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OFFICE OF AUDIT SERVICES
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AUG 31 2004

Report Number: A-03-03-00223

Charles Thompson, Director
Emily P. Bissell Hospital
3000 Newport Gap Pike
Wilmington, Delaware 19808

Dear Mr. Thompson:

Enclosed are two copies of the Department of Health and Human Services, Office of Inspector General report entitled "Review of Nursing Facility Staffing Requirements at Emily P. Bissell Hospital." This review was self-initiated and the audit objective was to determine whether Emily P. Bissell Hospital was in compliance with Federal and State staffing laws and regulations for nursing homes.

The scope and objective of this review encompassed only certain specific requirements of the Federal and State staffing regulations. This review did not assess the general requirement of 42 CFR § 483.30 that: "The facility must have sufficient nursing and related services to attain or maintain the highest practicable physical, mental, and psychosocial well-being of each resident, as determined by resident assessments and individual plans of care . . ." Rather, it assessed compliance with the staffing requirements stated in 42 CFR § 483.30 (b):

- (1) The facility must use the services of a registered nurse for at least 8 consecutive hours a day, 7 days a week.
- (2) The facility must designate a registered nurse to serve as the director of nursing on a full time basis.
- (3) The director of nursing may serve as a charge nurse only when the facility has an average occupancy of 60 or fewer residents.

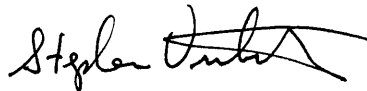
Delaware adds additional requirements to the Federal staffing requirements concerning hours of direct care and employee background checks and drug testing.

Should you have any questions or comments concerning the matters commented on in this report, please direct them to the Department official identified below.

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To facilitate identification, please refer to report number A-03-03-00223 in all correspondence relating to this report.

Sincerely yours,



Stephen Virbitsky
Regional Inspector General
for Audit Services

Enclosure

Direct Reply to HHS Action Official:

Nancy B. O'Connor, Acting Regional Administrator
Centers for Medicare & Medicaid Services - Region III
U.S. Department of Health and Human Services
150 South Independence Mall West, Suite 216
Philadelphia, Pennsylvania 19106-3499

Department of Health and Human Services

**OFFICE OF
INSPECTOR GENERAL**

**REVIEW OF NURSING FACILITY
STAFFING REQUIREMENTS AT
EMILY P. BISSELL HOSPITAL**



**AUGUST 2004
A-03-03-00223**

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 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. Authorized officials of the HHS divisions will make final determination on these matters.



EXECUTIVE SUMMARY

The objective of our review was to determine whether Emily P. Bissell Hospital (Bissell) was in compliance with Federal and State staffing laws and regulations for nursing homes. Bissell is located in Wilmington, DE.

The scope and objective of this review encompassed only certain specific requirements of the Federal and State staffing regulations. This review did not assess the general requirement of 42 CFR § 483.30 that: “The facility must have sufficient nursing and related services to attain or maintain the highest practicable physical, mental, and psychosocial well-being of each resident, as determined by resident assessments and individual plans of care” Rather, it assessed compliance with the staffing requirements stated in 42 CFR § 483.30 (b):

- (1) The facility must use the services of a registered nurse for at least 8 consecutive hours a day, 7 days a week.
- (2) The facility must designate a registered nurse to serve as the director of nursing on a full time basis.
- (3) The director of nursing may serve as a charge nurse only when the facility has an average occupancy of 60 or fewer residents.

Delaware adds additional requirements to the Federal staffing requirements concerning hours of direct care and employee criminal background checks and drug testing.

