

PERFORMANCE AUDIT  
OF THE  
REGULATION OF NURSING HOMES, ADULT FOSTER CARE  
HOMES, AND HOMES FOR THE AGED  
DEPARTMENT OF CONSUMER AND INDUSTRY SERVICES

April 2001

## EXECUTIVE DIGEST

# REGULATION OF NURSING HOMES, ADULT FOSTER CARE HOMES, AND HOMES FOR THE AGED

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INTRODUCTION	This report, issued in April 2001, contains the results of our performance audit* of the Regulation of Nursing Homes, Adult Foster Care (AFC) Homes, and Homes for the Aged (HFAs), Department of Consumer and Industry Services (CIS).
AUDIT PURPOSE	This performance audit was conducted as part of the constitutional responsibility of the Office of the Auditor General. Performance audits are conducted on a priority basis related to the potential for improving effectiveness* and efficiency*.
BACKGROUND	CIS is responsible for the licensing and regulation of nursing homes, AFC homes, and HFAs.  The Bureau of Health Systems is responsible for the licensing and certification of nursing homes in accordance with Sections 333.21711 - 333.21799e of the <i>Michigan Compiled Laws</i> (sections of the Public Health Code). The Bureau's responsibilities include conducting Medicare* certification surveys, conducting annual licensing survey inspections, and investigating complaints received against nursing homes. There were approximately 450 licensed

\* See glossary at end of report for definition.

nursing homes operating throughout the State as of December 31, 1999.

The Bureau of Regulatory Services is responsible for licensing AFC homes in accordance with Sections 400.701 - 400.737 of the *Michigan Compiled Laws*. The Bureau conducts biennial survey inspections, monitors AFC homes' compliance with State laws and regulations, and investigates complaints received against AFC homes. There were approximately 4,500 licensed AFC homes operating throughout the State as of December 31, 1999.

The Bureau of Health Systems was responsible for licensing HFAs, in accordance with Sections 333.21301 - 333.21333 of the *Michigan Compiled Laws* (sections of the Public Health Code), until January 2000. The responsibility for licensure was then transferred to CIS's Bureau of Regulatory Services. The licensure process required the Bureau of Health Systems to conduct annual survey inspections of each facility. The Bureau was also responsible for investigating complaints received against these facilities. There were approximately 175 licensed HFAs operating throughout the State as of December 31, 1999.

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AUDIT OBJECTIVES,  
CONCLUSIONS, AND  
NOTEWORTHY  
ACCOMPLISHMENTS

**Audit Objective:** To assess CIS's effectiveness and efficiency in regulating nursing homes.

**Conclusion:** We determined that CIS was moderately effective and efficient in regulating nursing homes. However, our assessment disclosed two material conditions\*:

- CIS had not formalized and maintained policies and procedures to effectively monitor, prioritize, and

\* See glossary at end of report for definition.

schedule annual survey inspections of nursing homes. Also, CIS did not conduct timely annual survey inspections of some nursing homes in accordance with State and federal laws and regulations. (Finding 1)

CIS agreed that the annual survey inspections were not conducted in a timely manner as a result of inadequate staffing levels. CIS has added additional staffing, reorganized the Bureau of Health Systems, and implemented a report system to calculate survey intervals and identify homes with extended intervals. As a result, CIS informed us that it is presently within the average 12-month standard and that no nursing home surveys are in excess of the 15-month standard.

- CIS needs to improve its controls to ensure that nursing home surveys and revisits are performed and documented in accordance with federal regulations (Finding 2).

CIS agreed with the finding and informed us that it is confident that the specific procedures for which deficiencies were noted were performed; however, the appropriate documentation was missing from the applicable files. CIS has instructed the surveyors to ensure that the required documentation is appropriately placed and maintained in the files.

Our assessment also disclosed reportable conditions\* related to revisits of nursing home annual surveys and complaint investigations, nursing home complaint investigations, and the licensing of HFAs and nursing homes (Findings 3, 4, and 13).

**Noteworthy Accomplishments:** In January 2000, the Bureau of Health Systems was reorganized to create the

Division of Nursing Home Monitoring, which was designed to more efficiently handle long-term care responsibilities. Additional staffing was added to the Division to aid in the Bureau's efforts to focus on federal and State mandates. Also, the Bureau developed computer reports to assist in monitoring progress toward those mandates. Since these changes were instituted, the Bureau has shown significant improvement in this area and is routinely meeting the mandated time frames.

The federal requirement that initial revisits be conducted within 70 days of the survey date is not totally within the control of the Bureau. The ability to conduct the initial revisit is heavily dependent upon long-term care facilities submitting timely and acceptable plans of correction. To aid in meeting the 70-day requirement, the Bureau requests facilities to produce plans of correction with compliance dates no later than 50 days following the survey date. This allows a window of approximately 10 days each for processing and revisits, providing a minimal period following the stated compliance date to be able to determine a facility's ability to sustain compliance and to accommodate the federal requirement that CIS conduct unannounced revisits. Some facilities do not comply with this request because it is not federally mandated.

The Bureau has also taken steps to upgrade and expand computer capability, which will allow more efficient monitoring of this requirement. Until completion of the project, the necessary information must be primarily compiled manually. Given the current limitations, the Bureau has shown substantial improvement in the number and percentage of cases meeting the time frames.

**Audit Objective:** To assess CIS's effectiveness and efficiency in regulating AFC homes.

**Conclusion:** We determined that CIS was generally effective and efficient in regulating AFC homes. However, our assessment noted reportable conditions related to report and automated information system data, the good moral character of licensees, the financial stability and capability of licensees, AFC biennial licensing inspections, and AFC complaint investigations (Findings 5 through 9).

**Noteworthy Accomplishments:** The Division of Adult Foster Care Licensing, Bureau of Regulatory Services, has consistently achieved over its 95% performance objective for responding in a timely manner to alleged violations of the *Michigan Compiled Laws* and/or administrative rules, conducting license renewal inspections and processing license renewals prior to the license expiration date, responding to inquiries for written information within 10 workdays of receiving the inquiry, and providing license renewal packets to licensees within 120 to 150 calendar days prior to the expiration of the current license. The Division has revised its monthly management reporting process to more accurately collect data on a quarterly reporting basis related to measuring established Division performance objectives. An information clearinghouse of in-service professional enhancement to further the expertise of the Division's licensing staff in the AFC area was made accessible to all AFC licensing staff on the Division's intranet site.

**Audit Objective:** To assess CIS's effectiveness and efficiency in regulating HFAs.

**Conclusion: We determined that CIS was not effective or efficient in regulating HFAs.** Our assessment disclosed three material conditions:

- CIS did not conduct annual surveys of HFAs in a timely manner, as required by State law. Also, CIS had not established and maintained formal policies and procedures to effectively monitor, prioritize, and schedule the required HFA annual surveys. (Finding 10)

CIS agreed with the finding. During the audit period, there were only two licensing staff members assigned to regulate over 170 HFAs. CIS informed us that, since the reassignment of the HFA Program in January 2000, two additional licensing staff members were added and a compliance plan has been established to ensure that all annual licensing inspections are done on a 12-month cycle.

- CIS did not ensure that HFAs corrected deficiencies found in annual surveys in a timely manner. Also, CIS had not established and maintained formal policies and procedures to adequately address its role and responsibilities in the survey process. (Finding 11)

CIS agreed with the finding. CIS informed us that it will provide assurance that HFAs correct deficiencies in a timely manner and establish and maintain formal policies and procedures addressing the roles and responsibilities in the survey process.

- CIS did not conduct timely investigations of complaints received against HFAs (Finding 12).

CIS agreed with the finding. CIS indicated that a compliance plan has been developed to ensure that all annual, initial, complaint, and follow-up inspections are done in a timely manner. CIS also indicated that it has established complaint investigation procedures and that all complaint investigations have been initiated and completed in accordance with the new established time frames.

Our assessment also disclosed reportable conditions related to the licensing of HFAs and nursing homes and the monitoring of newly opened HFAs (Findings 13 and 14).

**Noteworthy Accomplishments:** After reassignment of the HFA Program to the Bureau of Regulatory Services in January 2000, the Bureau has taken several steps to increase the effectiveness and efficiency of the Program. The steps taken include the hiring of two additional licensing staff members; assignment of an experienced manager in regard to implementation of the Public Health Code; reassignment of the process of intake, logging, handling, and tracking of all complaints related to HFAs and to the Program itself; reassignment of case loads to even work loads; a comprehensive review of laws, administrative rules, and policies and procedures for enforcement to ensure proper enforcement practices; implementation of a compliance plan for the completion of annual inspections of all HFAs; and implementation of a six-month temporary permit to new applicants that would allow CIS to determine compliance prior to the admission of residents.

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**AUDIT SCOPE AND  
METHODOLOGY**

Our audit scope was to examine the program and other records related to the Department of Consumer and Industry Services' regulation of nursing homes, adult foster care homes, and homes for the aged. Our audit was

conducted in accordance with *Government Auditing Standards* issued by the Comptroller General of the United States and, accordingly, included such tests of the records and such other auditing procedures as we considered necessary in the circumstances.

Our audit procedures included examining CIS records and activities for the period October 1, 1996 through December 31, 1999.

