



August 2019

ELDER ABUSE

Federal Requirements for Oversight in Nursing Homes and Assisted Living Facilities Differ

Accessible Version

GAO Highlights

Highlights of [GAO-19-599](#), a report to congressional requesters

Why GAO Did This Study

The federal government and states share responsibility for the health and welfare of about 1.5 million individuals—most of them vulnerable older adults—receiving long-term care in nursing homes and assisted living facilities covered by Medicare and Medicaid. For nursing homes, which provide skilled nursing care, federal law defines applicable quality standards and CMS provides guidance for nursing homes and the state survey agencies to help protect residents from elder abuse. For assisted living facilities, which provide assistance with activities of daily living in a residential setting, CMS defines the framework states must establish to oversee these facilities if covered under Medicaid. This includes requiring states to demonstrate to CMS that they are assuring quality including the obligation to protect against elder abuse.

GAO was asked to review federal oversight of elder abuse reporting, investigation, and law enforcement notification in both nursing homes and assisted living facilities. In this report, GAO describes federal requirements for reporting, investigating, and notifying law enforcement about elder abuse in both types of facilities. GAO reviewed relevant laws and regulations and agency guidance, and interviewed CMS and state officials from three states selected for variation in HCBS waiver program size and geography. GAO also interviewed representatives from national stakeholder groups representing consumers, facilities, Medicaid directors, and abuse investigators. In comments on this report, HHS highlighted the distinct oversight frameworks for the two settings and noted that CMS is undertaking efforts to strengthen oversight.

View [GAO-19-599](#). For more information, contact John Dicken at (202) 512-7114 or dickenj@gao.gov.

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What GAO Found

The Centers for Medicare & Medicaid Services (CMS) oversees the Medicare and Medicaid programs and is responsible for safeguarding the health and welfare of beneficiaries living in nursing homes and assisted living facilities. This includes safeguarding older residents from abuse—referred to as elder abuse. CMS delegates responsibility for overseeing this issue to state survey agencies, which are responsible for overseeing nursing homes. When assisted living facilities provide services to Medicaid beneficiaries, they are indirectly subject to CMS oversight through the agency’s oversight of state Medicaid agencies.

GAO found that there are specific federal requirements for nursing homes and state survey agencies for reporting, investigating, and notifying law enforcement about elder abuse in nursing homes. (See table below). For example, state survey agencies must prioritize reports of elder abuse in nursing homes based on CMS’s specified criteria and investigate within specific time frames. In contrast, there are no similar federal requirements for assisted living facilities—which are licensed and regulated by states. Instead, CMS requires state Medicaid agencies to develop policies to ensure the reporting and investigation of elder abuse in assisted living facilities. For example, CMS requires that state Medicaid agencies establish their own policies and standards for prioritizing reports when investigating incidents in assisted living facilities. Officials from the three selected states in GAO’s review said they apply certain federal nursing home requirements and investigation time frames for assisted living facilities when overseeing elder abuse.

Federal Requirements for Facilities and State Agencies to Conduct Elder Abuse Incident Reporting, Investigation, and Law Enforcement Notification

Federal requirement	Nursing homes		Assisted living facilities	
	Homes	State survey agencies	Facilities	State Medicaid agencies
Report incident to oversight agency ^a	●	●	○	⊗
Investigate incidents	●	●	○	⊗
Notify law enforcement of incidents	● ^b	●	○	○

- Required to take specified actions
- ⊗ Required to establish state- or facility-level policy
- Not required to take specific action or establish policy

Source: GAO analysis of federal regulations and guidance. | GAO-19-599

Note: This table reflects federal requirements applicable to services provided in assisted living facilities under section 1915(c) of the Social Security Act.

^aNursing homes are required to ensure that incidents are reported to state survey agencies. State survey agencies are required to report certain incidents to CMS and state Medicaid agencies are required to report incidents to CMS according to the state’s individual 1915(c) waiver agreement.

^bFederal law requires certain covered individuals at the nursing homes to immediately report to law enforcement in addition to the state survey agency if there is a reasonable suspicion that a crime has occurred. See 42 U.S.C. § 1320b-25(b).

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Abbreviations

APS	Adult Protective Services
CMS	Centers for Medicare & Medicaid Services
HCBS	home and community-based services
HHS	Department of Health and Human Services
HHS-OIG	Department of Health and Human Services' Office of Inspector General
SSA	Social Security Act

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August 19, 2019

The Honorable Susan M. Collins
Chairman
Special Committee on Aging
United States Senate

The Honorable Amy Klobuchar
Ranking Member
Committee on Rules and Administration
United States Senate

The federal government and states share responsibility for the health and welfare of approximately 1.5 million individuals—most of them older adults—receiving care in long-term care facilities financed by Medicare and Medicaid, the federal health care programs for the elderly and low-income and medically needy individuals, respectively.¹ These facilities include nursing homes, which provide skilled nursing and rehabilitative care to elderly and disabled individuals, and assisted living facilities, which provide a residential alternative to nursing home care for individuals who may prefer to live independently but need assistance with daily activities.² Residents of both types of facilities often have physical and cognitive limitations that can make them particularly vulnerable to abuse. Abuse, which can be committed by facility staff, residents, or others, is a serious occurrence and could result in potentially devastating consequences for the victim, including lasting mental anguish, serious injury, or death. While abuse is a concern for both elderly and nonelderly individuals in long-term care facilities, this report focuses on federal

¹Medicare, the federal health insurance program for people age 65 and older, individuals under age 65 with certain disabilities, and individuals diagnosed with end-stage renal disease, covers some short-term skilled nursing and rehabilitative care for beneficiaries following an acute care hospital stay. Medicaid, a joint federal-state health program for low-income and medically needy individuals, is the nation's primary payer of long-term services and supports for children and adults with disabilities and aged individuals.

²Depending on the state, assisted living services—including services such as bathing, dressing, and toileting—can be regulated separately from the facility that provides residential services. However, for the purposes of this report we refer to the assisted living services as those provided in assisted living facilities and do not include services provided in an individual's home or family member's home.

oversight to protect elderly residents of these facilities from abuse, more specifically known as elder abuse.³

Federal law mandates that nursing homes receiving Medicare and Medicaid payment must ensure that residents are free from abuse, neglect, and exploitation.⁴ Nursing homes must meet a comprehensive set of federal statutory and regulatory requirements in order to receive such payments. The Centers for Medicare & Medicaid Services (CMS)—the agency within the Department of Health and Human Services (HHS) that oversees the Medicare and Medicaid programs—is responsible for implementing these requirements. In 2016, nursing homes provided care to approximately 1.4 million individuals.⁵

In contrast to nursing homes, assisted living facilities are primarily overseen at the state level through state licensing and regulatory requirements. States that provide Medicaid coverage of assisted living facility services for older adults typically do so through a home and community-based service (HCBS) waiver under section 1915(c) of the

³We have issued several reports on different types of elder abuse and across different settings. For example, in a June 2019 report, we examined the Department of Justice's efforts to address crimes against older adults. See GAO, *Elder Justice: Goals and Outcome Measures Would Provide DOJ with Clear Direction and a Means to Assess Its Efforts*, GAO-19-365 (Washington, DC: June 7, 2019). We have also issued reports focused on the financial exploitation of elders, a topic not addressed in this report. Information on these reports is available on our Key Issues page, https://www.gao.gov/key_issues/elder_abuse/issue_summary?from=topics#t=1

⁴This report addresses these rights as they pertain to individuals age 65 or older and refers to the violation of these rights as "elder abuse."

⁵Of the 1.4 million nursing home residents, 83.5 percent—or 1.1 million—are over the age of 65.

Social Security Act (SSA).⁶ Under these waivers, states are responsible for developing adequate standards to protect the health and safety of beneficiaries receiving services under the waiver and must demonstrate to CMS that these standards are met. In 2016, Medicaid covered assisted living facility services for an estimated 125,000 elderly beneficiaries.⁷

In recent reports, we have found that improved federal oversight of the health and welfare of residents is needed in both nursing homes and assisted living facilities.⁸ For example, as we reported in our June 2019 report, we found that the incidence of abuse in nursing homes as identified by state survey agencies increased between 2013 and 2017, and in January 2018, we found that little is known about the incidence of abuse in assisted living facilities.⁹ In CMS's oversight of both settings, we

⁶Section 1915(c) of the Social Security Act (SSA), authorizes the Secretary of Health and Human Services (HHS) to waive otherwise applicable requirements that states offering HCBS offer comparable benefits statewide, offer comparable program benefits to all eligible beneficiaries, and use a single standard to determine income and resources for purposes of eligibility. For purposes of this report, references to "HCBS waiver" programs refer to HCBS offered under section 1915(c). States most commonly use section 1915(c) waivers to cover assisted living services under their Medicaid programs, but Medicaid coverage may also be provided under the state's Medicaid plan or through Medicaid demonstrations authorized under section 1115 of the SSA, which allows the Secretary of HHS to waive certain federal Medicaid requirements and allow costs that would not otherwise be eligible for federal matching funds for experimental, pilot, or demonstration projects that, in the Secretary's judgment, are likely to assist in promoting Medicaid objectives. Among these different Medicaid authorities, as we previously reported, section 1915(c) waivers have the most federal health and safety requirements. See GAO, *Medicaid Personal Care Services: CMS Could Do More to Harmonize Requirements across Programs*, [GAO-17-28](#), (Washington D.C.: Nov. 23, 2016).

