LOS ANGELES COUNTY
OFFICE OF INSPECTOR GENERAL

IMPROVING OVERSIGHT AND ACCOUNTABILITY WITHIN SKILLED NURSING FACILITIES: FIRST INTERIM REPORT

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INTRODUCTION

Skilled nursing facilities (SNFs) provide long-term care services to many of Los Angeles County's (County) frail, older adults with underlying chronic medical conditions.[1] SNFs are expected to play an increasingly important role in our health care system. By 2029, the entire baby boom generation—those born between 1946 and 1964—will be 65 years and older, and more than 20 percent of the total United States population is expected to be over the age of 65.[2] As the number of older adults continues to grow, so does the need to ensure quality skilled nursing care.

Despite extensive regulation, substandard care is an ongoing and persistent problem in many SNFs. Staffing shortages, inadequate training, poor infection control practices and insufficient oversight and enforcement are some of the well-documented and long-standing issues impacting quality of care. Furthermore, these issues left many SNFs ill-equipped to prevent and manage a highly infectious disease like COVID-19.[3] As a result, the COVID-19 pandemic has had a devastating impact on SNF residents and staff. As of September 26, 2020, 9,902 residents and 6,893 staff had tested positive for the virus, and 2,026 residents and 69 staff had died.[4] Although recent data reflects a decrease in resident deaths, COVID-19 continues to claim the lives of vulnerable residents throughout the County.[5]

Since the 1960s, the California Department of Public Health (CDPH) has contracted with the Los Angeles County Department of Public Health (LACDPH) to perform various licensing and certification, inspection and investigative activities in health care facilities, including SNFs, located in the County. In 2019, with over 5,000 pending SNF investigations, CDPH entered into a new agreement with LACDPH to fully transfer, over the course of three years, responsibility for the regulatory workload generated by county health care facilities to LACDPH. According to LACDPH's Health Facilities Inspection Division (HFID), the branch responsible for

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[1] A skilled nursing facility (SNF) is type of long-term care health care facility (or a distinct part of a hospital) that provides continuous skilled nursing care and supportive care to residents whose primary need is for availability of skilled nursing care on an extended basis. This 24-hour inpatient care includes, at a minimum, physician, skilled nursing, dietary, pharmaceutical services and an activity program. *See* Title 22 CCR § 72103.

[2] Colby, S. et al., *The Baby Boom Cohort in the United States: 2012 to 2060*, United States Census Bureau, May 2014.

[3] On March 11, 2020, the World Health Organization deemed the coronavirus disease 2019 (COVID-19), caused by the severe acute respiratory syndrome coronavirus 2 (SARS-CoV-2), a global pandemic.

[4] These figures exclude deaths and infection rates for SNFs located in Long Beach and Pasadena, since each of these cities has its own health department. *See* Los Angeles County Department of Public Health, Skilled Nursing Facilities COVID-19 Dashboard, at: http://publichealth.lacounty.gov/snfdashboard.htm (accessed on October 7, 2020).

[5] Los Angeles County Department of Public Health, 7-day Average Daily Total and Skilled Nursing Facility-Associated COVID-19 Laboratory Confirmed Case Deaths By Date of Death, at: http://publichealth.lacounty.gov/media/Coronavirus/locations.htm#snf-deaths (accessed on September 14, 2020).

performing the contracted regulatory work, there are currently 379 operating SNFs in its jurisdiction. Despite new contract negotiations and an increased workforce, the number of outstanding investigations has grown to more than 5,400 cases, the vast majority of which HFID is responsible for addressing, as discussed in more detail in the Auditor-Controller's (A-C) Interim Report, titled *Improving Oversight and Accountability within Skilled Nursing Facilities (May, 26, 2020, Board Agenda Item #23) – Auditor Controller's Interim Report* (Attachment I). The alarming number of outstanding investigations highlights deficiencies with SNF complaint and facility-reported incident (FRI) investigations, including those alleging resident abuse and neglect, and in the regulation and oversight of SNFs generally.

The COVID-19 pandemic has exacerbated existing concerns about the County's SNFs. The Los Angeles County Board of Supervisors (Board) has responded, indicating that the current situation demands an immediate, independent and holistic review of these facilities, as well as the County's capacity to oversee them, to mitigate further COVID-19 impact and prevent both small and large-scale public health emergencies within these settings on an ongoing basis. The Board has further noted that it is critical that the County learn from this crisis and the range of internal and external factors that have contributed to ongoing inadequate SNF conditions.

On May 26, 2020, the Board passed a motion (Board Agenda Item #23), titled *Improving Oversight and Accountability Within Skilled Nursing Facilities*, and directed the Executive Officer to facilitate the appointment of an inspector general to conduct an exhaustive review of the County's capacity to regulate SNFs and to provide a report on the oversight and operations of SNFs in the County, in consultation with the A-C, the directors of the health and social services departments of the County, County Counsel and other appropriate department leaders (Attachment II).[6]

On June 26, 2020, the Executive Officer appointed the County's Inspector General to oversee the County's capacity to monitor and regulate SNFs in order to ensure quality care. On July 30, 2020, the Inspector General and A-C each submitted a scope of work detailing the objectives, tasks and preliminary reporting schedule for their review and oversight of SNFs (Attachments III and IV, respectively).[7]

The Board motion also directs the A-C to develop a publicly available dashboard (released on August 12, 2020) to provide COVID-19 and other publicly available

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[6] Los Angeles County, Motion by Supervisors Mark Ridley-Thomas and Kathryn Barger, *Improving Oversight and Accountability Within Skilled Nursing Facilities*, May 26, 2020, Board Agenda Item #23, at: http://file.lacounty.gov/SDSInter/bos/supdocs/145993.pdf (accessed on September 14, 2020).

[7] As explained in the OIG's scope of work, the rapidly evolving nature of the COVID-19 pandemic makes it difficult to foresee the extent of work required to effectively mitigate outbreaks at this time. Therefore, the OIG's second interim report will include an anticipated schedule for the completion of the Report.

quality and patient metrics, assess HFID's ability to accomplish all COVID-19-related mitigation activities and other critical oversight roles, compare HFID's staffing level to other counties in the State and ensure necessary resources are available to support LACDPH's monitoring and enforcement efforts. The A-C's Interim Report provides a status update on its directives from the Board motion and illustrates in greater detail some of the deficiencies addressed above.

As of September 30, 2020, Office of Inspector General (OIG) staff have spoken to more than 50 subject matter experts and stakeholders, including medical professionals, academics, advocates, representatives of residents and SNF operators and federal, state and local government officials. In addition, OIG staff have spoken to more than 30 LACDPH staff, including Health Facilities Evaluator Nurses (HFEN), physicians, epidemiologists, health consultants, supervisors, regional managers and executive leadership. The OIG has also accompanied LACDPH personnel on site visits to SNFs and an acute care hospital to observe HFID's and Acute Communicable Disease Control (ACDC) program's COVID-19 mitigation efforts.

The OIG has retained Debra Saliba, M.D., M.P.H., as its subject matter expert to assist in the review and the development of recommendations. Dr. Saliba is a Professor of Medicine at the University of California, Los Angeles (UCLA), a practicing geriatrician and an internationally recognized leader in geriatrics research and quality. She is also a senior natural scientist at the RAND Corporation and has served as an expert on multiple national advisory panels. Dr. Saliba's research has resulted in the creation of tools that can be applied to improving quality of care and quality of life for vulnerable elders and adults with long-term care needs across the care continuum. Dr. Saliba completed fellowships in health services research and geriatric medicine at UCLA where she received a master's degree in public health in epidemiology.

This report is the first of an anticipated series of interim reports pending the completion of the OIG's review. Ensuring that LACDPH is prepared to respond to the ongoing threat of COVID-19 and provide necessary support to SNFs is of utmost importance, especially as the influenza season approaches. As such, this first report focuses largely on LACDPH's COVID-19 mitigation efforts in SNFs. This report also provides an overview of the existing SNF regulatory and oversight structure. Subsequent reports will analyze the long-standing, complex issues that left many SNFs ill-prepared to prevent and control the rapid spread of COVID-19 and the systemic failures that have allowed substandard conditions to persist.

The OIG observed first hand the challenges faced when, on October 1, 2020, OIG personnel responded to an emergency evacuation of a SNF that is alleged to have subjected residents to unsafe conditions, including dangerously high temperatures. What ultimately culminated in a crisis and coordinated emergency response led by

the Pasadena Fire Department appears to have been preceded by a months-long series of communications between HFID, Pasadena City officials, Elder Abuse Prevention and Ombudsman Services, and the SNF's operators. The OIG is reviewing the current State and County regulatory and oversight structure and practices to determine whether they can be improved to maintain patient safety and guarantee timely and appropriate responses.

REGULATION AND OVERSIGHT OF SKILLED NURSING FACILITIES

There are two general types of SNFs in California: (1) licensed, and (2) licensed *and* certified. All SNFs must meet specific standards and be licensed to operate under state law. All Medicare[8] and Medicaid[9] participating SNFs must be certified as meeting certain federal requirements. Most SNFs in the County are licensed and certified.

At the federal level, the Centers for Medicare & Medicaid Services (CMS), an agency within the United States Department of Health and Human Services, is responsible for ensuring SNFs nationwide meet federal requirements to participate in the Medicare and Medicaid programs. To help monitor whether SNFs are in compliance with federal regulations, CMS contracts with participating state health agencies (or other appropriate agencies). Certification is achieved through routine facility surveys by state survey agencies that occur at least once every 15.9 months. During these surveys, the facility's compliance with federal requirements are evaluated and all identified deficiencies are weighted according to scope and severity.

CMS ultimately determines, based on state survey agencies' findings and recommendations, whether SNFs are eligible to participate in the Medicare and Medicaid programs or whether SNFs are subject to further validation surveys and/or enforcement actions.[10] If deficiencies[11] are identified during surveys, state agencies and the CMS regional offices share responsibility for taking enforcement action to ensure that SNFs address the identified issues and achieve compliance with federal

[8] The Medicare program, established in 1965 under Title XVIII of the Social Security Act, is a federal health insurance program that primarily provides a wide range of benefits to individuals age 65 and older, regardless of income or health status.
[9] The Medicaid program, established in 1965 under Title XIX of the Social Security Act, pays for medical assistance for certain individuals and families with low incomes and resources. Medicaid is a cooperative venture jointly funded by the Federal government and state governments. In California, the Medicaid program, known as Medi-Cal, is jointly administered by CMS and the CDPH Care Services.
[10] 42 CFR § 488.12 and 42 CFR § 488.330.
[11] Deficiency means a nursing home failed to meet a participation requirement specified in the Social Security Act or in 42 CFR 483, subpart B.

requirements.[12] If steps are not taken to address deficiencies promptly, one or more enforcement actions, including monetary penalties, intermediate sanctions (i.e., suspension of marketing, enrollment and payment) and termination of Medicare and Medicaid participation may be imposed depending on the scope and severity of a deficiency.[13]

At the state level, the CDPH, Center for Health Care Quality, Licensing and Certification Program (L&C) is responsible for the regulatory oversight of SNFs located in the state. As part of this role, L&C (1) serves as the state survey agency responsible for certifying SNFs that participate in the Medicare and Medicaid (i.e., Medi-Cal) programs, (2) conducts state licensing reviews to ensure compliance with state law, (3) investigates complaints and FRIs, and (4) issues federal deficiencies and state citations, imposes sanctions, and assesses monetary penalties on SNFs that fail to meet certain state and/or federal requirements. L&C also issues All Facilities Letters (AFL) to provide guidance to SNFs, which may include changes in requirements or general information that affects SNFs.[14]

At the local level, CDPH contracts with LACDPH to perform various licensing and certification activities and complaint investigations for SNFs located in the County. Under the previous contract, LACDPH's HFID was responsible for conducting approximately 60 percent of the regulatory work generated by SNFs in the County, and the state was responsible for the balance. The current contract, for the period of July 1, 2019, through June 30, 2022, initiated the assumption by HFID of the entire regulatory workload by the end of the contract period, including inspections, consultation, verification of compliance with the licensing and certification programs, site surveys, issuance of facility notifications and follow-up compliance visits prior to CDPH's issuance of licenses/certifications. In each year of the current contract, HFID assumes a greater percentage of the regulatory workload. CDPH retains responsibility for establishing program policies, standards and enforcement actions related to licensure, including denials, revocations and suspensions.

