

Office of the Auditor General
Performance Audit Report

**Licensing and Inspections of
Homes for the Aged**
Bureau of Community and Health Systems
Department of Licensing and Regulatory Affairs

March 2023

The auditor general shall conduct post audits of financial transactions and accounts of the state and of all branches, departments, offices, boards, commissions, agencies, authorities and institutions of the state established by this constitution or by law, and performance post audits thereof.

The auditor general may make investigations pertinent to the conduct of audits.

Article IV, Section 53 of the Michigan Constitution



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Report Summary

Performance Audit

Licensing and Inspections of Homes for the Aged (HFAs)

Bureau of Community and Health Systems (BCHS)

Department of Licensing and Regulatory Affairs (LARA)

Report Number:
641-0452-22

Released:
March 2023

BCHS licenses and monitors HFAs operating in the State of Michigan, in accordance with the Public Health Code and *Michigan Administrative Code* rules. HFAs provide room, board, and supervised personal care to 21 or more individuals 55 years of age or older. BCHS regulates HFAs after initial inspection and licensure through good moral character assessments of HFA licensees, on-site renewal inspections, complaint investigations, corrective action plan reviews, and initiation of disciplinary action as needed to protect individuals served. As of June 30, 2022, 318 licensed HFAs were actively operating with a combined capacity of more than 24,000 beds.

Audit Objective			Conclusion
Objective 1: To assess the effectiveness of BCHS's efforts to inspect and license HFAs.			Moderately effective
Findings Related to This Audit Objective	Material Condition	Reportable Condition	Agency Preliminary Response
BCHS did not complete or maintain all documentation to support its on-site renewal inspections and conclusions, key inspection procedures, and pertinent HFA information. Also, BCHS did not have a managerial review process for inspections performed by its surveyors (Finding 1).		X	Agrees
BCHS's monitoring did not help ensure 4 HFA licensees conducted required background checks for 12 employees and 4 HFA licensees conducted timely background checks for 42 employees (Finding 2).		X	Agrees
HFA licensure activity costs exceeded related revenues by over \$650,000 to \$885,000 for fiscal years 2018 through 2021, representing 78% to 86% of total costs (Finding 3).		X	Agrees

Observations Related to This Audit Objective	Material Condition	Reportable Condition	Agency Preliminary Response
Section 333.21311a of the <i>Michigan Compiled Laws</i> could be clarified to address when HFAs can self-certify their eligibility to be exempt from State licensing and oversight requirements and when BCHS can investigate complaints related to exempt HFAs (<u>Observation 1</u>).			Not applicable for observations.

Audit Objective			Conclusion
Objective 2: To assess the sufficiency of BCHS's efforts to investigate and resolve complaints of alleged administrative rule or State statute violations related to HFAs.			Sufficient, with exceptions
Findings Related to This Audit Objective	Material Condition	Reportable Condition	Agency Preliminary Response
BCHS did not complete 17% of investigations timely or properly maintain necessary documentation to support noncompliance issues for 87% of the investigations we reviewed. Also, BCHS did not sufficiently document 14% of dismissed complaint decisions or have a managerial approval process for dismissal of complaints (<u>Finding 4</u>).		X	Agrees

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Doug A. Ringler, CPA, CIA
Auditor General

March 14, 2023

Ms. Orlene Hawks, Director
Department of Licensing and Regulatory Affairs
Ottawa Building
Lansing, Michigan

Dear Ms. Hawks:

This is our performance audit report on the Licensing and Inspections of Homes for the Aged, Bureau of Community and Health Systems, Department of Licensing and Regulatory Affairs.

We organize our findings and observations by audit objective. Your agency provided the preliminary responses to the recommendations at the end of our fieldwork. The *Michigan Compiled Laws* and administrative procedures require an audited agency to develop a plan to comply with the recommendations and to submit it to the State Budget Office upon completion of an audit. Within 30 days of receipt, the Office of Internal Audit Services, State Budget Office, is required to review the plan and either accept the plan as final or contact the agency to take additional steps to finalize the plan.

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

Sincerely,

Doug Ringler
Auditor General

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AUDIT OBJECTIVES, CONCLUSIONS, FINDINGS, AND OBSERVATIONS

INSPECTING AND LICENSING HOMES FOR THE AGED

BACKGROUND

In Michigan, a facility at a single address, other than a hotel, adult foster care facility, hospital, nursing home, or county medical care facility, providing room, board, and supervised personal care to 21 or more unrelated, nontransient individuals 55 years of age or older is required to be licensed under the Public Health Code (Section 333.21311 of the *Michigan Compiled Laws [MCL]*) as a home for the aged (HFA), unless exempt under *MCL* Section 333.21311a.

From October 1, 2018 through June 30, 2022, the Bureau of Community and Health Systems (BCHS) licensed 380 HFAs throughout the State, including 318 HFAs actively operating as of June 30, 2022 (see Exhibit 1).

MCL Sections 333.20164 and 333.20155(1) require HFAs to renew their license annually and BCHS to make at least one unannounced visit to each licensed HFA every three years for survey and evaluation for the purpose of licensure.

BCHS established and requires its surveyors to utilize an on-site inspection record checklist to ensure they verify the HFA's compliance with all applicable laws and administrative rules. At the conclusion of an inspection, the surveyor issues a licensing study report (LSR) including the scope of the inspection conducted and identification of all noncompliance violations. BCHS cited 2,059 compliance violations in 478 of the 675 licensing inspections it completed from October 1, 2018 through June 30, 2022. See Exhibits 2 and 3 for more detailed inspection and violation information.

AUDIT OBJECTIVE

To assess the effectiveness* of BCHS's efforts to inspect and license HFAs.

CONCLUSION

Moderately effective.

FACTORS IMPACTING CONCLUSION

- BCHS completed 675 initial license and renewal inspections from October 1, 2018 through June 30, 2022, completing 99.7% of the inspections in a timely manner.
- BCHS issued 62 initial HFA licenses for applications received from October 1, 2018 through June 30, 2022 and issued the 9 initial licenses we reviewed in a timely manner.
- BCHS obtained and verified all required initial licensure documentation for the 9 HFAs we reviewed.

* See glossary at end of report for definition.

- BCHS appropriately assessed and collected initial or renewal licensing fees for 95.3% of the 64 licenses we reviewed.
- BCHS appropriately granted exemption status, based on the attestations submitted, for the 18 exempt HFAs we reviewed.
- BCHS completed required background checks for 227 (96.6%) of 235 HFA authorized representatives who were active from October 1, 2018 through June 30, 2022.
- Reportable conditions* related to improving on-site renewal inspection processes, monitoring of HFA employee background checks, and evaluating the HFA licensing fee structure (Findings 1 through 3).

