

**Oklahoma State Department of Health
Protective Health Services
Long Term Care Questions and Answers**

1. Where can I get information about the results of surveys, inspections and investigations conducted by the Oklahoma State Department of Health in nursing facilities and other long-term care facilities?

- a. The OSDH survey, inspection and investigation reports for all long-term care facilities are available online at this link: <http://www.ok.gov/health/pub/wrapper/PHS-search.html>
- b. Additional information about the quality of care provided in Medicare certified nursing facilities is available from a website maintained by the federal government, at this link: <http://www.ok.gov/health/pub/wrapper/nhcompare.html>

2. How do families address concerns about the care provided in nursing facilities? What are incidents? Who can be contacted concerning a complaint about care provided in a nursing facility?

- a. **Bringing concerns to the attention of the facility:** Concerns of family members about the care or services provided to a loved one in a nursing facility may be handled in a number of ways. The family has an opportunity to work with the facility to resolve many concerns. A meeting between the family and the facility's administrator may result in a successful resolution.
- b. **Oklahoma Long Term Care Ombudsman:** Families may contact the Oklahoma Long Term Care Ombudsman program for help in addressing concerns with a facility. Oklahoma's Ombudsman program has trained advocates who routinely mediate and facilitate resolutions of residents' and families' concerns. The Ombudsmen will act as the agent for the resident or family and work toward positive outcomes with facility management. A list of local Ombudsman supervisors is available from the Oklahoma Department of Human services at <http://www.okdhs.org/programsandservices/aging/ltc/docs/ombudkeyp Personnel.htm>
- c. **Discussing concerns with the OSDH:** OSDH staff members are available to take calls about resident and family concerns, answer questions, and offer information that may be helpful. It is not necessary to file a complaint if a family member simply wants to call and visit with experienced staff in the OSDH Long Term Care Service to better understand the requirements that apply to care and services in nursing facilities. Concerns may be sent to OSDH via email at LTCComplaints@health.ok.gov, or by calling (405) 271-6868 or 1-800-747-8419.

- d. **Incidents defined:** Incidents are events that are self-reported by facilities and may not necessarily indicate a violation of a law or rule. For example, a power outage of more than four hours in duration at a nursing facility is considered an incident. Incident is defined in Oklahoma rules as “any accident or unusual occurrence where there is apparent injury, where injury may have occurred, including but not limited to, head injuries, medication, treatment errors or events subject to the reporting requirements in 310:675-7-5.1 (relating to reportable incidents).” (See the Oklahoma Administrative Code, Section 310:675-7-12.1, available at: <http://go.usa.gov/WhCh>)
- e. **Incident reports:** If there is an incident as defined in federal or state law and rules, the facility is to report the incident to the OSDH Long Term Care Service. The facility is responsible for ensuring the safety of the residents, investigating the incident and putting interventions in place to prevent further occurrence. This is also to be documented and reported to the OSDH. The facility is to contact law enforcement if a crime has occurred. They are to also report to the DHS Long Term Care investigative unit. Upon completion of their investigation, the facility is to provide a final report to OSDH for review. The facility has 24 hours to submit the first report, up to five days for the follow up, and ten days for the final report. OSDH receives about 30,000 incident reports a year.
- f. **Evaluation of incident reports:** The facility is required to ensure residents are protected, conduct a thorough investigation, and file incident reports with OSDH. OSDH intake staff members, who are trained surveyors, review each incident report for completeness, thoroughness and appropriate action on the part of the facility. Reports which include allegations of abuse by a specific facility staff member are reviewed by the OSDH Office of General Counsel, and if appropriate, are forwarded to the State Attorney General’s office for further investigation and possible prosecution. Any incident may be triaged for a complaint investigation. Incidents that involve assault are immediately triaged by OSDH for an onsite investigation. Other categories may also trigger an investigation. The surveyors examine incident reports from a facility prior to conducting the onsite survey to determine if further investigation needs to occur. They examine incident reports in the facility files while on site. They examine resident records and hospitalizations to determine if an incident occurred and was not reported or did not have proper action by the facility. This can result in serious deficiencies for a facility and significant fines. The resident, family or anyone else may call OSDH concerning an incident and file a complaint. Regardless of the content of the incident report, trained surveyors from OSDH go onsite at nursing facilities to investigate all complaints that indicate a possible violation of laws or rules that are under the jurisdiction of OSDH. If a complaint is

about a matter that is not under the jurisdiction of OSDH, the OSDH will so advise the complainant and may refer the matter to another agency with jurisdiction.

- g. **Complaints:** Anyone may file a complaint. They can be filed anonymously if desired. A person may contact OSDH by email, phone, letter or face to face. Each complaint is carefully reviewed to determine if there is a possible violation of laws or rules. All complaints that represent possible violations of law or rules under the jurisdiction of OSDH are triaged or prioritized for investigation, and OSDH surveyors or inspectors are assigned to follow-up.
- h. **Complaint reports:** After a complaint is investigated, the OSDH issues a written report that addresses the possible violations raised in the complaint. The OSDH may also issue a statement of deficiencies if violations of laws or rules are found. It is not always possible for OSDH to substantiate the information received in a complaint, but that does not mean that OSDH does not believe the complainant has valid concerns or has not experienced failures in the delivery of care. It may only mean there was not enough evidence available to meet the standards of law required. In some cases the OSDH cannot substantiate the specific complaint, but in the process of investigating the complaint the OSDH finds other violations at the facility and cites deficiencies.