⁷In 2016, approximately 757,941 elderly individuals received services in residential care communities specializing in services for the elderly, such as assisted living facilities. Of those, 16.5 percent—approximately 125,000 individuals—reported using Medicaid as a payer source. Harris-Kojetin L, Sengupta M, Lendon JP, Rome V, Valverde R, Caffrey C. Long-term care providers and services users in the United States, 2015–2016. National Center for Health Statistics. *Vital Health Stat* 3(43). 2019.

⁸See GAO, *Nursing Homes: Improved Oversight Needed to Protect Residents from Abuse*, [GAO-19-433](#) (Washington, D.C.: June 13, 2019); *Nursing Home Quality: CMS Should Continue to Improve Data and Oversight*, [GAO-16-33](#) (Washington, D.C.: Oct. 30, 2015); *Medicaid Personal Care Services: CMS Could Do More to Harmonize Requirements across Programs*, [GAO-17-28](#) (Washington, D.C.: Nov. 23, 2016); *Medicaid Managed Care: CMS Should Improve Oversight of Access and Quality in States' Long-Term Services and Supports Programs*, [GAO-17-632](#) (Washington, D.C.: Aug. 14, 2017); and *Medicaid Assisted Living Services: Improved Federal Oversight of Beneficiary Health and Welfare Is Needed*, [GAO-18-179](#) (Washington, D.C.: Jan. 5, 2018).

⁹[GAO-19-433](#); [GAO-18-179](#).

found a lack of clear federal guidance on reporting and consequently, a lack of key information necessary for monitoring incidents that may cause harm to a beneficiary's health or welfare, such as abuse. Additionally, the HHS Office of Inspector General (HHS-OIG) and state auditors have also examined how elder abuse is reported and investigated and recommended improvements at both the federal and state level.

You asked us to review federal oversight of the reporting, investigation, and notification of law enforcement about elder abuse in nursing homes and assisted living facilities. In this report, we describe federal requirements for reporting, investigating, and notifying law enforcement about elder abuse in both types of facilities. In appendix I, we provide information on efforts by three selected states to meet federal requirements for reporting, investigating, and notifying law enforcement about elder abuse in assisted living facilities. In appendix II, we provide summary information from other federal and state audits of elder abuse reporting and investigation. Further, throughout this report we note our past work on this topic.

To describe federal requirements for reporting, investigating, and notifying law enforcement about elder abuse in nursing homes and assisted living facilities, we reviewed relevant statutes and regulations and CMS guidance, including the State Operations Manual and HCBS waiver guidance and interviewed CMS officials regarding the agency's oversight of the requirements. We selected a non-generalizable sample of three states—Connecticut, Oklahoma, and South Dakota—that have implemented HCBS waivers and vary in HCBS waiver program size and geography.¹⁰ In each state, we reviewed their waiver agreements and spoke with officials from the state survey agency, state Medicaid agency, and the state agency responsible for licensing assisted living facilities and investigating complaints.¹¹ We also interviewed CMS officials, including regional office officials, about their oversight of state survey agencies and

¹⁰ For each of our selected states, we reviewed publicly available Centers for Disease Control & Prevention data on long-term care providers and services users to obtain state-level data on the number of assisted living facilities, beds, and residents receiving care financed by Medicaid.

¹¹ To oversee nursing homes, CMS enters into agreements with agencies in each state government—known as state survey agencies—and CMS regional offices oversee the work done by the state survey agencies. Survey agencies are frequently housed in the health services department of state governments and may have different names in different states.

HCBS waivers in our selected states. We interviewed representatives from national stakeholder groups representing consumers, facilities, Medicaid directors, and investigators to obtain their perspectives on elder abuse in nursing homes and assisted living facilities. We also reviewed related audits issued by the HHS-OIG and state auditors between 2014 and 2018 related to reporting and investigating elder abuse in nursing homes and assisted living facilities and included them with a discussion of related GAO reports.

We conducted this performance audit from August 2018 to August 2019 in accordance with generally accepted government auditing standards. Those standards require that we plan and perform the audit to obtain sufficient, appropriate evidence to provide a reasonable basis for our findings and conclusions based on our audit objectives. We believe that the evidence obtained provides a reasonable basis for our findings and conclusions based on our audit objectives.

Background

Care Provided in Nursing Homes and Assisted Living Facilities

Nursing homes and assisted living facilities provide important long-term care to vulnerable individuals in institutional or residential settings. Specifically, nursing homes provide care to elderly and disabled individuals, many of whom have physical and cognitive limitations requiring skilled nursing care. Assisted living facilities provide a residential alternative to nursing home care for individuals who prefer to live independently but need assistance to maintain their independence. Like nursing homes, they may provide residents with a variety of services to assist with activities of daily living, such as bathing and dressing, but the facilities are generally not licensed to provide 24-hour skilled nursing care and typically offer a more limited range of medical care. As we reported in our January 2018 report on CMS's oversight of assisted living facilities under the Medicaid program, the demand for assisted living services, which offer the benefit of community living, is expected to increase as a result of the aging of the nation's population, increased life expectancy, and older adults' desire to remain in the community.¹² Additionally, the

¹²See GAO, *Medicaid Assisted Living Services: Improved Federal Oversight of Beneficiary Health and Welfare Is Needed*, [GAO-18-179](#) (Washington, D.C.: Jan. 5, 2018).

cost of nursing home care for an individual generally exceeds the cost of assisted living facility services, further incentivizing a shift among consumers and payers to assisted living for elderly individuals, including those with increasingly complex health needs who would otherwise need nursing home care.¹³

Long-Term Care Facility Oversight

Oversight of nursing homes is a shared federal-state responsibility. Federal law imposes both a comprehensive set of quality standards that nursing homes must meet to participate in the Medicare and Medicaid programs, and federal and state oversight responsibilities to enforce these standards. CMS, which is charged with implementing these standards and conducting federal oversight, contracts with state survey agencies to perform both routine inspections—known as standard surveys—and conduct investigations of elder abuse incidents, including complaints and facility-reported incidents.¹⁴ CMS provides guidance implementing statutory and regulatory requirements to protect residents from elder abuse in its State Operations Manual, which specifies requirements for reporting, investigating, and notifying law enforcement about elder abuse in nursing homes. CMS regional offices monitor state compliance with federal requirements for nursing home oversight.

Generally, states establish their own oversight requirements for assisted living facilities. These facilities are largely overseen by state agencies within, for example, the state health or aging departments; however, when assisted living facilities provide services to Medicaid beneficiaries, they are also indirectly subject to CMS oversight through the agency's oversight of state Medicaid agencies. As we have previously reported, states can provide Medicaid coverage for assisted living services under

¹³Genworth Financial, Inc. *Cost of Care Survey* (Richmond, VA. October 2018). This industry study found that the median national cost for a year of nursing home care in a semi-private room was \$89,297 per year, compared to a national median cost of \$48,000 a year for care in an assisted living facility.

¹⁴Standard surveys are a comprehensive on-site evaluation of compliance with federal quality standards, during which surveyors must identify and report any deficiencies, which are classified by the potential for or occurrence of harm to residents. In addition, state survey agencies can receive information about elder abuse incidents through complaints and facility reported incidents. Complaints can be submitted verbally or in writing from residents, their family members, health care providers, state agencies, and anonymous sources. Facilities also report incidents to the state survey agency to be assessed for investigation.

multiple authorities, but most commonly states use an HCBS waiver under section 1915(c) of the SSA.¹⁵ Under these waivers, CMS requires states to develop a quality assurance system that monitors beneficiary health and welfare—including tracking and responding to incidents that may cause harm to a beneficiary’s health and welfare, such as elder abuse.¹⁶ States must demonstrate to CMS that they are meeting these quality assurance obligations in their waiver renewal reports, typically submitted about 2 years before an HCBS waiver is scheduled to end.¹⁷ States must also report summary information annually to CMS on any health and welfare deficiencies occurring under their HCBS waivers. CMS regional offices oversee state compliance with waiver requirements.

In addition to state survey agencies, state Medicaid agencies, and the agencies that license and regulate assisted living facilities, there are other entities charged with protecting nursing home and assisted living facility residents from elder abuse. These agencies’ roles and missions can vary by state. For example, Adult Protective Services (APS) programs in each state are generally responsible for identifying, investigating, resolving, and preventing abuse of older adults, and such programs may investigate complaints of elder abuse in nursing homes and assisted living facilities.¹⁸ Additionally, Medicaid Fraud Control Units and local law enforcement can

¹⁵HCBS waivers serve beneficiaries who are eligible for an institutional level of care; that is, beneficiaries must have needs that rise to the level of care usually provided in a nursing home. HCBS waivers are generally approved for an initial 3-year period and can be renewed, subject to HHS approval, for subsequent 5-year waiver periods.