We obtained an understanding of the regulations, policies, and procedures used by CIS to regulate nursing homes, AFC homes, and HFAs to ensure that they operated in compliance with applicable State and federal laws and regulations. We selected samples of licensed nursing homes, AFC homes, and HFAs and samples of individual complaints made against these homes. We tested the related case files and evaluated the related survey inspections and complaint investigation processes. We also reviewed and evaluated CIS's system for scheduling and performing annual survey inspections of nursing homes and HFAs and for administering the decentralized AFC Program.

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**AGENCY RESPONSES  
AND PRIOR AUDIT  
FOLLOW-UP**

Our audit report includes 14 findings and 20 corresponding recommendations. CIS's preliminary response indicated that it agreed with the findings.

CIS complied with 4 of the 13 prior audit recommendations included within the scope of our current audit. We repeated 1 prior audit recommendation and the 8 other prior audit recommendations were rewritten for inclusion in this audit report.

April 20, 2001

Ms. Kathleen M. Wilbur, Director  
Department of Consumer and Industry Services  
G. Mennen Williams Building  
Lansing, Michigan

Dear Ms. Wilbur:

This is our report on the performance audit of the Regulation of Nursing Homes, Adult Foster Care Homes, and Homes for the Aged, Department of Consumer and Industry Services.

This report contains our executive digest; description of agency; audit objectives, scope, and methodology and agency responses and prior audit follow-up; comments, findings, recommendations, and agency preliminary responses; and a glossary of acronyms and terms.

Our comments, findings, and recommendations are organized by audit objective. The agency preliminary responses were taken from the agency's responses subsequent to our audit fieldwork. The *Michigan Compiled Laws* and administrative procedures require that the audited agency develop a formal response within 60 days after release of the audit report.

We appreciate the courtesy and cooperation extended to us during this audit.

AUDITOR GENERAL

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## Description of Agency

The Department of Consumer and Industry Services (CIS) is responsible for the licensing and regulation of nursing homes, adult foster care (AFC) homes, and homes for the aged (HFAs).

### Nursing Homes

A "nursing home" is defined by Section 333.20109 of the *Michigan Compiled Laws* as a nursing care facility, including a county medical care facility, that provides organized nursing care and medical treatment to seven or more unrelated individuals suffering or recovering from illness, injury, or infirmity. A nursing home does not include a unit in a State correctional facility. A "skilled nursing facility" is a hospital long-term care unit, nursing home, county medical care facility, or other nursing care facility, or a distinct part thereof, certified by CIS to provide skilled nursing care. There were approximately 450 licensed nursing homes operating throughout the State as of December 31, 1999.

CIS's Bureau of Health Systems is responsible for the licensing and certification of nursing homes in accordance with Sections 333.21711 - 333.21799e of the *Michigan Compiled Laws* (sections of the Public Health Code). The Division of Health Facility Licensing and Certification is a division within the Bureau of Health Systems. Its responsibilities include conducting Medicare certification surveys on new and established nursing homes. Based on the survey findings, the Bureau of Health Systems makes a recommendation to the Health Care Financing Administration (HCFA), U.S. Department of Health and Human Services, for Medicare certification approval or denial. HCFA makes the final determination of the nursing homes' certification status. The Division is also responsible for developing, monitoring, and conducting annual licensing survey inspections to issue State licensure to nursing homes. In addition, the Division is responsible for investigating complaints received against nursing homes.

The Division of Enforcement Training and Evaluation is also a division within the Bureau of Health Systems. It was first established in May 1997 as a distinct enforcement unit to oversee and coordinate State and federal nursing home enforcement actions. One of the main responsibilities of the Division is to be a liaison with CIS's Office of Legal and Legislative Affairs, the Department of Attorney General, HCFA, and the nursing homes that are the subject of enforcement actions. In addition, the Division arranges for

informal and formal hearings related to enforcement actions, maintains the Michigan Enforcement Data System for tracking and evaluating enforcement actions, provides training and enforcement information to other Bureau programs and interested organizations, ensures that requests for enforcement are consistent with policies, and processes the Bureau's responses to litigation.

The Bureau of Health Systems was reorganized in January 2000, after our audit period.

Under the reorganization, the Division of Enforcement Training and Evaluation was renamed the Division of Operations and assumed responsibility for nursing home complaint intake and investigation in addition to its existing functions. At the same time, responsibility for standard and revisit surveys of nursing homes was transferred from the Division of Health Facility Licensing and Certification to the new Division of Nursing Home Monitoring.

#### Adult Foster Care (AFC) Homes

An "adult foster care facility" is defined in Section 400.703 of the *Michigan Compiled Laws* as a governmental or nongovernmental establishment that provides foster care to adults. "Adult foster care facility" includes facilities and foster care family homes for adults who are aged, mentally ill, developmentally disabled, or physically disabled who require supervision on an ongoing basis but who do not require continuous nursing care.

There are four types of AFC facilities that are licensed by the State:

1. AFC family homes are private residences with the approved capacity to receive 6 or fewer adults to be provided with foster care for 5 or more days a week and for 2 or more consecutive weeks. The AFC family home licensee shall be a member of the household and an occupant of the residence.
2. AFC small group homes are AFC facilities with the approved capacity to receive 12 or fewer adults to be provided with foster care.
3. AFC large group homes are AFC facilities with the approved capacity to receive at least 13 but not more than 20 adults to be provided with foster care.

4. Congregate homes are AFC facilities with the approved capacity to receive more than 20 adults to be provided with foster care. Current facilities that hold this type of license may continue but the issuance of a new license for this type of facility is prohibited.

The AFC Licensing Division, within CIS's Bureau of Regulatory Services, is responsible for licensing AFC homes in accordance with Sections 400.701 - 400.737 of the *Michigan Compiled Laws*. The AFC Program is a decentralized system with 9 area managers throughout the State who each oversee 7 to 10 consultants\*. There were approximately 4,500 licensed AFC homes operating throughout the State as of December 31, 1999. The consultants and managers are responsible for conducting the biennial survey inspections, monitoring AFC homes' compliance with State laws and regulations, and investigating complaints received against AFC homes. There is a central office for the Program, and it is responsible for overseeing the AFC licensing function. Some of the additional duties of the central office include, but are not limited to, recording and keeping files on adverse actions and sending out the notice of intent letters, coordinating Freedom of Information Act requests, providing responses to citizens regarding questions and concerns related to AFC, and compiling data from the area managers' monthly reports to assess the Program's performance.

#### Homes for the Aged (HFAs)

A "home for the aged facility" is defined in Section 333.20106(3) of the *Michigan Compiled Laws* as a supervised personal care facility, other than a hotel, AFC facility, hospital, nursing home, or county medical care facility, that provides room, board, and supervised personal care to 21 or more unrelated, nontransient individuals 60 years of age or older. HFA includes a supervised personal care facility for 20 or fewer individuals 60 years of age or older if the facility is operated in conjunction with and as a distinct part of a licensed nursing home. In addition, an age waiver may be granted to allow a person under 60 years of age to live in an HFA if the waiver is in the best interest of a resident of the HFA and the individual for whom the waiver is sought. There were approximately 175 licensed HFAs operating throughout the State as of December 31, 1999.

CIS's Bureau of Health Systems was responsible for the licensing of HFA facilities until January 2000. The responsibility for licensure was then transferred to CIS's Bureau of

\* See glossary at end of report for definition.

Regulatory Services. CIS is responsible for licensing and regulating HFA facilities in accordance with Sections 333.21301 - 333.21333 of the *Michigan Compiled Laws* (sections of the Public Health Code) and with the *Michigan Administrative Code*. The licensure process required the Bureau of Health Systems to conduct annual survey inspections of each facility. The Bureau of Health Systems was also responsible for investigating complaints received against these facilities.

## Audit Objectives, Scope, and Methodology and Agency Responses and Prior Audit Follow-Up

### Audit Objectives

Our performance audit of the Regulation of Nursing Homes, Adult Foster Care (AFC) Homes, and Homes for the Aged (HFAs), Department of Consumer and Industry Services (CIS), had the following objectives:

1. To assess CIS's effectiveness and efficiency in regulating nursing homes.
2. To assess CIS's effectiveness and efficiency in regulating AFC homes.
3. To assess CIS's effectiveness and efficiency in regulating HFAs.

### Audit Scope

Our audit scope was to examine the program and other records related to the Department of Consumer and Industry Services' regulation of nursing homes, adult foster care homes, and homes for the aged. Our audit was conducted in accordance with *Government Auditing Standards* issued by the Comptroller General of the United States and, accordingly, included such tests of the records and such other auditing procedures as we considered necessary in the circumstances.

### Audit Methodology

Our audit procedures, performed between August 1999 and June 2000, included examining CIS records and activities for the period October 1, 1996 through December 31, 1999. We conducted a preliminary review to obtain an understanding of the different operations of each program.

To accomplish our first objective, we obtained an understanding of the regulations, policies, and procedures used by CIS to regulate nursing homes to ensure that they operated in compliance with State and federal laws and regulations. We selected a sample of licensed nursing homes as well as a sample of individual complaints made against licensed homes. We tested the related case files and evaluated the annual survey inspection and complaint investigation process. We also reviewed and evaluated CIS's system for scheduling and performing annual survey inspections of nursing homes.

