



DEPARTMENT OF HEALTH AND HUMAN SERVICES

Office of Inspector General
Office of Audit Services

FEB 5 2004

REGION IV
61 Forsyth Street, S.W., Suite 3T41
Atlanta, Georgia 30303

Report Number: A-04-04-03028

Mr. Al Johnson, Administrator
ConsultAmerica Health and Rehabilitation
7110 First Avenue North
Birmingham, Alabama 35206

Dear Mr. Johnson:

Enclosed are two copies of the United States Department of Health and Human Services (HHS), Office of Inspector General (OIG) report entitled, *Effect of Staffing on Quality of Care at Nursing Facilities – ConsultAmerica Health and Rehabilitation*. A copy of this report will be forwarded to the action official noted below for her review and any action deemed necessary.

The objective of our review was to determine whether ConsultAmerica Health and Rehabilitation (ConsultAmerica) was in compliance with Federal and State staffing laws and regulations for nursing homes.

ConsultAmerica was in compliance with Federal and Alabama State staffing laws and regulations. Federal staffing regulations are contained in Title 42, Code of Federal Regulations, Section 483.30. Alabama has not established staffing requirements that exceed the Federal standards. For three selected 2-week periods, we determined that ConsultAmerica scheduled its direct care employees in compliance with Federal and State staffing standards. In addition, all 36 current direct care employees at ConsultAmerica were properly licensed or certified. Although not an Alabama State requirement, ConsultAmerica obtained background checks on current direct care employees. However, we found significant differences in the direct care hours per resident per day that we calculated and the hours of care reported in the Nursing Home Compare website. We recommend that ConsultAmerica establish a control to independently confirm the validity of the direct care hours that are provided to the Survey Agency for input into the Nursing Home Compare website.

In a written response to our draft report, the ConsultAmerica Administrator agreed with our findings and recommendations and stated that a control will be implemented to independently confirm the validity of the direct care hours that are provided to the Alabama State Survey Agency for input into the Nursing Home Compare website. We have included the entire contents of ConsultAmerica's comments as an appendix to our report.

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We concur with the actions that ConsultAmerica plans to take with respect to the recommendations in our report.

Final determination as to actions taken on all matters reported will be made by the HHS action official named below. We request that you respond to the HHS action official within 30 days from the date of this letter. Your response should present any comments or additional information that you believe may have a bearing on the final determination.

In accordance with the principles of the Freedom of Information Act, 5 United States Code 522, as amended by Public Law 104-231, OIG reports issued to the Department's grantees and contractors are made available to members of the press and general public to the extent information contained therein is not subject to exemptions in the Act which the Department chooses to exercise (see 45 CFR Part 5).

To facilitate identification, please refer to Report Number A-04-04-03028 in all correspondence related to this letter.

Sincerely,

A handwritten signature in black ink, appearing to read "Charles J. Curtis". The signature is written in a cursive, flowing style.

Charles J. Curtis
Regional Inspector General
for Audit Services, Region IV

Enclosures – as stated

Direct Reply to HHS Action Official:

Rose Crum-Johnson, Regional Administrator
Centers for Medicaid & Medicare Services
61 Forsyth Street, S.W., Suite 4T20
Atlanta, Georgia 30303-8909

Department of Health and Human Services

**OFFICE OF
INSPECTOR GENERAL**

**EFFECT OF STAFFING ON
QUALITY OF CARE AT
NURSING FACILITIES –
CONSULTAMERICA HEALTH
AND REHABILITATION**



**FEBRUARY 2004
A-04-04-03028**

Office of Inspector General

<http://oig.hhs.gov>

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In accordance with the principles of the Freedom of Information Act (5 U.S.C. 552, as amended by Public Law 104-231), Office of Inspector General, Office of Audit Services reports are made available to members of the public to the extent the information is not subject to exemptions in the act. (See 45 CFR Part 5.)

OAS FINDINGS AND OPINIONS

The designation of financial or management practices as questionable or a recommendation for the disallowance of costs incurred or claimed, as well as other conclusions and recommendations in this report, represent the findings and opinions of the HHS/OIG/OAS. Authorized officials of the HHS divisions will make final determination on these matters.





