

MEMORANDUM


February 22, 2019



U.S. DEPARTMENT
OF HOUSING
AND URBAN
DEVELOPMENT

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From: 
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Subject: OIG Topic Brief - Skilled Nursing Facilities Currently Exempted From Real Estate Assessment Center Inspections

Please find attached a topic brief on inspections of skilled nursing facilities. Topic briefs are a tool we use to keep officials within the U.S. Department of Housing and Urban Development (HUD) informed of challenges so that its leadership can be better prepared to address them. This topic brief expands upon two reports we issued concerning residential care facility inspections. The first was an evaluation of the Office of Residential Care Facilities (ORCF) use of Real Estate Assessment Center (REAC) scores in the inspection process. The second review was conducted by our Joint Civil Fraud Division, which examined HUD's oversight of physical conditions at residential care facilities. In the second report, we recommended that ORCF reimplement REAC physical condition inspections for the skilled nursing facilities that were exempted from routine physical inspections. HUD and the Office of Inspector General (OIG) are working together to come up with an acceptable resolution to this recommendation. The objective of this topic brief is to provide additional support for HUD conducting physical inspections of care facilities, in support of our earlier recommendation.

This topic brief is being shared for informational purposes. We do not require a response to it.

Please do not hesitate to contact me with any questions or concerns at (202) 402-5832 or BPattison@hudoig.gov or Paul Bergstrand, Director of the Program Evaluations Division, at (202) 402-2728 or PBergstrand@hudoig.gov.

Attachment

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Topic Brief

Skilled Nursing Facilities Currently Exempted From Real Estate Assessment Center Inspections

Introduction

Congress established the Section 232 loan program in 1959. This program provides mortgage insurance for residential care facilities, such as nursing homes, assisted living facilities, and board and care facilities. The program is operated by the U.S. Department of Housing and Urban Development's (HUD) Federal Housing Administration (FHA), Office of Healthcare Programs, Office of Residential Care Facilities (ORCF). The purpose of this program is "to assist the provision of urgently needed nursing homes for the care and treatment of convalescents and other persons who are not acutely ill and do not need hospital care but who require skilled nursing care and related medical services." HUD's mortgage insurance provides lenders with protection against losses as the result of borrowers defaulting on their mortgage loans. The lenders bear less risk because FHA will pay a claim to the lender in the event of a borrower's default. If the borrower defaults and the lender makes a claim, HUD is responsible for the unpaid principal amount of the mortgage and costs associated with taxes, special assessments, insurance on the property, mortgage insurance premiums paid after the default, and accumulated interest and fees.

As a part of this insurance, HUD used to require inspections of all care facilities through its Real Estate Assessment Center (REAC). The score the facility received would determine how frequently the facility would get reinspected, with those scoring below 80 getting reinspected annually. But in October 2012, a regulatory change took effect which exempted skilled nursing facilities from routine REAC inspections. Such facilities insured after October 2012 are not subject to routine REAC inspections. For skilled nursing facilities insured before October 2012, REAC inspects skilled nursing facilities until a facility scores at least 60, which HUD considers a "passing" score. HUD's reasoning for exempting facilities from REAC inspections is to "assure that facilities surveyed frequently by state regulatory agencies, for physical condition matters related to resident care and safety, are not subject to duplicative inspections." The Centers for Medicare & Medicaid Services (CMS) surveys nursing facilities approximately annually. As a result, most HUD-insured nursing facilities are no longer subject to routine REAC inspections.



We issued two reports on the issue of residential care facility inspections. The first was an evaluation of ORCF's use of REAC scores in the inspection process.¹ The second review was conducted by our Joint Civil Fraud Division, which examined HUD's oversight of physical conditions at residential care facilities.² In the second report, we recommended that ORCF reimplement REAC physical condition inspections for the skilled nursing facilities that were exempted from routine physical inspections. HUD and the Office of Inspector General (OIG) are working together to come up with an acceptable resolution to this recommendation. The objective of this topic brief is to provide additional support for HUD conducting physical inspections of care facilities, in support of our earlier recommendation.

Background

REAC Facilities Scoring

REAC assesses HUD-insured facilities to ensure that they are in safe, decent, and sanitary condition and in good repair. A facility starts an inspection with a score of 100, and each deficiency reduces the facility's score. Inspections consider a property's physical condition based on the following criteria:

- **Site:** fencing, retaining walls, and gates; grounds, mail boxes, and project signs; market appeal; parking lots, driveways, and roads; play areas and equipment; refuse disposal; storm drainage; and walkways and stairs.
- **Building exterior:** doors, fire escapes, foundations, lighting, roofs, walls, and windows.
- **Building systems:** domestic water; electrical systems; elevators; emergency power; exhaust systems; fire protection; heating, ventilation, and air conditioning; and sanitary systems.
- **Common areas:** basement, garage, and carport; closet, utility, and mechanical; community room; day care; halls, corridors, and stairs; kitchen; laundry room; lobby; offices; other community spaces; patios, porches, and balconies; pools and related structures; restrooms; storage; and trash collection areas.
- **Unit:** bathrooms; call-for-aid; ceilings; doors; electrical systems; floors; heating, ventilation, and air conditioning; hot water heaters; kitchens; lighting; outlets and switches; patios, porches, and balconies; smoke detectors; stairs; walls; and windows.