The A-C is evaluating whether the current HFID workforce is adequate to meet all contractual requirements, especially in light of the additional COVID-19 mitigation activities. CMS temporarily suspended survey activity for certain non-emergency state survey inspections to allow state survey agencies to prioritize the most serious health and safety threats like infectious diseases and abuse. However, these

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[12] 42 CFR 488, subpart F.
[13] 42 CFR § 488.406.
[14] An All Facilities Letter (AFL) is a letter from the Licensing and Certification (L&C) Program to health facilities that are licensed or certified by L&C. The information contained in the AFL may include changes in requirements in healthcare, enforcement, new technologies, scope of practice, or general information that affects the health facility. *See* California Department of Public Health, Licensing and Certification Program, Facilities Letter Library, at: https://www.cdph.ca.gov/Programs/CHCQ/LCP/Pages/LNCAFL.aspx (accessed on September 17, 2020).

activities will eventually resume, possibly during the course of the pandemic, which will present additional challenges to HFID's ability to adequately oversee SNFs.

The current contract provides that HFID is responsible for addressing SNF complaints that remained open and FRIs received on or after July 1, 2015. In addition, HFID is responsible for addressing a percentage of the projected annual caseload of all new SNF complaints and FRIs received on or after July 1, 2019. CDPH is responsible for addressing open SNF complaints and FRIs received prior to July 1, 2015, and the remaining percentage of all new SNF complaints and FRIs received on or after July 1, 2019. The current contract includes metrics for quantity, quality and customer service that are used to evaluate HFID's performance and sets forth conditions for financial withholdings should HFID not meet the metrics. The current contract allows for amendments and changes to the scope of work by agreement of the parties.

The A-C's Interim Report details a significant number of open complaint and FRI investigations and the varying durations of outstanding investigations. As of June 30, 2020, 5,407 SNF complaint and FRI investigations remain open at various stages of the investigation process, almost half of which have remained open for over three years. As part of the current contract, CDPH agreed to complete 989 of the 5,407 open investigations. As a result, HFID is currently responsible for completing the remaining 4,418 open investigations. The A-C's report also addresses the number of investigations into incidents alleging that SNF deficiencies have placed residents in "immediate jeopardy" of injury or death. As of June 30, 2020, 547 investigations prioritized as immediate jeopardy remained open at various stages of the investigation process. The OIG and A-C share the concerns of many stakeholders and advocates about the significant number of open investigations and the potential implications for patient safety and quality of care.

DPH maintains that since July 1, 2015, and each year thereafter, HFID has met or exceeded all of its contractual obligations with regard to the workload defined in the previous contract. However, questions remain as to why a significant number of investigations continued to accumulate over the course of several years. The OIG has initiated a review of the complaint and FRI investigation process, including a qualitative assessment of investigations and an analysis of the reasons for any backlog. The OIG—in consultation with its subject matter expert, the A-C and LACDPH—will present recommendations aimed at ensuring objective, timely and thorough investigations and establishing necessary accountability mechanisms.

COVID-19 MITIGATION EFFORTS

As the County examines LACDPH's COVID-19 mitigation efforts in SNFs, it is important to consider the challenges posed by the unprecedented health crisis. Infection control and testing protocols may not represent ideal standards or practices and are informed by real-world limitations on infrastructure, supplies and training, as well as experts' evolving understanding of the disease.

There are several challenges with controlling the spread and impact of COVID-19 in SNFs. First, SNFs serve a population identified as high risk for severe illness and death from COVID-19: frail, older adults with underlying chronic health conditions. Second, current evidence suggests that, while there are several modes of transmission, COVID-19 is primarily transmitted from person-to-person through viral particles in respiratory droplets.[15] The congregate nature of SNFs where residents live in close quarters, combined with the close contact required for staff to provide care, facilitates such transmission of COVID-19. Lastly, asymptomatic transmission (described as the "Achilles' heel of COVID-19 pandemic control") and pre-symptomatic transmission make it difficult to rapidly identify positive cases and separate them from the rest of the population effectively.[16] As detailed below, there was scientific uncertainty about the extent of asymptomatic transmission during the early stages of the pandemic, which may have contributed to the spread of COVID-19 in SNFs.

LACDPH has worked diligently to intervene and support residents and staff in SNFs across the County; however, initial efforts were constrained by the County's limited laboratory capacity for diagnostic testing. On April 24, 2020, in an effort to reduce the transmission of COVID-19 and protect vulnerable residents, as well as staff, LACDPH issued a comprehensive Health Officer Order[17] to all congregate health care facilities. This Health Officer Order contained several measures, including limited entry and access to facilities, universal masking and personal protective equipment (PPE) requirements, frequent temperature checks, testing of staff and residents and reporting of cases and deaths to LACDPH.[18]

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[15] Center for Disease Control and Prevention, COVID-19 Overview and Infection Prevention and Control Priorities in non-US Healthcare Settings, August 12, 2020, at: https://www.cdc.gov/coronavirus/2019-ncov/hcp/non-us-settings/overview/index.html (accessed on September 4, 2020).

[16] Ghandi, M., et al., *Asymptomatic Transmission, the Achilles' Heel of Current Strategies to Control Covid-19*, N Engl J Med 2020;382:2158–60, May 28, 2020.

[17] During a declared emergency, such as the current pandemic, the local Health Officer has broad regulatory control by way of Health Officer Orders. The Health Officer can issue Orders to SNFs and other LTC facilities to direct and guide them accordingly.

[18] County of Los Angeles Department of Public Health, Order of the Health Officer for Control of COVID-19, Prevention of COVID-19 Transmission in Licensed Congregate Health Care Facilities, April 24, 2020.

In early-May, LACDPH contacted SNFs with active COVID-19 outbreaks to schedule baseline testing of all residents and staff at no cost to facilities. LACDPH recruited and trained 30 community health workers and 30 nurses to support on-site testing. By mid-May, LACDPH expanded its capacity to support SNFs without active COVID-19 outbreaks and by June 19, 2020, LACDPH reports that all SNFs under its jurisdiction completed baseline testing.[19]

As the only local health entity to which the state has delegated authority for licensing and inspections, LACDPH's HFID is uniquely situated to enhance engagement and coordination. In addition to HFID's regulatory and enforcement responsibilities, several LACDPH units engage in ongoing activities to monitor, prevent and manage COVID-19 in SNFs. LACDPH reports that these units conduct virtual and on-site visits and engage in various activities to assist with infection prevention and control, promote resident safety and investigate and surveil outbreaks. In addition, HFID reports that it makes daily calls to SNFs with COVID-19 positive residents and weekly calls to SNFs with no COVID-19 residents, to gather pertinent information, reinforce local public health recommendations, provide technical assistance and determine what challenges the facilities face. Despite these efforts, continuing outbreaks and other deficiencies raise questions about how to ensure most effectively that recommendations are implemented and guidelines are followed. The OIG will work with the A-C and LACDPH to determine whether additional follow-up and/or enforcement action is required.

In response to the ongoing changes and updates in COVID-19 guidance for SNFs, LACDPH maintains a webpage that includes a compilation of the most recent guidance, requirements and protocols from the Centers for Disease Control and Prevention (CDC), CMS and CDPH for SNFs.[20] In addition, the ACDC program maintains a webpage dedicated to infection control, which provides links to current COVID-19 tracking information and resources, as well as training material and research on outbreak management of communicable diseases.[21] Both webpages are updated regularly to provide current information and guidance. Despite these available resources, SNFs report that it is exceedingly difficult to reconcile voluminous, complex and rapidly changing guidance documents and often believe that their infection preventionists must spend more time reconciling rather than implementing guidance and other requirements.

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[19] This excludes SNFs under the jurisdiction of Long Beach and Pasadena, since each of these cities has its own health department.

[20] Los Angeles County Department of Public Health, Guidelines for Preventing and Managing COVID-19 in Skilled Nursing Facilities, at: http://ph.lacounty.gov/acd/ncorona2019/snf.htm (accessed on September 14, 2020).

[21] Los Angeles County Department of Public Health, Skilled Nursing Facilities: Infection Prevention Resources and Guidance, at: http://publichealth.lacounty.gov/acd/SNF.htm (accessed on August 25, 2020).

On May 11, 2020, CDPH issued AFL 20-52 requiring all SNFs to expand their existing infection control policies to include the development and implementation of a CDPH approved COVID-19 mitigation plan.[22] The AFL required SNFs to submit mitigation plans by June 1, 2020, for review and approval, which address the following six elements: (1) testing of residents and staff, including how test results will be used to inform cohorting, (2) infection prevention and control, (3) personal protective equipment, (4) staffing shortages, (5) designation of space to separate infected residents and limit transmission and (6) communication with staff, residents and their families regarding the status and impact of COVID-19 in the facility.[23] HFID reports that all 379 mitigation plans were approved by August 25, 2020.

Infection Prevention and Control

Infection prevention and control is the practice of preventing or stopping the spread of infections in health care settings such as hospitals and long-term care facilities through various measures, including hand hygiene, universal masking for source control, PPE, environmental cleaning and isolation precautions.[24] Long before the emergence of COVID-19, many SNFs struggled with implementing adequate infection prevention and control measures. A recent study conducted by the U.S. Government Accountability Office (GAO) analyzed CMS data on infection prevention and control deficiencies and found that of the 1,258 SNFs surveyed in California from 2013 through 2017, 76 (6 percent) had no infection prevention and control deficiencies cited, 176 (14 percent) had infection prevention and control deficiencies cited in only one year, 204 (16.2 percent) had infection prevention and control deficiencies cited in multiple nonconsecutive years and 802 (63.8 percent) had infection prevention and control deficiencies cited in multiple consecutive years.[25] While the scope and severity of the deficiencies varied, the study highlights the prevalence of infection prevention and control deficiencies prior to COVID-19.

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[22] California Department of Public Health, AFL 20-52, *Coronavirus Disease 2019 (COVID-19) Mitigation Plan Implementation and Submission Requirements for Skilled Nursing Facilities (SNF) and Infection Control Guidance for Health Care Personnel (HCP)*, May 11, 2020. AFLs can be found at: https://www.cdph.ca.gov/Programs/CHCQ/LCP/Pages/LNCAFL.aspx (accessed on September 11, 2020).
[23] *Id.*
[24] Centers for Disease Control and Prevention, Infection Control, at: https://www.cdc.gov/infectioncontrol/index.html (accessed on September 4, 2020).
[25] U.S. Government Accountability Office, GAO-20-576R Nursing Home Infection Control, *Infection Control Deficiencies Were Widespread and Persistent in Nursing Homes Prior to COVID-19 Pandemic*, May 20, 2020.

Several factors contribute to suboptimal infection prevention and control in SNFs, including lack of training, inadequate staffing levels and high turnover rates.[26]

While implementing and maintaining infection prevention and control measures remains the responsibility of each SNF, one of the core functions of LACDPH is to provide technical assistance and ongoing training/educational opportunities. Since 2017, LACDPH has offered a free bi-annual, two-day training course for infection preventionists and health care workers in long-term care settings. Due to the COVID-19 pandemic, the 2020 courses were cancelled, but LACDPH plans to offer these courses again beginning in 2021 via online webinars.[27] LACDPH also reports that it recently assembled an educational committee to continue expanding its training opportunities, including the ongoing webinars and trainings to SNFs for the duration of the pandemic. Lastly, LACDPH reports that as it learns more about the ongoing needs of SNFs, as well as best practices identified in other jurisdictions, LACDPH will continually revise its infection control guidelines and reconcile CMS, CDC and state guidelines, rules and regulations. LACDPH should continue to expand its training and educational opportunities, actively engage with SNFs for participation and periodically update the Board on its progress.

Universal Masking Mandate

Early in the pandemic, the scope and extent of asymptomatic transmission was unclear.[28] As a result, the virus was able to spread, largely unimpeded, from asymptomatic staff and residents for several weeks, causing alarming rates of illness and death. Unaware that asymptomatic transmission was contributing significantly to the spread of COVID-19, LACDPH recommended universal masking the first week of April 2020, and then required universal masking with the issuance of the April 24, 2020, Health Officer Order.