3. I understand that Oklahoma recently passed a law regarding the use of electronic monitoring devices in resident rooms in nursing facilities. Where can I obtain the required notice and consent forms to be used before installing a video surveillance camera or audio recording device in my room?

- a. Yes, Senate Bill 587 was enacted earlier this year and went into effect November 1, 2013.
- b. Notice and consent forms to be completed for the purpose of installing electronic monitoring devices are available at this link: <http://go.usa.gov/WhYd>

4. What is the role of the Oklahoma State Department of Health in ensuring the quality of care and life for residents of nursing homes?

- a. The Oklahoma State Department of Health's license and inspection services are one component of the system to ensure quality and safety in nursing homes and long-term care facilities. The OSDH works to implement and ensure compliance with numerous quality, safety and law enforcement standards through partnerships, collaboration and interaction with:
 - i. The Centers for Medicare and Medicaid Services;
 - ii. The Oklahoma Health Care Authority;
 - iii. The Oklahoma Department of Human Services, which includes:

1. Adult Protective Services;
 2. State Long Term Care Ombudsman;
 - iv. Office of the Attorney General;
 - v. Oklahoma Department of Mental Health and Substance Abuse Services;
 - vi. Oklahoma State Board of Examiners for Long Term Care Administrators;
 - vii. Oklahoma State Board of Nursing;
 - viii. Oklahoma Vocational Technical Centers (nurse aide training);
 - ix. The Oklahoma Foundation for Medical Quality;
 - x. Nursing facility operators including:
 1. More than 300 private nursing home business operators;
 2. Seven Oklahoma Department of Veterans affairs nursing centers;
 - xi. Local law enforcement agencies;
 - xii. Professional, business and advocacy associations; and
 - xiii. The Long Term Care Facility Advisory Board.
- b. The Oklahoma State Department of Health fulfills obligations specifically set out in contracts with CMS/Medicare, OHCA/Medicaid, and state mandates provided in Oklahoma law.

5. What are surveys, inspections, investigations and deficiencies?

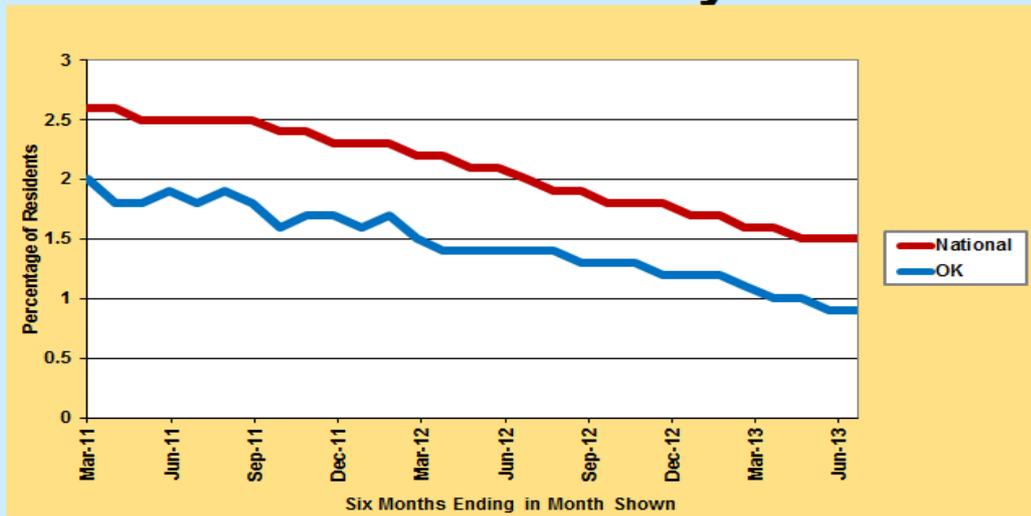
- a. "Survey" is the umbrella term used to refer to inspections and investigations conducted by the Oklahoma State Department of Health. The term comes from federal laws and rules covering the Medicare and Medicaid programs. "Surveyors" are the OSDH staff members who conduct the surveys, inspections and investigations in nursing facilities and other long-term care settings.
- b. "Inspections" refer to on-site visits at nursing facilities conducted by OSDH surveyors. Inspections are conducted annually at nursing facilities. Inspections are generally broader reviews of the overall conditions and delivery of care in a long term care facility.
- c. "Investigations" refer to the surveys or inspections that are conducted by OSDH upon receipt of a complaint or other information that alleges a law or rule under OSDH jurisdiction has been violated. Complaint investigations tend to be more focused than the annual inspections.
- d. "Deficiency" is a finding issued by the OSDH when surveyors determine that a nursing facility has failed to comply with a law or rule. A deficiency is written for each law or rule that has been violated. A facility may have no deficiencies if no violations are found or multiple deficiencies if the OSDH finds multiple violations. The deficiencies found during a nursing facility survey are collected on a "statement

of deficiencies,” also known as a Form 2567. Survey reports and deficiency statements for nursing homes in Oklahoma may be found on the OSDH web site.