Based on our review of 103 direct care employees¹, Bissell complied with Federal staffing laws and regulations that we reviewed, but did not comply with State drug testing and background check requirements. Delaware regulations required nursing homes to obtain a drug test, a Federal background check and a State background check on all direct care employees hired as of March 31, 1999. Additionally, these regulations required nursing homes to obtain the drug test results within 2 months of hiring the employee. Based on this criteria, Bissell was required to conduct drug testing as well as State and Federal criminal background checks on 47 of its current 103 direct care employees. A review of the 47 direct care employees disclosed that Bissell did not obtain:

- the drug test results for 12 direct care employees within 2 months
- the drug test results for 1 direct care employee
- the Federal background checks for 2 direct care employees

¹ For purposes of this review, we defined direct care employees as any nursing staff who were eligible to provide direct care to the residents.

Bissell did not follow its internal procedures sufficiently enough to assure that it was in compliance with State requirements. Bissell had internal procedures to verify that it completed the State required drug testing and background checks, but it did not sufficiently follow-up when the results were not received within the State required timeframes.

We recommend that Bissell:

- 1) restrict the three employees whose drug test or background check results were unknown from working directly with the residents until the results are complete
- 2) review and strengthen its internal controls to assure that it
 - a) obtains criminal background checks and drug test results on all new direct care employees
 - b) prohibits new employees from working directly with the residents if the required drug test results are not received within the required timeframes specified in the Delaware State Code

In a written response to our draft report, Bissell concurred with our findings and has taken action to assure that it has drug tests and criminal background checks for all current employees. Bissell has also implemented a tracking system for new employees that will alert Human Resources when a drug test or criminal background check is not obtained within the required timeframes. The full text of Bissell's response is included with this report as an Appendix.

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INTRODUCTION

BACKGROUND

The Omnibus Budget Reconciliation Act of 1987 established legislative reforms to promote quality of care in nursing homes. These reforms require 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. Specifically, Title 42 CFR § 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 the director of nursing on a full time basis (the director of nursing may serve as a charge nurse only when the home has an average daily occupancy of 60 or fewer residents).

States are required to ensure that nursing homes follow these Federal staffing standards at a minimum. Each State may implement its own staffing requirements that exceed these standards. Through the State survey and certification process, the State Survey Agency in each State is required to conduct periodic standard surveys of every nursing home in the State. Through this process State Survey Agencies measure the quality of care at each nursing home by identifying deficiencies and assuring compliance with Federal and State requirements.

Delaware has established staffing requirements that exceed the Federal standards. Under Delaware Code, title 16, part II, chapter 11, subchapter VII, section 1162, nursing homes are required to provide 3.28 hours of direct nursing care for each resident every day. The nursing homes are also required to provide a ratio of licensed nurses and certified nurse aides based on the number of residents. Under this requirement, a nursing home must have on duty 1 registered nurse or licensed practical nurse for every 15 residents and 1 certified nurse aide for every 8 residents on day shift, 1 registered nurse or licensed practical nurse for every 23 residents and 1 certified nurse aide for every 10 residents on evening shift, and 1 registered nurse or licensed practical nurse for every 40 residents and 1 certified nurse aide for every 20 residents on night shift.

Bissell is a 102 bed Medicare and Medicaid certified nursing home owned and operated by the State of Delaware.

OBJECTIVE, SCOPE, AND METHODOLOGY

Objective

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

Scope

The scope and objective of this review encompassed only certain specific requirements of the Federal and State staffing regulations. This review did not assess the general requirement of 42 CFR § 483.30 that: “The facility must have sufficient nursing and related services to attain or maintain the highest practicable physical, mental, and psychosocial well-being of each resident, as determined by resident assessments and individual plans of care” Rather, it assessed compliance with the staffing requirements stated in 42 CFR § 483.30 (b):

- (1) The facility must use the services of a registered nurse for at least 8 consecutive hours a day, 7 days a week.
- (2) The facility must designate a registered nurse to serve as the director of nursing on a full time basis.
- (3) The director of nursing may serve as a charge nurse only when the facility has an average occupancy of 60 or fewer residents.

We also looked at compliance with Delaware regulations concerning hours of direct care and employee background checks and drug testing.

We selected Bissell for review based on our analysis of data from the Centers for Medicare & Medicaid Services’s (CMS) Online Survey Certification and Reporting System.

