliance.

State surveyors use CMS guidance and the data when surveying nursing homes.

All State surveyors compare the staffing flags to their own observations and interviews of residents and staff when determining whether to issue a staffing deficiency.

In addition, an assigned surveyor conducts **targeted investigations into two flags** that list specific dates (zero RN hours and <24 hours of licensed nursing).

Source: OIG analysis of HHS guidance documents.

State surveyors who conduct targeted investigations of staffing during a standard inspection must review all elements of the detailed guidance for how to assess nurse staffing. This review includes investigating the two staffing flags that list specific dates of any issues. When a nursing home is flagged for having zero RN hours or fewer than 24 hours of licensed nursing, the surveyor must review records and conduct interviews to investigate potential noncompliance.

Continuing Impact From COVID-19

We collected and analyzed data after the COVID-19 pandemic had a devastating impact on nursing home residents and employees. Nursing home surveys were limited during the COVID-19 public health emergency, as CMS adjusted its approach

to nursing home oversight by, for example, temporarily suspending annual standard surveys.[19] In August 2020, CMS authorized State surveyors to resume normal operating procedures.[20] Nonetheless, State surveyors faced a challenging environment and a substantial backlog of standard and complaint surveys.[21]

The COVID-19 pandemic also led to nursing workforce shortages and reinforced the importance of sufficient staffing for nursing homes. Inadequate staffing makes it difficult for nursing homes to respond to outbreaks of infectious diseases such as COVID-19.[22, 23]

Related work

This study builds on previous OIG work relating to nursing home staffing requirements, PBJ data, and CMS oversight of State activities.

Our previous studies relating to the use of nursing home staffing data on Care Compare resulted in recommendations for CMS to use PBJ data to strengthen oversight of nursing home staffing.[24] In response to these recommendations, CMS began providing State surveyors with summaries of PBJ data to help improve the enforcement of staffing requirements.

Additionally, a recent OIG report recommended that CMS re-examine and revise nurse staffing requirements.[25] This report also advised CMS that including timestamps in the PBJ data could allow CMS to monitor compliance with around-the-clock staffing. Another recent OIG report recommended that CMS implement and expand its policies and programs to strengthen the nursing home workforce.[26]

Methodology

We collected and analyzed multiple data sources that pertain to the early use of PBJ Staffing Data Reports by States. Our review period covered the 12 months before CMS required States to use the reports (from November 2021 through October 2022) and the 6 months after the requirement was implemented (from November 2022 through April 2023). We broke down the 12-month, pre-implementation period into two 6-month periods for comparability. We also reviewed additional CMS actions related to oversight through October 2023 when making our recommendations.

We surveyed 20 States to assess their experiences using PBJ Staffing Data Reports.

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

States reported that expanded PBJ data and related guidance have been beneficial in targeting oversight and substantiating staffing deficiencies

CMS helped States oversee nursing home staffing by providing staffing data and related guidance. Although PBJ Staffing Data Reports flagged staffing concerns for a substantial portion of nursing homes, related CMS guidance allowed States to better target resources when conducting surveys.

States said PBJ Staffing Data Reports and CMS guidance help target and substantiate staffing deficiencies

Following CMS guidance, States in our review used PBJ Staffing Data Reports to target inspection actions. The vast majority of States characterized three of the five flags as particularly helpful. These flags were: (1) nursing homes with zero RN hours (18 of 20 States), (2) nursing homes with fewer than 24 hours of licensed nursing (18 of 20), and (3) nursing homes with low weekend staffing (17 of 20).[27] Fewer States, though still more than half of those in our review, described the flag for a one-star staffing rating (12 of 20) and the flag for nonsubmission of PBJ data as helpful (13 of 20).

One-half of the States (10 of 20) also said that they substantiate deficiencies by using PBJ Staffing Data Reports. For example, States targeted specific dates listed in the PBJ Staffing Data Reports when investigating allegations of inadequate staffing.[a] Additionally, one State reported using the PBJ Staffing Data Reports to consider whether staffing was a potential cause for incident reports involving falls and to help determine whether overuse of psychotropic medications was due to low staffing. States also reported using data from previous quarters to investigate specific staffing issues during earlier periods.

States in our review reported that CMS guidance helped improve their oversight practices. For example, the guidance instructs States that a PBJ Staffing Data Report is sufficient evidence to substantiate a staffing deficiency. The guidance states that State surveyors should issue a staffing deficiency citation if the nursing home cannot provide evidence that it had staff on site for the specific dates when the nursing home reported zero RN hours or fewer than 24 hours of licensed nursing coverage.[28]

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[a] In open-ended survey responses, States described how a PBJ Staffing Data Report can help in following up on allegations about specific dates, when data are available.
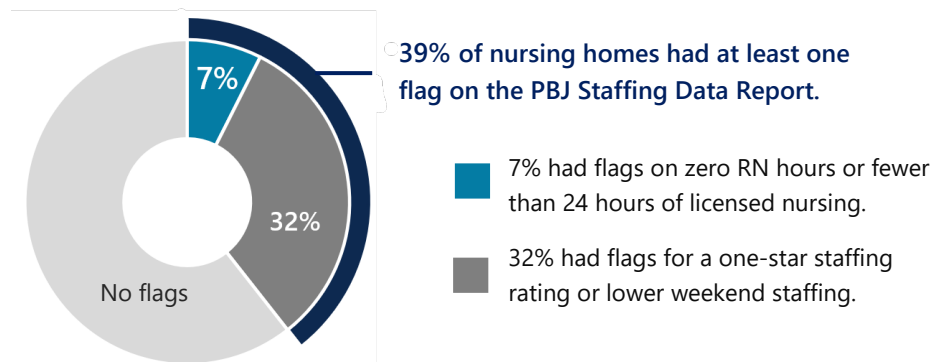
Using the PBJ data and CMS guidance, State inspections targeted 7 percent of nursing homes for heightened attention to staffing during investigations

PBJ Data Staffing Reports and CMS guidance helped States to prioritize use of resources by targeting nursing homes for investigations of staffing concerns. CMS requires this heightened attention to staffing during State investigations in response to two flags: zero RN hours and fewer than 24 hours of licensed nursing.[29] Targeted investigations include additional reviews of documentation and specific, probing, interviews of staff.

CMS flagged 39 percent of nursing homes for staffing concerns, with 7 percent flagged for targeted State investigations due to zero RN hours or fewer than 24 hours of licensed nursing (see Exhibit 2). The remaining 32 percent of nursing homes with staffing flags received those flags for having low weekend staffing or a one-star staffing rating,[b] which do not prompt investigation. For these flags, surveyors are directed by CMS guidance to be aware of the flag when conducting standard onsite inspection tasks, such as resident interviews.

OIG found that the number of nursing homes flagged with a staffing concern varied substantially across States, ranging from a quarter of nursing homes to two-thirds of nursing homes.[c]

Exhibit 2: Seven percent of nursing homes nationwide required targeted investigation by State surveyors due to CMS flagging for either zero RN hours or fewer than 24 hours of licensed nursing.

39% of nursing homes had at least one flag on the PBJ Staffing Data Report.

7% had flags on zero RN hours or fewer than 24 hours of licensed nursing.

32% had flags for a one-star staffing rating or lower weekend staffing.

Note: These numbers represent the 2022 average based on analyzing data for each quarter.

Source: OIG analysis using PBJ data and the provider information file for 2022, available at https://data.cms.gov.

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[b] For details, see Exhibit A-2 in Appendix A.

[c] For details, see Exhibit A-3 in Appendix A.

States described some challenges to using PBJ Staffing Data Reports to inform oversight

Some States (13 of 20) noted that timeliness issues limit the usefulness of PBJ Staffing Data Reports for inspections. These States reported that the information provided by CMS covers staffing from several months before an inspection and does not describe staffing patterns at the time of the inspection.[d] For State surveyors, this delay creates challenges in targeting current deficiency citations based only on PBJ data. However, in open-ended responses, many States noted the value that PBJ data provides in helping them follow up on older allegations (i.e., when data are available) as part of a standard annual inspection.

CMS provides updated staffing data to States approximately 2 months after the most recent quarter has ended.[e] The delay occurs because nursing homes must submit staffing data to CMS within 45 days after each quarter ends.[30] CMS then takes about another 20 days to provide the staffing data to States, during which CMS analyzes the data to generate the PBJ Staffing Data Reports and flags. Therefore, every quarterly data update that becomes available to surveyors describes staffing patterns that occurred 2 to 5 months earlier. If a State inspection occurs just before the quarterly staffing data are updated, surveyors could be considering information that might be up to 8 months old.

Most States (17 of 20) also reported that nighttime staffing levels information would be useful. However, staff data reported by nursing homes does not cite work timeframes such as daytime or nighttime. Instead, the PBJ staffing data submitted by nursing homes captures only the date the staff worked.[31] Therefore, PBJ data do not indicate how much, if any, nurse staffing was provided at night. Surveyors can request staffing records from a facility during an onsite survey to better understand night staffing levels.

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[d] For information about whether nursing homes flagged in a prior quarter were also flagged in subsequent quarters, see Exhibit A-1 in Appendix A.

