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Washington, DC 20548

April 28, 2010

The Honorable Herb Kohl  
Chairman  
Special Committee on Aging  
United States Senate

The Honorable Charles E. Grassley  
Ranking Member  
Committee on Finance  
United States Senate

Subject: *Nursing Homes: Some Improvement Seen in Understatement of Serious Deficiencies, but Implications for the Longer-Term Trend Are Unclear*

Federal and state governments share responsibility for ensuring that nursing homes provide quality care in a safe environment for vulnerable elderly or disabled individuals who can no longer care for themselves. States survey nursing homes annually under contract with the Centers for Medicare & Medicaid Services (CMS), the federal agency responsible for ensuring the effectiveness of state surveys.<sup>1</sup> To evaluate state surveyors' performance, CMS conducts federal comparative surveys in which federal surveyors independently resurvey a home recently inspected by state surveyors and compare and contrast the deficiencies identified during the two surveys. Federal comparative surveys can find two types of understatement: (1) missed deficiencies, which can occur when a state surveyor fails to cite a deficiency altogether, or (2) cases where state surveyors cite deficiencies at too low a level. In May 2008, we reported that a substantial proportion of federal comparative surveys conducted from fiscal years 2002 through 2007 identified missed deficiencies that either had the potential to or did result in harm, death, or serious injury to nursing home residents.<sup>2</sup> You

<sup>1</sup>Every nursing home receiving Medicare or Medicaid payment must undergo a standard state survey not less than once every 15 months, and the statewide average interval for these surveys must not exceed 12 months. Medicare, the federal health care program for elderly and disabled individuals, covers up to 100 days of skilled nursing home care following a hospital stay. Medicaid, the joint federal-state health care financing program for certain categories of low-income individuals, pays for the nursing home care of qualifying individuals who can no longer live at home. Combined Medicare and Medicaid payments for nursing home services were about \$82 billion in 2008, including a federal share of about \$58 billion.

<sup>2</sup>See GAO, *Nursing Homes: Federal Monitoring Surveys Demonstrate Continued Understatement of Serious Care Problems and CMS Oversight Weaknesses*, [GAO-08-517](#) (Washington, D.C.: May 9, 2008). This report also examined CMS's management of the federal monitoring survey program and database and made recommendations to address weaknesses that affect the agency's ability to track understatement and oversee regional office implementation of the federal monitoring survey program. CMS implemented all of the report's recommendations. We also issued a companion report in November 2009 that examined how four factors affect the understatement of nursing home deficiencies. See GAO, *Nursing Homes: Addressing the Factors Underlying Understatement of Serious Care Problems Requires Sustained CMS and State Commitment*, [GAO-10-70](#) (Washington, D.C.: Nov. 24, 2009).

asked us to update our May 2008 report on the extent of nursing home understatement. Specifically, we analyzed the results of the most recent data available on federal comparative surveys conducted during fiscal year 2008 and updated the data included in our May 2008 report to reflect this additional information.

To update our analysis of comparative surveys conducted nationwide from fiscal years 2002 through 2007, we incorporated the results of 163 fiscal year 2008 comparative surveys.<sup>3</sup> From fiscal years 2002 through 2008, federal surveyors conducted 1,139 comparative surveys.<sup>4</sup> CMS maintains the results of these comparative surveys in the federal monitoring survey database.<sup>5</sup> As a part of our prior work, we completed a number of reliability checks to ensure that the federal monitoring survey data was sufficiently reliable for our work, including interviewing representatives of all 10 CMS regional offices. For this update, we repeated a number of these reliability checks on fiscal year 2008 data to ensure it was sufficiently reliable for our work. Federal comparative survey data cannot be projected to all state surveys either within a state or across the nation because state surveys are not randomly selected for federal monitoring and therefore are not representative of state surveys.

We conducted this performance audit from January 2010 through April 2010 in accordance with generally accepted government auditing standards. Those standards require that we plan and perform the audit to obtain sufficient, appropriate evidence to provide a reasonable basis for our findings and conclusions based on our audit objectives. We believe that the evidence obtained provides a reasonable basis for our findings and conclusions based on our audit objectives.

In summary, we found that 12.3 percent of fiscal year 2008 comparative surveys identified at least one missed serious deficiency, compared to 14.7 percent in fiscal year 2007. Because the percentage of comparative surveys identifying at least one missed serious deficiency has fluctuated from as low as 11.1 percent to as high as 17.5 percent since fiscal year 2002, the longer-term trend is unclear. Overall, the number of states with missed serious deficiencies on 25 percent or more of their comparative surveys declined from nine to six states, with eight of those states improving their overall performance. As we reported in 2008, understatement can also occur when state survey teams cite some serious deficiencies at too low a level, and we found that the extent of such understatement in fiscal year 2008 was consistent with prior fiscal years. Although, combining such understatement with missed serious deficiencies increased overall understatement nationwide by about 1 percentage point for the entire period, total understatement for fiscal year 2008 declined to 14.1 percent from the 16.5 percent observed in fiscal year 2007. Finally, we found that missed deficiencies at lower-levels continued to remain more widespread than serious missed deficiencies on fiscal year 2008 comparative surveys, increasing slightly from 73.5 percent of comparative surveys with at least one lower-level missed deficiency in fiscal year 2007 to 74.8 percent in fiscal year 2008. Over the period fiscal years 2002 through 2008, the level of missed

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<sup>3</sup>Since our May 2008 report, CMS changed a deficiency citation on a fiscal year 2007 comparative survey from a serious deficiency to a lower-level deficiency, reducing the nationwide percentage of comparative surveys that identified at least one missed serious deficiency from 15.3 percent to 14.7 percent for that fiscal year. This report reflects this change.

<sup>4</sup>We did not review federal comparative surveys of state life safety code surveys because they focus on fire safety and do not assess compliance with federal health regulations.

<sup>5</sup>Fiscal year 2002 was the first year that the database contained all the information needed to assess the results of federal comparative surveys.

deficiencies at lower-levels remained steady with about 70 percent of federal comparative surveys identifying at least one such lower-level missed deficiency.

## Background

Oversight of nursing homes is a shared federal-state responsibility, with CMS defining quality standards that nursing homes must meet to participate in the Medicare and Medicaid programs and state survey agencies assessing whether nursing homes meet these standards through annual standard surveys and complaint investigations.<sup>6</sup>

### Survey Process

During a standard survey, state surveyors evaluate compliance with federal quality standards, which focus on the delivery of care, resident outcomes, and facility conditions. Based on the care provided to a sample of residents, the survey team (1) determines whether the care and services meet the assessed needs of the residents and (2) measures residents' outcomes such as incidents of pressure sores, weight loss, and accidents.