* See glossary at end of report for definition.

FINDING 1

On-site renewal inspection processes need improvement.

BCHS should improve its on-site renewal inspection processes to substantiate inspections were conducted in a manner that consistently mitigates potential risks to the health, safety, and well-being of HFA residents and fully supports its licensing decisions.

The Department of Licensing and Regulatory Affairs' (LARA's) HFA Licensing Policy Manual items 265 and 505 indicate:

- The objective of on-site licensing inspections is to thoroughly gather and evaluate information necessary to determine licensees' compliance.
- Surveyors should utilize an on-site inspection record checklist, review their files for potential follow-up items, and obtain all documentation necessary to support noted findings.

MCL Section 18.1285 requires LARA to maintain records necessary for the adequate and proper recording of its activities and protection of the legal rights of the State. LARA's records retention and disposal schedule indicates transactional documents should be retained for three years from the date created. Completed checklists, incident reports (IRs) requiring follow-up, and supporting documentation constitute BCHS's comprehensive record of the criteria evaluated and items tested to determine compliance and support its conclusion.

Our review of BCHS's processes and supporting documentation for 55 on-site renewal inspections relating to 38 HFAs active at some point from October 1, 2018 through June 30, 2022 disclosed:

- a. BCHS did not complete or maintain all documentation to support its on-site renewal inspections and conclusions. Specifically, BCHS:
 - (1) Could not provide 21 (38.2%) on-site inspection record checklists.
 - (2) Provided 19 (34.5%) partially completed on-site inspection record checklists.
 - (3) Could not provide documentation to support the noncompliance it identified in the 32 applicable on-site inspections.
- b. BCHS did not retain documentation to support its key inspection procedures and pertinent HFA information, including:
 - (1) IRs or an explanation of its review and assessment of the IRs related to the 8 renewal inspections for which the LSR indicated follow-up was applicable.

- (2) The total number of residents BCHS selected to verify the HFA's compliance with the administration of medications and review documentation of resident service plans and admission records.
 - (3) Its verification of the HFA not exceeding the authorized total number of residents.
 - (4) The total number of active employees and identification of the specific employees BCHS selected to review the HFA's documentation supporting required employee training, background checks, and health records.
 - (5) The names and titles of the individuals BCHS interviewed to corroborate its observations of the HFA's day-to-day operations.
- c. BCHS did not have a managerial review process to ensure the surveyors appropriately and thoroughly evaluated all applicable areas and followed up all applicable IRs during their inspections.
 - d. BCHS did not affirmatively document whether administrative rule violations noted during renewal inspections impacted the health, safety, or well-being of residents. BCHS's addition of a standardized requirement to its inspection documentation would help BCHS ensure its surveyors evaluated the severity of the noncompliance and whether a follow-up inspection should be performed prior to the next routine inspection.

LARA's HFA Licensing Policy Manual item 510 requires BCHS to obtain from HFAs cited for administrative rule violations a corrective action plan (CAP) identifying how compliance will be achieved. The item also requires BCHS to conduct a follow-up inspection when the noncompliance issue impacts the health, safety, or well-being of residents.

BCHS indicated identification of violations warranting a follow-up inspection based on administrative rule number alone is not practical and that a specific event code is available in its Bureau Information Tracking System (BITS) for a surveyor to indicate a follow-up inspection should be performed. However, it is solely up to the surveyor to initiate entry of this event code, and our analysis of BITS data associated with all HFAs licensed at some point from October 1, 2017 through March 22, 2022 did not identify any instances in which this specific event code was used.

LARA's HFA Licensing Policy Manual appendices 100 and 110 indicate BCHS should purge on-site inspection record checklists and other supporting documentation after the licensee affirms

BCHS's cited violations. However, these appendices are not consistent with LARA's records retention and disposal schedule.

RECOMMENDATION

We recommend that BCHS implement a managerial review process and maintain documentation necessary to demonstrate it appropriately and thoroughly evaluated all applicable areas and followed up all applicable IRs during its on-site renewal inspections.

AGENCY PRELIMINARY RESPONSE

LARA provided us with the following response:

BCHS agrees with this recommendation.

- a. *Renewal Inspections & Documentation: BCHS will evaluate and clarify its retention and disposal schedule to retain renewal inspection reports and maintain checklists for the full retention period. The supporting documentation obtained by the surveyor for deficiencies will also be identified as transactional documentation within the retention and disposal schedule. BCHS will retain the information until the facility's right to appeal has expired following BCHS's approval of the facility's corrective action plan to eliminate the deficient practice.*
- b. *Managerial Review Process: BCHS does have an informal process for managerial review. This includes the manager reviewing all complaint related reports as well as renewals where the health care surveyor may have questions or concerns and request manager input, such as where a statute or rule may be vague and open to interpretations. BCHS, however, agrees that it can improve its managerial review process by formalizing and documenting its process of selecting a small random sample of reports to ensure compliance and consistency on an annual basis.*
- c. *Incident Responses: BCHS will evaluate and clarify its retention and disposal schedule to ensure the current process for maintaining IRs, identified as a transactional document in the retention schedule, which BCHS will retain until the right to appeal has expired.*

The IR process has already been reviewed and evaluated by BCHS, HFA provider associations, resident advocacy organizations, HFA providers, and the public. Additionally, and in accordance with MCL 333.20172, draft changes to the administrative rules have been moving through the rule promulgation process. These changes will provide regulatory relief and streamline the process for IRs while protecting the health, safety, and welfare of residents. Through multiple meetings and a public hearing, draft changes to the administrative rules were created to

streamline the IR process. The draft changes to the administrative rules have the following effect:

- *Clarify the definition of an incident that an HFA should document on an IR.*
- *Remove the requirement for the HFA to send the IR to BCHS for review. In lieu of submission of the IR, the HFA must establish a quality assessment and performance improvement program pursuant to MCL 333.20175 and must complete the following actions:*
 - *Reviewing and evaluating incidents.*
 - *Identifying effective means to correct any deficient practice.*
 - *Ensuring resident safety and quality of care.*
 - *Improving procedures.*

BCHS anticipates the final administrative rules will go into effect in May 2023. BCHS will update its checklist, process, and the AFC & HFA Licensing Division Policy Manual at that time to include the requirement that health care surveyors review HFA quality review programs during renewal surveys to confirm the programs are in place. During complaint investigations, health care surveyors will require HFAs to confirm incidents were reviewed and the corrective actions taken, if any.

BCHS will revisit the timeline that determines how long an HFA is required to retain IRs on file in the administrative rules.