In seeking to understand the efficacy of each of the infection control measures that SNFs were required to implement, the OIG asked LACDPH personnel about the impact each measure had on COVID-19 mitigation efforts. LACDPH indicated that there has been no exhaustive study on the measures and conducting such a study would prove challenging due to the sheer number of guidelines that were issued and measures that were implemented in a short timeframe. LACDPH personnel have indicated that the most critical measure was universal masking, followed by

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[26] Stone, Patricia W. et al., *Nursing Home Infection Control Program Characteristics, CMS Citations, and Implementation of Antibiotic Stewardship Policies: A National Study*, Inquiry: The Journal of Health Care Organization, Provision, and Financing, Vol. 55 (2018).
[27] Los Angeles County Department of Public Health, Acute Communicable Disease Control – Healthcare Outreach, Basics of Infection Prevention for Long-Term Care Settings, at: http://publichealth.lacounty.gov/acd/IP2Daycourse.htm (accessed on September 9, 2020).
[28] World Health Organization, Coronavirus disease 2019 (COVID-19), Situation Report – 73, April 2, 2020.

enhanced environmental cleaning and social distancing. LACDPH reports that it observed lower infection rates in SNFs that implemented universal masking prior to the mandate.

While the scientific evidence on asymptomatic transmission was inadequate or inconclusive during the early stages of the pandemic to support a mandate, universal masking eventually proved to be an effective intervention.[29] Evidence-based decision-making is critical, especially during public health emergencies that require careful consideration of the risks and benefits of various options. The scientific and epidemiological uncertainty surrounding COVID-19, combined with its rapid spread, presented challenges to implementing timely and effective public health strategies on federal, state and county levels.[30] Even though LACDPH recommended universal masking earlier than many other governmental agencies, LACDPH should consider reviewing the timeline and factors in its decision-making process leading up to its mandate for universal masking in SNFs to determine what improvements, if any, could have been made to its approach.

Personal Protective Equipment

In order to succeed in infection prevention and control, SNFs must have access to adequate and ongoing supplies of PPE. The responsibility for the procurement, training and use of PPE in accordance with federal, state and county guidance, orders and directives falls on SNFs. Facilities are required to have plans for the adequate provision of PPE, including types that will be kept in stock, the duration the PPE stock is expected to last and information on established contracts or relationships with vendors for replenishment.[31]

OIG personnel spoke to SNF representatives and LACDPH personnel who reported that many facilities experienced difficulties early in the pandemic with obtaining PPE. The representatives indicated that the efforts of its member facilities in obtaining sufficient PPE and complying with applicable requirements were hampered

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[29] *See* Esposito, S. et al., *Universal use of face masks for success against COVID-19: evidence and implications for prevention policies*, The European Respiratory Journal, vol. 55, June 18, 2020.
[30] The challenges were further exacerbated by the many similarities between SARS-CoV-1, the virus that causes severe acute respiratory syndrome (SARS) that emerged in 2003, and SARS-CoV-2, the virus that causes COVID-19. Initial public health interventions focused on symptom-based screening since it was believed that both viruses had similar transmission dynamics and symptom-based screening was successful in controlling the spread of SARS. However, as evidence of asymptomatic transmission of COVID-19 became clear, additional measures, including universal masking were required to contain the spread of the disease. *See* Ghandi, M., et al., *Asymptomatic Transmission, the Achilles' Heel of Current Strategies to Control Covid-19*, N Engl J Med 2020;382:2158–60, May 28, 2020.
[31] California Department of Public Health, AFL 20-52, *Coronavirus Disease 2019 (COVID-19) Mitigation Plan Implementation and Submission Requirements for Skilled Nursing Facilities (SNF) and Infection Control Guidance for Health Care Personnel (HCP)*, May 11, 2020.

by a lack of coordination and communication between government entities, conflicting ordinances, directives and orders and a lack of clarity regarding the roles of the Medical and Health Operational and Coordination program,[32] the County Emergency Operations Center and LACDPH in assisting SNFs with coordinating resources.

In recognition of the difficulties experienced in obtaining PPE, LACDPH, in consultation with facility stakeholders, conducted an analysis of PPE needs and developed a work plan to optimize the County's PPE supply. Based on this analysis, LACDPH reports that it has implemented a system that assesses PPE supply chain status (i.e., inventory levels and utilization rates) and projects exhaustion rates for health care facilities, including SNFs and service providers. The system tracks county-wide status for each type of PPE and informs the level of contingency planning required.

In addition, LACDPH has created a county-wide emergency response distribution network to assist health care facilities and service providers with accessing PPE from state and national stockpiles, as well as procurement from commercial vendors. LACDPH has dedicated personnel to certain facility types, including long-term care facilities, to serve as points of contact for urgent PPE needs. LACDPH reports that it is currently able to serve as a bridge when an entity has a critically low supply (fewer than 7 days). LACDPH's efforts to address PPE shortages appear to have been comprehensive and well-reasoned. The OIG will monitor the effectiveness of LACDPH's efforts to support PPE procurement and distribution and the presence of adequate supplies of PPE during SNF site visits.

Seroprevalence Study

As infection and death rates decrease among SNF residents, it is unclear whether the decrease is the result of implemented infection prevention and control measures or the result of potential community (often referred to as "herd") immunity[33] due to widespread transmission early in the pandemic. In an effort to begin to answer this question, LACDPH has recruited 24 SNFs to participate in a seroprevalence study to determine the number of residents and staff who have

[32] The Medical Health Operational Area Coordinator (MHOAC) program is authorized by California Health and Safety Code § 1797.153. The MHOAC is responsible for monitoring and ensuring adequate medical and health resources are in place during a local emergency. MHOAC coordinates the dissemination of federal and state PPE. For Los Angeles County, the MHOAC is the Los Angeles County Emergency Medical Services Administrator.

[33] Community (or "herd") immunity is a form of indirect protection from infectious disease that occurs when a sufficient percentage of a population has become immune to an infection, whether through vaccination or previous infections, thereby reducing the likelihood of infection for individuals who lack immunity. *See* Centers for Disease Control and Prevention, Vaccines & Immunizations – Glossary, at: https://www.cdc.gov/vaccines/terms/glossary.html (accessed on September 14, 2020).

antibodies against COVID-19. LACDPH expects that identifying the proportion of residents and staff who are antibody positive will help provide a better understanding of the cumulative burden of disease in SNFs and inform future decision-making in the event of a potential resurgence of COVID-19. LACDPH's proactive step to understanding this question is commendable. LACDPH should share the results of the study broadly, including any implications for policy decisions.

Infection Preventionist

According to AFL 20-52, all SNFs must have a full-time, dedicated infection preventionist (IP). CDPH developed brief training materials for dedicated IP staff; however, it did not define credentials or ongoing training requirements for the IP. As such, stakeholders have expressed concerns regarding the lack of standardized qualifications and training for staff who can be dedicated IPs. The OIG will assess this issue in consultation with its subject matter expert, SNFs, LACDPH and other stakeholders.

COVID-19 DIAGNOSTIC TESTING

COVID-19 diagnostic testing, which identifies current infection, serves a critical role in measuring the spread of the disease and informing additional prevention and control efforts such as cohorting and contact tracing. The gravity and impact of the crisis raises obvious questions about the need for continuous universal testing of *all* residents and staff. Because of well documented limitations on testing capacity, continuous universal testing has been deemed infeasible at this time. As such, CDPH and LACDPH have established protocols for surveillance and response-based testing requirements.

As local, state and national experts have indicated, diagnostic testing is also not without limitations. For example, testing represents the state of infection at a single point in time. A test may have a turnaround time of several days during which an individual who tested negative may become positive by the time the results return due to an incubating infection or even a post-test exposure. In addition, because tests are not 100 percent sensitive, false negative results may occur. Lastly, there are limits on testing capacity due to the availability of swabs, reagents and media, as well as turnaround times for test results due to laboratory capacity. As such, diagnostic testing in no way replaces or precludes critical infection prevention and control interventions.

Testing Requirements

The increased risk of severe illness and death from COVID-19 exposure among vulnerable SNF residents combined with the inherent risks of congregate living necessitates enhanced testing efforts. On May 22, 2020, CDPH required that each SNF test 25 percent of its staff weekly to ensure that 100 percent of staff are tested each month for surveillance purposes.[34] On September 12, 2020, CDPH expanded the weekly surveillance testing requirement to include weekly testing of all SNF staff in facilities with no positive COVID-19 cases.[35] In addition, LACDPH requires that SNFs test a random sample of 10 percent of all residents per week.[36]

If any COVID-19 cases are identified among residents or staff, CDPH requires that the facility conduct comprehensive response-driven testing of all residents and staff. In addition, the facility is required to cohort residents based on test results and potential exposure accordingly. All remaining residents and staff who test negative are required to be tested weekly until no new cases are identified in two sequential rounds of testing, at which point the facility can resume weekly surveillance testing. Weekly surveillance testing of staff (as required by CDPH) and residents (as required by LACDPH) allows for early detection of and response to outbreaks. Response-based testing provides a complete picture of the virus' presence in a facility and provides the information needed to appropriately isolate and quarantine individuals who may be infected or exposed.

All SNFs are required to report their weekly COVID-19 testing data to CDPH via an online survey.[37] LACDPH has access to the results of this survey, which is used to monitor compliance with testing requirements. LACDPH reports that it utilizes a tiered approach to validate the testing data. First, LACDPH assesses whether the reported testing data is internally valid and consistent with prior reported data. Then, LACDPH cross-references the reported data with information from the National Healthcare Safety Network. Lastly, if LACDPH identifies inconsistencies, HFID staff are required to contact facilities and conduct inquiries. LACDPH reports that inconsistencies have been identified, but they were largely due to clerical errors or testing result delays.

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[34] California Department of Public Health, AFL 20-53, *Coronavirus Disease 2019 (COVID-19) Mitigation Plan Implementation and Submission Requirements for Skilled Nursing Facilities (SNF) and Infection Control Guidance for Health Care Personnel (HCP)*, May 11, 2020.
[35] California Department of Public Health, AFL 20-53.3, *Coronavirus Disease 2019 (COVID-19) Mitigation Plan Implementation and Submission Requirements for Skilled Nursing Facilities (SNF) and Infection Control Guidance for Health Care Personnel (HCP)*, September 12, 2020.
[36] Los Angeles County Department of Public Health, *Guidelines for Preventing and Managing COVID-19 in Skilled Nursing Facilities*, revised June 17, 2020, at: http://publichealth.lacounty.gov/ACD/docs/nCoVLTCGuide.pdf (accessed on July 29, 2020).
[37] California Department of Public Health, AFL 20-60, *SNF Weekly Reporting of Coronavirus Disease 2019 (COVID-19) Surveillance/Response-Driven Testing*, July 17, 2020.

LACDPH reports that, thus far, no instances of facilities knowingly falsifying data have been identified. However, if HFID receives information regarding falsification of reported data, an investigation will be conducted. Failure to cooperate or knowingly reporting inaccurate information on the surveys may result in state and/or federal enforcement actions.[38] State enforcement action may include a class B citation[39] and a federal enforcement action may include daily monetary penalties.

LACDPH anticipates instances where some SNFs will be unable to meet testing requirements. In order to avoid excessive delays in testing, LACDPH maintains a COVID-19 testing capacity and a strike team consisting of approximately 50 to 60 public health nurses that can be deployed to provide a sliding scale of assistance, including testing support. LASD reports that the strike team will be deployed when a facility has not met testing requirements for two consecutive weeks, has no legitimate reason for not meeting the requirements and has no actionable plan to resolve the issue.

County's Testing Capacity and Turnaround Times

Due to the County's limited independent testing capacity, LACDPH reports that supplemental testing will be provided in the following circumstances: (1) when the capacity of a specific laboratory to provide testing suddenly and unexpectedly ceases or decreases and (2) when an outbreak in a facility occurs that is of such magnitude or consequence that it exceeds the ability of the supporting laboratory to respond on the scale or timeliness that is required. The OIG inquired about whether the Los Angeles Public Health Laboratory (PHL) could serve as backstop to commercial laboratories. LACDPH reported that, while it might be necessary for the PHL to serve as a backstop for testing in the future, this is not a traditional role of the PHL and it is currently limited in its capacity and capability for widespread testing due to underfunding and outdated infrastructure. For instance, until recently, the PHL had relied on paper requisitions as it has lacked adequate information technology. LACDPH should conduct a thorough strategic assessment of the County's testing capacity, with the goal of generating an operational plan that would preserve adequate capacity to test for high priority and vulnerable populations, irrespective of community demand for testing and supply chain issues, such that SNF residents and staff would not be subjected to excessive testing delays. LACDPH should also (1) explore the feasibility of expanding the PHL to serve as a backstop for critical testing in the event that commercial laboratory turnaround times exceed reasonable schedules, and (2) determine whether it would

[38] California Department of Public Health, AFL 20-43.3, *SNF Coronavirus Disease 2019 (COVID-19) Daily Reporting*, June 19, 2020.
[39] Class B citations are issued when the violation has a direct or imminent relationship to the health, safety, or security of a patient or resident, other than class "AA" or "A" violations. This citation carries fines from $100 to $2,000. CA Health & Safety Code § 1424(e).

be beneficial for the PHL to develop the capability to bill for tests, for current and future use.

