



New York State Office of the State Comptroller
Thomas P. DiNapoli

Division of State Government Accountability

Oversight of Resident Care-Related Medical Equipment in Nursing Homes

Department of Health



Report 2016-S-80

September 2018

Executive Summary

Purpose

To determine whether the Department of Health's monitoring and inspection of nursing homes is sufficient to determine if nursing homes perform comprehensive inspections, testing, and maintenance of resident care-related medical equipment. The audit covered the Department of Health's oversight between January 1, 2015 and October 27, 2017, including nursing homes the Department inspected between January 1, 2015 and March 29, 2017.

Background

The Department of Health (Department) oversees nursing homes in New York State through its Division of Nursing Homes and Intermediate Care Facilities for Individuals with Intellectual Disabilities Surveillance (Division). The Division also acts as an agent for the U.S. Department of Health and Human Services, Centers for Medicare & Medicaid Services (CMS), in monitoring quality of care in nursing homes. The Division is responsible for ensuring nursing homes are in compliance with federal and State regulations designed to optimize the health, safety, and quality of life for the approximately 117,000 people living in nursing homes in the State.

The Division assesses and certifies nursing home compliance through unannounced, on-site inspections, commonly referred to as surveys, including:

- Certification surveys, which include both Standard Health (quality of care) and Life Safety Code (LSC) (fire and safety) inspections;
- Complaint surveys, which investigate complaints and incidents reported by nursing homes or third parties; and
- Follow-up surveys, which monitor nursing homes' progress in correcting previously noted deficiencies.

The LSC component of the Certification survey covers inspection of all essential mechanical, electrical, and resident care equipment to ensure their safe operating condition in accordance with Section 415.29(b) of Title 10 of the New York Codes, Rules and Regulations.

As established in Part 483 of Title 42 of the Code of Federal Regulations, as of July 2016, nursing homes that participate in federal reimbursement programs are required to comply with 2012 National Fire Protection Association (NFPA) safety codes and standards. With the adoption of NFPA regulations, among other actions, nursing homes are now required to:

- Establish policies and protocols regarding the testing intervals of patient care-related electrical equipment; develop a program for electrical equipment maintenance considering manufacturer service manuals; and retain records of tests and repairs.
- Inspect generators weekly, and exercise the generators under load for 30 minutes 12 times a year and for 4 continuous hours once every 36 months.
- Maintain readily available written records of generator maintenance and testing.

CMS's *Basic Health Facility Surveyor Training and State Operations Manual* provide guidance to surveyors for conducting NFPA compliance surveys. For this purpose, the Department created a Long Term Care Equipment Inventory Form (Inventory Form) to provide surveyors with a list of the different types of equipment commonly used at nursing homes. The Department requires its surveyors to review service records and manufacturer requirements for a random sample of resident care-related equipment pieces, based on the size of the facility's resident population (i.e., number of beds) and for at least one piece of non-resident care-related equipment. This requirement implemented by the Division was modeled after the Department's Division of Hospitals and Diagnostic and Treatment Centers' methodology and is accepted by CMS.

The Division has four regions with seven offices throughout the State that carry out survey functions. The regions are Capital District, Central New York, Western (with offices in Buffalo and Rochester), and the Metropolitan Area Regional Office (MARO) (with offices in New York City, Central Islip, and New Rochelle). Of the 625 nursing home facilities currently active in New York State, over half are located in the MARO area. Between January 1, 2015 and December 31, 2017, the Division completed 2,223 surveys, including 1,648 Certification surveys.

Key Findings

- The Department completes its Certification surveys in a timely manner and reports deficient practices to the public, as required. However, we identified gaps in the Division's procedures that weaken its ability to effectively monitor nursing homes' equipment inspection, testing, and maintenance programs. For example, a list of the types of equipment in use at a facility (Inventory Form) for use by the surveyors is not always comprehensive. We found that the Form does not include some types of resident care equipment, such as heart monitors, electrocardiograms, and dialysis machines that are in use at some facilities.
- The Department's equipment sample sizes meet federal requirements. However, the samples are very small relative to the number of equipment items in the facilities. For example, one 120-bed facility we visited had approximately 500 pieces of resident care-related medical equipment, of which only 4 would need to be reviewed. We question whether the Department's standard sample sizes based on a facility's number of beds are optimal to identify equipment deficiencies, such as at facilities with histories of poor survey results.
- We visited a judgmental sample of 36 facilities and observed the condition of a judgmental sample of 532 durable medical equipment items and found the items to be in good condition overall. However, the facilities did not maintain some equipment according to manufacturer recommendations or lacked records of their maintenance for other items. Additionally, maintenance personnel at 13 facilities could not provide documentation that the four-continuous-hour generator tests were conducted every 36 months as required, and 4 of the 13 facilities were not aware that this test was required.