¹⁶These incidents are commonly referred to as critical incidents. As we previously reported, although states vary in how they define critical incidents, the 48 states that covered assisted living through their HCBS waivers in 2014 all cited physical, emotional, and sexual abuse as a critical incident. See [GAO-18-179](#). Among other things, we recommended that CMS establish standard reporting requirements for states to report key information on critical incidents. CMS neither agreed nor disagreed with our recommendation and as of June 2019, has yet to take action.

¹⁷In renewal reports, states are required to report to CMS on performance indicators, selected at the state’s discretion, that demonstrate compliance with more specific assurances. Specifically, states must identify measures they will use to monitor the specified assurances for beneficiary health and welfare and submit evidentiary reports to CMS demonstrating that the state has met these assurances before a waiver can be renewed.

¹⁸In some states, APS is not responsible for investigating elder abuse in nursing homes.

also play a role in investigating elder abuse. Consequently, incident management may be coordinated among multiple separate agencies.¹⁹

Federal Requirements Specify Elder Abuse Reporting, Investigation, and Notification in Nursing Homes and Direct States to Establish Assisted Living Facility Requirements

Federal requirements include those for nursing homes and state survey agencies specific to reporting, investigating, and notifying law enforcement of elder abuse in nursing homes. For example, federal requirements specify the time frames within which nursing homes must report alleged elder abuse to state survey agencies and, similarly, specify time frames for state survey agencies to report elder abuse to CMS. In contrast, there are no similar requirements for assisted living facilities and, instead, states must establish their own policies to ensure the reporting and investigation of elder abuse in assisted living facilities covered by Medicaid. (See fig. 1 for federal requirements for reporting, investigating, and notifying law enforcement about elder abuse in nursing homes and assisted living facilities.)

¹⁹As we reported in [GAO-19-433](#), having multiple agencies—such as the state survey agency, adult protective services, local law enforcement—involved in investigations, can create challenges for coordinating investigations.

Figure 1: Federal Requirements for Elder Abuse Incident Reporting, Investigation, and Law Enforcement Notification

Federal requirement	Nursing homes		Assisted living facilities	
	Homes	State survey agencies	Facilities	State Medicaid agencies
Reporting				
Report incidents to oversight agency according to specified time frames ^a	●	●	○	○
Establish a policy for reporting incidents to oversight agency	●	○ ^b	○	●
Investigation				
Investigate incidents according to specified time frames	●	●	○	○
Establish a policy for investigating incidents	●	●	○	●
Law Enforcement Notification				
Notify law enforcement according to specified time frames or circumstances	● ^c	● ^d	○	○
Establish a policy for notifying law enforcement	●	○ ^b	○	○

● Required
○ Not required

Source: GAO analysis of federal regulations and guidance. | GAO-19-599

Note: This figure reflects federal requirements applicable to services provided in assisted living facilities to participants in a home and community-based waiver authorized under section 1915(c) of the Social Security Act. Elder abuse incidents include incidents reported by nursing homes or assisted living facilities and complaints reported by the alleged victim or other concerned individual. Certain requirements only apply to facility reported incidents, or apply to these incidents differently than complaints, as noted in the figure. States may choose to impose similar or additional requirements on assisted living facilities providing services under section 1915(c) waivers. See app. I for a summary of selected states' requirements for reporting, investigating, and notifying law enforcement about elder abuse in assisted living facilities.

^aNursing homes are required to ensure that incidents are reported to state survey agencies. State survey agencies must report to CMS all complaints gathered as part of the agency's federal survey and certification responsibilities but do not have to report facility-reported incidents that do not require an on-site investigation. State Medicaid agencies are not required to report individual incidents of elder abuse that occur under the HCBS waiver until they have been substantiated. State Medicaid agencies may also share summary data about elder abuse with CMS through required annual reports or as part of the state's waiver renewal process.

^bCMS defines policies for the state survey agencies in these areas.

^cFederal law requires certain covered individuals at the nursing homes to immediately report to law enforcement in addition to the state survey agency if there is a reasonable suspicion that a crime has occurred. See 42 U.S.C. § 1320b-25(b). These covered individuals include nursing home owners, operators, and employees, among others. CMS requires nursing homes to ensure compliance with this provision.

^dCMS requires state survey agencies to notify law enforcement of substantiated findings of abuse; however, it does not specify time frames for notification. As GAO noted in GAO-19-433, this can

result in significant delay and we recommended that CMS require state survey agencies to immediately notify law enforcement if they have a reasonable suspicion that a crime against a resident has occurred.

As illustrated in figure 1, there are key differences between federal requirements for reporting, investigating, and notifying law enforcement about elder abuse occurring in nursing homes compared to assisted living facilities. CMS officials told us that the difference in requirements between nursing homes and assisted living facilities reflects the different regulatory relationship between the agency and the two facility types. According to CMS officials, CMS has direct regulatory authority over nursing homes, but does not have direct authority over assisted living facilities. As noted, states are largely responsible for establishing their own policies for overseeing the reporting and investigation of abuse in assisted living facilities. (See app. I for profiles of selected states with HCBS waivers regarding elder abuse reporting, investigating, and notification.) Differences in federal requirements include the following:

Reporting. Federal law and CMS policy define specific time frames for nursing home staff and state survey agencies to report incidents of abuse that occur in nursing homes, respectively, and CMS requires states to establish their own reporting time frames for assisted living facilities serving HCBS waiver participants.²⁰ Nursing homes must ensure that allegations of elder abuse are reported to the state survey agency immediately, but no later than 2 hours after the allegation is made if the incident involves serious bodily injuries and within 24 hours if it does not. In addition, state survey agencies must report to CMS all complaints and certain facility-reported incidents of abuse through a computer-based complaint and incident tracking system and immediately alert CMS regional offices when an especially significant or sensitive incident occurs that attracts public or broad media attention.²¹ In contrast, CMS requires state Medicaid agencies that pay for care in assisted living facilities through HCBS waivers to establish their

²⁰Federal law requires certain covered individuals at the nursing homes to immediately report to law enforcement in addition to the state survey agency if there is a reasonable suspicion that a crime has occurred. See 42 U.S.C. § 1320b-25(b). These covered individuals include nursing home owners, operators, and employees, among others.

²¹State survey agencies are required to enter into CMS's tracking system all complaint information gathered as part of the agency's federal survey and certification responsibilities, as well as all facility-reported incidents that require a federal onsite survey.

own required time frames for reporting incidents.²² Consequently, reporting time frames and processes for assisted living facilities can vary by state. For example, Connecticut requires incidents to be reported to the state Medicaid agency and Adult Protective Services within 2 business days, while Oklahoma requires that initial incident reports are submitted within 1 business day.

Investigation. CMS prescribes investigation time frames and priority categories for incidents occurring in nursing homes and requires states to establish their own time frames and priority categories for incidents in assisted living facilities. CMS requires state survey agencies to assess reports of elder abuse in nursing homes and assign a priority investigation status based on the seriousness of the allegations. The required investigation time frames are tied to the priority status. For example, if the allegation indicates that there continues to be an immediate risk of serious injury, harm, impairment, or death of a resident unless immediate corrective action is taken, the survey agency must initiate an onsite investigation within 2 business days of receiving the report.²³ CMS also requires nursing homes to have written policies and procedures for conducting internal investigations of suspected elder abuse and to submit findings from these investigations to the state survey agency within 5 business days of the incident. In contrast, CMS does not prescribe investigation time frames or define priorities for incidents occurring in assisted living facilities; instead, CMS requires that state Medicaid agencies with HCBS waivers establish their own policies for prioritizing reports of abuse

²²Federal law requires states to report annually to CMS summary information about health and welfare deficiencies—such as incidents of abuse—found through state monitoring of their HCBS program. However, as we previously reported, CMS gives states wide latitude for determining what to include in these reports and does not require states to regularly provide CMS information on critical incidents. See [GAO-18-179](#).

²³CMS requires survey agencies to assign incidents to one of four prioritization categories and adhere to the following associated processes for initiating investigations: Immediate Jeopardy requires the agency to start onsite investigation within 2 business days of receipt; Non-Immediate Jeopardy High Priority requires onsite investigation within 10 days of prioritization; Non-Immediate Jeopardy Medium requires onsite survey to be scheduled (no time frame specified); Non-Immediate Jeopardy Low requires investigation during the next survey.

and initiating investigations in assisted living facilities.²⁴

Consequently, investigation time frames and prioritization can vary by state. For example, Connecticut does not specify a process for prioritizing incident investigations in its HCBS waiver, but officials told us the state requires the Medicaid program to initiate an investigation immediately; whereas South Dakota requires face-to-face contact with a victim within 24 hours if the incident is life or health-threatening.

²⁴As we previously reported in January 2018, state Medicaid agencies' definitions of incidents that facilities must report to the state vary and therefore, some incidents that could be considered elder abuse, such as a resident's unauthorized seclusion or restraint by a provider, may not routinely be reported to the state Medicaid agency in some states. See GAO, *Medicaid Assisted Living Services: Improved Federal Oversight of Beneficiary Health and Welfare Is Needed*, [GAO-18-179](#) (Washington, D.C.: Jan. 5, 2018).