To accomplish our second objective, we obtained an understanding of the regulations, policies, and procedures used by CIS to regulate AFC homes to ensure that they operated in compliance with State laws and regulations. We selected a sample of licensed AFC homes as well as a sample of individual complaints made against licensed homes. We tested the related case files and evaluated the license renewal inspection and complaint investigation process. We also reviewed and evaluated CIS's system for administering a decentralized program.

To accomplish our third objective, we obtained an understanding of the regulations, policies, and procedures used by CIS to regulate HFAs to ensure that they operated in compliance with State laws and regulations. We selected a sample of licensed HFAs as well as a sample of individual complaints made against licensed homes. We tested the related case files and evaluated the annual survey inspection and complaint investigation process. We also reviewed and evaluated CIS's system for scheduling and performing annual survey inspections of HFAs.

#### Agency Responses and Prior Audit Follow-Up

Our audit report includes 14 findings and 20 corresponding recommendations. CIS's preliminary response indicated that it agreed with the findings.

The agency preliminary response which follows each recommendation in our report was taken from the agency's written comments and oral discussion subsequent to our audit fieldwork. Section 18.1462 of the *Michigan Compiled Laws* and Department of Management and Budget Administrative Guide procedure 1280.02 require CIS to develop a formal response to our audit findings and recommendations within 60 days after release of the audit report.

CIS complied with 4 of the 13 prior audit recommendations included within the scope of our current audit. We repeated 1 prior audit recommendation and the 8 other prior audit recommendations were rewritten for inclusion in this audit report.

# COMMENTS, FINDINGS, RECOMMENDATIONS, AND AGENCY PRELIMINARY RESPONSES

## REGULATION OF NURSING HOMES

### COMMENT

**Background:** The Public Health Code requires all nursing homes to be licensed by the State. Each nursing home must also obtain certification from the Health Care Financing Administration (HCFA), U.S. Department of Health and Human Services, if the facility wishes to participate in the Medicare and/or Medicaid\* Programs. The Division of Health Facility Licensing and Certification, Department of Consumer and Industry Services (CIS), is responsible for conducting the annual surveys needed in the certification process. The Division performs annual surveys for the federal requirements of Medicare certification of providers seeking certification or recertification. The Division then recommends to HCFA either approval or denial of the Medicare certification. HCFA then grants or denies the Medicare certification.

In addition, the Division is responsible for investigating complaints received against nursing homes. The Division completes complaint investigations based on the assessed priority and notifies the complainants of the results of the complaint investigations. There were approximately 450 nursing homes licensed by the State as of December 1999.

**Audit Objective:** To assess CIS's effectiveness and efficiency in regulating nursing homes.

**Conclusion:** We determined that CIS was moderately effective and efficient in regulating nursing homes. However, our assessment disclosed two material conditions related to nursing home annual survey inspection intervals and the performance and documentation of nursing home annual surveys and revisits. Our assessment also disclosed reportable conditions related to revisits of nursing home annual surveys and complaint investigations, nursing home complaint investigations, and the licensing of HFAs and nursing homes.

\* See glossary at end of report for definition.

**Noteworthy Accomplishments:** In January 2000, the Bureau of Health Systems was reorganized to create the Division of Nursing Home Monitoring, which was designed to more efficiently handle long-term care responsibilities. Additional staffing was added to the Division to aid in the Bureau's efforts to focus on federal and State mandates. Also, the Bureau developed computer reports to assist in monitoring progress toward those mandates. Since these changes were instituted, the Bureau has shown significant improvement in this area and is routinely meeting the mandated time frames.

The federal requirement that initial revisits be conducted within 70 days of the survey date is not totally within the control of the Bureau. The ability to conduct the initial revisit is heavily dependent upon long-term care facilities submitting timely and acceptable plans of correction (POCs). To aid in meeting the 70-day requirement, the Bureau requests facilities to produce POCs with compliance dates no later than 50 days following the survey date. This allows a window of approximately 10 days each for processing and revisits, providing a minimal period following the stated compliance date to be able to determine a facility's ability to sustain compliance and to accommodate the federal requirement that CIS conduct unannounced revisits. Some facilities do not comply with this request because it is not federally mandated.

The Bureau has also taken steps to upgrade and expand computer capability, which will allow more efficient monitoring of this requirement. Until completion of the project, the necessary information must be primarily compiled manually. Given the current limitations, the Bureau has shown substantial improvement in the number and percentage of cases meeting the time frames.

## **FINDING**

### **1. Nursing Home Annual Survey Inspection Intervals**

CIS had not formalized and maintained policies and procedures to effectively monitor, prioritize, and schedule annual survey inspections of nursing homes. Also, CIS did not conduct timely annual survey inspections of some nursing homes in accordance with State and federal laws and regulations.

Title 42, Subpart E, sections 488.308 (a) and 488.308 (b) of the *Code of Federal Regulations* stipulate that the state agency must conduct a standard survey of each nursing home no later than 15 months after the last day of the previous standard survey. Furthermore, the statewide average interval between standard surveys must be 12 months or less. Section 333.20155 of the *Michigan Compiled Laws*

states that CIS shall make annual and other visits to each health facility or agency listed under this article for the purposes of survey, evaluation, and consultation. Section 333.20155(2) does allow for biennial visits to nursing homes if the nursing home is only partially certified under Title XVIII or Title XIX.

We analyzed the annual survey interval for the 451 nursing homes licensed as of December 1999. We compared the date of the most recent (current) annual survey performed to the date of the prior annual survey performed by CIS. Our analysis showed that 128 (28%) of the nursing homes had annual survey intervals that exceed the 15-month maximum allowable length of time between annual surveys. In addition, our analysis identified that, from the prior annual survey date to the current annual survey date, the average interval was 13.7 months. This average interval exceeded the 12-month average required by federal regulations.

CIS did not formalize and maintain policies and procedures to effectively monitor, prioritize, and schedule annual survey inspections. Prior to September 1999, CIS did not generate aging schedules to identify nursing homes that were overdue for the required annual survey inspections.

After September 1999, CIS implemented policy to schedule nursing home annual surveys for facilities with the longest time period since the last annual survey.

Because the extended survey intervals resulted in overdue surveys, CIS decreased its ability to determine if the nursing homes did, in fact, operate in compliance during the entire licensing or certification period. As a result, CIS management had limited assurance that nursing homes operated in sustained compliance with applicable State and federal laws and regulations.

## **RECOMMENDATIONS**

We recommend that CIS formalize and maintain adequate policies and procedures to effectively monitor, prioritize, and schedule annual survey inspections of nursing homes.

We also recommend that CIS conduct timely annual survey inspections of nursing homes in accordance with State and federal laws and regulations.

## **AGENCY PRELIMINARY RESPONSE**

CIS agreed that the annual survey inspections of nursing homes were not conducted in a timely manner, resulting from inadequate staffing levels. CIS added additional staffing beginning in fiscal year 1999-2000. CIS also reorganized the Bureau of Health Systems, creating the Enforcement Division to handle complaints investigations and enforcement activity and the Division of Nursing Home Monitoring to complete the required annual surveys and related tasks. In September 1999, CIS implemented a report system to calculate survey intervals and identify homes with extended intervals and established performance goals, monthly management meetings to assess completion of the goals, and corrective action measures when goals were not met. As a result, CIS informed us that it is presently within the average 12-month standard and that no nursing home surveys are in excess of the 15-month standard.

## **FINDING**

### **2. Performance and Documentation of Nursing Home Annual Surveys and Revisits**

CIS needs to improve its controls to ensure that nursing home surveys and revisits are performed and documented in accordance with federal regulations.

The State Operations Manual\* (SOM), issued by HCFA, details specific procedures to be performed by CIS when conducting nursing home surveys and performing revisits of homes. We reviewed the annual surveys performed by CIS on 64 nursing homes from October 1, 1996 through September 30, 1999 and noted:

- a. In 41 (64%) of the 64 nursing home annual surveys, CIS had one or more deficiencies in completing the survey tasks required by the SOM. Of those 41 annual surveys, 67 (14%) of 465 survey tasks tested had noted deficiencies.

\* See glossary at end of report for definition.

The following table presents the type and number of survey tasks that CIS either did not document or did not perform in the 41 nursing home annual surveys:

Deficiency Noted	Number of Deficiencies Noted in Annual Surveys
Deficiency decisions	4
Resident record reviews	12
Family interviews	14
Resident interviews	21
Group interviews	4
General facility observation	4
Kitchen and food service observation	4
Off-site meeting	<u>4</u>
Total deficiencies noted	<u>67</u>

- b. Fifty-eight nursing homes were found to have significant deficiencies that required CIS to perform one or more revisits to the nursing homes to ensure that they achieved compliance with federal regulations. CIS conducted a total of 100 revisits of these nursing homes. Our review of those 100 revisits disclosed that CIS did not select the appropriate sample size of residents as required by the SOM in 25 (25%) of the revisits and that CIS did not document its method for selection of residents in 15 (15%) of the revisits.

CIS did not have adequate controls in place to help ensure that nursing home surveys and revisits were conducted in accordance with the SOM. As a result, CIS's effectiveness in determining the nursing homes' compliance with State and federal regulations was diminished.

### **RECOMMENDATION**

We recommend that CIS improve its controls to ensure that nursing home surveys and revisits are performed and documented in accordance with federal regulations.

