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NURSING HOME CARE

Enhanced HCFA Oversight of State Programs Would Better Ensure Quality



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**Health, Education, and
Human Services Division**

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The Honorable Charles E. Grassley
Chairman
The Honorable John B. Breaux
Ranking Minority Member
Special Committee on Aging
United States Senate

The federal government and the states are jointly responsible for ensuring that the nation's more than 17,000 nursing homes provide adequate care to their highly vulnerable 1.6 million elderly and disabled residents. The Health Care Financing Administration (HCFA), within the Department of Health and Human Services, is responsible for ensuring that each state establishes and maintains a survey capability that effectively identifies and resolves problems in nursing homes that receive Medicare or Medicaid payments. Under contract with HCFA, state agencies conduct surveys at nursing homes to ensure that the homes provide quality care to residents. On the basis of their surveys, these agencies certify to the federal government that each home is in compliance with federal nursing home standards, which enables the home to receive federal payments. Federal payments to these nursing homes under the Medicare and Medicaid programs are expected to total \$39 billion in 1999.

In previous reports to you, we found that residents received an unacceptably poor quality of care in some nursing homes and that the federal and state programs designed to identify and correct these problems had significant weaknesses. For example, we reported that

- nearly a third of the 1,370 homes in California had been cited for care violations classified as serious under federal or state deficiency categories;¹
- one-fourth of the nation's nursing homes had serious deficiencies that caused actual harm to residents or that placed them at risk of death or serious injury and that 40 percent of these homes had repeated serious deficiencies;²
- serious complaints alleging that nursing home residents are being harmed can remain uninvestigated for weeks or months, prolonging situations in

¹California Nursing Homes: Care Problems Persist Despite Federal and State Oversight (GAO/HEHS-98-202, July 27, 1998).

²Nursing Homes: Additional Steps Needed to Strengthen Enforcement of Federal Quality Standards (GAO/HEHS-99-46, Mar. 18, 1999).

which residents may be subject to abuse, neglect resulting in serious care problems like malnutrition and dehydration, preventable accidents, and medication errors;³ and

- when serious deficiencies are identified, federal and state enforcement policies have not been effective in ensuring that the deficiencies are corrected and remain corrected.⁴

In response to these problems and our recommendations, HCFA has developed about 30 initiatives to strengthen federal standards, oversight, and enforcement for nursing homes.⁵ One of these initiatives is to enhance federal oversight of the state survey agencies to help ensure that the states are adequately protecting the health and safety of nursing home residents. When it is determined that a state agency is not adequately performing its survey responsibilities, HCFA has indicated it would develop appropriate sanctions to penalize the state agency, including terminating its contract. HCFA's initiatives are fundamental to its ability to hold states accountable for reliably and consistently performing their contractual responsibilities for certifying that nursing homes meet Medicare and Medicaid standards and provide quality care for nursing home residents.

Because an effective oversight program is critical to HCFA's ability to gauge the states' success in implementing HCFA's many initiatives, you asked us to evaluate HCFA's oversight programs of state agencies' nursing home survey process. Specifically, we assessed (1) the effectiveness of HCFA's approaches to assessing state agency performance, (2) the extent to which HCFA's regional offices vary in their application of these approaches, and (3) the corrective actions available to HCFA when it identifies poor state agency performance. To do this work, we contacted HCFA's 10 regional offices to obtain data about each region's oversight programs from 1996 to the present; interviewed officials at HCFA's headquarters in Baltimore as well as federal surveyors and their managers in HCFA's regional offices; interviewed HCFA officials from the Atlanta, Kansas City, and Seattle regions and met with state surveyors and their managers in four states from these three regions—Florida, Missouri, Tennessee, and Washington; and reviewed data provided by HCFA and its regional offices regarding the number and types of oversight reviews conducted during the past 3 years. We conducted our work between March and September 1999 in accordance with generally accepted government auditing standards.

³Nursing Homes: Complaint Investigation Processes Often Inadequate to Protect Residents (GAO/HEHS-99-80, Mar. 22, 1999).

⁴GAO/HEHS-99-46, Mar. 18, 1999.

⁵A list of related GAO products is included at the end of this report.

Results in Brief

Since last year, HCFA has undertaken a series of initiatives intended to address quality problems facing the nation's nursing home residents, including redesigning its program for overseeing state agencies that survey nursing homes to ensure quality care. The objective of HCFA's oversight program is to evaluate the adequacy of each state agency's performance in ensuring quality care in nursing homes, but the mechanisms it has created to do so are limited in their scope and effectiveness. In addition, HCFA's oversight mechanisms are not applied consistently across each of its 10 regional offices. As a result, HCFA does not have sufficient, consistent, and reliable data to evaluate the effectiveness of state agency performance or the success of its recent initiatives to improve nursing home care. Given the wide range in the frequencies with which states identify serious deficiencies, HCFA cannot be certain whether some states are failing to identify serious deficiencies that harm nursing home residents. Furthermore, HCFA does not have an adequate array of effective sanctions to encourage a state agency to correct serious or widespread problems with its survey process.

HCFA's primary mechanism to monitor state survey performance stems from its statutory requirement to survey annually at least 5 percent of the nation's 17,000 nursing homes that states have certified as eligible for Medicare or Medicaid funds.⁶ But HCFA's approach to these federal monitoring surveys does not produce sufficient information to assess the adequacy of state agency performance. To fulfill its 5 percent monitoring mandate, HCFA makes negligible use of its most effective technique—an independent survey done by HCFA surveyors following completion of a state's survey—for assessing state agencies' abilities to identify serious deficiencies in nursing homes. For the vast majority of states, HCFA requires only one or two of these comparative surveys per state, per year. Yet, in the 64 comparative surveys conducted from October 1998 to August 1999, HCFA found deficiencies that were more serious than those the state found in about two-thirds of the surveys, which suggests that some state surveyors miss some serious deficiencies. But because of elapsed time between the federal and state surveys, HCFA cannot tell whether the differences between its survey results and those of the state are attributable to poor state performance, such as underreporting by state surveyors, or to conditions in the nursing home that changed since the state survey. Rather than making extensive use of comparative surveys, HCFA focuses 90 percent of its own survey efforts on "observational

⁶The Omnibus Budget Reconciliation Act of 1987 refers to the surveys HCFA must conduct as "validation surveys." HCFA's broad term for validation surveys is "federal monitoring surveys," which consist of comparative and observational surveys. Under HCFA's current federal monitoring surveys, observational surveys are technically referred to as Federal Oversight and Support Surveys.

surveys,” in which it relies on its regional surveyors to observe state surveyors as they conduct at least a portion of their surveys. While this approach is useful in many respects, including identifying training needs for state surveyors, it also has a serious limitation as a way to evaluate state performance. HCFA’s presence may make state surveyors more attentive to their survey tasks than when they are not being observed (the Hawthorne effect); therefore, this approach does not necessarily provide a valid assessment of typical performance.

A second HCFA oversight mechanism also has significant shortcomings. About 3 years ago, HCFA implemented the State Agency Quality Improvement Program (SAQIP), a program under which the state agency does a self-assessment to inform HCFA, at least once a year, whether the state is in compliance with seven standard requirements. For instance, all states are expected to evaluate their surveyors’ ability to correctly document deficiencies in nursing homes and to conduct complaint investigations effectively. SAQIP is limited as an oversight program, however, because HCFA (1) does not independently validate the information that the states provide, so it is uncertain whether all serious problems are identified or whether identified problems are being corrected, and (2) has no policy regarding consequences for states that do not comply. For example, in our prior work, we found that some states were not promptly reviewing complaints filed against nursing homes and that these states had not identified this problem in their SAQIP reports to HCFA.⁷ SAQIP also includes four indicators of state performance that HCFA, rather than the states, assesses. SAQIP specifies, for example, that HCFA will determine whether states conduct nursing home surveys within specific time frames and enter the survey results into HCFA’s database. However, the four indicators do not address some important aspects of a state agency’s performance, such as the predictability of the timing of state surveys.

In addition to these weaknesses in its oversight programs, HCFA regions are uneven in the way they implement them, resulting in limited assurance that states are being held equally accountable to federal standards, including the recent initiatives. Although HCFA established the current federal monitoring surveys to develop a uniform national approach for regions to follow in conducting federal oversight surveys, the regions use different methods for selecting oversight reviews and conducting them. Some regions, for instance, comply with HCFA guidance to select homes with no established pattern of deficiencies, while other regions focus on

⁷GAO/HEHS-99-80, Mar. 22, 1999.

homes that the state has already identified as having serious deficiencies. Regions that take the latter approach are unlikely to identify situations in which state surveyors underreport serious deficiencies. The regions also, on average, spend very different amounts of time on observational surveys. While the average time spent on these surveys is 52 hours, the regions range from about 27 hours to about 71 hours to complete these surveys, thus raising questions about the level of effort some regions devote to gauging state performance. In addition, HCFA regional officials have varying views about SAQIP's effectiveness as an oversight program. As a result, some regions supplement SAQIP information by extensively analyzing available survey performance data, while other regions do not believe there is a need to use these supplemental data to assess state survey performance.