[e] CMS provides the public with updated staffing information on Care Compare (and updates PBJ public files) about 4 months after each quarter, approximately 2 months after it updates PBJ Staffing Data Reports for States.

The number of nursing homes cited for staffing deficiencies increased only moderately following initial State use of PBJ Staffing Data Reports, leading CMS to revise its guidance to further increase citations

After surveyors began using PBJ Staffing Data Reports provided by CMS in October 2022, the number of citations for staffing deficiencies increased moderately. CMS regularly monitored the frequency of staffing citations and found a small increase. CMS revised its guidance to further assist State surveyors in using PBJ data to oversee staffing in nursing homes.

Citations of staffing deficiencies increased moderately, including among nursing homes that CMS flagged in PBJ reports

State surveyors moderately increased rates of staffing deficiency citations in the early stages of using PBJ Staffing Reports. For every 100 surveys, an additional 2 to 3 nursing homes received staffing deficiency citations (see Exhibit 3). Before the introduction of PBJ Staffing Data Reports from November 2021 through April 2022, 6.6 percent of standard surveys identified a staffing deficiency. Early in the use of these reports from November 2022 through April 2023, 9.1 percent of standard surveys identified a staffing deficiency.[f] CMS reported that guidance and training released in June 2022 may have contributed to increased citations before the new reports became mandatory in October 2022.

Exhibit 3: Staffing deficiency citations increased moderately from November 2021 through April 2023.

	Percentage of Standard Inspections With a Staffing Deficiency		
	Pre-implementation Periods		*Early Post-implementation*
Deficiency Type	Nov. 2021 to Apr. 2022 (n=4,455)	May 2022 to Oct. 2022 (n=5,050)	Nov. 2022 to Apr. 2023 (n=4,932)
Insufficient staffing or fewer than 8 RN hours	**6.6%**	**8.2%**	**9.1%**
Insufficient staffing	4.0%	4.7%	5.2%
Fewer than 8 RN hours	3.3%	3.9%	4.5%

Source: OIG analysis of CMS data available at https://data.cms.gov.

Note: Because some nursing homes received multiple deficiencies during surveys, values of first two rows do not sum to the total in the final row. Prior to November 2022, CMS did not expect States to issue deficiencies for failing to submit PBJ data. Therefore, we excluded the deficiency (F851) when comparing the pre- and post-implementation periods. A deficiency for insufficient staffing (F725) relates to the flags for fewer than 24 hours of licensed nursing, low weekend staffing, and the one-star staffing rating. A deficiency for fewer than 8 RN hours every day (F727) relates to the flag for zero RN hours.

[f] OIG did not find substantial changes in the seriousness of staffing deficiencies (see Appendix B).

We cannot attribute the moderate increase in staffing deficiency citation rates exclusively to State surveyor use of the PBJ Staffing Data Reports and updated CMS guidance. The above analysis assessed deficiency citations among all nursing homes including those that were not flagged by PBJ Staffing Data Reports. Also, it is possible that other factors outside the scope of this report (e.g., nursing homes facing greater difficulty hiring and retaining staff) led to these increased citations.

However, CMS's monitoring data provide an indication that PBJ Staffing Data Reports and CMS guidance likely contributed to a moderate increase in deficiency citations.[g] CMS monitoring data show that deficiency citation rates increased moderately among nursing homes flagged by PBJ Staffing Data Reports, compared to earlier rates (see Appendix C, Exhibit C-1).

CMS's monitoring data found that deficiency citation rates increased for some flags more than other flags. For example, among nursing homes that previously reported zero RN hours, the deficiency citation rate increased from 15 percent to 25 percent.[h] The deficiency citation rates changed less among nursing homes identified by the other flags.

However, analysis by CMS and OIG indicated that deficiency citations for flagged facilities likely should have been higher

Analysis of PBJ and deficiency data by both CMS and OIG indicated that deficiency citation rates for staffing likely should have been higher. As part of the monitoring process, CMS feedback to States in April 2023, noted that agency officials expected staffing deficiency rates to be higher based on the number of nursing homes flagged in PBJ Staffing Data Reports. OIG data analysis also found the potential for missed staffing deficiency citations: a large percentage of nursing homes with PBJ Staffing Data Report flags did not receive deficiency citations for staffing even though State surveyors issued deficiencies for substandard quality of care. These findings raise concerns that State inspections may have missed staffing deficiencies that contributed to substandard quality of care. Without a specific citation for a staffing deficiency, nursing homes would not be required to implement corrective actions to improve staffing.

After initially finding only a moderate increase in deficiency citations, CMS revised its guidance to States and citation rates increased. CMS provided verbal guidance and first shared monitoring data with States during a training presentation in April 2023. As part of this guidance, CMS stated that nursing homes flagged by recent PBJ Staffing Data Report should have received deficiency

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[g] CMS also began disseminating the monitoring data to States on a monthly basis.

[h] CMS provided additional monitoring data for all calendar year 2023 (see Appendix C, Exhibit-C-2). Among nursing homes that previously reported zero RN hours, the deficiency citation rate reached 39 percent in 2023, which shows that increases continued beyond our review period. However, the citation rate remained low for nursing homes that reported fewer than 24 hours of licensed nursing services.

citations more often than they had during the initial months after States began using the new information.

Specifically, CMS noted that three flags in PBJ Staffing Data Report correspond to straightforward requirements that should typically result in deficiency citations. These flags pointed to noncompliance with submitting PBJ data, having fewer than 8 RN hours every day, and not having 24-hour licensed nursing services. But surveyors did not always cite deficiencies in these cases (see Exhibit 4). CMS acknowledged that the requirement for "sufficient staffing is more subjective."[32] Therefore, CMS was not surprised to see fewer deficiencies cited for the flags for low weekend staffing and a one-star staffing rating.

Exhibit 4: CMS expects the highest citation rates for three flags included in the PBJ Staffing Data Reports.

Flags in PBJ Staffing Data Reports	Deficiency Citation Rates Among Flagged Nursing Homes (April 2023)	CMS expected the deficiency citation rate to be . . .
Did not submit PBJ data	31%	. . . much higher, if not 100% (because all nursing homes that fail to submit data should receive a deficiency citation)
Zero RN hours	25%	. . . higher, but not 100% (because some nursing homes may not accurately report all staff hours to PBJ)
Fewer than 24 hours of nursing	5%	
Low weekend staffing	12%	. . . higher, but not as high as citation rates for the flags on no RNs and fewer than 24 hours (because the specific requirements for 8 RN hours and 24-hour nursing services every day are more clear-cut).
One-star staffing rating	3%	

Source: OIG analysis of CMS documentation, including a presentation ("Long-Term Care Surveying for Staffing Compliance") that CMS gave the Surveyor Executive Training Institute in April 2023.

CMS monitoring data and OIG's analysis found that deficiency citation rates continued to increase after April 2023. CMS indicated that it anticipates seeing a greater correlation between flags in PBJ Staffing Data Reports and deficiency citations as State surveyors continue to learn to use staffing data to support citations. CMS provided OIG with 2023 monitoring data from April 2024 that showed citation rates increased among nursing homes that failed to submit PBJ data or that reported days with no RN hours (see Appendix C, Exhibit C-2). OIG supplemental analysis confirmed an increase in the staffing deficiency citation rate (see Appendix C, Exhibit C-3).

Some nursing homes did not receive staffing deficiency citations, despite having a staffing flag and receiving deficiency citations for substandard quality of care. Lower quality of care in nursing homes is often related to staffing problems. To focus on nursing homes with lower quality of care and at higher risk for staffing shortages, we first identified nursing homes that received deficiency citations

for substandard quality of care. Then we assessed whether the nursing home was flagged by the PBJ Staffing Data Report and, if so, whether the nursing home received a staffing deficiency citation. From November 2022 through April 2023, a total of 199 nursing homes received deficiency citations for substandard quality of care but did not receive a staffing deficiency. Of these, 83 were flagged by the most recent PBJ Staffing Data Report.[i] More than 7,000 people resided in these 83 nursing homes.

We cannot state for certain that these nursing homes should have been cited with a staffing deficiency. The facilities could have been in compliance with staffing requirements while receiving a deficiency for substandard quality of care associated with other requirements. However, a deficiency for substandard quality of care and the presence of a PBJ staffing flag may indicate that a staffing issue was detected in the data but not cited by surveyors, meaning there is an opportunity for better use of PBJ staffing flags to help guide surveyors.

CMS took steps to ensure submission and accuracy of PBJ data to improve the data's usefulness in identifying staffing deficiencies

For PBJ Staffing Data Reports to be useful for State oversight of staffing, nursing homes must submit PBJ data. Moreover, these data must be accurate. CMS recently implemented two changes to help ensure the submission and accuracy of PBJ data. One change increased accountability for reporting the data by streamlining the process for States to issue deficiency citations to nursing homes that do not submit required data. The second change used the star ratings on Care Compare to incentivize nursing homes to submit accurate data.