Key Recommendations

- Improve oversight of nursing home resident care medical equipment by periodically updating the Inventory Form to add types of medical equipment known to be in use at nursing home facilities, such as the durable medical equipment items identified in this report.
- Formally evaluate whether equipment sample sizes should be based on factors such as the size

- of a facility's medical equipment inventory and a facility's prior survey history.
- Remind facilities of the requirements for preventive maintenance of medical equipment and generator tests and record keeping of these activities.

Other Related Audit/Report of Interest

[Department of Health: Nursing Home Surveillance \(2015-S-26\)](#)

State of New York
Office of the State Comptroller

Division of State Government Accountability

September 19, 2018

Howard A. Zucker, M.D., J.D.
Commissioner
Department of Health
Corning Tower
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Albany, NY 12237

Dear Dr. Zucker:

The Office of the State Comptroller is committed to helping State agencies, public authorities, and local government agencies manage government resources efficiently and effectively and, by so doing, providing accountability for tax dollars spent to support government operations. The Comptroller oversees the fiscal affairs of State agencies, public authorities, and local government agencies, as well as their compliance with relevant statutes and their observance of good business practices. This fiscal oversight is accomplished, in part, through our audits, which identify opportunities for improving operations. Audits can also identify strategies for reducing costs and strengthening controls that are intended to safeguard assets.

Following is a report of our audit entitled *Oversight of Resident Care-Related Medical Equipment in Nursing Homes*. This audit was performed according to the State Comptroller's authority under Article V, Section 1 of the State Constitution and Article II, Section 8 of the State Finance Law.

This audit's results and recommendations are resources for you to use in effectively managing your operations and in meeting the expectations of taxpayers. If you have any questions about this report, please feel free to contact us.

Respectfully submitted,

Office of the State Comptroller
Division of State Government Accountability

Table of Contents

Background	6
Audit Findings and Recommendations	8
Survey Documentation for Equipment Samples	8
Nursing Home Site Visit Results	9
Recommendations	10
Audit Scope, Objective, and Methodology	11
Authority	12
Reporting Requirements	12
Contributors to This Report	13
Agency Comments and State Comptroller's Comments	14

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Background

The Department of Health (Department) oversees nursing homes in New York State through its Division of Nursing Homes and Intermediate Care Facilities for Individuals with Intellectual Disabilities Surveillance (Division). The Division also acts as an agent for the U.S. Department of Health and Human Services, Centers for Medicare & Medicaid Services (CMS), in monitoring quality of care in nursing homes. The Division is responsible for ensuring nursing homes are in compliance with federal and State regulations designed to optimize the health, safety, and quality of life for the approximately 117,000 people living in nursing homes in the State.

The Division assesses and certifies nursing home compliance through unannounced, on-site inspections, commonly referred to as surveys, including:

- Certification surveys, which include both Standard Health (quality of care) and Life Safety Code (LSC) (fire and safety) inspections;
- Complaint surveys, which investigate complaints and incidents reported by nursing homes or third parties; and
- Follow-up surveys, which monitor nursing homes' progress in correcting previously noted deficiencies.

The LSC component of the Certification survey covers inspection of all essential mechanical (e.g., beds, wheelchairs), and electrical (e.g., respiratory/oxygen systems) equipment to ensure their safe operating condition in accordance with Section 415.29(b) of Title 10 of the New York Codes, Rules and Regulations.

