

Department of Health and Human Services
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Office of Audit Services

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Florida Did Not Comply With Federal Waiver and State Requirements at 18 of 20 Adult Day Care Facilities Reviewed



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Why OIG Did This Audit

- The Florida Home and Community-Based Services Waiver program (the program) funds home and community-based services for people 65 and older, or 18 or older and eligible for Florida Medicaid by reason of a disability, who require the level of care provided in a nursing home but choose to live in the community.
- Florida operates the program under a Federal waiver to its Medicaid State plan. The program funds adult day care services for Medicaid beneficiaries who reside at home and attend adult day care facilities (facilities).
- We have conducted various health and safety reviews nationwide and wanted to determine whether adults participating in this program were at risk.
- This audit determined whether Florida complied with Federal waiver and State requirements in overseeing adult day care facilities that serve adults who receive services through the program.

What OIG Found

- Florida did not fully comply with Federal waiver and State requirements in overseeing providers that serve adults receiving adult day care services through the program.
- Of the 20 providers we reviewed, 13 did not comply with 1 or more health and safety requirements, and 17 did not comply with 1 or more administrative requirements.
- We found 120 instances of provider noncompliance including 39 instances of noncompliance with health and safety requirements. The remaining 81 instances related to administrative requirements, some of which could significantly affect the health and safety of recipients.
- Florida did not fully comply with Federal waiver and State requirements because its inspections of facilities were insufficient to ensure a continuously safe and nonhazardous environment.

What OIG Recommends

We recommend that Florida:

1. ensure that providers correct the 120 instances of provider noncompliance identified in this report;
2. improve its oversight and monitoring of providers; and
3. work with providers to improve their facilities, staffing, and training.

Florida disagreed with our findings and did not indicate concurrence or nonconcurrence with our recommendations. However, it detailed steps it has taken and plans to take in response to our recommendations.

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INTRODUCTION

WHY WE DID THIS REVIEW

The Office of Inspector General (OIG) has conducted health and safety reviews of adult day care and foster care homes and regulated childcare facilities. (Appendix B lists related OIG reports). Those reviews identified multiple health and safety issues that put children and adults at risk. We wanted to determine whether adults participating in Florida's Home and Community-Based (HCB) waiver program (the program) were at risk.

OBJECTIVE

Our objective was to determine whether the Florida Agency for Health Care Administration (State agency) complied with Federal waiver and State requirements in overseeing adult day care (ADC) facilities that serve adults who receive services through the program.

BACKGROUND

The Medicaid program provides medical assistance to low-income individuals and individuals with disabilities. The Federal and State Governments jointly fund and administer the Medicaid program. At the Federal level, the Centers for Medicare & Medicaid Services (CMS) administers the Medicaid program. In Florida, the State agency administers its Medicaid program in accordance with a CMS-approved State plan. The State plan establishes which services the Medicaid program will cover.

Section 1915(c) of the Social Security Act authorizes the Secretary of Health and Human Services to waive certain Medicaid statutory requirements so that a State may offer HCB services to a State-specified target group of Medicaid recipients who need a level of institutional care that is provided under the Medicaid State plan.

Before the enactment of section 1915(c), the Medicaid program provided limited coverage for long-term services and support in noninstitutional settings but offered full or partial coverage of institutional care. Section 1915(c) was enacted to enable States to address the needs of individuals who would otherwise receive costly institutional care by furnishing cost-effective services that allow them to remain in their households and communities.

Federal regulations for section 1915(c) waivers require States to provide assurances that they will implement safeguards, including adequate standards for provider participation, to protect the health and welfare of individuals served under the waiver and to assure financial accountability for funds expended for those services (42 CFR § 441.302).

As part of the waiver, the State agency must also provide assurances that State requirements are met for services or for individuals furnishing services that are provided under the waiver (42 CFR § 441.302(a)(2)).

Florida Home and Community-Based Services Waiver Program

The State agency administers and operates the program under a 1915(c) waiver to its Medicaid State plan. The program funds HCB services for people who are 65 or older or 18 or older and eligible for Florida Medicaid by reason of a disability, who require the level of care provided in a nursing home but choose to live in the community.

Florida Adult Day Care Services

Under Florida’s Long-Term Care program, ADC facilities provide therapeutic programs of social and health services as well as activities for adults who have functional impairments in a protective environment that provides as non-institutional an environment as possible. Participants may utilize a variety of services offered during any part of a day, but less than a 24-hour period.