CMS revised its guidance to State surveyors to ensure that nursing homes receive deficiency citations for failing to submit PBJ Data. States had reported that the flag for failing to submit PBJ data was among the least helpful for surveyors because, according to a State that offered details, failing to submit data in itself does not indicate a staffing problem.

Subsequently, CMS revised its guidance in October 2023 to provide States more definitive instructions that explicitly stated surveyors should issue deficiency citations when nursing homes failed to submit PBJ data. These changes mean that through deficiency citations nursing homes will be held more accountable for failing to submit PBJ data. This, in turn, should drive nursing homes to improve PBJ data reporting.

Before this revision, States suggested to OIG that CMS assist States by enforcing the requirement that nursing homes submit PBJ data. Nineteen of 20 States reported that CMS should assist with their workload by directly issuing deficiency citations to nursing homes that did not submit PBJ data. CMS officials responded that it would disrupt the enforcement process if CMS headquarters centrally issued deficiency

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[i] We did not assess whether substandard quality of care also occurred at the same time as low staffing.

citations. For example, States must follow up on deficiency citations to verify compliance within specific timeframes.[33]

To further assist States, CMS guidance commits to work with surveyors, when surveyors are onsite performing an inspection, to help resolve discrepancies if a nursing home believes there was an inaccurate flag. For example, a nursing home may have evidence that it submitted PBJ data as required. CMS could then confirm whether the nursing home submitted data for the specific quarter in question.

CMS made changes to Care Compare to further incentivize nursing homes to submit accurate data. In April 2024, CMS revised the staffing rating methodology so nursing homes that fail to submit staffing data or submit inaccurate data receive the lowest score possible for staff turnover measures, which are a component of the overall staffing star rating. Before April 2024, nursing homes that failed to submit PBJ data or that submitted inaccurate data received an automatic downgrade to a one-star staffing rating for 3 months. In April 2024, CMS extended the potential impact on a star rating by an additional 15 months.[j] This extension may decrease a nursing home's star rating by one to two stars. This potential star rating reduction is intended to further incentivize nursing homes to submit accurate PBJ data.

CMS has additional opportunities to improve the data and guidance provided to States related to PBJ Staffing Data Reports

Based on our review, CMS can help State surveyors improve oversight of nursing home staffing requirements. CMS could improve oversight of the requirements to provide: (1) at least 8 RN hours every day and (2) sufficient nurse staffing to meet resident needs.

PBJ reports that CMS provides to State surveyors do not flag all nursing homes that appear to violate the requirement to provide 8 hours of RN services

In the PBJ Staffing Data Report, CMS flags nursing homes that report having zero RN hours per day. However, the applicable CMS staffing requirement calls for an RN to be on duty at least 8 hours per day. CMS does not flag instances between zero hours and 8 hours.

During our review period, CMS flagged approximately 7 percent of nursing homes for having at least 4 days in one quarter with zero RN hours. If CMS instead focused on all nursing homes with fewer than 8 RN hours on at least 4 days per quarter, almost

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[j] Staffing turnover measures are three of the nine components that can impact the staffing star rating.

twice as many nursing homes per quarter (i.e., 12 percent to 14 percent)—would have been flagged (see Exhibit 5).

Exhibit 5: Percentage of nursing homes flagged by CMS based on reporting zero RN hours compared to the percentage of nursing homes that would be flagged based on reporting fewer than 8 RN hours.
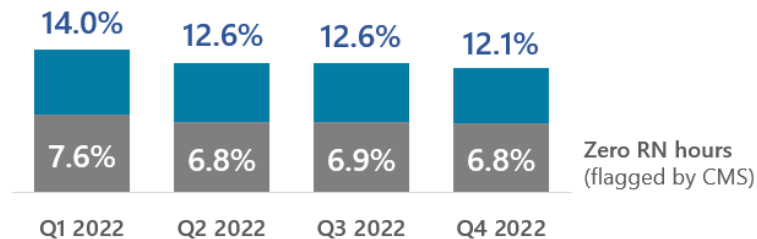
	Q1 2022	Q2 2022	Q3 2022	Q4 2022
Total	14.0%	12.6%	12.6%	12.1%
Zero RN hours (flagged by CMS)	7.6%	6.8%	6.9%	6.8%

Source: OIG analysis using PBJ data and the provider information file for 2022, available at https://data.cms.gov.

CMS explained why it focuses on RN absences that last an entire day (i.e., zero RN hours) and said that this poses a greater risk to nursing home residents than those that reported some RN hours.[k] CMS provided a similar explanation for why Care Compare automatically issues a one-star staffing rating to nursing homes that repeatedly report days with zero RN hours.[34]

CMS did not flag hundreds of nursing homes that reported fewer than 8 RN hours. During the last 3 months of 2022, 801 nursing homes (5.3 percent) providing care to about 49,000 residents reported fewer than 8 RN hours on at least 4 separate days. As a result, States did not have important information relevant for nursing home oversight to ensure that residents receive high-quality care.

The majority of these nursing homes posed a substantial risk for violating the requirement to have 8 RN hours every day because they had at least 4 days each with fewer than 6 RN hours. In the fourth quarter 2022, 456 nursing homes with fewer than 6 RN hours were at substantial risk for noncompliance and provided care to about 28,000 residents. (For more details about how many nursing homes reported fewer than 8 RN hours, see Appendix D.)

If CMS required States to perform targeted investigations of nursing homes that report fewer than 8 RN hours, it could increase oversight of this staffing requirement. This would have targeted an additional 801 (5.3 percent) of nursing homes.

The one-star staffing rating flag lacked actionable information for surveyors

CMS flags nursing homes with a one-star staffing rating (the lowest rating on Care Compare, the website for consumers) to inform State surveyors that the nursing home

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[k] OIG interview with the CMS Director of the Division of Nursing Homes, September 2023.

has potential staffing issues. Eight of the 20 States in our review characterized the one-star staffing rating flag as less useful than other flags. The remaining 12 States found it useful for the PBJ Staffing Data Report to include a flag for a one-star staffing rating.

Interpreting the one-star staffing rating flag appears to be especially challenging for some States. The one-star staffing rating reflects any of nine different components.[I] States receive no additional information to explain which aspect(s) of staffing led to a one-star staffing rating.

Some components of the one-star staffing rating are not directly related to staffing requirements. For example, the rating incorporates three separate turnover rates (nursing staff, RNs, and administrators), but a high turnover rate does not in itself violate nurse staffing requirements. Other components of the one-star staffing rating duplicate flags in a PBJ Staffing Data Report. Specifically, nursing homes receive a one-star staffing rating for not submitting PBJ data and for reporting 4 or more days with zero RN hours—issues flagged separately in a PBJ Staffing Data Report.

CMS intends for the one-star staffing rating flag to inform surveyors about potential noncompliance with the requirement to provide sufficient nurse staffing. CMS assessed the impact of this flag by monitoring the rate of State deficiency citations for insufficient nurse staffing for these one-star facilities. They found that only 3 percent of these nursing homes received a citation for insufficient staffing from the State.

States offered suggestions for information about staffing levels that would be beneficial

States expressed a desire for additional information about staffing levels to better target potentially insufficient staffing. States noted they could benefit from additional information about staffing levels relative to the number of residents in a nursing home and the residents' level of care needs. States also wanted additional information about the level of nurse aide staffing—staff who provide residents with essential assistance for the activities of daily living.

Currently, CMS does not include information about nurse aide staffing patterns in a PBJ Staffing Data Report. Instead, CMS calculates staffing levels for all nurse staff and for RNs as part of the calculation for the staffing rating on Care Compare. Information about low staffing among specific types of staff is not included in a PBJ Staffing Data Report when a nursing home is flagged for having a one-star staffing rating.

[I] The rating is based on nursing homes relative performance for six different measures, three of which relate to staffing levels (total nursing hours per resident day (HPRDs), RN HPRDs, and weekend nursing HPRDs) and three that measure turnover rates (nurse staff turnover, RN turnover, and administrator turnover). In addition, nursing homes receive an automatic one-star staffing rating for three reasons (failing to submit staffing data, reporting 4 or more days in a quarter with no RNs, or having a CMS audit of its staffing data that finds substantial inaccuracies).

Through the PBJ Staffing Data Reports and related guidance, CMS has taken important steps to provide States with targeted nursing home staffing information to improve State oversight. However, CMS has additional opportunities to help State surveyors better use PBJ data and more efficiently target nursing homes at risk of violating staffing requirements. Continued improvement will also benefit State oversight, by enabling State Survey Agencies to better leverage PBJ data and help target potential violations of State-specific staffing requirements.

We recommend that CMS:

Inform States of nursing homes that appear from PBJ data to violate the required number of daily RN staffing hours

CMS should use the PBJ Staffing Data Reports to assist States in ensuring that nursing homes provide residents with at least 8 hours of RN services every day, as currently required. Hundreds of nursing homes that care for tens of thousands of residents appear to provide fewer than 8 hours of RN services at least 1 day a month. However, CMS does not use the PBJ Staffing Data Reports to flag all these nursing homes for State survey consideration. Instead, CMS flags only those that reported zero RN hours at least 4 days a quarter. Flagging all nursing homes that provide fewer than 8 hours a day of RN services would flag an additional 5 percent of nursing homes for targeted investigation by State surveyors and help ensure better care for patients.

