



PERFORMANCE AUDIT REPORT

Kansas' Nursing Home Inspections: A K-GOAL Audit Determining Whether They're Carried Out In a Reasonable Manner

**A Report to the Legislative Post Audit Committee
By the Legislative Division of Post Audit
State of Kansas
December 2001**

Legislative Post Audit Committee

Legislative Division of Post Audit

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November 27, 2001

To: Members, Legislative Post Audit Committee

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This report contains the findings, conclusions, and recommendations from our completed performance audit, *Kansas' Nursing Home Inspections: A K-GOAL Audit Determining Whether They're Carried Out In a Reasonable Manner*.

The report includes a recommendation for the Department to take several actions that will help ensure that nursing home inspections are conducted as accurately and consistently as possible.

We would be happy to discuss this recommendation or any other items in the report with any legislative committees, individual legislators, or other State officials.

Barbara J. Hinton
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EXECUTIVE SUMMARY

LEGISLATIVE DIVISION OF POST AUDIT

Overview

Kansas law makes the Department of Health and Environment responsible for licensing and regulating adult care facilities. This audit focused on the Department's oversight of long-term care nursing facilities (referred to throughout this report as nursing homes) for the elderly and mentally ill. page 3

To comply with State law and federal regulations, the Department must inspect each nursing home at least once every 15 months. Inspections are conducted to determine whether nursing homes are deficient in one or more practices required by State or federal regulations. Deficiencies are rated based on classification guidelines established by the Health Care Financing Administration in 1994, and are classified into one of 12 categories (A - L) according to their scope (the number of residents potentially or actually affected) and their severity (the harm or risk of harm to residents).

Question: Does the Department of Health and Environment's Nursing Home Inspection Program Ensure That All Nursing Homes Are Treated Consistently and Fairly?

For the 16-month-period through June 30, 2001, Department inspectors cited more than 5,000 deficiencies in Kansas nursing homes. page 8
Inspectors look at many issues when inspecting a nursing home, including residents' rights, quality of life, quality of care, and nursing services. Most deficiencies cited during this period were at the lower severity levels (A-F), however, about 15% were classified as "G-level" or above. Legislators and industry association officials we talked with said their primary concern was with deficiencies classified as "G" or higher.

Most Department staff think they receive adequate training on classifying deficiencies. page 9
About 85% of the respondents said that the training they received about how to recognize and classify deficiencies was adequate, and that the "G" and above deficiencies their inspection teams cited were properly classified.

We saw little evidence indicating Department inspectors were incorrectly classifying G-level and above deficiencies. page 10
More than 95% of the G-level and above deficiencies we reviewed appeared to be classified correctly. These deficiencies included issues such as excessive weight loss (one resident lost about 9% of his body weight in one month), pressure sores not being cared for properly, and failure to prevent repeated falls by a resident. Federal officials don't conduct many comparative inspections, but the results of recent inspections generally supported the Department's findings.

Although most nursing home administrators think higher-level deficiencies are classified incorrectly, relatively few appeal the Department’s findings. page 12
Less than half of the administrators who responded to our survey thought Department inspectors properly classified deficiencies, particularly those deficiencies classified as “G” or higher. Administrators who think inspection teams have incorrectly classified deficiencies can appeal that decision. Only about 6% of the deficiencies cited during a recent 8-month period were appealed to the regional manager. Nursing home administrators expressed several concerns about the Department’s appeals process, saying it’s difficult to get an impartial hearing, information they provide isn’t considered during appeals, and they’re afraid the Department will retaliate against them.

Significant regional differences exist in the number of deficiencies cited at nursing homes, but there’s little solid evidence to explain why. page 14
For the 16-month-period through June 30, 2001, the average number of deficiencies cited per resurvey inspection ranged from a high of 12.4 deficiencies in the South Central region, to a low of 4.2 in the West region. Although many nursing home administrators think inspection teams aren’t consistent, administrators in regions with the highest number of deficiencies cited were much more critical of the Department’s inspectors than were their counterparts in other regions of the State. Department officials theorize that regional differences in the number of deficiencies cited may reflect real disparities in the conditions of nursing homes. When we accompanied inspection teams from each of the 6 regions, we saw a few situations that represented real or potential inconsistencies among inspectors.

Some Department practices may contribute to inconsistencies among inspection teams, or could be changed to better identify and address the inconsistencies that do exist. page 18
They include: the Department hasn’t provided inspectors with clear guidance on when it’s appropriate to discuss a concern with a nursing home instead of citing it as a written deficiency, a recent change in how training is conducted could exacerbate regional differences, and the Department could refocus at least some of its current quality assurance systems on evaluating whether inspectors are making the “correct” decisions.

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APPENDIX B: Agency Response page 28

This audit was conducted by Joe Lawhon, John Curran, and Carol Porter. Cindy Lash was the audit manager. If you need any additional information about the audit’s findings, please contact Mr. Lawhon at the Division’s offices. Our address is: Legislative Division of Post Audit, 800 SW Jackson Street, Suite 1200, Topeka, Kansas 66612. You also may call us at (785) 296-3792, or contact us via the Internet at LPA@lpa.state.ks.us.

Kansas' Nursing Home Inspections: A K-GOAL Audit Determining Whether They're Carried Out In a Reasonable Manner

The Kansas Governmental Operations Accountability Law (K-GOAL) requires Legislative Post Audit to conduct a performance audit of the Department of Health and Environment in time for the 2002 Legislature's consideration. The purpose of K-GOAL audits is to periodically review selected agencies, identify areas of inefficiency and ineffectiveness, and provide information for potential legislative action to modify or terminate ineffective or unneeded operations.

By law, the Department is responsible for licensing nursing homes, certifying them for Medicare and Medicaid participation, and investigating reports of abuse, neglect, or exploitation of nursing home residents. The Department has adopted rules and regulations to promote safe, proper, and adequate treatment and care of nursing home residents. It also can fine nursing homes or suspend or revoke their licenses for failure to comply with State laws or regulations.

Recently legislators have heard complaints about alleged or potential abuses in the Department's nursing home inspection program. For example, it was reported that Veterans Administration regulators praised the Kansas Veterans Home (formerly a part of the Winfield State Hospital) as a model facility for veterans, but Department inspectors cited the facility for a number of regulatory violations that prevented the admission of patients for several weeks. These complaints raised legislative questions about whether program staff have become overzealous in their enforcement of State regulations.

This performance audit answers the following question:

Does the Department's nursing home inspection program ensure that all nursing homes are treated consistently and fairly?

To answer this question, we reviewed Kansas law and various federal and Departmental policies and procedures. We interviewed officials from the Department, from the Kansas Veterans Home, and from several nursing homes, federal agencies, and associations that represent Kansas nursing homes. We also surveyed Department staff and nursing home administrators about the Department's inspection program and enforcement efforts.

As part of our analyses, we reviewed a sample of deficiencies written by Department staff to see if we agreed with the scope and severity classification they'd assigned. We also analyzed Department data on the number and type of deficiencies written and routine inspections conducted, and on the number and outcome of appeals by nursing home administrators. We also accompanied nursing home inspection teams on parts of 6 routine inspections.

A copy of the scope statement the Legislative Post Audit Committee approved for this audit is included in Appendix A.

In conducting this work, we followed all applicable government auditing standards set forth by the U.S. General Accounting Office. Our findings begin on page 3, following an overview.

An Overview of the Department of Health and Environment's Nursing Home Regulatory Program

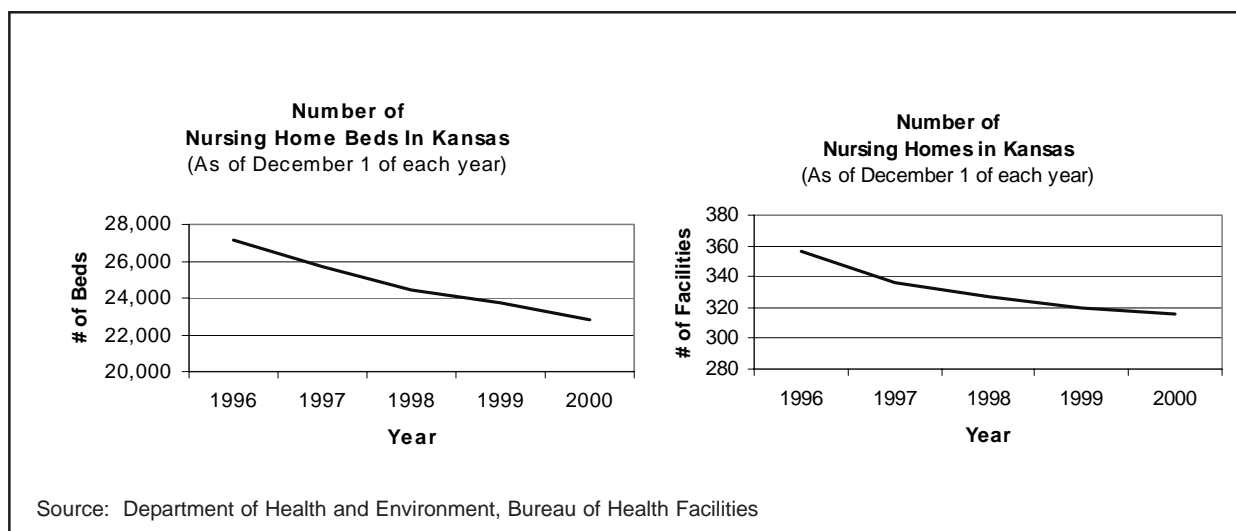
Kansas law makes the Department of Health and Environment responsible for licensing and regulating adult care facilities. This term is broad, and includes nursing facilities (for the elderly, disabled, and mentally ill), mental retardation facilities, residential health care facilities, assisted living facilities, and personal care facilities. The table below shows the number of facilities operating in Kansas as of July 31, 2001.