While the state regulates commercial laboratories, the County interacts with the laboratories on a daily basis since laboratories are required to report positive infections to LACDPH. This process is often interrupted or delayed due to backlogs in testing, resulting in excessive turnaround times for test results. In order for surveillance-based testing to work as prescribed, turnaround times need to be less than 48 hours, and ideally under 24 hours. According to the Los Angeles County Department of Health Services, LACDPH and a select group of SNFs, turnaround times are often longer.

LACDPH reports that it generally monitors the volume and timeliness of laboratories through its receipt of test results. LACDPH provides that while ensuring adequate turnaround times for commercial laboratories is beyond its scope, it has engaged with CDPH's Laboratory Field Services to coordinate efforts. LACDPH believes this coordination will be helpful in assuring the performance of laboratories. LACDPH indicated that it would consider additional intervention if average turnaround times began to exceed seven days, but the process and method by which the intervention would be carried out is unclear. LACDPH should consider developing a strategic plan for intervention in the event that SNF resident and staff testing turnaround times exceed recommended timeframes and continue to work with the state to improve oversight of the commercial laboratories.

In response to concerns about testing capacity and turnaround times, on July 14, 2020, CDPH issued a guidance on COVID-19 testing to support public health officials, health care providers and laboratories in determining who should be tested.[40] Under the guidance, testing was separated into four tiers of prioritization. The guidance included testing in outbreaks at SNFs as a Tier One priority and testing of asymptomatic residents and staff as a Tier Two priority.[41] On September 22, 2020, CDPH suspended the tiered prioritization of testing until further notice due to improvements in the state's testing capacity and turnaround times.[42] LACDPH reports that it intends to modify its testing guidance to align with the CDPH's updated guidance. The OIG cautions LACDPH in aligning its testing guidance with CDPH's until it is certain that testing turnaround times for SNF residents and staff are, and will remain, under 48 hours.

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[40]California Department of Public Health, *Updated COVID-19 Testing Guidance*, July 14, 2020, at: https://www.cdph.ca.gov/Programs/CID/DCDC/Pages/COVID-19/Updated-COVID-19-Testing-Guidance.aspx (accessed on July 22, 2020).
[41] *Id*.
[42] California Department of Public Health, *Updated COVID-19 Testing Guidance*, September 22, 2020, at: https://www.cdph.ca.gov/Programs/CID/DCDC/Pages/COVID-19/Updated-COVID-19-Testing-Guidance.aspx (accessed on September 28, 2020).

COVID-19 DESIGNATED FACILITIES

Beginning in April 2020, as part of its infection control efforts, LACDPH restricted the transfer of COVID-19 patients from acute care hospitals to SNFs.[43] Consequently, hospitals were required to retain many COVID-19 patients after they had fully stabilized and no longer needed acute level care, resulting in a bottleneck in discharges. In order to preserve hospital capacity for potential surges in COVID-19 hospitalizations, health plans and hospitals reportedly asked LACDPH to help a group of SNFs set up buildings, floors, or units dedicated to the care and recovery of stabilized COVID-19 patients until the patients were no longer infectious and could be transferred to other SNFs.

SNFs wishing to dedicate a building, floor or unit for the care of COVID-19 patients were asked to contact LACDPH and request an evaluation. The motivations of some SNFs for seeking COVID-19 designation as well as the process by which SNFs became COVID-designated have been questioned by some stakeholders and concerns have been raised about the level of care provided. In an effort to better understand the formalized designation process and corresponding safeguards, the OIG interviewed LACDPH personnel and reviewed tracking systems. As of August 25, 2020, LACDPH has designated 21 SNFs with specific units, floors, or buildings dedicated to COVID-19 residents.

LACDPH reports that the following evaluation criteria are used to determine whether a SNF is qualified to serve as a dedicated COVID-19 facility:

- Certification Survey Results: Any SNF that received a deficiency that constituted substandard quality of care[44] in certification surveys from the previous 24-month period is not eligible for consideration.

- COVID-19 Outbreak Status: Any SNF with an active COVID-19 outbreak is not eligible to serve as a dedicated COVID-19 facility until two consecutive rounds of response-based testing of all residents and staff yield no new positive cases.

- Written Plan: SNFs that meet the threshold eligibility requirements are provided with LACDPH's guidelines for developing specific buildings, floors or units dedicated to the care of COVID-19 patients and asked to submit a

[43] Los Angeles Department of Public Health, *Interfacility Transfer Rules During COVID-19 Pandemic*, at: http://publichealth.lacounty.gov/acd/NCorona2019/InterfacilityTransferRules.htm (accessed on September 4, 2020).
[44] As defined in 42 CFR § 488.301.

written plan that describes how they will adhere to the guidelines.[45] All facilities that seek designation must meet baseline requirements and operate within a specific infection prevention structure. Upon receipt, the written plan is reviewed by the lead infection control physician from LACDPH's ACDC program to determine eligibility.

- Virtual Assessment of Infection Prevention and Control Measures: After the written plan is approved, a public health nurse who specializes in infection prevention and control conducts a virtual assessment of the facility's COVID-19 infection prevention and control measures. Based on the assessment, the public health nurse provides the facility with specific written recommendations for any identified COVID-19 infection control issues.

- Notification: Upon approval, LACDPH notifies the SNF of its designation as a COVID-19 facility. The facility is then required to notify residents' families and staff of the designation. Once all notifications have been made, LACDPH posts the facility's information on its website so that it may begin to admit COVID-19 patients from acute care hospitals.

- Ongoing Monitoring: All designated COVID-19 facilities receive quarterly consultative in-person visits from a team of infectious disease specialists from LACDPH, including the lead infection control physician from the ACDC program and two public health nurses. These visits are designed as an opportunity for the team to monitor the quality of care provided, review infection control measures and engage in discussions with staff on best practices to protect the health of all residents and staff. In addition, all designated facilities receive daily calls from LACDPH.

LACDPH reports that the designation of COVID-19 facilities has been effective in reducing the hospital discharge bottleneck and provide recovering residents better care due to several factors. First, LACDPH's baseline requirements are tailored to ensure that designated facilities are prepared to provide post-acute care to COVID-19 patients, such as respiratory and other therapies. Next, LACDPH reports that designating a limited number of facilities has allowed it to closely monitor each facility and provide support as needed. Monitoring is conducted by LACDPH's ACDC program, which is comprised of a specialized team of physicians, public health nurses, epidemiologists and health educators. Lastly, LACDPH reports that it will revoke a designation if a facility does not continue to meet the heightened requirements of the program. To date, LACDPH has revoked two designations—the

[45] Los Angeles County Department of Public Health, *Los Angeles County Department of Public Health – Developing COVID-19 Dedicated Skilled Nursing Facilities*, May 28, 2020, at: http://publichealth.lacounty.gov/acd/docs/DedicatedLTCFPlan.pdf (accessed on September 4, 2020).

first due to an insufficient heating, ventilation and air conditioning system and the second due to staffing shortages.

Stakeholders have expressed serious operational and other concerns about the facilities that were selected by LACDPH to serve as designated COVID-19 facilities. Several designated facilities have received below average CMS Star Ratings[46] in health inspections, staffing, or quality measures, numerous complaints that have resulted in citations over the past three years and multiple deficiencies from recent health inspections surveys. Though LACDPH is satisfied that its designation process and ongoing monitoring is comprehensive, the OIG will evaluate and report on these concerns.

Due to the gravity of this decision-making process, LACDPH should consider (1) developing a set of qualitative metrics that account for complaints and any other relevant information to assess the performance of the designated COVID-19 facilities and ensure they remain in good standing and (2) posting findings on its website for improved transparency and accountability. The OIG will continue to monitor LACDPH's oversight of these facilities and provide additional analysis in subsequent reports.

[46] The Centers for Medicare & Medicaid Services uses an overall five-star quality rating system based on a facility's performance for three types of performance measures (health inspections, staffing and quality measures), each of which has its own associated five-star rating.

ATTACHMENT I

IMPROVING OVERSIGHT AND ACCOUNTABILITY WITHIN SKILLED NURSING FACILITIES (MAY, 26, 2020, BOARD AGENDA ITEM #23) – AUDITOR CONTROLLER'S INTERIM REPORT

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KAREN LOQUET
CONNIE YEE

October 5, 2020

TO Max Huntsman
Inspector General

FROM Arlene Barrera
Auditor-Controller

SUBJECT **IMPROVING OVERSIGHT AND ACCOUNTABILITY WITHIN SKILLED NURSING FACILITIES (May 26, 2020, Board Agenda Item 23) – AUDITOR-CONTROLLER'S INTERIM REPORT**

On May 26, 2020, the Board of Supervisors (Board) directed the Office of Inspector General (IG) to provide a report on the Oversight and Operations of Skilled Nursing Facilities (SNF) in Los Angeles County (Report). The IG's Report is to provide an evaluation of SNFs within Los Angeles County (County), recommendations on operational and programmatic changes necessary to improve the County's monitoring and oversight of these facilities, and include legislative and regulatory recommendations aimed at improving operations within these facilities.

The Board also directed the Auditor-Controller (A-C) to develop a publicly available dashboard, assess the Department of Public Health's (DPH) Health Facilities Inspection Division's (HFID) ability to meet all COVID-19 Mitigation and other critical oversight roles, compare HFID's staffing level to other counties in the State, and work with the Directors of DPH and other County departments to ensure there is the necessary staffing, expertise, training, enforcement protocols, and other functions required to support this monitoring and enforcement efforts.

The IG provided a proposed scope of work, along with the A-C's, to the Board on July 30, 2020. The Board directed the IG to complete their Report in consultation with the A-C and other appropriate department leaders, and provide interim reports every 60 days. This report constitutes our interim report to the IG on the A-C's status and observations made thus far.

Public Dashboard

As indicated above, the Board directed the A-C to develop a publicly available dashboard, in collaboration with DPH and other appropriate County departments, to be updated and posted on a weekly basis by DPH, that provides information by individual SNF on COVID-19 related data.

Status

On August 12, 2020, the Los Angeles County's SNF Dashboard, Version 1.0, was published to DPH's website. Version 1.0 includes SNF information related to: new and cumulative COVID-19 cases, new and cumulative COVID-19 related deaths, COVID-19 testing of both staff and residents, facilities with adequate staff, and Personal Protective Equipment (PPE).

In collaboration with DPH, we identified all necessary data to be included on the Dashboard from the Centers for Disease Control and Prevention's National Healthcare Safety Network, California Department of Public Health (CDPH), and DPH's HFID's internal files and supplemental survey. We also assessed how the data interrelates and identified the flow of data from the SNF to the dashboard identifying all touch points to the data and did not identify any issues. In addition, we assisted in designing and developing analytics that address metrics around SNF activity and performance, and testing and validating the dashboard, assuring data integrity and proper summary of data on the dashboard.

On September 30, 2020, the final version of the dashboard was made public to include data on the mitigation plan visit date and a link to the mitigation plan report on the State's website.

Assessment of DPH's HFID

As noted above, the A-C was directed by the Board to assess HFID's ability to monitor and ensure SNF compliance with the COVID-19 Mitigation Plans while maintaining the required level of non-COVID-19-related investigations and meeting other critical oversight roles necessary to ensure the ongoing health and safety of residents and staff within these facilities. The following are our updated statuses since our July 30, 2020 Scope of Work memo:

COVID-19 Mitigation Plans

CDPH issued an All Facilities Letter (AFL) 20-52 on May 11, 2020, requiring all SNFs to develop and implement an approved COVID-19 Mitigation Plan (Plan). The AFL required SNFs to submit their Plans by June 1, 2020, and "if CDPH determines that facility is not implementing its *approved* mitigation plan and identifies unsafe practices that have or are

likely to cause harm to patients, CDPH may take enforcement action including calling an Immediate Jeopardy (IJ) situation which may result in a civil penalty." The AFL also required the Plans to include the following six elements: (1) testing and cohorting, (2) infection prevention and control, (3) PPE, (4) staffing shortages, (5) designation of space, and (6) communication. HFID was also required to conduct COVID-19 Mitigation on-site survey visits of each SNF every six to eight weeks to ensure the SNFs implemented their Plans.