To help States prioritize their investigations, the PBJ Staffing Data Reports could differentiate between nursing homes that were flagged for zero RN hours versus those between zero and 8 RN hours.

Provide States additional nursing home staffing analysis and guidance to identify potential insufficient staffing

CMS should consider using PBJ Staffing Data Report to inform States about potentially insufficient staffing in relation to the number of residents in the nursing home and their care needs. States we reviewed reported wanting more information about staffing. For example, they indicated a desire to know whether nurse aide staffing appeared to be an issue. States in our review also wanted information about staffing levels relative to residents' care needs and the level of nurse aide staffing to provide assistance with activities of daily living. CMS collects this information and should provide it to States.

CMS has taken many steps to continually improve how it uses the PBJ data to inform State surveys, including revising guidance for the State survey process.[35] However,

there are additional ways the data can be used to identify potential insufficient staffing. This includes shorter-term options using current data, as well as longer-term options to create new metrics.

In the short-term, CMS could provide State surveyors with greater detail about staffing levels in each nursing home to compare to the facilitywide assessment. This information about staffing levels per resident per day is already provided within the Care Compare website. However, the Care Compare website does not indicate which quarter of PBJ data was used in analysis, and the historical files for earlier time periods also lack information describing what quarter of PBJ data was used in analysis. Providing information about staffing levels to surveyors as part of the PBJ Staffing Data Report along with appropriate guidance could reinforce CMS's ongoing efforts to leverage the PBJ data and improve the efficiency of the survey process.

Over the longer term, CMS could consider implementing larger revisions to how it flags nursing homes with potential insufficient staffing. Some ideas include:

1. CMS could break out the level of RN staffing and nurse staffing that it uses as components of the star rating. Currently, the staffing star rating is calculated by using multiple staffing types. But, State surveyors can benefit from knowing which specific staff types appear insufficient.

2. CMS could calculate other metrics not based on the one-star staffing rating. For example, CMS could consider using specific staffing levels (in terms of hours per resident day) that appear insufficient and may wish to consider the results from its Nursing Home Staffing Study published in 2023.[36]

AGENCY COMMENTS AND OIG RESPONSE

CMS nonconcurred with the first recommendation and neither concurred nor nonconcurred with the second recommendation. CMS conveyed that the actions described in the first recommendation would be overly burdensome on surveyors and, in turn, make it more difficult to provide oversight of all facilities. CMS stated that it currently flags the most at-risk nursing homes for States, and implementing this recommendation would increase the number of nursing homes flagged for inspection while the resources to conduct additional surveys have not increased. With respect to the second recommendation, CMS stated that it has already implemented it because the data it provides to States are risk-adjusted based on residents' care needs. CMS stated that it has also provided additional guidance to States, such as on how to use PBJ reports to improve surveyors' ability to identify noncompliance related to nurse staffing and any risks to residents' health and safety.

OIG has considered the actions that CMS reported taking and the resource limitations described by CMS in its response. We believe that the recommendations made in this report are reasonable steps that CMS should take to oversee nursing homes most at risk of noncompliance with staffing requirements and of providing substandard quality of care due to insufficient staffing. We recognize the concerns CMS raised about resource limitations and have previously highlighted these challenges to policy makers.[37] We also acknowledge CMS's ongoing efforts to improve the use of PBJ data. As such, we have altered the second recommendation to clarify how our recommendation goes beyond the activities that CMS has already taken.

OIG is committed to improving oversight of and, in turn, ensuring the safe care for residents in nursing homes, and we will continue to work with CMS on these issues. We look forward to CMS's response to the adjusted recommendation in its Final Management Decision.

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

DETAILED METHODOLOGY

Data Sources

Survey of State Survey Agencies and Interviews

We surveyed 20 States purposively selected according to geographic distribution and State characteristics (i.e., according to the number of nursing homes and staffing levels flagged by PBJ Staffing Data Reports). To ensure that selected States had experience using PBJ Staffing Data Reports, we selected States that conducted a reasonable number of nursing home surveys after October 2022 (i.e., each conducted at least 20 standard surveys or at least 10 standard surveys while also surveying at least 30 percent of the State's nursing homes.) Finally, while selecting States we coordinated with other OIGs and did not select States already undergoing separate OIG reviews, thus reducing States' burdens. Additionally, we received feedback from CMS on the survey instrument and pretested the survey with one State. We conducted surveys in Alabama, Arizona, California, Colorado, Indiana, Iowa, Kansas, Massachusetts, Michigan, Minnesota, Missouri, Montana, Nevada, New Jersey, New York, Oklahoma, South Carolina, Texas, Washington, and West Virginia.

CMS Interviews and Documentation Request

We conducted structured interviews with CMS staff from the Center for Clinical Standards and Quality, including the Division of Nursing Homes. We obtained context for how CMS shares staffing data and CMS's expectations for States to use the data. We also collected CMS program monitoring information and feedback it provided States.

CMS Public Data on Citations

We used CMS's publicly available files for nursing home surveys and health citations from November 2021 through April 2023. We also used quarterly PBJ data files from January through December 2022.

We identified which nursing homes were flagged by PBJ Staffing Data Reports. We identified these nursing homes by using PBJ data and the public data available on Care Compare and at https://data.cms.gov.

Data Analysis

State Survey Agencies Experiences and Feedback

We performed a qualitative analysis of the survey data to describe the experiences of State surveyors using PBJ data to improve oversight. For example, we asked States to identify promising practices, opportunities, and challenges for using PBJ data to improve nursing home staffing enforcement. At least two team members analyzed all open-ended responses to assure consistency in how the team identified common themes and responses from the surveys.

After we analyzed State survey responses, we asked State surveyors followup questions to verify and deepen our understanding. Additionally, we supplemented this information with quantitative analysis of the staffing data and deficiency citations to identify patterns, thus providing context to the State surveyors' experiences. For example, we used quantitative analysis to help describe different ways that CMS could identify nursing homes that reported fewer than 8 hours of RN services each day.[m] We interviewed CMS staff for contextual information to help us better understand the State responses and our quantitative analysis.

Staffing Patterns and Deficiency Citations

We reviewed the rates and types of staffing citations issued and assessed the number of facilities flagged by CMS in PBJ Staffing Data Reports to gain further insights. This analysis used public information from the PBJ Public Use File and the Care Compare provider information file.[n]

We took steps to avoid describing patterns that might have been due to unrelated changes across time periods (e.g., an increase in the number of standard inspections). For example, we used a rate of citations per 100 nursing home inspections to help account for potential changes in the number of standard inspections across time periods.

We also recognize that there might have been confounding variables that we could not fully control in our analysis. For example, changes in workforce availability during the COVID-19 pandemic that may have affected whether a nursing home had deficient staffing levels.

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[m] We defined RN hours and licensed nursing hours consistent with CMS's methods. For RN hours, we included RN directors of nursing, RNs with administrative duties, and RNs. For licensed nursing, we included licensed practical nurses (LPNs), licensed vocational nurses, and LPNs with administrative duties together with all RN hours.

[n] CMS guidance says an 8-hour shift should include a half-hour meal break and that meal breaks must not be counted in a PBJ report. Therefore, we categorized days when nursing homes reported at least 22.5 licensed-nurse hours as having at least 24 hours. We also categorized days when nursing homes reported at least 7.5 RN hours as having at least 8 RN hours.

We also analyzed the extent to which citations varied by State. Our analysis determined the rates of staffing deficiency citations and compared the rates from before and after States were required to use PBJ Staffing Data Reports in standard inspections. We compared the 12 months before (i.e., from November 2021 through October 2022) to the 6 months after (i.e., from November 2022 through April 2023) that States began to use PBJ Staffing Data Reports. The 12-month pre-implementation-period was divided into two 6-month periods to improve data comparability with the 6-month post-period.

Finally, we considered the recency of the CMS requirement to start using PBJ Staffing Data Reports by including data analysis and recent policy changes after our period of review. For example, we requested updated data from CMS and performed supplemental analysis of citation trends, including information through calendar year 2023. We also considered recent CMS actions related to oversight through October 2023.

Limitations

Part of this evaluation used CMS staffing data that nursing homes reported in the PBJ. This evaluation did not verify the accuracy of self-reported PBJ information, nor did it assess how CMS audits for accuracy PBJ data reported by nursing homes. In addition, we cannot account for all factors that may have affected staffing deficiency citation rates to isolate the effects of using PBJ Staffing Data Reports during inspections. Other factors could have impacted the rate of staffing deficiency citations, such as changes in the abilities of nursing homes to hire and retain staff.

Appendix A: Nursing Homes Identified by Each Staffing Deficiency Flag

Exhibit A-1: Most nursing homes flagged using PBJ data from Q4 2022 were also flagged using PBJ data from the previous two quarters.