Even if HCFA identifies inadequate state agency performance, it currently does not have a sufficient array of effective remedies or sanctions at its disposal to ensure adequate state performance. When HCFA identifies poor state agency survey performance, it can employ one or more of several remedies, such as requiring the state to submit a plan of correction or providing special training to the state surveyors. If these remedies do not bring the state agency into compliance with survey standards, HCFA has two sanctions available—reducing a state's survey and certification funding or terminating the agency's survey contract. Because of the extreme nature of these sanctions, HCFA has only once reduced state funding and has never terminated a state agency's contract. Although HCFA is considering additional sanctions, on the basis of our review of them, we believe that their potential to compel a state to improve its performance is doubtful.

To assist HCFA in effectively overseeing state agencies and achieving the goals of its broader initiatives, we are recommending that HCFA improve the scope and rigor of its state oversight mechanisms, improve the consistency of its oversight across its regions, and further explore the feasibility of additional remedies and sanctions for states that prove unable or unwilling to meet HCFA's performance standards.

Background

HCFA is required by statute to establish an oversight program for evaluating the adequacy and effectiveness of each state's nursing home survey process.⁸ If HCFA determines that a state agency's survey performance is inadequate, it is authorized to impose appropriate remedies or sanctions

⁸See sections 1819 (g) (3) and 1919 (g) (3) of the Social Security Act.

against the state agency. Among HCFA's remedies and sanctions are requiring the state to submit a written plan of correction explaining how it plans to eliminate the identified deficiencies; reducing federal funds for state survey and certification activities; and, ultimately, terminating HCFA's contract with the state. HCFA surveyors in its 10 regional offices carry out the oversight of state agencies.

Every nursing home that receives Medicare or Medicaid funding must undergo a standard survey conducted by the state agency no less than every 15 months. This survey entails a team of state surveyors spending several days on-site conducting a broad review of whether the care and services delivered meet the assessed needs of the residents.⁹ The Omnibus Budget Reconciliation Act of 1987 (OBRA 87) requires HCFA surveyors to conduct federal oversight surveys in at least 5 percent of the nursing homes in each state each year within 2 months of the state's completion of its survey.¹⁰ The following table shows the number of nursing homes per HCFA region, the number of federal monitoring surveys each region is required to conduct in fiscal year 1999, and the number of federal surveyors who conduct nursing home monitoring surveys as of August 1999.

Table 1: Nursing Homes, Required Federal Surveys, and Federal Surveyors Available, by HCFA Region

Regional office	Nursing homes	Federal monitoring surveys required to meet 5% requirement in fiscal year 1999	Federal nursing home surveyors available as of August 1999
Boston	1,170	63	12
New York	1,020	56	7
Philadelphia	1,526	84	12
Atlanta	2,772	139	18
Chicago	3,784	189	22
Dallas	2,398	122	11
Kansas City	1,693	84	12
Denver	666	37	8
San Francisco	1,681	89	11
Seattle	497	32	9
Total	17,207	895	122

⁹The standard survey is used to meet HCFA's requirement to certify homes for Medicare and Medicaid participation.

¹⁰A minimum of five reviews must be conducted in each state each year, even if this brings the total number of required reviews to more than 5 percent.

HCFA's recent initiatives relating to assessing state agency performance are the latest in a series of approaches HCFA has used since OBRA 87 was enacted. Until 1992, HCFA conducted only comparative surveys, in which federal surveyors performed an independent survey of a home and compared their results with the state's. Since 1992, HCFA has used a mix of comparative and different variations of observational surveys. For instance, from 1992 until July 1995, the regions used surveys in which they directly observed individual state surveyors as they performed a survey, but did not communicate with them until the last day of the survey. Starting in 1995, HCFA regional surveyors observed the state surveyors and actively communicated with them during the survey. Under this approach, federal surveyors provided on-the-spot training to the state surveyors. Starting in July 1996, HCFA allowed the regions to develop variations of this approach, and by 1998, multiple regional variations existed. Among these were partial observational surveys that focused on only parts of the survey, and participatory surveys in which federal surveyors became members of the state agency teams.

As part of its broader nursing home initiatives, in October 1998 HCFA introduced its current program of overseeing state survey agency performance, referred to as the federal monitoring survey. This program modified HCFA's prior oversight programs and has two components. The first component is a comparative survey, in which a team of federal surveyors conducts a complete, independent survey of a nursing home after the state has completed its survey, and then compares the results with the state's.¹¹ The second component, which is HCFA's primary monitoring technique, is an observational survey, in which generally one or two federal surveyors accompany state surveyors to a nursing home either as part of the home's annual standard survey or as part of a revisit or a complaint investigation.¹² During these observational surveys, federal surveyors watch the state surveyors perform a variety of tasks, give the surveyors verbal feedback, and later provide a written rating of the state surveyors' performance to state managers. Basically, the current observational surveys represent an extension of the several types of observational surveys that HCFA's regions have used over the previous 6 years. However, unlike earlier observational surveys, the revised surveys are intended to have a national standard protocol, a national focal point

¹¹In conducting these surveys, state and federal surveyors must use the survey protocol (that is, the set of survey procedures) as set out in HCFA's regulations.

¹²Revisits are surveys that are required after a nursing home has been found to have certain deficiencies, in order to determine whether the home has corrected the deficiencies. A complaint investigation is made when a complaint has been filed against the home.

for collecting data about the surveys, and a single national database for tracking survey results.

In addition to the formal review activities required under the federal monitoring surveys, HCFA has other sources of information available for evaluating state agency performance. One such source, SAQIP, initiated in 1996, requires states, in partnership and collaboration with HCFA, to develop and implement quality improvement action plans to address deficiencies in the state's survey process that either the state or HCFA has identified. In addition to SAQIP, a few regions also use information from HCFA's database on survey results to assess state performance in areas such as timeliness of providing information to nursing homes regarding identified deficiencies and the timeliness of enforcement actions.

Limitations Hinder HCFA Oversight Programs' Effectiveness in Assessing State Survey Performance

HCFA's current strategy for assessing state agency survey performance has limitations that prevent HCFA from developing accurate and reliable assessments. The number of comparative surveys required to be completed each year is negligible in that only one or two are required in most of the states, and over half of the comparative surveys are started more than a month after the state completes its survey. Observational surveys are also limited in their effectiveness because these tend to cause state surveyors to perform their survey tasks more attentively than they would if federal surveyors were not present (the Hawthorne effect), thus masking a state's typical performance. Observational surveys have also had other problems during their first year of implementation, such as the fact that federal surveyors are not required to observe state surveyors performing most survey tasks, the lack of an effective data system for recording results, and the slowness of written feedback to state surveyors. Finally, SAQIP does not require independent verification of states' self-reported performance, and its standards do not address all important aspects of the state survey process.

HCFA's Use of Comparative Surveys Is Negligible

Although comparative surveys are the only oversight tool that furnishes an independent federal survey where results can be compared with those of the states, HCFA's use of them is negligible. Conducting a sufficient number of these comparisons is important because of concern that some state survey agencies miss significant problems. For example, HCFA surveyors found deficiencies that were more serious than those found by the state surveyors in about two-thirds of the comparative surveys they conducted between October 1998 and July 1999.

As we reported in July 1998, state agency surveyors can miss problems that affect the health and safety of residents.¹³ In addition, HCFA data show significant variation in the extent to which state surveyors identify serious deficiencies. For example, state survey agencies in Idaho, Kansas, North Dakota, and Washington identified serious deficiencies in more than half of their surveys. On the other hand, state surveyors in Maine, Colorado, Tennessee, and Oklahoma identified such problems in only 8 to 13 percent of their surveys.¹⁴ With such a range in identified serious deficiencies in nursing homes, HCFA needs to know to what extent such data accurately portray the quality of care provided or the adequacy of state survey agency performance.

Of the 64 comparative surveys that HCFA completed between October 1998 and July 1999, 44 (69 percent) identified a more serious deficiency than had the state surveyors. For example, during a comparative survey conducted at a nursing home in Missouri in November 1998, HCFA found 24 deficiencies that it believes state surveyors should have, but did not, identify during their review about 6 weeks earlier. One of these deficiencies identified six residents whose nutritional status was not being adequately assessed by the nursing home, resulting in significant weight loss to several of them. One resident lost 19 percent of his weight between June and October 1998. His weight at the time of HCFA's survey was 93 pounds, which HCFA indicated was significantly below the resident's minimally acceptable body weight of 108 pounds. Less than 4 months after this resident's admission to the home, he had also developed two moderately severe pressure sores, which the nursing home was inappropriately treating with a cream that its manufacturer stated was not intended to heal pressure sores but rather to prevent irritation to the skin.

Until 1992, comparative surveys were the sole method HCFA used to carry out state agency oversight responsibilities. According to HCFA documents, the agency began to decrease its reliance on comparative surveys in 1992 because (1) it was difficult to adjust for changes in the nursing home that may have arisen between the dates of the state and the federal surveys, (2) two separate surveys during a short time period created a strain on the nursing home, (3) too much time had passed between the completion of the state survey and the time the state received feedback from federal surveyors for the state surveyors to recall the details of the survey, and (4) comparative surveys were resource-intensive.

¹³GAO/HEHS-98-202, July 27, 1998.

¹⁴Based on standard surveys conducted between January 1997 and April 1999.

Under the revised federal monitoring surveys, started in October 1998, HCFA acknowledged the need to do more comparative surveys than the 21 that had been done over the previous 2 years. Nevertheless, under this program, only about 10 percent of the federal monitoring surveys completed each year must be comparative surveys, and the remaining 90 percent may be observational surveys. Specifically, HCFA now requires a minimum of one comparative survey in states having fewer than 200 nursing homes, two in states with 200 to 599 nursing homes, and three in states with 600 or more homes. Table 2 shows the minimum number of comparative surveys to be completed in each state and the District of Columbia.