Status

According to HFID, all 379 SNFs under the County's purview submitted their Plans to HFID for review and approval by June 1, 2020, as required. As indicated in the next section, according to HFID management, as of August 15, 2020, they completed the first round of COVID-19 Mitigation on-site survey visits for all 379 SNFs. However, as of August 17, 2020, we noted that 28 (7%) of the 379 SNFs' Plans were not approved by HFID as required. HFID management indicated the remaining 28 SNFs' Plans were already approved by their first level approvers, and were, at the time of our review, with their second level approvers awaiting final review and approval as required by HFID. Despite not having completed their review and approval of all the SNFs' Plans, HFID scheduled and proceeded to conduct their first round of COVID-19 Mitigation on-site survey visits. HFID finalized their approval of the remaining 28 SNFs' Plans on or before August 25, 2020.

Next Step:

- Assess whether an evaluation of HFID's operational processes is needed to ensure timely completion of required tasks/responsibilities.

Tracking and Completion of COVID-19 Mitigation On-site Survey Visits

As noted above, AFL 20-52 requires HFID to conduct COVID-19 Mitigation on-site survey visits of each SNF every six to eight weeks indefinitely. HFID utilizes a spreadsheet to schedule their COVID-19 Mitigation on-site survey visits for the 379 SNFs. Based on HFID's spreadsheet, the first round of COVID-19 Mitigation on-site survey visits began on July 6, 2020, and ended on August 15, 2020. According to HFID management, as of August 15, 2020, they completed the first round of COVID-19 Mitigation on-site survey visits for all 379 SNFs. The second round of visits began on August 24, 2020.

Status

At the time of our review, HFID utilized the State's SNF COVID-19 Mitigation Plan On-Site Survey Tool (Onsite Tool) to document their observations and interviews during their on-site survey visits to ensure the SNFs are in compliance with their approved Plans. We reviewed a sample of 15 On-Site Tools to determine if HFID completed their SNFs'

COVID-19 Mitigation on-site survey visits in accordance with their schedule. HFID initially reported they needed to reschedule one of the 15 sampled COVID-19 Mitigation on-site survey visits since the State, who was assisting HFID in completing their on-site visits, could not conduct the visit as originally scheduled. HFID and the State subsequently provided documentation, showing the State's staff actually completed the required visit several weeks prior to when HFID initially informed us they needed to reschedule the visit.

It appears this oversight could be attributed to miscommunication between the State and HFID. Considering the State's assistance in completing HFID's COVID-19 related work, as indicated under "Next Steps" below, we will review HIFD's communication protocols, including frequency and content, to ensure there are no scheduling conflicts with the State.

HFID management has since provided a schedule that includes necessary information, such as the dates, organization (i.e., HFID, State), and names of the Evaluators who conducted the COVID-19 Mitigation on-site survey visits, which may help ensure all required visits are completed as scheduled and to reduce the risk of possible duplication by HFID and the State.

Finally, we noted that all 15 on-site visits were either completed as scheduled, or prior to HFID's target date (August 15, 2020) for completing the first round of on-site visits. However, our review identified possible concerns related to HFID's ability to monitor and ensure SNF compliance with the COVID-19 Mitigation Plans, while maintaining their non-COVID-19-related oversight activities. These concerns, which will be further explored as described in our "Next Steps" below, are focused on (1) the level and duration of the State's involvement despite a federal directive that suspended all routine oversight activities to focus on fulfilling COVID-19 Mitigation requirements and other critical investigations; (2) HFID's processes for scheduling, tracking and overseeing on-site visits to ensure all visits are completed timely; and (3) the need to routinely analyze the results of their COVID-19 Mitigation on-site survey visits to quickly facilitate needed changes and/or provide critical assistance where needed.

Next Steps:

- Determine the State's level and duration of involvement with assisting in conducting HFID's COVID-19 Mitigation on-site survey visits of some of their SNFs, and any other tasks/responsibilities HFID is required to fulfill.

- Assess HFID's communication protocols, including frequency and content, to ensure there are no scheduling conflicts with the State.

- Determine whether their tracking spreadsheet is updated real-time, and if a quality assurance review process, such as regularly reviewing, approving, and ensuring all discrepancies on the tracking spreadsheet are investigated and

resolved timely by management to ensure all scheduled visits have been conducted as scheduled.

- Determine whether HFID management is routinely compiling and analyzing the results of their COVID-19 Mitigation on-site survey visits to help identify trends and needs of the SNFs in order to better and more quickly facilitate changes and/or provide critical assistance where needed.

Enforcement Protocols

HFID is required to follow Centers for Medicare and Medicaid Services' (CMS) and State enforcement guidelines when they identify incidents of non-compliance with regulatory requirements during their COVID-19 Mitigation Plan Implementation and other routine on-site visits, such as licensing, certifications, and inspections, and make enforcement recommendations based on the guidance provided. The guidelines also require HFID's Evaluators to enter all incidents of non-compliance that require enforcement under federal and/or State regulations (i.e., failure to maintain the required staffing levels, failure to follow the required infection control policies and procedures) in the Automated Survey Process Environment (ASPEN), a federal system managed by CMS, and/or the Electronic Licensing Management System (ELMS), the State's system managed by CDPH. HFID Supervisors are required to review and approve the enforcement recommendations made by their Evaluators to the State and CMS.

Status

HFID indicated they utilize both federal and State policies and procedures for conducting various tasks, such as performing investigations, routine on-site visits, reporting incidents identified, and resolving enforcement recommendations. However, the CMS' State Operations Manual does not provide timeframes of when incidents identified during their other routine on-site visits should be entered into ASPEN or ELMS, or when the incidents should be resolved once the State or CMS accepts the enforcement recommendations. We also noted HFID does not have separate internal procedures/guidelines for applying CMS' enforcement protocols, such as timeframes for Evaluators to submit enforcement recommendations to their Supervisors after identifying incidents of non-compliance; timelines for Supervisory review of the Evaluators' proposed recommendations; or requirements for resolving and/or following-up on the incidents identified to ensure facilities are in compliance.

Next Steps:

- Evaluate whether HFID's current enforcement processes provide adequate assurances that the facilities resolved noted deficiencies timely and continue to comply with all regulatory requirements by outlining and assessing their enforcement timelines, starting with when the Evaluators identify the incidents

of non-compliance to when HFID has completed their follow-up inspections to confirm that the enforcement remedies resolved the deficiencies.

- Assess whether HFID complied with applicable federal and State policies and procedures, and determine whether HFID should develop a separate, internal enforcement procedural manual to ensure they are appropriately, consistently, and timely identifying incidents and applying CMS' enforcement remedies when facilities violate or are not in compliance with regulatory guidelines.

- Determine whether HFID adequately tracks enforcement recommendations made to the State or CMS to ensure timely implementation and resolution of all deficiencies.

- Determine whether HFID management compiles and analyzes the results of all incidents and enforcement remedies to identify trends and areas for improvement to appropriately address reoccurring and/or systemic issues.

HFID's Total Oversight Responsibilities

As indicated above, non-COVID-19 related investigations that are not critical and other oversight duties, such as routine inspections, licensing, and certifications, were suspended by the State. However, in order to assess whether HFID has the ability and capacity to monitor and ensure compliance with the COVID-19 Mitigation Plans while maintaining the required non-COVID-19-related investigations and meeting other critical oversight roles necessary to ensure ongoing health and safety of residents and staff within these facilities, we need to fully identify and understand HFID's total workload and oversight responsibilities and requirements relating to the 4,188 health care facilities under their jurisdiction.

Status

Exhibit A-1 of HFID's State/County contract outlines HFID's total required tasks/responsibilities for all of their facilities, such as the number of licensing, re-licensing, certifications, re-certifications, follow-up inspections, and investigations, that are required to be completed annually. We also obtained HFID's inventory of all open investigations in progress to determine the total amount of past due investigations. In addition, we obtained from the State and HFID, the standard average hours expected to complete each task/responsibility (i.e., the number/percentage of licensing, re-licensing, certifications, re-certifications, follow-up inspections, and investigations) outlined in the State/County contract. As indicated under "Next Steps" below, we will analyze HFID's total amount of required tasks and backlogs, and their overall oversight responsibilities over the SNFs and other health care facilities to complete our assessment.

Based on our review thus far, HFID does not conduct risk assessments of their health care facilities or tasks/responsibilities they are required to complete under their State/County contract. Specifically, HFID does not identify which types of the 4,188 total health care facilities within the County's jurisdiction, such as hospitals, outpatient clinics, acute health care facilities, and SNFs, are considered to be at higher risk for non-compliance with COVID-19 and other regulatory requirements. HFID also does not identify which contracted responsibilities such as licensing, certifications, and investigations, would require more immediate and timely completion, have the highest impact if not performed, and require the most amount of time to complete. Conducting risk assessments could help prioritize and reallocate their limited resources and help ensure high risk facilities and critical responsibilities, such as immediate jeopardy investigations and COVID-19 Mitigation oversight, are appropriately and timely completed.

Next Steps:

- Analyze HFID's total required tasks and backlog data/information, and their overall oversight responsibilities and requirements under the State/County contract over all of the health care facilities under the County purview.

- Confirm HFID's required tasks and workload statistics, such as the number of licensing, re-licensing, certifications, re-certifications, follow-up inspections, and investigations, and the standard average number of hours it takes to complete each task, on all required activities.

- Assess whether HFID's processes could be enhanced by conducting risk assessments of their health care facilities and the tasks/responsibilities required under their State/County contract to assist in identifying, prioritizing, and allocating their work and resources to better provide the required level of oversight, since the introduction of COVID-19 related work, over all health care facilities.

- Determine the State's involvement, if any, with assisting HFID meet their overall contractual obligations, similar to their assistance in conducting some of HFID's COVID-19 Mitigation on-site survey visits.

Open Investigations

A major component of assessing HFID's ability to monitor and ensure SNF compliance with the COVID-19 Mitigation Plans while meeting other critical oversight roles is to compile and analyze the total number of tasks/responsibilities HFID is required to complete by the State/County contract. This includes HFID's backlogs, if any, that are outstanding since, as previously mentioned, it's unknown when the suspended oversight activities will resume or how regulations will change in this highly fluid environment.

The terms of the State/County contract establish, in part, the contracted workload based on an estimated number of complaints and facility reported incident (FRIs) investigations. This methodology for establishing workload continually presents the possibility of actual case numbers exceeding estimates. The most recent contract, in place since July 1, 2019, aims to address the existing number of open investigations by adding capacity for this work, though the possibility of actual volume exceeding estimates still exists.

Status

As of July 1, 2019, the State/County contract requires HFID to complete complaint and FRI investigations within 60 and 365 days, respectively. As of June 30, 2020, HFID reported 5,407 open SNF investigations. Since July 1, 2019, HFID reported 1,690 complaints and FRIs, of which 1,200 were submitted after March 21, 2020, when HFID was directed by the State to redirect staff resources on COVID-19 related complaint investigations and COVID-19 Mitigation Plan implementation oversight. The following chart illustrates the lengths of time the 5,407 SNF investigations have remained open:

Lengths of Time Investigations Remained Open (as of 6/30/20)	SNF Complaints	SNF Facility Reported Incidents	Totals
Less than 1 year	816	874	1,690
Over 1 year	58	520	578
Over 2 years	56	460	516
Over 3 years	399	381	780
Over 4 years	193	661	854
Over 5 years	627	362	989
Totals	**2,149**	**3,258**	**5,407**

As of June 30, 2020, HFID reported 547 (10%) of the 5,407 in-progress SNF investigations were prioritized at the level of IJ. Investigations prioritized as IJ must be initiated within 24 hours since these are situations in which the facility's non-compliance with one or more requirement has caused, or is likely to cause, serious injury, harm, impairment, or death to a resident. The following chart illustrates the length of time the 547 IJ SNF investigations have been in-progress (at various stages in their investigation process):

Lengths of Time IJ Investigations Remained Open (as of 6/30/20)	SNF Complaints	SNF Facility Reported Incidents	Totals
Less than 1 year	304	134	438
Over 1 year	11	21	32
Over 2 years	8	39	47
Over 3 years	20	10	30
Totals	**343**	**204**	**547**

In addition to the 379 SNFs, a type of Long-Term Care (LTC) health care facility, HFID is responsible for overseeing 3,809 other LTC and Short-Term Care (STC) health care facilities within the County. In addition to the 5,407 open SNF investigations, HFID reported an additional 6,228 in-progress investigations related to the other LTC and STC health care facilities, bringing the grand total number of open complaint and FRI investigations to 11,635. 628 of which (547 for SNFs and 81 for other LTC and STC health care facilities) were determined to be at the IJ level. The following chart illustrates the lengths of time the 11,635 investigations have remained open:

Lengths of Time Investigations Remained Open (as of 6/30/20)	All Complaints	All Facility Reported Incidents	Totals
Less than 1 year	1,515	1,732	3,247
Over 1 year	170	813	983
Over 2 years	83	632	715
Over 3 years	417	441	858
Over 4 years	210	725	935
Over 5 years	2,409	2,488	4,897
Totals	**4,804**	**6,831**	**11,635**

In their current State/County contract, starting FY 2019-20, CDPH agreed to accept responsibility for LTC complaint and FRI investigations received by HFID prior to July 1, 2015, and all STC complaints and FRIs received prior to July 1, 2019. Based on the State/County contract guidelines and the datafile HFID provided of all open investigations as of June 30, 2020, we determined HFID and the State are responsible for completing 6,219 and 5,416 in-progress investigations, respectively. The chart below illustrates the breakdown of the total number of complaints and FRIs related to the SNFs and for all of their other LTC and STC health care facilities that fall under HFID's or the CDPH's jurisdiction:

Open Investigations (as of 6/30/20) Assigned to:	SNF Complaints A	SNF Facility Reported Incidents B	SNF Totals A+B=C	Other LTC/STC Complaints D	Other LTC/STC Facility Reported Incidents E	Grand Totals C+D+E
HFID	1,522	2,896	**4,418**	723	1,078	**6,219**
State (1)	627	362	**989**	1,932	2,495	**5,416**
Totals	**2,149**	**3,258**	**5,407**	**2,655**	**3,573**	**11,635**

(1) Represents the portion of HFID's open investigations (non-IJ cases) that the State has agreed to take over.