Comparison quarter	Percentage and Number of Nursing Homes Flagged in PBJ Staffing Data Reports					
	No PBJ data (Q4=268)	4+ days with zero RNs (Q4=1,020)	<24-hour nursing (Q4=661)	Weekend staffing (Q4=2,976)	One-star staffing rating (Q4=4,376)	Any flag (Q4=5,915)
Q3 2022	49% (131)	50% (529)	48% (318)	64% (1,909)	76% (3,320)	77% (4,538)
Q2 2022	40% (107)	40% (411)	42% (277)	55% (1,633)	71% (3,093)	72% (4,245)

Source: OIG analysis of Payroll Based Journal data from CMS and the provider information files available at https://data.cms.gov.

Exhibit A-2: Nationwide Summary of the Number of Nursing Homes Identified by Each Flag per Quarter in 2022

Quarter	Percentage and Number of Nursing Homes Flagged in PBJ Staffing Data Reports					
	No PBJ data	4+ days with zero RNs	<24-hour nursing	Weekend staffing	One-star staffing rating	Any flag
Q1 2022 (N=15,178)	2.2% (341)	7.6% (1,161)	5.4% (823)	19.8% (3,012)	30.2% (4,591)	40.1% (6,092)
Q2 2022 (N=15,147)	2.5% (375)	6.8% (1,034)	4.9% (735)	19.4% (2,945)	29.6% (4,478)	39.5% (5,978)
Q3 2022 (N=15,107)	2.1% (310)	6.9% (1,047)	4.9% (745)	19.7% (2,979)	28.6% (4,328)	38.7% (5,852)
Q4 2022 (N=15,076)	1.8% (269)	6.8% (1,020)	4.4% (661)	19.7% (2,976)	29.0% (4,376)	39.2% (5,916)
Average in 2022 (N=15,127)	2.1% (324)	7.0% (1,066)	4.9% (741)	19.7% (2,978)	29.4% (4,444)	39.4% (5,960)

Source: OIG analysis of Payroll Based Journal data from CMS and the provider information files available at https://data.cms.gov.

Exhibit A-3: State-by-State Summary of the Number of Nursing Homes Identified by Each Flag on Average per Quarter in 2022

State	Percentage and Number of Nursing Homes Flagged in PBJ Staffing Data Reports											
	No PBJ data		4+ days with zero RNs		<24-hour nursing		Weekend staffing		One-star staffing rating		Any flag	
AK (n=20)	0%	(0)	4%	(1)	10%	(2)	20%	(4)	4%	(1)	28%	(6)
AL (n=225)	6%	(14)	4%	(9)	2%	(5)	19%	(43)	18%	(40)	28%	(64)
AR (n=219)	2%	(5)	3%	(6)	1%	(3)	20%	(44)	12%	(27)	26%	(57)
AZ (n=143)	2%	(3)	4%	(6)	2%	(2)	20%	(28)	17%	(25)	30%	(43)
CA (n=1,175)	3%	(34)	8%	(90)	2%	(28)	19%	(229)	16%	(184)	28%	(329)
CO (n=219)	2%	(4)	5%	(12)	5%	(11)	19%	(43)	15%	(32)	28%	(61)
CT (n=207)	2%	(5)	1%	(2)	2%	(5)	20%	(41)	14%	(30)	26%	(53)
DC (n=17)	3%	(1)	3%	(1)	3%	(1)	24%	(4)	18%	(3)	31%	(5)
DE (n=44)	1%	(0)	1%	(1)	3%	(2)	20%	(9)	2%	(1)	24%	(11)
FL (n=698)	2%	(17)	3%	(23)	2%	(14)	20%	(137)	11%	(77)	25%	(177)
GA (n=359)	3%	(12)	10%	(36)	3%	(11)	19%	(70)	45%	(162)	49%	(177)
HI (n=43)	0%	(0)	1%	(1)	2%	(1)	22%	(10)	2%	(1)	23%	(10)
IA (n=429)	2%	(9)	8%	(34)	14%	(61)	20%	(84)	17%	(74)	34%	(148)
ID (n=80)	1%	(1)	6%	(5)	5%	(4)	19%	(16)	11%	(9)	28%	(22)
IL (n=700)	2%	(11)	8%	(53)	5%	(32)	20%	(137)	45%	(317)	51%	(358)
IN (n=523)	2%	(8)	9%	(48)	6%	(33)	20%	(103)	44%	(232)	50%	(263)
KS (n=319)	4%	(14)	8%	(26)	15%	(47)	19%	(62)	22%	(69)	39%	(125)
KY (n=279)	2%	(6)	3%	(9)	3%	(8)	20%	(55)	28%	(79)	36%	(102)
LA (n=268)	2%	(7)	6%	(17)	2%	(7)	19%	(51)	49%	(132)	51%	(137)
MA (n=358)	1%	(3)	5%	(19)	2%	(9)	20%	(73)	12%	(44)	26%	(93)
MD (n=225)	1%	(3)	3%	(6)	3%	(6)	20%	(44)	24%	(53)	34%	(76)
ME (n=89)	4%	(4)	4%	(3)	7%	(7)	22%	(19)	8%	(7)	31%	(27)
MI (n=432)	1%	(4)	5%	(20)	4%	(16)	20%	(85)	13%	(57)	26%	(114)
MN (n=355)	2%	(7)	5%	(18)	8%	(29)	20%	(70)	8%	(29)	28%	(99)
MO (n=514)	4%	(23)	14%	(70)	13%	(65)	19%	(99)	43%	(221)	50%	(259)
MS (n=204)	1%	(3)	2%	(4)	2%	(4)	20%	(41)	14%	(30)	26%	(53)
MT (n=70)	7%	(5)	11%	(8)	14%	(10)	19%	(14)	30%	(21)	41%	(29)
NC (n=424)	1%	(6)	10%	(43)	4%	(18)	20%	(84)	38%	(159)	45%	(190)
ND (n=78)	1%	(1)	1%	(1)	13%	(10)	20%	(16)	3%	(2)	29%	(23)

Exhibit A-3 (continued)

State	Percentage and Number of Nursing Homes Flagged in PBJ Staffing Data Reports					
	No PBJ data	4+ days with zero RNs	<24-hour nursing	Weekend staffing	One-star staffing rating	Any flag
NE (n=187)	2% (4)	5% (10)	13% (24)	20% (37)	15% (28)	35% (66)
NH (n=73)	2% (1)	7% (5)	2% (2)	21% (15)	13% (10)	30% (22)
NJ (n=351)	1% (4)	2% (7)	1% (5)	20% (70)	13% (47)	26% (92)
NM (n=68)	0% (0)	6% (4)	4% (3)	21% (14)	18% (12)	31% (21)
NV (n=66)	4% (3)	7% (5)	5% (4)	19% (13)	21% (14)	32% (21)
NY (n=610)	1% (7)	2% (10)	1% (5)	20% (120)	36% (220)	41% (249)
OH (n=949)	1% (11)	11% (103)	5% (44)	20% (188)	48% (459)	53% (505)
OK (n=295)	6% (18)	17% (49)	8% (24)	19% (55)	31% (93)	43% (127)
OR (n=130)	2% (3)	17% (22)	12% (15)	19% (25)	20% (26)	40% (52)
PA (n=680)	2% (11)	1% (9)	1% (9)	20% (136)	25% (171)	34% (231)
RI (n=76)	2% (2)	1% (1)	4% (3)	20% (15)	8% (6)	26% (20)
SC (n=188)	1% (1)	6% (11)	5% (9)	20% (38)	17% (32)	30% (57)
SD (n=100)	3% (3)	8% (9)	17% (17)	20% (21)	15% (16)	36% (36)
TN (n=312)	1% (4)	9% (27)	6% (18)	20% (63)	35% (110)	40% (125)
TX (n=1,204)	3% (32)	14% (171)	5% (58)	20% (235)	66% (798)	68% (822)
UT (n=98)	1% (1)	3% (3)	5% (5)	21% (21)	16% (16)	27% (26)
VA (n=288)	0% (1)	8% (23)	3% (8)	20% (57)	48% (138)	51% (148)
VT (n=35)	1% (1)	2% (1)	1% (0)	20% (7)	19% (7)	31% (11)
WA (n=199)	2% (3)	3% (7)	4% (7)	19% (38)	12% (24)	28% (56)
WI (n=340)	2% (8)	4% (15)	9% (30)	20% (66)	19% (65)	32% (107)
WV (n=123)	2% (2)	3% (4)	1% (1)	21% (26)	25% (31)	37% (45)
WY (n=36)	3% (1)	8% (3)	12% (4)	20% (7)	22% (8)	38% (14)

Source: OIG analysis of Payroll Based Journal data from CMS and the provider information files available at https://data.cms.gov.

Appendix B: Scope and Severity of Deficiency Citations

Each deficiency citation receives a scope level and a severity level that characterize the seriousness of the deficiency and that inform which corrective actions, if any, must be taken.[38] The *State Operations Manual* provides further guidance and examples for assigning these scope and severity levels. CMS defines the three scope levels as: (1) **Isolated** (when one or a very limited number of residents or employees are affected and/or a very limited area or number of locations within the facility are affected); (2) **Pattern** (when more than a very limited number of residents or employees are affected, and/or the situation has occurred in more than a limited number of locations but the locations are not dispersed throughout the facility); and (3) **Widespread** (when the problems causing the deficiency are pervasive (affect many locations) throughout the facility and/or represent a systemic failure that affected, or has the potential to affect, a large portion or all of the residents or employees).