Table 2: Minimum Number of Comparative Surveys Required Yearly, by State

Number of homes in state (as of May 1999)	Minimum number of comparative surveys required each year	Number of states	States
Fewer than 200	1	20	Alaska, Arizona, Delaware, District of Columbia, Hawaii, Idaho, Maine, Montana, Nevada, New Hampshire, New Mexico, North Dakota, Oregon, Rhode Island, South Carolina, South Dakota, Utah, Vermont, West Virginia, Wyoming
200 to 599	2	24	Alabama, Arkansas, Colorado, Connecticut, Georgia, Indiana, Iowa, Kansas, Kentucky, Louisiana, Maryland, Massachusetts, Michigan, Minnesota, Mississippi, Missouri, Nebraska, New Jersey, North Carolina, Oklahoma, Tennessee, Virginia, Washington, Wisconsin
600 or more	3	7	California, Florida, Illinois, New York, Ohio, Pennsylvania, Texas

While providing important information, the low number of comparative surveys will not permit HCFA to determine how representative these one to three surveys per state are of overall state performance.

Gap in Time Between State Survey and HCFA Comparative Survey Makes Assessment of State Performance Difficult

HCFA reestablished the comparative survey as part of its oversight survey process in 1998, but it has not adequately addressed the earlier concern about the time that elapses between the end of the state's survey and the start of the federal survey. We found that 33 days on average passed between these dates for comparative surveys completed from October 1998 through July 1999. Although this meets the requirements of OBRA 87, the gap in time between the two surveys raises the possibility that changes at the nursing home between the two surveys were responsible for differences, thus calling into question the extent to which federal results can be used to assess state performance.

OBRA 87 requires HCFA to start a comparative survey in a nursing home within 2 months of the completion of the state's survey. HCFA's conclusions about the state's survey effectiveness are supposed to take into account the difference in time. Because aspects of a nursing home, such as residents, staffing, and ownership, can change in a short period of time, developing a fair and accurate assessment of state surveyor performance after a lapse in time can be difficult. Several state and HCFA surveyors we interviewed told us that the time lag between the surveys continues to be a problem. Our analysis shows that for the 64 comparative surveys that HCFA completed between October 1998 and July 1999, 33 days, on average, had passed from the time the state completed its survey until HCFA started its comparative survey. Sixty-three of these comparative surveys started within the 2-month time frame mandated by OBRA 87, while only one, which started 68 days after the state's survey, did not.¹⁵ Four regions averaged fewer than 30 days, with the Dallas and Denver regions averaging 17 days. At the other end of the scale, the Atlanta and New York regions averaged 43 days, while the Philadelphia region averaged 47 days. Table 3 shows the number and time frames of comparative surveys conducted between October 1998 and July 1999.

¹⁵The median time for the start of the 64 comparative surveys was 32 days.

Table 3: Time Frames for the Start of the 64 Comparative Surveys HCFA Conducted Between October 1998 and July 1999

Days from end of state survey to start of comparative survey	Number of comparative surveys
0 to 10	7
11 to 20	10
21 to 30	12
31 to 40	12
41 to 50	10
51 to 60	8
Over 60	5

To avoid the problems presented by gaps in time between the state and federal surveys, in August 1999 HCFA instructed its regions to start comparative surveys within 2 to 4 weeks after the state's survey, because the less time that elapses between the two surveys, the less likely it will be that a home's environment, staff, or residents will have changed. While this is an improvement, a delay of several weeks in the comparative survey could still result in problems. State and federal surveyors told us that comparative surveys are more effective and reliable in assessing state performance if they start immediately after the state has completed its survey, even as soon as the day after the state's exit from the home.

Observational Surveys' Effectiveness Hindered by Systemic and Transitional Problems

HCFA relies on observational surveys as its primary federal monitoring technique. Observational surveys may help HCFA to identify state agency training needs on a real-time basis, but several problems inhibit these surveys from getting a clear and accurate picture of a state's survey capability. As designed, the surveys have a systemic weakness in that they require federal surveyors to observe state surveyors as they conduct a survey. Because they know they are being observed, state surveyors may be more attentive to survey tasks than they would normally be. In addition to this weakness, HCFA has encountered several specific problems as it transitions from its previous types of observational surveys to those now being conducted. For example, the surveys (1) cannot identify all significant deficiencies that state surveyors miss, in part because HCFA surveyors are not required to observe most of the tasks state surveyors perform; (2) necessitate that one HCFA surveyor must oversee the efforts of as many as three state surveyors at one time; (3) rate state surveyors for some survey activities that are not required by federal survey regulations; and (4) have had serious data system problems that prevent HCFA from assessing the results of observational surveys conducted since October 1998. In addition, HCFA surveyors have not always given timely

written feedback to state agencies with respect to state surveyors' performance so that corrective action can be implemented promptly.

Unlike comparative surveys, observational surveys do not require HCFA surveyors to perform an independent review of a nursing home. Instead, HCFA surveyors observe state surveyors as they perform portions of a survey and rate them on one or more of eight possible survey tasks.¹⁶ As a result of observing only a portion of the survey, HCFA surveyors cannot determine whether state surveyors identify all significant deficiencies. HCFA officials told us that observational surveys were not designed to identify all deficiencies. They also said that of the 631 observational surveys completed between October 1998 and August 1999, only 8 (1 percent) identified deficiencies that were more serious than those identified by the state.¹⁷ During our interviews, nine of the regions indicated that observational surveys allow them to help state surveyors identify deficiencies that may otherwise be missed but that the surveys do not ensure that HCFA surveyors identify all serious deficiencies. The Kansas City region agreed with the other regions but also indicated that federal surveyors can identify deficiencies missed by state surveyors if they perform all eight survey tasks, as this region says it does, during an observational survey.

During an observational survey, federal surveyors are generally required to observe only two of the eight tasks—the preparation of the statement of deficiencies and the resident review and quality-of-life assessments.¹⁸ As a result, during any given survey, federal surveyors are not required to observe most of the survey tasks that state surveyors perform. Furthermore, some federal surveyors told us that even observing only the required tasks can be a problem because a single federal surveyor has sometimes been required to observe as many as three state surveyors at a time. Although HCFA guidance to the regions suggests that one federal surveyor should be able to observe the work of two or three state

¹⁶The tasks are to determine how well state surveyors perform (1) the off-site preparation activities, (2) the entrance conference, (3) the initial tour of the home, (4) the selection of a sample of residents for review, (5) the analysis of information they developed to determine deficiencies, (6) the exit conference, and (7) the preparation of the statement of deficiencies. An eighth task, with six subtasks, includes how well state surveyors observe general conditions of the home, kitchen and food service activities, care and treatment of several sampled residents, quality of life for selected sampled residents, administration of medications, and the adequacy of the home's internal quality assurance program.

¹⁷These eight surveys were all from the Kansas City region.

¹⁸Each region must address three of the eight tasks in a given percentage of yearly observational surveys. For instance, the sample selection task must be reviewed in at least 40 percent of the observational surveys completed in a state during the year.

surveyors, federal surveyors we interviewed indicated that, in their experience, it is generally not possible for one federal surveyor to adequately observe more than two state surveyors at a time.

Several state surveyors expressed concern to us that some of the criteria HCFA used to assess their performance are inconsistent with the survey tasks required in federal guidelines. For example, although federal guidelines do not require an employee of the nursing home to accompany the state surveyors during the required tour of the home, a state surveyor in Florida told us that he was criticized for conducting the tour without an employee present. Officials from one HCFA region confirmed that such situations have occurred and attributed them to a flaw in the federal survey's protocol that does not distinguish between optional and required survey activities.

Inconsistencies between the federal guidelines and survey protocol increased when HCFA issued a revision to the guidelines on July 1, 1999. Some of these changes introduced significantly different survey requirements, such as a new methodology for state surveyors to use in selecting a sample of nursing home residents to review. A HCFA official acknowledged that inconsistencies have existed since revised observational surveys started in October 1998 and that the revision to the federal guidelines has added to the inconsistencies. She told us that one of several HCFA work groups now reviewing observational surveys is working to identify and eliminate the inconsistencies.

In addition, the data system developed to support the observational surveys has not been able to produce usable management reports. Because of technical problems with the system, HCFA regions were not able to enter survey results in the database for several months. As a result, HCFA has been unable to use the database to identify poorly performing state agencies or to determine needed corrective actions. The Dallas regional office found these problems particularly troublesome and told us that its surveyors are extremely frustrated with the database because it requires too much time to input data and does not allow easy access to the data that have been entered. As a result, the region has not been able to use the database to analyze the results of its surveys.

HCFA officials told us that problems with the data system occurred because HCFA rushed its development in order to meet the program implementation date of October 1998 and thus did not follow standard systems development practices. For example, a requirements analysis was not

completed to ensure that the system would provide all the information HCFA would need to assess state performance. HCFA entered into a contract in June 1999 to address these problems and to add additional capabilities, including the creation of a new database for surveys conducted after October 1, 1999. However, the results of surveys conducted in fiscal year 1999 will not be included in the new database. Although a HCFA official told us that it would be unacceptable for regions not to consider survey results from the first year of the revised surveys in determining a state survey agency's performance, there has been no guidance from HCFA requiring the regions to consider information in both databases when assessing state performance. Moreover, the observational survey database is now maintained separately from the database that HCFA uses to track identified deficiencies in nursing homes. Although HCFA plans to include the results of observational surveys in its redesigned central database, this redesign will not take place for several more years, according to HCFA officials.

