



Commonwealth of Massachusetts  
Office of the State Auditor  
Suzanne M. Bump

*Making government work better*

Official Audit Report – Issued September 11, 2019

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## Department of Public Health

For the period July 1, 2016 through June 30, 2018





Commonwealth of Massachusetts  
Office of the State Auditor  
Suzanne M. Bump

*Making government work better*

September 11, 2019

Ms. Monica Bharel, Commissioner  
Department of Public Health  
250 Washington Street, Second Floor  
Boston, MA 02108

Dear Ms. Bharel:

I am pleased to provide this performance audit of the Department of Public Health. This report details the audit objective, scope, methodology, findings, and recommendations for the audit period, July 1, 2016 through June 30, 2018. My audit staff discussed the contents of this report with management of the agency, whose comments are reflected in this report.

I would also like to express my appreciation to the Department of Public Health for the cooperation and assistance provided to my staff during the audit.

Sincerely,

A handwritten signature in blue ink, appearing to read "SMB", written over a light blue circular watermark.

Suzanne M. Bump  
Auditor of the Commonwealth

cc: Marylou Sudders, Secretary of the Executive Office of Health and Human Services

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## LIST OF ABBREVIATIONS

AGO	Attorney General's Office
ASPEN	Automated Survey Process Environment
CMS	Centers for Medicare & Medicaid Services
DHCFLC	Division of Health Care Facility Licensure and Certification
DPH	Department of Public Health
HCFRS	Health Care Facility Reporting System
IJ	Immediate Jeopardy
IT	information technology
OSA	Office of the State Auditor
SOD	Statement of Deficiencies

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## EXECUTIVE SUMMARY

In accordance with Section 12 of Chapter 11 of the Massachusetts General Laws, the Office of the State Auditor has conducted a performance audit of the Department of Public Health's (DPH's) complaint intake and investigation programs for the period July 1, 2016 through June 30, 2018. In this performance audit, we examined DPH's processes for reviewing, prioritizing, and responding to intakes involving allegations of deficiencies at licensed nursing homes in the Commonwealth.

Below is a summary of our findings and recommendations, with links to each page listed.

<b>Finding 1</b> <b>Page <a href="#">13</a></b>	DPH did not always perform required on-site investigation surveys.
<b>Recommendation</b> <b>Page <a href="#">14</a></b>	DPH should enhance its policies and procedures that define and implement monitoring controls over its intake process to ensure that all intakes requiring on-site investigation surveys are properly transcribed from the Health Care Facility Reporting System (HCFRS) to the Automated Survey Process Environment (ASPEN).
<b>Finding 2</b> <b>Page <a href="#">15</a></b>	DPH did not always prioritize and conduct investigations for high-priority intakes within the required timeframes.
<b>Recommendation</b> <b>Page <a href="#">16</a></b>	DPH should review staffing needs and make any further adjustments that are needed to ensure that the prioritization and investigation survey processes are completed in the required timeframes.
<b>Finding 3</b> <b>Page <a href="#">16</a></b>	DPH did not refer some intakes to the Attorney General's Office (AGO) as required.
<b>Recommendation</b> <b>Page <a href="#">17</a></b>	DPH should establish policies and procedures that define and implement monitoring controls over its intake process to ensure that all intakes requiring AGO notification are properly transcribed from HCFRS to ASPEN.
<b>Finding 4</b> <b>Page <a href="#">18</a></b>	DPH had inadequate documentation to track intakes designated for on-site investigation surveys.
<b>Recommendation</b> <b>Page <a href="#">19</a></b>	DPH should establish monitoring controls to ensure that its staff completes Complaint Processing Summary forms for all intakes that require on-site investigation surveys.

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## OVERVIEW OF AUDITED ENTITY

The Department of Public Health (DPH), established by Section 1 of Chapter 17 of the Massachusetts General Laws, is a regulatory agency under the Executive Office of Health and Human Services. According to its website,

*DPH regulates, licenses and provides oversight of a wide range of healthcare-related professions and services. Additionally, the Department focuses on preventing disease and promoting wellness and health equity for all people.*

Under DPH's Bureau of Health Care Safety and Quality, the Division of Health Care Facility Licensure and Certification (DHCFLC) is responsible for licensing healthcare facilities,<sup>1</sup> including nursing homes; issuing certifications for Massachusetts facilities participating in the Medicare and Medicaid programs; and monitoring these facilities to protect and promote the health and wellbeing of their residents. Because Medicare is funded with federal dollars and is administered by the Centers for Medicare & Medicaid Services (CMS), a federal entity, DHCFLC works in part as a representative for CMS, ensuring that facilities comply not only with state requirements but also with those established by CMS in accordance with CMS's *State Operations Manual*.<sup>2</sup>

DHCFLC monitors nursing homes in several ways. Its Certification Unit must conduct mandatory recertification surveys at each nursing home every 9 to 15 months, following the requirements of CMS's *State Operations Manual*. Surveyors who conduct the recertification surveys interview a sample of residents, observe facility personnel, and score the facility's performance in several categories. If the surveyors note any deficiencies at the facility, the facility is cited and must correct the deficiency in a timely manner. DPH continues to follow up with the facility until all deficiencies are satisfactorily resolved.