Section 483.90 of Title 42 of the Code of Federal Regulations requires that nursing homes that participate in federal reimbursement programs comply with 2012 National Fire Protection Association (NFPA) safety codes and standards as of July 2016. The NFPA standards, which were incorporated into LSC surveys starting November 1, 2016, include requirements relating to nursing homes' preventive maintenance, inspection, and testing of resident care-related medical equipment. Specifically, the standards incorporated by reference in this regulation require nursing homes to:

- Establish policies and protocols regarding the testing and maintenance of patient care-related electrical equipment in accordance with manufacturer recommendations and specifications, and retain maintenance/service records of such inspections;
- Inspect generators weekly, and exercise the generators under load for 30 minutes 12 times a year and once every 36 months for 4 continuous hours; and
- Maintain readily available written records of generator maintenance and testing.

CMS's *Basic Health Facility Surveyor Training and State Operations Manual* provide guidance to surveyors for conducting NFPA compliance surveys. The Department created a Long Term Care Equipment Inventory Form (Inventory Form), which is designed to provide surveyors with a list of the different types of equipment in use at each nursing home facility including residents'

personal equipment, durable medical equipment (DME), therapy/personal hygiene equipment, and gas/ventilator systems. Examples of DME items include suction machines, defibrillators, and intravenous delivery systems. Nursing homes are to complete and submit the Inventory Form at the start of each survey.

The Department requires surveyors to review service records and manufacturer requirements for a random sample of resident care-related equipment pieces. The sample sizes, which are based on the size of the facility's resident population, are as follows: fewer than 100 beds—three pieces; 100 to 200 beds—four pieces; 200 to 300 beds—five pieces; and more than 300 beds—six pieces. Each sample must also include at least one piece of non-resident care-related equipment. The Division set the sample sizes based on a standard in use by the Department's Division of Hospitals and Diagnostic and Treatment Center for hospitals.

According to the *State Operations Manual* and the Social Security Act, the Department must complete a standard survey of each nursing home no later than 15 months after the previous survey. Facilities with excellent histories of compliance would be surveyed every 15 months. However, nursing homes with poor survey histories can be surveyed more frequently, as often as every nine months. The State-wide standard survey average must not exceed 12 months. The Department is also required to report survey findings to the public.

The Division has four regions with seven offices throughout the State that carry out survey functions. The regions are Capital District, Central New York, Western (with offices in Buffalo and Rochester), and the Metropolitan Area Regional Office (MARO) (with offices in New York City, Central Islip, and New Rochelle). Of the 625 nursing homes currently active in New York State, over half are located in the MARO area. Between January 1, 2015 and December 31, 2017, the Division completed 2,223 surveys, including 1,648 Certification surveys.

Audit Findings and Recommendations

The Department completes its Certification surveys in a timely manner and reports deficient practices to the public, as required. However, we identified gaps in its monitoring and inspection procedures that weaken its ability to effectively monitor nursing homes' equipment inspection, testing, and maintenance programs. The Inventory Form, which is a list of the types of equipment in use at a facility, for use by the surveyors, is not always comprehensive. For example, the Form does not include some types of resident care equipment, such as heart monitors, electrocardiograms, and dialysis machines in use at some facilities. We also found that the Department only requires surveyors to document test results that identify a deficiency. Therefore, most surveyors do not document all equipment pieces they review.

We visited a judgmental sample of 36 facilities and observed the condition of a judgmental sample of 532 DME items and found the items to be in good condition overall. However, we found that the facilities did not maintain some equipment according to manufacturer recommendations or lacked records of their maintenance for other items. Additionally, maintenance personnel at 13 facilities could not provide documentation that the four-continuous-hour generator tests were conducted every 36 months, as required, and 4 of the 13 facilities were not aware that this test was required.

The Department's equipment sample sizes meet federal requirements. However, the samples are very small relative to the number of equipment items in the facilities. For example, one 120-bed facility we visited had approximately 500 pieces of resident care-related medical equipment, of which only 4 would need to be reviewed. We question whether the Department's standard sample sizes based on a facility's number of beds are optimal to identify equipment deficiencies, such as at facilities with histories of poor survey results.

Survey Documentation for Equipment Samples

We reviewed a judgmental sample of 46 surveys that were done after the NFPA requirements for equipment went into effect. Our analysis showed that the regions don't always carry out the survey procedures for equipment consistently. For instance, 15 of the 46 post-NFPA surveys did not include the required Inventory Form. Furthermore, we found that several types of resident care-related equipment, such as heart monitors, electrocardiograms, and dialysis machines, in use at facilities we visited were not a standard item on the Form. According to DOH officials, facilities can identify equipment in use at the facility in the "Other" category of the Inventory Form. However, we found some facilities were not doing that. Therefore, the surveyors did not have a complete list of the types of equipment in use at some facilities to aid in their sample selection.