Deficiencies identified during nursing home surveys are categorized according to their scope (i.e., the number of residents potentially or actually affected) and severity (i.e., the degree of relative harm involved). Homes with deficiencies at the A through C levels are considered to be in substantial compliance, while those with deficiencies at the D through L levels are considered out of compliance (see table 1).<sup>7</sup>

**Table 1: Scope and Severity of Deficiencies Identified during Nursing Home Surveys**

Severity	Scope		
	Isolated	Pattern	Widespread
Immediate jeopardy <sup>a</sup>	J	K	L
Actual harm	G	H	I
Potential for more than minimal harm	D	E	F
Potential for minimal harm <sup>b</sup>	A	B	C

Source: CMS.

<sup>a</sup>Actual or potential for death/serious injury.

<sup>b</sup>Nursing home is considered to be in "substantial compliance."

<sup>6</sup>In addition to nursing homes, CMS and state survey agencies are responsible for oversight of other Medicare and Medicaid providers, such as home health agencies, intermediate care facilities for the mentally retarded, and hospitals.

<sup>7</sup>Throughout this report, we refer to deficiencies at the actual harm and immediate jeopardy levels—G through L—as serious deficiencies and deficiencies at the D through F level as lower-level deficiencies.

## CMS Oversight of State Surveys

Statutorily required federal monitoring surveys are a key CMS oversight tool in ensuring the adequacy of state surveys.<sup>8</sup> Federal monitoring surveys are conducted annually in at least 5 percent of state-surveyed Medicare and Medicaid nursing homes in each state. CMS's Survey and Certification Group is responsible for the management of the federal monitoring survey database and for oversight of the 10 CMS regional offices' implementation of the federal monitoring survey program. Federal surveyors located in each of CMS's 10 regional offices conduct federal monitoring surveys.

For a comparative survey, a federal survey team conducts an independent survey of a home recently surveyed by a state survey agency in order to compare and contrast the findings. This comparison takes place after completion of the federal survey. When federal surveyors identify a deficiency not cited by state surveyors, they assess whether the deficiency existed at the time of the state survey and should have been cited by entering either yes or no to the question, "Based on the evidence available to the [state], should the [state survey] team have cited this [deficiency]?" This assessment is critical in determining whether understatement occurred because some deficiencies cited by federal surveyors may not have existed at the time of the state survey. For example, a deficiency identified during a federal survey could involve a resident who was not in the nursing home at the time of the earlier state survey. By statute, comparative surveys must be conducted within 2 months of the completion of the state survey. However, differences in timing, selection of residents for the survey sample, and staffing can make analysis of differences between the state and federal comparative surveys difficult. On the basis of our prior recommendations, CMS now calls for the length of time between the state and federal surveys to be between 10 and 30 working days and requires federal surveyors conducting a comparative survey to include at least half of the state survey's sample of residents from that nursing home in the comparative survey sample, making it easier to determine whether state surveyors missed a deficiency. Furthermore, federal comparative survey teams are expected to mimic the number of staff assigned to the state survey.

As a part of comparative surveys, federal surveyors also comment on the appropriateness of the scope and severity levels assigned by state survey teams during standard surveys. This commentary can help track when state surveyors cite these deficiencies at too low a level. In response to our May 2008 recommendation, CMS added specific fields to the federal monitoring survey database in October 2008 to address the understatement of scope and severity and instructed regional offices on how to collect such information.

### **Understatement of Serious Nursing Home Deficiencies Declined Nationally in Fiscal Year 2008, but It Is Unclear if This Improvement Will Be Sustained**

Understatement of serious deficiencies saw an improvement in the yearly percentage of comparative surveys identifying at least one missed serious deficiency in fiscal year 2008. However, it is unclear if this improvement will be sustained because the level of understatement has fluctuated since fiscal year 2002. In addition, we also observed an improvement in the performance of eight of the nine states we previously reported with

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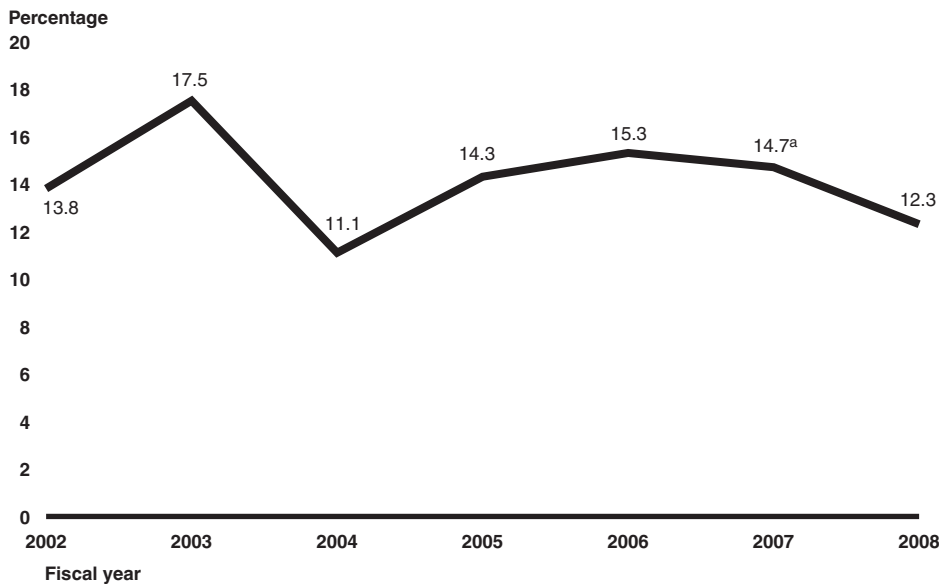
<sup>8</sup>CMS indicates that it meets this statutory requirement by conducting both comparative and observational surveys. Observational surveys are surveys in which federal surveyors accompany a state survey team to a nursing home to evaluate the team's on-site survey performance and ability to document survey deficiencies.

25 percent or more of their state’s comparative surveys identifying at least one missed serious deficiency when fiscal year 2008 comparative surveys were taken into account. Understatement as a result of state survey teams citing some deficiencies at too low a level of scope and severity remained a problem in fiscal year 2008, increasing the overall level of understatement from 12.3 percent to 14.1 percent when combined with missed serious deficiencies. Finally, the percentage of surveys with missed deficiencies at the potential for more than minimal harm level (D through F level) remained relatively stable in fiscal year 2008 and more widespread on comparative surveys than missed serious deficiencies.