In addition to the Certification Unit's recertification surveys, DPH is also responsible for on-site investigation surveys in response to complaints. DHCFLC's Complaint Unit<sup>3</sup> manages and responds to

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1. Although DPH licenses and/or certifies different types of healthcare facilities, our audit focused on nursing homes.  
2. This manual instructs state agencies on how they must conduct their intake and survey processes as representatives for CMS.  
3. As DPH stated in a letter to the Office of the State Auditor, "While this audit report focuses on nursing homes and the Complaint Unit within DPH . . . the Complaint Unit [also] responds to intake cases in other types of facilities including rest homes, dialysis units, hospitals, clinics, hospice, ambulatory surgical centers, home health agencies and adult day health programs."

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intakes or complaints reported to DPH alleging facility noncompliance,<sup>4</sup> substandard quality of care, and/or resident harm at its licensed facilities. According to a letter from DPH to the Office of the State Auditor (OSA),

*The Complaint Unit is responsible for triaging all consumer complaints and facility-reported incidents involving licensed and/or certified health care facilities within the Commonwealth, and must determine the best response to the incidents and complaints. This response includes performing offsite and onsite surveys at licensed and certified facilities, evaluating compliance with state and federal regulatory requirements, documenting areas of concerns, and reviewing submitted corrective action plans.*

DPH's *Complaint Unit Intake Process Manual* outlines one of its key roles:

*As a regulatory agency, [DPH is] focused on identifying and addressing abuse, neglect, misappropriation, mistreatment, quality of care and quality of life issues within nursing facilities, hospitals and other care settings, as defined by regulation.*

The Complaint Unit reviews, prioritizes, and responds to thousands of intakes reported to DPH each year, screening for high-priority incidents at licensed healthcare facilities that require immediate action from DPH.

In its letter to OSA, DPH stated,

*The Complaint Unit currently consists of the following staff:*

- *Intake: 5 intake surveyors who are health professionals including 4 social workers that have experience in working with older adults, chronic disease and diverse populations.*
- *Survey: 20 clinical professionals: 6 hospital focused and 14 non-hospital focused (including nursing homes). Survey staff are either registered nurses, social workers or pharmacists.*
- *Supervisors: 1 registered nurse unit manager, 1 intake supervisor and 3 registered nurse survey staff.*
- *Three clerks and one additional process staff member.*

DHCFLC had annual state and federal appropriations totaling approximately \$16.3 million for fiscal year 2017 and approximately \$16.9 million for fiscal year 2018. In fiscal years 2017 and 2018, DHCFLC expended a combined total of approximately \$32.9 million.

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4. Noncompliance can include assessments of performance below the expected levels for facility administration, nursing care, resident rights, food, or living environment.

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### DHCFLC Appropriations and Expenditures

	Appropriations	Expenditures
Fiscal Year 2017	\$ 16,317,954	\$ 16,155,472
Fiscal Year 2018	16,924,359	16,787,524
<b>Total</b>	<u>\$ 33,242,313</u>	<u>\$ 32,942,996</u>

### DPH’s Health Care Facility Reporting System

The Health Care Facility Reporting System (HCFRS) is a Web-based system that houses all intakes or complaints reported to DPH, including allegations that incidents occurred, or deficiencies existed, at licensed healthcare facilities. There are two ways an intake may be entered in HCFRS. When facility administrators are made aware of incidents at their facilities that require reporting, they are responsible for entering intakes in HCFRS for DPH’s review. Additionally, non-facility reporters can report complaints to DPH personnel, who then create new intakes and enter the information in HCFRS.