- d. *Follow-up Inspections: To provide an affirmative process of identifying whether a revisit is necessary, BCHS will add a question to the survey checklist to ensure that the surveyor documents if a revisit is needed due to the violations cited or is not necessary. If a revisit is identified as appropriate for the violations identified, in addition to noting it on the survey checklist, the surveyor will enter the event code Inspection Due into BITS documenting the necessity of the revisit within the database. In addition, BCHS will establish criteria of when a follow-up inspection is necessary to ensure consistency across the team.*

Regarding documentation for special investigations or licensure surveys, the HFA Licensing Division Policy Manual currently reflects the retention schedule used when HFA was associated with BCHS's Adult Foster Care & Camps Licensing Division. BCHS is working to align HFA with the Health Facilities retention schedule. The policy manual will be updated to reflect the appropriate retention period for maintaining survey reports, survey checklists, and code sheets as documentation of completed surveys. Additionally, BCHS will evaluate the necessity of maintaining facility obtained documentation after any right to appeal has expired.

FINDING 2

Improved monitoring of HFA employee background checks could help improve resident safety.

BCHS should improve its monitoring of HFA employee background checks to help ensure licensees conduct the required checks consistently and timely to help prevent individuals with unsuitable backgrounds from having access to HFA residents.

MCL Section 333.20173a states HFAs shall not employ an individual who regularly has direct access to or provides direct services to residents if the individual has been convicted of select crimes. LARA's HFA Licensing Policy Manual identifies licensees as responsible for ensuring a fingerprint background check is completed utilizing LARA's Workforce Background Check (WBC) System* for all employees, independent contractors, or individuals granted clinical privileges and requires the BCHS surveyor to verify, during renewal inspections, the completion of employee criminal history and background checks for 10% of the HFA employees.

Our review of HFA employee records and the WBC System for the 1,300 people employed by 5 HFAs, at any time from October 1, 2018 through June 30, 2022, disclosed BCHS did not detect:

- a. Four HFA licensees did not conduct the required background checks for 12 employees. The employment duration of these employees ranged from 22 days to 2,251 days (459 days on average), including 2 active employees who worked 541 days and 906 days at their respective HFAs as of June 30, 2022.
- b. Four HFA licensees did not conduct timely background checks for 42 employees. On average, the checks occurred 1,308 days after the employees' hire date and ranged from 14 days to 5,460 days.

BCHS does not maintain HFA employee listings to allow for centralized comparisons with the WBC System. Also, as noted in Finding 1, part b.(4), BCHS did not retain documentation supporting its review of HFA employee background checks, leaving BCHS management unable to monitor the thoroughness of the reviews performed by BCHS surveyors during inspections.

RECOMMENDATION

We recommend that BCHS effectively monitor HFA employee background checks to help ensure licensees conduct the required checks consistently and timely.

AGENCY PRELIMINARY RESPONSE

LARA provided us with the following response:

BCHS agrees with this recommendation.

* See glossary at end of report for definition.

To measure compliance with MCL 333.20173a, BCHS will design and implement a new survey methodology process. During an on-site licensure survey, a surveyor will have an HFA log into the WBC System and utilize the report feature within the system to pull the list of all individuals found eligible to work within the HFA facility. This will allow the surveyor to compare the current HFA employee roster with the WBC data. BCHS will retain the employee roster and WBC report in accordance with its retention schedule.

To measure compliance of the HFA with Administrative Rule 325.1944(1)(i), which requires criminal background information be a portion of the employee records, BCHS will evaluate and implement a new sample methodology based on statistical sampling standards. This sampling will help ensure that eligibility letters are appropriately maintained within employee records.

FINDING 3

Changes needed to HFA licensing fees.

LARA needs to evaluate the HFA licensing fee structure to ensure the restricted revenues earned are appropriate and reasonable in relation to the costs of licensing and inspecting HFAs.

MCL Sections 333.20161(1) and 333.20161(7) established and require HFA license fees to support the cost of HFA licensure activities.

Annual HFA licensing fees have not changed since legislatively established in 1981 at \$6.27 per licensed bed, and the State of Michigan statute does not provide for assessing other types of HFA fees, fines, or penalties. Our research indicated other states assessed HFA licensing fees, application fees, change in ownership-interest fees, late renewal fines, and compliance violation fines. We noted:

- a. For fiscal years 2018 through 2021, BCHS's cost to regulate licensed HFAs exceeded the related licensing fee revenue as follows:

Fiscal Year	Licensing Fee Revenue	Licensure Activity Costs	Deficit and Percentage of Costs Covered by General Fund/General Purpose and/or Other Restricted Revenues
2018	\$188,282	\$ 844,355	(\$656,073) (77.7%)
2019	\$131,639	\$ 886,910	(\$755,270) (85.2%)
2020	\$152,203	\$ 785,559	(\$633,356) (80.6%)
2021	\$145,974	\$1,033,939	(\$887,965) (85.9%)

Also, based on BCHS's fiscal year 2021 expenditures and the bed capacity for the 317 licensed HFAs as of April 26, 2022, we estimated BCHS would need to charge \$42.72 per bed to cover its licensure activity costs.

- b. Michigan statute does not provide BCHS the authority to assess fines for compliance violations. Fines could deter noncompliance and result in improved care for HFA residents and efficiencies for BCHS. From October 1, 2018 through June 30, 2022, BCHS noted at least one compliance violation in 70.8% of its original and renewal inspections and 46.1% of its complaint investigations, as follows:

Fiscal Year	Number of Original and Renewal Inspections		
	Total Completed	With Violations	Percentage With Violations
2019	195	156	80.0%
2020	123	90	73.2%
2021	244	157	64.3%
2022*	113	75	66.4%
Total	675	478	70.8%

* Through June 30, 2022.

Fiscal Year	Number of Complaint Investigations		
	Total Completed	With Violations	Percentage With Violations
2019	446	221	49.6%
2020	429	186	43.4%
2021	439	231	52.6%
2022*	365	136	37.3%
Total	1,679	774	46.1%

* Through June 30, 2022.

Our research noted the State of Minnesota statute provides for the assessment of fines for differing levels of compliance violations. For example, Minnesota may not assess a fine for a Level 1 violation; however, it may assess a \$500 fine for a Level 2 violation, \$3,000 for a Level 3 violation, and \$5,000 for a Level 4 violation.

- c. Michigan statute does not provide BCHS the authority to assess fines for late license renewal applications. From October 1, 2018 through June 30, 2022, BCHS received 748 license renewal applications subsequent to the date the previous license expired.

Our research noted the State of Ohio statute provides for assessing a \$100 late fee per week that the renewal fee is outstanding; Minnesota statute provides for assessing a \$200 late fee for a renewal application submitted within 30 days of or after the license expiration date.

RECOMMENDATION

We recommend that LARA evaluate the HFA licensing fee structure, including examining the potential need to request legislative authority to assess fines for compliance violations and/or late renewals.