Number of Comparative Surveys with Serious Missed Deficiencies Decreased by a Small Amount in Fiscal Year 2008

In fiscal year 2008, 12.3 percent of comparative surveys identified at least one missed serious deficiency, compared to 14 percent or more in the prior 3 fiscal years. It is unclear if this trend will be sustained in later fiscal years because a similar improvement was seen from fiscal years 2003 to 2004, when the percentage of surveys with missed serious deficiencies declined from 17.5 percent to 11.1 percent. However in fiscal year 2005, the percentage of surveys with at least one missed serious deficiency increased again to 14.3 percent (see fig. 1). Despite the improvement seen in fiscal year 2008, the national percentage of surveys with at least one missed serious deficiency remained at an average of about 14 percent (161) of the 1,139 comparative surveys conducted from fiscal years 2002 through 2008.

**Figure 1: National Percentage of Comparative Surveys Citing at Least One Missed Deficiency at the Actual Harm or Immediate Jeopardy Level, Fiscal Years 2002 through 2008**



Source: GAO analysis of federal monitoring survey data.

<sup>a</sup>Since our May 2008 report, CMS changed a deficiency citation on a fiscal year 2007 comparative survey from a serious deficiency to a lower level deficiency, reducing the nationwide percentage of comparative surveys that identified at least one missed serious deficiency from 15.3 percent to 14.7 percent for that fiscal year. This report reflects this change.

When we updated our earlier analysis with fiscal year 2008 data, we found that eight of nine states that missed at least one serious deficiency on 25 percent or more of their comparative surveys improved their overall performance for fiscal years 2002 through 2008, including three states where understatement dropped below 25 percent—Alabama (23.8), New Mexico (21.4), and Tennessee (22.7). Six states continued to have at least one serious missed deficiency on 25 percent or more of their comparative surveys (see table 2). One of the nine state’s performance on comparative surveys for the period fiscal years 2002 through 2008 deteriorated. The percentage of comparative surveys identifying at least one missed serious deficiency in South Dakota increased from 33.3 percent to 35.7 percent. See enclosure I for full state results.

**Table 2: Six States with 25 Percent or More of Comparative Surveys Identifying Missed Deficiencies at the Actual Harm or Immediate Jeopardy Levels, Fiscal Years 2002 through 2008**

State	Number of homes, in fiscal year 2008	Total comparative surveys, fiscal years 2002–2008	Total comparative surveys with at least one missed G through L deficiency, fiscal years 2002–2008	Total number of missed G through L deficiencies, fiscal years 2002–2008	Percentage of total comparative surveys with at least one missed G through L deficiency, fiscal years	
					2002–2007	2002–2008
South Dakota	108	14	5	5	33.3	35.7
South Carolina	160	21	6	19	33.3	28.6
Missouri	497	32	9	15	28.6	28.1
Wyoming	37	15	4	5	33.3	26.7
Arizona	132	16	4	6	26.7	25.0
Oklahoma	293	24	6	11	30.0	25.0

Source: GAO analysis of federal monitoring survey data.

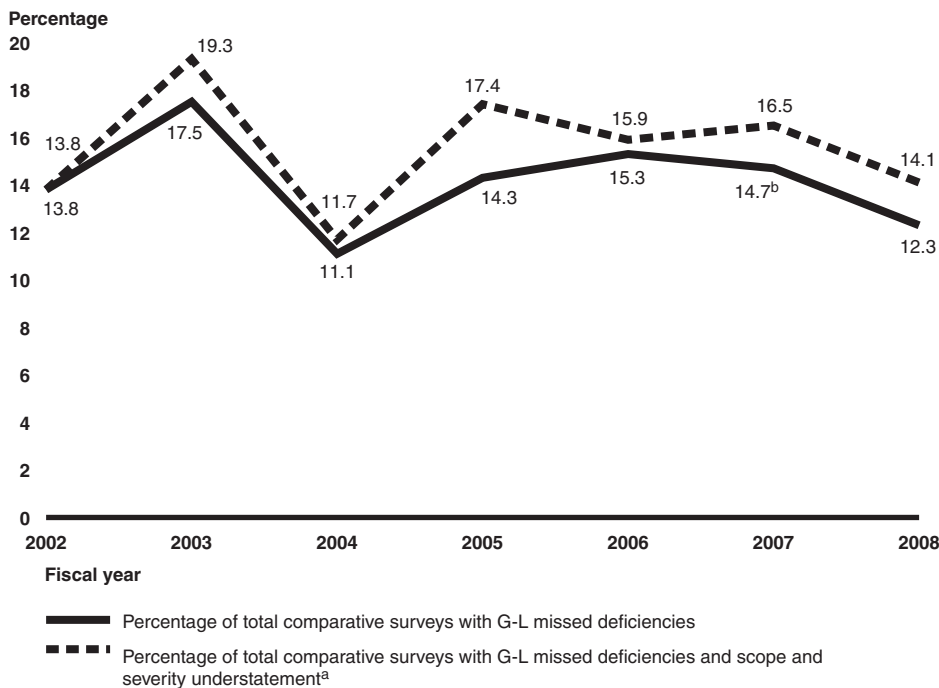
**Federal Comparative Surveys Continued to Identify Serious Deficiencies Cited at Too Low a Scope and Severity Level in Fiscal Year 2008**

Our analysis demonstrated that the amount of additional understatement attributed to state surveyors citing deficiencies at too low a scope and severity level remained about the same in fiscal year 2008 as in prior fiscal years. In fiscal year 2008, federal survey teams determined that states’ scope and severity citations were too low for 5 deficiencies, increasing the total number of such understated deficiencies to 32 from the 27 we reported for fiscal years 2002 through 2007.<sup>9</sup>

<sup>9</sup>To assess whether these differences in scope and severity levels were actually understated, we examined comments entered by federal surveyors in the federal monitoring survey database associated with these deficiencies to determine if federal surveyors believed the state survey team should have cited the deficiency at a higher scope and severity level.