DPH uses HCFRS as its system of record to track intakes from when they are first reported to DPH to when DPH reviews and prioritizes them. HCFRS contains not only the intake information itself, but also any action taken by DPH’s intake staff, including corresponding with the reporting source, reviewing and prioritizing intakes, and designating an intake’s disposition.<sup>5</sup>

### CMS’s Automated Survey Process Environment

CMS’s *State Operations Manual* states that all non-facility-reported complaints, regardless of disposition designation, and all intakes designated for on-site investigation surveys must be transcribed by DPH personnel from HCFRS into a separate intake and survey information system within the Automated Survey Process Environment (ASPEN), which is owned by CMS. Additionally, the results of the on-site investigation surveys and recertification surveys performed by DPH are completed to fulfill requirements put forth by CMS, as well as state laws and regulations, and entered in ASPEN. Within ASPEN, the intakes requiring on-site investigation surveys are linked with the surveys conducted, allowing DPH personnel to document in ASPEN that they were responded to appropriately.

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5. “Disposition” is the term for DPH’s process of determining how it should respond to a reported intake.



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## Intake Review and Prioritization Process

In accordance with Section 155.008(A) of Title 105 of the Code of Massachusetts Regulations, DPH is required to act on complaints received by DHCFLC as follows:

*Upon receipt of an oral or written report of suspected patient or resident abuse, neglect, mistreatment or misappropriation of patient or resident property made pursuant to 105 CMR 155.000, the Department shall:*

- (1) immediately notify the Attorney General orally, or by electronic transmission or facsimile, of the receipt of said report;*
- (2) conduct an investigation into the allegations contained in the report within 24 hours after receipt of the oral report if there is reasonable cause to believe that a patient's or resident's health or safety is in immediate danger from further abuse, neglect or mistreatment;*
- (3) conduct an investigation into the allegations contained in the report within seven days after receipt of the written report in all other cases;*
- (4) at the conclusion of the investigation, issue a written report containing the findings and recommendations of its investigation.*

As previously mentioned, all complaints are processed through DHCFLC's Complaint Unit. When a new intake is entered in HCFRS, the Complaint Unit must determine how it will respond based on the information associated with the intake. To do so, a DPH intake staff member reviews the incident narrative, allegation type, severity of the allegation, results of any internal investigations conducted by the facility, and corrective measures taken by the facility. If a duplicate intake has been reported from another source, the staff member may also review new information available from the duplicate intake. If the staff member requires additional information from the reporting source, s/he requests that information. When the staff member has sufficient information to determine how DPH should respond, s/he selects the appropriate disposition and submits it for a second review.

The staff member then reviews the information associated with the intake to assess the type and severity of the alleged incident and determines what actions DPH should take. At a minimum, DPH always reviews the intake and files it in its system of record. However, it may also determine that another action is appropriate in order to respond fully. The most common dispositions are as follows.

- Review and File: The intake is filed in HCFRS for trend analysis and may be investigated in a future recertification survey.

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- On-Site Investigation: A Complaint Unit staff member responds to the intake by gathering additional evidence regarding the alleged incident, which s/he does by investigating on site at the facility.
  - Off-Site Investigation: A Complaint Unit staff member responds to the intake by gathering additional evidence regarding the alleged incident, without going to the facility.
  - Refer to Other Agency: The complaint falls under another entity's jurisdiction and is referred to that entity by DPH.

Once two reviewers agree and sign off on the intake, the Complaint Unit responds to it with the disposition selected by DPH staff members during the review process. If the intake requires an on-site investigation survey, it is transcribed from HCFRS into ASPEN and assigned a priority code denoting its severity and the timeframe within which the Complaint Unit must investigate it.

### **On-Site Investigation Survey Process**

DPH responds to the most severe intakes by conducting on-site investigation surveys to assess the validity of the intakes' allegations and detect any facility deficiencies related to the intakes that may endanger facility residents. The Complaint Unit must complete on-site investigation surveys in timeframes that comply with both state and federal guidelines.<sup>6</sup>

CMS's *State Operations Manual* provides guidance on what types of allegations warrant on-site investigation surveys. Nursing home intakes designated for on-site investigation surveys are prioritized at four different levels. The most severe code is Immediate Jeopardy (IJ), which requires an on-site investigation survey within two working days from receipt of the intake. The other high-priority code is Non-IJ High. This code is used when residents are not in immediate jeopardy, but the intake is a high priority to be investigated.

Incidents that require on-site investigation generally involve allegations of harm to residents or facility deficiencies that could cause future harm to residents if left unresolved. However, if an incident is deemed unavoidable before investigation (in cases such as an elderly resident falling when the facility has followed all care plans), the intake staff may determine that another response is more appropriate than an investigation. When concluding an on-site investigation survey, DPH cites any deficiencies noted during the survey and reports them to CMS.