The Inventory Forms are designed to identify the types of equipment at a facility. However, they do not identify the number of each type of equipment. We requested equipment inventories from the facilities we visited and found that the facilities generally do not have an accurate equipment inventory list. Of the 36 facilities we visited, 22 (61 percent) could not provide us with a medical

equipment inventory, and the inventories of the 14 that had one were incomplete. Obtaining an inventory list could be useful to surveyors to aid in selecting their equipment sample. Department officials told us they don't have the authority to mandate nursing home facilities to maintain an inventory of their equipment. However, surveyors can still review a copy of the facility's inventory listing, if available, to identify whether there are types of equipment in use that are not on the Inventory Form to aid in sample selection.

The Department does not require surveyors to document which equipment pieces they select for review. Instead, the surveyors are only required to document test results that identify a deficiency. As a result, six of the seven offices do not document all equipment items they sample. Therefore, the Division has limited information on the types of items tested and limited assurance that surveyors test the required number of equipment items by the other six offices. In contrast, the Buffalo Regional Office surveyors consistently documented each piece of equipment they reviewed at each facility, and we confirmed that the surveyors reviewed the required number of equipment for four of the five applicable surveys. (The remaining survey tested one less item than required.)

According to Department officials, both the *State Operations Manual* and *Basic Health Facility Surveyor Training* state that survey emphasis and direction are focused on identifying negative outcomes that amount to a deficient practice and documenting it. We agree that the primary emphasis should be placed on documenting deficiencies, but documenting the equipment items tested is also important to show that the surveys comply with the requirements.

Nursing Home Site Visit Results

We visited 36 facilities across the State, and found that 35 had written policies and procedures for maintaining medical equipment as required. As we toured the facilities, we selected 532 DME items that we observed (approximately 15 pieces at each facility) for review. We found the items to be in good condition overall. However, we identified some inventory and maintenance issues among the facilities.

For each of the 532 items, we reviewed maintenance/service records and compared the preventive maintenance service intervals to manufacturer recommendations. We found that none of the 36 facilities maintained all of the equipment items we sampled in accordance with manufacturer recommendations as follows:

- Facility preventive maintenance schedules for 164 pieces of equipment (31 percent) did not meet manufacturer recommendations; and
- 35 facilities lacked maintenance/service records for 177 pieces of equipment (33 percent).
- We also observed several examples of poorly maintained equipment as follows:
 - A transport wheelchair appeared to be covered by rust, mold, and/or mildew. Facility officials told us it would be disposed of immediately.
 - A suction machine, used to remove airway fluid, was covered in a thick layer of dust that appeared to have accumulated over time. According to Department officials, suction machines in this condition would be cited during the Health survey for improper storage.

Although generators are not considered resident care equipment, they are necessary to power such items during a power outage. Therefore, we interviewed staff at all 36 facilities regarding generator maintenance and reviewed available records. Maintenance personnel at 13 facilities could not provide documentation that the four-continuous-hour generator tests were conducted every 36 months as required, and 4 of the 13 facilities were not aware that this test was required. The remaining 23 facilities were able to provide evidence they were aware of this requirement and documented their tests. However, one of the facility's records for the period January 2016 to August 2017 included the 30-minute load test start times, but not the end times. As a result, we could not determine if the tests met the 30-minute requirement.

The new NFPA regulations were implemented in November 2016, and the Department had not done a survey between then and the dates of our reviews at some of the nursing homes we sampled. Therefore, nursing homes were in varying stages of compliance with the new regulations at the time of our visits. Also, administrators at some facilities we visited told us they relied on an outside vendor to provide equipment maintenance services on an annual or semi-annual basis. However, in some cases, the schedules followed by the vendor were less frequent than manufacturer recommendations for some pieces of equipment. Additionally, we found turnover in the administration at some facilities may have contributed to the lack of maintenance/service records. At one facility, maintenance staff told us three months of generator test logs were missing because a prior administrator did not think it was necessary to keep the logs.

