

DEPT. COMM. NO. 23

November 15, 2018

VIA EMAIL & HAND DELIVERY (senkouchi@capitol.hawaii.gov)

The Honorable Ronald D. Kouchi
Senate President
415 South Beretania Street
Hawaii State Capitol, Room 409
Honolulu, Hawaii 96813

Re: Audit of the Office of Health Care Assurance's Adult Residential Care Homes Program,
Report No. 18-18

Dear President Kouchi:

Please find enclosed our *Audit of the Office of Health Care Assurance's Adult Residential Care Homes Program*, Report No. 18-18, along with a copy of the Auditor's Summary. The audit was performed pursuant to Article VII, Section 10 of the Hawaii State Constitution and Section 23-4, Hawaii Revised Statutes, which authorizes the Auditor to conduct post-audits of the transactions, accounts, programs, and performance of all departments, offices, and agencies of the State and its political subdivisions.

The report is accessible through our website at:
<http://files.hawaii.gov/auditor/Reports/2018/18-18.pdf>.

The summary is also accessible through our website at:
<http://files.hawaii.gov/auditor/Overviews/2018/18-18AuditorSummary.pdf>.

If you have questions about the report, please contact me.

Very truly yours,

Leslie H. Kondo
State Auditor

LHK:emo

Enclosures

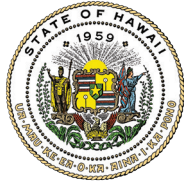
Audit of the Office of Health Care Assurance's Adult Residential Care Homes Program

A Report to the Governor
and the Legislature of
the State of Hawai'i

Report No. 18-18
November 2018



OFFICE OF THE AUDITOR
STATE OF HAWAII



OFFICE OF THE AUDITOR STATE OF HAWAII

Constitutional Mandate

Pursuant to Article VII, Section 10 of the Hawai'i State Constitution, the Office of the Auditor shall conduct post-audits of the transactions, accounts, programs and performance of all departments, offices and agencies of the State and its political subdivisions.

The Auditor's position was established to help eliminate waste and inefficiency in government, provide the Legislature with a check against the powers of the executive branch, and ensure that public funds are expended according to legislative intent.

Hawai'i Revised Statutes, Chapter 23, gives the Auditor broad powers to examine all books, records, files, papers and documents, and financial affairs of every agency. The Auditor also has the authority to summon people to produce records and answer questions under oath.

Our Mission

To improve government through independent and objective analyses.

We provide independent, objective, and meaningful answers to questions about government performance. Our aim is to hold agencies accountable for their policy implementation, program management and expenditure of public funds.

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We report our findings and make recommendations to the Governor and the Legislature to help them make informed decisions.

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<http://auditor.hawaii.gov>

Foreword

Our audit of the Office of Health Care Assurance's Adult Residential Care Homes Program was conducted pursuant to Article VII, Section 10 of the Hawai'i State Constitution and Section 23-4, Hawai'i Revised Statutes, which authorizes the Auditor to conduct post-audits of the transactions, accounts, programs, and performance of all departments, offices, and agencies of the State and its political subdivisions.

We express our sincere appreciation to the staff of the Office of Health Care Assurance's Licensing Section, the Department of Health's Long-Term Care Ombudsman, the Department of Human Services' Adult Protective Services, and other individuals whom we contacted during the course of our audit, for their cooperation and assistance.

Leslie H. Kondo
State Auditor

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Little Assurance: Audit of the Office of Health Care Assurance's Adult Residential Care Homes Program

THE DEPARTMENT OF HEALTH'S Office of Health Care Assurance (OHCA) is responsible for promulgating licensing rules and developing standards governing the quality of care for adult residential care homes (ARCHs) and expanded adult residential care homes (E-ARCHs) "to ensure the health, safety, and welfare" of each resident. A key component of this responsibility is OHCA's licensing of ARCHs and E-ARCHs, approximately 500 facilities as of November 2017, and the annual renewal of licenses (relicensing). State law requires OHCA to conduct annual inspections as part of the relicensing of these facilities, as well as separate, unannounced visits of every ARCH and E-ARCH. ARCHs and E-ARCHs must have a current valid license issued by OHCA to operate.

In our audit, we examined OHCA's relicensing process. Relicensing is a time-consuming effort, which relies heavily on the judgment and discretion of OHCA's nurse consultants who inspect ARCHs and E-ARCHs and identify deficiencies in quality of care standards. OHCA, in its 2018 report to the Legislature, represented that all deficiencies identified during an annual inspection must be corrected before a care home facility is relicensed. We found that, in practice,

"All adult residential care homes shall be licensed to ensure the health, safety, and welfare of the individuals placed therein."

**– Section 321-15.6(a),
Hawai'i Revised Statutes**

OHCA deems the relicensing process complete not upon actual correction of deficiencies, but upon submission and OHCA's approval of a "Plan of Correction," which is the care home's planned actions intended to address identified deficiencies. However, even under OHCA's practice, care homes were often relicensed before OHCA's acceptance of a Plan of Correction and, in some cases, before an inspection was even conducted. About half of the 214 care homes we sampled were allowed to operate in 2017 with either an expired license or a license hastily issued before all required steps of the relicensing process were completed.

We also found that OHCA lacks the basic organizational infrastructure necessary to guide and support these activities. For instance, the office has not created procedures for management and staff to track the relicensing process – nor to review and update such information – to ensure that all inspections are scheduled and completed as required. Instead, nurse consultants are responsible for monitoring the license expiration dates of the specific care homes they oversee and maintaining their own data on individual spreadsheets, each unique to its author.

OHCA's practice is to conduct an inspection three months prior to a care home's license expiration date. But our review of OHCA's inspection "packets" – working files kept by individual nurse consultants during the pendency of the inspection process – found that the office took an average of over six months to complete relicensing. As a result, we found many instances in which a care home's license expired, or would have expired, before the completion of the relicensing process. We found that OHCA renewed licenses without completing the inspection and relicensing process, substituted much less rigorous care home visits for statutorily required inspections, and issued licenses without inspecting or visiting the facilities.

Moreover, we found that OHCA has no written guidelines for enforcement if licensees cannot or will not comply with quality of care standards. This may at least partially explain why OHCA did not sanction or fine a single care home nor did it completely terminate a single care home license in the 10-year period from 2007 to 2017, even for care homes with substantial or repeat deficiencies.

We found that OHCA's primary objective appears to support the continued operations of those care homes, not to ensure the health, safety, or welfare of the facilities' residents as mandated by statute. OHCA's chief acknowledges that the office has an organizational culture that places importance on not disrupting the normal operation of care homes; however, he said that avoiding disruption while also ensuring residents' welfare is a hard balance to achieve. "At what point do we say, 'you're so bad, we are not going to renew your license, and the residents need to move somewhere else?'" he asked.

We agree that those decisions are difficult. But, those tough decisions need to be made if OHCA is to responsibly achieve its overarching statutory mission: to ensure the health, safety, and welfare of care home residents, many of whom are among those least able to protect themselves, through a thorough, rigorous, and timely relicensing process.

Audit Objectives

1. Assess the Office of Health Care Assurance's process for oversight and relicensing of adult residential care homes and expanded adult residential care homes; and
2. Make recommendations as appropriate.

Audit Scope and Methodology

This audit was performed pursuant to Article VII, Section 10 of the Hawai'i State Constitution and Section 23-4, Hawai'i Revised Statutes, which authorizes the Auditor to conduct post-audits of the transactions, accounts, programs, and performance of all departments, offices, and agencies of the State and its political subdivisions.

We focused on OHCA's management of the ARCH and E-ARCH programs, specific to the relicensing process, which included annual inspections and unannounced visits. We reviewed a random sample of 214 of 479 care home files. The sample size was determined using a confidence interval of 5 percent and a confidence level of 95 percent. We also reviewed 244 inspection packets in varying stages of the relicensing process. Our audit scope covered calendar years 2016 and 2017, but, where appropriate, included certain information from prior years or the current calendar year. We interviewed personnel within OHCA's State Licensing Section, the Department of Health's Long-Term Care Ombudsman, and the Department of Human Services' Adult Protective Services. We have made recommendations as appropriate.

Our audit was performed from August 2017 through May 2018 and conducted according to generally accepted government auditing standards. Those standards require that we plan and perform the audit to obtain sufficient, appropriate evidence to provide a reasonable basis for our findings and conclusions based on our audit objectives. We believe the evidence obtained provides a reasonable basis for the findings and conclusions based on our audit objectives.

This is our first audit of OHCA.

Summary of Findings

1. OHCA's license renewal process is unorganized and undisciplined, resulting in a large number of care homes operating with an expired license, or OHCA relicensing care homes before completing the statutorily required relicensing process.
2. OHCA does not consistently enforce care homes' compliance with quality of care standards and plans to correct deficiencies and, therefore, does not ensure the health, safety, and welfare of care home residents as the Legislature intended and the law clearly requires.