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6. In addition to enforcing state regulations, DHCFLC acts as the state survey agency on behalf of CMS. When an on-site investigation is warranted, Complaint Unit surveyors may investigate a facility, acting on behalf of DPH, CMS, or both.

The Complaint Unit is also responsible for investigating reports alleging abuse, neglect, or mistreatment of a resident, or misappropriation of a resident's funds or property, at a facility under Section 72H of Chapter 111 of the General Laws:

*The department shall . . .*

*(2) investigate and evaluate the information reported in any such report. Such investigation and evaluation shall be made within 24 hours if the department has reasonable cause to believe the patient's or resident's health or safety is in immediate danger from further abuse or neglect and within seven days for all other such reports. The investigation shall include a visit to the facility.*

When the report involves an accused nurse aide, home health aide, or homemaker, DPH concludes whether the allegations against the accused person were substantiated pursuant to Section 72J of Chapter 111 of the General Laws. Substantiated allegations may bar an accused person from working in future roles at licensed healthcare facilities.

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## AUDIT OBJECTIVES, SCOPE, AND METHODOLOGY

In accordance with Section 12 of Chapter 11 of the Massachusetts General Laws, the Office of the State Auditor has conducted a performance audit of certain activities of the Department of Public Health (DPH) for the period July 1, 2016 through June 30, 2018.

We conducted this 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.

Below is our audit objective, indicating the question we intended our audit to answer, the conclusion we reached regarding the objective, and where the objective is discussed in the audit findings.

Objective	Conclusion
1. Does DPH appropriately review and respond to reported alleged incidents, including abuse, neglect, mistreatment, and misappropriation, that negatively affect residents at licensed nursing homes?	<b>Not always; see Findings <u>1</u>, <u>2</u>, <u>3</u>, and <u>4</u></b>

We gained an understanding of the internal controls we deemed significant to our audit objectives and evaluated the design and effectiveness of those controls for management oversight of the intake and investigation process. We completed two internal control tests. The first control test determined whether each intake was reviewed by two unique members of the intake staff, as outlined in the *Complaint Unit Intake Process Manual*. Our second control test determined whether all intakes designated for on-site investigation surveys had management review documented on the Complaint Processing Summary form generated to track the administrative life of an investigation.

We interviewed management and staff members of the Division of Health Care Facility Licensure and Certification's (DHCFLC's) Complaint Unit to understand their processes, from when an intake is first reported to when an on-site investigation survey is completed. We identified and reviewed key laws, regulations, and policies that dictate how the Complaint Unit's intake and investigation program operates when the Complaint Unit responds to alleged incidents at nursing homes. We observed the processing of complaints by information systems key to the intake and investigation program. We

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identified data in the Health Care Facility Reporting System (HCFRS) and the Automated Survey Process Environment (ASPEN) that could support our substantive testing.

### **HCFRS and ASPEN Data**

To facilitate our planned substantive tests, we worked with DPH's information technology (IT) personnel and extracted a dataset from HCFRS that included all intakes from our audit period. The data included intake submission dates, facility identifiers, incident types, harm types, and disposition types selected by Complaint Unit personnel.

We also received a dataset from the Centers for Medicare & Medicaid Services (CMS) that included all intakes that occurred during our audit period and were entered in ASPEN. The data included some overlapping fields with HCFRS intake data, as well as unique fields specific to the prioritization and survey processes.

We interviewed DPH IT personnel and DHCFLC personnel to better understand the fields and data elements in both datasets. We filtered the HCFRS dataset that we extracted to include only HCFRS intakes linked to licensed nursing homes designated for on-site investigation surveys, which totaled 1,781 records. We filtered the ASPEN dataset to include only intakes with nursing home facility identifiers. We matched the rows of the two datasets and then joined the two, forming one dataset that captured intakes from initial reporting to investigation survey completion. We reviewed the joined dataset, removed any duplicates and extraneous ASPEN rows that did not join to HCFRS intakes, and separated the remaining 1,781 rows of data into categories based on key data elements.

### **Investigation Completion Test Methodology**

Since our Complaint Processing Summary control test concluded that there was high risk that intakes reported to DPH and designated for on-site investigation surveys might not be investigated, we tested all 1,781 HCFRS intakes designated for on-site investigation surveys at nursing homes to verify that investigations were completed. After our data join, we observed 170 HCFRS intakes that required additional information to show that DPH had completed an investigation survey. We asked DPH to provide us with evidence that it had responded to these 170 intakes. We reviewed all responses provided and determined whether they showed that (1) an investigation survey did occur or (2) another response type was more appropriate for the case and DPH could show its rationale. Intakes that did not have an on-site investigation survey when one was required were noted as exceptions. We reviewed

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these exceptions with DPH program management to determine whether they agreed that surveys should have occurred in those instances.