AGENCY PRELIMINARY RESPONSE

LARA provided us with the following response:

LARA agrees with this recommendation.

Under existing statute, BCHS can issue fines in limited circumstances, but not related to cited violations with the statute and administrative rules or late renewal payments.

BCHS will work with LARA's legislative liaison, LARA's finance director, and the Legislature to evaluate the licensing fee structure to ensure the restricted revenues earned reasonably cover BCHS's related costs and evaluate modifying statutory authority to assess fines for compliance violations and/or late renewals.

OBSERVATION 1

HFA exemption statute may need to be clarified and/or strengthened.

State of Michigan statute allows HFAs to self-certify their eligibility for exemption from State licensing and oversight requirements prescribed by the Public Health Code (*MCL* Sections 333.20101 - 333.22260) and *Michigan Administrative Code** and appears to limit BCHS's ability to investigate complaints made against exempt HFAs.

Public Act 167 of 2017 (*MCL* Section 333.21311a), effective February 2018, established an exemption from licensure, including on-site monitoring inspections, for new and existing HFAs and requires BCHS to issue an exemption upon receipt of a completed and signed request form upon which an HFA attests to the specific exemption it meets. As of June 30, 2022, 214 HFAs with a combined capacity of 29,210 beds were exempt and 318 HFAs with a combined approved capacity of 24,303 beds were licensed.

MCL Section 333.21311a provides for a \$5,000 fine for submitting a false or inaccurate attestation; however, it appears to prohibit BCHS from validating the HFA's attestation. Also, *MCL* Section 333.21311a(7) appears to require a higher standard be met before BCHS can investigate complaints related to exempt HFAs. *MCL* Section 333.20176 requires BCHS to investigate complaints related to a licensed HFA for any allegation of noncompliance with the Public Health Code or *Michigan Administrative Code*. However, *MCL* Section 333.21311a(7) appears to limit BCHS's ability to investigate complaints related to exempt HFAs unless:

- The complaint alleges false or inaccurate information was provided to obtain the exemption.
- The HFA is found to be negligent in a resident's death, serious physical injury, or serious mental anguish, as determined by a physician, physician assistant, or nurse practitioner, and a continued risk to the health and safety of the residents at the HFA exists.

As of July 2022, BCHS determined it had authority to investigate only 3 (0.8%) of the 389 complaints related to exempt HFAs received from October 1, 2018 through June 30, 2022. Based on one investigation involving the death of a resident, BCHS revoked the HFA's exemption status concluding the investigation results were inconsistent with the HFA's exemption attestation. For comparison purposes, BCHS investigated 1,711 (84.2%) of the 2,032 complaints it received during the same time period for licensed HFAs. Increasing the level of responsibility in relation to approving exempt status and investigating complaints could help reduce the risk of potential neglect, abuse, and exploitation for a vulnerable and expanding segment of Michigan's population.

BCHS could work with the Legislature to clarify and strengthen the process for approving exempt HFAs by requiring BCHS to validate HFAs met the requirements for the licensing exemption.

* See glossary at end of report for definition.

INVESTIGATING AND RESOLVING COMPLAINTS

BACKGROUND

BCHS receives and investigates complaints alleging noncompliance with the Public Health Code (Public Act 368 of 1978, as amended) and related *Michigan Administrative Code* rules.

From October 1, 2018 through June 30, 2022, BCHS received 2,032 complaints, completed 1,679 complaint investigations, and dismissed 311 complaints. BCHS identified 1,558 noncompliance violations during 774 complaint investigations. See Exhibits 4 and 5 for more detailed complaint, investigation, and violation information.

AUDIT OBJECTIVE

To assess the sufficiency of BCHS's efforts to investigate and resolve complaints of alleged administrative rule or State statute violations related to HFAs.

CONCLUSION

Sufficient, with exceptions.

FACTORS IMPACTING CONCLUSION

- BCHS initiated its investigation within 7 days from receipt of the complaint for 93.2% of the complaint investigations we reviewed.
- BCHS management approved the 44 complaint investigation reports we reviewed.
- BCHS maintained CAPs submitted by the HFAs for 23 (95.8%) of the 24 complaint investigations with identified noncompliance we reviewed.
- BCHS appropriately conducted special investigations into the 3 complaints related to unlicensed HFAs we reviewed.
- Reportable condition related to improving complaint and special investigation documentation and other complaint investigation and dismissal processes (Finding 4).

FINDING 4

Complaint investigation processes could be improved.

BCHS could improve its complaint investigation and dismissal processes to help mitigate potential risks to the health, safety, and well-being of HFA residents.

MCL Section 333.20176 requires BCHS to investigate each written complaint received and notify the complainant in writing of the results of the investigation and any action proposed to be taken. LARA's HFA Licensing Policy Manual items 100, 265, 320, 350, and 370 and appendix 100 indicate complaint investigations are the highest priority, based on the degree of risk to residents, and require BCHS to:

- Complete complaint investigations within 60 days of receipt.
- Obtain all documentation necessary to support investigative findings.
- Obtain a CAP if citing violations in the special investigation report (SIR).
- Create and retain an SIR code sheet to identify residents, resident relatives, resident guardians, and complainants addressed in SIRs.

Also, *MCL* Section 18.1285 requires LARA to maintain records necessary for the adequate and proper recording of its activities and protection of the legal rights of the State, and LARA's records retention and disposal schedule indicates transactional documents should be retained for three years from the date created.

Related to licensed HFAs, BCHS opened and/or completed 1,762 complaint investigations from October 1, 2018 through June 30, 2022 and dismissed 277 complaints it received from October 1, 2018 through March 22, 2022. We reviewed the timeliness of all 1,762 complaint investigations and BCHS's processes and supporting documentation for 44 completed complaint investigations and 28 dismissed complaints. We noted BCHS:

- a. Did not complete 294 (16.7%) complaint investigations within the required 60 days, as follows:

Fiscal Year	Days to Complete Complaint Investigations				
	61 to 70	71 to 80	81 to 90	91 to 120	Over 120
2019	55	25	19	28	10
2020	24	8	3	3	0
2021	23	13	11	12	4
2022 ⁽¹⁾	28	12	5	3	0
2022 ⁽²⁾	4	0	0	1	3
Total	134	58	38	47	17

⁽¹⁾ Completed October 1, 2021 through June 30, 2022.

⁽²⁾ In progress as of June 30, 2022.

BCHS indicated simultaneously completing multiple complaint investigations for the same HFA or delays in obtaining documentation from the HFA were the primary reasons for the delays.