Family or Legal Guardian Notification

Although the Centers for Medicare & Medicaid Services (CMS) requires facilities to notify a resident's representative of a deterioration in the resident's condition, CMS does not require nursing homes, assisted living facilities, state survey agencies, or state Medicaid agencies to notify a victim's family or legal guardian of alleged elder abuse. However, CMS's guidance for nursing homes notes the importance of family or legal guardian notification. Specifically, CMS guidance requires facilities to take actions to prevent further harm from occurring to a victim of alleged elder abuse and cites law enforcement notification, as well as family or legal guardian notification as examples of protective measures facilities may take to comply with that requirement. In addition, CMS requires states to develop a policy for notifying participants, family, or legal guardians of the findings of any critical incident investigations under its home and community-based services waiver program. CMS officials told us family or legal guardian notification is generally a state responsibility, and state officials told us that it is largely a facility responsibility governed by the facility's policies. Some states include family or guardian notification requirements in state guidance on mandatory reporting of elder abuse. In interviews with stakeholders representing consumers and elder abuse investigators we learned that family notification can both help but also pose some privacy challenges.

Source: GAO analysis | GAO-19-599

Law enforcement notification. Although federal law requires nursing homes to establish policies for ensuring that law enforcement is notified of elder abuse that occurs in their facilities, and CMS policy requires state survey agencies to notify law enforcement of substantiated findings of elder abuse that occur in nursing homes, these actions are not required when a similar incident occurs in an assisted living facility. Furthermore, CMS also does not require state Medicaid agencies to establish their own law enforcement notification requirements for assisted living facilities as part of the state's HCBS waiver agreements. CMS and state officials told us that, generally, state agencies coordinate with law enforcement regardless of where the abuse occurs. Some states also require law enforcement notification as part of their state mandatory reporter laws.²⁵ (See app. I for descriptions of selected state mandatory reporter laws.) For example, Connecticut requires Medicaid waiver program staff members to inform law enforcement of all suspected crimes, including abuse. Both GAO and HHS-OIG have identified, among other things, gaps in notifying law enforcement about abuse in nursing homes and recommended that CMS make changes to help ensure that nursing homes and state survey agencies notify law enforcement.²⁶

In the course of our review, we found states may align certain requirements for investigating, reporting, and notifying law enforcement about elder abuse in assisted living facilities with federal requirements for nursing homes. Officials from all three selected states in our review told us they apply certain federal nursing home requirements and time frames to assisted living facilities when overseeing reports and investigations of alleged elder abuse. For example, officials from Oklahoma and South Dakota told us they align or are in the process of aligning time frames within which assisted living facilities are required to report incidents of

²⁵Almost all states have mandated reporter laws for elder abuse that require various identified health care providers and facility staff, among others, to report suspected elder abuse to state oversight agencies or law enforcement.

²⁶In June 2019 GAO reported that because there is no federal requirement for state survey agencies to notify law enforcement until the state survey agency has substantiated a suspected crime, there were delays in referring suspected crime to law enforcement, and recommended that CMS require state survey agencies to immediately refer suspected crime to law enforcement. See [GAO-19-433](#). See app. II for information on HHS-OIG and state auditor reports on the reporting and investigation of elder abuse.

elder abuse to state authorities with the time frames federally required for nursing homes, and said that alignment reduces confusion, especially among facilities that offer both types of residential care.

Given its attenuated role in overseeing the reporting, investigation, and law enforcement notification of elder abuse in assisted living facilities, CMS officials told us the agency is taking steps to gather and disseminate best practices to help states better manage their response to elder abuse incidents in assisted living facilities. Specifically, officials told us that CMS has initiated an effort to more closely examine how states operate their incident management systems, which are used to track reports and investigations of elder abuse in assisted living facilities covered by their HCBS waivers.²⁷ In May 2018, CMS surveyed states requesting information on how those states operate an incident management system for their HCBS waiver programs to track reports and investigations of elder abuse.²⁸ CMS officials said they will take information learned through the survey as well as through on-site reviews that the agency has been conducting in five states since June 2019, to develop best practices and technical guidance on collecting and reporting critical incidents.

Agency Comments

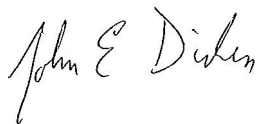
We provided a draft of this report to HHS for review and comment. HHS noted that federal oversight of nursing homes and assisted living facilities is not directly comparable given the differences between HHS's statutory authority to oversee both facility types. HHS noted that although CMS's oversight of assisted living facilities is more limited, CMS works in partnership with states—through providing guidance, technical support, training, and oversight of states' quality reporting—to ensure the safety of Medicaid beneficiaries in assisted living facilities. We recognize that CMS is operating in different statutory frameworks with respect to both nursing homes and assisted living facilities, and we have noted the distinction in our report. HHS further noted that CMS is undertaking efforts to

²⁷States use the information in these systems, in part, to provide their quality assurances to CMS as part of its HCBS waiver oversight.

²⁸CMS fielded a pilot survey of seven states in May 2018. Among other things, the pilot survey found variation among the states' required time frames for reporting incidents and that most waiver programs do not notify beneficiaries about a provider's involvement in prior incidents of elder abuse.

strengthen federal oversight of nursing homes and states with HCBS programs, including through addressing our past recommendations. HHS comments are reproduced in appendix III. HHS also provided technical comments, which were incorporated as appropriate. As agreed with your offices, unless you publicly announce the contents of this report earlier, we plan no further distribution until 30 days from the report date. At that time, we will send copies of this report to the Secretary of Health and Human Services, appropriate congressional committees, and other interested parties. The correspondence is also available at no charge on the GAO website at <http://www.gao.gov>.

If you or your staff have any questions about this report, please contact me at (202) 512-7114 or at dickenj@gao.gov. Contact points for our Offices of Congressional Relations and Public Affairs may be found on the last page of this report. GAO staff who made key contributions to this report are listed in appendix IV.



John E. Dicken
Director, Health Care

Appendix I: Summary of Selected States' Requirements for Reporting, Investigating, and Notifying Law Enforcement about Elder Abuse in Assisted Living Facilities

We reviewed state-level requirements for reporting, investigating, and notifying law enforcement about elder abuse in three selected states that cover services in assisted living facilities under their Home and Community-based Services (HCBS) waivers—Connecticut, Oklahoma, and South Dakota. These states are collectively responsible for safeguarding as many as 16,800 assisted living residents—2,751 of whom are covered by Medicaid—from elder abuse. All three states have mandatory reporting requirements that typically require various identified health care providers and facility staff to report suspected elder abuse to adult protective services or law enforcement, regardless of the setting in which the victim was abused or whether the victim is an HCBS waiver participant who would be protected under the Centers for Medicare & Medicaid Services (CMS) program requirements.¹ Further, the states developed guidance for their HCBS programs that establishes additional reporting, investigation, and notification requirements—beyond their mandatory reporting law requirements—that caregivers, facilities, program staff, and state agencies must follow in response to incidents that occur to residents receiving services under Medicaid waiver programs. Selected information about assisted living facilities and state-

¹We identified these states' mandatory reporting laws using resources available through the Department of Justice Elder Justice Initiative and confirmed this information with the states. The Elder Justice Initiative is the Department of Justice's program to support and coordinate enforcement and programmatic efforts to combat elder abuse, neglect, and financial fraud and scams that target seniors.

Appendix I: Summary of Selected States' Requirements for Reporting, Investigating, and Notifying Law Enforcement about Elder Abuse in Assisted Living Facilities

level requirements for each of the three states is summarized in figures 2 through 4.

Figure 2: Connecticut State Profile

Numbers of Assisted Living Facilities, Licensed Beds, and Residents Financed by Medicaid Dollars, 2014			
State	Number of facilities	Number of beds	Number of residents financed by Medicaid
Connecticut	60	1,700	1,261 ^a

Selected Mandatory Reporter Requirements	
Reporting	
Reporters, including nurse's aides or facility administrators, with reasonable cause to believe that a long-term care resident has been abused, must report the information to Connecticut's Department of Social Services' Adult Protective Services (APS) program within 72 hours. ⁹	
Investigating	
Upon receipt of a report, APS determines whether there are reasonable grounds for an investigation. If no grounds, then that determination must be made within 5 working days and reported to the complainant. If an investigation is warranted, it must begin within 10 working days and completed within 15 working days of receiving the report.	
Notifying	
Incidents meeting the state's legal standard of abuse must be reported to law enforcement. APS must notify a guardian within 24 hours unless the guardian is suspected of perpetrating the abuse.	