February 5, 2004

Report Number: A-04-04-03028

Mr. Al Johnson, Administrator
ConsultAmerica Health and Rehabilitation
7110 First Avenue North
Birmingham, Alabama 35206
Dear Mr. Johnson:

This Office of Inspector General (OIG) report provides the results of our review of the *Effect of Staffing On Quality of Care at Nursing Facilities – ConsultAmerica Health and Rehabilitation* (ConsultAmerica). ConsultAmerica is a 62 bed nursing facility located in Birmingham, Alabama.

The objective of our review was to determine whether ConsultAmerica was in compliance with Federal and State staffing laws and regulations for nursing homes. Federal staffing regulations are contained in Title 42, Code of Federal Regulations, Section 483.30. Alabama has not established staffing requirements that exceed the Federal standards. Based on our review of 36 current direct care employees¹, we found that ConsultAmerica complied with Federal and State staffing laws and regulations. However, we noted significant differences in the direct care hours per resident per day that we calculated and the hours of care reported in the Nursing Home Compare website. We recommend that ConsultAmerica establish a control to independently confirm the validity of the direct care hours that are provided to the Alabama State Survey Agency (Survey Agency) for input into the Nursing Home Compare website.

In a written response to our draft report, the ConsultAmerica Administrator agreed with our findings and recommendations and stated that a control will be implemented to independently confirm the validity of the direct care hours that are provided to the Alabama State Survey Agency for input into the Nursing Home Compare website. We have included the entire contents of ConsultAmerica's comments as an appendix to our report.

¹ Direct care employees are any nursing staff who are eligible to provide direct care to the residents.

INTRODUCTION

We concur with the actions that ConsultAmerica plans to take with respect to the recommendations in our report.

BACKGROUND

The Omnibus Budget Reconciliation Act of 1987 established legislative reforms to promote quality of care in nursing homes. This act requires nursing homes to have sufficient nursing staff to provide nursing and related services to attain or maintain the highest practicable physical, mental, and psychosocial well-being of each resident.

Title 42, Code of Federal Regulations, Section 483.30 requires nursing homes to provide sufficient nursing staff on a 24-hour basis. Sufficient nursing staff must consist of licensed nurses and other nursing personnel and include: (1) a licensed nurse designated “to serve as a charge nurse on each tour of duty,” (2) “a registered nurse for at least 8 consecutive hours a day, 7 days a week,” and (3) a registered nurse designated “to serve as director of nursing on a full time basis. The director of nursing may serve as a charge nurse only when the facility has an average daily occupancy of 60 or fewer residents.”

At a minimum, States are required to ensure that nursing homes follow these Federal staffing standards. Each State may also implement its own staffing requirements that exceed these standards. Alabama has not established staffing requirements that exceed the Federal standards.

As part of the survey and certification process, the Survey Agency is required to conduct periodic standard surveys of every nursing home in the State. Through this process the Survey Agency measures the quality of care at each nursing home by identifying deficiencies and assuring compliance with Federal and State requirements. At the conclusion of its review, the Survey Agency posts its results, including direct care staffing data, to the Nursing Home Compare website. This computer generated information is made available to the general public.

OBJECTIVE, SCOPE, AND METHODOLOGY

The objective of our review was to determine whether ConsultAmerica was in compliance with Federal and State staffing laws and regulations for nursing homes.

Based on analysis of data from the Centers for Medicare & Medicaid Services’s (CMS) Online Survey Certification and Reporting System, we selected a sample of nursing facilities for review, including ConsultAmerica.

To accomplish our objective we:

- obtained data for ConsultAmerica from CMS's Nursing Home Compare website which we reviewed for background, staffing, and deficiency information;
- reviewed Federal and Alabama State laws and regulations for nursing homes to determine the staffing standards ConsultAmerica was required to adhere to;
- obtained staffing schedules and payroll records to determine the facility's direct care hours per resident per day as well as the employee-to-resident ratio for three 2-week periods;
- obtained verification of licensure and certification for all direct care employees to assure that the facility adheres to Federal and State requirements;
- conducted inquiries through Alabama's on-line certification system to determine if all Certified Nursing Assistants (CNA) were in good standing;
- reviewed the survey and certification process at the Survey Agency and analyzed the results of the two most recent standard surveys conducted at ConsultAmerica to identify deficiencies and causes; and
- met with the administrator of the facility to obtain an understanding of ConsultAmerica's policies and procedures for recruiting and retaining staff.