- b. Did not maintain documentation to support the noncompliance issues for 21 (87.5%) and the HFA's CAP for 1 (4.2%) of the 24 investigations in which BCHS identified noncompliance.
- c. Did not always maintain supporting documentation or obtain managerial approval for dismissing complaints. Specifically:
 - (1) BCHS did not document sufficient information to support dismissing 4 (14.3%) complaints.
 - (2) BCHS management did not review or approve the surveyor's decision to dismiss the complaints.

BCHS had not established formal guidance and did not require its surveyors to document their reasoning for dismissing a complaint.

- d. Did not notify the complainant of the results of 8 (34.8%) of the 23 completed complaint investigations we reviewed for which BCHS documented the complainant's identifying information.

BCHS indicated it did not have sufficient contact information to provide the investigation results to the complainant. However, we noted BCHS interacted with 6 of the 8 complainants throughout the investigation giving BCHS opportunity to obtain contact information.

- e. Did not identify for the 44 investigations all appropriate individuals on 6 (13.6%) SIR code sheets and did not maintain 1 (2.3%) SIR code sheet.

LARA's HFA Licensing Policy Manual appendices 100 and 110 indicate BCHS should purge complaint investigation and corrective action supporting documentation after the SIR is completed and compliance is verified. However, these appendices are not consistent with LARA's records retention and disposal schedule.

RECOMMENDATION

We recommend that BCHS improve its processes to ensure timely complaint investigations, proper documentation, managerial approval, and proper notification of investigation results.

**AGENCY
PRELIMINARY
RESPONSE**

LARA provided us with the following response:

BCHS agrees with this recommendation, with comment.

- a. *Complaint Investigation Timeliness:* *The 60-day completion metric is not required by State law or applicable administrative rules, but it is listed within the BCHS policy. This policy requires the issuance of an investigation report to complete the investigation. An investigation may require additional information from the licensee, the complainant, law enforcement, medical examiner, and other health care providers. As a result, complaint investigations may take longer than 60 days to receive the information and documentation necessary for the accurate completion of the investigation report.*

BCHS is evaluating the timelines identified within its internal policy. More specifically, BCHS will adjust the policy to emphasize the timely initiation of complaint investigations. Additionally, the policy will be adjusted to state that the complaint investigation report must be issued within 45 days of the receipt of all external information or documentation necessary for the accurate completion of the investigation report. Finally, BCHS must document why an investigation report could not be issued within 60 days of receiving the complaint.

- b. *Complaint Investigation Notifications:* *BCHS currently mails the final complaint report to the complainant through US mail when a complete mailing address has been supplied by the complainant.*

BCHS is evaluating corrective actions that can be taken to improve its ability to notify complainants of investigation results in writing. First, BCHS will make a reasonable effort to notify complainants that a complete mailing address or an email address must be provided to enable BCHS to send the investigation results in writing. BCHS will document this notification attempt. To further improve compliance with MCL 333.20176(1), BCHS will implement the following actions:

- *Utilize email as a method to provide complainants with a written copy of the final complaint report.*
- *BCHS staff were advised via an email on October 13, 2022, that effective immediately, the following changes have been implemented:*
 - *If a complainant has supplied a valid email address, the surveyor will email the complainant a copy of the final complaint report.*
 - *If a complainant has supplied a phone number, the surveyor will make one attempt*

to contact the complainant to see if they would like to supply a mailing address or an email address to receive a written copy of the final complaint report. The surveyor will document the attempt to obtain the mailing address or email address of the complainant through a comment in the BCHS data system.

- Evaluate modifying the online complaint form:
 - Ensure the form indicates that a complete mailing address or a valid email address must be provided by the complainant to allow for BCHS to send a written copy of the investigation results and any action proposed to be taken.
 - Evaluate adding an event within the BCHS data system to document the issuance of the complaint report to the complainant and whether the distribution was through US mail or via email.
- c. Complaint Dismissals: BITS does not maintain the reason code selected by HFA survey staff when an intake is dismissed due to the database programming. Historically, email communication was the main form of documentation utilized to support the reason for dismissal of intakes.

On October 31, 2022, BCHS added an event code within BITS, titled "Intake Dismissed – Reason", which will be used by HFA survey staff to document the specific reason that an intake has been dismissed within the database.

HFA survey staff have been informed of this process change through email notification. The change was implemented on November 1, 2022, and will be incorporated into applicable BCHS process instructions.

- d. Complaint Response: The one instance of the missing CAP and code sheet were the result of a scanning error when the paper file was converted to an electronic format. BCHS will review its practice of quality verification of scanning documents.
- e. SIR Code Sheets: BCHS will evaluate its policy on coding of residents and staff for special investigations and licensure surveys to ensure that the policy is clear and consistent on coding requirements.

Regarding documentation for special investigations or licensure surveys, the HFA Licensing Division Policy Manual currently reflects the retention schedule used when HFA was associated with BCHS's Adult Foster Care & Camps Licensing Division. BCHS is working to align HFA with the Health Facilities retention