Exhibit B-1: Scope and Severity of Deficiencies for Insufficient Nurse Staffing (F-725), November 2021 to April 2023

	Pre-implementation Period						Early Post-implementation Period		
	Nov. 2021 to Apr. 2022 (n=178)			May 2022 to Oct. 2022 (n=239)			Nov. 2022 to Apr. 2023 (n=256)		
Severity	**Scope**			**Scope**			**Scope**		
	Isolated	Pattern	Widespread	Isolated	Pattern	Widespread	Isolated	Pattern	Widespread
Immediate jeopardy to resident health or safety	0.6% (1)	1.1% (2)	1.1% (2)	0	0.4% (1)	0.8% (2)	0.4% (1)	0.4% (1)	0.8% (2)
Actual harm that is not immediate jeopardy	2.8% (5)	2.2% (4)	0.6% (1)	2.9% (7)	1.7% (4)	0	0.8% (2)	0.8% (2)	0
No actual harm with **potential for more than minimal harm**	12.9% (23)	57.9% (103)	20.8% (37)	14.6% (35)	54.8% (131)	23.8% (57)	19.9% (51)	55.1% (141)	21.9% (56)
No actual harm with **potential for minimal harm**	N/A	0	0	N/A	0.4% (1)	0.4% (1)	N/A	0	0

Source: OIG analysis of CMS data available at https://data.cms.gov.

Exhibit B-2: Scope and Severity of Deficiencies for Not Having 8 RN Hours Every Day or a Director of Nursing (F-727), November 2021 to April 2023

	Pre-implementation Period						Early Post-implementation Period		
	Nov. 2021 to Apr. 2022 (n=146)			May 2022 to Oct. 2022 (n=198)			Nov. 2022 to Apr. 2023 (n=221)		
Severity	**Scope**			**Scope**			**Scope**		
	Isolated	Pattern	Widespread	Isolated	Pattern	Widespread	Isolated	Pattern	Widespread
Immediate jeopardy to resident health or safety	0.7% (1)	0	0	0	0	0.5% (1)	0	0	0
Actual harm that is not immediate jeopardy	0	0	0	0	0	0	0	0	0
No actual harm with **potential for more than minimal harm**	**21.2%** (31)	**29.5%** (43)	**43.8%** (64)	**13.1%** (26)	**32.3%** (64)	**49.5%** (98)	**20.4%** (45)	**31.7%** (70)	**46.2%** (102)
No actual harm with **potential for minimal harm**	N/A	0	4.8% (7)	N/A	1.0% (2)	3.5% (7)	N/A	0.5% (1)	1.4% (3)

Source: OIG analysis of CMS data available at https://data.cms.gov.

Exhibit B-3: Scope and Severity of Deficiencies for Nonsubmission of Payroll Based Journal Data (F-851), November 2022 to April 2023

	Early Post-implementation Period		
	Nov. 2022 to Apr. 2023 (n=44)		
Severity	**Scope**		
	Isolated	Pattern	Widespread
Immediate jeopardy to resident health or safety	0	0	0
Actual harm that is not immediate jeopardy	0	0	0
No actual harm with **potential for more than minimal harm**	25.0% (11)	25.0% (11)	4.5% (2)
No actual harm with **potential for minimal harm**	N/A	4.5% (2)	**40.9%** (18)

Note: CMS did not instruct States to issue deficiency citations for nonsubmission of PBJ data until Oct. 24, 2022.

Source: OIG analysis of CMS data available at https://data.cms.gov.

Appendix C: CMS Monitoring Data Provided to States in April 2023 and Updated Deficiency Citation Rates

The citation rates presented in the monitoring data describe the number of deficiency citations among nursing homes flagged by a PBJ Staffing Data Report. CMS calculated a comparison citation rate for a pre-implementation period immediately before the COVID-19 pandemic began.

Exhibit C-1: Trends in Citation Rates as Identified by CMS in Monitoring Data Provided to States in April 2023

Flags Included in a PBJ Staffing Data Report	Citation Rates During Respective Periods of Time		Difference in Citation Rates
	Pre-implementation (Oct. 2019 to Dec. 2019)	*Early Post-implementation* (Nov. 2022 to Apr. 2023)	
Zero RN hours	15%	25%	**10-percentage point increase**
Fewer than 24 hours of nursing	5%	5%	**No change**
Low weekend staffing	5%	12%	**7-percentage point increase**
One-star staffing rating	5%	3%	**2-percentage point decrease**
Nonsubmission of PBJ data*	--	31%	--

* CMS did not instruct States to issue deficiency citations for nonsubmission of PBJ data until Oct. 24, 2022.

Note: CMS did not actually provide State surveyors with a PBJ Staffing Data Report in 2019. CMS uses this period immediately before the COVID-19 pandemic because CMS considers it a useful point of reference.

Source: OIG analysis of CMS documentation.

Exhibit C-2: CMS's 2023 monitoring data shows citation rates continued increasing for the flags on zero RN hours and failing to submit PBJ data.

Flags Included in a PBJ Staffing Data Report	Citation Rates During Respective Periods of Time		
	Pre-implementation (Oct. 2019 to Dec. 2019)	*Early Implementation* (Nov. 2022 to Apr. 2023)	*All 2023* (Jan. 2023 to Dec. 2023)
Zero RN hours	15%	**25%**	**39%**
Fewer than 24 hours of licensed nursing	5%	5%	**3%**
Low weekend staffing	5%	12%	**10%**
One-star staffing rating	5%	3%	**4%**
Nonsubmission of PBJ data*	--	**31%**	**51%**

* CMS did not instruct States to issue deficiency citations for nonsubmission of PBJ data until Oct. 24, 2022.

Note: CMS did not provide State surveyors with a PBJ Staffing Data Report in 2019. CMS uses this period immediately before the COVID-19 pandemic because CMS considers it a useful point of reference.

Source: OIG analysis of CMS documentation.

Exhibit C-3: Supplemental analysis shows citations for staffing deficiencies continued increasing from May to October 2023.

	Percent of standard inspections with a staffing deficiency			
	Pre-implementation Periods		Post-implementation Periods	
Deficiency Type	Nov. 2021 to Apr. 2022 (n=4,455)	May 2022 to Oct. 2022 (n=5,050)	Nov. 2022 to Apr. 2023 (n=4,932)	May 2023 to Oct. 2023 (n=5,125)
Insufficient staffing or fewer than 8 RN hours	**6.6%** (293)	**8.2%** (412)	**9.1%** (451)	**9.7%** (497)
Insufficient staffing	4.0% (178)	4.7% (239)	5.2% (256)	5.1% (262)
Fewer than 8 RN hours	3.3% (146)	3.9% (198)	4.5% (221)	5.1% (261)

Source: OIG analysis of CMS data available at https://data.cms.gov.

Note: Some nursing homes received multiple deficiencies during surveys (thus values of the first row is not a sum of the values in second and third rows. Prior to November 2022, CMS did not expect States to issue deficiencies for failing to submit PBJ data. Therefore, we excluded the deficiency (F851) when comparing the pre- and post-implementation periods.

Appendix D: Nursing Homes Not Flagged by CMS for Reporting Fewer Than 8 RN Hours

Exhibit D-1: Among nursing homes reporting fewer than 8 RN hours that were not flagged by CMS, most reported fewer than 6 RN hours on at least 4 days.
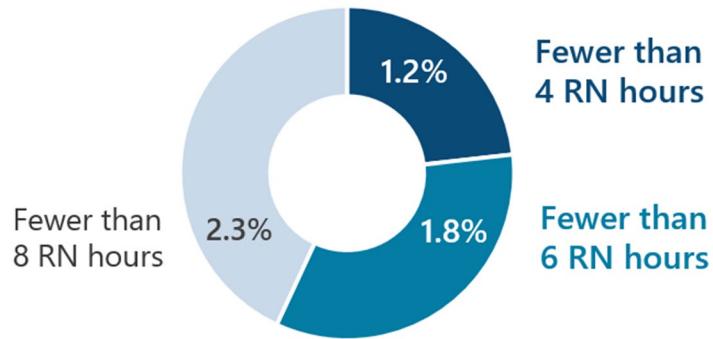
Note: In Q4 2022, 5.3 percent of nursing homes reported fewer than 8 RN hours on at least 4 days but were not flagged by CMS.

Source: OIG analysis of Q4 2022 data from the PBJ and provider information at https://data.cms.gov.

Appendix E: Agency Comments

Following this page are the official comments from CMS.

DATE:　　　April 14, 2025

TO:　　　　Megan Tinker
　　　　　　　Chief of Staff

FROM:　　　Stephanie Carlton
　　　　　　　Acting Administrator

SUBJECT:　Office of Inspector General Draft Report: Nursing Home Staffing: CMS Should
　　　　　　　Continue the Use of Staffing Data to Inform State Oversight (OEI-04-22-00550)

The Centers for Medicare & Medicaid Services (CMS) appreciates the opportunity to review and comment on the Office of Inspector General's (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's approach to the oversight of nursing homes, including their staffing levels, is constantly evolving and CMS is continuously looking for ways to improve the oversight approach to nursing home safety and quality.