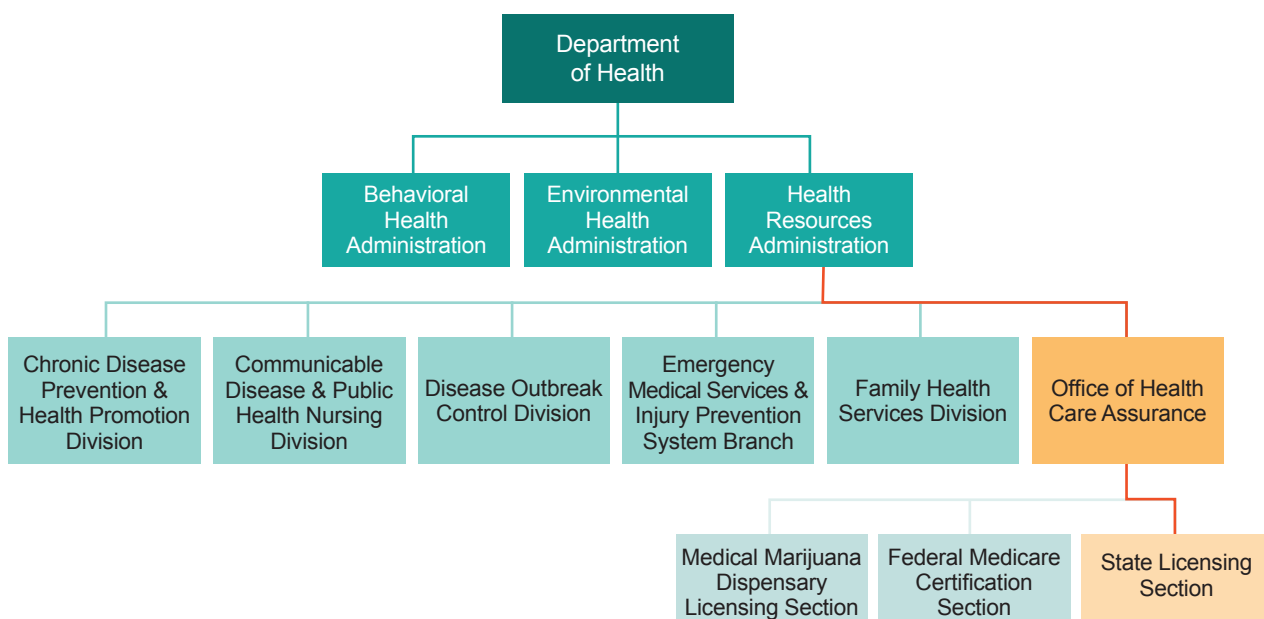
OHCA's Organization and Programs

The Department of Health (DOH) is empowered with the oversight and care of the health and lives of the people in Hawai'i with the goal of achieving health equity. Within DOH, OHCA performs all State licensing of healthcare facilities, agencies, and organizations in Hawai'i. This includes performing all on-site State licensing surveys (inspections) as well as Medicare certification surveys (inspections) for the U.S. Centers for Medicare and Medicaid Services.

Exhibit 1 illustrates the department's organizational structure.

Exhibit 1

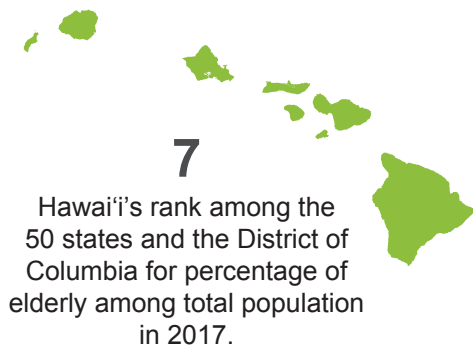
Department of Health's Organizational Structure



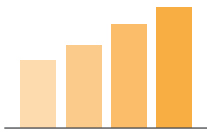
Source: Department of Health

OHCA's State Licensing Section is responsible for promulgating the licensing rules and developing standards to ensure quality of care for certain community-based facilities that must be licensed by the State, but are not eligible for Medicare participation. These facilities include ARCHs and E-ARCHs, assisted living facilities, developmentally disabled domiciliary homes, therapeutic living programs, and special treatment facilities.

By the Numbers Aging and ARCHs



17.8
Percentage of Hawaii's population of 1.43 million who are considered "elderly," i.e., 65 years and older, in 2017.



3.7%
Hawaii's average annual growth rate of elderly population from April 2010 to July 2017.



2,703*
Number of beds in Hawaii ARCHs and E-ARCHs.

479

Number of Hawaii ARCH and E-ARCH facilities.



What is an ARCH? What is an E-ARCH?

ADULT RESIDENTIAL CARE HOMES (ARCHs) care for residents who require care 24 hours a day, seven days a week, but not at the level of an intermediate or skilled nursing facility. Expanded adult residential care homes (**E-ARCHs**) care for residents who require care at the level of an intermediate or skilled nursing facility. There are two kinds of ARCH and E-ARCH homes. A Type I home consists of five or fewer residents, and a Type II home consists of six or more residents.

*According to the *Hawaii Long-Term Care Ombudsman Program Federal Report* (October 1, 2015–September 30, 2016).

Source: Data compiled from Department of Business, Economic Development & Tourism, Hawaii Population Characteristics 2017 and OHCA.

OHCA's State Licensing Section is authorized to maintain 16 full-time positions. A fully-staffed section would include a section head, three clerical positions (including a licensing secretary), one Registered Nurse V, eight Registered Nurse IVs, two Public Health Nutritionist IVs, and one Occupational Therapist IV. However, during our work on this audit, some positions were unfilled, which left the staff count at the time of our audit at 12.

OHCA's license renewal process is unorganized and undisciplined, providing little "assurance" of quality of care.

All ARCHs and E-ARCHs are required by law to be licensed by OHCA to "ensure the health, safety, and welfare" of residents. These licenses are valid for one year and are required by law to be renewed annually. An annual inspection is a required component of the relicensing process. OHCA's practice has been to conduct the relicensing inspection three months before license expiration, with the intent to complete the process within that three-month period. However, when we reviewed relicensing tracking cover sheets and other documents within inspection packets, we found that the process took the agency, on average, *over six months* to complete. This led to many cases where a care home's license expired (or would have expired) *before* the completion of the relicensing process. In most of those cases, licensees had not gone through a complete or timely inspection process and had been allowed to operate under licenses granted prematurely or with an expired license, putting the health, safety, and welfare of ARCH and E-ARCH residents at risk.

OHCA's Relicensing Process: What They Do and What We Found

TO "ENSURE THE HEALTH, SAFETY, AND WELFARE" of care home residents, DOH has established standards for care home licensure. These standards are monitored through inspections and visits of care home facilities by OHCA nurse consultants. As deficiencies in a care home's standard of care are identified during inspections, OHCA is supposed to work with the care home to correct them. According to OHCA, all deficiencies must be corrected before the facility receives its renewed license. We found this not to be the case. The following description of OHCA's process, and the problems we found with certain steps of the process, provides some insight and a preview of our more detailed findings.

STEP 1

Inspection notice sent to licensee.



STEP 2

Nurse consultant inspects care home.



STEP 3

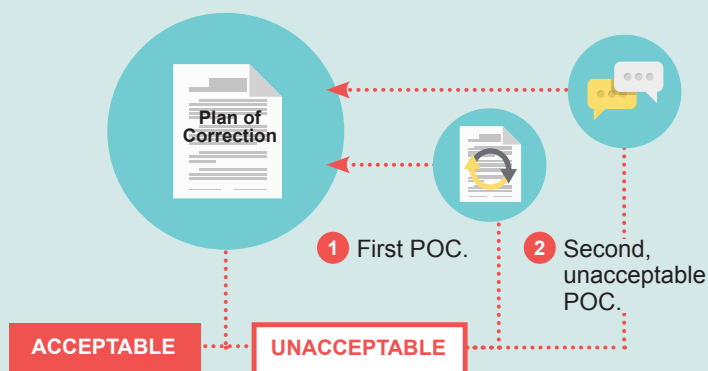
If there are deficiencies, a Statement of Deficiencies (SOD) is given on-site or mailed to licensee. Continue to Step 4.

If there are no deficiencies, license is mailed to licensee. Skip to Step 6.

STEP 4

Licensee submits Plan of Correction (POC).

If POC is unacceptable **1**, licensee revises and resubmits plan. After second unacceptable POC **2**, nurse consultant meets with licensee to go over plan.



STEP 5

After POC or Unacceptable Plan of Correction is deemed acceptable, license is mailed to licensee.



STEP 6

SOD/POC posted on DOH's website.



1. Scheduling and notification of relicensing inspections



OHCA'S STATED PRACTICE

Nurse consultants generate a schedule of their upcoming inspections, then submit it to the OHCA clerical staff.

Clerical staff generally send a notice of an upcoming inspection to each licensee six months before its license is due to expire, and the actual inspection process starts three months before expiration. The notice states the month and the day of the week (but not the precise date) the inspection will be conducted.



WHAT WE FOUND

There is no uniform system for management and staff to track inspections. Instead, each nurse consultant is responsible for monitoring the license expiration dates of the care homes they oversee and scheduling upcoming inspections. According to one nurse consultant, in some cases, unless she receives a call from a care home operator who voices concerns that their license is about to expire, she lets the license expire. The nurse consultant also said that she was not aware certain licenses were about to expire or had expired because she was busy with other work.

2. Inspections of the care home



OHCA'S STATED PRACTICE

Relicensing inspections, which usually take between two to four hours to complete, consist of a walk-through of the facility and a review of certain records, including information such as smoke detection and fire alarm drills, emergency procedures, and staff in-service clearances and certifications. If no deficiencies are found, OHCA clerical staff generate a new license and mail it to the licensee.



WHAT WE FOUND

In our sampling of 214 care home files, we found no evidence that inspections were conducted for 6 care homes in 2017. We also found that OHCA did not conduct annual relicensing inspections for 22 care homes in 2016. Instead, nurse consultants were allowed to substitute those legally required inspections with an unannounced care home visit, which only consists of a brief walk-through of the facility, checking on safety issues. The unannounced visits generally take an average of 10 minutes to complete, are far less comprehensive than annual relicensing inspections, and are intended for a different purpose – to check for safety hazards.