Finally, although formal written feedback is not required as part of observational surveys, the regions we visited provide feedback in this way to state agencies. To be useful, this feedback should be provided in a timely manner to both the state surveyors who performed the survey and their managers so that any needed corrective action can be taken. Nevertheless, in three of the four states we visited, the surveyors and their managers sometimes did not receive the written feedback for 3 to 5 months after the survey was completed. Furthermore, in some cases, state surveyors were surprised at the content of the written feedback because it was much more critical of their performance than the initial verbal feedback they received from HCFA surveyors during the survey. Although the revised surveys started in most states in October 1998, an official of the Association of Health Facility Survey Agencies testified that as of late June 1999, state agency managers from a majority of states had received no formal feedback. She further indicated that oversight without feedback is not effective in improving quality.¹⁹

Some state agency officials told us that HCFA's delays in providing written feedback have prevented the agencies from initiating important corrective actions when problems with state surveyor performance were identified. For example, for an observational survey conducted in Florida in October 1998, HCFA did not give feedback to the state until February 1999. This survey found, among other things, that the state surveyors did not correctly select the resident sample and that HCFA surveyors had to intervene to ensure that the sample was appropriate. For another survey

¹⁹Testimony before the Senate Special Committee on Aging, June 30, 1999.

conducted in Florida in March 1999, HCFA gave feedback to the director of the state's survey program in early April 1999, but the state surveyors who participated in the review and their manager did not receive the written results until May 1999. In this survey, HCFA found that the state surveyors were too quick to accept explanations of apparent deficient practices by the nursing home's staff, thus permitting potentially deficient practices to continue.

SAQIP Does Not Provide HCFA With Complete State Agency Performance Data

In addition to the federal monitoring surveys that are required by statute, HCFA instructs its regions to use SAQIP to improve and monitor certain state agency survey-related activities. When a state is not in compliance with a SAQIP standard, HCFA is expected to help the state develop a corrective action plan and to work with the state as a partner to correct the problem. However, SAQIP cannot ensure that HCFA knows of significant problems in a state agency's activities because SAQIP relies on the state agency to self-certify to HCFA whether it is in compliance with particular requirements associated with its performance. Because HCFA does not independently verify the information the states provide, it has no assurance that states surface all serious problems or that they correct the problems they have identified. Although SAQIP also includes some indicators of state performance that HCFA itself assesses, these indicators do not address all the important aspects of a state agency's activities.

SAQIP replaced HCFA's State Agency Evaluation Program in 1996.²⁰ Under the previous program, HCFA's regions analyzed data maintained in HCFA's databases to evaluate some indicators of state performance and conducted on-site reviews at state survey agencies of state documentation to assess compliance with other indicators. For example, to assess a state's complaint process, regional surveyors visited the state to review state documentation from a sample of complaints filed against nursing homes and determine whether the state responded appropriately to the complaints. Each region was required to follow the same procedures in reviewing all state agencies, the states were rated on specific activities, and the results of each state's rating were compiled in a single report.

In essence, SAQIP includes nearly all of the same broad standards that the previous program included, but it shifts the responsibility for assessing compliance with seven standards from the regions to the states. SAQIP does not require that HCFA independently verify the state's assertion.

²⁰Both the State Agency Evaluation Program and SAQIP apply to all types of providers, including home health agencies, kidney dialysis facilities, nursing homes, and others.

Compliance with the other four standards for nursing homes is determined by HCFA (see table 4).

Table 4: SAQIP Nursing Home Performance Standards for State Agencies

Responsible entity	Performance standards
State	<ul style="list-style-type: none"> — Properly document deficiencies discovered in a nursing home — Ensure that nursing homes' plans of correction accepted by the state agency reflect appropriate actions and time frames to correct cited deficiencies — Conduct all surveys with qualified individuals — Ensure consistency in survey performance — Measure the accuracy and improve the consistency in applying enforcement actions against nursing homes — Effectively investigate and process complaints filed against nursing homes — Monitor expenditures and support charges to federal programs in accordance with regulations
HCFA	<ul style="list-style-type: none"> — Ensure that each nursing home is subject to a standard survey not more than 15 months after its previous survey and that the statewide average between standard surveys does not exceed 12 months — Ensure that all surveys, including complaint investigations, are conducted unannounced or are announced consistent with HCFA instructions — Ensure that the state agency's annual budget request, activity plan, and expenditure reports are prepared and submitted in accordance with federal instructions and accurately reflect the allocation of costs between state and federal programs — Ensure that the state agency effectively maintains the database HCFA uses to record survey results

As a result of this change in SAQIP's design, HCFA has no assurance that a state is in compliance with the first seven standards. For instance, for the standard that requires states to "effectively investigate and process complaints filed against nursing homes," our March 22, 1999, report noted that Michigan's SAQIP acknowledged the state had not determined whether it was investigating and processing complaints in accordance with state time frames; yet, the state indicated that it believed it was doing so. When we reviewed the state documentation, we found that more than 100 pending complaints filed against Michigan nursing homes remained uninvestigated weeks and even months after their receipt, and that complaints that were investigated had not been investigated within Michigan's required time frames.²¹ The Atlanta regional office staff also told us that it identified more significant problems in a state when it used the previous evaluation program than it does using SAQIP. From this region's perspective, SAQIP does not provide for an in-depth evaluation of a

²¹GAO/HEHS-99-80, Mar. 22, 1999.

state agency's survey or operational performance because it depends on a state's willingness to devote adequate resources for assessment and to be candid in identifying problems to HCFA.

In addition to removing HCFA's direct responsibility for verifying state compliance with the seven standards, SAQIP does not set national performance thresholds. For instance, under the previous evaluation program, HCFA reviewed a sample of deficiencies identified by the state survey agency to determine whether at least 90 percent of them were properly documented. If a state met this 90-percent threshold, its performance for this standard was acceptable. SAQIP leaves the determination of such thresholds to each state, and we found wide differences among states in the percentages they use. For example, in 1998, Oklahoma's goal was 75 percent, Louisiana's goal was 90 percent, and Wyoming's goal was 100 percent.

Regions Are Inconsistent in How They Conduct Oversight Activities

One of HCFA's goals in revising its federal monitoring surveys was to establish consistency among the regions in the process used to assess state performance. However, differences still exist among the regions in how they select and conduct oversight surveys. Although regions may need some flexibility in selecting surveys for review, conducting them requires a high level of consistency among the regions to ensure that states are being held equally accountable to federal standards. Additionally, HCFA regions differ in their view of SAQIP's effectiveness as an oversight tool, and some supplement HCFA's federal monitoring surveys and SAQIP by analyzing other available survey data to assess state agency performance. Finally, the regions spend very different amounts of time, on average, conducting observational surveys, which raises questions about the scope and quality of their reviews.

Regions Use Different Criteria and Methods for Selecting and Conducting Surveys for Review

When HCFA established the new federal monitoring survey in October 1998, it suggested that, for comparative surveys, the regions select homes for which the state did not find deficiencies categorized as "immediate jeopardy," "actual harm," or "substandard quality of care" (see app. I for definitions of these deficiency categories).²² However, only the Dallas, Denver, San Francisco, and Seattle regions indicated that they routinely follow this guidance. Other regions generally used a variety of other criteria, including selecting homes for which the state has identified

²²In commenting on a draft of this report, HCFA indicated that the focus of its comparative surveys for the next year will be on deficiency-free nursing homes.

continuing serious problems or homes located in diverse geographic areas. Some regions also indicated that when conducting comparative surveys, they specifically select homes designated by HCFA for special focus because of the homes' poor performance histories.²³ By focusing on homes that were identified by state surveyors as having serious problems, HCFA's surveyors are less likely to identify situations in which state surveyors underreported serious deficiencies.

Another significant difference we found among the regions in conducting comparative surveys is the way they select a sample of nursing home residents for review. State surveyors select a sample of a home's residents as part of their procedures for evaluating the care and treatment given to the residents. For this sample, the surveyors may review a resident's medical record, interview residents and their relatives, and observe the environment and care practices of the home. Sample selection is a key survey task for determining whether a nursing home is in compliance with federal survey regulations and is providing appropriate care to its residents. In conducting a comparative survey, federal surveyors determine whether the state surveyors selected an appropriate sample of residents, and then also select a sample of residents as part of the comparative survey.

The regions vary in how they select resident samples, with some regions selecting a sample that includes some overlap with the state sample and other regions making no attempt to do so. For example, the Kansas City region tries to include in its sample one-half of the residents who were included in the state's sample, believing that this practice allows it to more closely duplicate the state's survey and thus obtain a more valid assessment of the state's performance. On the other hand, the Atlanta region makes no attempt to include any of the same residents in its samples, believing that if systemic care problems exist in a home, any sample will disclose these problems. We believe that, to better determine the reasons for discrepancies between comparative and state surveys, federal surveyors should sample as many of the same residents as the state sampled in cases in which federal surveyors determine that the state sample was appropriate. Federal and state surveyors we interviewed agreed that reviewing the same sample would improve the consistency of comparative surveys among HCFA's regions. However, they also noted that reviewing the same sample would require the comparative surveys to start much sooner than 2 months after the state's survey.