When combined with understatement resulting from missed deficiencies, scope and severity understatement increases total understatement nationwide for fiscal year 2008 to 14.1 percent (see fig. 2). From fiscal years 2002 through 2008, overall understatement averaged 15.5 percent, about 1 percentage point more than missed deficiency understatement alone. See enclosure II for full state results. Although Alabama and New Mexico had missed deficiencies on fewer than 25 percent of their comparative surveys from fiscal years 2002 through 2008, the percentages of their comparative surveys with understatement were 38.1 percent and 28.6 percent, respectively, when surveys with understated scope and severity levels are included.

**Figure 2: Percentage of Comparative Surveys Nationwide with Understatement of Actual Harm and Immediate Jeopardy Deficiencies When Scope and Severity Differences Are Included, Fiscal Years 2002 through 2008**



Source: GAO analysis of federal monitoring survey data.

<sup>a</sup>The inclusion of scope and severity understatement is based on our analysis of 87 deficiencies that federal survey teams cited as actual harm or immediate jeopardy deficiencies that state survey teams cited at a lower scope and severity level.

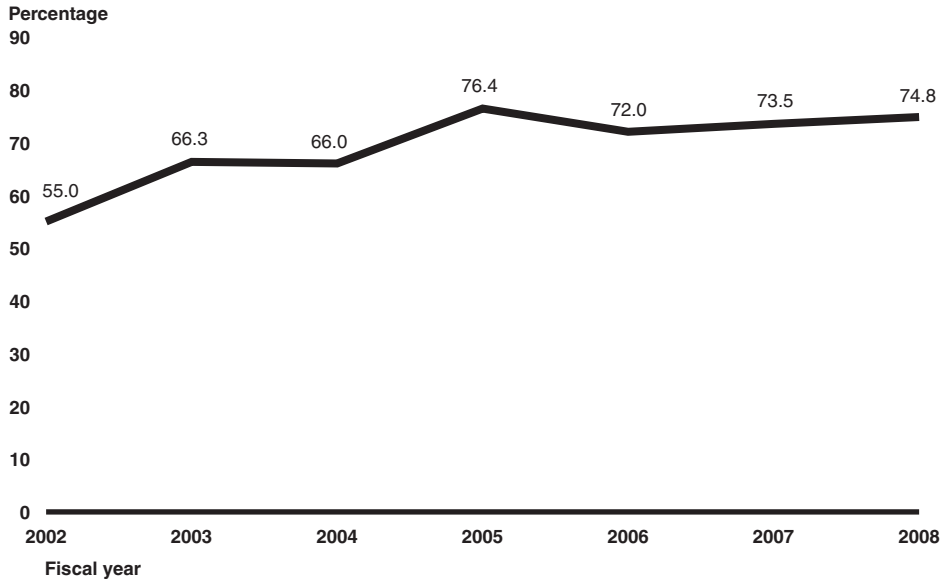
<sup>b</sup>Since our May 2008 report, CMS changed a deficiency citation on a fiscal year 2007 comparative survey from a serious deficiency to a lower-level deficiency, reducing the nationwide percentage of comparative surveys that identified at least one missed serious deficiency from 15.3 percent to 14.7 percent for that fiscal year. This report reflects this change.

**Missed Deficiencies at the Potential for More Than Minimal Harm Level Continue to Be Widespread**

In fiscal year 2008, the percentage of comparative surveys with missed deficiencies at the potential for more than minimal harm level (D through F) increased to 74.8 percent from 73.5 percent the prior fiscal year (see fig. 3). Undetected care problems at the D through F level remain of concern because they could become more serious over time if nursing homes are not required to take corrective actions. The percentage of comparative surveys conducted nationwide identifying at least one missed deficiency at the D through F level remained at approximately 70 percent (69.2) for the fiscal year 2002 through 2008 period, with such missed deficiencies identified on greater than 40 percent of comparative surveys in

all but three states—Alaska, Wisconsin, and West Virginia.<sup>10</sup> See enclosure III for full state results.

**Figure 3: National Percentage of Comparative Surveys Citing at Least One Missed Deficiency at the Potential for More Than Minimal Harm Level, Fiscal Years 2002 through 2008**



Source: GAO analysis of federal monitoring survey data.

### Agency Comments and Our Evaluation

We provided a draft of this report to the Department of Health and Human Services for comment. In its written comments, CMS agreed that it is too early to tell if the trend in decreased understatement will be sustained and that the agency appreciated the thoughtful and updated analysis from GAO. There were no recommendations in this report; however, CMS noted that it had made progress on implementing the recommendations from our May 2008 report.

In May 2008, GAO recommended that CMS regularly analyze and compare federal comparative and observational survey results. We are encouraged that CMS discussed analysis of comparative surveys in its comments and hope that such analysis is routinely incorporated into their oversight of state survey agencies. Specifically, CMS's comments contained the agency's own preliminary analysis of understatement of serious deficiencies as reflected in federal comparative surveys, including fiscal year 2009 data which was unavailable at the time we conducted our analysis. Although CMS's analysis of fiscal year 2009 data showed a continuing decline in the understatement of serious deficiencies, the agency consistently found more actual harm and immediate jeopardy level missed deficiencies and cases of understated scope and severity levels for fiscal years 2002 through 2008 than did our analysis. We believe there are two reasons for these differences. First,

<sup>10</sup>This finding was consistent with the overall prevalence of D through F level deficiencies cited by state survey teams during annual standard surveys. Approximately 84 percent of all deficiencies identified during these surveys in 2006 were at the D through F level. In contrast, only about 5 percent of deficiencies cited on state surveys were at the actual harm and immediate jeopardy (G through L) levels.



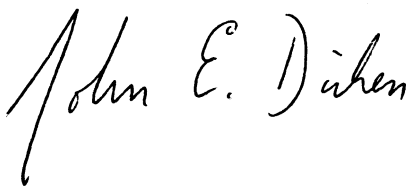
differences in both missed deficiencies and cases of understated scope and severity levels are due in part to the fact that CMS did not clean the data to remove duplicate surveys, cases of erroneous data entry, and other data outliers. Second, additional differences in cases of understated scope and severity levels reflect the fact that, unlike CMS, we reviewed federal surveyors' comments for each potential case of understated scope and severity at the actual harm and immediate jeopardy levels to determine whether they concluded that state surveyors had inappropriately cited the deficiency at too low a scope and severity level. Assessing the federal surveyor comment fields is important because a resident's condition may have worsened in the period between the state and federal surveys. As a result of these methodological differences, we believe that our lower estimates of understatement for fiscal years 2002 through 2008 are accurate.