Home and Community-based Services (HCBS) Waiver Program Requirements	
CMS waiver requires states specify	Connecticut's HCBS program requirements
Reporting	
Which types of incidents must be reported	Allegations of abuse, neglect, or exploitation, along with other incidents such as untimely death or unplanned hospitalization must be reported.
Who must report incidents	All members of the participant's care planning team, support staff, and service agency officials are required to report incidents.
Time frames for reporting incidents	Reports must be made within two business days.
To whom reports are submitted	Reports must be made to the Medicaid program's quality assurance unit and, in cases involving abuse, neglect, or exploitation, to APS and law enforcement.
Investigating	
Who is responsible for assessing incidents and conducting investigations	A dedicated Medicaid program quality assurance unit conducts the initial assessment.
How incidents are assessed	Departments involved with HCBS waivers initiate investigations; specific manner of follow-up is determined by the nature of the allegation.
Time frame for conducting and completing an investigation	No time frames specified in the waiver agreement
Notifying	
Process for informing the participant, or the participant's family or legal representative and other relevant parties, of the investigation results	Law enforcement: suspected crimes must be reported to law enforcement. Participant: must receive a copy of critical incident report. Family or legal representative: must receive a copy of critical incident report. ⁶ Licensing and regulatory agency: no notification requirements specified in the waiver agreement.

Source: GAO analysis of the Centers for Disease Control & Prevention data and the Centers for Medicare & Medicaid Services (CMS) HCBS waiver technical guidance and Connecticut's waiver agreement. | GAO-19-599

⁹Connecticut also provides financial assistance to assisted living residents separate from federal-state Medicaid funding. Medicaid made payments for 79 percent of assisted living residents in Connecticut in 2014.

Appendix I: Summary of Selected States' Requirements for Reporting, Investigating, and Notifying Law Enforcement about Elder Abuse in Assisted Living Facilities

^bConnecticut's APS program that serves individuals age 60 or older is called Protective Services for the Elderly.

^cAccording to Connecticut's waiver agreement, incidents must be reported to a participant's conservator, or court appointed representative, who may or may not be a family member.

Figure 3: Oklahoma State Profile

Numbers of Assisted Living Facilities, Licensed Beds, and Residents Financed by Medicaid Dollars, 2014			
State	Number of facilities	Number of beds	Number of residents financed by Medicaid
Oklahoma	200	10,500	458 ^a

Selected Mandatory Reporter Requirements	
Reporting	
Reporters, including assisted living facility staff, must report instances of abuse, neglect, or exploitation to Oklahoma's Department of Human Services', Adult Protective Services (APS) program or local law enforcement, as soon as they are aware of the situation.	
Investigating	
While investigations must be prompt, no specific time frames for initiating or completing APS investigations are noted in requirements.	
Notifying	
APS must notify law enforcement of the agency's investigation. In addition, APS must notify the victim's caretaker, legal guardian, and next of kin of the initiation of an investigation, and whether there has been a finding of abuse, neglect, or exploitation.	

Home and Community-based Services (HCBS) Waiver Program Requirements	
CMS waiver requires states specify	Oklahoma's HCBS program requirements
Reporting	
Which types of incidents must be reported	Allegations of sexual and physical abuse, neglect, or exploitation, along with other incidents such as injuries requiring medical attention, or unexpected death must be reported.
Who must report incidents	Waiver program contracted care providers are required to report incidents.
Time frames for reporting incidents	Providers must submit initial reports within 1 business day.
To whom reports are submitted	The program's Medicaid Service Unit; abuse must also be reported to APS. ^b
Investigating	
Who is responsible for assessing incidents and conducting investigations	The Medicaid Service Unit is responsible for initial assessments and investigations.
How incidents are assessed	Reports are assessed and prioritized for investigation according to state criteria, and reports categorized as abuse, neglect, or exploitation are referred to APS.
Time frame for conducting and completing an investigation	APS investigations must be initiated within 3 working days, or, for emergency situations, within 4 hours. Findings must be submitted within 30 days to the District Attorney.
Notifying	
Process for informing the participant, or the participant's family or legal representative and other relevant parties, of the investigation results	Participant: must receive a copy of APS investigative findings.
	Family or legal representative: next of kin, caretakers, or legal guardians must receive a copy of the APS findings.
	Licensing and regulatory agency: must receive a copy of the APS findings.

Source: GAO analysis of the Centers for Disease Control & Prevention data and the Centers for Medicare & Medicaid Services (CMS) HCBS waiver technical guidance and Oklahoma's waiver agreement. | GAO-19-599

^aMedicaid made payments for 6 percent of assisted living residents in Oklahoma in 2014.

Appendix I: Summary of Selected States' Requirements for Reporting, Investigating, and Notifying Law Enforcement about Elder Abuse in Assisted Living Facilities

^bThe Oklahoma waiver program's Conditions for Provider Participation specify that assisted living facilities are required to follow APS's process for reporting potential instances of suspected abuse, neglect, or exploitation.

Figure 4: South Dakota State Profile

Numbers of Assisted Living Facilities, Licensed Beds, and Residents Financed by Medicaid Dollars, 2014			
State	Number of facilities	Number of beds	Number of residents financed by Medicaid
South Dakota	100	4,600	1,032 ^a

Selected Mandatory Reporter Requirements	
Reporting	Reporters—including assisted living facility staff—with cause to suspect abuse or neglect must notify the person in charge within 24 hours. Facility administrators must make an oral or written report within 24 hours to specified authorities, including South Dakota's Department of Human Services' Adult Protective Service (APS) program or law enforcement.
Investigating	No time frames for initiating or completing investigations are specified.
Notifying	No requirement to notify law enforcement. No requirement to notify family or legal guardian.

Home and Community-based Services (HCBS) Waiver Program Requirements	
CMS waiver requires states specify	South Dakota's HCBS program requirements
Reporting	
Which types of incidents must be reported	Abuse, neglect, or exploitation along with other incidents such as a serious injury, death, missing person, or the provider's use of restraints or seclusion must be reported.
Who must report incidents	Providers contracted to provide waiver services are required to report incidents.
Time frames for reporting incidents	Serious injuries or suspected crimes must be reported within 2 hours, and other injuries within 24 hours.
To whom reports are submitted	Reports must be made to the Department of Human Services. Assisted living facilities must also submit critical incident reports to the facility's licensing and regulatory agency. Suspected crime must be reported to local law enforcement.
Investigating	
Who is responsible for assessing incidents and conducting investigations	The Department of Human Services is responsible for assessing and referring incidents as needed. State's attorney and law enforcement agencies must notify the Department of all reports they receive. The three entities work together on reports.
How incidents are assessed	Reports are categorized according to whether the report involves life- or health-threatening conditions or criminal activity, including suspected abuse.
Time frame for conducting and completing an investigation	For life- or health-threatening conditions or criminal activity, the Department of Human Services must make face-to-face contact within 24 hours. For other reports, they must make contact within 72 hours and face-to-face contact within 7 business days.
Notifying	
Process for informing the participant, or the participant's family or legal representative and other relevant parties, of the investigation results	Law enforcement: law enforcement must be notified by the Department of Human Services of reports of life- or health-threatening conditions or criminal activity, including abuse. Participant: no notification requirements are specified in the waiver agreement. Family or legal representative: no notification requirements in the waiver agreement. Licensing and regulatory agency: the Department of Health is notified of all incidents in facilities licensed by the Department of Health, and investigations are coordinated with Department of Health staff.

Source: GAO analysis of the Centers for Disease Control & Prevention data and the Centers for Medicare & Medicaid Services (CMS) HCBS waiver technical guidance and South Dakota's waiver agreement. | GAO-19-599

^aMedicaid made payments for 24 percent of assisted living residents in South Dakota in 2014.

Appendix II: Summary of Selected Federal and State Audits of Oversight of the Reporting, Investigation, and Notification of Law Enforcement about Elder Abuse in Nursing Homes and Assisted Living Facilities

GAO has issued reports reviewing the Centers for Medicare & Medicaid Services' (CMS) oversight of the health and welfare of residents in nursing homes and assisted living facilities. For example, selected GAO reports from approximately the past 5 years included a review of the incidence of abuse in nursing homes and a review of what is known about the incidence of abuse in assisted living facilities. Reports often included key recommendations. (See table 1.)