²³Homes selected by HCFA for special focus are those that continually have serious problems and require intense state agency monitoring as part of HCFA's nursing home initiatives. HCFA has designated two special-focus nursing homes in each state.

Each of the regions also uses a variety of criteria to select nursing homes for observational surveys. HCFA's guidance for selecting homes instructs the regions to use type, size, and geographic location of a nursing home, as well as to consider other criteria, including the performance differences among state survey offices in the region. Although observational surveys give HCFA an opportunity to provide on-site training to state surveyors, HCFA's guidance does not ensure that the regions will observe as many state surveyors as possible. For example, the Atlanta and Seattle regions indicated that surveys are often selected primarily on the basis of the characteristics of the nursing home and not in order to assess a broad range of state surveyors. At the time of our visit to the Atlanta region, it had completed seven observational surveys in two of Tennessee's three districts, but none in the third district. Furthermore, 7 of the 20 state surveyors reviewed during these surveys had been reviewed two or three times, while over two-thirds of Tennessee's surveyors had not been reviewed at all. The Atlanta region did not indicate any particular problem with the performance of these surveyors that would require repeated review of their performance.

Regions Differ in Their View and Use of SAQIP and Other Available Data

HCFA regions also vary in how valuable they believe SAQIP is as an oversight program. Some regions believe that SAQIP is effective, while others believe some SAQIP standards encourage states to improve the quality of their survey programs but other standards do not surface all serious problems. The Atlanta regional office told us that it does not believe SAQIP is an effective method for tracking and reporting operational problems in a state agency. Believing that SAQIP has limitations, some regions supplement it by analyzing data included in HCFA's databases to evaluate state agency performance in areas such as survey predictability.

The Seattle region, which played a major role in developing SAQIP, believes SAQIP is an effective oversight tool because it allows state agencies to identify survey performance problems unique to a state and permits the state agency to develop corrective action plans. The Philadelphia, Dallas, and Denver regions believe that some of the seven SAQIP quality improvement standards the states assess themselves are effective in encouraging states to improve their survey processes, but they also believe that the four remaining standards for which HCFA assesses performance are incomplete. For example, although one standard requires regions to review data to determine whether a state performs its surveys within statutory time frames, it does not require the regions to assess the same data to determine whether a state's survey schedule allows nursing homes

to predict the date of their next survey. Avoiding predictability is important because the extent of care problems in a nursing home can be hidden if nursing homes can predict when their next survey will occur.

The Atlanta regional office recently started a program to conduct in-depth analyses of each state agency in its region by using available survey data. Through these analyses, the region recently determined that the annual state surveys of nursing homes in four of the region's eight states (South Carolina, Kentucky, Tennessee, and Mississippi) are highly predictable, contrary to HCFA policy. It also found that in most of the states where it has completed reviews, state surveyors were not conducting revisits of nursing homes to determine whether identified deficiencies have been corrected within HCFA's recommended time frame. Although HCFA recommends that a state wait no longer than 55 days to conduct its first revisit to a nursing home, four of the six states for which the Atlanta region completed reviews did not meet this time frame more than half of the time.²⁴ Table 5 presents the results of the Atlanta region's analysis of state time frames related to this requirement. The Atlanta region also found several problems with Florida's timeliness in conducting revisits, including one case in which state surveyors did not conduct a revisit until about 10 months after the home's original survey.

Table 5: Percentage of Surveys in Which First Revisit Was Not Made Within HCFA's Recommended Time Frame

State	Number of revisits conducted	Percentage of surveys in which first revisit was not made within HCFA's recommended time frame
Alabama (through Jan. 20, 1999)	21	76
Georgia (through Mar. 31, 1999)	105	77
Kentucky (through June 1, 1999)	108	22
Mississippi (through June 16, 1999)	69	61
North Carolina (through Apr. 20, 1999)	60	53
Tennessee (through Mar. 3, 1999)	84	10

After identifying problems with state performance, Atlanta officials meet with top-level survey and certification management officials in each state to discuss the results and present the data used to develop the findings. They then follow up this meeting with a formal letter to the state

²⁴The Atlanta region had not completed comparable analyses of Florida or South Carolina at the time of our visit.

summarizing the results of the meeting and identifying actions the region expects the state to take to correct identified problems. These management reports, which the Atlanta region plans to begin issuing quarterly, are expected to provide the region with a documented history of a state agency's performance over time, making it possible to more readily identify patterns of poor state performance.

Variation in Resources, Survey Time Across Regions

In addition to the variations among regions in the methods they use to conduct reviews, variations exist in the level of oversight resources available to them. Table 6 contains the ratio of state to federal surveyors, the ratio of observational surveys to be completed in fiscal year 1999, and the number of federal surveyors available to complete them. It also shows the average number of hours each region spent conducting surveys from October 1998 through July 1999.

Table 6: Variation in Resources Available for and Time to Complete Observational Surveys

Region	Number of federal nursing home surveyors (as of August 1999)	Ratio of state to federal surveyors	Ratio of observational surveys required in 1999 to federal surveyors	Average no. of hours per observational survey (Oct. 1998 - July 1999)
Boston	12	14.4 to 1	4.6 to 1	26.9
New York	7	33.3 to 1	7.1 to 1	31.0
Philadelphia	12	15.8 to 1	6.2 to 1	48.7
Atlanta	18	32.8 to 1	6.8 to 1	60.9
Chicago	22	30.7 to 1	8.0 to 1	70.6
Dallas	11	59.8 to 1	10.2 to 1	37.5
Kansas City	12	29.8 to 1	6.3 to 1	50.6
Denver	8	17.6 to 1	3.8 to 1	58.8
San Francisco	11	26.5 to 1	7.5 to 1	53.6
Seattle	9	15.7 to 1	3.0 to 1	51.6
Nationwide	122	28.3 to 1	6.6 to 1	52.2

Table 6 illustrates that federal surveyors in some regions must conduct significantly more observational surveys than surveyors in other regions. For example, at one extreme, Seattle surveyors are required to complete an average of 3 observational surveys per surveyor per year, while at the other extreme, Dallas surveyors must perform more than 10. Officials from the Dallas region told us that they did not have the resources available to complete the required review of 5 percent of state surveys in fiscal year

1998 and indicated that the shortage would likely prevent them from meeting their survey requirements again in fiscal year 1999 unless they received help from other regions. The region attributed this shortage to the retirement of several surveyors at the end of the prior year, who had not yet been replaced, and the need to focus on other, higher-profile projects. A Dallas region official told us that the region plans to hire two more surveyors this year, but it will nevertheless need an additional four or five surveyors to meet its oversight requirements.

As shown in the last column of table 6, there are also large differences in the average time that regions have invested to complete observational surveys since October 1998, ranging from about 27 hours in the Boston region to nearly 71 in the Chicago region. HCFA officials could not explain the reasons for such variation. One official theorized that the variations might be due simply to differences in how the regions account for the time they spend conducting these surveys but also said that the variations could signify a difference in the content and quality of the surveys being performed.

HCFA's Options for Addressing Poorly Performing State Agencies Are Inadequate

Although HCFA has authority under the Social Security Act to take corrective action against a state agency that performs inadequately in conducting surveys, HCFA does not now have an adequate array of effective sanctions. HCFA may use several remedies to encourage a state to improve performance. When remedies fail, HCFA may impose either of two sanctions—reducing the state's funding for survey and certification activities or terminating the state's survey contract. However, HCFA has only once reduced a state's survey and certification funding for failure to conduct surveys in accordance with HCFA regulations, and it has never terminated a state's contract.²⁵ HCFA is considering regulations to authorize two additional actions that it classifies as sanctions, but, on the basis of our review of the proposed regulations, we believe their effectiveness is doubtful.

HCFA's Criteria for Applying Present Sanctions Limits Their Use

HCFA has the authority to take certain actions against a state agency that performs poorly.²⁶ Currently, HCFA defines inadequate state agency performance to include a state's failure to identify an instance in which

²⁵HCFA reduced survey and certification funding to the California state agency for its refusal to conduct surveys of nursing homes in 1990 and 1991 in accordance with OBRA 87.

²⁶See, for example, sections 1819 (g)(3)(C) and 1919 (g)(3)(C) of the Social Security Act.

nursing home residents are placed in immediate jeopardy, or if a state agency demonstrates a pattern of other problems, including failure to

- identify deficiencies when the failure cannot be explained by changed conditions in the home;
- cite only valid deficiencies; and
- conduct surveys in accordance with federal requirements.

When HCFA identifies inadequate state performance, its first step is to impose one or more of several remedies against the state, with the objective of improving the state's performance. The most commonly used remedy has been to provide training for individual state surveyors or survey teams. A HCFA official indicated that other remedies are occasionally used but that training is viewed as the preferred approach. When remedies fail to improve state performance, HCFA can impose sanctions, which are intended to penalize a state agency for failing to improve performance. See table 7 for the remedies and sanctions now available to HCFA.

Table 7: Remedies and Sanctions Available to HCFA in Response to Poor State Agency Performance

Tool	Action
Remedies	<ul style="list-style-type: none"> — Provide training to survey teams — Provide technical assistance to the state with respect to scheduling surveys and following survey procedures — Require the state agency to implement improvements identified in the state's plan of correction — Assume responsibility for developing survey schedules for the state agency
Sanctions	<ul style="list-style-type: none"> — Reduce the state's Medicaid funding for survey and certification activities — Terminate the state's survey contract

Note: Remedies and sanctions are shown in the order they appear in HCFA documentation.

