



Catherine E. Heigel, Director

*Promoting and protecting the health of the public and the environment*

February 24, 2016

Patrick J. Maley  
Inspector General  
Office of the State Inspector General  
111 Executive Center Drive, Suite 204  
Synergy Business Park, Enoree Building  
Columbia, S.C. 29210-8416

RE: Review of the Community Residential Care Facilities Program, Department of Health and Environmental Control  
Case # 2015-1369-I

Dear Inspector General Maley:

The Department appreciates the professionalism exhibited by the Office of Inspector General (“the IG”) in its review of the Department’s Community Care Oversight (“CCO”) Division. The IG’s draft recommendations serve as valuable input for improving the Department’s regulation of community residential care facilities (“CRCFs”). We also appreciate the opportunity to provide feedback with regard to the draft report and hope that you will accept our changes. We offer some clarification and responses as follows.

#### Representations of Condition of CRCFs

The executive summary paints a broad picture of CRCFs which may give the impression that 40 to 60% of CRCFs are substandard by the language in the second paragraph referencing “subject matter experts” and their statements regarding placing relatives in CRCFs. During meetings with Department staff, the IG indicated that the targeted “at risk” facilities fall within the 5 to 10% range. The Department has started the process of identifying the facilities that would fall into this category. Thus far, we have identified 25 potential facilities, with a total licensed bed capacity of 912. While additional facilities may be identified once we develop the “at risk” audit tool, this number is far less than the numbers portrayed in the summary. Based upon the “subject matter expert” statement and the total licensed bed capacity of over 17,000, a reader of the IG report may mistakenly assume that 10,200 people are living in substandard facilities. We do not believe that was a finding of your review and we fear that using the 40 to 60% statement would cause alarm throughout the state for both facilities and for citizens who have family members in CRCFs. We ask that you remove the second paragraph in its entirety and modify the fourth paragraph as indicated in the attached markup of the executive summary.

#### Statistics

The Department recommends that you update and/or correct statistics in both the executive summary and the body of the report.

- The Department recommends that the IG clarify the number of CRCFs and “licensed bed capacity” verses “clients.” The IG draft report states there are “470 CRCFs serving over 17,000 vulnerable clients, primarily the elderly and disabled.” See p. 2. As of January 7, 2016, there are 471 licensed CRCFs in South Carolina with a licensed bed capacity of 17,657 beds. The licensed bed capacity represents the maximum number of residents CRCFs may serve in accordance with their licenses. See S.C. Code Ann. Regs. 61-84 § 103.D. The licensed bed capacity does not necessarily reflect the number of residents actually admitted into CRCFs.
- The IG draft report makes several references to the Medicaid revenue sources for CRCFs. See pp. 2 and 13. South Carolina Department of Health and Human Services provided the Department with the following information, current as of February 17, 2016, concerning Medicaid and CRCFs:
  - 2,567 CRCF residents receive Optional State Supplement (“OSS”) funding. OSS funding is a fixed monthly rate of \$1,351. 2,567 residents represents 14.5% of the licensed bed capacity in South Carolina.
  - 781 CRCF residents receive Optional Supplemental Care of Assisted Living Participants (“OSCAP”) funding, in addition to OSS funding. OSCAP funding is an additional \$207 supplement.
  - Personal needs monies for CRCFs are deducted from these Medicaid funding sources. For OSS residents, \$65 is deducted for the residents’ personal needs monies. For OSS/OSCAP residents, \$85 is deducted.
- The Department mistakenly provided the IG with incorrect data concerning the number of violations cited from 7/1/2014 to 9/25/2015. That data is reflected on pages 2 and 8 of the draft report. The corrected data is as follows.

During the period of 7/1/2014 to 9/25/2015, the Department cited 8,669 violations of Regulation 61-84, as follows: 4,205 Class I (49%); 2,766 Class II (32%); and 1,698 Class III (20%).