### **Timeliness of Intake Prioritization Test Methodology**

CMS's *State Operations Manual* requires that all Non-Immediate Jeopardy (Non-IJ) intakes be prioritized within two working days. DPH's staff told us that intakes were backlogged during our audit period. Therefore, we determined that there was a high risk that intakes were not prioritized in a timely manner. Using the joined dataset of 1,781 HCFRS intakes, we identified a population of 1,567 nursing home intakes that were designated for on-site investigation at priority Non-IJ High by DPH's intake staff and were linked with investigation survey identifiers in ASPEN. We selected a random statistical sample of 200 intakes from the population of 1,567, using a confidence level of 95% with a sampling error range of 13.3% and an assumed noncompliance rate of 50%. For each intake in our test sample, we found the date the intake was submitted to DPH, the date DPH completed its prioritization of the intake, and the number of working days between those two dates. Intakes that took more than two working days to prioritize were noted as exceptions.

### **On-Site Investigation Timeliness Test Methodology**

During the interview process, Complaint Unit staff members informed us that Non-IJ High on-site investigations were not always started within the required timeframes. To test DPH's compliance with on-site investigation timeliness requirements, we used the same population of 1,567 nursing home intakes designated for on-site investigation at priority Non-IJ High that we had used for our intake prioritization test. We also used the same random statistical sample of 200 intakes for our on-site investigation timeliness test that we had used for our intake prioritization timeliness test. The projection has a confidence level of 95% with a sampling error range of 13.3% and an assumed noncompliance rate of 50%. For each intake in our test sample, we identified the date DPH completed its final prioritization, the date the investigation staff arrived at the facility to begin the investigation survey, and the number of working days between those two dates to determine whether the investigation began within the required timeframe.

### **Attorney General's Office Notification Test Methodology**

During program inquiries with the Complaint Unit manager, intake supervisor, and intake staff, we determined that DPH keeps a paper record of the fax cover letters for all intakes referred to the state

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Attorney General’s Office (AGO). These cover letters are addressed to the AGO and contain an ASPEN intake identifier. We determined this fax cover letter to be sufficient to demonstrate that DPH referred a given intake to AGO and sufficient for us to assess compliance with the requirement of referring abuse to AGO in accordance with Section 72H of Chapter 111 of the General Laws.

To assess whether DPH notifies AGO when it receives intakes alleging abuse, neglect, mistreatment, or misappropriation, we identified a population of all HCFRS intakes that were designated for on-site investigation with an incident type of abuse, neglect, mistreatment, or misappropriation, totaling 430 intakes. We then selected a nonstatistical random sample of 40. For each case in our sample, we verified whether DPH had a record of a fax cover letter addressed to AGO with the specific intake identifier included. The results of the testing cannot be projected to this population.

### **Refer to Other Agency Test Methodology**

When DPH determines that a case falls under another agency’s jurisdiction, it refers the case to that agency. We confirmed with Complaint Unit personnel that all available documentation associated with an intake’s referral to another agency is documented with the intake in HCFRS in the form of timestamped comments and scanned attachments. To assess whether DPH follows its *Complaint Unit Intake Process Manual*, we identified the population of all HCFRS intakes designated as “Refer to Other Agency” in our audit period, totaling 697 intakes. We selected a nonstatistical random sample of 50. We then verified that each intake had evidence that DPH faxed the complaint to the agency, received a follow-up from the agency, and reviewed the agency follow-up. The results of the testing cannot be projected to this population.

### **Recertification Survey Cited Deficiencies Follow-Up Test Methodology**

After reviewing the recertification survey scores for 393 licensed nursing homes, we identified the “Nursing” category as the section of the survey most pertinent to our audit objective. We selected a judgmental sample of the 19 lowest-scoring nursing homes in the “Nursing” category (those with a score below 25) and requested the Statement of Deficiencies (SOD), which notes any instances of facility noncompliance found by DPH during the recertification survey, for each survey in our sample. We also requested and reviewed all follow-up SODs and each nursing home’s plan to correct the cited deficiencies to verify that DPH followed up with each facility until the cited deficiencies were corrected.