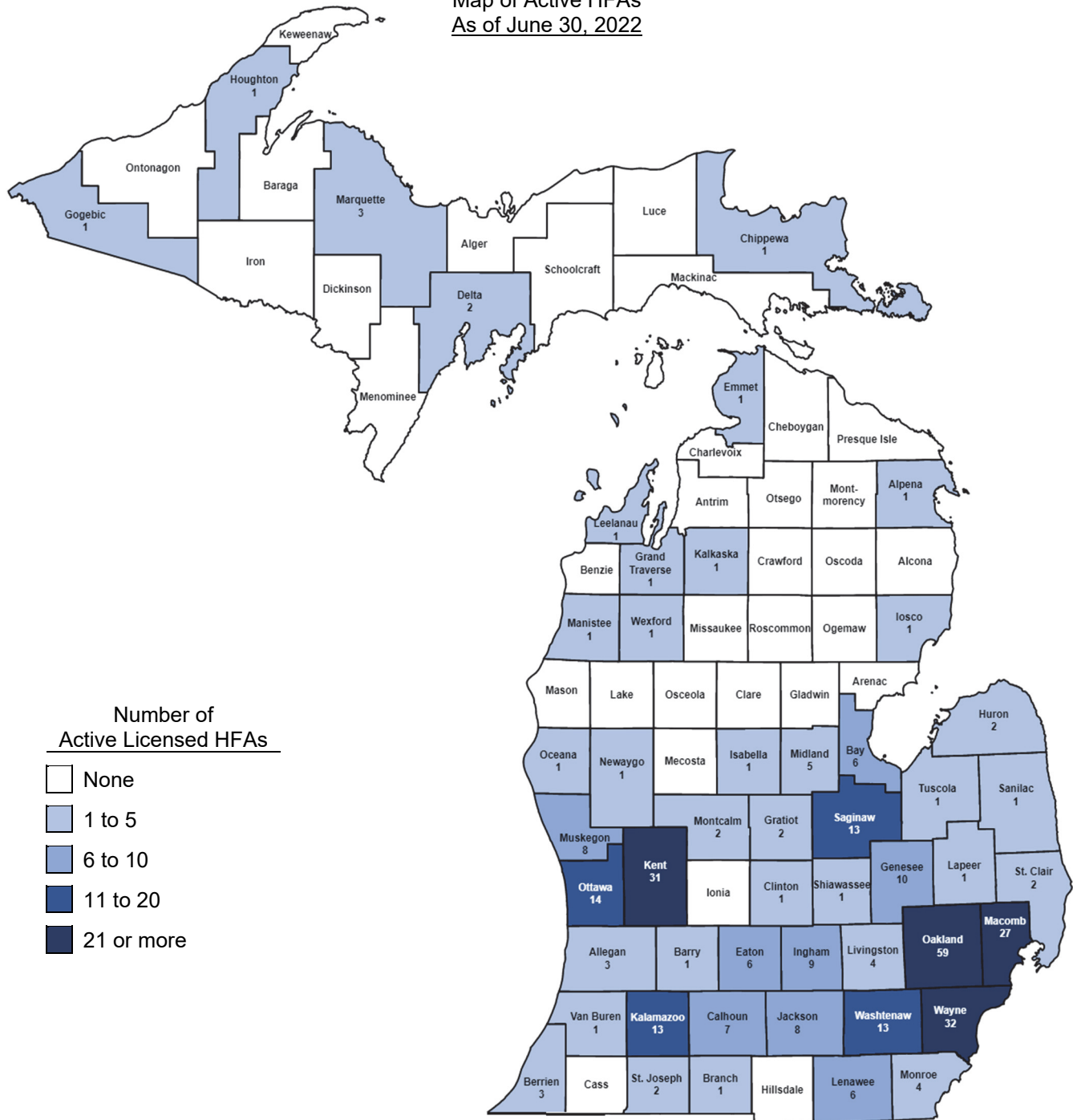
schedule. The policy manual will be updated to reflect the appropriate retention period for maintaining survey reports, survey checklists, and code sheets as documentation of completed surveys. Additionally, BCHS will evaluate the necessity of maintaining facility obtained documentation after any right to appeal has expired.

UNAUDITED
Exhibit 1

LICENSING AND INSPECTIONS OF HOMES FOR THE AGED

Bureau of Community and Health Systems
Department of Licensing and Regulatory Affairs

Map of Active HFAs
As of June 30, 2022



Source: The OAG prepared this exhibit using data from LARA's BITS.

LICENSING AND INSPECTIONS OF HOMES FOR THE AGED

Bureau of Community and Health Systems
Department of Licensing and Regulatory Affairs

Number of Completed Inspections
From October 1, 2018 Through June 30, 2022

Month	Fiscal Year				Total
	2019	2020	2021	2022*	
October	13	14	26	17	70
November	13	13	17	15	58
December	8	21	16	13	58
January	14	14	16	14	58
February	13	10	23	18	64
March	26	6	22	14	68
April	18	4	15	8	45
May	11	1	20	10	42
June	31	6	26	5	68
July	19	8	26		53
August	13	15	14		42
September	16	11	22		49
Total number of inspections completed	195	123	243	114	675
Average number of inspections completed, per month	16.3	10.3	20.3	12.7	
Number (percent) of inspections with violations cited	156 (80.0%)	90 (73.2%)	157 (64.6%)	75 (65.8%)	478 (70.8%)
Number of violations cited	657	462	654	286	2,059

*As of June 30, 2022.

Source: The OAG prepared this exhibit based on information obtained from BITS.

LICENSING AND INSPECTIONS OF HOMES FOR THE AGED

Bureau of Community and Health Systems
Department of Licensing and Regulatory Affairs

Top 10 Violations Cited in Completed Inspections
From October 1, 2018 Through June 30, 2022

Michigan Administrative Code Rule	Description	Fiscal Year				Total
		2019	2020	2021	2022*	
R 325.1932(1)	The giving/taking/application of medications shall be in accordance with labeling instructions or orders of the prescribing licensed health care professional.	35	24	34	21	114
R 325.1976(6)	Food and drink shall be clean and wholesome.	41	20	38	13	112
R 325.1953	Home shall post regular and therapeutic or special diet menus for the current week.	42	15	39	10	106
R 325.1923(2)	Home shall provide a TB screening for all employees.	22	23	37	24	106
R 325.1932(3)	Resident medication handling, administration, and recordkeeping requirements for staff.	28	32	29	3	92
R 325.1964(9)	Ventilation shall be provided throughout the facility.	34	19	16	20	89
R 325.1922(7)	Home shall provide a TB screening for all residents.	7	14	42	26	89
R 325.1932(2)	The giving/taking of medications shall be supervised by the home in accordance with the resident's service plan.	29	16	26	12	83
R 325.1954	Home shall maintain a record of the meal census.	24	14	34	11	83
R 325.1921(1)	Owner, operator, and governing body requirement.	24	16	27	10	77
Total Top 10 HFA Violations Cited		286	193	322	150	951

*As of June 30, 2022.

Source: The OAG prepared this exhibit based on information obtained from BITS.

LICENSING AND INSPECTIONS OF HOMES FOR THE AGED Bureau of
Community and Health Systems
Department of Licensing and Regulatory Affairs

Complaints Received and Dismissed and Investigations Opened and Completed
From October 1, 2018 Through June 30, 2022

Month	Fiscal Year												Total		
	2019			2020			2021			2022*					
	Complaints Received	Complaints Dismissed	Investigations Opened	Complaints Received	Complaints Dismissed	Investigations Opened	Complaints Received	Complaints Dismissed	Investigations Opened	Complaints Received	Complaints Dismissed	Investigations Opened	Complaints Received	Complaints Dismissed	Investigations Opened
October	39	11	29	60	5	55	34	6	28	49	6	42	182	28	154
November	46	7	39	41	9	31	40	5	35	53	4	49	180	25	154
December	33	6	27	31	3	28	40	5	35	47	4	43	151	18	133
January	46	8	38	36	7	29	55	9	46	63	13	50	200	37	163
February	50	4	46	40	2	38	43	7	36	47	4	43	180	17	163
March	48	10	38	42	5	37	48	3	45	46	10	36	184	28	156
April	50	9	41	42	11	31	26	3	23	58	12	45	176	35	140
May	42	7	35	31	6	25	36	4	32	55	6	47	164	23	139
June	41	7	35	34	2	32	51	9	42	74	12	56	200	30	165
July	43	8	35	55	8	47	40	5	35				138	21	117
August	45	5	40	46	9	35	57	7	50				148	21	125
September	47	8	39	34	12	22	48	8	40				129	28	101
Total	530	90	442	492	79	410	518	71	447	492	71	411	2,032	311	1,710
Monthly averages	44.2	7.5	36.8	41.0	6.6	34.2	43.2	5.9	37.3	54.7	7.9	45.7			

Investigations Completed	Fiscal Year			
	2019	2020	2021	2022*
Total number of investigations completed	446	429	439	365
Average number of investigations completed per month	37.2	35.8	36.6	40.6
Number (percent) of completed investigations with violations cited	221 (49.6%)	186 (43.4%)	231 (52.6%)	136 (37.3%)
Number of violations cited	458	415	488	197

*As of June 30, 2022.