6. What are some goals, successes and trends of the OSDH nursing home regulatory program?

- a. The Oklahoma State Department of Health is committed to continuous quality improvement and performance improvement. We are continually looking at data and information and driving for improvement.
- b. OSDH Long Term Care Service has shown improvement in a number of areas.
 - i. In a recent national project to reduce unnecessary use of antipsychotic drugs in nursing home patients with dementia, Oklahoma was one of 11 states to achieve the target of a 15% reduction in unnecessary drug use.
 1. OSDH collaborated with the Oklahoma Foundation for Medical Quality, the Oklahoma Alzheimer’s Association and nursing home providers. OSDH provided training faculty, jointly presented the project at 10 regional meetings, and promoted the project during surveys and inspections.
 2. Oklahoma had the seventh-best results on the project to reduce unnecessary antipsychotic drugs.
 3. Stories on the project are available at:
<http://www.youtube.com/watch?v=pc6QgZ7HaTI&feature=youtu.be>
<http://youtu.be/RT0Ut3NQipU>
 - ii. The percent of nursing home residents who are physically restrained dropped to 0.9%, or less than one in 100 residents, which represents a 55% decrease since October 2010. Oklahoma is performing better than the national average on this indicator, as shown in the table below.

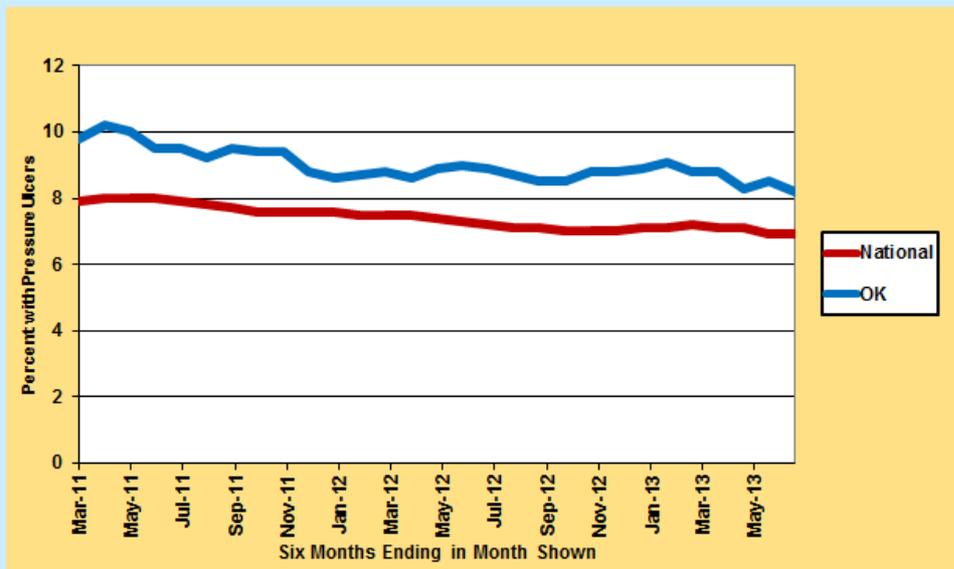
Percent of Residents Physically Restrained Down to .9%, a 55% decrease from Oct. 2010 to July 2013



(Source: MDS 3.0 CASPER Facility Level Quality Measure Report)

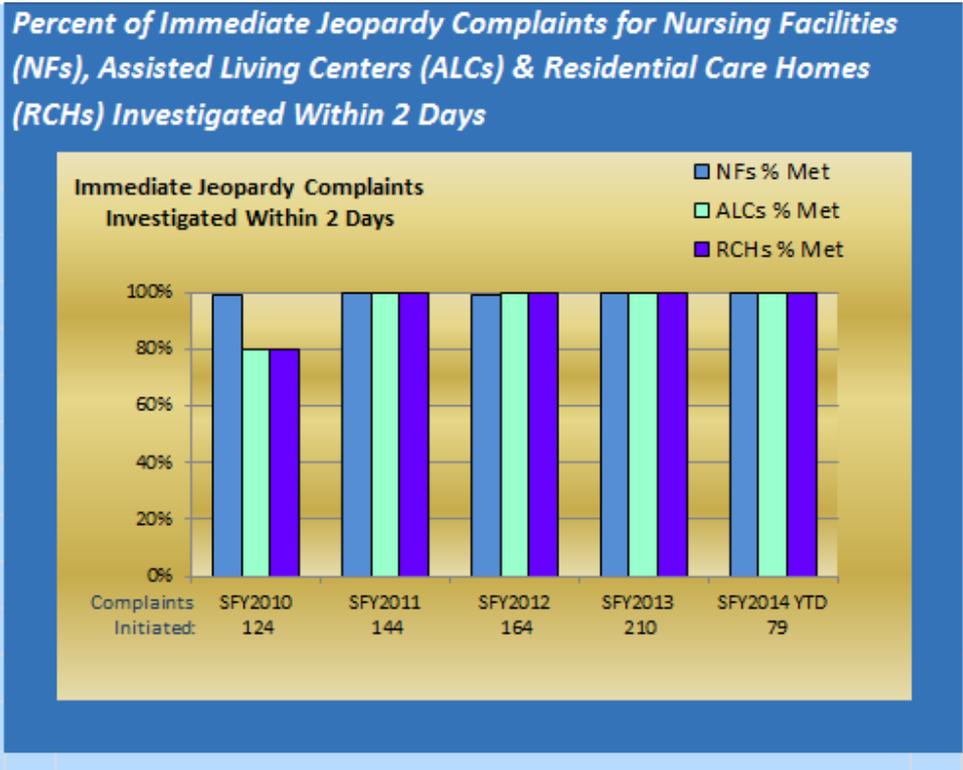
- iii. The percent of high risk residents with pressure ulcers, or bedsores, is down to 8%, a 20% decline over the last three years. There are opportunities for additional improvements in this area through the collaborative efforts of the OSDH, the Oklahoma Foundation for Medical Quality, nursing facilities, the Long Term Care Ombudsman, and other committed advocates.