To reduce a state's survey and certification funding, HCFA must demonstrate that the state displays a pattern of failure to identify deficiencies in nursing homes.²⁷ To develop this information, HCFA compares the deficiencies it identifies through its surveys of nursing homes with those found by state surveyors. When HCFA determines that the quarterly disparity rate between the deficiencies it identified and those the state agency identified is greater than 20 percent in at least three of the

²⁷HCFA cannot reduce survey and certification funding to a state or terminate the state's contract based on a single instance of a state's failure to identify a situation that places the health or safety of a resident in immediate jeopardy.

last four quarters and the state fails to correct the disparity within the next two quarters, it may impose this sanction.

Currently, the only way HCFA can develop the specific quantitative evidence it needs to identify disparity rates is through comparative surveys. However, as previously discussed, the regions conduct too few such surveys to establish a pattern of inadequate state agency performance. For instance, 43 states and the District of Columbia will have only one or two comparative surveys per year. A HCFA official acknowledged that conducting so few comparative surveys is insufficient to establish a pattern of poor performance in any state. Therefore, this official told us, HCFA attempts to rely on observational surveys to obtain the needed quantitative evidence, but the official agreed that the present observational surveys are not designed to provide this information. As noted, 69 percent of the comparative surveys completed as of August 1999 identified deficiencies that were more serious than those found by state surveyors, but only in 1 percent of their observational surveys did the regions identify deficiencies that were more serious. This is largely because the goal of observational surveys is not to identify all deficiencies but rather to observe state survey performance. Thus, it does not appear that either the comparative or the observational surveys can provide the basis HCFA needs to use the sanction of reducing a state's Medicaid survey and certification funding for failing to properly identify deficiencies in nursing homes.

Terminating a contract with a state agency would require HCFA to find a replacement for the state surveyors. HCFA officials indicated to us that three alternatives exist: (1) use federal surveyors to conduct surveys in a state, (2) contract with another state agency in the same state, or (3) contract with a state agency from another state. According to HCFA and state survey agency officials, HCFA does not have a sufficient number of surveyors to conduct surveys in states that have a large number of nursing homes. Texas alone has 402 state surveyors, while HCFA has 122 surveyors nationwide. Six other states also have more surveyors than HCFA. Furthermore, even in smaller states, the use of federal surveyors for an extended period could become a problem because they would not be able to perform their normal monitoring duties and other responsibilities. With regard to the second alternative, the President of the Association of Health Facility Survey Agencies told us that contracting with another agency within the state is unrealistic given the negative atmosphere created between HCFA and the state if the state agency's contract has been terminated. The third alternative, contracting with another state, would be

feasible only if the contracting state had or could hire a sufficient number of surveyors to conduct surveys in both states.

Potential Effectiveness of Proposed Sanctions Is Doubtful

As part of its nursing home initiatives, HCFA established a task force in late 1998 to expand and clarify the definition of inadequate state survey performance and to suggest additional remedies and sanctions that HCFA could take against state agencies that perform poorly. HCFA indicated to us that new instructions should be issued sometime in the fall of 1999. However, on the basis of our review of the proposed changes, it is uncertain whether the additional sanctions HCFA is considering will be strong enough to compel a state agency to improve its performance.

Under its proposed guidelines, HCFA would add seven situations to its definition of inadequate state performance. These seven include situations in which a state agency has a pattern of failure to

- conduct surveys within required time frames;
- use proper enforcement actions against a nursing home;
- respond to complaints in accordance with requirements;
- enter nursing home deficiency data into HCFA's database timely and accurately;
- follow federal standards, protocols, forms, methods, procedures, policies, and systems specified in HCFA's instructions;
- ensure that nursing homes maintain specific resident information; and
- enter nursing home resident assessment data into federal data systems.

The proposed changes include a new remedy that would require HCFA to develop a plan of correction for the state to implement. In addition, two new sanctions are proposed to penalize a poorly performing state agency: (1) placing the state agency on notice that it is not in compliance with its Medicaid plan regarding nursing home survey performance and (2) requiring HCFA officials to meet with the state governor and other high-level state officials.

Although HCFA refers to the proposed two new actions as sanctions, they are not as severe as what is normally thought of as sanctions and may not be enough to compel a state to improve its performance. When we discussed placing the state agency on notice, we were told by a HCFA official that, under this sanction, HCFA expects the regions to work collaboratively with state agencies to comply with the requirements in their state Medicaid plan. The proposed sanction requiring HCFA officials to

meet with the governor or other state officials can raise problems to a higher level in state government and possibly secure greater state support to improve performance. Nevertheless, it is not clear what impact either of these sanctions would have on a state agency to effect the desired performance.

Conclusions

HCFA has recently demonstrated the desire and initiative to confront and respond to various quality problems facing the nation's nursing homes and their residents. Some of the methods HCFA currently uses and is developing, to ensure that state agencies develop effective survey programs capable of identifying survey deficiencies in nursing homes, can contribute useful information for assessing the overall effectiveness of its many nursing home quality improvement initiatives. However, the limited scope and rigor of its various state performance monitoring mechanisms, and the uneven application of the mechanisms across the regions, do not provide HCFA with a systematic, consistent means of assessing the sufficiency of state survey performance. Additionally, HCFA's approach to conducting federal monitoring surveys is not adequate to establish a pattern of inadequate state performance, which is needed before imposing any sanction. Specifically,

- the negligible use of comparative surveys, combined with delays in scheduling them to closely follow state surveys, does not provide HCFA with sufficient evidence to establish whether states are appropriately assessing nursing homes' compliance with federal standards.
- systems development problems for reporting results of observational surveys and delays in giving states written feedback have hindered HCFA's ability to effectively use survey results as a management tool.
- inconsistencies among HCFA regional offices in how they target their federal monitoring surveys within each state and select resident samples for comparative surveys further hamper HCFA's ability to ensure that these reviews effectively and equitably assess state survey performance.

Even if HCFA strengthens its oversight programs to be able to establish any pattern of unacceptable state survey performance, it has yet to develop effective alternatives for compelling the state to come into compliance with nursing home survey standards, short of cutting off federal funds. Being able to accurately and consistently assess state agency performance and hold states accountable for meeting HCFA standards is essential to the success of HCFA's recent initiatives to improve the quality of care for the nation's nursing home residents.

Recommendations

To ensure that states effectively meet federal standards for certifying nursing homes and to consistently implement the more stringent requirements of HCFA's recent initiatives, HCFA needs to strengthen its oversight of state survey agencies' activities. To accomplish this, we recommend that the Administrator of HCFA take the following actions:

1. Improve the scope and rigor of HCFA's oversight process by
 - increasing the proportion of federal monitoring surveys conducted as comparative surveys to ensure that a sufficient number are completed in each state to assess whether the state appropriately identifies serious deficiencies,
 - ensuring that comparative surveys are initiated closer to the time the state agency completes the home's annual standard survey,
 - requiring regions to provide more timely written feedback to the states after the completion of federal monitoring surveys, and
 - improving the data system for observational surveys so that it is an effective management tool for HCFA to properly assess the findings of observational surveys.
2. Improve the consistency in how HCFA holds state survey agencies accountable by standardizing procedures for selecting state surveys and conducting federal monitoring surveys, including
 - ensuring that the regions target surveys for review that will provide a comprehensive assessment of state surveyor performance, and
 - requiring federal surveyors to include as many of the same residents as possible in their comparative survey sample as the state included in its sample (where HCFA surveyors have determined that the state sample selection process was appropriate).
3. Further explore the feasibility of appropriate alternative remedies or sanctions for those states that prove unable or unwilling to meet HCFA's performance standards.

Agency Comments

In its comments on our draft report, HCFA noted that enhanced oversight of state programs is critical to improving the quality of care in nursing homes and generally agreed with our recommendations.

HCFA commented, and we agree, that a mix of comparative and observational surveys is a prudent approach to overseeing state survey

agencies' performance. It did not agree to immediately increase the number of comparative surveys it requires the regions to undertake but stated that it is reviewing the issue of the appropriate balance between the two types of monitoring surveys. While we agree that a mix is beneficial, an adequate number of comparative surveys is critical to assess the performance of state agencies. Furthermore, these surveys can help improve the effectiveness of resources devoted to observational surveys by focusing more of them on areas of poorer performance. We believe that the results of the comparative surveys conducted in the past year indicate that these surveys have been more effective than observational surveys in identifying serious deficiencies affecting the health and safety of residents that state agencies' survey processes miss. While we agree that observational surveys can serve as an effective training tool for state surveyors, in our view, they do not provide an accurate representation of typical state surveyor performance because of the likelihood that state surveyors modify their performance when they are aware that they are being observed.

HCFA agreed that its comparative surveys should be initiated in closer proximity to the state agency's completion of the nursing home's annual standard survey. However, HCFA indicated that because it will focus its comparative surveys on deficiency-free homes in the future, it does not believe it would be realistic to start these surveys earlier than 2 weeks after the state has completed its survey because the results of the state survey are not often known for 2 weeks. But HCFA's decision to focus its comparative surveys on deficiency-free homes would exclude more than two-thirds of homes nationwide from this review. In addition to reconsidering the universe of nursing homes for which comparative surveys are conducted, we believe that HCFA can initiate a comparative survey more promptly, even if it means that HCFA does not know the results of the state's most recent survey before beginning its comparative survey. HCFA can still achieve its monitoring objective by choosing its sample on the basis of nursing homes' prior survey history and could improve results by having the two surveys more closely coincide. In fact, not having the results could eliminate any bias associated with having state survey results.