Methodology

To accomplish our objective we:

- obtained background, staffing and deficiency data for Bissell from the Online Survey Certification and Reporting System database through CMS’s Nursing Home Compare website
- reviewed Federal and Delaware State laws and regulations for nursing homes to determine to what staffing standards Bissell was required to adhere
- obtained staffing schedules, time and attendance records and payroll records to determine Bissell’s direct care hours per resident per day as well as the employee-to-resident ratio for three 2-week periods
- obtained and analyzed criminal background checks and drug testing results for all direct care employees to assure they adhered to the State requirements

- conducted inquiries through Delaware’s on-line license and certification systems to determine if all direct care employees were in good standing
- reviewed the results of the two most recent Bissell standard surveys conducted by the State Survey Agency
- obtained an understanding of Bissell’s procedures for recruiting, retaining and scheduling staff through meetings and discussions with personnel at the home

Our review of internal controls was limited to obtaining an understanding of the controls concerning the hiring and scheduling of employees. The objective of our review did not require an understanding or assessment of the complete internal control structure at Bissell.

We conducted our review at Bissell in Wilmington, DE.

Our review was conducted in accordance with generally accepted government auditing standards.

FINDINGS AND RECOMMENDATIONS

Bissell was in compliance with Federal staffing laws and regulations that we reviewed but was not in compliance with State drug testing and background check requirements. Bissell scheduled sufficient direct care employees to comply with Federal staffing standards as well as both the State employee-to-resident ratio and the 3.28 hours of direct care per resident per day requirement. All 103 direct care employees had current licenses and/or certifications. However, Bissell did not comply with the State drug testing or criminal background check requirements for 15 direct care employees.

State Criteria for Background Checks and Drug Testing

Delaware Code, title 16, part II, chapter 11, subchapter IV, sections 1141 and 1142 required nursing homes to obtain a Federal background check, a State background check and a drug test on all employees hired as of March 31, 1999. Delaware nursing homes were required to have evidence that each employee submitted to the background checks and to the drug test before hiring them. Delaware nursing homes were allowed to hire employees on a conditional basis while awaiting the results. There was no time period placed on the conditional hire for receiving the background checks, but there was a 2-month timeframe in which the drug test results must be received. If the drug test results were not received within the 2 months, the employee was not eligible to work directly with residents until the results were received and found not to contain anything that would preclude the employee from being hired. Based on this criteria, Bissell was required to conduct drug testing as well as State and Federal criminal background checks on 47 of its current 103 direct care employees. The remaining 56 direct care employees were hired before the effective date of the law.

Incomplete and Untimely Drug Testing

Bissell did not obtain the drug test results for 13 direct care employees within the State required 2-month timeframe. Bissell obtained the drug test results for 12 of the 13 direct care employees. Eight were obtained prior to our review and four were obtained as a result of our review. However, Bissell allowed these 12 employees to work directly with residents after the 2-month maximum period had expired, but before the results were obtained. The range of time these employees continued to work directly with residents after the initial 2-month period ranged from 19 days to 4 years. Each employee submitted to drug testing, but Bissell did not sufficiently follow-up when the results were not received within the 2-month period. Once received, the 12 drug tests did not disclose anything that would preclude the employees from working directly with residents. Therefore, these 12 employees may continue to work directly with the residents. However, the employee whose drug test results were still unknown at the time of our review should be restricted from working directly with the residents until the results are received and found not to contain anything that would preclude the employee from being hired.

Incomplete Criminal Background Checks

Bissell did not obtain the results of the State required Federal background check for two direct care employees. Bissell obtained the State background check results for all 47 direct care employees, but only obtained the Federal background check results for 45 of the 47 direct care employees. The remaining two employees submitted to fingerprinting, but Bissell did not sufficiently follow-up when the results were never received. These employees continued to work directly with the residents even though their Federal background check results were unknown. Although there was no timeframe within the State requirements for obtaining background checks, these employees have worked at Bissell for over 3 years without the background check results. Therefore, they should be restricted from working directly with the residents until their Federal background check results are received and found not to contain anything that would preclude the employee from being hired.