3. If deficiencies in standards of care are found



OHCA'S STATED PRACTICE

If ten or fewer deficiencies are found, nurse consultants prepare a Statement of Deficiencies, which they give to the licensee on site. Licensees are required to provide a written explanation of how they plan to correct each deficiency and ensure that the deficiencies do not happen again. If nurse consultants find more than 10 deficiencies, they submit the list of deficiencies and applicable rules to the OHCA clerical staff for formatting. After the Statement of Deficiencies is formatted, it is reviewed by the nurse consultant and mailed to the licensee.

Licensees have 10 working days to complete their Plan of Correction and return it to the nurse consultant. If the nurse consultant deems the Plan of Correction to be acceptable, a new license is issued. If not, the nurse consultant will issue the licensee an Unacceptable Plan of Correction, requiring the licensee to submit an improved plan to correct the deficiencies. Deficiencies must be resolved to OHCA's satisfaction before a license is renewed.



WHAT WE FOUND

In our review of 244 inspection packets, we found that the relicensing process — from the date of the inspection to submission of the first Unacceptable Plan of Correction to the clerical staff — took an average of nearly **180 days** to complete, a delay that extended well beyond a care home's license expiration date in many cases.

In 2017, we found that OHCA relicensed **116 care homes** (54 percent) in our sample of 214 care homes before the inspection process was completed. Of these, 22 had 2016 inspections that were still unprocessed and incomplete. In 2017, 8 care homes in our sample had **20 or more deficiencies**, but OHCA relicensed them before those deficiencies were resolved. Most of the time, OHCA simply renewed a care home's license since, according to OHCA, "it's not [the care home's] fault."

OHCA has no uniform system to track inspections and review and update information.

We found that OHCA has no uniform system to track inspections and review and update information to ensure that all inspections are completed in a timely manner. Instead, the office relies on a mix of manual processes to track inspections and to review and update information. Keeping track of the status of where each care home is in the relicensing process is the responsibility of the nurse consultant who is assigned to monitor that particular care home.

One nurse consultant we interviewed said that she reviews her list of assigned care homes for license expiration dates *as time permits*, and admitted to not being aware that some of her care homes' licenses had expired. We found that OHCA has neither written procedures nor provides staff with other guidance on whose responsibility it is to track license expiration dates.

OHCA inputs and maintains general information about the care homes it has licensed in a computerized database. However, the current clerical staff do not know how to use it beyond basic data entry functions. The database is not used to identify care homes whose licenses are about to expire nor to generate notifications to nurse consultants or care homes when licenses expire. As a result, the database is no more than a repository of information and has little operational value.

Currently, the most comprehensive set of information, particularly relating to inspections, remains with each nurse consultant as they maintain and manage their individual schedules. This information is not readily accessible by management and other staff to review or update, is unique to each nurse consultant, and varies widely in format and content. For instance, some nurse consultants keep track of certain phases and dates in the process while others do not, and some of the individual records were incomplete. OHCA's clerical staff maintain a separate record of their own, but it is incomplete and, therefore, unreliable.

Our review of inspection packets found that OHCA takes an average of over six months to complete the relicensing inspection process.

During the process of relicensing of a care home, OHCA keeps "packets" – working files containing records pertaining to active relicensing – which become part of the care home's permanent file once the process is completed. As part of this audit, we reviewed 244 packets in varying stages of the relicensing process that were awaiting clerical action on the day of our review. We found that OHCA took

longer than six months on average to complete the relicensing process. The longest phase of the process was the formatting of the Statement of Deficiencies, which took the OHCA clerical staff an average of 87 days to complete. Of the 244 packets we reviewed, we found 14 packets containing a Statement of Deficiencies waiting to be formatted and sent to the licensee. One had just been submitted to clerical for formatting two days before; and two had been sitting for 282 days. ***According to the licensing secretary, paying the office's bills and P-card payments and reimbursing staff travel and mileage were higher priorities than processing and formatting inspection packets.***

This stage of the relicensing process appears to be an unwarranted bottleneck, since the formatting of the Statement of Deficiencies, as described to us, is a simple and straightforward task. It is largely a “cut-and-paste” exercise: identified deficiencies in one column are aligned with the relevant language from the corresponding administrative rules that were violated.

After receiving the Statement of Deficiencies, licensees have 10 working days to complete and return a Plan of Correction, listing the measures they plan to undertake to address the identified deficiencies. **(See Exhibit 2 on page 12 for an example of a Statement of Deficiencies/Plan of Correction.)** If the nurse consultant deems the plan acceptable, OHCA will renew the care home's license for another year. If not, the nurse consultant will issue the licensee an Unacceptable Plan of Correction, which requires the care home to further revise its intended actions to correct the deficiencies. We found in our review of the 244 packets that, on average, it took nurse consultants 31 days to determine that a Plan of Correction was insufficient. This added to an already protracted relicensing process. For instance, we found that, in January 2018, OHCA sent out Unacceptable Plans of Correction to licensees for inspections conducted in February and June 2015 – ***almost three YEARS prior.***

We conducted an in-depth review of 214 of OHCA's 479 care home files and found that, in 2017, 79 (37 percent) of the inspections resulted in at least one Unacceptable Plan of Correction, up slightly from the 74 we found in 2016. Of the care homes issued an Unacceptable Plan of Correction, 62 in 2017 and 39 in 2016 were relicensed before the inspection process was completed.

Finally, we found that OHCA has no internal timelines or deadlines for each step of the relicensing process to ensure tasks are completed within a specific timeframe, and ultimately, before a care home's one-year license expires.

According to the licensing secretary, paying the office's bills and P-card payments and reimbursing staff travel and mileage were higher priorities than processing and formatting inspection packets.

Exhibit 2

Statement of Deficiencies and Plan of Correction

Below is an example of one of the deficiencies identified in a Statement of Deficiencies and Plan of Correction that was accepted and posted to the Department of Health website by OHCA.

Referred to as Statement of Deficiencies when sent to licensee, and Plan of Correction when submitted by licensee.

Office of Health Care Assurance
State Licensing Section

STATEMENT OF DEFICIENCIES AND PLAN OF CORRECTION

Facility's Name: [REDACTED]	CHAPTER 100.1
Address: [REDACTED]	Inspection Date: November 3, 2017 Annual

Care home was inspected on November 3, 2017.

THIS PAGE MUST BE SUBMITTED WITH YOUR PLAN OF CORRECTION. IF IT IS NOT, YOUR PLAN OF CORRECTION WILL BE RETURNED TO YOU, UNREVIEWED.

Identifies specific Hawai'i Administrative Rules section violated.

Deficiency found.
*SCGs = Substitute Caregiver

Rules (Criteria)	Plan of Correction	Completion Date
☒ §11-100.1-9 Personnel, staffing and family requirements. (c)(4) The substitute care giver who provides coverage for a period less than four hours shall: Be trained by the primary care giver to make prescribed medications available to residents and properly record such action. FINDINGS *SCGs #1, #2, #3, #4, and #5 No documentation for SCG training by the primary care giver for safe medication administration and personal care to residents. (NOTE: Repeat deficiency from 2015, 2016.)	PART 1 DID YOU CORRECT THE DEFICIENCY? USE THIS SPACE TO TELL US HOW YOU CORRECTED THE DEFICIENCY 3-6s 1 2 3 4 + 5 1 just made 2 done last year 3 done last year 4 done last year 5 done last year	9/4/18

This deficiency was repeated and not corrected over three consecutive annual inspections.

Licensee is required to complete parts 1 and 2 for each deficiency found. If OHCA accepts explanations provided, license is renewed.

Explanation of how licensee corrected the deficiency.

Licensee corrected deficiency and completed future plan on September 4, 2018, about ten months after care home was inspected.

Rules (Criteria)	Plan of Correction	Completion Date
☒ §11-100.1-9 Personnel, staffing and family requirements. (c)(4) The substitute care giver who provides coverage for a period less than four hours shall: Be trained by the primary care giver to make prescribed medications available to residents and properly record such action. FINDINGS SCGs #1, #2, #3, #4, and #5 No documentation for SCG training by the primary care giver for safe medication administration and personal care to residents. (NOTE: Repeat deficiency from 2015, 2016.)	PART 2 FUTURE PLAN USE THIS SPACE TO EXPLAIN YOUR FUTURE PLAN: WHAT WILL YOU DO TO ENSURE THAT IT DOESN'T HAPPEN AGAIN? Because the tragedy for substitute caregiver training. I have document after training in the substitute folder + check the folder whenever I get my inspection notice.	9/4/18

Explanation of how licensee will ensure deficiency does not occur again.

Inspection workarounds and accommodations undermine the integrity of OHCA's relicensing process.

Our audit work showed that OHCA relicenses care homes without completing the legally required inspection process at an alarmingly high rate. According to OHCA, all deficiencies identified during an annual inspection must be addressed before a care home facility is relicensed. However, we found that OHCA relicensed a little more than half of our sample of 214 care homes from 2017 before the inspection process was completed. Of these files, more than 20 had inspections dating back to 2016 that had yet to be processed and completed. According to the previous licensing supervisor, the licensing section issues licenses even though the Statement of Deficiencies had not been mailed or the Plan of Correction had not been approved because it is the fault of the office for not completing the process before license expiration. The previous licensing supervisor also said that, even when a care home has a large number of deficiencies, the section will renew its license.