## **Data Reliability Assessment**

We assessed the reliability of the data from HCFRS and ASPEN that we used to support our data matching and joining procedures and ultimately our substantive testing. In both data reliability assessments, we concluded that the data used were sufficiently reliable for the matching and joining procedures and for our substantive testing. We performed the following data reliability assessment tests:

- a “trace to and from” procedure using two samples of 25 sources (written intakes) and HCFRS data
- an intake report date validity check to confirm that all intakes were within our audit period
- a duplicate check to confirm that no duplicate HCFRS identifiers or duplicate rows were present in our data
- a comparative check after the joining procedure to confirm for each row that all facility identifiers in ASPEN data matched exactly with all facility identifiers in HCFRS data



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## DETAILED AUDIT FINDINGS WITH AUDITEE'S RESPONSE

### 1. The Department of Public Health did not always perform required on-site investigation surveys.

Out of a population of 1,781 intakes during our audit period that the Department of Public Health (DPH) determined required an on-site investigation survey, 9 did not have surveys completed, even though 7 of the 9 included allegations of abuse or of misappropriation of a resident's funds. When an on-site investigation survey does not take place, there is an increased risk that significant problems may exist at the nursing home and continue to pose a threat of physical or financial harm to a resident.

#### Authoritative Guidance

According to Chapter 5 of the Centers for Medicare & Medicaid Services' (CMS's) *State Operations Manual*,

*At a minimum, if the intake information requires an onsite survey and the allegation may involve both Federal and State licensure requirements, a Federal onsite survey is completed.*

All intakes that DPH investigates with an on-site investigation survey allege facility noncompliance<sup>7</sup> that, pursuant to Section 153.012 of Title 105 of the Code of Massachusetts Regulations, may involve licensure requirements, including substandard quality of care, resident safety or comfort issues, and resident abuse.

Additionally, according to Section 72H of Chapter 111 of the Massachusetts General Laws, "[DPH] shall . . . investigate and evaluate the information reported in any such report."<sup>8</sup>

#### Reasons for Issue

DPH does not have adequate policies and procedures in place that define and implement monitoring controls to ensure that all intakes designated for on-site investigation surveys in DPH's Health Care Facility Reporting System (HCFRS) are subsequently transcribed by staff members into CMS's Automated Survey Process Environment (ASPEN). When intakes requiring an investigation survey are not

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7. Noncompliance can include assessments of performance below the expected levels for facility administration, nursing care, resident rights, food, or living environment.  
8. For the purposes of this law, "such report" is a report alleging abuse, neglect, or mistreatment of a resident, or misappropriation of a resident's funds or property, at a facility.

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transcribed into ASPEN, those intakes do not receive on-site investigation surveys, because the survey process does not begin until the intake is entered in ASPEN.

## Recommendation

DPH should enhance its policies and procedures that define and implement monitoring controls over its intake process to ensure that all intakes requiring on-site investigation surveys are properly transcribed from HCFRS to ASPEN.

## Auditee's Response

*The Complaint Unit received the following number of nursing home and rest home intake cases annually, which as the draft report states, were either prioritized as an on-site investigation, off-site investigation, referred to another agency or reviewed:*

- *July 1, 2015 through June 30, 2016: 10,895 complaints*
- *July 1, 2016 through June 30, 2017: 11,859 complaints*
- *July 1, 2017 through June 30, 2018: 14,760 complaints*

*Of the cases listed above, there were 12 [Immediate Jeopardy intakes] which represent .03% of the total complaints received. [Immediate Jeopardy intakes] are the most concerning intake cases that are investigated on-site and then found to have substantial non-compliance that affects several residents at a severe level of harm. [Immediate Jeopardy intakes] often require extensive surveyor resources and coordination to ensure that the nursing home undertakes corrections to restore resident safety and well-being. . . .*

*Prior to the start of the audit, DPH had identified and hired staff to address an identified triage backlog. Further, a process of continuous quality improvement monitoring was put into place to proactively address the number of intake cases awaiting onsite investigation weekly. As of December 2018, no backlog of intake cases existed.*

*DPH disagrees with [the] finding that "DPH does not have adequate policies and procedures in place." DPH notes that the Complaint Unit's manual provides detailed policies and procedures for properly triaging intake cases. The purpose of the manual is to provide standardization of the intake process.*

## Auditor's Reply

As noted above, during our audit period we found nine instances where DPH did not conduct required on-site investigations, even though seven of the nine included allegations of abuse or of misappropriation of a resident's funds. Although we acknowledge that this represents a small percentage of the total complaints received by DPH during our audit period, all required on-site

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investigation surveys need to be conducted promptly so that any potential problems at the nursing home do not continue to pose a threat of physical or financial harm to a resident. Additionally, the Office of the State Auditor (OSA) acknowledges that DPH's *Complaint Unit Intake Process Manual* does provide policies and procedures for triaging intake cases; however, as stated in our report, DPH needs to establish monitoring controls to ensure that these established policies and procedures are adhered to.