HCFA also agreed with the importance of ensuring national consistency in overseeing state survey agencies and establishing definitive and measurable performance standards to hold states accountable for survey performance. However, HCFA indicates that it will establish additional performance standards by the end of 1999. It will evaluate the use of these

standards and its process for working with state agencies to improve their performance for about 18 months before determining whether other additional remedies or sanctions are needed. In our view, HCFA currently does not have an adequate array of effective remedies or sanctions at its disposal to ensure corrections, and it should more immediately consider expanding the available remedies and sanctions that can be applied to compel states to improve their performance.

HCFA's comments are included as appendix II.

As agreed with your offices, unless you publicly announce its contents earlier, we plan no further distribution of this report until 30 days after its issue date. At that time, we will send copies to the Honorable Nancy-Ann Min DeParle, Administrator of HCFA; other interested congressional committees; and other interested parties upon request.

Please contact me or Kathryn G. Allen, Associate Director, at (202) 512-7114 if you or your staffs have questions about this report. Jack Brennan and Mary Ann Curran prepared this report under the direction of John Dicken.

A handwritten signature in black ink that reads "William J. Scanlon". The signature is written in a cursive style with a large, stylized "S" and "C".

William J. Scanlon
Director, Health Financing and
Public Health Issues

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Abbreviations

HCFA	Health Care Financing Administration
OBRA 87	Omnibus Budget Reconciliation Act of 1987
SAQIP	State Agency Quality Improvement Program

HCFA's Definitions of Severity of Deficiencies

HCFA's nursing home regulations established several categories of deficiencies that state survey agencies may find and record during their surveys. Each identified deficiency is placed into one of the 12 categories ranging from "A" to "L," depending on the extent of resident harm (severity) and the number of residents adversely affected (scope). The following table identifies the scope and severity HCFA has assigned to Medicare and Medicaid compliance deficiencies.

Table I.1: HCFA Scope and Severity Ratings for Nursing Home Deficiencies

Severity category	Scope of deficiency		
	Isolated	Pattern	Widespread
Actual or potential for death/serious injury (also referred to as immediate jeopardy)	J	K	L
Other actual harm	G	H	I
Potential for more than minimal harm	D	E	F
Potential for minimal harm (substantial compliance)	A	B	C

A home is considered to be in "substantial compliance" if any identified deficiencies are those in which the potential exists for only minimal harm to occur to residents (levels A, B, and C). Any nursing home with a deficiency categorized as D through L is considered to be not in compliance. "Potential for more than minimal harm" is a deficiency for which no actual harm has occurred to residents but that presents the potential for more than minimal harm to occur. "Other actual harm" includes deficiencies that cause actual harm to residents but do not immediately jeopardize their health or safety. "Immediate jeopardy," the most serious deficiency, includes situations that immediately jeopardize the health or safety of residents.

In addition to the four severity categories shown in the table, HCFA also uses a fifth deficiency category referred to as "substandard quality of care." Deficiencies in this category are those that affect nursing home residents in the areas of resident behavior and facility practices, quality of life, and quality of care, and that are in the F, H, I, J, K, or L categories in the table.

HCFA also classifies deficiencies by their scope or extent as follows: (1) isolated, defined as affecting a limited number of residents; (2) pattern,

Appendix I
HCFA's Definitions of Severity of
Deficiencies

defined as affecting more than a limited number of residents; and
(3) widespread, defined as affecting all or almost all residents.

Comments From the Health Care Financing Administration



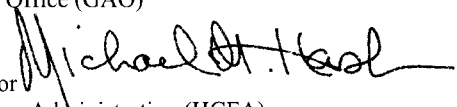
DEPARTMENT OF HEALTH & HUMAN SERVICES

Health Care Financing Administration

Deputy Administrator
Washington, D.C. 20201

OCT 21 1999

TO: William J. Scanlon, Director
Health Financing and Systems Issues
General Accounting Office (GAO)

FROM: Michael M. Hash 
Deputy Administrator
Health Care Financing Administration (HCFA)

SUBJECT: General Accounting Office (GAO) Draft Report: ***Nursing Homes:
Enhanced HCFA Oversight of State Programs is Critical to Assure
Quality Care***

I have attached the response of the Health Care Financing Administration to the GAO draft report entitled, ***Nursing Homes: Enhanced HCFA Oversight of State Programs is Critical to Assure Quality Care.***

This and earlier GAO reports recognize some of the improvement initiatives launched by HCFA, and help sharpen our focus on areas that need to be addressed. We agree with the GAO premise that enhanced HCFA oversight of state programs is critical to improving the quality of care in our nation's 17,000 nursing homes. Already, we are addressing many of the specific issues raised by the GAO report, and are studying additional measures we might employ.

We appreciate the opportunity for the Health Care Financing Administration to comment on this report.

Comments of the Health Care Financing Administration (HCFA)
On the General Accounting Office (GAO) Draft Report,
“Nursing Homes: Enhanced HCFA Oversight of State Programs
Is Critical To Assure Quality Care”

Since July 1995, when the Clinton Administration began enforcing the nation's toughest-ever enforcement regulations for nursing homes, HCFA has been working aggressively to improve its enforcement procedures and practices that protect Americans who rely on nursing homes for care. In July 1998, reports by HCFA and GAO noted that conditions had improved but that more needed to be done. At that time, President Clinton announced a major new initiative to increase protections for vulnerable nursing home residents and crack down on problem providers.

This and earlier GAO reports recognize some of the improvement initiatives launched by HCFA and help sharpen our focus on areas that need to be addressed. We agree with the GAO premise that enhanced HCFA oversight of state programs is critical to improving the quality of care in our nation's 17,000 nursing homes. Already, we are addressing many of the specific issues raised by the GAO report and are studying additional measures we might employ.

We have increased our efforts on monitoring how states are implementing specific provisions, and determining where we need to take further action to ensure effective performance. For example, we have refined our Federal Oversight Support Survey (FOSS) protocols. We have stepped up efforts in HCFA's ten regional offices to improve consistency, cooperation and communication in the application of our guidelines across the country. We held national training conferences and satellite broadcasts for Regional surveyors on FOSS implementation. We have been developing performance standards for state survey agencies, definitions of inadequate performance, and a listing of sanctions and remedies available under current law and will finalize them within the next 90 days. In addition, we will redirect the State Agency Quality Improvement Program (SAQIP) to be a consistent national program directly tied to measurable and reportable performance standards.

New Survey Protocols

HCFA published the new nursing home initiative survey protocols on July 1, 1999, our target date. In addition to printed copies, HCFA made these new protocols available electronically to state agencies. They also are available on HCFA's website, www.hcfa.gov. These new standards addressed hydration, nutrition, and pressure sore

quality indicators, among many other important changes. These protections are vital to guiding and training state surveyors and will assure a new level of consistency of surveying among the states.

Training on the Nursing Home Initiative

We have provided training and guidance to states on the President's nursing home initiative, including enforcement, use of quality indicators in the survey process, survey tasks in the areas of medication review, pressure sores, dehydration, weight loss, and abuse prevention.

Enhanced Oversight of Selected Facilities

HCFA has identified facilities in each state for more frequent inspection and intense monitoring, based on results of most recent annual inspections and any substantiated complaints during the previous two years. States have begun monitoring these facilities more frequently.

Monitoring Protocols for Tracking Nursing Homes Citing Financial Hardship

A top priority of HCFA is not only monitoring and regulating nursing homes but also assuring a high quality of care for their residents and protecting residents from the disruptions and dislocations that may accompany financial and other difficulties experienced by the facilities themselves. While some chains may choose to file for Chapter 11 bankruptcy protection, the filing does not diminish the facilities' responsibility to provide high quality care, and a good quality of life to residents in their nursing homes. In August 1999, HCFA issued three separate monitoring protocols to be used by states in visits to facilities citing financial troubles. These protections include an onsite monitoring protocol, a protocol for state ombudsmen, and a telephone monitoring protocol. The purpose of this monitoring is to uncover early warning signals that might indicate the possibility that a facility will fail to continue providing quality care to residents.

Contingency Plans for Protecting Beneficiaries in the Event of Nursing Home Chain Bankruptcy

HCFA has designed and implemented a management contingency plan that enables HCFA and affected states to respond quickly and effectively if the financial situation in a nursing home chain places resident health or safety at risk. In the event of such a development, the state government, through such agencies as emergency management, or survey or licensure, has the primary responsibility, but the federal government will provide available resources and support to the states in protecting residents. HCFA's plan spells out the responsibilities of the state and federal governments. Ongoing activities at

HCFA include biweekly meetings with the Deputy Administrator to develop strategies and monitor progress as well as regular consultation with HCFA regional offices, the states, the Department of Justice, the Office of the Inspector General, Office of General Counsel, the Administration on Aging, and others.

Abuse Intervention Campaign

A new abuse intervention campaign is now active in 10 pilot states. This program places posters and other printed messages in nursing homes to inform residents and their families of the signs of abuse and tells them how to report it. The program is being tested in Massachusetts, New Jersey, West Virginia, Georgia, Wisconsin, Louisiana, Missouri, Colorado, Arizona, and Idaho. HCFA will use feedback to expand this information campaign.