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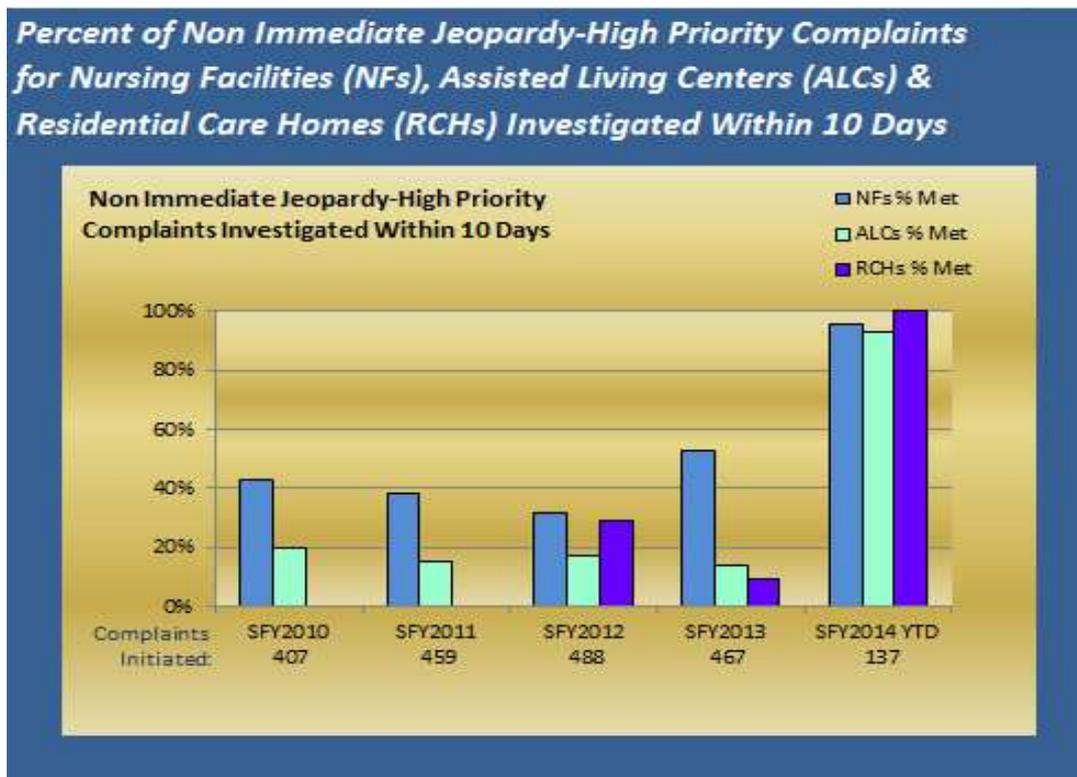


(Source: MDS 3.0 CASPER Facility Level Quality Measure Report)

- c. Timely completion of surveys, inspections and investigations is a strategic priority of the OSDH and the State Board of Health.
- d. Timeliness of nursing home inspections and investigations has improved over the last four years.
 - i. Performance on investigating immediate jeopardy complaints within two days has consistently been at 100%.



- ii. From July to October of 2013, in excess of 95% of high priority nursing home complaints were investigated within 10 days. That is an important improvement from a 30% success rate in 2010. The level for the first three months of this fiscal year now meets federal quality standards for complaint investigations and we continue to reach for 100%.