In most of these cases where renewal was granted without completing the relicensing process (45 out of 64 cases in 2016, and 100 out of 116 cases in 2017), OHCA issued a regular (as opposed to a provisional or short-term) license. Multiple nurse consultants told us that, if they find that a care home's license is about to expire, they will generally take into consideration factors such as the care home's history of compliance and the licensee's current Statement of Deficiencies. According to one of the nurse consultants, if it appears that the deficiencies are not serious or too numerous, and in the nurse consultant's judgment, it is likely the care home operator's Plan of Correction will be approved by the third submission, she will process a notice for a one-year license, with a memo or letter explaining that the license is being issued but that an approved Plan of Correction is still required. (See "How Serious is Serious?" on page 15 for further discussion on OHCA's lack of standards in regards to deficiencies.) In these instances, OHCA does not provide its nurse consultants with guidance on what constitutes a "serious" deficiency or how many are "too many" deficiencies for renewal. We found that OHCA prematurely relicensed some care homes in our sample that had as many as 20 or more deficiencies – 6 times in 2016 and 8 times in 2017.

Less frequently, OHCA issues provisional licenses, which, according to OHCA's administrative rules, may be issued for a specified period of time at the discretion of the department for the purpose of giving care homes additional time to correct deficiencies. We note that giving the OHCA clerical staff additional time to process inspection documents is not an allowable use of a provisional license. OHCA also issues "short-term" licenses, which appear to be an improvised designation since this term does not appear in the statute, the administrative rules, or any other

In its 2018 report to the Legislature, OHCA stated that all deficiencies identified during an inspection must be corrected before a care home facility is relicensed. However, since OHCA does not conduct follow-up visits to verify implementation of the Plan of Correction, there is no way to determine if corrections have in fact been made. In 2017, 116 care homes in our sample were relicensed before the inspection process was completed.

written guidelines. Provisional licenses can only be issued for a specific period of time, and no more than two consecutive provisional licenses can be issued. However, short-term licenses do not fall under any such restrictions. This practice of renewing licenses before the inspection process is completed appears to be reflective of an organizational culture that prioritizes not disrupting the normal operation of care homes over the inspection process and, consequently, the health, safety, and welfare of care home residents.

Cursory, unannounced care home visits were conducted in lieu of, not in addition to, more comprehensive annual inspections.

“The department shall conduct unannounced visits, other than the inspection for relicensing, to every licensed adult residential care home and expanded adult residential care home on an annual basis and at such intervals as determined by the department to ensure the health, safety, and welfare of each resident.”

**– Section 321-15.6(a),
Hawai‘i Revised Statutes**

According to Section 321-15.6 Hawai‘i Revised Statutes (HRS), DOH is required to conduct at least one unannounced care home visit, *in addition to* the inspection for relicensing for every licensed ARCH and E-ARCH on an annual basis and at intervals determined by the department to ensure the health, safety, and welfare of each resident. An unannounced visit is a walk-through of the facility that focuses on safety issues and takes an average of 10 minutes to complete. Annual inspections, on the other hand, are much more comprehensive. Not only do nurse consultants look at safety issues, they also examine a resident’s records to ensure that he or she is properly cared for. Nurse consultants also review records to confirm that caregivers have received the proper clearances and appropriate training. Altogether, annual inspections can take between two to four hours to complete. Unlike annual inspection reports, the results of unannounced visits are not posted to the DOH website for public viewing.

Although the unannounced visits are clearly meant to be a supplement to the annual inspection process, in our sample of 214 care home files, unannounced visits were substituted for annual inspections for 22 care homes in 2016. Of these visits, eight were conducted *after* the care homes’ licenses were renewed.

According to the licensing supervisor, annual inspections were not conducted for certain care homes because the caseload of a nurse consultant who was on medical leave and eventually left the office was not immediately transferred to the remaining nurse consultants. He said that, of this caseload, there was not enough time to conduct inspections of all the facilities, so inspections were conducted for half the care homes and unannounced visits were done for the other half. He added that they were instructed by the former supervisor to exempt certain care homes from the annual inspection based on their past inspection history and, instead, conduct unannounced visits for those care homes. He explained that two nurse consultants made the determination by reviewing records and asking other nurse consultants for their input. We

reiterate that OHCA has no standards for care home deficiencies which could be used to support these case-by-case determinations. And, more importantly, although it must conduct unannounced care home visits at least once annually, the law requires OHCA to perform an inspection as part of the relicensing process “to ensure the health, safety, and welfare” of the residents.

Documents are in disarray.

We found OHCA’s licensing records in disarray: licenses, Statements of Deficiencies, Plans of Correction, and Unacceptable Plans of Correction were misfiled; original reports for required annual inspections and unannounced care home visits were missing from files; and key documents contained typographical errors or incorrect dates. In addition, licenses may have been issued to licensees without OHCA retaining an office copy, as we were unable to locate valid licenses in some files. We were also unable to locate the active files for some ARCH and E-ARCH operators; these may have been with a nurse consultant, but there was no way to determine if this was the case without asking each nurse consultant. The licensing secretary explained that nurse consultants often remove active care home files during relicensing or an investigation and that the files may be on their desks until the work is completed. OHCA’s staff do not track this intra-office movement of files.

According to the U.S. Government Accountability Office’s Internal Control Standards, management is responsible for ensuring that internal controls, all transactions, and other significant events are clearly documented. These actions must be done in a manner that allows the documentation to be readily available for examination and, that records are properly managed and maintained. OHCA has clearly not met these standards.

Online postings of inspection reports are incomplete and erratic.

By law, OHCA must post Statements of Deficiencies and Plans of Correction on the DOH website after the Plan of Correction is accepted. Section 321-1.8, HRS, requires the department to post reports on its website of all inspections it performs on State-licensed care facilities, including ARCHs and E-ARCHs. Each report must include the following:

- Date of the inspection;
- Description of violations of relevant laws or rules;
- Plans of corrective actions to address identified violations;
- List of all corrective actions taken by the facility (can be added to the report at a later time as determined by DOH); and
- Other information about the quality and conditions of the facility as deemed appropriate by DOH.

How Serious is Serious?

OHCA’S LACK OF WRITTEN POLICIES, procedures, or standards for guiding the relicensing process, issuing licenses, administering fines, and suspending or revoking licenses has a wide-ranging impact on office operations. For instance, when deciding whether to do a follow-up visit of a care home or relicense a care home before the inspection process is completed, the supervisor and nurse consultants use their judgment, weighing the severity of the deficiencies against the licensee’s perceived willingness to resolve these issues.

But what are these decisions based on? What is a “serious” deficiency?

We found that OHCA neither ranks specific care home deficiencies according to severity (e.g., threats to residents’ welfare) nor does it have guidance on the number of deficiencies that would disqualify a care home from renewal. For instance, is an inattentive or absent caregiver a more serious deficiency than a faulty fire alarm or mislabeled medicines? Are 25 deficiencies too many? Are 30?

According to the OHCA chief, providing proper guidance to staff is something that he and the licensing supervisor are working on. The current licensing supervisor assumed the supervisor position during our audit, after the prior supervisor retired in December 2017. The OHCA chief has been in his position for nearly 10 years.

Our review showed that OHCA is falling well short of these requirements. As of early April 2018, only half of ARCH and E-ARCH facilities in our sample of 214 care home files had 2017 Plans of Correction posted on the department's website. We also found that 24 care homes inspected in 2017 and 12 inspected in 2016 had accepted Plans of Correction that were not posted on the department's website. In addition, 18 care homes from our sample of active files were not listed at all on the website.

Of the Plans of Correction that were posted, we found that many of these handwritten documents were illegible or difficult to read. While nurse consultants may have the contextual knowledge to decipher these scribbles, it is imperative that interested parties — such as the family members of current and potential residents — can easily read and comprehend this important information.



Repeat deficiencies in 2016 and 2017 that did not affect the relicensing process and did not trigger sanctions for licensees

- No tuberculosis clearances for substitute caregiver and household members
- No documentation that physician was notified of residents' weight gain
- No documentation of first aid certification for substitute caregiver
- No documentation of safe medication administration and personal care to residents training given by the primary caregiver to the substitute caregiver
- Unsecured toxic chemicals
- Incomplete progress notes for residents
- Menu not posted in kitchen or dining area
- Medication ordered but not reflected or recorded in the residents' medication record
- Residents' medication record reflected that medication was not properly administered
- Residents' emergency sheet missing physician prescribed medication or current list of medications
- Cobwebs in the corners and along hallway ceiling
- No order for medications listed in residents' medication record
- Physician order, but no medication on hand and no documentation that physician was aware
- Primary caregiver and substitute caregiver did not complete the required six hours of continuing education training
- No documentation of chest x-ray following positive tuberculin skin test
- Incomplete resident medication records
- No schedule of activities for residents
- No monthly care plan review by the case manager
- Household members had no annual physical examination

Source: Data compiled by Office of the Auditor from OHCA files

According to the licensing secretary, two staff in OHCA's Medicare Section were redacting and uploading Plans of Correction to the website, but in April 2018, one of the State Licensing Section staff took over this responsibility. She said that this individual is doing the job temporarily, and the office plans to hire someone to do all the redacting and posting of Plans of Correction.

OHCA does not enforce care homes' compliance with regulations and has no written guidelines on how to do so.

If the department determines that any person has violated any term or condition of a care home license, DOH is required to assess administrative penalties for past or current violations, which can include suspension, modification or revocation of any license, or require compliance immediately or within a specific time.