CMS has long identified staffing as a vital component of a nursing home's ability to provide quality care, and CMS has used staffing data to more accurately and effectively gauge its impact on quality of care in nursing homes. In 2015, CMS announced it had developed a system for facilities to submit staffing and census information, known as the Payroll-Based Journal (PBJ). Through the PBJ program, CMS began holding nursing homes accountable for their staffing levels through more precise staffing reporting. This system allows CMS to track nursing home staffing through auditable data, which nursing homes must submit on a quarterly basis.

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. Since November 2018, CMS has shared staffing data with SAs so they know which nursing homes may have potential staffing problems in order to target their surveys appropriately. SAs conduct a portion of their unannounced surveys after-hours and on weekends to focus on potential staffing problems during those times. In addition, when conducting standard or complaint surveys, the SAs also investigate compliance with nursing staff requirements for those identified to have reported no registered nurse onsite. SAs then make recommendations to CMS for taking appropriate actions against those facilities that

failed to provide the required nurse staffing. By targeting these surveys, CMS has been able to engage in better, stronger enforcement of staffing rules.

To assist surveyors in determining whether the facility has sufficient nursing staff available to meet the residents' needs and has licensed registered nurses and licensed nursing staff available to provide and monitor the delivery of resident care, CMS created the Sufficient Nursing Staff Review[1] survey tool which guides surveyors through specific questions to ask. Surveyors evaluate if the facility has sufficient and competent nursing staff to provide requisite nursing and related services to assure resident safety and attain or maintain the highest practicable physical, mental, and psychosocial well-being of each resident.

Further, in June 2024, CMS released the "Revised Guidance for LTC Facility Assessment Requirements," which provided additional information to surveyors on identifying insufficient staffing.[2] In November 2024, CMS released the "Revised: LTC Surveyor Guidance: Significant revisions to enhance quality and oversight of the LTC survey process."[3] Most recently, in January 2025, CMS released new guidance and training for Nursing Services requirements and PBJ, which are effective April 28, 2025.[4] [5] Specifically, this memorandum includes instructions specific to using the PBJ staffing data to conduct staff interviews, observations, identify key elements of noncompliance, and deficiency categorization. CMS also included investigative probes for the Director of Nursing requirements and deficiency categorization examples, as well as investigative procedures for evaluating compliance with the submission of direct care staffing information. CMS also included a new Sufficient and Competent Nurse Staffing Review Critical Element Pathway, which guides the surveyors through detailed observations and interviews if surveyors suspect insufficient staffing.

CMS thanks OIG for their efforts on this issue and looks forward to working with OIG on this and other issues in the future.

OIG's recommendations and CMS' responses are below.

OIG Recommendation
Inform States of nursing homes that appear from PBJ data to violate the required number of daily RN staffing hours

CMS Response
CMS non-concurs with this recommendation. CMS took this request into consideration and concluded it would be overly burdensome on surveyors and in turn make it more difficult to provide oversight on all facilities. For example, while this recommendation would increase the number of

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[1] CMS Sufficient Nursing Staff Review (2013)
[2] CMS Memorandum QSO-24-13-NH, "Revised Guidance for LTC Facility Assessment Requirements" (June 18, 2024)
[3] CMS Memorandum QSO-25-07-NH, "Revised LTC Surveyor Guidance: Significant revisions to enhance quality and oversight of the LTC survey process" (November 18, 2024)
[4] CMS Memorandum QSO-25-12-NH, "REVISED: Revised LTC Surveyor Guidance: Significant revisions to enhance quality and oversight of the LTC survey process" (January 15, 2025)
[5] CMS Memorandum QSO-25-14-NH, "REVISED: Revised LTC Surveyor Guidance: Significant revisions to enhance quality and oversight of the LTC survey process" (March 10, 2025)

nursing homes flagged for investigation by SAs, the resources to conduct additional surveys have not increased. Meanwhile, residents living in nursing homes without an RN onsite for four days per quarter are at a greater risk for harm than residents living in nursing homes without an RN onsite for one day per quarter, for example. Due to limited resources, CMS currently flags the most at-risk nursing homes for SAs, which include nursing homes that report zero hours of RN staffing for four or more days in a quarter.

OIG Recommendation
Provide States additional nursing home staffing analysis to identify potential insufficient staffing

CMS Response
CMS believes we have already implemented this recommendation. CMS notes that the data shared with surveyors is risk-adjusted based on the residents' care needs, which is in line with OIG's recommendation. Further, in January 2024, CMS released the "Revised Guidance for LTC Facility Assessment Requirements," in which CMS provided additional information to surveyors on identifying insufficient staffing.[6] Then in November 2024, CMS released the "Revised LTC Surveyor Guidance: Significant revisions to enhance quality and oversight of the LTC survey procedure."[7] And in January 2025, CMS released a revised version of the LTC surveyor guidance,[8] revising training for Nursing Services and PBJ. Specifically, CMS provided additional guidance to surveyors for using the PBJ reports to improve their ability to identify noncompliance related to nurse staffing and any risks to residents' health and safety.[9]

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[6] CMS Memorandum QSO-24-13-NH, "Revised Guidance for LTC Facility Assessment Requirements" (June 18, 2024)
[7] CMS Memorandum QSO-25-07-NH, "Revised LTC Surveyor Guidance: Significant revisions to enhance quality and oversight of the LTC survey process" (November 18, 2024)
[8] CMS Memorandum QSO-25-12-NH, "REVISED Revised LTC Surveyor Guidance: Significant revisions to enhance quality and oversight of the LTC survey process" (January 15, 2025)
[9] Id.

ENDNOTES

[1] CMS, QSO-22-19-NH Memorandum. Accessed at https://www.cms.gov/files/document/qso-22-19-nh-revised-long-term-care-surveyor-guidance.pdf on Nov. 30, 2022.

[2] This figure includes only nursing homes that receive Medicaid or Medicare funding. It does not include privately funded nursing homes.

[3] Sections 1819(f)(1) and 1919(f)(1) of the Social Security Act.

[4] These agreements are known as 1864 Agreements under the Social Security Act. Sections 1864(a), 1819(g), and 1919(g).

[5] Annual Federal appropriations for State oversight of nursing home compliance have remained fairly flat for nearly a decade. For FY 2024, Federal appropriations provided $397.3 million to CMS's survey and certification program, matching the annual appropriated amounts from FY 2015 through FY 2019. When adjusting for inflation, the FY 2024 appropriated amount is about 25 percent less than in FY 2015. Note that in response to COVID-19, the Coronavirus Aid, Relief, and Economic Security Act (CARES Act) of 2020 appropriated an additional $100 million for survey and enforcement activities, which ended in FY 2023. The FY 2024 appropriation was P.L. No. 118-147, the Further Consolidated Appropriations Act (Mar. 23, 2024). For details about Federal appropriations and HHS budget requests, see Table 3 on page 59 of a report by the Majority Staff of the U.S. Senate Special Committee on Aging, *Uninspected and Neglected: Nursing Home Inspection Agencies are Severely Understaffed, Putting Residents at Risk, Putting Residents at Risk*, May 23, 2023. Accessed on Feb. 9, 2024. For the inflation adjustment, $397.33 million in March 2015 had the same buying power as $525.58 million in March 2024; alternatively, $397.33 million in March 2024 had the same buying power as $300.38 million in March 2015. Source: Bureau of Labor Statistics, *CPI Inflation Calculator*. For details about the CARES Act, see CMS, *CARES Act Financial Guidance to State Survey Agencies* and P.L. No. 116-136, the Coronavirus Aid, Relief, and Economic Security Act, Mar. 27, 2020.

[6] A standard survey is a periodic, resident-centered inspection that gathers information about the quality of services in a facility to determine compliance with CMS requirements of participation. Complaint surveys may be conducted when a complaint is made, or there is reason to question compliance. Additionally, a complaint survey is required when there is evidence of immediate jeopardy or a higher level of actual harm for residents.

[7] 42 CFR 488.308(b); State Survey Agencies conduct standard recertification surveys annually on a 9- to 15-month cycle, with a statewide average of 12 months. CMS, *Nursing Home Enforcement*. Accessed at https://www.cms.gov/medicare/health-safety-standards/enforcement/nursing-home-enforcement on Mar. 1, 2024.

[8] In July 2024, CMS revised how staffing star ratings on Care Compare are risk-adjusted based on residents' care needs. See: CMS, QSO-23-21-NH Memorandum. Accessed at https://www.cms.gov/files/document/qso-23-21-nh.pdf on Apr. 24, 2025.

[9] OIG, *CMS Should Take Further Action To Address States With Poor Performance in Conducting Nursing Home Surveys* (OEI-06-19-00460), Jan. 14, 2022. OIG, *A Few States Fell Short in Timely Investigation of the Most Serious Nursing Home Complaints: 2011–2015* (OEI-01-16-00330), Sept. 28, 2017.