Although the Department's equipment sample sizes meet federal requirements, they are very small relative to the number of equipment items in the facilities. For example, at a 120-bed facility we visited that listed 501 pieces of resident care-related medical equipment on its inventory, surveyors would only be required to test 4 pieces (less than 1 percent). Given the extent of deficiencies we found during our site visits, we question whether the Department's standard sample sizes based on a facility's number of beds are optimal to identify equipment deficiencies, such as at facilities with larger inventories or histories of poor survey results.

Recommendations

1. Improve oversight of nursing home resident care medical equipment by:
 - Periodically updating the Inventory Form to add types of medical equipment known to be in use at nursing home facilities, such as the DME items identified in this report;
 - Using inventories of nursing home facility resident care equipment, if available, to identify whether there are types of equipment in use that are not on the Inventory Form to aid in sample selection; and
 - Requiring surveyors to document their equipment samples.
2. Formally evaluate whether equipment sample sizes should be based on factors such as the size of a facility's medical equipment inventory and facility prior survey histories.
3. Remind facilities of the requirements for preventive maintenance of medical equipment and generator tests and record keeping of these activities.

Audit Scope, Objective, and Methodology

The objective of this audit was to determine whether the Department's monitoring and inspection of nursing homes is sufficient to determine if nursing homes perform comprehensive inspections, testing, and maintenance of resident care-related medical equipment. The audit covered the Department's oversight between January 1, 2015 and October 27, 2017, including nursing homes the Department inspected between January 1, 2015 and March 29, 2017.

To accomplish our audit objective and assess related internal controls, we interviewed Department officials responsible for the review process of resident care-related medical equipment in nursing homes. We reviewed pertinent laws, regulations, policies, and procedures. We reviewed a judgmental sample of 34 pre-NFPA and a judgmental sample of 46 post-NFPA surveys for a total of 80 surveys to determine if the Department implemented appropriate changes in alignment with the NFPA regulations and accurately reported deficient practices to the public. We selected our samples based on factors such as the number of complaints, not receiving a certification, being due for a certification, and not previously selected for review based on a deficiency. We conducted site visits at 36 judgmentally selected nursing homes (6 facilities in New Rochelle and 5 facilities in each of the remaining six regions) to determine if the Department provided proper oversight over the inspection, testing, and maintenance of resident care-related medical equipment. We selected our sample of nursing homes based on the number of complaint surveys conducted, nursing homes identified as problematic by Division officials, CMS five-star-rated nursing homes as benchmarks for good practice, and facilities that were in close proximity to facilities identified by the audit team as risky. We reviewed approximately 15 pieces of durable medical equipment at each facility for a total of 532 judgmentally selected pieces of equipment and corresponding manufacturer preventive maintenance recommendations. We also viewed all generators at each of the nursing home facilities and reviewed their maintenance and inspection records.

Federal law prevented our auditors from accessing the ASPEN database, which documents all surveys conducted at facilities prior to being released on the Department's website. However, we were able to review the information needed from the surveys on the Department's website. We were able to see deficiencies identified by the surveys, with the exception of any complaints documented by the Department, which are protected by federal law. Also, one facility we reviewed would not allow us to retain documentation we had obtained during our review. The facility ownership also requested we not visit its five other facilities. However, we do not believe these limitations had a significant impact on our overall audit work or conclusions.

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

In addition to being the State Auditor, the Comptroller performs certain other constitutionally and statutorily mandated duties as the chief fiscal officer of New York State. These include operating

the State's accounting system; preparing the State's financial statements; and approving State contracts, refunds, and other payments. In addition, the Comptroller appoints members to certain boards, commissions, and public authorities, some of whom have minority voting rights. These duties may be considered management functions for purposes of evaluating organizational independence under generally accepted government auditing standards. In our opinion, these functions do not affect our ability to conduct independent audits of program performance.

Authority

This audit was performed pursuant to the State Comptroller's authority under Article V, Section 1 of the State Constitution and Article II, Section 8 of the State Finance Law.

Reporting Requirements

A draft copy of this report was provided to Department officials for their review and formal comment. Their comments were considered in preparing this final report and are attached at the end in their entirety, along with our State Comptroller's Comments, which address some of their specific statements. In general, the Department disagrees with our findings and recommendations because some items, such as the Equipment Inventory Form and a nursing home's medical equipment inventory list (if available), are not federally required or because its current practice, such as only documenting the equipment items that surveyors sample that have a deficiency, meets federal requirements. Our responses to certain Department comments are included in the report's State Comptroller's Comments, which are embedded in DOH's response.