### **AGENCY PRELIMINARY RESPONSE**

CIS agreed with the finding and informed us that it is confident that the specific procedures for which deficiencies were noted were performed; however, the

appropriate documentation was missing from the applicable files. CIS has instructed the surveyors to ensure that the required documentation is appropriately placed and maintained in the files.

## **FINDING**

### **3. Revisits of Nursing Home Annual Surveys and Complaint Investigations**

CIS did not conduct timely revisit investigations of deficiencies noted during annual surveys and complaint investigations of nursing homes, as required by federal regulations. Also, CIS did not notify nursing homes of the results of annual surveys and complaint investigations on a timely basis.

The SOM requires nursing homes to submit a POC for the deficiencies noted during annual surveys and complaint investigations. The SOM also requires CIS to conduct an on-site revisit to verify that the nursing homes implemented the POC and achieved substantial compliance with deficiencies discovered during annual surveys and complaint investigations. The SOM further requires CIS to conduct the revisits between the last correction date on the POC and the 70th day from the inspection date. The timing of the revisits is contingent on CIS receiving the POC and the stated correction date. Additional revisits are required until correction of deficiencies is validated and the facility is determined to be in substantial compliance. Due dates for the second and subsequent revisits are not specified in the SOM.

Section 7316 of the SOM provides that, when the State conducts an inspection and identifies deficiencies, it should send the nursing home notification citing the individual deficiencies within 10 calendar days of the last day of the inspection. In addition, Section 7319 of the SOM provides that, when the State conducts an inspection and certifies compliance, it should send the nursing home notification of compliance within 10 calendar days of the last day of the inspection. CIS was informed by HCFA that it had 10 workdays rather than 10 calendar days to provide the required notification to the homes. For testing purposes, we used 15 calendar days to ensure that weekends and holidays were properly included.

Our review of annual survey visitations and complaint investigations conducted by CIS disclosed:

- a. CIS did not conduct initial revisits of nursing homes within 70 days in 22 (38%) of the 58 annual survey inspections that required revisits. In addition, CIS did not conduct additional revisits of nursing homes within 70 days in 8 (19%) of the 42 instances that required 2 or more revisits. CIS took from 71 to 167 days to complete the required additional revisits to validate compliance.
- b. CIS did not conduct revisits of nursing homes within 70 days in 15 (39%) of the 38 complaint investigations that required revisits. CIS took from 71 to 137 days to complete the required revisits.
- c. CIS did not notify nursing homes of the deficiencies noted within 15 calendar days in 20 (31%) of the 64 annual surveys that required deficiency notices. CIS took from 16 to 33 days to issue the required notices of deficiency.
- d. CIS did not notify nursing homes within 15 calendar days of the deficiencies noted in 15 (31%) of the 48 revisit investigations that required deficiency notices. In addition, CIS did not notify nursing homes of its determination of compliance within 15 calendar days in 14 (27%) of the 52 revisit investigations that required compliance notices. CIS took from 16 to 47 days to issue the required notices of deficiency or compliance.
- e. CIS did not notify nursing homes on a timely basis of the deficiencies noted in 27 (63%) of the 43 complaint investigations that required deficiency notices. In addition, CIS did not document that it notified or did not notify on a timely basis nursing homes of its determination of compliance in 10 (26%) and 5 (13%), respectively, of the 39 complaint investigations that required compliance notices. CIS took from 16 to 56 days to issue the required notices of deficiency or compliance.

By performing timely revisit investigations and notifying nursing homes of noted deficiencies on a timely basis, nursing home deficiencies could be corrected more expediently. In addition, by timely notification of nursing homes that they are now in compliance relative to noted deficiencies, the nursing home administrators gain assurance that their nursing homes are operating in compliance with applicable State and federal nursing home regulations.

## **RECOMMENDATIONS**

We recommend that CIS conduct timely revisit investigations of deficiencies noted during annual surveys and complaint investigations of nursing homes, as required by federal regulations.

We also recommend that CIS notify nursing homes of the results of annual surveys and complaint investigations on a timely basis.

## **AGENCY PRELIMINARY RESPONSE**

CIS agreed with the finding and informed us that the ability to do an investigation revisit is based on the availability of surveyors and scheduling. CIS also informed us that, during the audit period, revisits had to be coordinated with complaint investigations; priority investigations of alleged resident abuse, death, or neglect; and other health facility investigations. CIS stated that the addition of 29 new staff members and the separation of functions should correct delays in revisits.

## **FINDING**

### **4. Nursing Home Complaint Investigations**

CIS needs to improve controls and procedures to ensure that complaints made against nursing homes are investigated in accordance with State and departmental requirements.

The Complaint Intake Unit, Bureau of Health Systems, receives complaints and assesses their priority. The Bureau's Health Facility and Licensing and Certification Complaint Investigation Manual stipulates that the investigation shall be performed in accordance with the urgency determined by CIS. Accordingly, CIS has specified that reports of death or potential criminal activity require an investigation to be initiated within 24 hours. Other complaints that are assessed as priorities by CIS require investigations to be initiated within 5 to 45 days. In addition, Section 333.21799a of the *Michigan Compiled Laws* requires that, within 30 days after the receipt of a complaint, CIS shall inform the complainant of its findings and provide the complainant with a copy of CIS's written determination.

We sampled and tested a total of 127 original complaint case files. These complaints were received by CIS from October 1, 1996 through September 30, 1999. From our testing, we identified the following:

- a. CIS assessed 4 of the cases with a priority requiring CIS to investigate the complaint within 24 hours. However, CIS took 8, 10, 14, and 21 days to begin conducting an on-site investigation of these 4 complaints.
- b. CIS assessed 4 of the cases with a priority requiring CIS to investigate the complaint within 5 days. However, CIS took 13 days to begin conducting an on-site investigation for 2 (50%) of these complaints.
- c. CIS assessed 82 of the cases with a priority requiring CIS to investigate the complaint within 30 to 45 days. However, CIS took from 31 to 364 days to conduct an on-site investigation for 61 (74%) of these complaints.

Our testing of the 127 complaint files also disclosed the following deficiencies regarding assessing priority of complaints, notification to the complainant, closure of case files, and conduct of investigations:

- (a) Sixty-six (80%) of 82 cases were assessed a priority of 45 days. However, this assessment exceeds the standard of 30 days, as prescribed by Section 333.21799a of *Michigan Compiled Laws*, by 15 days.
- (b) CIS did not notify the complainants of its findings in 4 (3%) of 127 cases by providing them with a copy of CIS's written determination. Without adequate feedback to the complainants, the complainants lack assurance from the State that their concerns were appropriately addressed.
- (c) CIS could not provide adequate documentation in 32 (25%) of 127 cases authorizing the closing of a case without a CIS investigation. Without a process to verify that only authorized CIS personnel close complaint case files without an investigation, CIS management lacks reasonable assurance that all complaints warranting an investigation were appropriately processed.
- (d) CIS declined to conduct an investigation in 9 (7%) of 127 cases. CIS documentation contained within the case file noted that the issue would be investigated by CIS during the next regularly scheduled annual survey.

However, CIS was unable to provide us with documentation supporting that the investigation had taken place during the annual survey.

### **RECOMMENDATION**

We recommend that CIS improve controls and procedures to ensure that complaints made against nursing homes are investigated in accordance with State and departmental requirements.

### **AGENCY PRELIMINARY RESPONSE**

CIS agreed with the finding and acknowledged that deficiencies in conducting and documenting complaint investigations existed during the audit period. CIS informed us that it had implemented actions to correct these problems both before and after the end of the audit period.

## **REGULATION OF ADULT FOSTER CARE HOMES**

### **COMMENT**

**Background:** The State requires adult foster care (AFC) homes to obtain licensure by the State. CIS's Bureau of Regulatory Services is responsible for the licensure of these homes. The AFC Program is a decentralized system with 9 area managers who each oversee 7 to 10 consultants. These consultants and managers perform the biennial and interim annual licensing inspections for approximately 4,500 AFC homes. In addition, they are responsible for conducting investigations into complaints received against AFC homes. There is a central office that is responsible for the overall oversight and direction of the AFC Program.

**Audit Objective:** To assess CIS's effectiveness and efficiency in regulating AFC homes.

**Conclusion:** We determined that CIS was generally effective and efficient in regulating AFC homes. However, our assessment noted reportable conditions related to report and automated information system data, the good moral character of licensees, the financial stability and capability of licensees, AFC biennial licensing inspections, and AFC complaint investigations.

**Noteworthy Accomplishments:** The Division of Adult Foster Care Licensing, Bureau of Regulatory Services, has consistently achieved over its 95% performance objective for responding in a timely manner to alleged violations of the *Michigan Compiled Laws* and/or administrative rules, conducting license renewal inspections and processing license renewals prior to the license expiration date, responding to inquiries for written information within 10 workdays of receiving the inquiry, and providing license renewal packets to licensees within 120 to 150 calendar days prior to the expiration of the current license. The Division has revised its monthly management reporting process to more accurately collect data on a quarterly reporting basis related to measuring established Division performance objectives. An information clearinghouse of in-service professional enhancement to further the expertise of the Division's licensing staff in the AFC area was made accessible to all AFC licensing staff on the Division's intranet site.

## **FINDING**

### **5. Report and Automated Information System Data**

CIS did not ensure that it obtained accurate and consistent data from its field offices and automated information systems for use in the management of the AFC Program.