Table 1: Examples of GAO Reports Relevant to Reporting and Investigation of Elder Abuse in Nursing Homes and Assisted Living Facilities, 2015-June 2019

Date	Title	Description
June 2019	Nursing Homes: Improved Oversight Needed to Better Protect Residents from Abuse (GAO-19-433)	<p>GAO examined trends and types of abuse in nursing homes in recent years and CMS's oversight. GAO found that, while relatively rare, incidents of abuse as identified by state survey agencies more than doubled from 2013 to 2017, and that gaps in CMS oversight resulted in delays prioritizing investigations and notifying law enforcement about abuse.</p> <p>GAO made six recommendations including that CMS require state survey agencies to immediately notify law enforcement of any suspicion of a crime. HHS agreed with the recommendations and GAO will continue to monitor actions in response to the recommendations</p> <p>Setting: nursing homes</p>

Appendix II: Summary of Selected Federal and State Audits of Oversight of the Reporting, Investigation, and Notification of Law Enforcement about Elder Abuse in Nursing Homes and Assisted Living Facilities

Date	Title	Description
April 2019	Management Report: CMS Needs to Address Gaps in Federal Oversight of Nursing Home Abuse Investigations That Persisted in Oregon for at Least 15 Years (GAO-19-313R)	GAO reviewed CMS oversight of the Oregon state survey agency’s investigation of complaints and facility-reported incidents of abuse in nursing homes in Oregon. GAO found that the Oregon survey agency was not following federal requirements that the survey agency investigate all abuse allegations in nursing homes. GAO made three recommendations including that CMS ensure all state survey agencies are meeting federal requirements for investigating alleged abuse and that the results are shared with CMS. HHS agreed with the recommendations and GAO will continue to monitor actions in response to the recommendations. Setting: nursing homes
January 2018	Medicaid Assisted Living Services: Improved Federal Oversight of Beneficiary Health and Welfare is Needed (GAO-18-179)	GAO examined state and federal oversight of assisted living services in Medicaid. GAO found oversight of state monitoring of assisted living services by CMS was limited by gaps in state reporting. GAO made three recommendations including that CMS clarify state requirements for reporting program deficiencies and require states to annually report critical incidents. HHS agreed with GAO’s recommendations to clarify deficiency reporting and stated that it would consider annual reporting requirements for critical incidents after completing an ongoing review. As of June 2019, the recommendations remain open. Setting: assisted living facilities
August 2017	Medicaid Managed Care: CMS Should Improve Oversight of Access and Quality in States’ Long-Term Services and Supports Programs (GAO-17-632)	GAO reviewed states’ implementation and CMS’s oversight of managed long-term services and supports programs. GAO found that states varied in the extent to which—and how—they monitored concerns about quality and access and CMS did not always require states to report the information needed to monitor access and quality. GAO made one recommendation that CMS take steps to identify and obtain information to oversee key aspects of managed long-term services and supports programs’ access and quality, including network adequacy, critical incidents, and appeals and grievances. HHS agreed with GAO’s recommendation. As of June 2019, the recommendation remains open. Setting: nursing homes, assisted living facilities, and others
October 2015	Nursing Home Quality: CMS Should Continue to Improve Data and Oversight (GAO-16-33)	GAO reviewed trends in nursing home quality data—including data on complaints and health and welfare deficiencies—and changes in CMS nursing home oversight. GAO found that trends in nursing home quality show mixed results (with data issues complicating the ability to assess quality trends) and that CMS made numerous modifications to its nursing home oversight activities, but has not monitored the potential effect of these modifications on nursing home quality oversight. GAO made three recommendations including that CMS implement a clear plan for ongoing auditing of self-reported data and establish a process for monitoring oversight modifications to better assess their effects. HHS agreed with GAO’s recommendations. As of June 2019, one of the recommendations has been closed as implemented. Setting: nursing homes

Source: GAO. | GAO-19-599

In addition to GAO’s audits of federal oversight of nursing homes and assisted living facilities, the Office of Inspector General within the Department of Health and Human Services (HHS-OIG) routinely audits a

Appendix II: Summary of Selected Federal and State Audits of Oversight of the Reporting, Investigation, and Notification of Law Enforcement about Elder Abuse in Nursing Homes and Assisted Living Facilities

broad range of both the Centers for Medicare & Medicaid Services' (CMS) and states' oversight activities related to long-term care facilities. We identified three HHS-OIG reports issued between 2014 and 2018 that provide examples of HHS-OIG's examinations of the reporting, investigation, and notification of law enforcement of elder abuse in nursing homes.¹ (See table 2.) Although the specific scope of these reports varied, common findings included gaps in notifying law enforcement. For example, HHS-OIG examined Medicare claims data to identify cases where hospital staff had identified potential abuse and found that nursing homes failed to report many of these incidents to state survey agencies or notify law enforcement despite federal and state requirements and recommended that CMS provide training, clarify guidance, and track referrals to law enforcement.

Table 2: Examples of the Department of Health and Human Services, Office of Inspector General (HHS-OIG) Reports on the Reporting and Investigation of Elder Abuse in Nursing Homes, 2014-2018

Date	Title	Description
September 2017	HHS OIG Data Brief – A Few States Fell Short In Timely Investigation of the Most Serious Nursing Home Complaints: 2011 -2015 (OEI-01-16-00330)	HHS-OIG reviewed nursing home complaints from 2011 through 2015 to identify the extent to which state survey agencies met onsite investigation timeframes for the most serious complaints. Key findings included: (1) states received one-third more reports of complaints in 2015 than in 2011 and (2) almost all states conducted onsite investigations within required timeframes. No specific recommendations were made. Setting: nursing homes
August 2017	Early Alert: The Centers for Medicare & Medicaid Services Has Inadequate Procedures to Ensure That Incidents of Potential Abuse or Neglect at Skilled Nursing Facilities Are Identified and Reported in Accordance With Applicable Requirements (A-01-17-00504)	HHS-OIG released the early alert as part of then-ongoing audits and investigations of nursing homes' performance in detecting and reporting elder abuse. Specifically, the audits are looking at whether incidents of potential abuse or neglect were reported and investigated in accordance with state and federal requirements. HHS-OIG found that a significant percentage of these incidents may not have been reported to law enforcement and that CMS has inadequate procedures to ensure that incidents of potential abuse or neglect of Medicare beneficiaries residing in nursing homes are identified and reported. In the agency's subsequent June 2019 report, HHS-OIG confirmed these findings and made a number of recommendations to CMS to provide training and clarify guidance for state survey agencies and nursing homes and track referrals to law enforcement. ^a CMS agreed with the recommendations. Setting: nursing homes

¹HHS-OIG officials told us that their agency has not reported on elder abuse in assisted living facilities specifically, but some of the agency's findings in other settings—e.g., group homes—may also apply to assisted living facilities.

Appendix II: Summary of Selected Federal and State Audits of Oversight of the Reporting, Investigation, and Notification of Law Enforcement about Elder Abuse in Nursing Homes and Assisted Living Facilities

Date	Title	Description
August 2014	Nursing Facilities' Compliance with Federal Regulations for Reporting Allegations of Abuse or Neglect (OEI-07-13-00010)	HHS-OIG examined the extent to which nursing homes reported allegations of abuse and neglect in 2012 and had policies in place for notifying law enforcement. Key findings included: (1) 85 percent of surveyed nursing homes reported at least one allegation of abuse or neglect in 2012 and (2) 76 percent of nursing homes had policies to address federal regulations for reporting and investigation of abuse or neglect. HHS-OIG made three recommendations regarding the reporting of abuse; CMS concurred with the recommendations. Setting: nursing homes

Source: GAO analysis of HHS-OIG reports. | GAO-19-599

^aHHS-OIG. *Incidents of Potential Abuse and Neglect at Skilled Nursing Facilities Were Not Always Reported and Investigated*. [A-01-16-00509](#) (Washington, D.C.: June 2019).

State auditors may also audit their states' oversight of nursing homes and assisted living facilities. We identified nine reports issued by state auditors between 2014 and 2018 that examined their states' oversight of elder abuse reporting and investigation across both settings. (See table 3.) Although the scope of individual reports across the states varied, state auditors identified instances of state entities not complying with state or federal requirements for a variety of reasons—including weaknesses in policies and procedures, resource constraints, and information management challenges—and recommended improvements. For example, in 2014 California state auditors found that thousands of complaint investigations—including over 300 classified as immediate jeopardy—were left open for almost a year, in part because the state did not specify time frames for completing investigations.

Table 3: Examples of State Audit Reports on the Reporting and Investigation of Elder Abuse in Nursing Homes and Assisted Living Facilities, 2014-2018

State	Title	Source	Description
California	California Department of Public Health: It Has Not Effectively Managed Investigations of Complaints Related to Long-Term Health Care Facilities	California State Auditor (Oct. 2014)	The state auditor examined the state's Department of Public Health—which licenses and inspects nursing homes—compliance with state and federal requirements for the timeliness and quality of complaint investigations. Key findings included: (1) inadequate oversight of complaint processing and (2) lack of established investigation policies. The state auditor made a number of recommendations including specifying timeframes and developing policies for monitoring complaint processing and investigation. The Department did not agree with all the recommendations. Setting: nursing homes

Appendix II: Summary of Selected Federal and State Audits of Oversight of the Reporting, Investigation, and Notification of Law Enforcement about Elder Abuse in Nursing Homes and Assisted Living Facilities