Source: The OAG prepared this exhibit based on information obtained from BITS.

LICENSING AND INSPECTIONS OF HOMES FOR THE AGED

Bureau of Community and Health Systems
Department of Licensing and Regulatory Affairs

Top 10 Violations Cited in Completed Investigations
From October 1, 2018 Through June 30, 2022

Michigan Administrative Code Rule or MCL Section Citation	Description	Fiscal Year				Total
		2019	2020	2021	2022*	
R 325.1921(1)	Owner, operator, and governing body requirements.	68	64	67	36	235
R 325.1931(2)	Home shall treat residents with dignity and personal needs consistent with the resident's service plan.	62	48	55	23	188
R 325.1924(3)	Home shall report an incident/accident to BCHS within 48 hours and immediately to others.	43	37	53	14	147
R 325.1932(1)	The giving/taking/application of medications shall be in accordance with labeling instructions or orders of the prescribing licensed health care professional.	34	31	29	18	112
R 325.1922(5)	Home shall update each resident's service plan annually or when there is a significant change in the resident's care needs.	30	27	29	12	98
R 325.1932(3)	Resident medication handling, administration, and recordkeeping requirements for staff.	20	17	22	7	66
R 325.1931(5)	Home shall have adequate and sufficient staff on duty at all times capable of providing for resident needs consistent with resident service plans.	19	14	23	7	63
R 325.1924(1)	Home shall complete a report of all reportable incidents, accidents, and elopements including specified information.	20	12	22	7	61
Section 333.20201(1)	Home shall adopt, provide, and post a policy describing the rights and responsibilities of residents.	18	23	9	7	57
R 325.1932(5)	Home shall take precautions to ensure prescription medication is only used for the resident for whom it is prescribed.	12	10	14	5	41
Total Top 10 HFA Violations Cited		326	283	323	136	1,068

*As of June 30, 2022.

Source: The OAG prepared this exhibit based on information obtained from BITS.

DESCRIPTION

BCHS licenses and monitors HFAs operating in the State of Michigan in accordance with the Public Health Code (*MCL* Sections 333.20101 - 333.20211 and Sections 333.21301 - 333.21335) and *Michigan Administrative Code* rules. BCHS's mission is to prevent harm and provide protection to those persons reliant on HFA services.

BCHS regulates HFAs after initial inspection and licensure through good moral character assessments of HFA licensees; on-site renewal inspections; complaint investigations; review and approval of CAPs; and disciplinary action, if necessary. Disciplinary actions may include denial or revocation of a license, involuntary reduction in capacity, or issuance of a corrective notice order.

As of June 30, 2022, BCHS employed 1 manager and 8 surveyors and annually expended approximately \$900,000 during fiscal years 2019 through 2021 to regulate HFAs.

AUDIT SCOPE, METHODOLOGY, AND OTHER INFORMATION

AUDIT SCOPE

To examine the records and processes related to BCHS's efforts to license, regulate, investigate, and resolve complaints of HFAs. We conducted this performance audit* in accordance with generally accepted government auditing standards. Those standards require that we plan and perform the audit to obtain sufficient, appropriate evidence to provide a reasonable basis for our findings and conclusions based on our audit objectives. We believe that the evidence obtained provides a reasonable basis for our findings and conclusions based on our audit objectives.

As part of the audit, we considered the five components of internal control (control environment, risk assessment, control activities, information and communication, and monitoring activities) relative to the audit objectives and determined all components were significant.

PERIOD

Our audit procedures, which included a preliminary survey, audit fieldwork, report preparation, analysis of agency responses, and quality assurance, generally covered October 1, 2018 through June 30, 2022.

METHODOLOGY

We conducted a preliminary survey to gain an understanding of BCHS's operations to formulate a basis for establishing our audit objectives, scope, and methodology. During our preliminary survey, we:

- Interviewed BCHS management and staff regarding their responsibilities and procedures.
- Reviewed applicable *MCL* sections, *Michigan Administrative Code* rules, and BCHS policies.
- Analyzed BCHS revenue and expenditure data from October 1, 2018 through March 31, 2022.
- Analyzed HFA-related BITS data to identify new licenses issued, inspections completed, complaints received, investigations opened and completed, and noncompliance issues reported.
- Obtained an understanding of BCHS's processes to inspect and license HFAs, including the on-site inspection, CAP, and IR processes.
- Obtained an understanding of BCHS's processes to screen, investigate, and resolve complaints of alleged *MCL* and *Michigan Administrative Code* violations.

* See glossary at end of report for definition.

- Obtained an understanding of BCHS's processes related to granting an HFA exemption.
- Analyzed the timeliness of the initial license issuance, renewal inspections, and complaint investigation processes performed from October 1, 2018 through March 22, 2022.
- Reconciled BCHS's legislative reports for fiscal years 2019, 2020, and 2021 with BITS data.

OBJECTIVE 1

To assess the effectiveness of BCHS's efforts to inspect and license HFAs.

To accomplish this objective, we:

- Analyzed BITS data related to the 380 HFAs active at any time from October 1, 2018 through June 30, 2022 to determine whether BCHS completed on-site inspections at least once every three years.
- Tested BCHS's records for 9 of the 62 HFAs, who applied and were newly licensed from October 1, 2018 through June 30, 2022, to assess BCHS's initial licensing procedures and determine whether BCHS obtained and reviewed all required documents and completed an on-site inspection prior to issuance, assessed appropriate license fees, and accurately documented all key events in BITS.
- Reviewed BCHS's records of the 55 on-site renewal inspections relating to 38 of the 380 HFAs active at any time from October 1, 2018 through June 30, 2022 to determine whether BCHS:
 - Appropriately conducted periodic on-site inspections.
 - Appropriately obtained, approved, and documented the HFAs' CAPs, if required.
 - Assessed appropriate licensing renewal fees.
 - Issued license renewals timely.
 - Accurately documented all key events related to license renewals in BITS.
- For 36 of the 380 HFAs active at any time from October 1, 2018 through June 30, 2022, we reviewed the three most recent IRs submitted by the HFAs (99 of the 795 total IRs) since their last inspection through June 30, 2022 to determine whether BCHS properly reviewed and documented the IRs and subsequent actions taken.