Finally, CMS commented that our reporting threshold of one missed deficiency per survey for deficiencies at the potential for more than minimal harm level (D through F) may be inappropriate because such deficiencies are more numerous than those at the actual harm or immediate jeopardy levels. We believe that the threshold of reporting surveys with at least one missed D through F level deficiency is appropriate because undetected care problems at this level could become more serious over time if nursing homes are not required to take corrective actions.

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As agreed with your offices, unless you publicly announce the contents of this report earlier, we plan no further distribution until 30 days after its issue date. At that time, we will send copies to the Administrator of CMS and appropriate congressional committees. The report will also be available at no charge on GAO's Web site at <http://www.gao.gov>.

If you or your staff have any questions regarding this report, please contact me at (202) 512-7114 or [dickenj@gao.gov](mailto:dickenj@gao.gov). Contact points for our Offices of Congressional Relations and Public Affairs may be found on the last page of this report. Walter Ochinko, Assistant Director; Katherine Nicole Laubacher; Dan Lee; and Phillip J. Stadler were major contributors to this report.



John E. Dicken  
Director, Health Care

Enclosures - 4

**Percentage of Federal Comparative Surveys That Identified Missed Deficiencies  
at the Actual Harm or Immediate Jeopardy Levels (G through L), Fiscal Years  
2002 through 2008**

State	Number of homes, fiscal year 2008	Total comparative surveys, fiscal years 2002–2008	Total comparative surveys with at least one missed G through L deficiency, fiscal years 2002–2008	Total number of missed G through L deficiencies, fiscal years 2002–2008	Percentage of total comparative surveys with at least one missed G through L deficiency, fiscal years	
					2002–2007	2002–2008
Alabama	232	21	5	13	27.8	23.8
Alaska	14	13	0	0	0.0	0.0
Arizona	132	16	4	6	26.7	25.0
Arkansas	239	21	1	1	5.6	4.8
California	1,127	59	8	9	10.2	13.6
Colorado	198	24	4	7	13.6	16.7
Connecticut	198	18	1	1	6.3	5.6
Delaware	44	15	2	2	15.4	13.3
District of Columbia	18	14	1	1	8.3	7.1
Florida	643	30	3	6	11.5	10.0
Georgia	334	21	3	4	16.7	14.3
Hawaii	46	14	2	2	8.3	14.3
Idaho	64	14	0	0	0.0	0.0
Illinois	760	38	8	13	21.9	21.1
Indiana	468	30	3	4	12.0	10.0
Iowa	404	23	3	4	15.8	13.0
Kansas	317	27	5	9	16.7	18.5
Kentucky	274	21	2	2	11.1	9.5
Louisiana	260	20	4	7	17.6	20.0
Maine	109	14	0	0	0.0	0.0
Maryland	189	21	2	2	10.5	9.5
Massachusetts	410	20	1	1	5.9	5.0
Michigan	397	30	7	7	20.0	23.3
Minnesota	391	26	2	2	9.5	7.7
Mississippi	204	21	4	8	22.2	19.0
Missouri	497	32	9	15	28.6	28.1
Montana	90	14	2	2	16.7	14.3
Nebraska	222	21	1	1	5.6	4.8

Enclosure I

State	Number of homes, fiscal year 2008	Total comparative surveys, fiscal years 2002–2008	Total comparative surveys with at least one missed G through L deficiency, fiscal years 2002–2008	Total number of missed G through L deficiencies, fiscal years 2002–2008	Percentage of total comparative surveys with at least one missed G through L deficiency, fiscal years	
					2002–2007	2002–2008
Nevada	48	14	2	3	8.3	14.3
New Hampshire	79	15	2	2	14.3	13.3
New Jersey	336	27	5	16	20.8	18.5
New Mexico <sup>a</sup>	72	14	3	8	25.0	21.4
New York	620	33	8	22	22.2	24.2
North Carolina	409	24	4	4	14.3	16.7
North Dakota	79	14	0	0	0.0	0.0
Ohio	845	37	1	1	3.2	2.7
Oklahoma	293	24	6	11	30.0	25.0
Oregon	124	20	0	0	0.0	0.0
Pennsylvania	693	42	6	6	16.2	14.3
Rhode Island	86	14	2	3	16.7	14.3
South Carolina	160	21	6	19	33.3	28.6
South Dakota	108	14	5	5	33.3	35.7
Tennessee	270	22	5	10	26.3	22.7
Texas	1,113	46	6	12	13.2	13.0
Utah	78	13	2	2	9.1	15.4
Vermont	34	11	0	0	0.0	0.0
Virginia	268	19	1	1	5.9	5.3
Washington	232	21	3	3	11.1	14.3
West Virginia	108	15	1	1	0.0	6.7
Wisconsin	386	26	2	2	9.5	7.7
Wyoming	37	15	4	5	33.3	26.7
<b>Nation<sup>b</sup></b>	<b>14,759</b>	<b>1,139</b>	<b>161</b>	<b>265</b>	<b>14.4</b>	<b>14.1</b>

Source: GAO analysis of federal monitoring survey data.

<sup>a</sup>Since our May 2008 report, CMS changed a deficiency citation on a New Mexico fiscal year 2007 comparative survey from a serious deficiency to a lower-level deficiency. This reduced the state’s total comparative surveys with at least one missed G through L deficiency and the total number of missed G through L deficiencies by 1. This also reduced New Mexico’s fiscal years 2002 to 2007 percentage of total comparative surveys with at least one missed G through L deficiency from 33.3 percent to 25.0 percent. This report reflects these changes.

<sup>b</sup>Due to the change in a New Mexico deficiency citation on a fiscal year 2007 comparative survey from a serious deficiency to a lower-level deficiency, the nationwide percentage of comparative surveys that identified at least one missed serious deficiency for fiscal years 2002 through 2007 was reduced from 14.5 percent to 14.4 percent. This report reflects this change.