Based on its response, DPH is taking measures to address our concerns in this area.

## **2. DPH did not always prioritize and conduct investigations for high-priority intakes within the required timeframes.**

We found significant problems with how DPH prioritizes and investigates intakes it deems high priority. First, out of a statistical sample of 200 intakes from a population of 1,567 that DPH designated for on-site investigation at priority level Non-Immediate Jeopardy (Non-IJ) High during our audit period, 142 were not prioritized for on-site investigation surveys within the required two working days. Projecting our sample results to the population, we determined with a 95% confidence level that between 64.6% and 76.8% of these 1,567 intakes were not properly prioritized for investigation.

In addition, in the same statistical sample of 200 intakes, 148 were not investigated within the required period of 10 working days. DPH took an average of approximately 41 working days to begin an on-site investigation survey from the time these 148 intakes were prioritized. Projecting our sample results to the population, we determined with a 95% confidence level that between 67.8% and 79.5% of these 1,567 intakes were not investigated within the required period of 10 working days.

When DPH does not prioritize and investigate intakes within the required timeframes, significant issues involving the health and safety of residents in these nursing homes may exist for prolonged periods and could result in physical or financial harm to residents.

### **Authoritative Guidance**

According to Chapter 5 of CMS's *State Operations Manual*,

*For all non-immediate jeopardy situations, the complaint/incident is prioritized within two working days of its receipt, unless there are extenuating circumstances that impede the collection of relevant information.*

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The manual also states that intakes with a Non-IJ High priority code must be investigated at the nursing home within 10 days of their prioritization.

### **Reasons for Noncompliance**

DPH staff members informed us that they did not have enough personnel to perform these activities in a timely manner in every instance and that there was therefore a significant intake backlog during our audit period.

### **Recommendation**

DPH should review staffing needs and make any further adjustments that are needed to ensure that the prioritization and investigation survey processes are completed in the required timeframes.

### **Auditee's Response**

*During the audit period, July 1, 2016 through June 30, 2018, there was a backlog of intake cases. To address the backlog, in 2018 additional staff were hired in the Complaint Unit. As of December 2018, due to hiring additional staff there is no longer a backlog of intake cases. . . .*

*Our analysis of all of the non-IJ high on-site investigations for this period yields a finding that 65.3% were not prioritized within two working days when tracking from HCFRS receipt date to the Aspen Complaint Tracking System (ACTS) assignment. Using the calculation, 65.3% is at the lower end of the range estimated by the Office of the State Auditor based on their sample.*

### **Auditor's Reply**

As noted above, OSA determined that between 64.6% and 76.8% of the 1,567 intakes in question were not prioritized within the required period of two working days. Regardless of the actual percentage, both OSA's and DPH's own analyses indicate that during the audit period, there was a significant problem in this area.

Based on its response, DPH has taken measures to address the problems we identified in this area.

### **3. DPH did not refer some intakes to the Attorney General's Office as required.**

In a nonstatistical sample of 40 intakes out of a population of 430 that required DPH to notify the Attorney General's Office (AGO), DPH did not notify AGO in 2 instances. As a result, AGO was not given the opportunity to review the intake details and determine whether the office needed to take any measures to address the problems.

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## Authoritative Guidance

According to Section 72H of Chapter 111 of the General Laws, DPH "shall . . . notify the attorney general forthwith upon receipt of an oral or written report" alleging abuse, neglect, or mistreatment of a resident, or misappropriation of a resident's funds or property, at a nursing home.

## Reasons for Noncompliance

DPH does not have adequate policies and procedures in place that define and implement monitoring controls to ensure that all intakes designated for on-site investigation surveys in HCFRS, which include all intakes requiring DPH to notify the AGO, are transcribed into ASPEN. When an intake alleging abuse, neglect, mistreatment, or misappropriation is not transcribed into ASPEN, AGO does not receive the required notification.

## Recommendation

DPH should establish policies and procedures that define and implement monitoring controls over its intake process to ensure that all intakes requiring AGO notification are properly transcribed from HCFRS to ASPEN.