Types of Adult Care Home Facilities Operating in Kansas	
Type of Facility	# of Facilities
<i>Nursing Homes for the Elderly (long-term care)</i>	314
<i>Nursing Homes for Mental Health</i>	13
Mental Retardation Facilities	35
Residential Health Care Facilities	52
Assisted Living Facilities	94
Boarding Care Homes	39
Home Plus	43
Adult Day Care	11
Total	601

Source: Department of Health and Environment, Bureau of Health Facilities

This audit focused on the Department's oversight of long-term care nursing facilities (referred to throughout this report as nursing homes) for the elderly and mentally ill.

As the accompanying graphs show, the number of licensed nursing homes and beds has fallen in recent years.



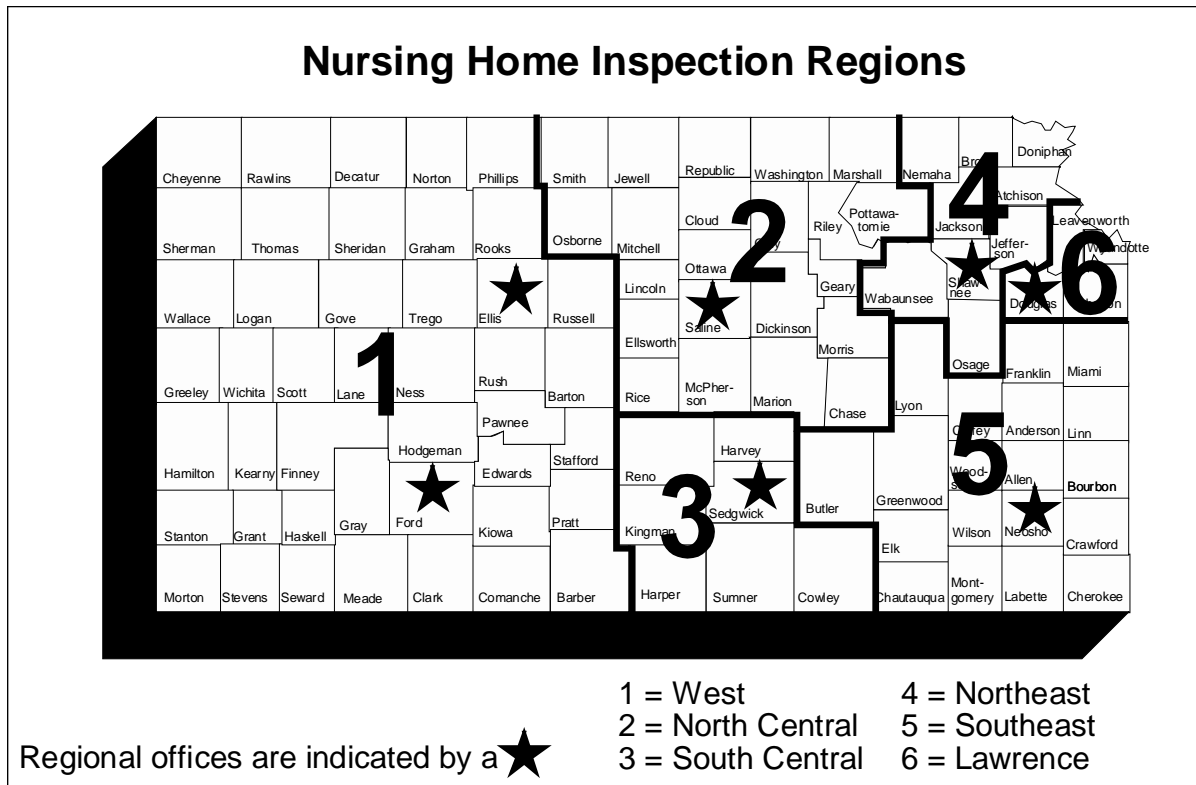
Nursing Homes in Kansas Are Subject to Both Federal and State Regulation

Most Kansas nursing homes receive payments from the Medicare or Medicaid programs. Medicare pays the cost of caring for elderly and disabled people, while Medicaid pays the cost of caring for needy individuals. To participate in these federal programs, nursing homes must meet certain federal operating standards.

At the federal level, the Centers for Medicare and Medicaid Services (formerly known as the Health Care Financing Administration) establishes regulations for nursing homes. This agency has developed a set of very detailed regulations governing health, safety, and sanitation issues for nursing homes.

It also has developed a corresponding set of inspection guidelines, based on those regulations, that are used to inspect nursing homes nationwide. The agency contracts with each state's nursing home regulatory agency to conduct nursing home inspections.

All nursing homes licensed to operate in Kansas also must meet State licensing regulations. Those regulations are similar to the federal regulations in many ways, and cover areas such as residents' rights, quality of life, quality of care, and nursing services.



***Federal Regulations
Require Nursing Homes
To Be Inspected at Least
Once Every 15 Months***

To comply with State law and federal regulations, the Department must inspect each nursing home at least once every 15 months. These inspections are conducted out of 6 regional offices located across the State. The map on page 4 shows the location of these offices and the counties they serve.

Typically, a team of 2-4 inspectors will spend about a week to complete a regular inspection of a nursing home. These regular inspections, referred to as resurveys, are one of 4 types of nursing home inspections conducted by the Department.

Types of Nursing Home Inspections		
Type	Description	# of Inspections Conducted In FY 2001
Initial	Inspection conducted before a facility opens	6
Resurvey	Inspection required by State and federal law to be conducted on average every 12 months, but not less than once every 15 months per home	356
Revisit	Return inspection conducted to determine whether deficiencies found in other inspections have been corrected	685
Complaint Investigation	Inspection conducted when the Department receives complaints regarding a facility	3,065 (a)
(a) This is the number of complaints investigated. Multiple complaints may be handled in one inspection.		
Source: Department nursing home database		

Inspections are conducted to determine whether nursing homes are deficient in one or more practices required by State or federal regulations. Some of the activities inspectors perform to help identify deficiencies include:

- interviewing residents, residents' family members, and nursing home staff
- reviewing nursing home policies, procedures, and resident files
- inspecting the condition of the home, including the kitchen
- observing resident care given by nursing home staff
- observing and examining residents

At the end of each inspection, team members meet to discuss and jointly decide what deficiencies, if any, the home should be cited for. Any serious deficiencies are discussed with the regional manager to make sure they're classified correctly.

Deficiencies are rated based on classification guidelines established by the Health Care Financing Administration in 1994. As shown in the accompanying table, deficiencies are classified into one of 12 categories (A - L) according to their scope (the number of residents potentially or actually affected) and their severity (the harm or risk of harm to residents).

Scope and Severity of Deficiencies			
Severity	Scope		
	Isolated	Pattern	Widespread
Immediate Jeopardy: Residents are at immediate risk for serious injury or death (for example, the hot water temperature in a nursing home exceeded 180 degrees)	J	K	L
Actual Harm: Residents' ability to reach their highest physical and mental well-being is compromised (for example, a resident lost too much weight)	G	H	I
Potential for More Than Minimal Harm: Minimal harm or discomfort to residents or the potential of actual harm to residents (for example, a non-ambulatory resident wasn't repositioned as frequently as required, increasing the risk of pressure sores)	D	E	F
Potential for Minimal Harm: Potential of no more than minimal harm to residents (For example, resident records were stored improperly)	A	B	C

Source: Health Care Financing Administration

Some of the more serious deficiencies commonly cited by Department inspectors include:

- failure to prevent or care for resident pressure sores. Pressure sores or bedsores occur when a person, particularly anyone confined to a bed or a wheelchair, sits or lies in the same position for a very long time. These sores can become serious or even life-threatening if they are left untreated or if they become infected.
- lack of adequate supervision or use of assistive devices to prevent accidents. Assistive devices include such things as body alarms, bed rails, and pillows that may stop residents from falling and hurting themselves.
- failure to maintain acceptable nutritional status. Nutritional status most often refers to maintaining a healthy body weight.