Our review was conducted in accordance with generally accepted government auditing standards. Our review of internal controls was limited to obtaining an understanding of the controls concerning the hiring and scheduling of employees, as well as providing information to the Survey Agency. The objective of our review did not require an understanding or assessment of the complete internal control structure at ConsultAmerica.

We performed our review at ConsultAmerica, the OIG Birmingham Field Office, and the OIG Atlanta Regional Office from March 2003 through September 2003. Our review covered a 2-year period from January 1, 2001 through December 31, 2002.

We reviewed the results of the two most recent standard surveys preceding our audit. These surveys were performed by the Survey Agency during April 2001 and April 2002. In addition, we reviewed information, such as hours of care, for the same periods of time as the surveys and for November 2001, which was a mid-point between the last two surveys. We also reviewed other information pertaining to ConsultAmerica that was current as of March 2003.

We issued a draft report to ConsultAmerica on December 5, 2003 and invited them to comment on the findings and recommendations in the report. We have summarized ConsultAmerica's comments after the findings and recommendations and included the entire text of their comments as an appendix.

FINDINGS AND RECOMMENDATIONS

ConsultAmerica was in compliance with Federal and Alabama State staffing laws and regulations. Federal staffing regulations are contained in Title 42, Code of Federal Regulations, Section 483.30. Alabama has not established staffing requirements that exceed the Federal standards. For three selected 2-week periods, we determined that ConsultAmerica scheduled its direct care employees in compliance with Federal and State staffing standards. In addition, all 36 current direct care employees at ConsultAmerica were properly licensed or certified. Although not an Alabama State requirement, ConsultAmerica obtained background checks on current direct care employees. However, we found significant differences in the direct care hours per resident per day that we calculated and the hours of care reported in the Nursing Home Compare website. We recommend that ConsultAmerica establish a control to independently confirm the validity of the direct care hours that are provided to the Survey Agency for input into the Nursing Home Compare website.

Compliance with Federal and State Laws and Regulations

The Federal regulations discuss what nursing staff criteria nursing homes must meet to participate in the Medicare and Medicaid programs. Basically, Title 42 Code of Federal Regulations, Section 483.30 requires three elements to be met for a facility to be considered as having sufficient staffing:

- (1) a licensed nurse designated "to serve as a charge nurse on each tour of duty,"
- (2) "a registered nurse for at least 8 consecutive hours a day, 7 days a week," and
- (3) a registered nurse designated "to serve as director of nursing on a full time basis. The director of nursing may serve as a charge nurse only when the facility has an average daily occupancy of 60 or fewer residents."

We determined that ConsultAmerica, a 62 bed nursing facility, was in compliance with the 3 elements of Federal and State regulations during the three 2-week time periods we tested. During the three 2-week periods occurring in April 2001, November 2001, and April 2002, we determined that a charge nurse was assigned for each 8-hour shift. We determined that the Director of Nursing (Director) was different from the charge nurse. We also determined that the facility had at least one Registered Nurse (RN) for at least 8 consecutive hours per day for each 7-day period. The following table illustrates ConsultAmerica's compliance with the regulations:

Federal and State Staffing Requirements	April 2001	November 2001	April 2002
Charge nurse assigned for each 8-hour shift	Yes	Yes	Yes
Director different from the charge nurse	Yes	Yes	Yes
At least 1 RN 8 hours/day for each 7-day period	Yes	Yes	Yes

At the time of our review, ConsultAmerica had 36 direct care staff. We verified that RNs and Licensed Practical Nurses (LPN) had a current license and that CNAs at ConsultAmerica had a current certificate and were in good standing on the State Nurse Aid Registry. The staffing allocations among nurses and assistants of the 36 direct care staff as well as the licensure and certification standings were:

	RN	LPN	CNA
Current License	4 – Yes	9 – Yes	N/A
Current Certification	N/A	N/A	23 – Yes
Good Standing on State Nurse Aid Registry	N/A	N/A	23 – Yes

Based on the results of our review, ConsultAmerica met the three critical elements of the Federal and State regulations. Therefore, we concluded that the facility was in compliance with Federal and State staffing requirements.

Differences Between the Nursing Home Compare Website and OIG Calculations

We noted significant differences in the direct care hours provided to the ConsultAmerica residents compared to those hours reported in the Nursing Home Compare website.