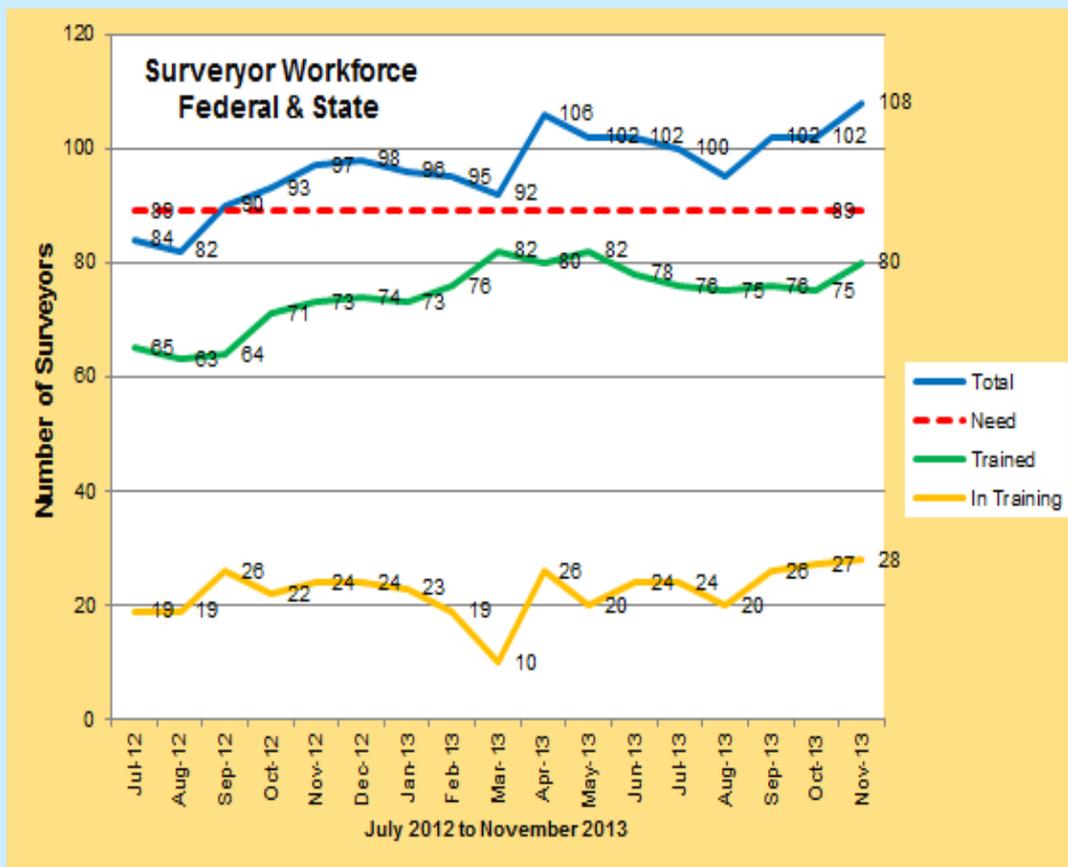


- iii. The Department’s Long Term Care Service staff brought surveys and investigations current on June 30, 2013. To do so, the Long Term Care staff cleared 199 backlogged investigations.

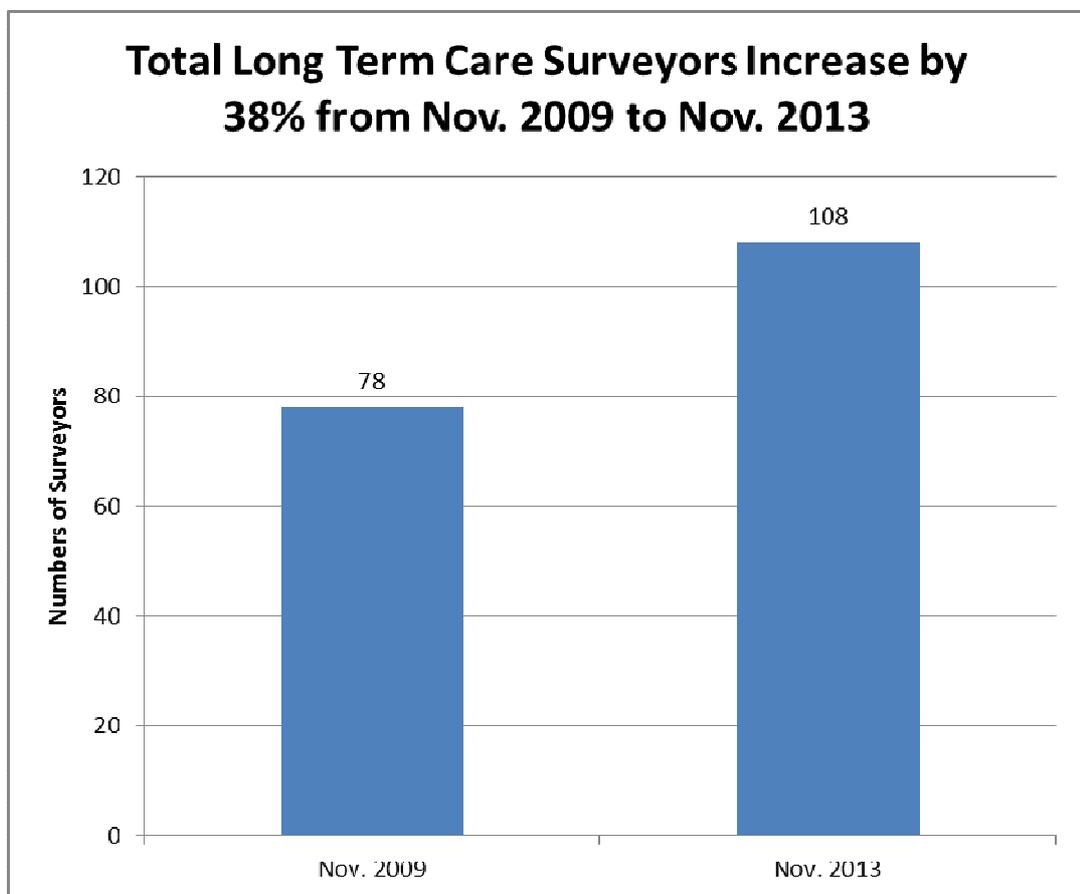
- e. The staff of fully trained surveyors for long-term care facilities increased by 23%, to 80 full time staff, from July 2012 to November 2013. Over the same time, the total number of surveyors, including surveyors in training, increased by 29%, to 108 full time surveyors in the Long Term Care Service.