**Percentage of Federal Comparative Surveys That Identified Missed Deficiencies and Understated Scope and Severity Deficiencies at the Actual Harm or Immediate Jeopardy Levels (G through L), Fiscal Years 2002 through 2008**

State	Number of homes, fiscal year 2008	Total comparative surveys, fiscal years 2002–2008	Total comparative surveys with at least one understated G through L deficiency, fiscal years 2002–2008	Total number of understated G through L deficiencies, fiscal years 2002–2008	Percentage of total comparative surveys with at least one understated G through L deficiency, fiscal years	
					2002–2007	2002–2008
Alabama	232	21	8	17	44.4	38.1
Alaska	14	13	0	0	0.0	0.0
Arizona	132	16	4	6	26.7	25.0
Arkansas	239	21	1	1	5.6	4.8
California	1,127	59	9	13	12.2	15.3
Colorado	198	24	4	8	13.6	16.7
Connecticut	198	18	2	4	12.5	11.1
Delaware	44	15	2	2	15.4	13.3
District of Columbia	18	14	1	1	8.3	7.1
Florida	643	30	3	6	11.5	10.0
Georgia	334	21	4	5	22.2	19.0
Hawaii	46	14	2	2	8.3	14.3
Idaho	64	14	0	0	0.0	0.0
Illinois	760	38	9	15	25.0	23.7
Indiana	468	30	4	5	12.0	13.3
Iowa	404	23	4	5	15.8	17.4
Kansas	317	27	5	9	16.7	18.5
Kentucky	274	21	2	2	11.1	9.5
Louisiana	260	20	4	7	17.6	20.0
Maine	109	14	0	0	0.0	0.0
Maryland	189	21	2	2	10.5	9.5
Massachusetts	410	20	1	1	5.9	5.0
Michigan	397	30	7	9	20.0	23.3
Minnesota	391	26	4	4	14.3	15.4
Mississippi	204	21	4	8	22.2	19.0
Missouri	497	32	9	16	28.6	28.1
Montana	90	14	3	3	25.0	21.4
Nebraska	222	21	1	1	5.6	4.8

Enclosure II

State	Number of homes, fiscal year 2008	Total comparative surveys, fiscal years 2002–2008	Total comparative surveys with at least one understated G through L deficiency, fiscal years 2002–2008	Total number of understated G through L deficiencies, fiscal years 2002–2008	Percentage of total comparative surveys with at least one understated G through L deficiency, fiscal years	
					2002–2007	2002–2008
Nevada	48	14	3	4	16.7	21.4
New Hampshire	79	15	2	2	14.3	13.3
New Jersey	336	27	5	16	20.8	18.5
New Mexico	72	14	4	9	33.3	28.6
New York	620	33	8	23	22.2	24.2
North Carolina	409	24	4	5	14.3	16.7
North Dakota	79	14	0	0	0.0	0.0
Ohio	845	37	1	1	3.2	2.7
Oklahoma	293	24	6	13	30.0	25.0
Oregon	124	20	0	0	0.0	0.0
Pennsylvania	693	42	6	6	16.2	14.3
Rhode Island	86	14	2	3	16.7	14.3
South Carolina	160	21	6	19	33.3	28.6
South Dakota	108	14	5	5	33.3	35.7
Tennessee	270	22	5	10	26.3	22.7
Texas	1,113	46	6	13	13.2	13.0
Utah	78	13	2	2	9.1	15.4
Vermont	34	11	0	0	0.0	0.0
Virginia	268	19	2	2	11.8	10.5
Washington	232	21	3	3	11.1	14.3
West Virginia	108	15	1	1	0.0	6.7
Wisconsin	386	26	2	2	9.5	7.7
Wyoming	37	15	5	6	41.7	33.3
<b>Nation</b>	<b>14,759</b>	<b>1,139</b>	<b>177</b>	<b>297</b>	<b>15.8</b>	<b>15.5</b>

Source: GAO analysis of federal monitoring survey data.

**Percentage of Federal Comparative Surveys That Identified Missed Deficiencies  
at the Potential for More Than Minimal Harm Level (D through F), Fiscal Years  
2002 through 2008**

State	Number of homes, fiscal year 2008	Total comparative surveys, fiscal years 2002–2008	Total comparative surveys with at least one missed D through F deficiency, fiscal years 2002–2008	Total number of missed D through F deficiencies, fiscal years 2002–2008	Percentage of total comparative surveys with at least one missed D through F deficiency, fiscal years	
					2002–2007	2002–2008
Alabama	232	21	18	62	94.4	85.7
Alaska	14	13	5	13	36.4	38.5
Arizona	132	16	13	77	80.0	81.3
Arkansas	239	21	14	50	72.2	66.7
California	1,127	59	46	155	73.5	78.0
Colorado	198	24	23	120	95.5	95.8
Connecticut	198	18	10	32	50.0	55.6
Delaware	44	15	11	33	69.2	73.3
District of Columbia	18	14	12	32	83.3	85.7
Florida	643	30	20	65	69.2	66.7
Georgia	334	21	15	51	72.2	71.4
Hawaii	46	14	9	35	58.3	64.3
Idaho	64	14	8	19	58.3	57.1
Illinois	760	38	23	81	53.1	60.5
Indiana	468	30	15	41	48.0	50.0
Iowa	404	23	17	45	68.4	73.9
Kansas	317	27	21	74	79.2	77.8
Kentucky	274	21	13	37	61.1	61.9
Louisiana	260	20	14	76	76.5	70.0
Maine	109	14	7	26	50.0	50.0
Maryland	189	21	11	21	47.4	52.4
Massachusetts	410	20	9	23	47.1	45.0
Michigan	397	30	23	48	72.0	76.7
Minnesota	391	26	19	38	71.4	73.1
Mississippi	204	21	17	67	83.3	81.0
Missouri	497	32	26	165	78.6	81.3
Montana	90	14	14	59	100.0	100.0
Nebraska	222	21	15	55	72.2	71.4

Enclosure III

State	Number of homes, fiscal year 2008	Total comparative surveys, fiscal years 2002–2008	Total comparative surveys with at least one missed D through F deficiency, fiscal years 2002–2008	Total number of missed D through F deficiencies, fiscal years 2002–2008	Percentage of total comparative surveys with at least one missed D through F deficiency, fiscal years	
					2002–2007	2002–2008
Nevada	48	14	13	41	91.7	92.9
New Hampshire	79	15	10	43	64.3	66.7
New Jersey	336	27	16	64	58.3	59.3
New Mexico	72	14	11	36	75.0	78.6
New York	620	33	20	119	55.6	60.6
North Carolina	409	24	19	53	81.0	79.2
North Dakota	79	14	12	36	91.7	85.7
Ohio	845	37	18	30	38.7	48.6
Oklahoma	293	24	19	106	75.0	79.2
Oregon	124	20	12	30	66.7	60.0
Pennsylvania	693	42	28	75	62.2	66.7
Rhode Island	86	14	10	15	75.0	71.4
South Carolina	160	21	16	61	83.3	76.2
South Dakota	108	14	14	51	100.0	100.0
Tennessee	270	22	19	54	84.2	86.4
Texas	1,113	46	35	145	73.7	76.1
Utah	78	13	13	108	100.0	100.0
Vermont	34	11	5	19	40.0	45.5
Virginia	268	19	13	34	70.6	68.4
Washington	232	21	12	26	55.6	57.1
West Virginia	108	15	3	3	23.1	20.0
Wisconsin	386	26	8	19	38.1	30.8
Wyoming	37	15	14	85	100.0	93.3
<b>Nation</b>	<b>14,759</b>	<b>1,139</b>	<b>788</b>	<b>2,853</b>	<b>68.2</b>	<b>69.2</b>

Source: GAO analysis of federal monitoring survey data.