HFID's State/County contract also requires HFID to complete all LTC and STC complaint investigations received after July 2019 up to the annual contract percentage of their projected full caseload amount. For example, for the first year of the three-year contract term, the projected full caseload amount of LTC and STC complaints in FY 2019-20 was 3,876 (3,675 + 201) as illustrated below. CDPH is responsible for any LTC and STC complaints in excess of 3,876 in FY 2019-20. The party responsible for investigating LTC and STC FRIs received after July 2019 is determined based on the percentage of projected FRIs agreed upon in the State/County contract. The following chart illustrates the FY 2019-20 projected full caseload amounts and HFID's proportionate share of LTC and STC complaints and FRIs, as agreed upon in the State/County contract:

FY 2019-20	Projected Full Caseload (A)	Annual Contract % Required (B)	HFID's Contracted Caseload (A) x (B) = (C)	Remaining Caseload: CDPH's Responsibility (A-C)
LTC Complaints	3,675	100%	3,675	-
LTC FRIs	4,566	51%	2,329	2,237
STC Complaints	1,543	13%	201	1,342
STC FRIs	1,673	0%	-	1,673
Totals	**11,457**		**6,205**	**5,252**

The annual contract percentage of responsibility and HFID's annual contract budget increase each year of the three-year contract term to support expanded staff and oversight activity. To avoid further contributing to the increasing amount of incomplete investigations, HFID will need to actively and aggressively work on tracking, completing, and closing out their older investigations. HFID is currently in year two of their three-year contract term. Below is a breakdown of the State/County contract budget per year:

- Year 1 (FY 2019-20) $65 million
- Year 2 (FY 2020-21) $86 million
- Year 3 (FY 2021-22) $105 million

Next Steps:

- Determine whether HFID adequately tracks the phases/stages of their open investigations, and other tasks/responsibilities, in order to prioritize and ensure high risk investigations and other possible enforcement protocols are completed timely.

- Determine the impact of not completing the complaints investigations and FRIs within the required timeframes.

- Determine whether HFID has a plan in place to ensure all of their investigations, especially those determined to be at the IJ level, are completed timely.

- Determine the amount of other critical oversight work required under HFID's contract with the State that may be backlogged or has been suspended by CMS, such as inspections, licensing, certifications, etc., which will need to be completed and/or resumed in the future.

- Calculate and determine the average number of hours necessary to complete HFID's current and backlogged required oversight duties to fulfill the terms of the State contract, and determine whether HFID currently has the resources necessary to complete the workload required under contract once the State removes the suspension placed on all standard oversight activities.

- Determine whether HFID clearly identified which specific complaint and FRI investigations that have been assigned to the State.

- Determine how HFID will ensure their staff, who initiated the investigations, do not continue to work on complaint and FRI investigations that have since been assigned to the State.

- Determine whether HFID has developed and/or implemented a plan to identify ways to efficiently complete and/or close out older investigations.

- Assess how the COVID-19 Mitigation requirements will impact the ability of HFID to meet the increased State/County contract workload from Year 1 to Year 3.

Benchmarking Analysis

The Board directed the A-C to compare HFID's staffing level, in terms of number of employees and classifications, to other counties in the State in proportion to the number of SNFs and relative to the State-contracted scope of work. In addition, the A-C was instructed to work with the Chief Executive Officer, Director of the Department of Human Resources, County Counsel, and the Director of DPH to ensure there is the necessary staffing, expertise, training, enforcement protocols, and other functions required to support DPH's monitoring and enforcement effort.

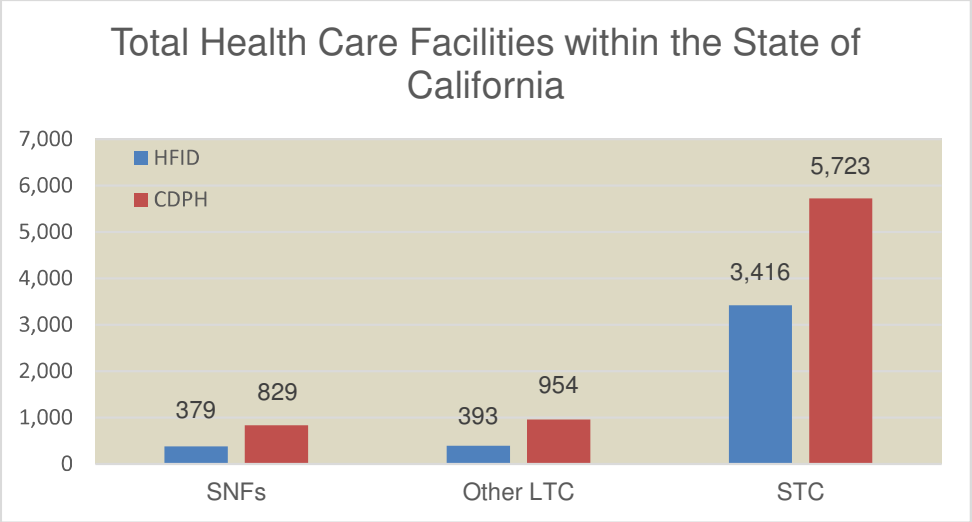
Los Angeles County is the only county in California with a county/state contract to perform inspections, licensing, and certifications, among other oversight activities, for all of the County's health care facilities, including SNFs. There were no other comparable counties outside of California, and therefore, we will only benchmark against the State.

Status

As of August 20, 2020, we've gathered the following information for our benchmarking analysis, but will require additional work as described below.

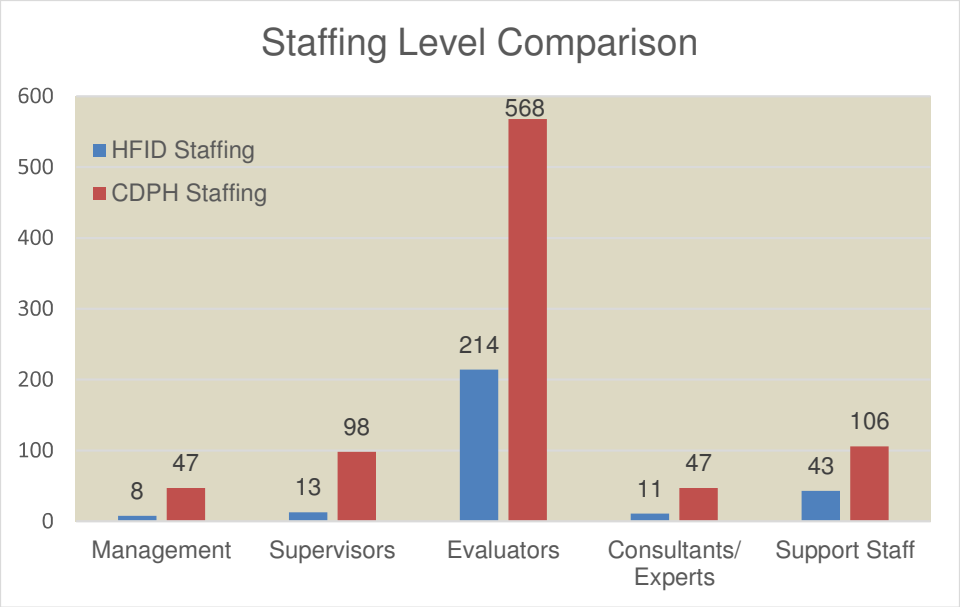
Total Health Care Facilities – State vs. County

In the State of California, there are 11,694 health care facilities, of which CDPH is responsible for overseeing 7,506 (64%) and DPH's HFID is responsible for overseeing 4,188 (36%). The 4,188 health care facilities HFID oversees include both LTC and STC facilities. SNFs, along with other types of facilities are categorized as LTC. The State currently has 1,208 SNFs, of which 379 (31%) are under HFID's purview and 829 (69%) are under CDPH's jurisdiction. The chart below illustrates the total number of SNFs, other LTC and STC facilities for both HFID and CDPH:



Staffing Comparison – State vs. County

HFID consists of four district offices with 289 staff, including 214 Evaluators assigned to perform licensing, certifications, inspections, and investigations of 4,188 health care facilities. By comparison, CDPH has 866 staff, including 568 Evaluators to perform licensing, certifications, inspections, and investigations for 7,506 health care facilities. The chart below illustrates the staffing levels and organizational structures (as of 8/7/2020) of both HFID and CDPH:



In comparison, HFID has a similar percentage of Management personnel (3%) when compared to the State (5%). However, we noted the following disparity, which we will determine the operational impacts of staffing ratio variances between HFID and CDPH, as indicated under our "Next Steps." For example:

- The State has a significantly higher percentage of Supervisors (11%) when compared to HFID (4%).
- The State has a lower staff to facilities ratio (1:9) than HFID (1:14).
- HFID has a higher percentage of Evaluators (74%) than the State (66%).

Next Steps:

In order to properly compare HFID's organizational structure and staffing levels with those of the State in proportion to the number of SNFs and relative to the State-contracted scope of work, we need to:

- Analyze the organizational structures of both HFID and CDPH, evaluate the levels of expertise, the training, and roles and responsibilities of each staffing level, and determine the operational impacts of staffing ratio variances between HFID and CDPH.
- Compile, analyze, and assess HFID's and the State's total oversight responsibilities and workload, including the total number of complaints and

FRIs backlogs for all LTC (including SNFs) and STC facilities, in order to complete our analysis and comparison with the State.

- Obtain and analyze HFID's and the State's workload statistics, such as determining the average number of hours it takes to complete an oversight function, on all required activities to complete our benchmarking analysis.

- Determine whether HFID management reevaluates their staffs' roles and responsibilities in order to reassign duties and/or redirect staff to timely meet the emerging needs of all health care facilities they are responsible for in the County.

- Identify and analyze HFID's methodology for developing their budget and number of staff needed to meet their new State/County contract terms, starting July 1, 2019.

- Determining the required number of staffing resources needed, level of expertise and training, enforcement protocols and other functions required to complete all COVID-19 monitoring and enforcement efforts.

DPH management indicated they already have in place or implemented many of the management oversight processes we plan on further assessing as described in our "Next Steps" under each of the sections above. We will further evaluate DPH's assertions by reviewing any additional documentations DPH is able to provide and report the results in our next interim report.

As the A-C completes sections within our scope of work, we will share our results and the status of any remaining sections with DPH and the IG, and issue our final assessment report to the DPH, IG, and Board when completed including recommendations for corrective action, if any.

If you have any questions please call me, or your staff may contact Terri Kasman at tkasman@auditor.lacounty.gov.