Building Qualified Staff to Meet Workload Needs

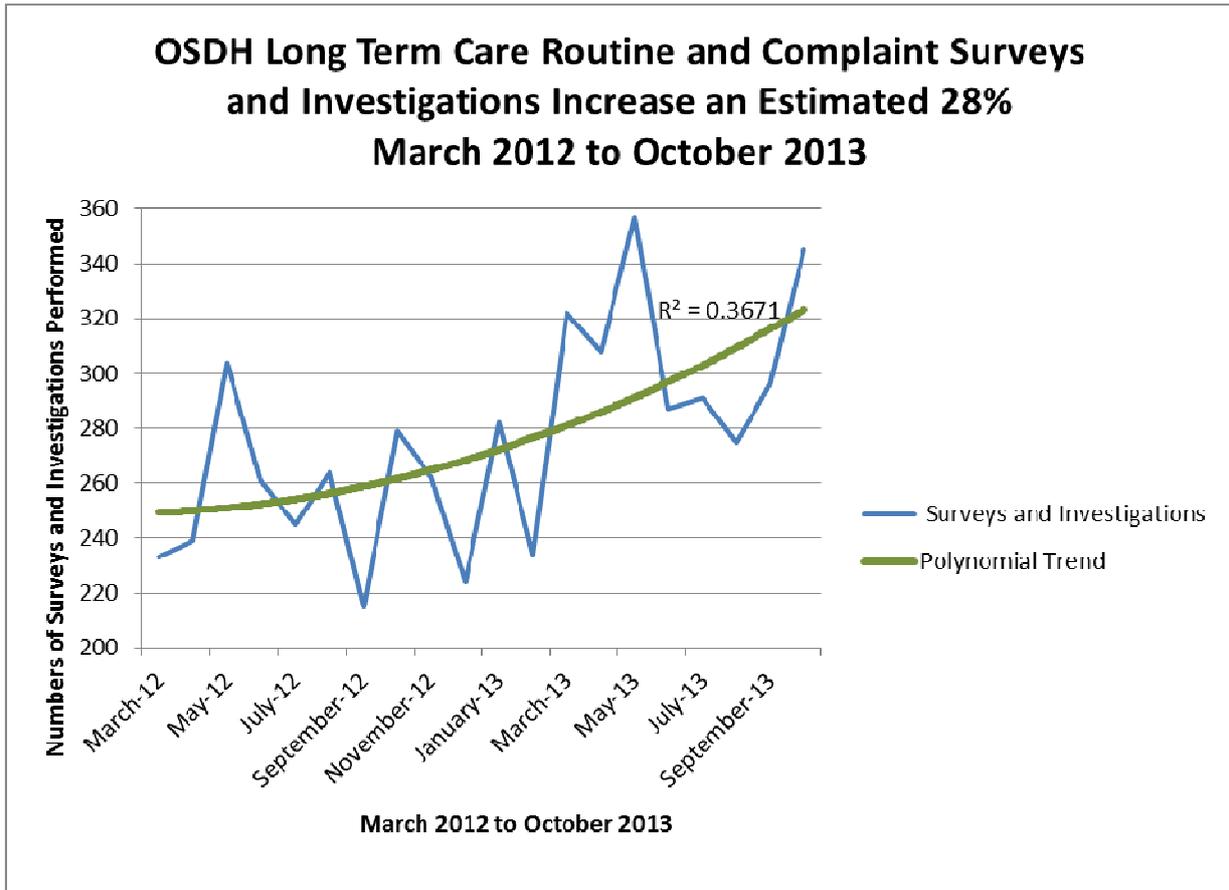
Long Term Care Surveyor Staffing



- f. The increase in surveyor staffing is the result of a long-term strategic effort by OSDH to enhance the capability of the Long Term Care Service to meet workload needs. In FY2009 the OSDH initiated efforts to increase the long term care surveyor staffing levels from 78 to 85 FTEs. In FY2010, the Department added 16 positions in an effort to bring the surveyor staffing levels to 101 employees. Authorization for up to 20 more positions was added in FY2011 and FY2012. The result was an increase over five years, from November 2009 to November 2013 of 38% in the total numbers of long term care surveyors.



- g. The enhancement of surveyor staffing has enabled the Department to increase the number of surveys and investigations on a monthly basis, moving from 233 in March 2012, to 345 in October 2013. The trend line for that time frame estimates a 28% increase in surveys and investigations accomplished on a monthly basis.



- h. The Oklahoma State Department of Health committed to being one of the first states in the nation to implement a fingerprint-based national criminal background check program for all persons who work in nursing facilities. Phase-in of this new program is expected beginning in February 2014.
- i. Beginning in May 2013, OSDH was charged under Oklahoma law with licensing and inspecting Oklahoma Department of Veterans Affairs Nursing Facilities.
 - i. OSDH has licensed seven ODVA nursing facilities with 1,423 beds.
 - ii. OSDH experience with ODVA nursing facilities for May 2013 to October 2013 is as follows:
 - 1. One annual survey;
 - 2. Two revisits; and
 - 3. Six complaint investigations.