Under its administrative rules, OHCA has the authority to issue administrative penalties or fines to ARCH and E-ARCH licensees for noncompliance with rules or State law, as well as the authority to levy penalties or refuse to renew a license for repeat deficiencies. However, we found that ***OHCA did not sanction or fine a single care home nor did it completely terminate a single care home license in the 10-year period from 2007 to 2017.*** In addition, there are no rules or other written guidelines that define when and how punitive action can be carried out. The OHCA chief said that, since he started in 2008, he has not created any policies or procedures with regard to the relicensing process, issuing licenses, administering fines, or suspending or revoking licenses. He told us that they were in the process of developing them but could not provide a reason why they have not yet been done.

According to the previous licensing supervisor who retired in December 2017, OHCA did not impose fines against any care homes during her tenure dating back to 2007. She said that, when she started in 2007, records showed that OHCA had fined care homes in the past; however, most of the licensees had not paid the fines or paid only a portion of the fines. OHCA did not (and still does not) have policy guidance from the OHCA chief regarding the issuance of fines and punitive measures, in general, and without a clear directive, she felt she could not develop any written guidelines or procedures for punitive actions herself.

Fool them once, ... fool them twice, ...

While unannounced visits revealed serious deficiencies in one care home's practices, a lack of enforcement exposed residents to health and safety risks.

DURING A JUNE 2017 unannounced visit, an OHCA nurse consultant found that no caregiver was present at a care home, an ARCH in Waipahu. Only two of the four residents were present. When asked, one of the residents reported that the caregiver had gone to Walmart with other residents. The nurse consultant asked if the residents were often left home alone, and the other resident responded, "Sometimes."

The nurse consultant waited with the residents for nearly 90 minutes without a visit from a primary or substitute caregiver and until the primary caregiver returned with the two other residents. The primary caregiver stated that the substitute caregiver was upstairs. However, the nurse consultant had, on three separate occasions, attempted to alert the substitute caregiver of her presence by knocking on the door and ringing the doorbell, with no response. Only after the primary caregiver called out the substitute's name did someone finally respond. After the nurse consultant informed her of the multiple attempts to find her, the substitute caregiver explained she must have been on the telephone.

In July 2017, OHCA sent the care home a three-page letter that recounted the details of its nurse consultant's visit the month before and cited the administrative rules that the caregiver had violated, including the rules' definition of "neglect." In the letter, OHCA concluded that: "Entry onto your property and into your care home without your care giver's knowledge or awareness of a person's presence placed your residents at risk.... A non-responsive care giver is tantamount to having no care giver at all."

Also included in the correspondence was a Statement of Deficiencies and a provisional license, which was valid for approximately seven months. The letter explained that the care home's standard license, issued earlier that year, was rescinded because the caregiver had endangered the welfare of two residents. OHCA also notified the care home that, during the provisional license period, it would conduct a maximum of six unannounced monitoring

visits to ensure that there is always a responsive caregiver on premises. It stipulated that the substitute caregiver was no longer to be used and included the following admonition:

"Finally, you are warned that a second occurrence of this nature will result in further action taken against your license which may include rescinding your license or levying a fine."

During an unannounced monitoring visit in January 2018, the nurse consultant could not find the caregiver on premises after repeated attempts. Two residents were present in the care home, and the nurse consultant waited with them until the primary caregiver's son arrived more than 20 minutes later. He told the nurse consultant that someone was at home, but in the upstairs residence. The substitute caregiver, the same person who OHCA had disallowed from overseeing the residents after the June 2017 unannounced visit, said that she had been in the bathroom and kitchen and was unaware of the nurse consultant's presence.

Despite the repeat violation, there does not appear to have been any real consequences for the care home. A month later, OHCA sent the caregiver a one-page letter, which briefly noted the caregiver's use of an unauthorized substitute caregiver. It did not identify any enforcement action the office would be taking against the care home for the repeat violation. The letter did not mention that the use of an unauthorized and unresponsive substitute caregiver was a repeat violation. Instead, the letter referred to an attached Statement of Deficiencies for details on the visit. It did note that the caregiver was required to submit a Plan of Correction to OHCA within ten days. Not doing so, the letter warned, would result in an enforcement action, which could include penalties of up to \$1,000 for each day of violation.

The care home's Plan of Correction was approved on July 5, 2018, which concluded the monitoring visit process. No fines were levied nor other enforcement actions taken against the care home. We note that OHCA did not require — and the nurse consultant did not conduct — any additional monitoring visits to confirm compliance.

As previously noted, OHCA did not sanction or fine a single care home nor did it completely terminate a single care home license in the 10-year period from 2007 to 2017.

OHCA does not make it standard practice to do follow-up visits to care homes to ensure the correction of deficiencies.

Licensees are required to provide a Plan of Correction for deficiencies identified during the annual inspections and visits. According to the licensing supervisor, follow-up visits are rarely done because of nurse consultants' caseload and OHCA's limited resources. For severe deficiencies or in cases when there are concerns over inaccuracies or suspicious behavior, the nurse consultant consults with the licensing supervisor. For less serious deficiencies, nurse consultants do not do follow-up visits because they are overburdened.

OHCA does not subject care homes to any consequences for repeat deficiencies.

We found that licensees are not reprimanded for repeat deficiencies. In 2017, 44 care homes in our sample (22 percent) were relicensed before the inspection process was completed, despite all of them having repeat deficiencies from 2016. According to the licensing supervisor, having repeat deficiencies noted in the Statement of Deficiencies does not affect the relicensing process of a care home. He said the nurse consultants are expected to verify that the mitigating actions stated in the Plan of Correction had been implemented when they inspect the care home. He added that this is what nurse consultants are supposed to be doing, but he was not sure if they are following this procedure on a consistent basis.

We found that some of the documented repeated deficiencies required supervisory review under OHCA's policy and procedures, but there was no documentation in the care home files evidencing such a review.

There are no policies, procedures, laws, or rules requiring any type of action for repeat deficiencies after review.



Examples of deficiencies found requiring supervisory review, but did not prompt a follow-up visit, include:

- Misabeled medication
- Unsecured medication
- Wrong dosage given
- Exceeded frequency of medication administration
- Medication administered without physician's orders
- Medication discontinued without physician's orders
- Blocked exit or access to the safe area of refuge
- Primary caregiver home alone with five residents, two of which were non-self-preserving. (DOH administrative rules require a ratio of one caregiver to one non-self-preserving resident, meaning one not capable of following directions or taking appropriate action for self-preservation under emergency conditions.)
- No substitute caregiver present in the absence of the primary caregiver during breakfast and lunch for a period of three days. An activities coordinator, not trained to provide care, was present on two of the days

Source: Data compiled by LAO from OHCA files

Revoke, Suspend, or Renew?

OHCA's incomplete documentation of a care home complaint investigation illustrates the tough choices and possible risks that result from a poorly administered relicensing program.

IN OUR REVIEW of OHCA's complaints process, we found reference to a complaint filed against a Honolulu care home, alleging that an adult male caregiver, an adult female, and a newborn child were living in a tent in the home's backyard. OHCA later learned that the caregiver and another person associated with the care home had prior criminal convictions. The care home file neither contained the original complaint that initiated the subsequent investigation nor did it have other crucial information on the circumstances and, more importantly, the outcome of the case. OHCA does not keep centralized records for complaints, and each nurse consultant tracks his or her own complaints. Moreover, there are no policies or procedures for complaints.

With the limited documentation that was available, we were able to assemble the following chronology.

May 2017: OHCA initiates a complaint investigation of the Honolulu care home to determine if a couple and child are living in the backyard and if the adult male is providing care to the home's residents. Staff present during the visit state that the male in question is a caregiver at the home and had lived in the home's backyard with his girlfriend, but had since moved out. For additional information on the caregiver, staff refer the investigator to other care home officials.

June 2017: OHCA sends a letter to the care home administrator requesting additional information on the one-time camping

caregiver, specifically the results of a physical examination, tuberculosis clearance, cardiopulmonary resuscitation certification, and first aid certification. The letter stipulates that the care home submit these documents within five working days of the date of the letter.

July 2017: The OHCA chief sends an email to OHCA's Licensing Section supervisor, explaining that the office is still drafting its administrative rules regarding background checks; however, he believes that current rules may still apply.

August 2017: OHCA sends a letter to the caregiver, requesting that he provide a written statement explaining the circumstances and consequences of the five convictions found on his record. Four of the convictions involve a series of traffic violations and misdemeanors nearly 30 years ago. The fifth is a more recent conviction, a Class-C felony.

August 2017: OHCA conducts its annual relicensing inspection of the care home and finds deficiencies unrelated to the complaint investigation.

September 2017: OHCA completes its complaints investigation, submitting a "complaint packet" to the care home's file. It is unclear what this packet consists of, but the file does contain an email from the Licensing Section supervisor to the OHCA chief and the deputy attorney general, outlining the major issues and considerations of the case. The file did not contain

any information on how this or any other issues were resolved and was missing documentation on OHCA's final decision.

November 2017: OHCA sends the care home a "Statement of Deficiencies/Licensing/Plan of Correction Notice" for the relicensing inspection conducted about four months earlier. The care home must submit a Plan of Correction to OHCA within ten working days of receipt of the letter. Included with the notice is the care home's license, good for one year and effective on December 1, 2017. Although the Statement of Deficiencies was in the file we reviewed, we saw no reference to the outcome of the complaint investigation.

February 2018: OHCA accepts the care home's Plan of Correction, over six months after the relicensing inspection was conducted and over five months after the complaint investigation concluded.