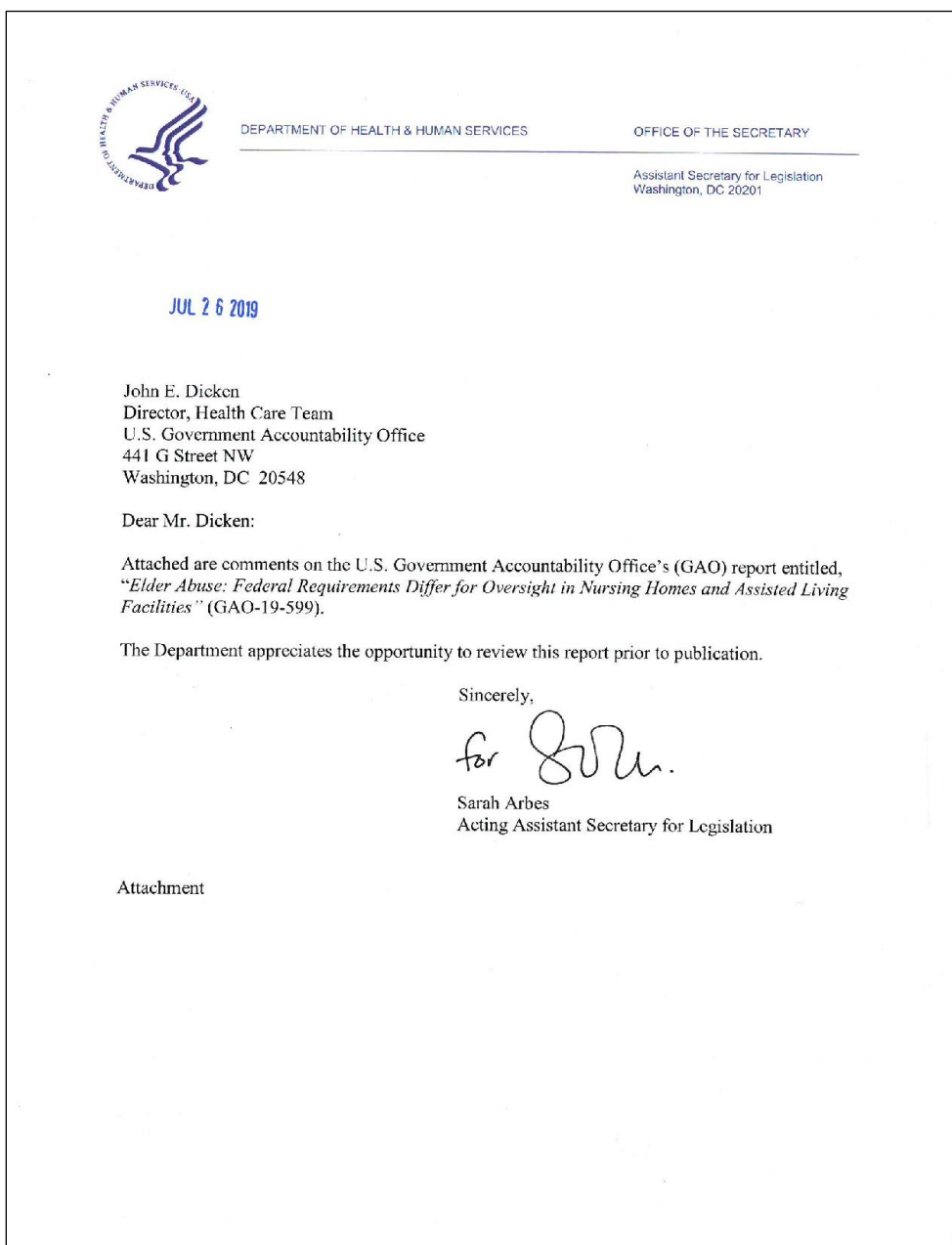
State	Title	Source	Description
Massachusetts	Executive Office of Elder Affairs (EOEA) Performance Audit	Office of the State Auditor, Massachusetts (2018)	<p>The state auditor examined EOEA's process for screening, investigating, documenting and reporting incidents of elder abuse. The EOEA serves as the state's adult protective service (APS) and is responsible for investigating elder abuse in community settings including assisted living facilities. Key findings included: (1) a lack of reporting of abuse to investigative authorities; (2) a lack of documentation; and (3) weaknesses in monitoring of abuse report decisions.</p> <p>The state auditor made a number of recommendations including that EOEA develop written policies for documentation and review. EOEA agreed to implement the recommendations.</p> <p>Setting: assisted living facilities</p>
Michigan	Follow-Up Report on Prior Audit Recommendations: Adult Protective Services (APS), Michigan Department of Health and Human Services	Office of the Auditor General, Michigan (2016)	<p>The state auditor conducted a follow-up examination on a 2014 performance audit to determine whether APS had taken appropriate corrective action in response to previous findings. Among other things, these findings were related to compliance with the state's timeliness standards for investigations. The state auditor noted improvements but found that APS had not fully complied with earlier recommendations, and, as a result, investigations were not consistently initiated within required timeframes.</p> <p>The state auditor reiterated earlier recommendations; APS concurred.</p> <p>Setting: nursing homes and assisted living facilities</p>
Minnesota	Office of Health Facility Complaints (OHFC) 2018 Evaluation Report	Office of the Legislative Auditor, Minnesota, (2018)	<p>The state legislative auditor reviewed OHFC's ability to investigate allegations, impose enforcement measures, and communicate with complainants and stakeholders regarding their cases. Key findings included: (1) a lack of written policies, (2) information management system deficiencies, and (3) gaps in the state's regulatory structure resulting in less oversight of assisted living facilities than nursing homes.</p> <p>The legislative auditor made recommendations including legislative changes to improve accountability and oversight across facility types; OHFC largely concurred with the recommendations.</p> <p>Setting: nursing homes and assisted living facilities</p>
New Hampshire	State of New Hampshire Department of Health and Human Services Health Facility Licensing Unit (HFLU) Performance Audit Report	Office of the Legislative Budget Assistant, New Hampshire (2014)	<p>The state legislative auditor examined the extent to which HFLU efficiently and effectively conducted inspections and complaint investigations in assisted living facilities and noncertified (i.e., private pay) nursing facilities. Key findings included a lack of policies and procedures.</p> <p>The auditor made several recommendations; HFLU agreed.</p> <p>Setting: assisted living facilities</p>

Appendix II: Summary of Selected Federal and State Audits of Oversight of the Reporting, Investigation, and Notification of Law Enforcement about Elder Abuse in Nursing Homes and Assisted Living Facilities

State	Title	Source	Description
New York	Department of Health Nursing Home Surveillance	Office of the State Comptroller, New York (2016)	<p>The state auditor examined the extent to which the Department applied federal and state procedures for conducting nursing home surveys, and whether enforcement actions were effective in improving nursing home quality of care and safety. Key findings included that the state was generally meeting federal and state requirements, but that inefficient processes delayed enforcement actions.</p> <p>The state auditor recommended further action; the Department acknowledged the recommendations and noted actions underway.</p> <p>Setting: nursing homes</p>
Ohio	Ohio Department of Health (ODH) Performance Audit	Auditor of State, Ohio (2017)	<p>The state auditor reviewed and assessed selected program areas within ODH such as the Bureau of Long-Term Care and its processes to license, certify, and investigate complaints against long term care facilities. Key findings included identifying that staffing constraints contributed to inefficiencies during surveys and complaint investigations.</p> <p>The state auditor recommended diversifying hiring practices; ODH concurred.</p> <p>Setting: nursing homes and assisted living facilities</p>
Pennsylvania	Performance Audit of the Department of Health (DOH)	Department of the Auditor General, Pennsylvania (2016)	<p>The state auditor reviewed DOH's regulation of nursing homes, including a review of its policies and procedures for ensuring the quality of care provided, the effectiveness and timeliness of the agency's complaint response, and the consistency of its enforcement actions. Key findings included policy weaknesses that led to challenges in the states' ability to promptly investigate all incoming complaints.</p> <p>The state auditor made several recommendations including revised policies and procedures; DOH concurred.</p> <p>Setting: nursing homes</p>
Washington	Performance Audit Complaint Resolution Unit (CRU) at the Department of Social and Health Services	Washington State Auditor (2015)	<p>The state auditor examined whether CRU accurately prioritized and processed incoming complaint allegations from vulnerable adults in nursing homes and assisted living facilities on a timely basis. Key findings included: (1) an inefficient voicemail system that led to delays in investigations; (2) a lack of clarity in state law for required timeframes; and (3) inconsistent application of policy.</p> <p>The state auditor made several recommendations; CRU concurred.</p> <p>Setting: nursing homes and assisted living facilities</p>

Source: GAO analysis of state auditor reports. | GAO-19-599

Appendix III: Comments from the Department of Health & Human Services



**GENERAL COMMENTS FROM THE DEPARTMENT OF HEALTH & HUMAN SERVICES
ON THE GOVERNMENT ACCOUNTABILITY OFFICE'S DRAFT REPORT ENTITLED –
ELDER ABUSE: FEDERAL REQUIREMENTS DIFFER FOR OVERSIGHT IN NURSING
HOMES AND ASSISTED LIVING FACILITIES (GAO-19-599)**

The U.S. Department of Health and Human Services (HHS) appreciates the opportunity to review and comment on the U.S. Government Accountability Office (GAO) draft report on federal oversight of elder abuse reporting, investigation, and law enforcement notification. Every resident deserves to be treated with dignity and kept safe from abuse and neglect. Resident safety in facilities that participate in the Medicare and Medicaid programs is a top priority for HHS.

Regardless of facility type, HHS is committed to ensuring the safety of residents and directly overseeing and supporting states' oversight of reporting, investigating, and notifying law enforcement about elder abuse. In this report, GAO directly compared federal oversight requirements of nursing homes receiving Medicare and Medicaid payments and assisted living facilities providing services to Medicaid beneficiaries. As GAO reported, only 16.5 percent of assisted living facilities use Medicaid as a payer source. It is important to note that HHS oversees these facilities in partnership with states that have received a Medicaid home and community-based service (HCBS) waiver, also known as a 1915(c) waiver, or a 1915(i) Medicaid State Plan Amendment (SPA) to provide assisted living facility services to Medicaid beneficiaries. In contrast, HHS has direct oversight responsibility over nursing homes. Therefore, these two types of federal oversight are not directly comparable.