[10] The staffing F-tags are F-725 (insufficient nurse staffing, including lack of 24-hour licensed nursing services); F-726 (failure to ensure that nurses have required knowledge, competencies, and skill sets); F-727 (fewer than 8 RN hours a day) and F-728–732 (deficiencies for various other requirements under 42 CFR 483.35). If surveyors identify violations of State-specific staffing requirements, the violation is considered an Administration deficiency and cited under F-836, due to noncompliance with State and local laws, regulations, and codes.

[11] Medicaid and CHIP Payment and Access Commission. *Compendium: State Policies Related to Nursing Facility Staffing*, March 2022. Accessed on Oct. 29, 2024.

[12] Nursing homes must report hours for 32 different staff types and can choose to report hours for an additional 8 staff types. CMS, *Electronic Staffing Data Submission Payroll-Based Journal, Long-Term Care Facility Policy Manual*, Version 2.6, June 2022.

Accessed at https://www.cms.gov/Medicare/Quality-Initiatives-Patient-Assessment-Instruments/NursingHomeQualityInits/Downloads/PBJ-Policy-Manual-Final-V25-11-19-2018.pdf.

[13] Section 6106 of the Affordable Care Act requires facilities to submit this data electronically. CMS then uses the data to populate its Care Compare website. Nursing Home Compare has a quality rating system that ranks each nursing home with between one and five stars, with five stars considered highest quality. Each nursing home's overall quality rating is based on a combined rating based in three areas: (1) health inspection measures based on outcomes from State health inspections, (2) staffing based on nursing home staffing levels and staff turnover, and (3) quality measures: based on Minimum Data Set and claims-based quality measures. The staffing star rating was revised in July 2022 to be based on six measures—three for nurse staffing level (hours per resident day) and three for turnover. CMS, *Design for Care Compare Nursing Home Five-Star Quality Rating System: Technical Users' Guide*, July 2024. Accessed at https://www.cms.gov/Medicare/Provider-Enrollment-and-Certification/CertificationandComplianc/downloads/usersguide.pdf.

[14] CMS requires 10 percent of standard surveys to be off-hour surveys (starting in the evening, early morning, or on the weekend), and in 2019 CMS began requiring States to conduct half of off-hour standard surveys on weekends. CMS notified States of this new requirement in QSO 19-02-NH. CMS monitors State performance on meeting this requirement for weekend surveys within the State Performance Standards System. CMS, Admin Info: 20-02-ALL and CMS, Admin Info: 24-02-ALL, accessed on Apr. 23, 2024.

[15] CMS has provided the CASPER Report 1705D since at least June 2021. CMS, *CASPER Reporting MDS Provider User's Guide—Section 12 Payroll Based Journal Reports*, Version 1.12, June 2021. Accessed at https://qtso.cms.gov/system/files/qtso/cspr_sec12_mds_prvdr_7.pdf.

[16] CMS instructs surveyors to issue a deficiency citation under F-tag F851 for nonsubmission of PBJ data.

[17] Guidance from CMS to States includes material in the *State Operations Manual*, survey checklists (i.e., "Critical Element Pathways"), and the *Long-Term Care Survey Process Procedure Guide* and its related software applications.

[18] CMS, Quality, Safety & Education Portal training, "Staffing, Nursing Services 483.35," accessed at https://qsep.cms.gov/data/352/NurseStaffing.pdf and CMS, QSO-22-19-NH Memorandum, https://www.cms.gov/files/document/qso-22-19-nh-revised-long-term-care-surveyor-guidance.pdf, June 2022.

[19] CMS, "Frequently Asked Questions for State Survey Agency and Accrediting Organization Coronavirus Disease 2019 (COVID-19) Survey Suspension." Accessed at https://www.cms.gov/files/document/covid19survey-activity-suspension-faqs.pdf on May 28, 2024.

[20] CMS, QSO-20-35-ALL Memorandum. Accessed at https://www.cms.gov/files/document/qso-20-35-all.pdf on Apr. 16, 2024.

[21] For example, nationally 71 percent of nursing homes did not receive a standard inspection between February 2020 and May 2021. The percentage varied across States, with four States not performing a standard inspection for more than 90 percent of their nursing homes during this time. OIG, *States' Backlogs of Standard Surveys of Nursing Homes Grew Substantially During the COVID-19 Pandemic* (OEI-01-20-00431), July 27, 2022.

[22] Anna Wilde Mathews and Jon Kamp, "Coronavirus Hits Nursing Homes Hard, as Staff Combat Infections, Shortages," *Wall Street Journal*, https://www.wsj.com/articles/coronavirus-hits-nursing-homes-hard-as-staff-combat-infections-shortages-11585250841. Accessed on Nov. 29, 2023.

[23] Joanne Kenan, Rachel Roubein, and Susannah Luthi, "How Public Health Failed Nursing Homes," *Politico*, https://www.politico.com/news/2020/04/06/public-health-failed-nursing-homes-167372. Accessed on Nov. 29, 2023.

[24] OIG, *Some Nursing Homes' Reported Staffing Levels in 2018 Raise Concerns; Consumer Transparency Could Be Increased* (OEI-04-18-00450), Aug. 3, 2020, and OIG, *CMS Use of Data on Nursing Home Staffing: Progress and Opportunities To Do More* (OEI 04-18-00451), Mar. 9, 2021.

[25] OIG, *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), Jan. 19, 2023.

[26] OIG, *Lessons Learned During the Pandemic Can Help Improve Care in Nursing Homes* (OEI-02-20-00492), Feb. 26, 2024.

[27] One respondent skipped questions about the helpfulness of: (1) the flag for zero RN hours and (2) the flag for 24 hours of licensed nursing.

[28] CMS provided these instructions in person during the Survey Executives Training Institute conference. This feedback mirrored formal guidance that CMS had previously provided through training slides.

[29] More in-depth survey actions described in *Critical Element Pathway for Sufficient and Competent Nurse Staffing* instruct a surveyor to review whether staffing requirements were violated on specific dates listed in a PBJ report and whether violations continued at the time of a survey.

[30] CMS, *Staffing Data Submission Payroll Based Journal (PBJ)*, https://www.cms.gov/medicare/quality/nursing-home-improvement/staffing-data-submission. Accessed on Mar. 25, 2024.

[31] CMS implemented the statute which requires nursing homes to electronically submit staffing data "per day" as codified in 42 U.S.C. 1320a-7j(g) and implemented in 42 CFR 483.70(p). CMS, *Staffing Data Submission Payroll Based Journal (PBJ)*, https://www.cms.gov/medicare/quality/nursing-home-improvement/staffing-data-submission. Accessed on Mar. 25, 2024.

[32] In previous OIG work, State Survey Agencies reported that overseeing the requirement to have sufficient staffing is more difficult than overseeing other requirements for nurse staffing levels. Six of 10 States reported difficulty in determining when nursing homes violate the requirement for sufficient staffing. In contrast, 8 of the 10 States reported finding it straightforward to determine when to cite nursing homes for not providing 8 RN hours and 24-hour nursing services every day. OIG, *CMS Use of Data on Nursing Home Staffing: Progress and Opportunities To Do More* (OEI-04-18-00451), Mar. 9, 2021.

[33] Nursing homes must develop a plan of correction for noncompliance within 10 calendar days of receiving notification of a deficiency. States and CMS Locations verify whether nursing homes become compliant (e.g., within 3 months from the last date of the inspection to receive payments for new admissions and within 6 months to continue receiving any Federal payments). Sections 1819(h)(2)(C) and 1919(h)(2)(C) of the Social Security Act as implemented in 42 CFR 488.400 and in CMS guidance. CMS, *State Operations Manual*, Pub. No. 100-07, Chapter 7—Survey and Enforcement Process for Skilled Nursing Facilities and Nursing Facilities, Sections 7301, 7316, and 7317 (Rev. 213, 02-10-23).

[34] CMS said "the presence of an RN onsite every day is extremely important to improving the health and safety of nursing home residents. We are also concerned about the risks that the absence of an RN introduces." CMS, QSO-18-17-NH Memorandum. Accessed at https://www.cms.gov/Medicare/Provider-Enrollment-and-Certification/SurveyCertificationGenInfo/downloads/QSO18-17-NH.pdf on Nov. 30, 2022.

[35] CMS, QSO-25-14-NH REVISED Memorandum. Accessed at https://www.cms.gov/files/document/qso-25-14-nh.pdf on Apr. 21, 2025.

[36] Abt Associates (CMS contractor), *Nursing Home Staffing Study: Comprehensive Report*, June 2023. Accessed at https://www.cms.gov/files/document/nursing-home-staffing-study-final-report-appendix-june-2023.pdf.

[37] OIG, *Assistant IG for Evaluation and Inspections Erin Bliss Testifies Before the Committee on Aging*, May 18, 2023. Accessed on Apr. 24, 2025.

[38] CMS, *Nursing Home Enforcement—Frequently Asked Questions*. Accessed at https://www.cms.gov/Medicare/Provider-Enrollment-and-Certification/SurveyCertificationEnforcement/Downloads/NH-Enforcement-FAQ.pdf.

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