7. How are photographs or other video evidence handled by OSDH?

- a. The Oklahoma State Department of Health has authority and discretion to use photographs or other video images in conducting routine surveys and investigating complaints. For nursing facility surveys and investigations, the OSDH relies on guidelines and principles established by Centers for Medicare & Medicaid Services (CMS) regarding the collection of evidence, records and observations, and documentation of deficient practices.
- b. The Oklahoma State Department of Health (OSDH) can accept video or photographic evidence. Authentication of the photographic or video materials, verification of the chain of custody, and assurance of the methods used to produce them, will impact the conclusions that may be drawn based on the materials. CMS advises state agencies that photography may be used as a tool to supplement written documentation and observations.
- c. OSDH does not have jurisdiction in criminal investigations. If criminal activity is suspected, Oklahoma law is explicit that law enforcement is to be contacted so they may conduct a proper criminal investigation. OSDH is to determine if the facility failed to act diligently in the best interests of the residents as set out in the regulations. OSDH works with law enforcement, coordinating the respective expertise and authority.
- d. OSDH written investigation reports and deficiency statements are the documentation of a body of work that may serve as exhibits and the basis for testimony in court proceedings. For nursing facility investigations and inspections,

OSDH follows protocols, guidelines, operations manuals, and surveyor training developed by the Centers for Medicare & Medicaid Services. The protocols and other resources serve to ensure a thorough, unbiased investigation takes place. Surveyors are trained to make observations, review records, and conduct interviews in every investigation to include evaluation of all allegations made by the complainant. Surveyors also consider other information that could be pertinent to establishing the supportable facts of the situation and the existence of any non-compliance. The findings of an investigation must be a result of evidence-based analysis that can meet the “preponderance of the evidence” or “clear and convincing” standards of proof in administrative and legal proceedings as applicable. OSDH can accept anything a complainant presents as supporting evidence for their allegations, including photos. Family members who are considering taking photographs should bear in mind that nursing facility residents have rights to privacy and confidentiality of health information. For electronic monitoring of a resident’s room, including video surveillance and audio recordings, the OSDH makes available notice and consent forms. Those forms are available at this link: <http://go.usa.gov/WhYd>

8. What are the numbers for abuse citations in Oklahoma and what do the deficiencies cited mean?

- a. The Oklahoma State Department of Health in federal fiscal year 2013 (ending September 30, 2013) cited nursing facilities with 293 deficiencies on abuse, neglect, mistreatment, misappropriation of property, and related issues. Such deficiencies can be cited for abuse caused by facility staff, other residents, consultants or volunteers, staff of other agencies, family member or guardians, friends or other individuals.
- b. When deficiency reports on long term care facilities are issued, a deficiency is denoted with a tag number (example of a tag number is F223, F224, etc...). These tag numbers are used by the federal government and the State of Oklahoma to identify specific deficiencies that are found. The following are the meanings of certain tag numbers:

Oklahoma State Department of Health

ASPEN: Tag Summary Report
Federal Fiscal Year 2005 thru 2013
from 10/01/2004 thru 09/30/2013

Citation Frequency

ASPEN	2005	2006	2007	2008	2009	2010	2011	2012	2013	Total
F223	7	4	8	3	6	5	4	3	5	45
F224	29	23	24	5	2	3	6	9	6	107
F225	70	32	34	26	37	19	26	37	33	314
F226	88	77	76	52	71	61	66	68	79	638
F323	99	85	74	119	112	101	106	115	170	981
Total	293	221	216	205	228	189	208	232	293	2085

F223 is a deficiency cited when the OSDH Long Term Care Service documents that a facility has failed to protect the resident's right to be free from verbal, sexual, physical, and mental abuse, corporal punishment, and involuntary seclusion. Residents must not be subjected to abuse by anyone, including, but not limited to, facility staff, other residents, consultants or volunteers, staff of other agencies service the residents, family members or legal guardians, friends, or other individuals.

"Abuse" means the willful infliction of injury, unreasonable confinement, intimidation, or punishment with resulting physical harm, pain or mental anguish." (42 CFR §488.301)

F224 is a deficiency cited when a facility fails to protect the resident's right to be free from mistreatment, neglect and misappropriation.

"Neglect" means failure to provide goods and services necessary to avoid physical harm, mental anguish, or mental illness. (42 CFR 488.301)

"Misappropriation of resident property" means the deliberate misplacement, exploitation, or wrongful, temporary or permanent use of a resident's belongings or money without the resident's consent. (42 CFR 488.301)

F225 is a deficiency cited when a facility fails to report alleged violations, conduct an investigation of all alleged violations, take necessary corrective actions, and report the results to proper authorities. It is also cited if a facility hires a potential employee with a history of abuse, if that information is known to the facility. F225 is cited if the facility fails to report knowledge of actions by a court of law against an employee that indicates the employee is unfit for duty.

F226 is a deficiency cited when a facility fails to develop and operationalize policies and procedures for screening and training employees, protection of residents and for the prevention, identification, investigation, and reporting of abuse, neglect, mistreatment, and misappropriation of property. The purpose is to assure that the facility is doing all that is within its control to prevent occurrences. The facility must develop and implement policies and procedures that include the seven components: screening, training, prevention, identification, investigation, protection and reporting/response.