AB:OV:PH:TK:YP:dc

ATTACHMENT II

IMPROVING OVERSIGHT AND ACCOUNTABILITY WITHIN SKILLED NURSING FACILITIES (BOARD AGENDA ITEM 23, MAY 26, 2020)

AGN. NO.

MOTION BY SUPERVISORS MARK RIDLEY-THOMAS AND KATHRYN BARGER

May 26, 2020

Improving Oversight and Accountability Within Skilled Nursing Facilities

Skilled nursing facilities (SNFs) serve many of Los Angeles County's (County) most frail, elderly, and medically fragile residents. Moreover, the majority of the residents in these facilities are very low-income, with 62% of residents relying on Medicaid.

SNFs have become the epicenter of the County's COVID-19 epidemic. As of May 18, 2020, 4,794 SNF residents and 2,918 SNF staff have tested positive for the virus. 955 individuals from institutional settings, the vast majority of which reside in SNFs, have died, representing 52% of all deaths Countywide. The control of the rapid spread of COVID-19 in these facilities is made more complex as these institutions, many of which are for-profit entities, have historically been challenged with low marks for patient satisfaction, employee pay, and quality of care.

The California Department of Public Health (CDPH) has the responsibility for licensing and monitoring health care facilities, including SNFs, throughout the State. However, in the County, the oversight of approximately 2,500 health facilities, which includes approximately 400 SNFs, has historically been shared with the County Department of Public Health (DPH).

In 2014, the Board of Supervisors (Board) recognized the sub-standard conditions and inadequate oversight of SNFs, and called for an audit of County inspections and

- MORE -

MOTION

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RIDLEY-THOMAS _____

KUEHL _____

HAHN _____

BARGER _____

investigations which revealed a backlog of approximately 3,000 SNFs' investigations. By 2019, the SNFs' investigation backlog had grown to 5,000, with approximately 2,100 new complaints annually contributing to this backlog.

In 2019, DPH entered into a new contract with CDPH to fully transfer responsibility of health care facility investigation and monitoring activities to the County, with the objective of creating more operational efficiencies and improving the quality of enforcement activities. Despite this new arrangement, thousands of complaints continue to be registered with the County each year.

The COVID-19 crisis has exacerbated concerns within these facilities. In an effort to mitigate the spread and impact of the virus, the Board unanimously approved two motions on April 28, 2020 related to congregate living facilities. The first motion (Ridley-Thomas) advocated for Statewide action to improve infection control protocols and worker safety within SNFs and other congregate living facilities, and the second motion (Hahn) asked for a plan to improve COVID-19 testing among residents and staff within these settings, with a particular focus on SNFs.

Subsequently, on May 11, 2020, CDPH issued an All Facilities Letter (AFL) which requires SNFs to submit a facility-specific COVID-19 Mitigation Plan by June 1, 2020 which must include the following six elements:

1. **Testing and Cohorting.** The SNFs must develop a plan in conjunction with CDPH and their local health department for regular testing of residents and staff, including how test results will be used to inform the cohorting of residents and health care personnel;
2. **Infection Prevention and Control.** The SNFs must have a full-time, dedicated Infection Preventionist, and a plan must be in place for infection prevention quality control;
3. **Personal Protective Equipment (PPE).** The SNFs must have a plan for adequate provision of PPE, including types that will be kept in stock, duration the stock is expected to last, and information provided on established contracts or relationships with vendors for replenishing stock;

4. **Staffing Shortages.** The SNFs must have policies in place to address health care professional staffing shortages, including contingency and crisis capacity strategies;
5. **Designation of Space**. The SNFs must have policies in place for dedicated spaces within the facility to ensure separation of infected patients and for eliminating movement of health care professionals among those spaces to minimize transmission risk; and
6. **Communication**. A designated staff member must be assigned responsibility for daily communications with staff, residents, and their families regarding the status and impact of COVID-19 in the facility.

Per CDPH, each SNF will receive a visit at least every six to eight weeks to validate its certification. If the facility is found to be delinquent in its implementation of an approved mitigation plan, or unsafe practices are identified that have caused, or are likely to cause, harm to patients, enforcement action may be taken, including the assessment of civil penalties.

Moreover, on May 13, 2020, CDPH issued another AFL which requires all SNFs to report daily its COVID-19 facility data to the CDPH via an online survey, with the objective of ensuring that the State has the information necessary to respond to the COVID-19 outbreak and to provide resources and support to SNFs.

DPH has responsibility in the County for assessing the adequacy of the mitigation plans and oversight of their implementation. Taking into consideration the County's current financial constraints, it is critical that the County appropriately prioritize and reallocate, if necessary, existing County resources, including subject matter experts, to ensure the full operationalization of effective mitigation plans immediately and on an ongoing basis.

The COVID-19 crisis has required the workforce that normally inventories, manages and responds to SNF complaints and investigations be deployed to focus on COVID-19-related issues. While this staff deployment may be warranted given the

severity of this crisis, it calls into question whether other serious quality control issues within these facilities are growing and persisting without appropriate intervention.

More broadly, it is critical that the County learn from this crisis and the range of internal and external factors that have contributed to ongoing inadequate conditions within SNFs. The current situation demands an immediate, independent and holistic review of these facilities, as well as the County's capacity to oversee them, to mitigate further COVID-19 impact and prevent both small and large-scale public health emergencies within these settings on an ongoing basis. As a much-needed accountability measure, an Inspector General should be appointed to conduct an exhaustive review of the County's capacity to regulate these facilities, recommend structural and operational changes, and outline a plan for ensuring adequate and sustainable oversight. Moreover, the Inspector General should identify regulatory and policy recommendations for consideration at the local, state and federal level to enhance the quality of care for residents, ensure that ongoing adequate infection control measures are in place, and support the health care professionals that serve in this industry.

WE THEREFORE MOVE THAT THE BOARD OF SUPERVISORS:

1. Direct the Auditor-Controller, in consultation with other appropriate Los Angeles County (County) Department directors, to:
    a. Design a publicly available dashboard, consistent with State requirements, to be updated and posted on a weekly basis by the Department of Public Health (DPH), that provides information, by individual skilled nursing facility (SNF), on the following:
        i. The number of cumulative and current COVID-19 cases to date, broken down by residents and staff;
        ii. The number of COVID tests performed each month, broken down by residents and staff, testing among symptomatic and asymptomatic individuals, and the percent positive among each cohort; and

iii. The implementation status of each facility's COVID-19 Mitigation Plan, which specifically notes compliance with the following requirements:
    1. Testing and Cohorting;
    2. Infection Prevention and Control;
    3. Personal Protective Equipment (PPE);
    4. Staffing;
    5. Designation of space to ensure separation of infected patients and for eliminating movement of health care personnel among those spaces; and
    6. Daily Communications Protocols; and

iv. Other publicly-available quality and patient experience metrics, as deemed appropriate;

b. Assess DPH's Facility Inspection Division's (HFID) ability to monitor and ensure compliance with the COVID-19 Mitigation Plans while maintaining the required level of non-COVID-19-related investigations and meeting other critical oversight roles necessary to ensure the ongoing health and safety of residents and staff within these facilities. This should include a comparison of HFID's staffing level, in terms of number of employees and classifications, to other counties in the State in proportion to the number of SNFs and relative to the State-contracted scope of work; and

c. Work with the Chief Executive Officer, Director of the Department of Human Resources, County Counsel, and the Director of DPH to ensure there is the necessary staffing, expertise, training, enforcement protocols, and other functions required to support this monitoring and enforcement effort.

WE FURTHER MOVE THAT THE BOARD OF SUPERVISORS:

Direct the Executive Officer of the Board of Supervisors (Board) to facilitate the appointment of an Inspector General to provide a report on the Oversight and Operations

of Skilled Nursing Facilities in Los Angeles County (Report). The Report should provide an evaluation of SNFs within the County, and recommendations on operational and programmatic changes necessary to improve the County's monitoring and oversight of these facilities. The Report should also include legislative and regulatory recommendations aimed at improving operations within these facilities, given the role of state and federal regulations impacting the operation of these facilities. The Report should be completed in consultation with the Auditor-Controller, directors of the health and social services departments of the County, County Counsel, and other appropriate department leaders. The Inspector General should also consult with subject matter experts including but not limited to medical professionals, representatives of patients, workforce, and insurance payers, as well as individuals with a high level of understanding of SNF administrative, financial and operational protocols, as well as legal and regulatory oversight to guide the recommendations within the Report. The Inspector General should be selected on or before July 1, 2020, provide a proposed scope of work to the Board in writing by August 1, 2020 that outlines a schedule for completing the Report, and thereafter provide interim reports every 60 days until the final Report is completed. A qualified County employee should either be reassigned to the position of Inspector General or philanthropic resources should be secured in the event that the most suitable candidate is not a County employee.

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(DJ/HS)

ATTACHMENT III

IMPROVING OVERSIGHT AND ACCOUNTABILITY WITHIN SKILLED NURSING FACILITIES (BOARD AGENDA ITEM 23, MAY 26, 2020) – INSPECTOR GENERAL'S SCOPE OF WORK

COUNTY OF LOS ANGELES
OFFICE OF INSPECTOR GENERAL

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LOS ANGELES, CALIFORNIA 90013
213 974 6100
http: oig.lacounty.gov

MAX HUNTSMAN
INSPECTOR GENERAL

July 30, 2020

TO: Supervisor Kathryn Barger, Chair
Supervisor Hilda L. Solis
Supervisor Mark Ridley-Thomas
Supervisor Sheila Kuehl
Supervisor Janice Hahn

FROM: Max Huntsman
Inspector General

SUBJECT: **IMPROVING OVERSIGHT AND ACCOUNTABILITY WITHIN SKILLED NURSING FACILITIES (Board Agenda Item 23, May 26, 2020) – INSPECTOR GENERAL'S SCOPE OF WORK**

On May 26, 2020, the Board passed a motion directing the Executive Officer to facilitate the appointment of an Inspector General to conduct an exhaustive review of the County's capacity to regulate skilled nursing facilities (SNFs) and to provide a report on the oversight and operations of SNFs in Los Angeles County (Report), in consultation with the Auditor-Controller (A-C), the directors of the health and social services departments of the County, County Counsel, and other appropriate department leaders. The Report should: 1) provide an evaluation of SNFs within the County, and 2) make recommendations on operational and programmatic changes necessary to improve the County's monitoring and oversight of these facilities, including legislative and regulatory recommendations aimed at improving operations within these facilities. The Board motion further directs the inspector general consult with subject matter experts and stakeholders, including medical professionals, representatives of residents, workforce, and insurance payers and individuals with a high level of understanding of SNF administrative, financial and operational protocols, as well as legal and regulatory oversight to guide the recommendations within the Report. Lastly, the Board motion instructs the Inspector General designate to submit a scope of work proposal to the Board by August 1, 2020, that outlines a schedule for completing the Report, and to provide interim reports every 60 days until the final Report is completed.

On June 26, 2020, the Executive Officer appointed the County's Inspector General as the Inspector General called for in the motion. The following scope of work details the Office of Inspector General's objectives, tasks, and preliminary reporting schedule for its review and oversight of SNFs.

The Office of Inspector General intends to retain subject matter experts to assist in the review and the development of recommendations. We have identified experts with backgrounds in geriatrics, epidemiology, and public health, as well as expertise in the regulatory systems and operational protocols involved in improving the quality of care and quality of life for vulnerable adults with long-term care needs. The Office of Inspector General will submit all reports, updates, and tasks related to this motion directly to the Board.

SCOPE OF WORK

I. Oversight Review

The Office of Inspector General (OIG) will:

A. Identify federal, state, and local regulations and reporting requirements pertaining to SNFs.

B. Analyze the Department of Public Health's (DPH) system of monitoring SNF compliance with pertinent federal, state, and local regulations and reporting requirements and determine whether:

1. DPH conducts valid, timely, and thorough facility inspections;
2. DPH's process for issuing sanctions, identifying violations of regulations and reporting requirements is effective;
3. Identified violations of regulations and reporting requirements are remedied in an efficient and timely manner; and
4. DPH tracks outstanding violations and whether the tracking and enforcement process is effective.

C. Determine DPH's specific obligations related to SNFs under the terms and conditions of Standard Agreement Number 19-10042, the current contract between the California Department of Public Health (CDPH) and DPH. Pursuant to the obligations set forth in the agreement, the OIG will review:

1. DPH's process for handling SNF complaint and facility reported incidents (FRI) investigations;
2. DPH's ability to prioritize, monitor, and track SNF complaint and FRI investigations;
3. The current backlog of SNF complaint and FRI investigations to determine the reasons for the backlog;
4. A sample of SNF inspection reports, complaints, and FRI investigations to assess objectivity, and thorough and timely completion;
5. DPH's process for certifying and licensing SNFs; and

6. DPH's resources to determine whether any additional resources are necessary to adhere to the terms of the agreement, which require the backlog of investigations be cleared.