## Auditee's Response

*In addition to updated long-term care regulations being promulgated during the audit period, CMS implemented new federal regulations for nursing home oversight on November 28, 2017. This was the first update of federal regulations for nursing homes in over twenty years and represented a significant change in oversight monitoring. . . .*

*Based upon DPH review of the nine intake cases in Finding 1 that were not investigated, only two of the cases were not referred to the AGO as they should have been. Since this oversight was identified, DPH has taken appropriate steps to appropriately refer these two cases. DPH disagrees with OSA's finding that "DPH does not have adequate policies and procedures in place." DPH notes that the Complaint Unit's manual provides detailed policies and procedures for properly triaging intake cases. The purpose of the manual is to provide standardization of the intake process.*

## Auditor's Reply

In its response, DPH acknowledges that the two cases that OSA determined should have been referred to AGO were not. Although this number may not represent a significant percentage of the population of cases during our audit period that required DPH to notify AGO, any instance of noncompliance with this statutory requirement denies AGO the opportunity to review the intake details and determine whether

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it needs to take additional measures to address the problem. Further, although DPH's *Complaint Unit Intake Process Manual* may detail policies and procedures for triaging intake cases, we found that DPH did not have sufficient monitoring controls to ensure that all intakes designated for on-site investigation surveys in HCFRS (which include all intakes requiring that DPH notify AGO) are transcribed into ASPEN.

Based on its response, DPH has taken some measures to address these problems, but we urge the agency to implement our recommendations.

#### **4. DPH had inadequate documentation to track intakes designated for on-site investigation surveys.**

In a nonstatistical sample of 94 intakes designated for on-site investigation surveys, 24 intakes lacked Complaint Processing Summary forms to track the intakes and document a manager's review of work performed by surveyors. In addition, DPH tracked and reviewed 16 of those 24 intakes on a different form from the one outlined in its stated procedures, and there was no documentation to track, and document manager review of, the remaining 8 intakes. As a result, there is a higher-than-acceptable risk that DPH staff members might not take the required actions described on the form. Furthermore, there is a higher-than-acceptable risk that DPH staff members may lose track of an intake altogether after it is designated for on-site survey.

#### **Authoritative Guidance**

DPH's *Complaint Unit Intake Process Manual* states,

*Once a decision has been made to conduct an On-Site investigation it is the responsibility of the Intake Surveyor to create the On-Site Cover Sheet, "Complaint Processing Summary." . . . This tracking form reflects the administrative life of the case and is the key information resource which documents proper review.*

DPH staff members told us that managers use the Complaint Processing Summary form to document their review of work performed by surveyors on on-site investigations.

#### **Reasons for Issues**

DPH does not have monitoring controls in place that ensure that its staff completes Complaint Processing Summary forms for all intakes that require on-site investigation surveys.

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## Recommendation

DPH should establish monitoring controls to ensure that its staff completes Complaint Processing Summary forms for all intakes that require on-site investigation surveys.

## Auditee's Response

*The audit report notes that 16 out of 24 of the intake cases that were identified as non-IJ high on-site investigations had a different form other than the on-site cover sheet with them. In a review of these intake cases, DPH found that the form referenced in the draft report is the tracking sheet for the Recertification Unit as these 16 intake cases were investigated as part of a recertification survey.*

*DPH acknowledges that the Complaint Unit Manual requires that intake cases prioritized as requiring on-site investigations have an on-site cover sheet with them. However, the on-site cover sheet serves as a visual trigger for tracking an on-site investigation through the stages of completion including investigation, writing, review and mailing but it is not a replacement for the work performed in ACTS. The draft audit report states that "DPH staff members may lose track of an intake altogether after it is designated for on-site survey." However, ACTS serves as the tracking system, and the on-site cover sheet augments the process. As a result, while having the on-site cover sheet is a quality assurance tool for tracking an on-site investigation through the completion stages, its absence does not preclude an on-site investigation from being completed. The absence of this form in no way influences or increases the risk of an on-site investigation not being performed.*

## Auditor's Reply

As noted above, we found a number of problems with the documentation related to 24 out of 94 intakes reviewed: 16 of the 24 were processed using a different form from the one prescribed by DPH policy, and there was no documentation to track the remaining 8 and document their manager review. In its response, DPH does not address the 8 intakes that had no Complaint Processing Summary forms completed and suggests that the other 16 were processed using a different but acceptable intake form. However, DPH's *Complaint Unit Intake Process Manual* requires the generation of a specific Complaint Processing Summary form for all intakes that require on-site investigation and states, "This tracking form reflects the administrative life of the case and is the key information resource which documents proper review." For 16 intakes, DPH staff members used an alternate form from the one outlined in its stated procedures, and for 8 intakes, there was no documentation that could be used for tracking and for documenting the manager review. In OSA's opinion, these conditions create a higher-than-acceptable risk that DPH staff members may lose track of an intake altogether after it is designated for on-site survey, and we therefore urge DPH to implement our recommendation to address this problem.