The chronology raises more questions regarding the coordination of the complaints investigation and OHCA's regularly scheduled inspection/relicensing process. How OHCA investigated and resolved these issues is unclear. What is clear is that a lack of administrative rules and policies and procedures likely made tough decisions even more difficult. In addition, poor recordkeeping prevented the decision-making process from being anything close to transparent and accountable.



The Legislature Acted, Can OHCA?

FOLLOWING THE 2018 LEGISLATIVE SESSION, the governor signed House Bill 1911 HD2 SD1 CD1 into law as Act 148. Act 148, which took effect on July 1, 2018, added six new sections to Chapter 321, Hawai'i Revised Statutes. The new sections give the department stronger and better-defined enforcement tools over unlicensed care facilities, which include ARCH and E-ARCH facilities. The tools include, with some exceptions: the power to have a court issue a search warrant to allow entry to and investigation of a facility reported to be operating without a license; enforcement options ranging from informal resolution to court petition for relief; right of entry to investigate a report of unlicensed activity; and a provision that anyone interfering with the right of entry or an investigation shall be guilty of a misdemeanor. Under the new law, it is also a misdemeanor to intentionally operate a care home without a license for which the department may assess a fine of no more than \$100 per day for a first offense, \$500 per day for a second offense, and \$1,000 per day for a third and each succeeding offense. In addition, it is now unlawful for a certified or licensed health care provider or health care facility to knowingly refer or transfer residents to a care home without a license. The department is also authorized to assess fines for this offense of no more than \$500 for a first offense, \$1,000 for a second offense, and \$2,000 for a third and each succeeding offense.

“OHCA did not sanction or fine a single care home nor did it completely terminate a single care home license in the 10-year period from 2007 to 2017.”

In its January 25, 2018, testimony to the House Committee on Health & Human Services in support of House Bill 1911, DOH wrote that it needed stronger enforcement authority over unlicensed care homes to “help ensure the health, safety, and welfare of persons receiving care at these homes.” However, having enforcement tools is one thing; actually using them is another.

In our review of OHCA's relicensing efforts, we found that the office has been unable to complete annual inspections of care homes before their licenses expire. It also only rarely conducts follow-up visits to confirm that corrective actions are being implemented by the operator. Finally, OHCA did not sanction or fine a single care home nor did it completely terminate a single care home license in the 10-year period from 2007 to 2017.

If OHCA is unable to adequately oversee its licensed care homes, how can it be expected to police unlicensed ones?

Conclusion

“Assurance” is the “A” in OHCA. “Assurance” assumes that the residents’ health, safety, and welfare are protected. However, poor monitoring and recordkeeping do not provide assurance. Taking over six months to complete the relicensing process does not provide assurance. Relicensing a care home before the inspection process is completed or doing so without verifying compliance does not provide assurance. And failure to fully define and use enforcement authority do not provide assurance. To the contrary, these circumstances – which we found to exist at OHCA – likely increase the risk to the health, safety, and welfare of care home residents, risks that OHCA is mandated to minimize through its licensing, relicensing, and inspection processes.

Recommendations

OHCA should:

1. Complete its annual inspection process, including OHCA’s acceptance of a care home’s Plan of Correction and confirmation that deficiencies have been corrected, before renewing a care home’s license.
2. Use provisional licenses only as stipulated in Chapter 11-100.1, Hawai‘i Administrative Rules, including to allow a care home to operate while it addresses and corrects deficiencies identified during a relicensing inspection.
3. Discontinue the use of short-term licenses, which are not defined by statute or administrative rules.
4. Establish policies and procedures to verify or otherwise confirm that care homes have implemented approved Plans of Correction to correct deficiencies identified during inspections or unannounced visits, including policies and procedures to conduct follow-up visits for certain types of deficiencies.
5. Conduct at least one unannounced visit for each care home as required by Section 321-15.6, HRS, not as a substitute for an annual inspection, and should consider conducting more unannounced visits for each care home per year to verify that the care home is implementing its Plan of Correction and/or the care home is adequately providing care for its residents.

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6. Develop a centralized data management system for management and staff to review and update information as well as monitor inspections and licenses.
 7. Develop policies and procedures to guide the relicensing process, including clear deadlines by which staff must, for example, issue Statements of Deficiencies to the licensee, review Plans of Correction, and complete inspections, to ensure timely license renewal.
 8. Promulgate administrative rules that describe the types of violations for which it may consider assessing a monetary fine or other action, including suspending or revoking a care home's license.
 9. Implement policies and take all measures necessary to comply with the posting requirements of Section 321-1.8, HRS, including posting all approved Plans of Correction for relicensing inspections. OHCA should also consider posting unanswered Statements of Deficiencies for care homes that do not submit a Plan of Correction within the ten-day deadline and Plans of Correction resulting from unannounced visits that identified deficiencies.

Office of the Auditor's Comments on the Department of Health's Response

WE PROVIDED A DRAFT OF THIS REPORT to the Department of Health on October 29, 2018, and met with the Director of Health, Deputy Director of Health, Deputy Director of Behavioral Health Administration, Communications Office Administrator, Office of Health Care Assurance (OHCA) Branch Chief, and the State Licensing Section Supervisor on November 1, 2018, to discuss our findings and recommendations. The department offered its written response to the draft report on November 9, 2018, which is included as Attachment 1.

The department generally agreed with our findings and recommendations and reported that it has taken numerous steps to address and implement them. For instance, according to the department, OHCA surveyors (referred to as nurse consultants in our report) are now required to complete and submit quarterly reports to their supervisor, and administrative support staff are tracking the status of all inspections. The department is also developing a management information system to track workload, staff assignments, and completed work among other things.

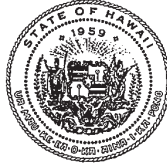
The department questioned our observation that OHCA did not conduct annual relicensing inspections for six care homes in 2017, suggesting that the six care homes we had identified likely had ceased operating that year, and for that reason, OHCA had not conducted an annual inspection. However, based on a cursory review of the care homes listed in the “Combined ARCH-Expanded ARCH Vacancy Report – By Area” posted on the Department of Health’s website, we found three of the care homes have licenses that expire in 2019 and another has a license that expired on 10/30/2018. In other words, OHCA’s assumption that those four care homes had ceased operating appears incorrect. Assuming that OHCA conducted annual inspections of all care homes that it relicensed in 2017, as it represents, the fact that the files of the four care homes did not include evidence of an inspection or a copy of the new license validates our finding that OHCA’s records are in disarray. As we recommended, OHCA must develop and implement a system to manage its records to track inspections and licenses.

OHCA’s statutory mandate is to ensure the health, safety, and welfare of care home residents. That requires OHCA to compel care homes to meet certain quality of care standards. However, we report OHCA took no enforcement action against care homes which fail to meet those standards.

OHCA did not dispute that finding. Instead, OHCA cites 277 cases during the past five years where it reported possible abuse or neglect of care home residents to the Department of Human Service's Adult Protective Services. The cases reported to Adult Protective Services represent *actual* situations where care home residents' health, safety, or welfare may have been at risk. However, the relicensing process, which includes the inspection and the care home's plan to correct any noted deficiencies in its quality of care standards, is intended to *prevent* the situations that result in the referrals to Adult Protective Services.

As the department stated earlier in its response, "OHCA's first and foremost obligation as a regulatory agency is to ensure residential care homes comply with all applicable laws and provide quality care in a safe environment." And the relicensing process is integral in this effort. While we are encouraged that OHCA is carrying out its other responsibilities, we reiterate that the office's problematic relicensing process and its inability and unwillingness to consistently enforce care homes' compliance with certain quality of care standards are likely increasing the risk to the health, safety, and welfare of care home residents.

DAVID Y. IGE
GOVERNOR OF HAWAII



BRUCE S. ANDERSON, Ph.D.
DIRECTOR OF HEALTH

STATE OF HAWAII
DEPARTMENT OF HEALTH
P. O. BOX 3378
HONOLULU, HI 96801-3378

In reply, please refer to:
File:

November 9, 2018

Mr. Leslie Kondo
State Auditor
Office of the Auditor
465 S. King Street, Room 500
Honolulu, Hawaii 96813-2917

Aloha Mr. Kondo:

Protecting the health, safety, and welfare of kūpuna and those with disabilities who live in residential care homes is a statutory requirement the Hawai'i Department of Health (DOH) takes very seriously. Although the findings in the audit relating to home care inspections in 2016-2017 do not reflect conditions today, the DOH agrees with the overall findings and recommendations of the auditor for this period. Major steps have been taken to correct deficiencies since then and today inspections and reports are more timely and up-to-date.

The DOH realizes that the responsibilities of the Office of Health Care Assurance (OHCA) to conduct care home surveys and licensing or re-licensing of care homes in a timely manner is critical to ensuring quality home- and community-based care in our state. We also understand the importance of timely inspection reports being available for Hawai'i's families and healthcare professionals who depend upon these reports in their decisions on home care placements.

Older adults without family caregivers or families unable to care for older adults in their homes turn to residential care homes for support and to ensure their loved ones can thrive in a safe environment and enjoy socialization. As the need for cost-effective alternatives to institutional care continues to grow, OHCA's role in assessing the quality of care at adult residential care homes will become even more important. The need for residential care is anticipated to increase as Hawai'i's population ages. Our first and foremost obligation as a regulatory agency is to ensure residential care homes comply with all applicable laws and provide quality care in a safe environment.

We appreciate the work of the Office of the Auditor in identifying problems during 2016-2017, your recommendations to improve the licensure and inspection program, and for allowing us to respond to the audit. As you will see in our response, OHCA has already taken action to make improvements to the inspection and licensing policies and procedures. Some of the problems you identified were not recognized, and we appreciate your recommendations on

Mr. Leslie Kondo
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November 9, 2018

how to best address these issues. I anticipate that you will see significant program improvements when your follow-up audit has been completed.