Enhanced Enforcement

HCFA has been vigorous in encouraging states to apply appropriate sanctions for noncompliance. HCFA has taken a variety of other steps to strengthen enforcement. Closer scrutiny and immediate sanctions for states will help prevent “yo-yo” compliance, in which problems are fixed temporarily, only to be cited again in subsequent surveys. HCFA has directed states to stagger surveys and conduct a set amount on weekends, early mornings and evenings. States are required to revisit facilities in person to confirm that violations have been corrected before lifting sanctions. HCFA has developed a significant new compliance tool and issued regulations that enable states to impose civil money penalties for each serious incident. HCFA has also been working with the Department of Justice to improve referral for potential prosecution of egregious cases where residents have been harmed.

The following outlines in more specific detail the HCFA responses to the GAO recommendations:

GAO Recommendation -1

(1) Improve the scope and rigor of HCFA’s oversight process by:

- (a). increasing the proportion of federal monitoring surveys conducted as comparative surveys to ensure that a sufficient number of these surveys are completed in each state to assess whether the state appropriately identifies serious deficiencies.

HCFA Response

The report promotes the value of using comparative surveys to identify issues related to state performance. However, other evidence emphasizes the merits of other approaches, such as observational surveys. The report does not provide sufficient information to determine the relative merits between the observational (FOSS) and the comparative surveys. In fact, a recent HHS Office of Inspector General report on hospitals recommended that HCFA de-emphasize and even phase out validation (comparative) surveys and consider incorporating observational surveys into its oversight activities. We believe that the most prudent approach at this time is one that includes both comparatives and FOSS surveys. In addition, we need to assure that there are enough comparative surveys in order to study the relative merits of each. We are reviewing this issue to determine the appropriate balance between the two and the budget implications of implementing any changes.

The FOSS provides for a comprehensive review of state survey activity. It enables HCFA, through its regional offices, to evaluate the State surveyors' investigation, data analysis and preliminary deficiency findings during the standard recertification, complaint, initial or revisit surveys. It also mandates a review of the deficiency report after the survey is completed, the management review and after any informal dispute resolution. The FOSS review protocol is a measurement tool to assure consistency in the regional assessment of a broad range of state agency functions. These include:

- documentation of deficiency citations
- quality assurance review by State Agency supervisors
- timeliness of the deficiency findings report to the facility
- appropriateness of the scope and severity determinations
- informal dispute resolution decisions
- surveyor skills (investigation, data analysis, decision making, professionalism, interviewing techniques, and general communication ability)
- survey results
- adherence to federal survey policies and protocols

The comparative survey allows the regional office to identify whether the chosen facility is in compliance with the federal regulation and compare any deficiencies to the State Agency's findings. It does not provide a full assessment of how and why the state agency failed to identify serious deficiencies on any given survey.

GAO Recommendation -1

- (1b) Ensuring that comparative surveys are initiated in closer proximity to the state agencies' completion of the home's annual standard survey.

HCFA Response

We agree and have already taken action regarding the length of time that is allowed to lapse between the state recertification survey and the comparative survey. While the statutory requirements allow 60 days between the state recertification survey and the federal comparative survey, the current average is 30 days.

Before the end of the year, HCFA will implement a revised comparative survey procedure including new time frames for initiating the comparative survey. This procedure directs staff in regional offices to start comparative surveys from two to four weeks after the state has completed its annual survey. Some regions are currently starting many comparative surveys within this two to four week time frame.

We do not believe that it would be realistic, at this time, to mandate that all comparative surveys start earlier than within 2 weeks after the state has completed its onsite review. Several logistical and operational limitations make it difficult to initiate comparative surveys in such a short time frame. Since a focus on our comparative surveys over the next year will be deficiency free facilities for those with deficiencies with a scope/severity of "C" or less, the comparative survey site cannot be selected until after the survey report has been completed. For example, states are allowed 10 days to complete deficiency reports and notify facilities. HCFA, then, would not receive the information necessary for selecting facilities for comparative surveys until after 10 days. We will continue to analyze the time frames that are being applied by regions, and work on methods for further reducing them.

GAO Recommendation -1

- (1c). Requiring regions to provide more timely written feedback to the states after the completion of federal monitoring surveys

HCFA Response

We agree with the recommendation that the regions provide more timely feedback to the state agency supervisors after the completion of federal monitoring surveys. In an effort to ensure that the feedback of state management is consistent across the nation, HCFA is developing a national standard reporting form and time frames for feedback and will complete its work by November 30, 1999. This process will then be implemented nationally.

In August 1999, the Director of the Center of Medicaid and State Operation directed all regions to report to the state agency Director at least monthly on survey process errors, omissions and significant findings resulting from Federal Monitoring Surveys. Even though some regional offices have consistently been innovative and diligent in feeding back performance information, this direction defines minimum expectations for national feedback.

GAO Recommendation -1

- (1d). Improving the data system for observational surveys to be an effective management tool for HCFA to properly assess the findings of observational surveys.

HCFA Response

Because of the limitations of the present data system, HCFA expects to implement a new system as soon as November 1999. The current system was developed on an emergency basis as an interim system to meet minimum needs of the regions and central office. Under the current interim system, regions have available hard copy and database files, which can be analyzed. HCFA is now in the final phases of developing an updated system. The application is in Microsoft ACCESS and includes powerful, easy to use query and report generating capabilities that can be utilized by end users.

GAO Recommendation -2

- (2) **Improve the consistency in how HCFA holds state survey agencies accountable by standardizing procedures for selecting and conducting federal monitoring surveys, including:**

- (2a-b) Assuring that the regions target surveys for review to provide a more

comprehensive assessment of state surveyor performance; and requiring federal surveyors to include many of the same residents in their comparative survey sample as those included in the state's sample (where it has been determined that the state sample selection process was appropriate).

HCFA Response

We are committed to ensuring maximum consistency in oversight of survey agencies. We have initiated several steps toward this goal over the last year including ongoing efforts to improve the design and implementation of the FOSS and comparative surveys.

We agree with GAO that the core elements required in every FOSS survey be expanded. Effective August 1999, regional office staff was informed and trained to include several additional "tasks," including off-site preparation and additional survey analyses. It should be noted, however, even over the past year most regions were observing more than the required tasks. In 547 FOSS surveys, at least 75.3% of the tasks were observed.

We also agree that comparative surveys should include a portion of the state agency sample of residents. HCFA developed a revised sampling procedure that requires the region to include all state agency sampled residents that were chosen for comprehensive review. We expect this procedure to be implemented before the end of the year.

In an effort to improve consistency, HCFA issued clarifications of FOSS to ensure more consistent interpretations. For example, HCFA clarified that federal surveyors should provide guidance to state surveyors. Furthermore, we continue to have training for federal surveyors on the appropriate application of the FOSS process. In fact, we recently conducted face to face training for all federal surveyors.

HCFA will further review survey selection procedures and issue any clarifications needed to assure a standard selection process nationwide. This is consistent with our proposed selection process for oversight of hospital surveys and our commitment to improving national consistency. We will take other appropriate steps to improve national consistency as quickly as possible.

GAO Recommendation-3:

- (3) **Further explore the feasibility of appropriate, alternative remedies or sanctions for those states that prove unable or unwilling to meet HCFA's**

performance standards.

HCFA Response

We agree with the report's description of the statutory and operational parameters that characterize HCFA's ability to ensure state agency accountability for survey performance. The most critical factor for assuring state accountability is to establish definitive and measurable standards.

As we have indicated, we will be establishing definitive and measurable performance standards, by the end of 1999, which will serve as the basis for holding states accountable. The standards will include performance areas such as timeliness of surveys, documentation of deficiencies, expenditure of funds and adherence to survey policies and protocols. Each performance standard will have a threshold criterion, and review instructions for regional staff to conduct standardized evaluations of State performance. The state agencies have been consulted during development of the standards and the process.

Once these performance standards are defined and states have a clear understanding of what is expected, HCFA will further explore alternative options for appropriately sanctioning or rewarding states based on their performance in protecting nursing home residents. Where states fail to meet the standards, HCFA will use the appropriate remedy or sanction to improve performance. Based on past experience, we expect the process of working with the states on corrective actions will lead to improved performance. We will evaluate the effectiveness of this process over the next 18 months to determine if additional remedies or sanctions should be developed. In addition, we intend to redirect SAQIP (State Agency Quality Improvement Program) so that it is a consistent national program directly tied to measurable and reportable performance standards.

Related GAO Products

Nursing Home Oversight: Industry Examples Do Not Demonstrate That Regulatory Actions Were Unreasonable ([GAO/HEHS-99-154R](#), Aug. 13, 1999).

Nursing Homes: HCFA Initiatives to Improve Care Are Under Way but Will Require Continued Commitment ([GAO/T-HEHS-99-155](#), June 30, 1999).

Nursing Homes: Proposal to Enhance Oversight of Poorly Performing Homes Has Merit ([GAO/HEHS-99-157](#), June 30, 1999).

Nursing Homes: Complaint Investigation Processes in Maryland ([GAO/T-HEHS-99-146](#), June 15, 1999).

Nursing Homes: Complaint Investigation Processes Often Inadequate to Protect Residents ([GAO/HEHS-99-80](#), Mar. 22, 1999).

Nursing Homes: Additional Steps Needed to Strengthen Enforcement of Federal Quality Standards ([GAO/HEHS-99-46](#), Mar. 18, 1999).

California Nursing Homes: Care Problems Persist Despite Federal and State Oversight ([GAO/HEHS-98-202](#), July 27, 1998).

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