The AFC Program is decentralized and administered by 9 area managers located throughout the State who each oversee 7 to 10 consultants. The AFC Program central office relies on information obtained from the area managers and computer-generated reports to monitor activities in the field. CIS uses this information to help guide program and policy decisions and also to track compliance with required inspections and complaint investigations.

We analyzed the different reporting mechanisms used by the central office and noted the following deficiencies:

- a. Monthly reports prepared by the area managers did not agree with data from MAPPER, the automated information system used for the recording and tracking of AFC home licenses and complaints. We noted several discrepancies between monthly reports and MAPPER, including variances related to the number of closed complaints; the number of complaints closed on a timely basis; lags in complaint closure dates resulting in inaccurate reports to the central office; the inability of MAPPER to determine timely initiation and closure resulting in errors in the manual compilation of the data;

and inconsistencies among area managers in reporting complaint data from the prior year to the central office.

- b. Numerous errors existed on reports generated from the data system maintained by the Family Independence Agency (FIA). This data system is used by FIA for making payments to licensed AFC homes and by CIS for obtaining information regarding the licensure of AFC homes. We noted that reports generated from this data system contained numerous duplications pertaining to closed facilities and also duplications pertaining to enrollments. However, CIS does not have control over the FIA data system in order to correct the inaccurate data.
- c. CIS's monthly reports of adverse actions incorrectly counted addendums to notices of intent as separate adverse actions. As a result, CIS overstated the 123 adverse actions recorded by 9 (7%) during the audit period. A "notice of intent" is the start of an adverse action that indicates to the licensee that CIS is revoking a license, refusing to renew a license, or denying licensure. CIS uses an addendum to a notice of intent when additional information is uncovered prior to the hearing, but the addendum does not constitute a separate adverse action. During our audit, CIS established an adverse action log on its computer system to include all data relevant to the initiation and outcome of the recommended adverse actions. CIS informed us that this log is regularly reviewed by the director of the Division of Adult Foster Care Licensing.
- d. Adverse action files maintained by central office staff were not up to date. Proper maintenance of these files is necessary because CIS may need to use the information contained in the files in determining whether to relicense a home that CIS previously closed because of an adverse action. In addition, we noted that AFC management staff use the files in communicating with the area managers. We reviewed the documentation maintained in central office files for 29 AFC licensees issued an adverse action and noted the following:
  - (1) One file had an "order for stay," issued by an administrative law judge, indicating that the home may remain open because of a stipulation or agreement. The necessary memorandum from the Attorney General to close the case was not in the file. The file maintained in the field office

showed that the licensee had subsequently closed; however, CIS still considered the adverse action file open in the central office.

- (2) One file contained only a notice of intent and a notice of scheduled hearing date. The file did not contain any documentation as to the resolution of the adverse action. We later learned from AFC staff that the licensee had withdrawn its request for an appeal, received a temporary license, and eventually voluntarily closed.
- (3) One file did not have any documentation as to the status or resolution of the adverse action and was filed with the open cases. We later learned from AFC staff that CIS revoked the home's license and that CIS issued a new license to a different licensee for the existing home.
- (4) Three files selected were still filed as being open even though they contained all of the paperwork needed to close the file.
- (5) CIS considered one file open that did not have a closure letter in the central office file. However, the field file indicated its closure on MAPPER.

By reducing the discrepancies and errors noted in program data, CIS could gain better assurance that decisions are based on reliable information. Control procedures for obtaining up-to-date, reliable information and consistent methods for evaluating data are necessary in a decentralized system to ensure that CIS has accurate data on which to base program decisions.

### **RECOMMENDATION**

We recommend that CIS ensure that it obtains accurate and consistent data from its field offices and automated information systems for use in the management of the AFC Program.

### **AGENCY PRELIMINARY RESPONSE**

CIS agreed with the finding and informed us that it has implemented changes and improvements to provide reasonable assurance that it obtains accurate data from its field offices and automated information systems. In addition, CIS is implementing the Bureau Information Tracking System, an ORACLE data system

that tracks all data related to the AFC Program, in March 2001. Further, CIS is developing specific policies and procedures for implementation concurrently with the Bureau Information Tracking System for the recording and reporting of complaint data by local field offices.

## **FINDING**

### **6. Good Moral Character of Licensees**

CIS should improve its procedures for assessing the good moral character of the applicants, owners, partners, and directors of licensed AFC homes to help ensure that licensees are in compliance with State laws and regulations. CIS should also improve its procedures for monitoring whether AFC licensees comply with State law by completing assessments of whether the employees of their facilities are of good moral character.

Section 400.713(3)(c) of the *Michigan Compiled Laws* specifies that CIS shall issue or renew licenses if satisfied as to, among other criteria, the good moral character of the applicants, owners, partners, and directors of the facility, if other than an individual. Appendix 220.2 of the AFC Licensing Policy Manual requires that CIS conduct criminal history record checks on the licensee, administrator, and adult members of the household; however, this policy only requires that this be done at initial licensure unless there are existing persons on whom checks have not been conducted and then one will be performed at the next renewal.

CIS did not require criminal history record checks at the biennial license renewal, and the criminal history record checks on file were often several years old. *Michigan Administrative Code* R 400.1152 specifies offenses that would evidence a lack of good moral character. Thus, obtaining criminal history record checks on AFC licensees and administrators only at initial licensure may not be sufficient. To assess the value of periodic checks after initial licensure, CIS could perform criminal history record checks on a limited sample of AFC licensees.

Section 400.713(3)(e) of the *Michigan Compiled Laws* specifies that it is the responsibility of the AFC home licensee to assess the good moral character of the employees of the facility. We noted that CIS lacks the authority to specify how the AFC applicants assess the good moral character of the employees of their facilities. In addition, Appendix 220.2 of the AFC Licensing Policy Manual states

that convictions specified in the good moral character administrative rule must be used by licensees as the standard for the assessment of good moral character. We noted that the signed initial and renewal applications of the licensees contained a statement asserting the good moral character of the employees of the home. However, CIS could not document that it verified these statements either by reviewing personnel files for appropriate criminal history record checks and the absence of specified convictions or by determining what other methods the provider used, if any, to make the certification. As a result, CIS had limited assurance that the licensees did ascertain that staff responsible for the direct care of the AFC residents were of good moral character.

### **RECOMMENDATIONS**

We recommend that CIS improve its procedures for assessing the good moral character of the applicants, owners, partners, and directors of licensed AFC homes to help ensure that the licensees are in compliance with State laws and regulations.

We also recommend that CIS improve its procedures for monitoring whether AFC licensees comply with State law by completing assessments of whether the employees of their facilities are of good moral character.

### **AGENCY PRELIMINARY RESPONSE**

CIS agreed with the finding and informed us that it would improve its procedures for assessing the good moral character of the licensees by formalizing the additional procedures it currently performs. The additional procedures will include performing field reviews twice a year to ensure that current criminal history record checks have been performed and are on file for persons initially licensed to operate AFC facilities. In addition, CIS informed us that its formal procedures will include random criminal history record checks of a representative sample of license renewals to provide assurance that no offenses have occurred since the initial criminal history record checks. CIS also informed us that it has hired a quality assurance specialist who will be responsible for reviewing and improving the AFC licensing processes and procedures. This additional position will assist in improving CIS's current process for monitoring applicants for compliance with applicable State statutes and policies.

## **FINDING**

### **7. Financial Stability and Capability of Licensees**

CIS needs to improve its controls to ensure that it obtains and verifies sufficient information to assess the financial stability and capability of AFC licensees.

Section 400.713(3)(a) of the *Michigan Compiled Laws* specifies that CIS shall issue or renew a license only if it is satisfied as to the financial stability of the home. Because the statute does not define financial stability, CIS has promulgated rules for the different types of AFC homes (family, small group, large group, and congregate). These rules require the submission of specific financial information. CIS policy, as shown in Appendix 220.4 of the AFC Licensing Policy Manual, requires AFC homes to submit specific documents for financial statements and outlines standards for CIS to apply in evaluating the financial statements and determining financial stability.

Our sample of 76 licensing files disclosed that CIS did not obtain sufficient information to evaluate each licensee's financial stability and capability. We noted:

- a. Sixteen (21%) of the files were missing financial documents required for the evaluation of financial stability and capability necessary for licensure. Appendix 220.4 of the AFC Licensing Policy Manual requires submission of financial documents, such as a financial declaration, financial questionnaire, balance sheet, income statement, and credit report, for evaluating financial stability and capability for licensure.
- b. Seven (9%) of the files had incomplete or inaccurate financial information submitted with the home's application for license renewal. We noted amounts that did not balance and income statements that did not list all expenses.
- c. Five (7%) of the files had financial documents submitted by the licensee that did not meet the standards for licensure. Appendix 220.4 of the AFC Licensing Policy Manual lists specific items that would indicate lack of financial capability, such as loss of an income source, false or incomplete information, or lack of available current liquid assets to cover one month of expenses.

Complete financial information is essential for CIS to fulfill its statutory requirement to assess financial stability. Whenever financial information is missing or

inaccurate, CIS limits its ability to accurately evaluate the financial stability and capability of licensees to effectively function as AFC providers.