Although HHS' oversight of assisted living facilities is limited to states' HCBS waivers and SPAs that may provide assisted living facilities services for Medicaid beneficiaries, HHS is engaged in supporting states in overseeing these facilities and ensuring the safety of beneficiaries. In an effort to strengthen community living options for older Americans and people with disabilities, HHS issued a final rule in 2014¹ that set forth requirements for several Medicaid authorities under which states may provide home and community-based services. In particular, as part of the 1915(c) waiver approval process, each waiver must have a Quality Improvement Strategy wherein the state demonstrates that it has designed and implemented an effective system for assuring participant health and welfare. As part of this system, HHS requires states to develop and measure performance indicators in fourteen areas, which are reported to HHS in the form of an annual report. In addition, the annual report to HHS must include a mandatory quality improvement project/remediation when the compliance threshold for a performance measure is below 86 percent.²

HHS also offers technical assistance resources to states to improve quality under HCBS programs. This includes a 2014 Informational Bulletin that modifies the quality assurance systems under 1915(c) waivers to strengthen the oversight of beneficiary health and welfare reporting requirements.³ Specifically, this guidance modified HHS requirements regarding reporting on individual remediation, requiring states to report on individual activities related to instances of substantiated abuse, neglect and/or exploitation. Furthermore, in January 2015, HHS

¹ 79 FR 2948

² <https://www.medicaid.gov/medicaid-chip-program-information/by-topics/waivers/downloads/3-cms-quality-memo-narrative.pdf>

³ <https://www.medicaid.gov/medicaid-chip-program-information/by-topics/waivers/downloads/3-cms-quality-memo-narrative.pdf>

**GENERAL COMMENTS FROM THE DEPARTMENT OF HEALTH & HUMAN SERVICES
ON THE GOVERNMENT ACCOUNTABILITY OFFICE'S DRAFT REPORT ENTITLED –
ELDER ABUSE: FEDERAL REQUIREMENTS DIFFER FOR OVERSIGHT IN NURSING
HOMES AND ASSISTED LIVING FACILITIES (GAO-19-599)**

updated a 1915(c) technical guide, which outlines HHS' expectations on what states need to include in their waiver application with regard to reporting and investigating critical events or incidents.⁴ Lastly, HHS provides monthly webinars to states on a variety of HCBS topics. For example, in January 2017, HHS conducted a webinar to assist states in creating and implementing quality and performance measures across the HCBS authorities, including a focus on remediation reporting requirements.

HHS works in partnership with state survey agencies to oversee nursing homes, since these agencies are generally responsible for state licensure. The state survey agencies visit and survey every Medicare and Medicaid participating nursing home in the nation at least annually to ensure they are meeting CMS' health and safety requirements as well as state licensure requirements. For nursing homes, the state survey agencies not only inspect providers for compliance with Medicare and Medicaid health and safety standards, but also manage the intake of complaints and facility-reported incidents and conduct investigations accordingly. Residents deserve consistent nursing home quality, regardless of location, so HHS is revising its oversight of state survey agency performance. HHS is examining the way surveyors identify issues such as abuse, facility staffing levels, and dementia care, and is clarifying expectations regarding when abuse must be reported to the state and law enforcement. This means setting clear timelines for state survey agencies to review allegations of abuse and neglect.

HHS' approach to oversight of nursing homes is constantly evolving, and we're continuously looking for ways to improve our approach to nursing home safety and quality. HHS is undertaking a comprehensive review of our regulations, guidelines, internal structure, and processes related to safety and quality in nursing homes. HHS has demonstrated a commitment to this path by developing a five-part plan to ensure the care provided in nursing homes is of the highest possible quality. The five-part plan will strengthen oversight, enhance enforcement, increase transparency, improve quality, and put patients over paperwork.⁵

In addition to HHS efforts to strengthen federal oversight of nursing homes and states with HCBS programs, CMS has committed to addressing numerous recommendations from GAO and OIG to further strengthen reporting, investigating, and notifying law enforcement about elder abuse.

⁴ <https://wms-mmdl.cms.gov/WMS/faces/portal.jsp>

⁵ <https://www.cms.gov/blog/ensuring-safety-and-quality-americas-nursing-homes>

Agency Comment Letter

Text of Appendix III: Comments from the Department of Health & Human Services

Page 1

July 26, 2019

John E. Dicken
Director, Health Care Team
U.S. Government Accountability Office
441 G Street NW
Washington, DC 20548

Dear Mr. Dicken:

Attached are comments on the U.S. Government Accountability Office's (GAO) report entitled, "Elder Abuse: Federal Requirements Differ for Oversight in Nursing Homes and Assisted Living Facilities" (GAO-19-599).

The Department appreciates the opportunity to review this report prior to publication.

Sincerely,

Sarah Arbes
Acting Assistant Secretary for Legislation

Attachment

Page 2

GENERAL COMMENTS FROM THE DEPARTMENT OF HEALTH & HUMAN SERVICES ON THE GOVERNMENT ACCOUNTABILITY OFFICE'S DRAFT REPORT ENTITLED - ELDER ABUSE: FEDERAL REQUIREMENTS DIFFER FOR OVERSIGHT IN NURSING HOMES AND ASSISTED LIVING FACILITIES (GAO-19-599)

The U.S. Department of Health and Human Services (HHS) appreciates the opportunity to review and comment on the U.S. Government Accountability Office (GAO) draft report on federal oversight of elder abuse reporting, investigation, and law enforcement notification. Every resident deserves to be treated with dignity and

kept safe from abuse and neglect. Resident safety in facilities that participate in the Medicare and Medicaid programs is a top priority for HHS.

Regardless of facility type, HHS is committed to ensuring the safety of residents and directly overseeing and supporting states' oversight of reporting, investigating, and notifying law enforcement about elder abuse. In this report, GAO directly compared federal oversight requirements of nursing homes receiving Medicare and Medicaid payments and assisted living facilities providing services to Medicaid beneficiaries. As GAO reported, only 16.5 percent of assisted living facilities use Medicaid as a payer source. It is important to note that HHS oversees these facilities in partnership with states that have received a Medicaid home and community-based service (HCBS) waiver, also known as a 1915(c) waiver, or a 1915(i) Medicaid State Plan Amendment (SPA) to provide assisted living facility services to Medicaid beneficiaries. In contrast, HHS has direct oversight responsibility over nursing homes. Therefore, these two types of federal oversight are not directly comparable.

Although HHS' oversight of assisted living facilities is limited to states' HCBS waivers and SPAs that may provide assisted living facilities services for Medicaid beneficiaries, HHS is engaged in supporting states in overseeing these facilities and ensuring the safety of beneficiaries. In an effort to strengthen community living options for older Americans and people with disabilities, HHS issued a final rule in 2014¹ that set forth requirements for several Medicaid authorities under which states may provide home and community-based services. In particular, as part of the 1915(c) waiver approval process, each waiver must have a Quality Improvement Strategy wherein the state demonstrates that it has designed and implemented an effective system for assuring participant health and welfare. As part of this system, HHS requires states to develop and measure performance indicators in fourteen areas, which are reported to HHS in the form of an annual report. In addition, the annual report to HHS must include a mandatory quality improvement project/remediation when the compliance threshold for a performance measure is below 86 percent.

HHS also offers technical assistance resources to states to improve quality under HCBS programs. This includes a 2014 Informational Bulletin that modifies the quality assurance systems under 1915(c) waivers to strengthen the oversight of beneficiary health and welfare reporting requirements. Specifically, this guidance modified HHS requirements regarding reporting on individual remediation, requiring states to report on individual activities related to instances of substantiated abuse, neglect and/or exploitation. Furthermore, in January 2015, HHS

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updated a 1915(c) technical guide, which outlines HHS' expectations on what states need to include in their waiver application with regard to reporting and investigating critical events or incidents. Lastly, HHS provides monthly webinars to states on a variety of HCBS topics. For example, in January 2017, HHS conducted a webinar to assist states in creating and implementing quality and performance measures across the HCBS authorities, including a focus on remediation reporting requirements.

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In addition to HHS efforts to strengthen federal oversight of nursing homes and states with HCBS programs, CMS has committed to addressing numerous recommendations from GAO and OIG to further strengthen reporting, investigating, and notifying law enforcement about elder abuse.

Appendix IV: GAO Contact and Staff Acknowledgments

GAO Contact

John E. Dicken, (202) 512-7114 or dickenj@gao.gov.

Staff Acknowledgments

In addition to the contact named above, Karin Wallestad (Assistant Director); Jasleen Modi (Analyst-in-Charge); and Elise Pressma made key contributions to this report. Also contributing were Thomas Garloch, Cathy Hamann, Laurie Pachter, and Jennifer Whitworth.

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