D. Report on the A-C's progress carrying out the following directives from the May 26, 2020, Board motion and corresponding tasks (see attachment for the A-C's scope of work and status as of July 10, 2020):

1. Develop a publicly available dashboard, in collaboration with DPH and other appropriate County departments, to be updated and posted on a weekly basis by DPH, that provides information by individual SNF on COVID-19 related data.
    a. Identify all data sources (via the Centers for Disease Control and Prevention's National Healthcare Safety Network, and DPH's Health Facilities Inspection Division's (HFID) internal files and supplemental survey) to be included on the Dashboard.
    b. Assess how the data interrelates and identify the flow of data from the SNF to the dashboard identifying all touch points to the data.
    c. Design and develop analytics that address metrics around SNF activity and performance.
    d. Test and validate the dashboard, assuring data integrity and proper summary of data on the dashboard. Publish the County SNF Dashboard to DPH's public facing website for citizen consumption.
2. Assess HFID's ability to monitor and ensure SNF compliance with the COVID-19 Mitigation Plans (Plans) while maintaining the required level of non-COVID-19-related investigations and meeting other critical oversight roles necessary to ensure the ongoing health and safety of residents and staff within these facilities.
    a. Obtain and assess HFID's plans, policies, and procedures for ensuring compliance with the Plan requirements imposed by the State, and determine/identify all critical oversight roles DPH is responsible for under Standard Agreement Number 19-10042.
    b. Obtain and assess HFID's enforcement protocols for ensuring SNFs are in compliance with their Plans and other requirements imposed by the County, State, and federal guidelines.
3. Work with the Chief Executive Officer (CEO), Director of the Department of Human Resources, County Counsel, and the Director of DPH to ensure there is the necessary staffing, expertise, training, enforcement protocols, and other functions required to support DPH's monitoring and enforcement effort.

a. Obtain and compile the State's and DPH's current staffing levels, organizational structures, total number of SNFs (and other types of facilities) under their purview, listing of operational duties/responsibilities (e.g. licensing, certification, inspection, and investigation) of their evaluators/inspectors when overseeing all facilities, and total number of backlogs, if any.

b. Compare HFID's current staffing levels and structures, in terms of number of employees, responsibilities and duties, classifications, expertise, and training, to those of the State since no other county in California has the same State-contracted scope of work.

c. Assess HFID's organizational structure and the number of staffing needed to adequately ensure compliance with monitoring the COVID-19 Mitigation plans while maintaining the required level of non-COVID-19-related investigations and other critical oversight roles.

E. Ensure that adequate transparency mechanisms related to crucial areas of public interest exist within DPH to promote accountability.

II. Operational Review

The OIG will:

A. Identify factors that contributed to the COVID-19 crisis throughout County SNFs.

B. Conduct a holistic review, including an operational and programmatic assessment, of:

a. Living conditions for, and the overall quality of care of, residents;

b. Adequacy of SNF staffing levels and working conditions;

c. The availability of resources necessary to implement training on federal, state, and local guidelines;

d. Compliance with COVID-19 testing and reporting requirements; and

e. The County's ability to monitor and maintain consistent quality of care standards in all SNFs throughout the County, regardless of the economic vulnerabilities of the communities they serve.

C. Conduct site visits to gather information through direct observation and conversations with residents, staff, and operators.

D. Identify structural and operational changes targeted at creating a system of standardized, consistent, measurable, and sustainable oversight.

III. Policy, Regulatory, and Legislative Recommendations

Pursuant to the oversight and operational reviews, the OIG, in consultation with the A-C, CEO, the directors of the health and social services departments of the County, and County Counsel, will present policy, legislative, and/or regulatory recommendations for consideration at the local, state, and federal levels. Recommendations will be aimed at improving SNF operations and oversight as well as mitigating further COVID-19 impact and preventing future public health emergencies. The OIG will:

A. Obtain input from community stakeholders and advocates, medical professionals, resident representatives, residents, line staff and management, insurance providers, and also individuals with a high level of understanding of SNF administrative, financial and operational protocols, and legal and regulatory oversight.

B. Assess the results of the oversight and operational reviews and in consultation with A-C, CEO, and County Counsel, draft policy, legislative, and/or regulatory recommendations aimed at creating a system of robust and durable oversight of County SNFs. Recommendation will focus on the following:

    1. Enhancing the safety and quality of care for all residents living in SNFs throughout the County, regardless of location or economic circumstance;
    2. Ensuring that ongoing adequate infection control measures are in place and monitored by the County; and
    3. Supporting and protecting the health care professionals that serve in this industry.

PRELIMINARY REPORTING SCHEDULE

As new COVID-19 cases and infection rates surge in the County, protecting the health and safety of SNF residents and staff is critically important and requires immediate action. The OIG, in coordination with DPH and the A-C, will initially focus reporting efforts on identifying actionable recommendations that can be implemented in the near term to mitigate the impact of COVID-19 throughout the County's SNFs. The OIG anticipates that the first two interim reports, due on October 1, 2020, and December 1, 2020, respectively, will include a discussion of the mitigation efforts and highlight any outstanding areas for concern. The rapidly evolving nature of the COVID-19 pandemic makes it difficult to foresee the extent of work required to effectively mitigate outbreaks at this time. Therefore, the December 1, 2020, interim report will include a final reporting schedule for the completion of the Report.

If you have any questions, please do not hesitate to contact me at (213) 974-6100.

MH:bo

Enclosure

c: Sachi A. Hamai, Chief Executive Officer
Celia Zavala, Executive Officer
Mary C. Wickham, County Counsel
Barbara Ferrer, Ph.D., M.P.H., M.Ed
Department of Public Health
Arlene Barrera, Auditor-Controller

ATTACHMENT IV

IMPROVING OVERSIGHT AND ACCOUNTABILITY WITHIN SKILLED NURSING FACILITIES (MAY, 26, 2020, BOARD AGENDA ITEM #23) – AUDITOR CONTROLLER'S SCOPE OF WORK

OF LOS

COUNTY OF LOS ANGELES
DEPARTMENT OF AUDITOR-CONTROLLER

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ARLENE BARRERA
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CHIEF DEPUTY AUDITOR-CONTROLLER

ASSISTANT AUDITOR-CONTROLLERS

PETER HUGHES
KAREN LOQUET
CONNIE YEE

July 28, 2020

TO: Max Huntsman
Inspector General

FROM Arlene Barrera
Auditor-Controller

SUBJECT **IMPROVING OVERSIGHT AND ACCOUNTABILITY WITHIN SKILLED NURSING FACILITIES (May 26, 2020, Board Agenda Item #23) – AUDITOR-CONTROLLER'S SCOPE OF WORK**

On May 26, 2020, the Board of Supervisors (Board) directed the Inspector General (IG) to provide a report on the Oversight and Operations of Skilled Nursing Facilities (SNF) in Los Angeles County (Report). The IG's Report is to provide an evaluation of SNFs within the County, recommendations on operational and programmatic changes necessary to improve the County's monitoring and oversight of these facilities, and include legislative and regulatory recommendations aimed at improving operations within these facilities.

The Board also directed the IG to complete their Report in consultation with the Auditor-Controller (A-C) and other appropriate department leaders, and to provide a proposed scope of work to the Board in writing by August 1, 2020, that outlines a schedule for completing the Report. The A-C's directives from this Board Motion, and our scope of work and status as of July 10, 2020, are as follows:

Public Dashboard

Develop a publicly available dashboard, in collaboration with the Department of Public Health (DPH) and other appropriate County departments, to be updated and posted on a weekly basis by DPH, that provides information by individual SNF on COVID-19 related data.

- Identify all data sources (via the Center for Disease Control's National Healthcare Safety Network, and DPH's Health Facility Inspection Division's (HFID) internal files and supplemental survey) to be included on the Dashboard.

- Assess how the data interrelates and identify the flow of data from the SNF to the dashboard identifying all touch points to the data.

- Design and develop analytics that address metrics around SNF activity and performance.

- Test and validate the dashboard, assuring data integrity and proper summary of data on the dashboard. Publish the Los Angeles County SNF Dashboard to DPH's public facing website for citizen consumption.

  Status:

  - Obtained information on DPH's experience with the development of other dashboards, the toolsets used for data collection, data cleanup, and reporting/analytics.

  - Reviewing DPH's draft dashboard design and assisting DPH in developing their dashboard assessment tool.

  - Awaiting DPH's data flow diagram that will be used to validate the integrity of the data at all stages.

Assessment of DPH's HFID

Assess HFID's ability to monitor and ensure SNF compliance with the COVID-19 Mitigation Plans (Plans) while maintaining the required level of non-COVID-19-related investigations and meeting other critical oversight roles necessary to ensure the ongoing health and safety of residents and staff within these facilities.

- Obtain and assess HFID's plans, policies, and procedures for ensuring compliance with the Plan requirements imposed by the State, and determine/identify all critical oversight roles DPH is responsible for under its contract with the State.

- Obtain and assess HFID's enforcement protocols for ensuring SNFs are in compliance with their COVID-19 Mitigation Plans and other requirements imposed by the County, State, and federal guidelines.

Status:

- Verified all SNFs submitted their Plans to HFID for review/approval by the June 1, 2020 deadline as required by the State's All Facilities Letter Directive dated May 11, 2020.

- Reviewed HFID's implementation tool that will be used to verify whether the SNFs are in compliance with their approved Plans and confirmed HFID has scheduled three rounds of onsite visits, in accordance with the State's Directive, beginning July 7, 2020.

- Reviewing HFID's COVID-19 enforcement protocols to determine whether they are aligned with the State's requirements, are sufficient to ensure compliance by the SNFs, and include penalties/fines and/or other ramifications when SNFs are not in compliance with all requirements.

- Determined the total number of current and past due investigations. In the process of obtaining HFID's current workload and backlogs of other duties (e.g. licensing, certifications, and inspections) pertaining to the SNFs.

- Compiling a list of all critical oversight roles and responsibilities under DPH's jurisdiction, including facilities (besides SNFs), and determining what other backlogs exist, if any.

HFID Benchmarking Analysis

Work with the Chief Executive Officer, Director of the Department of Human Resources, County Counsel, and the Director of DPH to ensure there is the necessary staffing, expertise, training, enforcement protocols, and other functions required to support DPH's monitoring and enforcement effort.

- Obtain and compile the State's and DPH's current staffing levels, organizational structures, total number of SNFs (and other types of facilities) under their purview, listing of operational duties/responsibilities (e.g. licensing, certification, inspection, and investigation) of their evaluators/inspectors when overseeing all facilities, and total number of backlogs, if any.

- Compare HFID's current staffing levels and structures, in terms of number of employees, responsibilities and duties, classifications, expertise, and training, to those of the State since no other county in California has the same State-contracted scope of work.

- Assess HFID's organizational structure and the number of staff needed to adequately ensure compliance with monitoring the COVID-19 Mitigation plans while maintaining

the required level of non-COVID-19 related investigations and other critical oversight roles.

Status:

- Compiled HFID's current staffing levels, organizational structures, and the total number of SNFs under their purview, and identified HFID's operational duties/responsibilities pertaining to the SNFs under their jurisdiction.

- Compiling a list of all critical oversight roles and responsibilities, and facilities (besides SNFs), under the State's purview.

- Awaiting information requested from the State on staffing levels, organizational structures, duties/responsibilities, workload statistics on required activities, and other information needed to perform our benchmarking analysis/comparison.

- Awaiting information on HFID's total workload requirements based on their State contract for all facilities (including SNFs) under their jurisdiction, and workload data (time required to perform a required activity) from both HFID and the State for estimating HFID's total workload and staffing needs to meet HFID's contractual obligations, including COVID-19 Mitigation Plan requirements.

- Determining if there are counties outside of California that could be used for benchmarking since no other counties within California are comparable or have a similar contract with the State.

As the A-C completes sections within our scope of work, we will provide the results and the status of any remaining sections to the IG for their interim reports to the Board.

If you have any questions please call me, or your staff may contact Terri Kasman at tkasman@auditor.lacounty.gov.

AB:OV:PH:TK:YP:dc

c: Celia Zavala, Executive Officer, Board of Supervisors