### **RECOMMENDATION**

We recommend that CIS improve its controls to ensure that it obtains and verifies sufficient information to assess the financial stability and capability of AFC licensees.

### **AGENCY PRELIMINARY RESPONSE**

CIS agreed with the finding. CIS informed us that it conducted a training needs survey and confirmed that training was needed for licensing staff to better understand financial stability. A training module to complement the procedures established in Appendix 220.4 of the AFC Licensing Policy Manual was developed and reviewed by CIS's Office of Internal Audit. CIS informed us that training was conducted in September and October 2000.

### **FINDING**

#### **8. AFC Biennial Licensing Inspections**

CIS's biennial licensing inspections of AFC homes were not always conducted in accordance with State laws, administrative rules, and CIS policy.

CIS's Bureau of Regulatory Services licenses AFC homes. CIS is required to conduct biennial licensing inspections of homes in accordance with State laws, administrative rules, and CIS policy. Based on the results of the inspections, CIS issues temporary licenses or renews the homes' licenses. CIS utilizes a temporary license for an AFC home receiving licensure for the first time. The temporary license is valid for six months and, at that time, CIS conducts another licensing inspection and issues a permanent license.

Our review of CIS biennial licensing inspections found that the inspections were completed in a timely manner. However, we noted the following weaknesses regarding CIS's process in conducting the licensing inspections:

- a. CIS did not always document approval for the issuance of a temporary license.

AFC policy, as stated in Item 220.8 of the AFC Licensing Policy Manual, requires that consultants obtain supervisory review and approval of recommended licensing actions. AFC policy also requires that the temporary license should not be dated prior to receiving supervisory approval.

We reviewed 76 licensee files and noted that CIS issued 14 licensees an original license during our audit period. Two (14%) of the 14 files did not have documentation of manager approval. Through discussions with the managers, we determined that they had their own methods for indicating approval and that many did not believe that their signature was required. Without consistent methods used Statewide to indicate manager approval, there is a potential risk of licenses being issued without proper approval.

- b. CIS did not document that consultants reviewed resident funds.

AFC licensing rules allow a licensee to accept a resident's funds and valuables and hold those items in trust. In response to a prior audit finding, CIS implemented interpretative procedures for small and large group homes under *Michigan Administrative Code* R 400.14315 and R400.15315. These sections require CIS to verify whether licensees were in compliance with the rules related to the handling of and accounting for resident funds and valuables. CIS requires that licensing staff verification be documented on the addendum to the compliance checklist or in a transmittal letter.

We reviewed 41 files for small or large group homes and noted that 13 (32%) did not document the review of resident funds through a statement on the addendum to the compliance checklist or in the transmittal letter, as required. In addition, the statements used by licensing staff to document their verification did not provide reasonable assurance as to the extent and sufficiency of their review. With limited documentation of licensing staff verification of the licensees' handling of resident funds, CIS could not be assured of compliance.

- c. CIS did not always ensure that AFC homes obtained and documented updated tuberculosis (TB) tests in the licensing file.

Section 400.713(3)(d) of the *Michigan Compiled Laws* requires that CIS be satisfied of the physical and emotional ability of the licensee and the person

responsible for daily operations. Licensing rules for family homes, group homes, and congregate homes require that those who come into contact with residents (including the licensees, persons responsible in the home, members of the household, direct care staff, other employees, and volunteers) be free from communicable TB. AFC policy, as stated in Appendix 220.7 of the AFC Licensing Policy Manual, requires small and large group homes to submit evidence of TB testing every three years for licensees and administrators. During an annual survey, CIS reviews the licensee's records of TB tests of members of the household, direct care staff, and other employees. CIS does not require family homes and congregate homes to submit evidence of testing but does require those facilities to retain documentation of updated TB tests in the facility records.

We reviewed 41 licensing files for small or large group homes and noted that 6 (15%) did not have updated documentation of TB tests on the licensee and the person responsible for daily operations. Whenever updated TB tests were not obtained, CIS could not be assured that residents were not put at risk of being in contact with communicable TB.

Biennial licensing inspections completed in accordance with State laws, administrative rules, and CIS policy help ensure that AFC homes are in compliance with laws and regulations and help ensure that AFC homes properly care for residents.

### **RECOMMENDATION**

We recommend that CIS's biennial licensing inspections of AFC homes be conducted in accordance with State laws, administrative rules, and CIS policy.

### **AGENCY PRELIMINARY RESPONSE**

CIS agreed with the finding and stated that it will reiterate to staff that all required procedures related to the biennial inspections of AFC homes be properly documented and maintained in the appropriate files.

## **FINDING**

### **9. AFC Complaint Investigations**

CIS did not conduct complaint investigations in accordance with CIS policy.

According to Sections 400.723 and 400.724 of the *Michigan Compiled Laws* and Items 320, 321, 330, 340, 350, 360, and 370 of the AFC Licensing Policy Manual, CIS is required to conduct investigations for complaints received.

CIS policy requires CIS to prioritize complaints as either high risk or low risk. CIS policy also requires that CIS prioritize allegations of abuse, neglect, or exploitation as high risk and that these investigations be initiated within 1 business day. CIS policy further requires CIS to initiate investigations for all other high-risk and low-risk complaints within 5 workdays.

CIS policy establishes four categories of complaints: formal, administrative, informal, and anonymous. Formal complaints are those submitted in writing. State law requires completion of formal complaints within 30 days or requires CIS to provide a status report to the complainant indicating anticipated completion. Administrative complaints are those from the legislative body of a city, village, or township. State law requires resolution of this type of complaint within 45 days. Informal complaints are all other complaints not submitted in writing. Anonymous complaints are those involving complainants who wish to remain anonymous. CIS's standard of promptness requires that informal and anonymous complaints be completed within 45 and 60 days, respectively.

We selected 45 investigations conducted by CIS to test for compliance with State law and CIS policy. Our audit disclosed:

- a. CIS did not initiate 6 (13%) of the investigations within the time frame required by CIS policy. We noted that 4 of the 6 investigations were high-risk complaints of abuse, neglect, or exploitation and that CIS did not initiate the investigations within 1 business day, as required. The average length of time for CIS to initiate the investigation was approximately 6 days. For the 2 complaints categorized as low risk, CIS did not initiate the investigations within 5 workdays as required by CIS policy. The average length of time for CIS to initiate these investigations was 12 days. Timely initiation of

investigations is necessary to help ensure that AFC residents are not placed at further risk.

- b. CIS incorrectly categorized 8 (18%) of the complaints received. CIS categorized 5 of the 8 complaints as low risk when the complaints involved allegations of abuse, neglect, and exploitation. CIS categorized the other 3 complaints as administrative when they were informal or anonymous, and CIS should have recorded the complaints as such. However, CIS did initiate investigations for 7 of these complaints within the proper time frame. CIS should improve controls to help ensure proper categorization to reduce the risk of investigations not being initiated in a timely manner.
- c. CIS did not complete 13 (29%) of the investigations within the 45-day standard of promptness specified by CIS policy. We noted that 90 days was the average length of time that the 13 investigations were open. The standard of promptness is an internal performance goal that CIS has set to help ensure the processing of complaints and resulting investigations in a timely manner. CIS changed this standard to 60 days, effective October 1, 1999. Timely investigations are critical so that the effectiveness of the investigation is not reduced.
- d. CIS did not always ensure documentation of proper approval in the closure of high-risk complaints. CIS recorded 27 of the investigations as high-risk complaints. For 6 (22%) of the 27 high-risk investigations, CIS could not document proper approval of the closure of the investigation. Item 370 of the AFC Licensing Policy Manual states that investigation reports which involve high-risk allegations are required to have manager approval prior to closure. Documentation of manager approval is essential to reduce the potential risk of a complaint being closed without proper approval.

A home with outstanding investigations at the time of renewal cannot have its license renewed. Therefore, CIS may not be able to renew a license if it is awaiting resolution of an investigation and the home's license could lapse.

### **RECOMMENDATION**

We recommend that CIS conduct complaint investigations in accordance with CIS policy.

## **AGENCY PRELIMINARY RESPONSE**

CIS agreed with the finding. CIS informed us that Act 218, P.A. 1979, as amended, does not require specific time frames for the investigation of high-risk or low-risk complaints. The time frames used to investigate complaints are a matter of CIS policy. The current high-risk and low-risk complaint data collection system will be improved through the implementation of the new Bureau Information Tracking System.

## **REGULATION OF HOMES FOR THE AGED**

### **COMMENT**

**Background:** Homes for the aged (HFAs) are required to be licensed in accordance with Sections 333.21301 - 333.21333 of the *Michigan Compiled Laws* and to receive annual survey inspections to ensure compliance with State laws. During our audit period, the licensure of HFAs was the responsibility of CIS's Bureau of Health Systems. In January 2000, the licensure functions were transferred to CIS's Bureau of Regulatory Services. CIS is also responsible for investigating complaints received against HFAs as well as complaints received against assisted living facilities operating as nonlicensed HFAs. There were approximately 175 HFAs licensed by the State as of December 1999.

**Audit Objective:** To assess CIS's effectiveness and efficiency in regulating HFAs.

**Conclusion: We determined that CIS was not effective or efficient in regulating HFAs.** Our assessment disclosed three material conditions related to HFA annual surveys, follow-up of survey deficiencies, and HFA complaint investigations. Our assessment also disclosed reportable conditions related to the licensing of HFAs and nursing homes and the monitoring of newly opened HFAs.