When nursing homes are out-of-compliance with regulations, the Department can apply a number of sanctions. When Department inspectors find deficiencies during an inspection or complaint investigation, the nursing home is required to submit a plan of correction showing how and when it will correct the violations. Depending on the severity of the deficiencies, the Department can take several actions, including:

- issuing a correction order
- denying payment for new or all Medicare or Medicaid residents
- assessing an immediate fine of up to \$10,000
- terminating the provider agreement with the nursing home

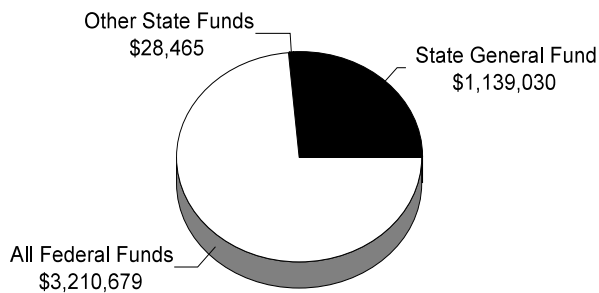
**Kansas Department of Health and Environment, Bureau of Health Facilities
Nursing Home Inspection Activity (a)
AT A GLANCE**

Authority: K.S.A. 1999 Sup. 39-923 et seq. grants the Department of Health and Environment the authority to license and regulate adult care homes (including nursing homes). The Department's Bureau of Health Facilities carries out most of these duties.

Staffing: In FY 2001, a total of 82 full-time-equivalent positions in the Health Facilities Bureau were devoted to inspecting nursing homes and administering the nursing home program.

Budget: Funding comes largely from federal Title XIX (Medicaid) and Title XVIII (Medicare) funds. For FY 2001, about \$4.4 million was spent on inspecting nursing homes, as shown below.

FY 2001 Funding Sources



FY 2001 Expenditures

Type	Amount	% of Total
Salaries/Wages	\$3,377,886	77%
Contractual Services	767,809	17%
Commodities	35,463	1%
Capital Outlay	73,902	2%
Transfers	123,114	3%

Total Funding: \$4,378,174

Total Expenses: \$4,378,174 100%

Source: Department of Health and Environment, Bureau of Health Facilities

(a) For FY 2001, Health Facilities Program staff spent 71% of their time on activities related to inspecting nursing homes. This percentage was used to estimate the number of full-time-equivalent positions, funding sources, and expenditures attributable to the inspection of nursing homes.

Does the Department of Health and Environment's Nursing Home Inspection Program Ensure That All Nursing Homes Are Treated Consistently and Fairly?

For the 16-month period through June 30, 2001, Department inspectors cited more than 5,000 deficiencies in Kansas nursing homes. We saw little evidence indicating Department inspectors were classifying serious deficiencies incorrectly—more than 95% of the serious deficiencies we reviewed appeared to be classified correctly. Although most nursing home administrators think serious deficiencies are classified incorrectly, relatively few appeal the Department's findings. Only about 6% of the deficiencies cited during a recent 8-month period were appealed, and about one-fifth of those were either reduced or dropped altogether. Significant regional differences exist in the number of deficiencies cited at nursing homes, but there's little solid evidence to explain why. Some Department practices may contribute to inconsistencies among inspection teams, or could be changed to better identify and address the inconsistencies that do exist. These and other findings are discussed in the sections that follow.

For the 16-Month Period Through June 30, 2001, Department Inspectors Cited More Than 5,000 Deficiencies In Kansas Nursing Homes

Department inspectors may identify a deficiency during any type of inspection, but most are found during regular inspections, called resurveys. As the following table shows, most deficiencies cited during this period were at the lower severity levels (A-F). However, about 15% were classified as G-level or above.

Scope and Severity of Deficiencies Issued				
March 1, 2000, through June 30, 2001				
Severity	Scope			Percent
	Isolated	Pattern	Widespread	
Immediate jeopardy	J = 1%	K = < 1%	L = 0%	15%
Actual harm	G = 11%	H = 2%	I = 0%	
Potential for more than minimal harm	D = 47%	E = 24%	F = 11%	85%
Potential for minimal harm	A = <1%	B = <1%	C = 2%	

Source: LPA analysis of Department nursing home database

A report issued by the U.S. General Accounting Office in September 2000 showed that Kansas ranked 9th out of 38 states in the percentage of nursing homes cited for serious deficiencies during a preceding 18-month period.

Even though most of the deficiencies cited fell into the A-F ranges, legislators and industry association officials we talked with said their primary concern was with deficiencies classified as “G” or higher. Because receiving a G-level or higher deficiency can trigger serious consequences for homes (see the accompanying box), it’s important that those deficiencies be classified accurately, and not higher than they should be. Industry officials also expressed concerns that Department inspectors weren’t consistent from region-to-region in the number and type of deficiencies they cited. These concerns are addressed separately in the sections that follow.

**Categorizing Deficiencies Higher Than Conditions Warrant
Can Have Adverse Effects on the Public as Well as on Nursing Homes**

One goal of government regulation is to protect the public. It’s not unreasonable for concerns to arise about whether nursing home inspectors are doing a thorough job of identifying problems that pose a risk to elderly and disabled residents. However, nursing home administrators and the public also have reason to be concerned that Department staff don’t assign a deficiency at a higher level than conditions merit. These concerns are heightened when a G-level or above deficiency is cited. For example:

1. The results of recent inspections can be reviewed at a federal government website (www.medicare.gov) and are required to be available for review at each nursing home. Families interested in placing someone at a particular nursing home may compare its recent inspection results to those of other nursing homes under consideration. It’s important to families and facilities that the conditions in the nursing home are evaluated accurately.
2. The results of recent inspections are used by insurance companies and underwriters to determine whether to continue providing liability insurance coverage for nursing homes and whether to increase premium rates for that coverage. Insurance industry officials told us they view a G-level deficiency as quite serious, and it could adversely impact a nursing home’s ability to obtain insurance coverage.
3. Depending on the severity of the deficiencies and whether G-level deficiencies were received in back-to-back inspections, a nursing home might not be allowed to receive payment for services rendered to any new Medicare or Medicaid patients it takes in, or it could be totally prohibited from admitting any new patients. These actions could severely reduce the revenue earned by the home, and limit the choices of homes for Medicare and Medicaid patients.

**FINDINGS RELATED TO THE
CLASSIFICATION OF DEFICIENCIES**

***Most Department Staff
Think They Receive
Adequate Training on
Classifying Deficiencies***

Department inspectors receive information about classifying violations of federal or State nursing home regulations from a number of sources. First, newly hired inspectors receive about 9 weeks of training on all aspects of the inspection process, including the classification of deficiencies. Second, the Centers for Medicare and Medicaid Services has prepared guidance documents that contain information about how deficiencies should be classified. In addition, the Department has prepared additional documents that provide guidance about how various regulations should be interpreted and how deficiencies should be classified.

During this audit we surveyed 80 Department staff (predominantly inspectors) about various aspects of the Department’s inspection program. In all, 73% responded. About 85% of the respondents

said that the training they received about how to recognize and classify deficiencies was adequate, and that the “G” and above deficiencies their inspection teams cited were properly classified.

***We Saw Little Evidence
Indicating Department
Inspectors Were
Incorrectly Classifying
G-Level and Above
Deficiencies***

To assess whether Department inspectors were correctly classifying serious deficiencies, we reviewed a sample of 60 G-level and above deficiencies issued from March 1, 2000, through June 30, 2001. Those deficiencies involved 44 nursing homes. We also reviewed the results of recent federal evaluations.

In evaluating the accuracy of the deficiencies in our sample, it’s important to remember that we were limited to reviewing the inspection teams’ write-ups, comparing those against the classification criteria, and deciding if we agreed with the assigned scope and severity classifications. There was no way for us to ascertain whether those write-ups accurately reflected the situations that existed at each nursing home at the time. However, for a subset of the deficiencies in our sample, we did review the inspector’s notes to ensure that those notes matched what had been reported.