ADC services include providing a protective setting that is as non-institutional as possible, therapeutic programs of social and health activities and services, leisure activities, self-care training, rest, nutritional services, and respite care.¹ ADC services are provided at a licensed facility.² These services are designed to prevent institutionalization of aged or disabled individuals by offering effective individualized services that ensure the health, safety, and welfare of participants so they may remain in their own home and community.

The State agency must ensure the health and welfare of adults through licensing standards in State statutes and regulations and the requirements in its application for waiver services.³ ADC facilities providing program services (providers) must meet the health care needs of program participants and maintain compliance with State requirements, and the State agency must comply with Federal waiver and State requirements for overseeing and monitoring the health and welfare of program participants.⁴

HOW WE CONDUCTED THIS REVIEW

Of the 268 providers in Florida as of July 29, 2022, we selected a non-statistical sample of 20 for review. We selected these providers based on their geographic location and number of participants. To evaluate the State agency’s oversight of facilities, we conducted unannounced

¹ Florida Statutes, title 30, chapter 429.901.

² Florida Statutes, title 30, chapter 429.907 and Florida’s HCB waiver application, Appendix C-1/C-3: “Provider Specifications for Service” and Appendix C-2: “General Service Specifications.”

³ In its waiver, the State agency assures that necessary safeguards have been taken to protect the health and welfare of persons receiving services under the waiver. These safeguards include adequate standards for all types of providers that provide services under the waiver.

⁴ Florida Administrative Code 59A-16 and Florida’s HCB waiver application, section 5(A) and (H).

site visits at the 20 selected facilities between April 3 and April 7, 2023, and we discussed with State officials how the State agency monitors its facilities.

We conducted this performance audit in accordance with generally accepted government auditing standards. Those standards require that we plan and perform the audit to obtain sufficient, appropriate evidence to provide a reasonable basis for our findings and conclusions based on our audit objectives. We believe that the evidence obtained provides a reasonable basis for our findings and conclusions based on our audit objectives.

Appendix A contains the details of our audit scope and methodology. Appendix C contains Federal regulations and specific State requirements related to health and safety and administration.

FINDINGS

The State agency did not fully comply with Federal waiver and State requirements in overseeing providers that serve adults receiving ADC services through the program. Of the 20 providers we reviewed, 13 did not comply with 1 or more health and safety requirements, and 17 did not comply with 1 or more administrative requirements.⁵ We found 120 instances of provider noncompliance with health, safety, and administrative requirements. Providers did not always meet the needs of program participants or maintain compliance with State requirements, and the State agency's inspections of facilities were insufficient to ensure a continuously safe and nonhazardous environment. As a result, adults were at risk in numerous instances. (See Appendix D).

THIRTEEN PROVIDERS DID NOT COMPLY WITH ONE OR MORE HEALTH AND SAFETY REQUIREMENTS

The State agency must inspect providers to ensure compliance with applicable State requirements, including those regarding health and safety.⁶ Providers must have adequate, safe, and sanitary facilities appropriate to meet the needs of participants.⁷ In addition, providers must offer a protective environment that promotes the health, safety, and well-being of adults who have functional impairments.⁸

⁵ Twelve providers did not comply with both health and safety and administrative requirements.

⁶ Florida Statutes, title 29, chapter 408.811, "Right of inspection; copies; inspection reports; plan for correction of deficiencies."

⁷ Florida Administrative Code 59A-16.109, "Physical Plant, Sanitary Conditions, Housekeeping Standards and Maintenance," section (1).

⁸ Florida Administrative Code 59A-16.105, "Basic Services," section (1)(a).

Of the 20 providers we reviewed, 13 did not comply with 1 or more State health and safety requirements. Specifically, we found 39 instances of provider noncompliance with State health and safety requirements.

Those findings included the following: toxic chemicals in unlocked areas that were accessible to participants in 11 facilities (Photograph 1); insufficient maintenance in 8 facilities (Photograph 2); water damage in 8 facilities, with mold in 1 of them (Photograph 3); exposed electrical wiring in 4 facilities (Photograph 4); unclean conditions in 3 facilities (Photograph 5); and alcoholic beverages in 1 facility (Photograph 6). (See Appendix E for additional photographs of noncompliance.)



Photograph 1: Hazardous Chemicals.



Photograph 2: Insufficient Building Maintenance.



Photograph 3: Water Damage and Mold.



Photograph 4: Exposed Wiring.



Photograph 5: Unclean Conditions.



Photograph 6: Alcoholic Beverages.