**Noteworthy Accomplishments:** After reassignment of the HFA Program to the Bureau of Regulatory Services in January 2000, the Bureau has taken several steps to increase the effectiveness and efficiency of the Program. The steps taken include the hiring of two additional licensing staff members; assignment of an experienced manager in regard to implementation of the Public Health Code; reassignment of the process of intake, logging, handling, and tracking of all complaints related to HFAs and to the Program itself; reassignment of case loads to even work loads; a comprehensive review

of laws, administrative rules, and policies and procedures for enforcement to ensure proper enforcement practices; implementation of a compliance plan for the completion of annual inspections of all HFAs; and implementation of a six-month temporary permit to new applicants that would allow CIS to determine compliance prior to the admission of residents.

**FINDING**

**10. HFA Annual Surveys**

CIS did not conduct annual surveys of HFAs in a timely manner, as required by State law. Also, CIS had not established and maintained formal policies and procedures to effectively monitor, prioritize, and schedule the required HFA annual surveys.

Section 333.20155 of the *Michigan Compiled Laws* requires CIS to visit each HFA, at least annually, for the purpose of survey, evaluation, and consultation.

We analyzed the status of the most recent annual survey conducted for each of the 175 open and operating HFAs as of December 31, 1999 and noted that 115 (66%) of these HFAs had annual surveys that were overdue, including 40 surveys that were overdue by at least three years. The following table shows the number of HFAs and the amount of time since the last annual survey was completed:

<u>Amount of Time Since Last Annual Survey</u>	<u>Number of HFAs</u>	<u>Percentage of Total</u>
Within 1 year	60	34%
More than 1 year but less than 2 years	64	37%
More than 2 years but less than 3 years	11	6%
More than 3 years but less than 4 years	33	19%
More than 4 years but less than 5 years	6	3%
Greater than 5 years	<u>1</u>	<u>1%</u>
Total	<u>175</u>	<u>100%</u>

We also reviewed completed annual surveys for 55 HFAs. We tested the survey files to determine the timeliness of the surveys, the processes used in completing

the surveys, and whether the surveys ensured that the HFAs were in compliance with State laws. Our review disclosed:

- a. Two (4%) of the 55 annual surveys did not have documentation that demonstrated the completion of the survey process.

We determined that HFA surveyors kept the notes taken during the surveys in separate files rather than in the official records. However, these notes did document the items reviewed during the surveys. The two exceptions were files that were destroyed when an HFA surveyor left the HFA Unit. CIS has not changed its policy regarding the notes, and there is a continued risk that future notes documenting annual surveys could be taken or destroyed.

- b. CIS had not developed adequate survey documentation forms for the surveyors to use to document their survey observations or findings. In addition, none of the annual surveys tested adequately documented that surveyors effectively reviewed HFAs to ensure that the HFAs were in compliance with State laws.

Our review of the requirements for an HFA to be a licensed home in Michigan disclosed that there were task areas that should be completed by the surveyor to verify the HFA's compliance. Those tasks included HFA policy review, resident interviews, resident records review, surveyor observations, staff interviews, staff records review, and HFA staffing record reviews.

CIS procedure states: "The surveyor will document findings on the Home for the Aged Surveyor Worksheet (LC-174) and/or the Surveyor Notes Worksheet (HCFA-681)." However, these documents were blank pages for the surveyors to record their observation notes. Our testing disclosed that CIS did not use either the LC-174 form or the HCFA-681 form to document that CIS completed the required task areas of a survey. Because surveyors did not use adequate survey documentation forms to document their findings, CIS could not ensure that the surveyors investigated all compliance requirements and that the HFAs were in compliance with all State laws and regulations.

In addition, CIS did not keep the notes in the official survey file. As noted in part a., there is a continued risk of the taking or destruction of personal files,

and CIS would not have documentation of the proper completion of HFA surveys.

Our analysis noted that CIS did not have a formal process to schedule annual surveys to help ensure that CIS was in compliance with State laws regarding survey intervals. In addition, CIS did not generate aging schedules to identify HFAs that were overdue for their annual surveys.

CIS indicated that it did not have sufficient resources to allocate to the HFA Program to ensure that HFAs were being surveyed annually, as required by State law. During our audit period, CIS had only two HFA surveyors to conduct the annual surveys and to handle all complaint investigations for approximately 175 HFAs licensed and operating in Michigan.

CIS cannot be assured that the HFAs are operating in substantial compliance with State laws and CIS policy. Adequate annual surveys would help CIS to ensure sustained compliance by HFAs.

We reported a similar finding in a prior audit. In response to the prior audit finding, CIS stated that it agreed with the recommendation and had budgeted funds for the inspection and monitoring of HFAs.

During our audit fieldwork, the HFA Program was reassigned within CIS. After reassignment, CIS began to write and establish formal policies and procedures for the monitoring, prioritizing, and scheduling of HFA annual surveys. These policies and procedures were immediately implemented.

## **RECOMMENDATIONS**

WE AGAIN RECOMMEND THAT CIS CONDUCT ANNUAL SURVEYS OF HFAs IN A TIMELY MANNER, AS REQUIRED BY STATE LAW.

We also recommend that CIS maintain formal policies and procedures to effectively monitor, prioritize, and schedule the required HFA annual surveys.

## **AGENCY PRELIMINARY RESPONSE**

CIS agreed with the finding. During the audit period, there were only two licensing staff members assigned to regulate approximately 175 HFAs. CIS informed us

that, since the reassignment of the HFA Program in January 2000, two additional licensing staff members were added and a compliance plan has been established to ensure that all annual licensing inspections are done on a 12-month cycle.

## **FINDING**

### **11. Follow-Up of Survey Deficiencies**

CIS did not ensure that HFAs corrected deficiencies found in annual surveys in a timely manner. Also, CIS had not established and maintained formal policies and procedures to adequately address its role and responsibilities in the survey process.

State laws require CIS to complete an annual survey of each HFA. CIS requires the HFA to submit a POC to address any deficiencies noted during the survey. CIS also requires that the HFA submit the POC within 10 days of receipt of CIS's survey report and complete all corrective actions within 90 days.

Proper controls are needed to help ensure that CIS reviews and approves POCs in a timely manner. We reviewed the HFA licensing manual and a sample of 55 HFA survey visitations and 56 HFA facility complaint investigations completed by CIS. Our review disclosed:

- a. CIS policy did not ensure that survey reports, including deficiencies noted during the annual survey, were transmitted to HFAs in a timely manner. Our review disclosed 46 HFA annual surveys and 46 HFA complaint investigations that required a survey report. We noted that the average length of time for CIS to prepare and send the survey reports to HFAs for annual surveys and complaint investigations was 11 and 19 days, respectively. However, the number of days ranged from 1 to 151 days. CIS should inform HFAs in a timely manner of deficiencies to help ensure adequate and timely corrective action by the HFAs.
- b. CIS did not review and approve POCs submitted by HFAs in a timely manner. In addition, CIS did not ensure that HFAs submitted POCs within the 10-day

requirement. CIS should promptly review POCs to ensure that HFA corrective actions result in compliance with State laws in a timely manner:

- (1) We reviewed 40 HFA annual surveys that required a POC, 28 of which had been approved by CIS as of the date of our review. It took CIS an average of 49 days to approve these POCs, including 2 POCs that CIS took over 4 months to approve. Also, the 12 POCs that had not yet been approved by CIS had been in CIS's possession for an average of 356 days.
  - (2) We reviewed 27 HFA complaint investigations that required a POC, 22 of which had been approved by CIS as of the date of our review. It took CIS an average of 80 days to approve these POCs, including 4 POCs that CIS took over 4 months to approve. Also, the 5 POCs that had not yet been approved by CIS had been in CIS's possession for an average of 180 days.
- c. CIS did not ensure that HFAs implemented their POCs. CIS did not generally perform revisits to HFAs to ensure that the HFAs implemented their POCs and that the HFAs had complied with all reported deficiencies. CIS should improve procedures to ensure that POCs are implemented by the HFAs in a timely manner.

## **RECOMMENDATIONS**

We recommend that CIS ensure that HFAs correct deficiencies found in annual surveys in a timely manner.

We also recommend that CIS establish and maintain formal policies and procedures to adequately address its role and responsibilities in the survey process.

## **AGENCY PRELIMINARY RESPONSE**

CIS agreed with the finding. CIS informed us that it will provide assurance that HFAs correct deficiencies in a timely manner and establish and maintain formal policies and procedures addressing the roles and responsibilities in the survey process.

## **FINDING**

### **12. HFA Complaint Investigations**

CIS did not conduct timely investigations of complaints received against HFAs. As a result, CIS was not assured that the HFAs were operating in substantial compliance with State laws and regulations and CIS policy.

The Complaint Intake Unit receives all complaints against HFAs and enters the complaints into the Care\*Net System, an automated information system used for the recording and tracking of nursing home and HFA licenses and complaints. The Complaint Intake Unit assesses the priority of the complaints and forwards them to the HFA Program for investigation.