More than 95% of the G-level and above deficiencies we reviewed appeared to be classified correctly. We agreed with the scope and severity classification for 58 of the 60 deficiencies we reviewed (97%). The box on page 11 shows some examples of deficiencies we agreed with. For the following 2 deficiencies, we thought the documentation assembled by the inspectors was insufficient to support a G-level deficiency:

- **In one case, the nursing home failed to complete an assessment of a resident within 2 weeks after a significant change in the resident’s condition.** When a resident’s condition significantly changes, the nursing home is required to do an assessment to determine if the care the resident is receiving should be changed. For one resident, the nursing home didn’t complete the assessment and was cited for a G-level deficiency as a result. G-level deficiencies are cited when harm is done to one or a small number of residents as a result of the home’s deficient practices. We agreed that the home should be cited for failing to do the assessment, but we saw no documentation that the resident in question was harmed.
- **In the other case, the nursing home didn’t resolve a resident’s grievance concerning the nursing home’s improper use of the resident’s funds.** The nursing home took \$95 of the resident’s personal funds without authorization to pay the resident’s outstanding balance to the home. The nursing home was given a G-level deficiency for the unauthorized use of resident funds and was given another G-level deficiency for not resolving the issue after the resident complained. Such deficiencies require the inspection team to document either physical or mental harm to a resident. While we agreed the nursing home should be given a deficiency for improperly using resident funds, we questioned the classification of the second G-level deficiency. The documentation we saw in the inspection file didn’t clearly show the extent to which the resident was upset or mentally harmed from the nursing home’s failure to resolve his grievance.

Department officials told us they thought 1 deficiency was classified correctly, but acknowledged the other could have been classified at a lower severity level, given the documentation in the files.

Federal officials don't conduct many comparative inspections, but the results of recent inspections generally supported the Department's findings. In a comparative inspection, inspectors from the Centers for Medicare and Medicaid Services inspect a nursing home within approximately one month of the Department's inspection, then compare the deficiencies cited by both inspection teams to see if similar results were found and, if not, why not.

At the time this report was written, federal inspectors had conducted 3 comparative inspections in Kansas in 2001. In 2 of those inspections, federal inspectors generally agreed with the Department's findings. However, in one case federal inspectors thought the Department's inspectors had under-identified deficiencies. In response, the Department volunteered to address possible problems by providing training.

Examples of Deficiencies That Were Classified Correctly

Almost all the G-level or above deficiencies we reviewed appeared to be classified correctly, when compared with federal classification criteria. Here are some typical examples of the types of deficiencies cited:

- An inspector observed a resident sitting next to a window in an open room with her blouse open. Although a nursing home staff member served the resident a meal, no attempt was made to cover the resident for over 2 hours. Federal regulations require that the facility must promote care for residents in a manner and in an environment that maintains or enhances each resident's dignity and respect.
- An inspector found that a resident lost 16 pounds, or about 9% of his body weight in one month. The inspector noted that the resident was unable to feed himself and the facility didn't provide proper assistance during meals. Federal regulations require that residents maintain "acceptable" body weight. Federal guidance to inspectors classifies any weight loss greater than 5% of the resident's body weight in one month as severe.
- An inspector saw that a resident had several pressure (bed) sores and noted that nursing home wasn't caring for the resident as her doctor ordered. The nursing home was cited for failing to prevent a resident from developing avoidable pressure sores and not providing the necessary treatment to promote healing of pressure sores as required by federal regulations.
- A nursing home documented that a resident had a history of falls and planned to use a personal alarm and a wheelchair belt to prevent the resident from future falls. Even with these interventions in place, the resident still fell 8 times; one fall resulted in broken bones. The Department cited the nursing home for not revising how it was caring for the resident when the interventions it had put in place weren't successful. Federal regulations require nursing homes to provide adequate supervision and assistive devices to prevent accidents – such as falls.

Although Most Nursing Home Administrators Think Higher-Level Deficiencies Are Classified Incorrectly, Relatively Few Appeal the Department's Findings

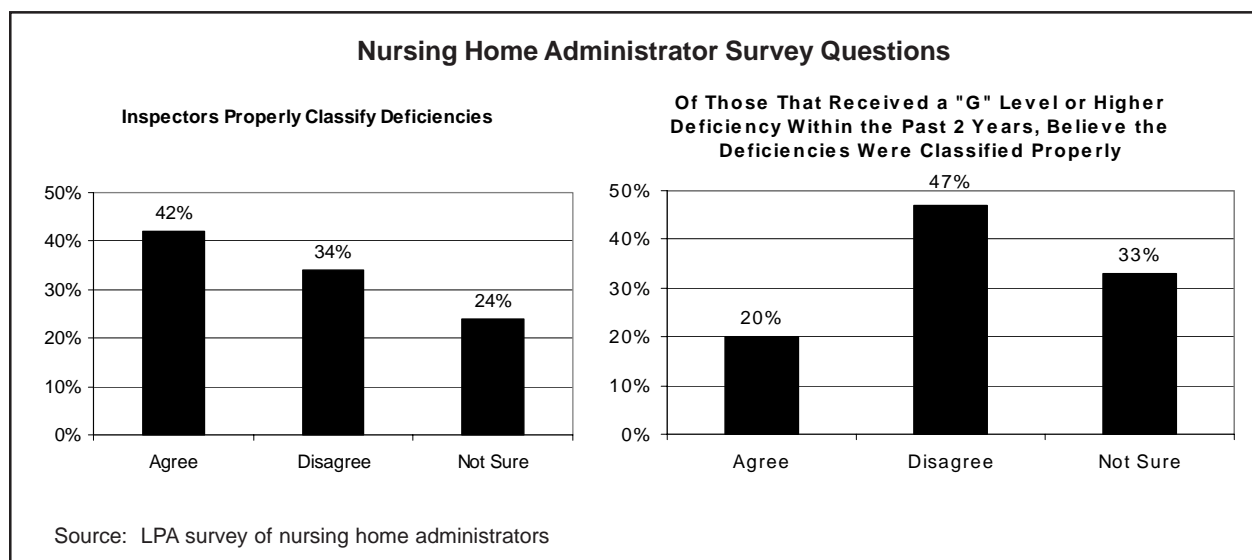
During this audit, we also surveyed more than 325 nursing home administrators about the Department's inspection program. More than 60% responded, and almost two-thirds of the respondents wrote additional comments on the survey. (The box below includes some typical comments administrators made about the appeals process.)

Nursing Home Administrators' Comments About the Appeal Process

- I believe it's very hard for a regional manager to give a totally unbiased examination in an informal conflict resolution, when the findings of the inspection staff are being questioned.
- There is no neutral 3rd party to mediate, thereby violating one of the primary principles of dispute resolution.
- We felt as though we were penalized by retribution or harsher treatment for using the appeal process.
- We have had bad experiences in the past with appealing survey finding. This caused us to be reluctant to challenge any more findings. We felt we were penalized for challenging results when the surveyors came in for our next survey.
- I have never had a case when appealing made any difference.
- In my experience, an appeal is an exercise in futility.

Source: LPA survey of nursing home administrators

As might be expected, nursing home administrators had a much different view about the classification of deficiencies than Department staff. As the graphs below show, few administrators thought Department inspectors properly classified deficiencies, particularly those deficiencies classified as "G" or higher.



Administrators who think inspection teams have incorrectly classified deficiencies can appeal that decision. Federal regulations require states to offer “informal” dispute resolution to nursing homes that disagree with the findings of an inspection. If administrators continue to think that the fines or other remedies imposed were too harsh, they can file an appeal with the U.S. Department of Health and Human Services and have their case heard by a federal administrative law judge. Beyond that, an appeal could be taken to the courts.

The Department’s informal dispute resolution process allows for 2 levels of appeal: first to the regional manager, then to the central Bureau management.

Only about 6% of the deficiencies cited during a recent 8-month period were appealed to the regional manager. The table below summarizes the number of appeals administrators made to the Department. (Federal officials told us they received only 5 appeals from Kansas nursing homes during this period, and that none were taken to court.)