F323 is a deficiency cited when a facility fails to ensure that the resident environment remains as free from accident hazards as is possible, or fails to ensure that each resident receives adequate supervision and assistance devices to prevent accidents. The facility is required to provide an environment that is free from accident hazards over which the facility has control and provides supervision and assistive devices to each resident to prevent avoidable accidents. This includes identifying hazards and risks, evaluating and analyzing hazards and risks, implementing interventions to reduce hazards and risks, and monitoring for effectiveness and modifying interventions when necessary.

9. What are the requirements for admitting registered sex offenders in nursing homes or other care facilities?

Nursing facilities must provide a safe, secure environment for all residents. Every facility is responsible for assessing each potential resident for admission. They are expected to be able to provide the needed care and ensure all residents are protected. If a resident endangers other residents by their actions, the facility must take action and immediately work to seek remedies for the behaviors or discharge them away from the community. Oklahoma law does not prohibit a felon from being admitted to a nursing facility. The law requires the nursing facility to check the sex offender registry on each resident admitted and report to OSDH if the facility has admitted a resident that is a convicted sex offender. Because of privacy laws, OSDH cannot disclose to the public information on any types of residents, whether they are sex offenders or not, residing in any type of health care facility.

10. Are there any initiatives to improve the quality of care and life in nursing facilities in Oklahoma?

a. Training for the staff of long-term care facilities is paramount in the effort to improve the quality of care. OSDH has just completed its ninth year of trainings for providers of long term care. OSDH organizes and present programs for all facility types to include a wide variety of topics that help to educate and improve the skill sets of the attendees and the care in the homes.

- b. OSDH and other partners are actively engaged in bringing nationally recognized quality improvement initiatives to Oklahoma. These efforts include providing training and resources to facilitate better quality of care and life in nursing homes. The quality improvement efforts attempt to leverage resources in Oklahoma and nationally to strategically target important problems in nursing facilities and affecting positive outcomes. For example:
- i. The National Partnership to Improve Dementia Care seeks to reduce the use of unnecessary anti-psychotic medications and build a more creative approach to the care of these residents. Oklahoma is a leader in this initiative exceeding the initial target of 15% reduction. There is a robust collaborative effort to train and educate with many stakeholders.
 - ii. The National Nursing Home Quality Care Collaborative (NNHQCC) involves the Quality Improvement Organizations (such as the Oklahoma Foundation for Medical Quality) and the 10th Statement of Work, which is the basis of quality improvement efforts on key quality outcome measures. At this writing, the OSDH, the Oklahoma Foundation for Medical Quality, and other partners are in the planning phases for focused quality improvement work in 2014 in Oklahoma, which may include additional efforts relating to improving dementia care, and driving further positive changes in key quality of care indicators such as residents with pressure ulcers and residents who are physically restrained.
 1. During January-February 2014, the OSDH Quality Improvement and Evaluation Service (QIES) staff will be partnering with OSDH Long Term Care staff to hold “A Stakeholder’s Forum to Improve Care” for Minimum Data Set (MDS) coordinators, administrators, directors of nursing, and other nursing facility staff. QIES staff will be training on MDS resident assessment protocols and Long Term Care staff will interact with the providers to explain how “survey” interprets the requirements. OSDH is holding three forums and with 60 facility participants per session. The training is planned to be interactive with tips and best practices shared among the participants.
 2. During February-March 2013 OSDH, collaborated with OFMQ to present a joint training on quality improvement in nursing homes. Three training seminars were held across the state to teach quality improvement concepts using the TeamSTEPPS (Team Strategies and Tools to Enhance Performance and Patient Safety) approach to nursing home staff that included: (1) what is quality healthcare; (2) teamwork to promote quality; (3) partnering with the resident; (4)

the application of these concepts to the newly released MDS 3.0 Quality Measures; and (5) the CMS reports available to assist providers in developing their own quality improvement projects. OFMQ dedicated their section of the training to the five elements of QAPI.

3. Recent OSDH training has focused on resident care plans. This item usually rates high in the top ten deficiencies and facilities consistently request information from OSDH on how to write a good care plan. On September 25 and 26, 2012, OSDH brought in a guest speaker who trained on “Care Plans and Quality Measures.” Another session on care planning was held on November 19, 2013 during an OSDH 3-day MDS Basic workshop. Improved care plans should result in improved resident outcomes as goals are reached allowing the resident to attain or maintain the highest practicable level of functioning.
 - iii. The Advancing Excellence in America’s Nursing Home’s Campaign helps nursing homes become person-centered, high performance organizations. Free information and tools to create a structured approach to improvement are available at www.nhqualitycampaign.org. OSDH actively promotes and works with nursing facilities that are striving to achieve person-centered organizations.
 - iv. Quality Assurance and Performance Improvement, or QAPI, is a systematic, comprehensive, data driven approach to maintaining and improving safety and quality in nursing homes while involving all nursing home caregivers in practical and creative problem solving. The program is designed to build the capability of nursing homes to proactively identify quality of care problems, design and test solutions, and fully implement innovations that prove effective. OSDH will continue to engage with CMS and nursing facilities as this initiative rolls out nationally.