ConsultAmerica prepares a Facility Staffing form (CMS-671) and a Resident Conditions and Census form (CMS-672) for each survey period. The Survey Agency then inputs information on direct care hours shown on these forms into the Nursing Home Compare website. While we determined that the information contained in the forms agreed with the information in the website, we found significant differences in the hours in the website and the hours that we calculated relying on information for the same period furnished by the facility.

We calculated the direct care hours for the survey period, April 2002, using the CMS-671 and the CMS-672. The 5.23 direct care hours we calculated using the CMS-671 and CMS-672 agreed with the hours on the Nursing Home Compare website that showed 5.23 hours. Although these numbers agreed, we noted significant differences in the direct care hours that we calculated

using the staff schedules and payroll records when compared to the direct care hours reported on the Nursing Home Compare website.

	OIG Calculation	CMS-671 and CMS-672	Nursing Home Compare Website
April 2002	3.83	5.23	5.23

There should be agreement between the direct care hours shown in the official nursing daily hour records and the information made available to the general public. Key data regarding ConsultAmerica and other public nursing facilities is accessible by computer on the Nursing Home Compare website. Based on staff schedules and payroll records provided by ConsultAmerica, we determined that ConsultAmerica provided 3.83 direct care hours during the time of the Alabama State Agency’s April 2002 survey. The 3.83 direct care hours we calculated using facility data was significantly less than the 5.23 hours shown in the Nursing Home Compare website for the same time period – a difference of 1.40 direct care hours per resident per day or 27 percent.

We also noted that the 3.83 hours of direct care is less than the nationwide average of 3.9 hours and the Alabama Statewide average of 4.2 hours, both as of December 2002.

Recommendation

We recommend that ConsultAmerica establish a control to independently confirm the validity of the direct care hours that are provided to the Survey Agency for input into the Nursing Home Compare website.

Comments by the ConsultAmerica Administrator

In a written response to our draft report, the ConsultAmerica Administrator agreed with our findings and recommendations and stated that a control will be implemented to independently confirm the validity of the direct care hours that are provided to the Alabama State Survey Agency for input into the Nursing Home Compare website.

OIG Comments

We concur with the actions that ConsultAmerica plans to take with respect to the recommendations in our report.

* * * * *

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To facilitate identification, please refer to Report Number A-04-04-03028 in all correspondence related to this letter.

Sincerely,

A handwritten signature in cursive script that reads "Charles J. Curtis".

Charles J. Curtis
Regional Inspector General
for Audit Services, Region IV

Enclosure

CONSULTAMERICA HEALTH & REHAB
7110 1st Ave. North
Birmingham, AL 35565
Phone # 205 836-4080 Fax # 836-0085

February 3, 2004

U. S. Dept. Of Health & Human Services
Office of Inspector General
Office of Audit Services

RE: Report # A-04-04-03028

Dear Mr. Curtis,

I apologize for the delay in getting this letter to you. I mailed it to the wrong office. I am resending it to you. I want to thank you for the recommendations you made. ConsultAmerica Health and Rehab will establish a control to independently confirm the validity of the direct care hours that are provided to the Alabama State Survey Agency for input into the Nursing Home Compare website.

Facility Staffing form (CMS-671) will be completed by the facility bookkeeper who will, in turn, present it to the facility Administrator for review. The Administrator will compare the staffing hours reported on the Facility Staffing form to the facility's corresponding pay period to check for accuracy. This is to assure staffing hours reported are accurate prior to presenting the Facility Staffing form to the Alabama State Survey Agency.

Thank you for pointing this error out to our facility. We will attempt to assure this error does not recur by following the above stated plan of action.

Sincerely,

A handwritten signature in black ink, appearing to read "Al Johnson Adm.", written over the word "Sincerely,".

Al Johnson
Administrator

ACKNOWLEDGMENTS

This report was prepared under the direction of Charles J. Curtis, Regional Inspector General for Audit Services, Atlanta. Other principal Office of Audit Services staff who contributed include:

Richard C. Edris, *Audit Manager*
Thomas Justice, *Senior Auditor*
Neha Shukla Smith, *Auditor in Charge*
Martyne Hough, *Auditor*
Keith Gore, *Auditor*
Janet Mosley, *Referencer*

For information or copies of this report, please contact the Office of Inspector General's Public Affairs office at (202) 619-1343.