Within 90 days of the final release of this report, as required by Section 170 of the Executive Law, the Commissioner of the Department of Health shall report to the Governor, the State Comptroller, and the leaders of the Legislature and fiscal committees, advising what steps were taken to implement the recommendations contained herein, and where recommendations were not implemented, the reasons why.

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Vision

A team of accountability experts respected for providing information that decision makers value.

Mission

To improve government operations by conducting independent audits, reviews, and evaluations of New York State and New York City taxpayer-financed programs.

Agency Comments and State Comptroller's Comments



Department of Health

ANDREW M. CUOMO
Governor

HOWARD A. ZUCKER, M.D., J.D.
Commissioner

SALLY DRESLIN, M.S., R.N.
Executive Deputy Commissioner

August 6, 2018

Mr. Stephen Goss, Audit Director
Office of the State Comptroller
Division of State Government Accountability
110 State Street – 11th Floor
Albany, New York 12236-0001

Dear Mr. Goss:

Enclosed are the Department of Health's comments on the Office of the State Comptroller's Draft Audit Report 2016-S-80 entitled, "Oversight of Resident Care-Related Medical Equipment in Nursing Homes."

Thank you for the opportunity to comment.

Sincerely,

Sally Dreslin, M.S., R.N.
Executive Deputy Commissioner

Enclosure

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**Department of Health
Comments on the
Office of the State Comptroller's
Draft Audit Report 2016-S-80 entitled,
Oversight of Resident Care-Related Medical Equipment
in Nursing Homes**

The following are the Department of Health's (Department) comments in response to the Office of the State Comptroller's (OSC) Draft Audit Report 2016-S-80 entitled, "Oversight of Resident Care-Related Medical Equipment in Nursing Homes."

General Comment

As the Department previously advised OSC, Section 1919(g)(2) of the Social Security Act provides that the State must conduct a standard survey of each nursing facility at least once every 15.9 months. Section 1919(g)(2) also provides that nursing home surveys must be conducted by "a multidisciplinary team of professionals (including a registered professional nurse)" and "[n]o individual shall serve as a member of a survey team unless the individual has successfully completed a training and testing program in survey certification techniques that has been approved by the Secretary." In the absence of meeting these requirements, there is potential for misinterpretation and erroneous conclusions. As acknowledged by OSC, the audit team was not comprised of clinical professionals. This is apparent from several inaccuracies in interpretations of the audit findings leading to OSC's conclusions and recommendations.

State Comptroller's Comment - The audit team does not make clinical determinations. Rather, they test Department actions against its own procedures. We believe they are qualified to perform such tests.

Recommendation #1

Improve oversight of nursing home resident-care medical equipment by:

- Periodically updating the Inventory Form to add types of medical equipment known to be in use at nursing home facilities, such as the DME items identified in this report;
- Using inventories of nursing home facility resident care equipment, if available, to identify whether there are types of equipment in use that are not on the Inventory Form to aid in sample selection; and
- Requiring surveyors to document their equipment samples.

Response #1

The Department disagrees with this recommendation. Response addresses each bullet of the recommendation.

- *Periodically updating the Inventory Form to add types of medical equipment known to be in use at nursing home facilities, such as the DME items identified in this report;*

The Department's Equipment Inventory Form includes medical equipment common to all nursing homes. Recognizing that some nursing homes provide specialized services and, accordingly, have specialized equipment, the Equipment Inventory Form includes an "Other" category or blank space to list any other equipment that a qualified Life Safety Code (LSC) surveyor may consider for review. The non-federally required Equipment Inventory Form was developed by federally trained Department surveyors as a job aid to assist in the LSC survey process. It was not intended to be all-inclusive in the ever-changing world of health care technology.

The Equipment Inventory Report Form is not the sole source of information federally trained surveyors use to identify resident care medical equipment and determine compliance with regulatory requirements regarding resident care medical equipment. The survey process includes surveyor observation, record review, and interview of nursing home staff and residents in all aspects of service delivery and facility operations, including the maintenance of equipment. Both health and LSC surveyors observe equipment in resident areas. LSC surveyors inspect all facility common areas, service areas and a prescribed percentage of resident rooms. Any equipment issues noted would be subject to further investigation. Health surveyors report any equipment issues observed to the LSC surveyor for further investigation. Equipment maintenance issues are then identified and cited, as appropriate. The Department carries out this survey process consistent with all CMS requirements.