Deficiencies Appealed to the Department January 1 through August 31, 2001				
Informal Dispute Resolution With:	Description	# of: Deficiencies Appealed / Nursing Homes Making Appeals (a)	# and % of Deficiencies...	
			Deleted	Reduced
Regional manager	The nursing home administrator must request informal dispute resolution within 10 calendar days from the date of the exit conference. After the regional manager meets with the administrator and / or reviews any new documentation, the regional manager must submit a written decision to the administrator.	164 deficiencies (about 6% of the deficiencies written) 64 nursing homes (about 5% of the inspections conducted)	21 (13%)	16 (10%)
Bureau managers	The nursing home administrator may request an administrative review after receiving the regional manager’s decision. The review is conducted by a committee composed of 3 to 5 members of Bureau of Health Facilities, and usually includes the Director. The committee reviews only written information, and provides a written response to the administrator.	32 deficiencies 10 nursing homes	4 (13%)	2 (6%)
(a) Department data show that, from December 15, 2000, through August 15, 2001, 1,221 inspections were conducted, and 2,543 deficiencies were written as a result of these inspections. Because of the lag time needed for administrators to appeal inspection findings, this time period was used as the basis for our calculations.				
Source: LPA analysis of Department nursing home database, including deficiency data.				

Nursing home administrators expressed several concerns about the Department's appeals process. In responding to our survey, administrators indicated by a 2-to-1 margin they thought the Department's appeal process wasn't fair or reasonable. Their main concerns about the informal dispute resolution appeal process, together with our comments, are listed below:

- **nursing home administrators think it's difficult to get an impartial hearing from the bosses of the inspectors who wrote the deficiencies.** It is understandable that people may think it's unfair to appeal to the agency that made the decision they dispute, because agencies do have an inherent conflict of interest in such situations. State and federal laws typically give a regulatory agency the power to make the final decision on internal appeals, because that agency is ultimately accountable for ensuring that laws, regulations, and policies are carried out appropriately. In the case of nursing homes, all appeals dealing with whether a deficiency should have been cited, or whether its assigned severity level was correct, are made to the Department. However, nursing homes can appeal any penalties imposed by the Department to the U.S. Department of Health and Human Services, and beyond that to the courts.
- **they think the information they provide isn't considered during appeals.** We couldn't examine this concern in detail, but we did note that more than one-fifth of the deficiencies appealed were either reduced or dropped altogether. These figures don't suggest the Department doesn't consider any additional information during the informal dispute resolution process.
- **they are afraid the Department will retaliate against them if they appeal.** Determining whether an appeal led to any retaliation would be nearly impossible to prove in the context of an audit. If a subsequent inspection resulted in more deficiencies than the previous inspection, that wouldn't necessarily indicate retaliation because conditions in the home could have deteriorated. Likewise, if a subsequent inspection resulted in fewer deficiencies than the previous inspection, retaliation could have occurred if those deficiencies weren't warranted or were classified at too high a level.

FINDINGS RELATED TO THE CONSISTENCY OF INSPECTIONS

Significant Regional Differences Exist in the Number of Deficiencies Cited at Nursing Homes, But There's Little Solid Evidence To Explain Why

The second area of concern we reviewed related to perceived inconsistencies among regions or between inspectors. Because nursing home inspectors must exercise considerable judgment in evaluating such things as whether nursing home residents are receiving appropriate care, or how serious a violation may be, it's not realistic to expect absolute consistency among inspectors.

However, it is realistic to expect the Department would have established appropriate policies and procedures to help ensure that inspections are as consistent and accurate as possible. We noted the Department had designed a reasonable process in this area, including:

- requiring all new inspectors to be registered nurses, having all new inspectors trained and certified by the Centers for Medicare and Medicaid Services, and providing at least 3 week-long training conferences for inspectors each year
- providing written guidance and interpretations for all inspectors on how to identify and classify deficiencies
- holding monthly meetings with regional managers and quality improvement coordinators to discuss, among other things, issues with the inspection process
- having inspection teams decide as a group how to classify deficiencies, and requiring them to consult with the regional manager before citing serious deficiencies
- having regional managers or quality improvement coordinators at each regional office review their inspection teams' reports, and periodically having management staff from one region travel to another region to watch and evaluate a team during an inspection

Despite these steps, significant differences exist between the regions in the average number of deficiencies cited per regular (resurvey) inspection, as shown in the table below. The 2 regions with the highest number of deficiencies cited included large urban areas, while the 2 with the lowest average numbers were mostly in rural areas.

Average Number of Deficiencies Cited per Resurvey March 1, 2000 to June 30, 2001		
Region	Average Number of Deficiencies	Variance from Average
South Central <i>(includes Wichita & Hutchinson)</i>	12.4	+3.7
Northeast <i>(includes Topeka & Atchison)</i>	12.0	+3.3
Southeast	9.9	+1.2
Statewide Average	8.7	---
Lawrence <i>(includes Johnson and Leavenworth Counties)</i>	8.3	-0.4
North Central	5.8	-2.9
West	4.2	-4.5
Source: LPA analysis of KDHE database of deficiency data		

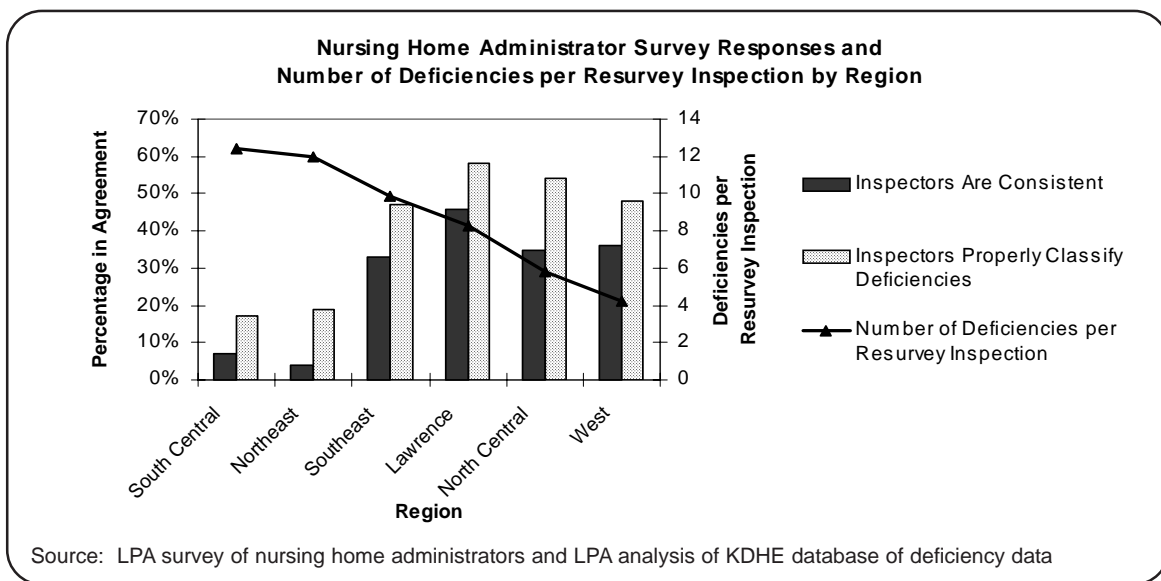
Although many nursing home officials think inspection teams aren't consistent, those concerns were more widespread in regions where high numbers of deficiencies were cited. During this audit, officials from several associations that represent Kansas nursing homes suggested that such regional differences are proof of inconsistencies among inspection teams. In addition, slightly more than half the nursing home administrators who responded to our survey replied that the Department's inspectors weren't consistent in how they assess nursing facilities, and about 23% thought the inspectors weren't fair. They offered a number of comments; the box below provides some typical examples.

Nursing Home Administrator Comments About Inconsistency Between Regions and Inspectors

- Having worked with inspectors from different regions, inconsistency is rampant.
- The inspections differ drastically from region to region.
- The inspection process is a matter of interpretation and which inspectors you happen to get.
- The inspectors all have their own interpretation of the regulations and what one says is okay, the next will say is wrong.

Source: LPA survey of nursing home administrators

We did note that the concerns and opinions expressed by nursing home administrators weren't uniform across the State. Nursing home administrators in regions with the highest number of deficiencies cited were much more critical of the Department's inspectors than were their counterparts in other regions of the State. The graph below shows the results of our analysis.



Department officials theorize that regional differences in the number of deficiencies cited may reflect real disparities in the conditions of nursing homes. Department officials suggested that nursing homes in primarily rural areas of the State are more likely than urban homes to have lower rates of turnover in their nursing staff, more family involvement in residents' care, and fewer residents with acute-care needs. All these factors, they said, can have an impact on the quality of care provided and, thus, on the number of violations and deficiencies cited. They also said the type of ownership of the nursing home (whether it's not-for-profit or for-profit) can be a factor. However, the Department doesn't have any evidence that these factors actually account for the regional differences shown above.

When we accompanied inspection teams from each of the 6 regions, we saw a few situations that represented real or potential inconsistencies among inspectors. We observed inspection teams for 1-2 days each, and saw that team members followed the same inspection process and were conscientious and considerate. However, we also noted the following:

- In one home an inspection team decided to discuss 2 "minor" violations verbally with the nursing home administrator, even though federal regulations specify that any violation of requirements, even for one resident, is a deficiency that should be cited. In one case, an inspector observed a nursing home staff member washing a resident in an improper manner. In another, the inspector saw a staff member improperly washing her hands.