**Comments from the Department of Health and Human Services**



DEPARTMENT OF HEALTH & HUMAN SERVICES

OFFICE OF THE SECRETARY

Assistant Secretary for Legislation  
Washington, DC 20201

**APR 9 2010**

John E. Dicken  
Director, Health Care  
U.S. Government Accountability Office  
441 G Street N.W.  
Washington, DC 20548

Dear Mr. Dicken:

Enclosed are comments on the U.S. Government Accountability Office's (GAO) report entitled: "Nursing Homes: Some Improvement Seen in Understatement of Serious Deficiencies, but Implications for the Longer-Term Trend Are Unclear" (GAO-10-434R).

The Department appreciates the opportunity to review this report before its publication.

Sincerely,

A handwritten signature in cursive script, appearing to read "Andrea Palm for".

Andrea Palm  
Acting Assistant Secretary for Legislation

Enclosure






DEPARTMENT OF HEALTH & HUMAN SERVICES

Centers for Medicare & Medicaid Services

Administrator  
Washington, DC 20201

**DATE:** APR 08 2010

**TO:** Andrea Palm  
Acting Assistant Secretary for Legislation  
Office of the Secretary

**FROM:**   
Charlene Frizzera  
Acting Administrator

**SUBJECT:** Government Accountability Office (GAO) Proposed Report: "Nursing Homes: Some Improvement Seen in Understatement of Serious Deficiencies, but Implications for the Longer-Term Trend are Unclear" (GAO-10-434R)

In this report, the GAO updated its earlier analysis of the Centers for Medicare & Medicaid Services' (CMS) comparative nursing home surveys<sup>1</sup> that are designed to determine whether State survey agencies miss or understate the degree of serious deficiencies in nursing homes. The GAO observes that--

- **Missed Serious Deficiencies Decline:** Between fiscal year (FY) 2006 and FY 2008, there was an improvement in the yearly percentage of comparative surveys indicating that a State had missed a serious deficiency;
- **Trend is Uncertain:** Despite recent improvement in identifying deficiencies, it is unclear if the improvement will be sustained over time; and
- **Rating the Seriousness of Deficiencies:** While a lower proportion of serious deficiencies was missed between FY 2006 and FY 2008, comparative surveys continue to demonstrate that States understate the scope and severity of serious deficiencies.

As CMS expanded its efforts to improve oversight of States, it is reasonable to expect there would be some improvement in State surveyor identification of deficiencies. In fact, the average number of deficiencies identified in each standard survey increased from 6.5 in 2005 to 6.8 in 2009, which suggests that this is the case. CMS and State improvements include--

- **Improved Training of States:** CMS increased the number and broadened the scope of training, and made in-person, as well as web-based, on-demand training more accessible across the country;
- **Guidance for Surveyors:** As the GAO has noted in other reports, CMS substantially upgraded the quality of surveyor guidance published online in the State Operations Manual (SOM). For example, publication of the revised medication guidance in late 2006, together

<sup>1</sup> *Nursing Homes: Federal Monitoring Surveys Demonstrate Continued Understatement of Serious Care Problems and CMS Oversight Weaknesses* (GAO-08-517). Washington, DC: May 9, 2008.

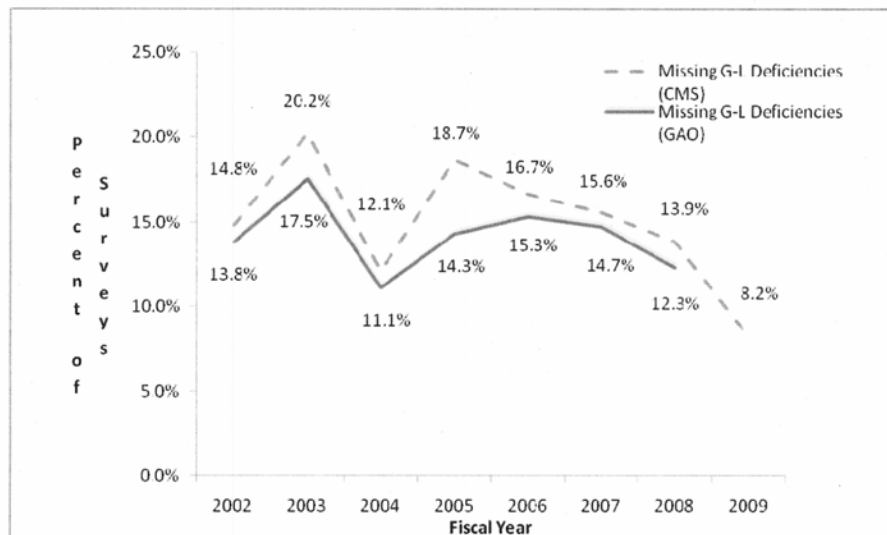
with the accompanying training of surveyors, produced an increase in the percentage of surveys in which the use of unnecessary medications was cited as a deficiency (from about 13 percent of surveys in 2006 to 18 percent in 2007 and 19 percent in both 2008 and 2009); and

- **CMS Comparative Surveys:** CMS improved its fulfillment of the statutory obligation to conduct validation surveys on a 5 percent sample of State surveys. Pursuant to a GAO report on fire safety in 2005, CMS also ensured for the first time that every comparative survey included assessed compliance with life safety code requirements.

While the above examples suggest reasons why we should expect improvement, we fully agree with the GAO that it is too early to tell if the trendline of improvement will be sustained. To shed more light on this question, we examined more recent data from 2009 that were not available at the time the GAO performed its analysis.