Internal Procedures Not Followed

Bissell did not follow its internal procedures sufficiently enough to assure that it was in compliance with State drug testing requirements for 13 direct care employees and State background check requirements for 2 direct care employees. Bissell had internal procedures to verify that it completed the State required drug testing and background checks for direct care employees. The Delaware Department of Health and Social Services, along with the Delaware State Human Resources Department, assisted Bissell in obtaining the required results by processing the requests and reporting the results to Bissell. Ultimately, however, Bissell was responsible for assuring that all direct care employees had no drug abuse or criminal history that would preclude them from working directly with the residents.

Bissell obtained the results of the drug tests for 12 of the 13 employees, although not in a timely manner. The results did not include anything that would preclude the individuals from contact with the residents. As a result, these 12 employees may continue to work with the residents. However, because the drug test for the remaining employee was still unknown at the time of our review, this employee should be restricted from working directly with the residents until Bissell complies with State drug testing requirements. Also, the results of the background checks for two direct care employees were still unknown at the time of our review. Therefore, these employees should be restricted from working directly with the residents until Bissell complies with State background check requirements.

RECOMMENDATIONS

We recommend that Bissell:

- 1) restrict the three employees whose drug test or background check results were unknown from working directly with the residents until the results are complete
- 2) review and strengthen its internal controls to assure that it
 - a) obtains criminal background checks and drug test results on all new direct care employees
 - b) prohibits new employees from working directly with the residents if the required drug test results are not received within the required timeframes specified in the Delaware State Code

AUDITEE RESPONSE

In a written response to our draft report, Bissell concurred with our findings and has taken action to assure that it has drug tests and criminal background checks for all current employees. Bissell has also implemented a tracking system for new employees that will alert Human Resources when a drug test or criminal background check is not obtained within the required timeframes. The full text of Bissell's response is included with this report as an Appendix.

**DELAWARE HEALTH
AND SOCIAL SERVICES**DIVISION OF PUBLIC HEALTH
LONG TERM CARE SECTION

EMILY P. BISSELL HOSPITAL

July 15, 2004

Stephen Virbitsky
Regional Inspector General for Audit Services
Department of Health and Human Services
Office of Inspector General
Office of Audit Services
150 S. Independence Mall West
Suite 316
Philadelphia, PA 19106-3499

Dear Mr. Virbitsky:

RE: Report Number A-03-03-00223

I am writing in response to the draft report referenced above. The employee whose drug test was unknown has resigned and is no longer employed at this facility. We have received the criminal history from the Federal Bureau of Investigation on one of the two employees whose federal background check was not complete. The results are attached. The second employee with an incomplete federal background check has had her fingerprints taken twice, but they could not be classified by the Federal Bureau of Investigation. She is now going for a Live Scan rather than ink prints. We should have a report back soon. A copy of this report will be forwarded to you.

Human Resources has instituted a tracking system for all new employees in which it logs the name of the employee and the date the drug test results and the criminal background checks are received. The system will flag if timeframes are exceeded and appropriate action will be taken. It is noted Bissell Hospital is now using a different medical laboratory for drug testing. The previous laboratory had many administrative issues resulting in unnecessary delays in reporting test outcomes.

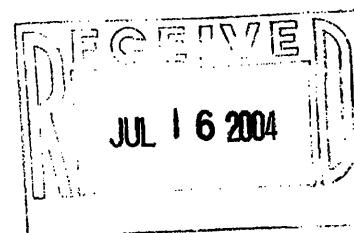
Thank you for the opportunity to respond to the draft report.

Sincerely yours,

A handwritten signature in cursive script that reads "Charles G. Thompson".

Charles G. Thompson
Director
Encl.

Cc: Jack Askin



ACKNOWLEDGMENTS

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

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