Because the team concluded the problems in both cases were isolated and weren't a significant problem, they decided to discuss these observations verbally instead of citing them as deficiencies. However, another inspection team may have cited both violations as deficiencies.

- At another home, an inspection team from a different region cited a problem with how and where the home kept certain records, a problem that hadn't been cited by the team from that region in the past. In this case, the out-of-region inspectors cited the home for keeping resident records in cardboard boxes in a room with a sprinkler system. Nursing home staff admitted these medical records "would be wiped out" if the sprinklers went off, but indicated these records had been stored this way for as long as anyone could remember. The nursing home received a C-level deficiency for failing to safeguard resident records against loss or destruction.
- During a meeting with staff at one home, an inspector criticized the home for playing jazz music in the Alzheimer's unit, rather than "older" music she thought the residents would enjoy more. No deficiency was written, but because the team gave this concern a great deal of attention in the meeting, nursing home staff could have perceived the inspection team as being nit-picky.

To see if we could identify differences in the ways teams inspect, we compared the results of a sample of 26 inspections—2 consecutive inspections for 13 nursing homes. Each nursing home had 1 inspection conducted by its normal “in-region” inspectors, and 1 inspection conducted by a team from another region—an “out-of-region” team. Although this analysis is limited, we thought it might provide an indicator of whether inspectors followed the pattern of citing deficiencies that’s shown in the table on page 15

The results were fairly inconclusive. Although inspectors from the Northeast region—who generally cite among the highest number of deficiencies—did cite more deficiencies than their counterparts in the 3 “out-of-region inspections” we reviewed, the other results showed no pattern. That’s because out-of-region inspection teams sometimes cited more deficiencies, sometimes fewer, and sometimes the same number as the in-region inspectors for those nursing homes.

***Some Department Practices
May Contribute to
Inconsistencies
Among Inspection Teams,
Or Could Be Changed To
Better Identify and
Address the Inconsistencies
That Do Exist***

The practices we identified that could contribute to inconsistencies in the types or numbers of deficiencies inspectors cite are described below:

- *The Department hasn’t provided inspectors with clear guidance on when it’s appropriate to discuss a concern with a nursing home instead of citing it as a written deficiency.* Although the Department gives inspectors guidance on how to classify deficiencies, there seems to be ambiguity concerning when a deficiency is significant enough to cite in the inspection report. As noted earlier, some teams may discuss violations verbally, while others may classify them as deficiencies and include them in their inspection report.
- *A recent change in how training is conducted could exacerbate regional differences.* The Department recently switched from having 2 trainers conduct training for all new inspectors, to having each region train its own new inspectors. This new practice could perpetuate any existing regional differences of interpretation regarding deficiencies and how they should be reported.
- *Staffing shortages could contribute to differences in how deficiencies are treated.* As of October 2001, 9 of the Department’s 74 inspector positions were vacant. Of these 9 vacancies, 5 were in the Lawrence regional office, representing over half of the region’s inspector positions. Staff shortages

could result in hastily conducted inspections, significant overtime which can lead to employee “burn-out,” or inspections being delayed. According to Department officials, such staffing shortages are compensated for by sharing inspection teams among regions. (This staffing shortage doesn’t appear to have significantly affected the Department’s ability to meet its statutory requirement to perform resurvey inspections at least once every 15 months, although we did identify a few nursing homes that weren’t inspected within the established timeframe.)

The areas where we thought the Department could do a better job of identifying and addressing the inconsistencies that do exist are summarized below:

- *The Department could refocus at least some of its current quality assurance systems on evaluating whether inspectors are making the “correct” decisions.* Both the Centers for Medicare and Medicaid Services and the Department have set up monitoring processes to oversee nursing home inspections that assess whether inspectors are performing the steps required during each inspection. (Kansas inspectors get high marks from both reviews.) However, neither process requires the reviewers to formally assess whether the Department’s inspectors cited all the deficiencies they should have during the inspections, and whether those deficiencies were correctly classified.

Because of recent criticism along this same line, the Centers for Medicare and Medicaid Services is in the process of revising its evaluation process. If the revised evaluation shifts the focus from whether inspection teams are performing their required tasks to how well they are done, it should provide a better tool for assessing inspection performance.

- *Central office staff could review a sample of inspection reports submitted by each region to compare consistency across regions.* Most reviews of inspection reports occur at the regional level. While staff in the central office may pull a sample of reports from time to time, the purpose of these reviews is to look at how staff are treating a specific issue. If staff from the central office reviewed entire reports on a periodic basis, it might allow them to identify issues involving inconsistency.

The box on the next page includes some typical comments Department staff made about the nursing home inspection program.

Department Field Staff Comments About Different Aspects of the Inspection Process

Comments on Training:

- Previously, KDHE had 2 inspectors who were designated to train all new inspectors. Recently these 2 inspectors quit training due to lack of support from the Bureau (Bureau of Health Facilities). I feel the loss of these 2 trainers will create a significant loss in the training process as well as a lot of inconsistency in the way inspections are conducted across the State.
- Training has changed due to the two trainers resigning after not being given the promotions promised. This will affect consistency as regions train their own new inspectors .

Comments on Staffing:

- Wages are too way too low for experienced inspectors. Many are leaving and more will go.
- The time constraints are unreasonable at times and there is a lot of pressure to do a complete survey and write it up in 4 days. The inspectors are not compensated in time or fair market wages for the work they do.
- Sometimes (more often than not) I feel a real push to either 'let things go' on an inspection or work long hours on my own time to get the inspection completed within timeframes.

Comments on Inspections and Consistency:

- I wish inspectors had more flexibility with the inspection process - to not spend so much time on parts that aren't problems so that we could spend more time to delve into the identified problems.
- Inspectors are not consistent from district to district. When inspecting out of district, it is difficult to deal with providers because of this.
- Inspectors try to be very thorough and very fair. It is frequently surprising that providers are not aware of the regulations by which they have agreed to operate.

Source: LPA survey of KDHE field staff

Department Officials Identified Several Parts of the Federally Required Nursing Home Inspection Process They Would Like to See Changed

Most aspects of the nursing home inspection process are mandated by the Centers for Medicaid and Medicare Services. Department officials told us they thought some aspects of the process are punitive in nature, unnecessarily burdensome on nursing homes, or are simply a poor use of inspection resources. In their opinion, these requirements likely contribute to nursing homes' dissatisfaction with the inspection process. The changes the Department would like to see include:

- Eliminate the Plan of Correction. Facilities are required to submit a plan for all deficiencies cited during an inspection, showing what will be done to correct the problems, and when. Department officials think this isn't a productive use of administrators' time, because the Department doesn't use the plan of correction to determine whether deficiencies have been corrected, it does so by conducting another inspection.
- Allow More Discretion in How Often a Particular Facility Should be Inspected. The Department is required to inspect all facilities every 15 months, but Department officials think it would be a more effective and efficient use of everyone's resources if they could inspect facilities with fewer problems less frequently. This would allow them to devote more time to problem facilities.
- Eliminate the Ban on Internal Nurse Aide Training. Nursing homes cited for a deficiency that results in a denial of payment for new admissions are banned for 2 years from operating an in-house nurse aide training program. Department officials think this ban is detrimental to patient care, because these facilities have the greatest need to be training their front-line staff. If they can't do it in-house, the training either won't be provided, or the homes will have to absorb the staff time (and expense) of traveling elsewhere for training.
- Eliminate Past Non-Compliance Requirements. The Department now must cite deficiencies for any past instances of "immediate jeopardy" they find, even if the non-compliance has been corrected by the time of the inspection.
- Change the Scope and Severity Grid. Under the current Scope and Severity Grid, deficiencies that result in actual harm to residents are rated as less serious than deficiencies that represent "immediate jeopardy." Department officials think immediate jeopardy situations (immediate risk for potential harm) should not be classified higher than instances of actual harm.
- Eliminate the Requirement To Report Administrators to the Licensing Board. Generally, the Department is required to report an administrator to the Board of Adult Care Home Administrators any time the nursing home receives a deficiency classified as "D" or higher. Although there are no immediate consequences for being on the list, Department officials think this requirement is particularly punitive for administrators who may have only recently come to a facility, particularly if the deficiencies cited are the result of a previous administrator's failure to take corrective action.