Figure 1 displays data produced by the GAO analysis and data from our own analysis. It is important to note that CMS's data are preliminary, and that the raw CMS data have consistently indicated more missed deficiencies than the GAO methodology. Nonetheless, the CMS analysis fully confirms the GAO findings and indicates that the improvement did not end in 2008, but continued throughout 2009, declining from 16.7 percent in 2006 to 13.9 percent in 2008 and 8.2 percent in 2009.

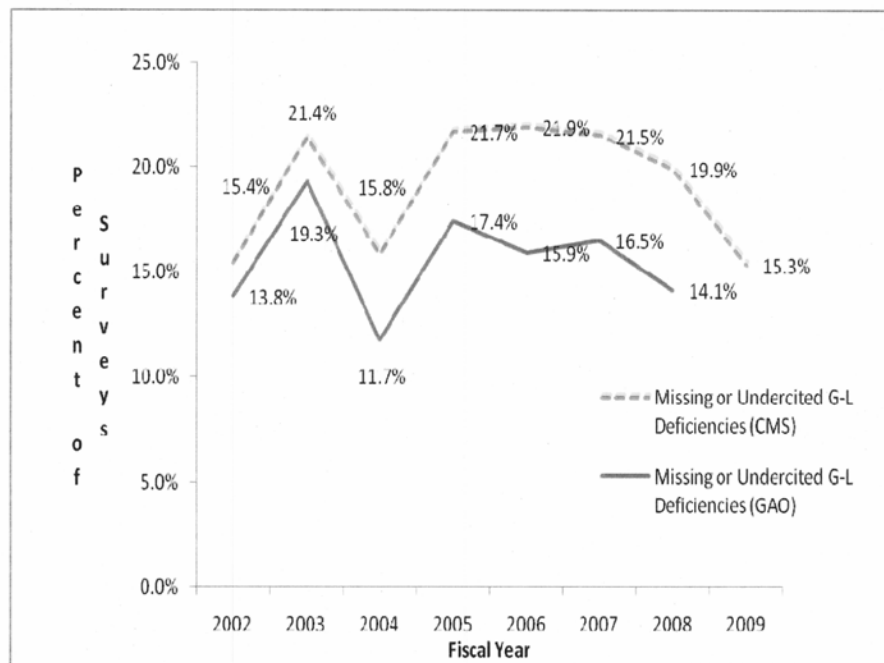
**Figure 1. Percentage of Comparative Surveys Nationwide with Missing Deficiencies of Actual Harm or Higher (G-L), Fiscal Years 2002 through 2009: Comparison of GAO and CMS Findings**



Sources: CMS Analysis of Comparative Surveys; and the GAO Analysis of CMS Comparative Surveys

The GAO examined the extent to which serious deficiencies were not missed by States, but where States rated the deficiencies at a lower scope or severity than did the CMS regional office surveyors. When data for both missed and under-rated serious deficiencies are combined, we see the same trendline as the trendline for missed deficiencies alone. Figure 2 displays the GAO and the CMS data for the combined phenomena. The CMS data, for example, show that the combination of missed or under-rated deficiencies declined from 21.7 percent in 2005 to 19.9 percent in 2008, and then further to 15.3 percent in 2009.

**Figure 2. Percentage of Comparative Surveys Nationwide with Either Under-Rated or Missed Deficiencies of Actual Harm or Higher (G-L), Fiscal Years 2002 through 2009: Comparison of GAO and CMS Findings**



The GAO also examined the extent to which less serious deficiencies were missed or under-rated. Such deficiencies, identified at the “D through F” scope and severity level, indicate a potential for more than minimal harm without actual harm occurring. The GAO indicated that the percentage of surveys with at least one missed or under-rated “D-F” deficiency increased from 2002 to 2008. For a number of reasons, we believe that more analysis is needed before conclusions are drawn about these deficiencies.

Page 4 – Andrea Palm

In addition, the “D-F” deficiencies are much more numerous than the more serious deficiencies, and we wonder if “one missed deficiency” is an appropriate threshold for a useful measurement metric of these deficiencies. It may, therefore, be worth investing in a more sophisticated metric for the D-L deficiencies.

We appreciate the thoughtful and updated analysis from the GAO. There were no recommendations in this most recent update. In its prior work, the GAO made a number of recommendations, on which we are taking action. CMS appreciates the opportunity to comment on this draft report and we look forward to working with the GAO on this and other issues.

## Related GAO Products

*Nursing Homes: Addressing the Factors Underlying Understatement of Serious Care Problems Requires Sustained CMS and State Commitment.* [GAO-10-70](#). Washington, D.C.: November 24, 2009.

*Nursing Homes: Opportunities Exist to Facilitate the Use of the Temporary Management Sanction.* [GAO-10-37R](#). Washington, D.C.: November 20, 2009.

*Nursing Homes: CMS's Special Focus Facility Methodology Should Better Target the Most Poorly Performing Homes, Which Tended to Be Chain Affiliated and For-Profit.* [GAO-09-689](#). Washington, D.C.: August 28, 2009.

*Medicare and Medicaid Participating Facilities: CMS Needs to Reexamine Its Approach for Funding State Oversight of Health Care Facilities.* [GAO-09-64](#). Washington, D.C.: February 13, 2009.

*Nursing Homes: Federal Monitoring Surveys Demonstrate Continued Understatement of Serious Care Problems and CMS Oversight Weaknesses.* [GAO-08-517](#). Washington, D.C.: May 9, 2008.

*Nursing Home Reform: Continued Attention Is Needed to Improve Quality of Care in Small but Significant Share of Homes.* [GAO-07-794T](#). Washington, D.C.: May 2, 2007.

*Nursing Homes: Efforts to Strengthen Federal Enforcement Have Not Deterred Some Homes from Repeatedly Harming Residents.* [GAO-07-241](#). Washington, D.C.: March 26, 2007.

*Nursing Homes: Despite Increased Oversight, Challenges Remain in Ensuring High-Quality Care and Resident Safety.* [GAO-06-117](#). Washington, D.C.: December 28, 2005.

*Nursing Home Quality: Prevalence of Serious Problems, While Declining, Reinforces Importance of Enhanced Oversight.* [GAO-03-561](#). Washington, D.C.: July 15, 2003.

*Nursing Homes: Sustained Efforts Are Essential to Realize Potential of the Quality Initiatives.* [GAO/HEHS-00-197](#). Washington, D.C.: September 28, 2000.

*Nursing Home Care: Enhanced HCFA Oversight of State Programs Would Better Ensure Quality.* [GAO/HEHS-00-6](#). Washington, D.C.: November 4, 1999.

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

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

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

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