



Department of Health

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Executive Deputy Commissioner

December 18, 2018

Mr. Kenneth Shulman
Assistant Comptroller
New York State Office of the State Comptroller
110 State Street, 10th Floor
Albany, New York 12236

Dear Mr. Shulman:

Pursuant to the provisions of Section 170 of New York State Executive Law, I hereby transmit to you a copy of the New York State Department of Health's comments related to the Office of the State Comptroller's final audit report 2016-S-80 entitled, "Oversight of Resident Care-Related Medical Equipment in Nursing Homes."

Please feel free to contact Estibaliz Alonso, Assistant Commissioner, Office of Governmental and External Affairs at (518) 473-1124 with any questions.

Sincerely,

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

Enclosure

cc: Estibaliz Alonso

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

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 agrees with the second bulleted recommendation and disagrees with the first and third bulleted recommendations:

- 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 is not a CMS required surveillance tool; it 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. OSC's comment on page 2 of the audit report states "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 Department again verified this is an independent separate entity with its own operating certificate, entrance and administration and therefore not part of the nursing home (NH) process. This dialysis unit is surveyed under the End Stage Renal Disease (ESRD) hospital program surveillance. The facility advertises "in-house dialysis services," and the dialysis unit does treat in-house nursing home residents.
- 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. OSC's comments agreed with this statement. The recommendation that the facilities maintain an inventory list does have the potential to assist the Federally

trained surveyor; therefore, if a NH does maintain an inventory list, the LSC surveyor will review this list and use it in conjunction with the Department's Equipment Inventory Form.

- Through the Federally prescribed survey process, Department surveyors determine whether a nursing home's operations comply with Federal and State regulations. The survey rules identify compliant practice; however, require 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's comment on page 18 of the report states, "...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 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:

- There is no evidence to support OSC's finding that the Department's sample size is inadequate. 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 and modeled after the hospital program. 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.

Recommendation #3

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

Response #3

The Department agrees with this recommendation:

- The Department agrees ongoing education is important and has already taken steps to address the recommendation. The Department reissued DAL NH 18-04 Inspection & Maintenance of Patient Care Related Electrical Equipment and Generator Testing (POREE) (PDF) - August 21, 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.