In addition to a numerical score, a facility may receive an asterisk as part of its score, indicating a health and safety (H&S) deficiency related to smoke detectors. The facility may also receive a letter as part of the score as described below.

- **a:** No H&S deficiencies were observed other than for smoke detectors.
- **b:** One or more non-life-threatening H&S deficiencies, but no exigent or fire safety H&S deficiencies were observed other than for smoke detectors.

¹ [The Office of Residential Care Facilities' Use of Real Estate Assessment Center Scores, 2017-OE-0011, September 15, 2017](#)

² [Management Alert: HUD Did Not Provide Acceptable Oversight of the Physical Condition of Residential Care Facilities, 2018-CF-0801, January 5, 2018](#)



- c: One or more exigent or fire safety (calling for immediate attention or remedy) H&S deficiencies were observed.

CMS Quality of Care Scoring

Skilled nursing facilities must comply with the requirements in 42 CFR (Code of Federal Regulations) Part 483, Subpart B, to receive payments from the Medicare or Medicaid programs. Each State has the responsibility for certifying a skilled nursing facility's or nursing facility's compliance or noncompliance, except in the case of State-operated facilities. A State's certification for a skilled nursing facility is subject to CMS's approval. To certify a skilled nursing facility, a State surveyor must complete at least two surveys, consisting of at least a life safety code survey and a standard survey. The surveys are unannounced, occur annually (on average), and are conducted by a team of health care professionals who spend several days at the nursing home to assess whether the nursing home complies with Federal quality of care requirements. As a result of the surveys, the nursing home receives an overall rating of between 1 and 5 stars, with a score of 1 being the lowest score. CMS surveys focus on the care facilities provide to residents, not the physical condition of the property in support of a mortgage.

Scope and Methodology

We analyzed CMS ratings for HUD-insured facilities, observed CMS surveys at two skilled nursing facilities, and conducted unofficial REAC inspections of three now inspection-exempt facilities that REAC had not inspected in at least 5 years. We performed these steps to better understand if HUD's reliance on CMS surveys is warranted and what could happen when REAC stops inspecting facilities.

To compare CMS ratings to REAC scores, we obtained data on all HUD insured skilled nursing facilities as of February 15, 2018. We matched that data to CMS rated facilities, surveyed during three cycles from October 2010 through November 2017, and obtained 2,710 one-to-one matches (2,588 skilled nursing facilities, 111 assisted living facilities, and 11 board and care facilities). We restricted our analysis to skilled nursing facilities, leaving us with 2,588 facilities. We further excluded facilities without REAC scores (1,660), zero or negative original loan amounts (25), and without CMS star ratings (12). Thus, our analysis focused on 891 skilled nursing facilities. We grouped REAC numerical inspection scores (ranging from 8 to 99) into six categories: 29 and below, 30 to 59, 60 to 69, 70 to 79, 80 to 89, and 90 and above.

Additionally, at ORCF's request, we observed two CMS surveys to determine whether such surveys replicated the steps REAC undertakes to conduct a physical inspection of a skilled nursing facility.

Finally, we selected three skilled nursing facilities exempted from REAC inspections for unofficial inspections because REAC had given those facilities scores of at least 60 in its most recent inspections. Our intent was to determine whether the facilities would still score at least 60 if reinspected. Although we used a REAC inspector to conduct the reinspections, the scores presented in this document are not official.



Results

HUD Has Exempted From Further Inspection 86.4 Percent of the Facilities That CMS Rated as 1 Star; HUD Scored 8.5 percent of Facilities at 59 or Below That CMS Rated as 5 Star

Overall, CMS rated 103 of the 891 facilities included in our analysis as 1 star. (See table 1.) REAC scored 89, or 86.4 percent, of those 103 facilities at 60 or above, which exempts those facilities from future REAC inspections. In the extreme, REAC scored 32, or 31.1 percent, of 1 star facilities as 90 or above. REAC scored an additional 26 facilities, or 25.2 percent, between 80 and 89.

CMS rated 248 of the 891 facilities included in our analysis as 5 star. HUD scored 21 of those facilities, or 8.5 percent of the 248, at 59 or below. HUD scored 18 of these facilities, or 7.3 percent, at between 30 and 59 and 3 facilities, or 1.2 percent, at or below 29.