SEVENTEEN PROVIDERS DID NOT COMPLY WITH ONE OR MORE ADMINISTRATIVE REQUIREMENTS

The State agency must inspect providers to ensure compliance with applicable State requirements, including those regarding administration.⁹ Providers must meet the needs of the participants by having enough appropriately qualified staff.¹⁰ For example, before employment, a provider must ensure that all employees are free from tuberculosis, and employees who will have direct contact with participants must satisfactorily complete a background check.¹¹

Of the 20 providers we reviewed, 17 did not comply with 1 or more State administrative requirements. We found 81 instances of provider noncompliance with State administrative requirements.

Among other things, we found staffing issues at 11 providers who did not have licensed or certified medical personnel on staff. We also found eight providers had not conducted required fire drills. Additionally, seven providers did not ensure staff and/or participants were free from

⁹ Florida Statutes, title 29, chapter 408.811, "Right of inspection; copies; inspection reports; plan for correction of deficiencies."

¹⁰ Florida Administrative Code 59A-16.102, "Governing Authority, Administration and Staffing," sections (4) and (8).

¹¹ Florida Statutes, title 29, chapter 408.809, "Background screening; prohibited offenses" and Florida Administrative Code 59A-16.102, "Governing Authority, Administration and Staffing," section (5)(b)7.

tuberculosis prior to employment and/or admission.¹² We also found training issues at six providers.¹³ For example, some staff did not receive the required initial training within the first 90 days of employment. We also found that three providers had not conducted criminal background checks as required for certain staff, and one provider did not complete major incident reports for several documented incidents.¹⁴

NONCOMPLIANCE WITH FEDERAL WAIVER AND STATE REQUIREMENTS

The State agency did not fully comply with Federal waiver and State requirements for overseeing and monitoring the health and welfare of Medicaid recipients receiving ADC services because its inspections of facilities were insufficient to ensure a continuously safe and nonhazardous environment.

Between February 24, 2021, and March 30, 2023, the State agency inspected each of the 20 providers we reviewed. For 14 of these providers, the State agency did not identify any compliance violations, including the maintenance issues, water damage, unclean conditions, exposed electrical wiring, or toxic chemicals in unlocked areas. In addition, the State agency's inspections did not include sufficient review of staff and participant records. For example, inspections did not identify that some providers did not perform criminal background checks as required or ensure that staff and participants were free from tuberculosis. Inspections also failed to identify that some providers did not have licensed medical personnel on staff.

Providers did not always meet the needs of program participants or maintain compliance with State requirements, and the State agency's oversight and monitoring did not detect these instances of noncompliance. As a result, adults were at risk in numerous instances.

RECOMMENDATIONS

We recommend that the Florida Agency for Health Care Administration:

- ensure that providers correct the 120 instances of provider noncompliance identified in this report;
- improve its oversight and monitoring of providers; and
- work with providers to improve their facilities, staffing, and training.

¹² Florida Administrative Code 59A-16.102, "Governing Authority, Administration and Staffing," sections (5)(b)7 and (1)(a)1, respectively.

¹³ Florida Administrative Code 59A-16.110, "Adult Day Care Center Staff Training Requirements," section (1).

¹⁴ Florida Statutes, title 29, chapter 408.809(1), and Florida Administrative Code 59A-16.107, "Participant and Program Data, Comprehensive Emergency Management Plan," section (7), respectively.

STATE AGENCY COMMENTS AND OFFICE OF INSPECTOR GENERAL RESPONSE

STATE AGENCY COMMENTS

In written comments on our draft report, the State agency disagreed with our findings and did not indicate concurrence or nonconcurrence with our recommendations. However, it detailed steps it has taken and plans to take in response to our recommendations.

The State agency expressed concerns about the audit period, the number of instances of noncompliance, the report title, and the evidence supporting the audit findings. Among other things, the State agency asserted that:

- The report title suggests that the responsibility for maintaining compliance rests with the Florida State Survey Agency rather than the providers themselves and lacks distinction between the role of the State versus the role of a privately owned entity. The State of Florida does not run privately owned and operated facilities. Thus, provider management and staff (not the State of Florida) are responsible for ensuring the safety and well-being of participants by complying with regulations.
- None of the detailed audit findings were within the October 1, 2021, through December 31, 2021, audit period mentioned in our audit notification letter, thus leading to questions regarding the audit's methodology, intent, and conclusion.
- The number of instances of noncompliance was inflated since the State agency counts environmental issues as a single deficiency in a facility.
- All but three of the OIG site visits were conducted more than 3 months after the last biennial survey for the provider, many of them after a year or more. Changes can occur within a provider organization within that time, including physical plant deterioration and staff and participant changes. This significant difference in the intervals between observations has the potential to impact many areas of an audit, including environmental findings (such as maintenance, emergency drills, unlocked hazards, lack of hot water, medication storage, pests, etc.), staffing levels, personnel records, facility policy availability, and postings (such as evacuation routes, activities, phone numbers and operating hours).
- At least 12 facilities reviewed were impacted by the devastation of Hurricane Ian (Category 4) in September 2022. Four of the 18 facilities were in the Tampa Bay and Fort Myers areas hardest hit by the storm. At least four others were selected for review in other state regions with historically destructive storm surges and flooding due to Hurricane Ian. Due to the extent of the damage, repair contractors have been scarce.
- The auditors did not provide the necessary evidence for State agency staff to assess whether the findings were valid.