If you have any questions, please contact me or Keith Ridley, Chief of the Office of Health Care Assurance, at (808) 692-7227. Thank you.

Sincerely,



Bruce S. Anderson, Ph.D.
Director of Health

Enclosure

Response to the Auditor's Report No. 18-XX / October 2018
Department of Health
Office of Health Care Assurance (OHCA)
November 9, 2018

Department Response

Introduction

After reading the audit, many families may erroneously conclude that adult residential care homes may be unsafe for their loved ones. It is important to address this misperception at the outset of our response by emphatically stating that any risks to the safety, health and wellbeing of older adults in an adult residential care home are immediately investigated and appropriate action taken.

The audit focused on problems inherent in the inspection process for license renewals. Whenever the Hawai'i Department of Health's Office (DOH) of Health Care Assurance (OHCA) surveyors identify potential abuse or neglect, these incidents are immediately reported to Adult Protective Services (APS), another state agency, for a thorough investigation. APS is part of the Adult Protective and Community Services Branch of the Hawai'i Department of Human Services. In addition, OHCA also conducts timely investigations of consumer complaints or suspicions of abuse or neglect referred from APS.

The inter-departmental collaboration has resulted in 277 referrals for all types of facilities between the two entities over the past five years. OHCA documents these types of reports, which is a separate responsibility from its licensing and inspection activities.

OHCA's Role and Responsibilities

The Office of Health Care Assurance (OHCA) performs all state licensing activities on healthcare facilities, agencies and organizations in Hawai'i. This includes conducting all on-site state licensing surveys (inspections) and Medicare certification surveys (inspections) on behalf of the U.S. Centers for Medicare and Medicaid Services (CMS). In addition to adult residential care homes (ARCHs) and expanded ARCHs (E-ARCHs), OHCA also surveys and regulates assisted living facilities, developmentally disabled domiciliary homes, therapeutic living programs, community care foster family homes, special treatment facilities, adult day health centers, adult day care centers, ambulatory surgical centers, home health agencies, home care agencies, dietitians, case management agencies, hospitals, intermediate care facilities for individuals with intellectual disabilities, skilled nursing and intermediate care facilities, end-stage renal disease facilities, hospices, rehabilitation agencies, rural health clinics, portable x-ray facilities, and clinical laboratories.

All adult residential care homes are licensed by OHCA to protect the health, safety, and welfare of the residents in those homes. OHCA conducts inspections, both announced and unannounced visits of every licensed adult residential care home and expanded adult residential care home on an annual basis and at other intervals.

To ensure residential care facilities meet state licensing requirements and provide high quality care in a safe environment, OHCA reviews and verifies the following areas during its surveys:

- ✓ Approved caregivers with documented training—this includes background checks on all non-client adults in the home and approved primary and secondary caregivers;
- ✓ Approved housing unit meets all space, cleanliness, and home repair requirements;
- ✓ Fire and life safety;

Response to the Auditor's Report No. 18-XX / October 2018
Department of Health
Office of Health Care Assurance (OHCA)
November 9, 2018

- ✓ Quality of care, such as for monitoring for positive health outcomes;
- ✓ Medical record keeping;
- ✓ Medication management;
- ✓ Diet and meal planning;
- ✓ Food storage and handling;
- ✓ Emergency preparedness; and
- ✓ Social activities.

The surveys, also referred to as inspections, are consultative in nature, designed to help care home operators address deficiencies and point out violations. OHCA's goal is not punitive but to ensure all care homes are in compliance. We set high standards and, as noted later in our response, many care home operators come to the conclusion on their own that they cannot meet the regulatory requirements and choose to cease their operations.

As required by statute, OHCA may provide training of and consultations with operators and staff of any facility licensed and shall adopt rules to ensure that adult residential care home operators have the needed skills to provide proper care and supervision in a home environment.

Past Performance

OHCA's current, year-to-date dashboard of metrics for 2018 clearly shows significant improvement since the audit took place from January 2016 to December 2017. Historically, OHCA admittedly had a lack of funding for staffing, difficulty filling vacant positions to meet workload requirements, and a lack of structured management policies and procedures on inspection processes and enforcement. This resulted in OHCA's inability to meet its statutory obligations during the audit period.

The lack of staffing and the need for improved policies and procedures resulted in the audit's finding that OHCA's license renewal process is unorganized and undisciplined, due to a large number of care homes operating with an expired license and OHCA relicensing care homes before completing the statutorily required relicensing process. The audit also pointed out OHCA does not consistently enforce care homes' compliance with quality of care standards and plans to correct deficiencies and, therefore, does not ensure the health, safety, and welfare of care home residents as the Legislature intended and the statute clearly requires.

Adequate staffing became a priority funding request and both the Governor and the Legislature recognized the need for additional staff and approved three staff positions requested by DOH in 2017. Going forward, these positions will ensure the sustained support needed to meet workload requirements and consistently complete the license renewal process in a timely manner.

Having additional staff trained with improved policies and procedures in place will be a key driver in the turnaround of OHCA's performance since the audit. Despite its past challenges, OHCA has been able to conduct all the required annual inspections in 2017 and 2018 and continues to make improvements in its operations.

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Improvements Underway

Current actions now underway to improve operations include:

- Development of a management information system to track workload, staff assignments, and completed work;
- Transition from a paper-based system to a fully electronic inspection process;
- Development of an automated system to post electronic inspection reports online;
- Implementation of updated, revised, and new policies and procedures that ensure operational consistency through an improved structured approach.

These actions are all consistent with the Auditor's recommendations.

As demonstrated in 2017 and 2018, OHCA has shown improvements in conducting inspections and is able to live up to its purpose of providing assurance to families that care homes in Hawaii are safe for their loved ones.

Auditor's Findings and Department's Responses

Finding #1

OHCA's license renewal process is unorganized and undisciplined, resulting in a large number of care homes operating with an expired license, or OHCA relicensing care homes before completing the statutorily required relicensing process.

Department Response to Finding #1

OHCA has taken action to improve operations, beginning with implementing updated, revised and new written policies and procedures (P&P). For example, new P&P on inspections include ensuring a uniform system to track inspection timeliness. Surveyors are required to complete and submit quarterly reports to their supervisor, and administrative support staff are tracking the status of all inspections.

OHCA acknowledges the auditor's finding for 2016 but disputes the finding for 2017 that OHCA did not conduct annual relicensing inspections on six care homes. OHCA conducted annual relicensing inspections on 100% of open care homes in 2017. Some care homes closed prior to their annual inspection date.

In 2016, the Department requested, and the Governor and Legislature approved additional resources in 2017. The additional resources were for two nurse consultants (inspectors) and one administrative assistant. The additional resources will be used to continue and maintain improvement efforts and to address the growing number of residential care homes. We are appreciative of the Governor's and Legislature's responsiveness and support.

In 2017, 100% of the 467 open care homes received full annual inspections. This contradicts information presented by the State Auditor and we believe the Auditor may have inadvertently included homes that closed prior to their inspection date. OHCA acknowledges that some homes were relicensed before the inspection process was completed.

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For 2018, of 460 care homes, 398 or 87%, full annual inspections have been conducted. The remaining 62 or 13% are scheduled for November and December. OHCA is well on track to complete all inspections for 2018. The Department will continue to monitor care home inspections to ensure all inspections are conducted on a timely basis.

Public demand for care home services is high, and in the past, the Department's inspection staff (called "consultants") worked with care home licensees to ensure compliance with licensing requirements, even if it required time beyond the license expiration date. The Department acknowledges the overall concern on timeliness of the license renewal process. Revised policies will ensure all inspections are conducted on a timely basis and renewal completed before the expiration of a license.

Finding #2

OHCA does not consistently enforce care homes' compliance with quality of care standards and plans to correct deficiencies and, therefore, does not ensure health, safety, and welfare of care home residents as the Legislature intended and the statute clearly requires.

Department Response to Finding #2

The Department relies on the professional clinical judgment of the registered nurse supervisor and the registered nurse consultants (inspectors) to consider all factors in determining whether threats to patient care or safety are evidenced.

A total of 277 cases during the past five years were referred from Adult Protective Services (APS) for possible action. The referrals resulted in OHCA investigations and appropriate actions were taken.

OHCA's consultant staff are mandated to report possible abuse or neglect cases to APS or other government agencies. All OHCA consultant staff are aware of their professional responsibilities. In 2018, three referrals were made from OHCA's Licensing Section to APS.

The Department appreciates the Auditor's finding and has taken action to improve the decision-making process. This issue will be included in the Inspections P&P and includes an outline on a more consistent decision-making process.

The Department's inspection staff will continue to work with care home operators to ensure compliance with licensing requirements and conduct follow-up visits on repeated deficiencies to confirm corrections and quality of care.

From 2008 to 2018, 174 adult residential care homes voluntarily closed. Most of these homes closed due to pressure from OHCA on repeated deficiencies. Nevertheless, the Department acknowledges the overall concern on timeliness of the licensing process. Policy and procedure implemented in November 2018 includes more consistent enforcement and sanctions processes.

Regarding the Auditor's concern with Act 148 (HB 1911 HD2 SD1 CD1) enacted from the 2018 legislative session which provides stronger legal authority to OHCA to conduct investigations, DOH initiated action in November 2017 on an unlicensed care home prior to Act 148. That care home was closed and a settlement agreement was reached. OHCA is currently in the process of conducting or scheduling 64

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investigations of homes in 2018. This includes investigations on 42 unlicensed homes from 2015 to 2017.