We Couldn't Tell Why the Department and the Veterans Administration Reached Such Different Conclusions During Their Inspections of the Kansas Veterans Home in the Former Winfield State Hospital

When this audit was requested, legislators specifically cited conflicting results from inspections conducted by the Department and the Veterans Administration of the Kansas Veterans Home in Winfield. By interviewing officials from each agency about their inspections and reviewing their inspection reports, we learned the 2 agencies appear to have different approaches—Veterans Administration inspectors tend to focus more on a review of documentation, while the Department's inspectors tend to interact more with and observe residents and their care providers.

Still, when the inspection teams from both agencies looked at the care provided to the same resident in November 2000 they reached very different conclusions. For example, Department inspectors determined that this resident had a pressures sore, however, the federal inspectors thought the resident had a blister and didn't express concerns about the quality of care this resident was receiving. In both cases, the inspectors were trained medical professionals. We couldn't pinpoint the reasons for this difference.

What follows is a brief chronology of the inspections and corresponding enforcement actions related to the Kansas Veterans Home.

May 2000 **Veteran's Administration officials found no problems when they conducted their first inspection of the remodeled State Hospital.** This inspection occurred before any residents had been admitted, and focused on the remodeling and on the Home's policies and procedures relating to patient care.

June 2000 **The Veterans Home began admitting residents.**

Sept. 2000 **Department officials found problems related to patient care when they conducted their first inspection of the Veterans Home.** Although the complaint that led to the inspection wasn't substantiated, other patient-care problems were found. The Department issued 2 G-level deficiencies to the nursing home portion of the Home.

A few weeks later, Department officials reinspected the Home to see if the earlier deficiencies had been corrected. The inspectors found they hadn't been, and cited the Home for 3 more patient care G-level deficiencies. Because the Home had received a G-level deficiency on 2 consecutive inspections, Department officials were required by law to take several actions, including imposing a ban on new admissions. That ban was effective November 3, but covered only the nursing home side of the Home, not the assisted living side.

Nov. 2000 **Department and Veterans Administration inspectors found problems in different areas when they conducted simultaneous inspections of the Home.** Department officials conducted another follow-up inspection as well as a full-scale annual inspection of the Home. Veteran's Administration officials also conducted their annual inspection during that same week. Department officials cited the Veterans Home for 13 deficiencies, including 4 G-level deficiencies related to patient care. The Veterans Administration inspection reflected none of the same deficiencies; it cited 12 unmet standards, but those covered such areas as resident funds and dietary services.

Dec. 2000 **The Department's ban on new admissions was lifted December 27 after its follow-up inspection found the Home to be in substantial compliance with all regulations.** The Veterans Administration also conducted a follow-up inspection and found the Home had taken the appropriate corrective actions.

Mar. 2001 **The Veterans Administration recognized the Veterans Home as meeting all standards, and allowed it to begin receiving VA funding retroactively.**

Aug. 2001 **Department inspectors identified only a few minor deficiencies during another annual inspection.** Those were verified as corrected during a follow-up inspection in September 2001.

Conclusion Regulatory agencies exist to protect the public interest. In its role as regulator of nursing homes, the Department of Health and Environment must carry out its responsibility to ensure the well-being of the vulnerable residents of these facilities while remaining cognizant of the needs of the industry to operate in an efficient and fiscally prudent manner. Regulatory actions that are inappropriately stringent could damage the industry, and ultimately limit the choices available to elderly Kansans. From the documents we were able to review, it appeared that Department inspectors were correctly categorizing the problems they observed. And although there will never be absolute consistency in inspections because of the amount of judgment involved, we found the Department has designed a reasonable process for trying to ensure that inspections are accurate and consistent. Still, there are significant differences between regions in the number of deficiencies cited, and even during our limited observations while accompanying inspectors we saw a few situations where violations either were or could be treated differently by different inspection teams. While we didn't identify any fundamental flaws in the current inspection process, we think the Department can take additional steps to improve the consistent application and interpretation of regulations governing nursing homes.

- Recommendations**
1. To help ensure that nursing home inspections are conducted as accurately and consistently as possible, the Department of Health and Environment should do the following:
 - a. use its quality improvement function to monitor its new-inspector training program, and re-evaluate within a year whether it is more beneficial to have 1 - 2 staff members provide most of the training (which can help ensure greater consistency), or to allow the regional staff to provide most of the training (which may be more efficient and cost-effective).
 - b. provide written guidance for its inspectors about when it is appropriate to express a concern to a nursing home administrator through verbal comments, as opposed to including the concern in the written report provided to the administrator at the conclusion of each inspection.
 - c. expand its review process so that the central office's Director of Quality Improvement randomly selects a sample

of deficiencies or inspection reports each quarter from all regions, and reviews them for the purpose of determining whether inspectors are treating problem conditions in a similar manner. Among other things, this review would look at issues such as whether inspectors are consistent in the types of deficiencies they cite, whether those deficiencies are cited under the appropriate section of federal regulation, and whether they are assigned an appropriate severity level. The results of this work should be formally reported to the program's Quality Control Committee and to any other appropriate management staff.

- d. increase the number of observations that quality improvement staff make of inspection teams each year to a number that is sufficient to reach conclusions about the quality of inspections being conducted within each region. In these reviews, monitoring staff should be sure to formally assess and record how well the inspectors performed their required tasks, and not just whether those tasks were performed. In addition, the monitoring staff should determine whether the inspection team cited the correct deficiencies and assigned the proper scope and severity classification.

APPENDIX A

Scope Statement

This appendix contains the scope statement approved by the Legislative Post Audit Committee for this audit on May 31, 2001. The audit was requested by Representative Annie Kuether.

SCOPE STATEMENT

Kansas' Nursing Home Inspections: Determining Whether They're Carried Out In a Reasonable Manner

By law, the Department of Health and Environment is responsible for licensing nursing homes and investigating reports of abuse, neglect, or exploitation of nursing home residents. The Department has statutory authority to adopt rules and regulations to promote safe, proper, and adequate treatment and care of nursing home residents, and to fine nursing homes or suspend or revoke their licenses for failure to comply with State laws or regulations.

Through its Bureau of Adult and Child Care, the Department enforces regulations related to nursing homes and other health facilities such as hospitals and home health agencies. Department staff assess compliance with State regulations and federal certification standards through inspections of health facilities, and through investigations of allegations of abuse, neglect, or exploitation.

Recently legislators have heard complaints about alleged or potential abuses in the nursing home inspection program in Kansas. For example, it has been reported that federal regulators praised the conversion of part of the Winfield State Hospital, the Kansas Veterans Home, as a model facility for veterans. But a few days later, the Department of Health and Environment's inspectors reportedly came in and cited the facility for a number of regulatory violations that prevented the admittance of patients for almost a month. Complaints such as these and others have caused legislators to question whether program staff have become overzealous in their enforcement of State regulations.

A performance audit of this topic would answer the following question:

1. Does the Department's nursing home inspection program ensure that all nursing homes are treated uniformly, fairly, and in accordance with laws and regulations? To answer this question, we would look at the structure of the program to ensure that it appears to be reasonable and in accordance with laws, regulations, and best practices for an inspection program. In conducting this review, we would look at things like how nursing home inspectors are trained and supervised to help ensure that inspectors are accountable, and nursing home staff and owners are treated as uniformly as possible. We would review complaints filed by nursing home staff or administrators about the inspection process, and determine what actions the Department took to deal with those complaints. We would survey nursing home administrators to get their opinions about the thoroughness and fairness of the inspection process. Also, we would look at a sample of inspections to determine whether they appeared to be thorough and reasonable, and whether they appeared to allow reasonable time for correction of problems before follow-up actions were taken. As part of our review, we would look at fines or penalties to determine whether they appeared to be reasonable based on the infractions found. We would

specifically look at the inspection that was done of the Winfield facility and talk to the inspectors and to facility administrators to determine what the infractions were, and why they caused delays in opening the facility. We would conduct additional work and look at other records as needed.

Estimated time to complete: 7-9 weeks

APPENDIX B

Agency Response

On November 16, 2001, we provided copies of the draft audit to the Department. Its response is included as this Appendix.

As a result of discussions with Department officials during their review of the draft report, we made some minor clarifications to the draft that didn't affect any of our findings or conclusions.