Types of Violations

<b>Regulation Section</b>	<b># of Violations</b>	<b>Percentage</b>
Staff/Training	1653	39
Medication Management	1108	26
Housekeeping	411	10
FLS/Construction	349	8
Physical Exam and TB	191	5
Meal Service	149	4
Resident Care/Services	120	3
Fire Prevention	105	2
Admission/Retention	66	2
Enforcing Regulations	29	<1
Rights and Assurances	17	<1
Resident Records	3	<1
Definitions and License Requirements	3	<1
Reporting	1	<1

- The Department recommends that the IG clarify that enforcement actions have increased in more recent years (2011 to present). The IG draft report notes that, “the past seven years (2009-2015) had a significant reduction in enforcement actions<sup>1</sup> of 73 from the prior six years (2003-2008) of 120.” See p. 9. In the years 2003 to 2008, the Department actually took 119 enforcement actions against CRCFs. Of the 119, 30 of the actions were suspensions taken by the Department based upon facilities’ failure to comply with current structural standards after undergoing a change of ownership. Additionally, please note the increased frequency of enforcement actions in more recent years. From July 2013 to December 2015, there were 31 enforcement actions; for the previous 18-month period (January 2011 to June 2013), there were 22. For a larger picture, there were 55 enforcements taken from September 2011 to December 2015; for the previous 39-month period, there were 27. Therefore, in recent years the Department has increased its enforcement actions.

#### Roles and responsibilities of the Department and other agencies

We appreciate your understanding of the complexity of issues involved and the varying roles of the Department and other agencies that have a role or responsibility regarding CRCFs. The Department has taken the lead in coordinating efforts among these agencies and will work closely with the agencies. With regard to P&A, while there is overlap in the items and conditions reviewed by the Department and P&A, oftentimes the findings of P&A’s inspections have minimal impact on compliance with the laws administered by the Department. For example, P&A asks residents whether they like living at the CRCF, whether they have someone to talk to, whether residents need medical exams, whether they are able to take naps when they want to, etc. The Department actively supports and commends the work of P&A. However, the findings of P&A do not necessarily translate to violations of the laws administered by the Department and do not necessarily serve as bases for the Department taking enforcement against a CRCF. P&A’s review of CRCFs is instrumental in advocating for and protecting the rights of the developmentally disabled; however, P&A’s reviews are at a different angle than the Department’s inspections.

#### Proposed DHEC-risk based audit process

The Department agrees that the existing enforcement process needs improvements with regard to the “high risk” CRCFs. We are working on developing the guidelines for identifying these facilities and look forward to working with your staff in helping us develop the risk based audit. We have already taken steps to assign an experienced and motivated inspector to focus solely on high-risk CRCFs and moved this function to the Quality Management section of the Bureau of Health Facilities Licensing. Being organizationally located within this division will allow the inspector to more closely work with the staff who work on enforcement actions. Allowing one inspector to focus solely on this subset of facilities will ensure a consistent application and approach, provide training opportunities, and focused treatment. The goal is always to assist the facilities to come into compliance, but if that goal is not realized in short measure, aggressive enforcement will be initiated.

#### Reference to Peachtree Manor does not include dates

On page 10 of the draft report, it states that “Many witnesses illustrated this systemic problem cited the Peachtree Manor CRCR as an example.” We ask that you reference that the enforcement actions surrounding Peachtree Manor began in 2006 and the court order upholding DHEC’s revocation of Peachtree’s license occurred in 2008. In addition, please add the publication dates for the two WIS News articles regarding Peachtree Manor, which are in the appendix.

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<sup>1</sup> Enforcement actions, as used in this context, include revocations, suspensions, and/or monetary penalties.

Again, the Department thanks the IG for its recommendations for developing a more effective CCO program. The recommendations provide solid starting points that may result in achieving a regulatory program that better protects and promotes the health, safety, and welfare of the public. Additionally, the Department continues to welcome the opportunity to coordinate with other state agencies to better manage the health and safety of CRCF residents in all aspects.

Should you have any questions or comments regarding the Department's response to the draft IG report, I am available at (803) 545-4331 or [kellysb@dhec.sc.gov](mailto:kellysb@dhec.sc.gov).

Sincerely,

A handwritten signature in black ink, appearing to read 'Shelly Kelly', with a long horizontal flourish extending to the right.

Shelly Bezanson Kelly  
Director, Health Regulations

Enclosures

cc: Catherine Heigel, Director, DHEC  
Gwen Thompson, Bureau Chief, Health Facilities Licensing