OSC reports they identified three pieces of equipment (heart monitors, electrocardiograms and dialysis machines) that were cited as not being on the Department's Equipment Inventory Form, and cited instances at specific nursing homes in which those types of equipment were present at the facility but not included on the inventory form. The dialysis machines that are referenced in the report are equipment that are part of a separate and distinct dialysis unit that is not operated by the nursing home. This Dialysis Unit operated by a separately-licensed entity, is not the responsibility of the nursing home, and therefore was inaccurately included in OSC's sample as it is not part of the nursing home LSC survey.

State Comptroller's Comment - During the audit, the Department told us that the dialysis unit was not operated by the nursing home. At that time, we spoke to nursing home officials and they told us that they were responsible for maintaining and inspecting the dialysis machines in their facility. Therefore, we question why the Department states that they are not the responsibility of the nursing home.

The referenced "heart monitors" are actually three-lead portable battery-operated electrocardiograms. Electrocardiograms would be captured under "Other" or blank space. OSC's evidence does not support this recommendation.

State Comptroller's Comment - Although the Department states that the electrocardiograms would be captured under "Other" or in a blank space on the Inventory Form, as we state on page 8 of the report, some facilities were not including such items on the Form. The Inventory Form lists 18 types of Durable Medical Equipment, as well as 14 items of Resident Personal Belongings, and 11 Therapy/Personal Hygiene items. With so many items listed, an item not specifically listed could be easily overlooked when the Form is being completed. While omission of several items are not critical errors, we believe expanding the list periodically could provide the surveyors with a more complete list.

- *Using inventories of nursing home facility resident care equipment, if available, to identify whether there are types of equipment in use that are not on the Inventory Form to aid in sample selection.*

This finding is based on a false premise. There are no federal or State regulations that require nursing homes to keep medical inventory equipment lists and therefore no requirement for nursing homes to keep these inventories.

State Comptroller's Comment - We agree that there are no federal or State regulations that require nursing homes to keep medical inventory equipment lists and we don't state that there are such requirements. Nonetheless, we found during our site visits that some facilities maintain such lists. In these cases, we believe the survey teams could use such lists as another tool to assist them to identify equipment in use at the facility that may have been inadvertently omitted from the Inventory Form.

Regulation requires that facilities identify the equipment required to meet its residents' needs for both day to day operations and in emergency situations and are responsible for having an effective system in place to ensure proper maintenance of patient care-related equipment.

- *Requiring surveyors to document their equipment samples.*

The report makes several references to the Department not documenting the sample selection and review process for the pieces of equipment selected for review, noting that Sanitarians may only be documenting equipment determined to be deficient.

Throughout both the State Operations Manual (which includes Appendix P-Survey Protocol for Long Term Care Facilities, Appendix PP-Guidance to Surveyors for Long Term Care Facilities and Exhibit 7A-Principles of Documentation) and Basic Health Facility Surveyor Training, the emphasis and direction is focused on identifying negative outcomes that amount to a deficient practice and documenting it. We would compare it to what OSC does with audits where you only cite the deficiency.

State Comptroller's Comment - The Department states that we only cite deficiencies in our audits. However, we report by exception and use a balanced reporting format where we put our findings into context. Therefore, the report reader understands the materiality of our exceptions.

The federally prescribed survey process identifies compliant practice with federal and State regulations, but requires documentation only of deficient practice. As such, the evidence must provide the underlying reason, basis or rationale for the findings of noncompliance with the federal regulatory requirement(s) with detailed documentation of observations of deficient practice. This assists the provider in identifying when and where the deficient practice occurred.

OSC inaccurately states that because there is no requirement for surveyors to document what equipment pieces they select for review; the Division has limited information on the types of items tested and limited assurance that surveyors test the required number of equipment items.

State Comptroller's Comment - As we state on page 9 of the report, six of the seven offices do not document the equipment items they selected for review or the method used for the selection. Therefore, the Department is not able to determine how many items the surveyors actually tested, nor the selection methodology they used. For example, surveyors may limit their selection to items in one section of the nursing home.