State of Kansas

Department of Health and Environment

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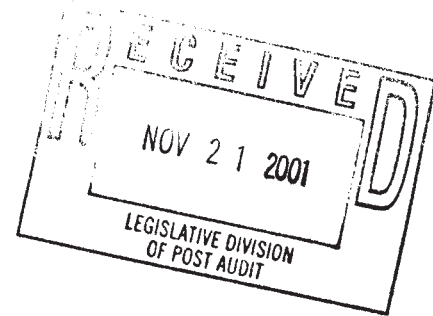
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BILL GRAVES
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CLYDE D. GRAEBER
SECRETARY

November 20, 2001

Barbara J. Hinton, Legislative Post Auditor
Legislative Division of Post Audit
800 SW Jackson
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Topeka KS 66612-2212



Dear Mrs. Hinton:

Thank you for the opportunity to provide a written response to the Legislative Post Audit Report addressing the question of whether or not KDHE's Nursing Home Inspection Program ensures that all nursing homes are treated consistently and fairly. I also take this opportunity to thank you and your staff for the professionalism and courtesy given my staff during the course of the audit process.

I am pleased with the conclusion of the audit which found the Department has designed a reasonable process to ensure that inspections are accurate and consistent. It also confirms my experience as Secretary that the Nursing Home Inspection Program is well managed, and has a number of policies and systems in place to assure consistency and fairness in the nursing home inspection and enforcement process. The findings in the audit, including that most department staff think they received adequate training on classifying deficiencies, that there is little evidence indicating our inspectors are incorrectly classifying G level and above deficiencies, and that federal comparative inspections generally support our findings, are all indicators of the quality of our program.

It is evident by the audit that your office also recognizes the complexity of our nursing home program and that it must successfully bring together multiple federal and state requirements, balancing limited resources under the intense scrutiny of not only the regulated industry, but consumers, other state agencies and legislative oversight.

As reiterated by my staff in their interviews with your auditors, the overriding philosophy and theme of the nursing home inspection program is to *do it right*. This simple philosophy assures that each

individual nursing home is treated fairly and consistently with other facilities. I believe it is important to state this because of the interest by the nursing home industry to achieve a higher level of consistency in survey results across the state. Consistency must be the result of conducting the process correctly and cannot and should not be the end to itself. In addition, it is pointed out that my department has implemented systems, such as our Quality Improvement Program, to assure consistency. There is evidence to suggest the differing number of deficiencies between facilities is as much the result of service delivery as it is the survey process.

I would also like our response to record a number of other initiatives the department has implemented over the years to help assure that our nursing home inspection program is consistent and fair. Accordingly, I am asking that the letter of November 14, 2001 to your office, summarizing a list of initiatives be included as part of this response.

I would like now to address the four specific recommendations resulting from the audit.

Recommendation 1a.

Monitor our new inspector training program. As noted in the audit, we are in the process of restructuring our surveyor training program by centralizing oversight of the program to an individual in Topeka and giving more responsibility for the actual training to the regional manager for whom the surveyor works. This adjustment is being made to improve our training and bring accountability to the regional manager, who is directly responsible for surveyor performance. Although the audit identifies that such an approach could compromise consistency, it is noted that all survey policies are coordinated through the regional managers, and thus involving them more intensely in the training should enhance consistency. Nevertheless, we are in agreement with the recommendation that our training program should continually be monitored to assure positive results.

Recommendation 1b.

Provide written guidance for its inspectors regarding when to cite a deficiency versus verbal comment. It is noted that the audit's examples regarding this issue are all low level deficiencies which do not result in enforcement sanctions. The department will develop a written guidance for inspectors for the purpose of providing more clarity on when to express verbal concern versus citing a low level deficiency. However, it is noted for the record that such a guidance should not be overly restrictive to the point of removing surveyor discretion.

Mrs. Hinton
November 20, 2001
Page 3

Recommendation 1c.

Expand its review process. Prior to the audit, the nursing home inspection program has had continual internal discussion regarding ways to improve the Quality Improvement Program. The quality improvement program already reviews such issues as whether surveyors are consistent and the types of deficiencies they cite, and whether those deficiencies are cited under the appropriate section of federal regulation and whether they are assigned the appropriate severity level. This is confirmed by the audit agreeing with our severity level 97 percent of the time. Pursuant to the recommendation, this process will be more formally documented.

Recommendation 1d.

Increase the number of observations the quality improvement staff make of inspection teams. To the extent limited resources will allow, we agree the number of observations should be increased. It is noted that our quality improvement process already assesses and records how well the inspectors perform required tasks, but we acknowledge a greater emphasis on the outcome of those tasks should be incorporated into our quality improvement process.

Thank you for allowing my office to respond to the audit and its recommendations.

Sincerely,

Clyde D. Graeber
Secretary, KDHE

CDG/JFK/lh

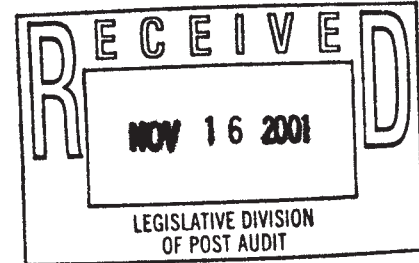
c: Sharon Patnode, Assistant Secretary, KDHE
Dr. Michael Moser, Director, DOH
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KANSAS
DEPARTMENT OF HEALTH & ENVIRONMENT
BILL GRAVES, GOVERNOR
Clyde D. Graeber, Secretary

November 14, 2001

Barbara J. Hinton, Legislative Post Auditor
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Dear Mrs. Hinton:

We thought it would be helpful in addressing the purpose and scope of the Legislative Post Audit of the nursing home inspection process to provide a summary of some of the initiatives we have undertaken to help assure that our nursing home survey and enforcement process is reasonable and fair.

If you have any questions regarding any of the following items, please do not hesitate to contact my office.

- In order to assure that the nursing home industry has a forum to provide input into the regulatory process, KDHE established the Long Term Care Advisory Group. This group, which includes representatives in the nursing home industry, other state agencies and consumers, is presented with all proposed adult care home regulations and significant policy issues prior to their adoption.
- In order to help assure that facilities are treated in a professional and courteous manner, KDHE became one of the first states in the nation to adopt a formal written surveyor Code of Conduct.
- In order to assure that the nursing home industry had a method to informally appeal deficiencies and to provide KDHE with a quality improvement tool, we became the first state in the nation to adopt a dispute resolution process and to require that it be given in writing to the facility.

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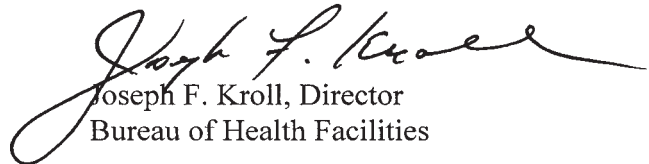
- In order to provide recognition and motivation to the best nursing facilities in our state, KDHE started a public recognition exemplary facility award program. This award, which recognizes facilities that are in substantial compliance with regulations and exceed regulations by providing innovative care systems, has been awarded many times over the years.
- KDHE was the first state survey agency in the nation to eliminate the duplicative Inspection of Care Survey, which relieved the nursing home industry from the burden of duplicative surveys by two state agencies, SRS and KDHE.
- Kansas has implemented, within existing resources and without requesting new positions, a formal quality improvement survey program. To our knowledge this was the first such program in the nation.
- In order to assist facilities in understanding how deficiencies are applied to everyday situations, and how federal regulation work with state regulations, we developed and maintain a comprehensive interpretation manual that integrates state and federal regulations. In addition, this manual is also provided to all adult care homes and surveyors so that both parties are working from the same interpretations.
- In order to relieve the nursing home industry of unnecessary paperwork, KDHE became the first state in the nation to eliminate the plan of correction for lower level deficiencies. For licensed-only facilities, where federal rules do not apply, we have implemented a total elimination of the plan of correction on a pilot basis.
- To assist facilities in linking up with other facilities that have good and effective programs, KDHE started the Best Practice Program to provide link-ups of facilities who could share their practice.
- In order to assure that surveyors and nursing home staff are provided consistent training on key care issues, such as pressure sores, KDHE helped develop and conduct on-going statewide joint training on significant care issues.
- KDHE has not been hesitant to deviate from prescribed federal protocol to reduce the time and imposition on facilities, although the Centers for Medicare and Medicaid Services (CMS, formerly HCFA), now strictly prohibits such deviations. KDHE will continue to be aggressive and innovative and deviating from federal protocol when possible.

Mrs. Hinton
November 14, 2001

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We believe the initiatives identified above demonstrate our intent and philosophy to be reasonable and fair with the industry we regulate and to be judicious monitors of our state's resources. We believe that a list of these initiatives should be included in the Legislative Post Audit Report.

Sincerely,



Joseph F. Kroll, Director
Bureau of Health Facilities

JFK/lh

c: Clyde Graeber, Secretary, KDHE
Sharon Patnode, Assistant Secretary, KDHE
Dr. Michael Moser, Director, DOH