- Reviewed BCHS's records for 40 of the 209 HFAs who had more than one inspection from October 1, 2018 through June 30, 2022 to determine whether BCHS verified compliance with the HFAs' prior CAPs.
- Verified 18 of the 155 HFAs granted exempt status between October 1, 2018 and June 30, 2022 qualified for the exemption based on the documentation submitted to BCHS and our review of the services advertised on their Web sites.
- Obtained BCHS management views regarding the HFA exemption statute.
- Reviewed BCHS's records for 235 HFA personnel required to have background checks for the 380 HFAs active at some point from October 1, 2018 through June 30, 2022 to determine whether BCHS completed required background checks.
- Reviewed fees and fee structures for facilities similar to HFAs in other midwestern states.
- Analyzed the HFA fee revenue and related expenditures for fiscal years 2018 to 2021.
- Selected 40 of 317 licensed HFAs, actively operating as of June 30, 2022, and requested staff rosters from October 1, 2018 through June 30, 2022. We compiled the first 5 HFAs' staff rosters received, including 1,300 employees, and compared our listing with LARA's WBC System to determine whether HFAs completed the employee background checks timely. Based on our selection methodology, we could not project into the entire population.

Unless otherwise indicated, our samples were randomly selected to eliminate bias and enable us to project the results to the respective populations.

OBJECTIVE 2

To assess the sufficiency of BCHS's efforts to investigate and resolve complaints of alleged administrative rule or State statute violations related to HFAs.

To accomplish this objective, we:

- Requested documentation for 28 of the 277 dismissed complaints BCHS received from October 1, 2018 through March 22, 2022 to determine whether BCHS properly dismissed the complaint.
- Reviewed the appropriateness of BCHS's documentation related to 44 of the 1,679 complaint investigations BCHS

opened and completed from October 1, 2018 through June 30, 2022.

- Analyzed the 1,762 complaint investigations BCHS opened and/or completed from October 1, 2018 through June 30, 2022 to assess timely completion.
- Selected 21 of the 214 complaint investigations of unlicensed facilities BCHS conducted from October 1, 2018 through March 22, 2022. We reviewed the appropriateness of BCHS's complaint investigation documentation for the 3 related to HFAs.

Unless otherwise indicated, our samples were randomly selected to eliminate bias and enable us to project the results to the respective populations.

CONCLUSIONS

We base our conclusions on our audit efforts and any resulting material conditions* or reportable conditions.

When selecting activities or programs for audit, we direct our efforts based on risk and opportunities to improve State government operations. Consequently, we prepare our performance audit reports on an exception basis.

AGENCY RESPONSES

Our audit report contains 4 findings and 4 corresponding recommendations. LARA's preliminary response indicates it agrees with all of the recommendations.

The agency preliminary response following each recommendation in our report was taken from the agency's written comments and oral discussion at the end of our fieldwork. Section 18.1462 of the *Michigan Compiled Laws* and the State of Michigan Financial Management Guide (Part VII, Chapter 4, Section 100) require an audited agency to develop a plan to comply with the recommendations and to submit it to the State Budget Office upon completion of an audit. Within 30 days of receipt, the Office of Internal Audit Services, State Budget Office, is required to review the plan and either accept the plan as final or contact the agency to take additional steps to finalize the plan.

* See glossary at end of report for definition.

**PRIOR AUDIT
FOLLOW-UP**

Following is the status of the reported findings from our May 2015 performance audit of the Adult Foster Care and Homes for the Aged Licensing Division, Michigan Department of Health and Human Services (431-5115-14):

Prior Audit Finding Number	Topic Area	Current Status	Current Finding Number
1	Documentation of Inspections	Rewritten*	1
2	Documentation of Corrective Action Plan Follow-Up	Rewritten	1
3	Timely Completion of Inspections	Complied	Not applicable
4	Consistent Enforcement of Incident Reporting	Rewritten	1
5	Monitoring of Employee Background Checks	Rewritten	2
6	Required Reporting to Legislature	Not in scope of this audit.	
7	Reporting of Complaints to Adult Protective Services	Complied	Not applicable
8	Timely Completion of Complaint Investigations	Rewritten	4
9	Investigation of Unlicensed Facilities and Homes	Complied	Not applicable
10	Maintaining Critical Coding of Complaint Investigations	Rewritten	4

**SUPPLEMENTAL
INFORMATION**

Our audit report includes supplemental information presented as Exhibits 1 through 5. Our audit was not directed toward expressing a conclusion on this information.

* See glossary at end of report for definition.

GLOSSARY OF ABBREVIATIONS AND TERMS

BCHS	Bureau of Community and Health Systems.
BITS	Bureau Information Tracking System.
CAP	corrective action plan.
effectiveness	Success in achieving mission and goals.
HFA	home for the aged.
IR	incident report.
LARA	Department of Licensing and Regulatory Affairs.
LSR	licensing study report.
material condition	A matter that, in the auditor's judgment, is more severe than a reportable condition and could impair the ability of management to operate a program in an effective and efficient manner and/or could adversely affect the judgment of an interested person concerning the effectiveness and efficiency of the program. Our assessment of materiality is in relation to the respective audit objective.
MCL	<i>Michigan Compiled Laws.</i>
<i>Michigan Administrative Code</i>	A compilation of all adopted rules and regulations in effect in the State of Michigan. Each rule has been assigned a rule number, which appears at the beginning of each rule in the text of the <i>Michigan Administrative Code</i> .
observation	A commentary highlighting certain details or events that may be of interest to users of the report. An observation may not include all of the attributes (condition, effect, criteria, cause, and recommendation) presented in an audit finding.
performance audit	An audit that provides findings or conclusions based on an evaluation of sufficient, appropriate evidence against criteria. Performance audits provide objective analysis to assist management and those charged with governance and oversight

in using the information to improve program performance and operations, reduce costs, facilitate decision-making by parties with responsibility to oversee or initiate corrective action, and contribute to public accountability.

reportable condition

A matter that, in the auditor's judgment, is less severe than a material condition and falls within any of the following categories: a deficiency in internal control; noncompliance with provisions of laws, regulations, contracts, or grant agreements; opportunities to improve programs and operations; or fraud.

rewritten

The recurrence of similar conditions reported in a prior audit in combination with current conditions that warrant the prior audit recommendation to be revised for the circumstances.

SIR

special investigation report.

**Workforce Background
Check (WBC) System**

LARA's electronic Web-based system required by *MCL* Section 333.20173a(14) to assist HFAs in performance of criminal history checks of employees, independent contractors, and individuals granted clinical privileges.



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