Table 1: REAC inspection scores compared to CMS star ratings

REAC inspection score	CMS star rating (total = 891)				
	5	4	3	2	1
90 or above	94 (37.9)*	71 (38.0)	62 (35.4)	70 (39.3)	32 (31.1)
80 to 89	65 (26.2)	56 (30.0)	40 (22.9)	47 (26.4)	26 (25.2)
70 to 79	32 (12.9)	22 (11.8)	25 (14.3)	27 (15.2)	15 (14.6)
60 to 69	36 (14.5)	24 (12.8)	29 (16.6)	14 (7.9)	16 (15.5)
30 to 59	18 (7.3)	12 (6.4)	13 (7.4)	19 (10.7)	10 (9.7)
29 or below	3 (1.2)	2 (1.1)	6 (0.7)	1 (0.6)	4 (3.9)
Column total	248	187	175	178	103

*Column percentage

Our Observations of CMS Surveys Support That CMS Surveys Are not Acceptable Substitutes for REAC Inspections

Our Joint Civil Fraud Division issued management alert memorandum [2018-CF-0801](#) on January 5, 2018. In the management alert, we found that HUD failed to monitor the physical condition of facilities in its portfolio to ensure sustainable properties for the life of HUD-insured mortgages. Therefore, we recommended that ORCF reimplement REAC physical condition inspections for the skilled nursing facilities that were exempted from routine physical inspections (recommendation 1C). HUD instead relies on the CMS surveys for skilled nursing facilities.

ORCF asked us to go to a skilled nursing facility and observe a CMS survey in progress before making a final determination on recommendation 1C. We agreed to do so and subsequently observed CMS surveys at two skilled nursing facilities and again concluded that ORCF cannot rely on the CMS survey process to replace REAC inspections for skilled nursing facilities



because CMS does not examine the same items that REAC inspectors examine. For example, the CMS survey does not include a roof inspection, but REAC inspections require roof inspections. Additionally, CMS did not check all fire doors, emergency lighting, fire extinguishers, and electrical panels that REAC inspectors would have examined. CMS also did not enter the bathrooms of the residential units and, therefore, would not be able to identify leaks, damage, mold, or clogged drains.

Our second round observations strengthened our management alert conclusion that ORCF did not monitor the physical condition of residential care facilities in its portfolio to ensure sustainable properties for the life of the HUD-insured mortgage. Therefore, we are not revising our recommendation that ORCF reimplement the REAC physical condition inspections for the skilled nursing facilities that it exempted from routine physical inspections. HUD provided OIG a management decision on this recommendation.³ HUD and OIG continue to work together to come up with an acceptable resolution to this recommendation.

The Condition of Facilities That Do Not Receive REAC Inspections May Deteriorate Over Time, Which Could Lead to a Score Below 60 if Reinspected

We worked with REAC inspectors to inspect three facilities that received a score of at least 60 in their last REAC inspection. Each of these facilities had not been inspected by REAC for at least 5 years. From the unofficial inspections that we asked be conducted, REAC gave these three facilities unofficial scores of 43c, 35c, and 21c. If these facilities were still required to undergo routine REAC inspections, their low scores would require an inspection every year.

The REAC inspectors noted health and safety issues with the three facilities, including exposed wires, infestations, ununlockable windows, missing and broken exit signs, broken or missing handrails on stairs, missing components or painted sprinkler heads, and plumbing leaks. REAC inspectors also noted roof deficiencies, including damaged and clogged drains, missing or damaged components from the downspouts and gutters, water ponding, and damaged roof membranes. Lastly, REAC inspectors noted repairs that did not meet industry standards to such things as damaged walls, peeling paint, and missing electrical breakers.

A representative at one of the facilities told us that the facility's preparation for an inspection focused on what the CMS survey addresses, which focuses on items associated with the medical care of residents. The preparation did not include items of interest to HUD, such as the physical condition of the property.

Conclusion

Our analysis of CMS survey scores, observation of CMS surveys, and unofficial inspections of facilities that are not subject to routine REAC inspections further support HUD's need to conduct

³ According to the Inspector General Act of 1978, 5 U.S.C. § 5(f)(5), as amended, a management decision is defined as "...the evaluation by the management of an establishment of the findings and recommendations included in an audit report and the issuance of a final decision by management concerns its response to such findings and recommendations, including actions concluded to be necessary."



regular physical condition inspections of care facilities. HUD exempted from future inspections more than 86 percent of the facilities that CMS rated as 1 star. CMS considers 1 star facilities as well below average, but generally with regard to the care those facilities provide to residents, not the physical condition of the property. Still, facilities receiving 1 star (or any number of stars) for resident care could have issues with physical condition. Additionally, CMS contract surveyors do not examine the same items that REAC inspectors examine. CMS surveyors do not inspect roofs, for example. Finally, the condition of facilities that ORCF cleared from the requirement to be inspected routinely may decline over time. Our unofficial inspections suggest facilities may decline in physical condition to the point where annual inspections are again warranted. If routine HUD inspections did occur, property declines could be identified and possibly mitigated. We continue to believe that HUD, and not another agency, needs to conduct physical inspections of care facilities in support of the mortgages HUD insures.