The Department monitors regional citation rates for electrical equipment testing and maintenance to identify potential area office inconsistency or potential survey process noncompliance. There is no evidence to support OSC's untrained opinion, that documenting equipment reviewed which is not required under the federally prescribed survey process would improve the survey process in identifying facility noncompliance with electrical equipment testing and maintenance regulations.

Recommendation #2

Formally evaluate whether equipment sample sizes should be based on factors such as the size of a facility's medical equipment inventory and facility prior survey histories.

Response #2

The Department disagrees with this recommendation.

As OSC noted, there is nothing in Federal regulations based on either NFPA 99 or 101 that specifies the number of pieces of equipment that should be reviewed on survey. The selection of a specific number of Resident Care Related Electrical equipment to review on survey was established by a work group of federally trained Department Sanitarians. As with all other federal survey tasks, a sample is chosen for review. Facility census is already currently factored into the selection sample size as noted in OSC's report. Federally trained surveyors do consider several factors when deciding what equipment to sample including OSC's recommendation to include a facility's prior survey history. Other factors considered include complaints received since the last survey and identified concerns based on federally trained observations, record reviews and interviews noted during the survey.

State Comptroller's Comment - As we state on page 9 of the report, six of the seven offices do not document the equipment items they selected for review or the method used for the selection. Therefore, the Department is not able to determine how many items the surveyors actually tested, nor the selection methodology they used. For example, surveyors may limit their selection to items in one section of the nursing home.

There is no evidence to support OSC's finding that the Department's sample size is inadequate.

State Comptroller's Comment - We do not state that the Department's sample size is inadequate. However, we question whether a standard sample size should be used for every nursing home based simply on the number of beds.

While OSC states that none of the 36 facilities maintained all the equipment items they sampled in accordance with manufacturer recommendations, OSC agreed that many of these were nursing homes that the Department had not yet surveyed under the new regulation.

Additionally, the Department cited facilities in 152 instances between 11/1/16 (date regulation took effect) to 7/19/18 for noncompliance with this requirement.

Finally, the OSC report identified only two isolated instances of equipment in varying stages of disrepair during 36 site visits: A single transport wheelchair that appeared to be covered by rust, mold, and/or mildew and a single suction machine, covered in a thick layer of dust. Manual wheelchairs are not Resident Care Related Electrical equipment. Observations of both a soiled manual wheelchair and a suction machine covered with dust would not be cited under LSC but, rather as an issue under a health citation. This lack of significant findings further supports the fact there is no evidence to support OSC's opinion that the Department's sample size is inadequate in identifying facility noncompliance with electrical equipment testing and maintenance regulations.

Recommendation #3

Remind facilities of the requirements for preventive maintenance of medical equipment and generator tests and recordkeeping of these activities.

Response #3

CMS issued S&C:16-29-LSC to providers on June 20, 2016 notifying them of the adoption of the 2012 edition of the National Fire Protection Association (NFPA) 101-Life Safety Code (LSC) and 2012 edition of the NFPA 99-Health Care Facilities Code (HCFC) and its intent to begin surveying facilities for compliance on November 1, 2016.

The Department also provided additional guidance to nursing home facilities on these requirements through a Dear Administrator Letter (DAL) on January 26, 2017 reminding them that CMS had adopted by regulation the 2012 edition of the National Fire Protection Association (NFPA) 101- Life Safety Code (LSC), and all its referenced standards.

The Department also reinforced its guidance by conducting in person Life Safety Technical Assistance workshops for providers in collaboration with New York State Long Term Care associations to assist nursing homes to be compliant with new life safety code requirements. These workshops occurred on 10/10/17 (Rensselaer, NY), 10/23/17 (Queens, NY), 11/3/17 (Buffalo, NY), 11/8/17 Syracuse, NY and 11/13/17 (Lake Placid, NY) and 11/29/17 in Uniondale, NY.

The Department agrees ongoing education is important and has already taken steps to address. The Department will reissue a DAL in August/September 2018 reminding nursing homes of the requirements specifically related to the preventive maintenance of medical equipment and generator tests and record keeping of these activities. The Department is committed to protecting the health and safety of New York State's nursing home residents. The Department's ongoing surveillance of nursing home operations ensures residents receive high quality services that are consistent with federal and State regulations.