Written P&P implemented in October 2018 include specific guidance on conducting investigations on unlicensed care homes.

Auditor's Recommendations and Department's Actions

Recommendation 1:

Complete its annual inspection process, including OHCA's acceptance of a care home's Plan of Correction and confirmation that deficiencies have been corrected, before renewing a care home's license.

Department Action:

The license renewal process will be restructured in the Inspections P&P which will provide clear guidelines on timeframes and actions required to consistently complete the renewal process before license expiration. The improved process will become effective by December 2018. Inspection staff will be retrained and will be monitored.

Recommendation 2:

Use provisional licenses only as stipulated in Chapter 11-100.1, Hawaii Administrative Rules, including to allow a care home to operate while it addresses and corrects deficiencies identified during a relicensing inspection.

Department Action:

Use of provisional licenses, including their purpose, will be described in the Inspections P&P and will become effective by December 2018. Inspection staff will be retrained and will be monitored.

Recommendation 3:

Discontinue the use of short-term licenses, which are not defined by statute or administrative rules.

Department Action:

Short-term licenses are allowed in the administrative rules, Chapter 100.1-3(a)(2), HAR. The use of short-term licenses, including their purpose, will be described in the Inspections P&P and will become effective by December 2018. Inspection staff will be retrained and will be monitored.

Recommendation 4:

Establish policies and procedures to verify or otherwise confirm that care homes have implemented approved Plans of Correction to correct deficiencies identified during inspections or unannounced visits, including policies and procedures to conduct follow-up visits for certain types of deficiencies.

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Department Action:

Confirmation of the implementation of approved Plans of Correction will be restructured in the Inspections P&P with required actions and documentation to include procedures to conduct follow-up visits for deficiencies. Inspection staff will be retrained and monitored.

Recommendation 5:

Conduct at least one unannounced visit for each care home as required by Section 321-15.6, HRS, not as a substitute for an annual inspection, and should consider conducting more unannounced visits for each care home per year to verify that the care home is implementing its Plan of Correction and/or the care home is adequately providing care for its residents.

Department Action:

In 2017, there were 481 unannounced visits conducted on 467 open care homes; no visits were substituted for inspections.

In 2018, 100% of 460 open adult residential care homes had at least one unannounced visit conducted, and all of the homes had the full annual inspection completed. None of the unannounced visits were substituted for the annual inspections.

Confirmation of the implementation of approved Plans of Correction will be restructured in the Inspections P&P with required actions and documentation to include procedures to conduct follow-up visits for deficiencies. Inspection staff will be retrained and monitored.

Recommendation 6:

Develop a centralized data management system for management and staff to review and update information as well as monitor inspections and licenses.

Department Action:

In June 2013, OHCA developed a written proposal to modernize care home inspection operations using information technology (IT) resources. The proposal sought to develop an electronic system to streamline and organize the inspection process and reporting.

In March 2018, the administrative rules on licensing fees were approved after several years of delay by external parties. The new fee structure enables OHCA to use licensing fees to pay for IT modernization.

In June 2018, contracted work began on IT modernization (Phase I). The purchase order was created on June 26, 2018, and the Memorandum for Agreement (MOA) for Phase I was executed on July 3, 2018. Subsequent phases will be procured.

Recommendation 7:

Develop policies and procedures to guide the relicensing process, including clear deadlines by which

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staff must, for example, issue Statements of Deficiencies to licensee, review Plans of Correction, and complete inspections, to ensure timely license renewal.

Department Action:

The entire license renewal process will be restructured in the Inspections P&P to include clear deadlines for inspection staff, administrative support staff, and care home operators. The revised P&P will be implemented by December 2018. Inspection staff will be retrained and will be monitored.

Recommendation 8:

Promulgate administrative rules that describe the types of violations for which it may consider assessing a monetary fine or other action, including suspending or revoking a care home's license.

Department Action:

OHCA will develop clear and structured policies and procedures in 2019 on enforcement actions including fines, license suspension, license revocation, and other penalties.

Recommendation 9:

Implement policies and take all measures necessary to comply with the posting requirements of Section 321-1.8, HRS, including posting all approved Plans of Correction for relicensing inspections. OHCA should also consider posting unanswered Statements of Deficiencies for care homes that do not submit a Plan of Correction within the ten-day deadline and Plans of Correction resulting from unannounced visits that identified deficiencies.

Department Action:

In March 2018, OHCA began online posting of inspection reports with unanswered Statements of Deficiencies.

Although online posting of reports on unannounced visits are not required by statute, OHCA plans to post identified deficiencies and Plans of Correction on unannounced visits when its automated inspection process and online tools are implemented. The automated inspection process and tools are part of OHCA's plan to modernize its operations using IT resources.

Auditor's Summary

Audit of the Office of Health Care Assurance's Adult Residential Care Homes Program

Report No. 18-18



PHOTO: THINKSTOCK

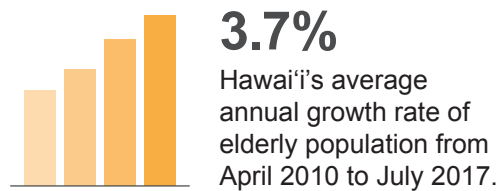
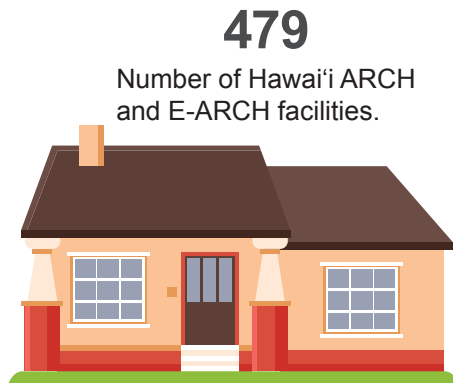
IN REPORT NO. 18-18, *Audit of the Office of Health Care Assurance's Adult Residential Care Homes Program*, we examined the Office of Health Care Assurance's (OHCA) relicensing process. That process is integral to OHCA's ability to ensure that care homes maintain certain quality of care standards to safeguard the health, safety, and welfare of care home residents. Relicensing is a time-consuming effort, which relies heavily on the judgment and discretion of the office's nurse consultants who inspect adult residential care homes (ARCHs) and expanded adult residential care homes (E-ARCHs) and identify deficiencies in quality of care standards.

What We Found

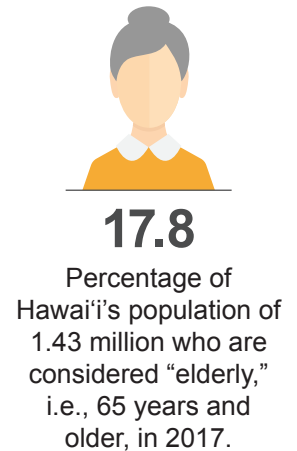
We found that OHCA renewed licenses without first completing the relicensing process, substituted much less rigorous unannounced care home visits for statutorily required inspections and issued licenses without even inspecting or visiting the facility. About half of the 214 care homes we sampled were allowed to operate in 2017 with either an expired license or a license hastily issued before all required steps of the relicensing process were completed. Of these, OHCA had yet to complete the inspection process from 2016 for 22 care homes. In 2017, eight care homes in our sample had 20 or more deficiencies with certain quality of care standards, but OHCA relicensed them before those deficiencies were resolved. Most of the time, OHCA simply renewed a care home's license.

In its 2018 report to the Legislature, OHCA stated that all deficiencies identified during an inspection must be corrected before a care home facility is relicensed. However, since OHCA does not conduct follow-up visits to verify implementation of the Plan of Correction, there is no way to determine if corrections have in fact been made. In 2017, 116 care homes in our sample were relicensed before the inspection process was completed.

By the Numbers Aging and ARCHs



2,703*
Number of beds in Hawai'i ARCHs and E-ARCHs.



*According to the *Hawai'i Long-Term Care Ombudsman Program Federal Report* (October 1, 2015–September 30, 2016).

Source: Data compiled from Department of Business, Economic Development & Tourism, Hawai'i Population Characteristics 2017 and OHCA.

In addition, we found that OHCA has no written guidelines for enforcement if licensees cannot or will not comply with quality of care standards. For instance, OHCA neither ranks specific care home deficiencies according to severity nor does it have guidance on the number of deficiencies that would disqualify a care home from license renewal. This may at least partially explain why OHCA did not sanction or fine a single care home nor did it completely terminate a single care home license in the 10-year period from 2007 to 2017, even for care homes with substantial or repeat deficiencies.

Why Did These Problems Occur?

We found that OHCA's primary objective appears to support the continued operations of care homes, not to ensure the health, safety, or welfare of the facilities' residents as mandated by statute. Perhaps, as a result, we found that OHCA lacks the basic organizational infrastructure necessary to guide and support its relicensing activities. For instance, it has no uniform system to track inspections and review and update information. In addition, OHCA has no internal timelines or deadlines for each step of the relicensing process to ensure tasks are completed within a specific timeframe, and ultimately, before a care home's one-year license expires.

Why Do These Problems Matter?

"Assurance" is the "A" in OHCA. Assurance assumes that care home residents' health, safety, and welfare are protected. However, relicensing a care home before the inspection process is completed or doing so without verifying compliance does not provide assurance. And failure to fully define and use enforcement authority do not provide assurance. To the contrary, these circumstances, which we found to exist at OHCA, likely increases the risk to the health, safety, and welfare of care home residents.