The HFA Program followed the Bureau of Health Systems' Complaint Investigation Manual. We tested 56 complaints filed with CIS, 47 of which required investigation. Our testing disclosed:

- a. Four complaints required investigations within 24 hours. Of those, CIS did not initiate complaint investigations within 24 hours for 3 complaints (75%), as required by CIS procedures. These investigations took place 204, 148, and 13 days after receipt of the complaint by the HFA Program. The Complaint Investigation Manual required an investigation to be initiated (for complaints received prior to June 1999) or a site visit completed (for complaints received on or after June 1999) within 24 hours for these types of complaints.
- b. Forty-three complaints required investigations within 30 days. Of those, CIS did not conduct complaint investigations within 30 days for 27 complaints (63%). CIS took an average of 83 days to investigate these complaints. Also, 9 of the 27 complaints took more than 90 days to investigate. The Complaint Investigation Manual requires CIS to investigate these types of complaints within 30 days (prior to June 1999) or to investigate complaints within 30 days or with the next annual survey (after June 1999).

CIS indicated that it did not have sufficient resources to allocate to the HFA Program to ensure that HFA complaint investigations were conducted on a timely basis. As noted in Finding 10, CIS did not allocate sufficient resources to effectively administer the HFA Program.

## **RECOMMENDATION**

We recommend that CIS conduct timely investigations of complaints received against HFAs.

## **AGENCY PRELIMINARY RESPONSE**

CIS agreed with the finding. During the audit period, there were only two surveyors assigned to regulate the HFA Program. CIS informed us that, since the reassignment of the HFA Program to the Bureau of Regulatory Services in January 2000, two additional surveyors were added to the HFA staff. CIS indicated that a compliance plan has been developed to ensure that all annual, initial, complaint, and follow-up inspections are done in a timely manner. In addition, the Bureau of Regulatory Services has assumed full responsibility for the handling and tracking of complaints that were formerly handled by the Complaint Intake Unit, Bureau of Health Systems. CIS informed us that it established complaint investigation procedures in accordance with statutory mandate and integrated those procedures with the Bureau's Division of Adult Foster Care Licensing special investigations procedures. CIS implemented the procedures in March 2000 and all complaint investigations have been initiated and completed in accordance with the new established time frames.

## **FINDING**

### **13. Licensing of HFAs and Nursing Homes**

CIS needs to improve its procedures to ensure that license renewals for HFAs and nursing homes are completed on a timely basis, as required by State law. Also, CIS could improve its internal control over the license renewal process by implementing a system to control and track licenses issued to HFAs and nursing homes.

Section 333.20164 of the *Michigan Compiled Laws* (a section of the Public Health Code), which governs the HFA and Nursing Home Programs, states that a license, certification, provisional license, or limited license is valid for not more than one year after the date of issuance. In addition, *Michigan Administrative Code* R 325.20209, which governs the Nursing Home Program, states that a license or certificate shall expire on the date shown on its face or one year after the date of issuance, whichever is sooner, unless renewed or terminated in accordance with the Public Health Code or the administrative rules.

In August 1997, CIS began issuing nonexpiring licenses to HFAs and nursing homes. As its basis for issuing these types of licenses, CIS cited Section 24.291 of the *Michigan Compiled Laws* (a section of the Michigan Administrative Procedures Act):

When a licensee makes timely and sufficient application for renewal of a license or a new license with reference to activity of a continuing nature, the existing license does not expire until a decision on the application is finally made by the agency...

CIS did not issue invoices for the HFA and nursing home license renewals in a timely manner. Our analysis disclosed that CIS did not issue invoices for renewal of licenses for up to one year after the previous license expired. As a result, the HFAs and nursing homes could not make timely and sufficient application for the renewal of their current licenses. In addition, there was an increased risk that HFAs operated as licensed homes without being subjected to the proper licensing process, which includes required annual survey visitations to ensure compliance with State laws. We tested licensing fee invoice payment records for 15 HFAs and 3 nursing homes. CIS could not provide us with documentation for 3 of the 15 HFA records of licensing fee invoices and receipt of payment records for the licensing period ended July 31, 1998.

We also noted that CIS lacked adequate control over the licenses issued to HFAs and nursing homes. Licenses issued by CIS did not have a unique license number allowing CIS to track what license was issued to a specific home and the status of that license. Because CIS issues nonexpiring licenses, a control mechanism is necessary to ensure that a license that is revoked or voluntarily terminated is surrendered to CIS. A home that has had its license revoked or voluntarily terminated and does not surrender its paper license could hold itself out to be a properly licensed home by the State.

## **RECOMMENDATIONS**

We recommend that CIS improve its procedures to ensure that license renewals for HFAs and nursing homes are completed on a timely basis, as required by State law.

We also recommend that CIS improve its internal control over the license renewal process by implementing a system to control and track licenses issued to HFAs and nursing homes.

### **AGENCY PRELIMINARY RESPONSE**

CIS agreed with the finding. CIS informed us that, since the reassignment of the HFA Program to the Bureau of Regulatory Services, a new process has been developed and implemented to ensure timely invoicing and collection of licensing fees on an annual basis, resulting in control over the licenses issued to HFA facilities. The procedure will be adjusted to accommodate expiration dates.

### **FINDING**

#### **14. Monitoring of Newly Opened HFAs**

CIS did not conduct timely monitoring of newly opened HFAs to ensure that they were operating in compliance with State laws.

CIS conducts initial surveys of new HFAs prior to the opening of the facility. According to the HFA licensing manual:

Initial Survey is a survey that also evaluates structural components (e.g., policy and procedure), staffing and staff qualifications, contracts, and systems to determine if the facility is set up to operate according to the Home for the Aged statutory requirements.

In order for a new HFA to receive its State license, it must obtain approval from the HFA Program administered by the Engineering Section within CIS's Office of Fire Safety and pay its required licensing fee. After an HFA has received its license, Section 333.20155 of the *Michigan Compiled Laws* requires CIS to visit the HFA, at least annually, for the purpose of survey, evaluation, and consultation.

We determined that 42 HFAs have opened since October 1, 1993. Our review disclosed that 20 (49%) of the 41 newly licensed HFAs had not received a follow-up annual survey within one year. The following table shows the number of HFAs

and the amount of time from when the HFA opened to when CIS conducted its first annual survey of the HFA:

Amount of Time From HFA Opening to the First Annual Survey	Number of HFAs	Percentage of Total
Less than 180 days	11	27%
More than 180 days but less than 1 year	10	24%
More than 1 year but less than 2 years	12	29%
More than 2 years but less than 3 years	5	12%
More than 3 years but less than 4 years	3	7%
Total	<u>41</u>	<u>100%</u>

CIS indicated that it did not have sufficient resources to allocate to the HFA Program to ensure that HFAs were receiving their required annual surveys.

Because CIS conducts initial surveys prior to construction completion and before any residents are admitted to an HFA, CIS cannot be assured that the newly licensed HFAs are operating in compliance with State laws until the HFAs receive an annual survey. It is important that CIS conduct timely annual survey visitations to ensure sustained compliance with State laws by HFAs.

**RECOMMENDATION**

We recommend that CIS conduct timely monitoring of newly opened HFAs to ensure that they are operating in compliance with State laws.

**AGENCY PRELIMINARY RESPONSE**

CIS agreed with the finding. CIS informed us that, since the reassignment of the HFA Program to the Bureau of Regulatory Services, a compliance plan was established to ensure that all annual, initial, complaint, and follow-up inspections are done on a timely basis. In addition, effective May 2000, CIS began to issue a temporary permit to new HFA applicants for a one-time, 6-month period upon receiving approval to occupy their buildings from the Office of Fire Safety; a request to license from the Health Facility Evaluation Section, Bureau of Health

Systems; and a completed review of the HFA applicant's proposed program plan, staffing, staff qualifications, and contracts by the HFA Program, Bureau of Regulatory Services. Following the issuance of temporary permits, the facilities are allowed to admit residents and are required to further demonstrate that they are in compliance with the applicable rules and statutes that apply to HFAs.

## Glossary of Acronyms and Terms

AFC	adult foster care.
CIS	Department of Consumer and Industry Services.
consultant	AFC licensing consultant (i.e., a CIS employee).
effectiveness	Program success in achieving mission and goals.
efficiency	Achieving the most outputs and outcomes practical for the amount of resources applied or minimizing the amount of resources required to attain a certain level of outputs or outcomes.
FIA	Family Independence Agency.
HCFA	Health Care Financing Administration, U.S. Department of Health and Human Services.
HFA	home for the aged.
material condition	A serious reportable condition that could impair the ability of management to operate a program in an effective and efficient manner and/or could adversely affect the opinion of an interested person concerning the effectiveness and efficiency of the program.
Medicaid	A State government-operated health care program for the medically needy funded by State money and federal matching money.
Medicare	A federal government-operated health care program for the elderly funded by federal money.

performance audit	An economy and efficiency audit or a program audit that is designed to provide an independent assessment of the performance of a governmental entity, program, activity, or function to improve public accountability and to facilitate decision making by parties responsible for overseeing or initiating corrective action.
POC	plan of correction.
reportable condition	A matter coming to the auditor's attention that, in the auditor's judgment, should be communicated because it represents either an opportunity for improvement or a significant deficiency in management's ability to operate a program in an effective and efficient manner.
State Operations Manual (SOM)	A manual, issued by HCFA, that sets requirements for Medicare certification surveys.
TB	tuberculosis.