Despite its disagreement, concerns, and assertions, the State agency commented that it would review the findings with Field Office Managers, monitor the efficacy of its survey processes, provide ongoing training and feedback to staff to ensure appropriate implementation of adult

day care regulations, incorporate the adult day care survey process into surveyor training, and consider amending survey tools if necessary.

OFFICE OF INSPECTOR GENERAL RESPONSE

We commend the State agency for taking or considering corrective action, although we have not formally reviewed those actions. Additionally, we refute the assertions above as follows:

- Our report title, findings, and recommendations reflect shared responsibility for maintaining compliance. Providers are responsible for maintaining compliance and ensuring the safety and well-being of participants. Additionally, in its CMS-approved HCB waiver, the State agency acknowledged its oversight responsibilities and assured CMS that necessary safeguards had been taken to protect the health and welfare of persons receiving services under the waiver.
- The dates referred to in the audit notification letter do not lead to questions regarding the audit's methodology, intent, and conclusion. The letter disclosed our intention to review the State agency's oversight of providers that received payments for 1915(c) waiver services from October 1 through December 31, 2021. In August 2022, the State agency updated its listing of providers to include 268 that were still operating as of July 29, 2022. From this listing, we selected providers for unannounced site visits between April 3 and April 7, 2023. During our entrance conference on February 10, 2023, we discussed our scope and methodology with State officials and told them that unannounced site visits would be conducted at 20 providers that received payments for 1915(c) waiver services from October 1 through December 31, 2021.
- The number of instances of noncompliance was not inflated. The State agency may choose to count one instance of noncompliance when multiple instances are identified in facility environments. However, we did not use the State agency's checklist or methodology for our audit, and we counted each instance of noncompliance separately.
- We recognize that the timing of our onsite inspections did not coincide with the timing of the State surveys. Accordingly, some of the compliance violations we identified during our audit of the 20 facilities may not have been present at the time of the State surveys. However, given that the State agency did not identify any compliance violations at 14 of the 20 facilities, in comparison to the number of violations we identified, we maintain that the State agency should consider improving its oversight and monitoring processes.
- We recognize that Florida has been impacted by severe weather in the last couple of years. Given localized shortages of repair contractors, we acknowledge that the State agency may need to provide extended deadlines to providers as it ensures that providers correct some of the 120 instances of noncompliance identified in this report.
- We provided necessary evidence for State agency staff to assess the validity of our findings. As indicated in Appendix D, we provided it with a "Detailed Findings by Provider" identifying the specific facilities reviewed, conditions observed, and instances of noncompliance. Additionally, the State agency requested a list of sampled participants and staff and, to the extent feasible, we provided this information. The

State agency never requested the information listed in its comments and, therefore, we did not provide it. Regardless, we maintain that such information is not necessary for the State agency to assess the conditions observed, validate the findings, and take corrective actions. For example, Florida Administrative Code 59A-16.106(6)(c)(2) requires a registered nurse (RN) or licensed practical nurse (LPN) to be on-site during the primary hours of program operation. However, we observed 11 providers that did not have an RN or LPN present during primary hours of program operation, and we reported 11 related instances of non-compliance. Among other things, the State agency asserted that we failed to provide necessary information (i.e., how long a nurse had been absent or if there were any participants during the timeframe in which no nurse was onsite) to assess validity of this finding. Given the plain language of the criteria cited, our observations were sufficient to support these 11 instances of provider non-compliance. Thus, we refute this and other State agency assertions that we did not provide evidence necessary to assess the validity of our findings.

After review and consideration of the State agency's comments, our report title, findings, and recommendations remain unchanged.

The State agency's comments are included in their entirety as Appendix F.

APPENDIX A: AUDIT SCOPE AND METHODOLOGY

SCOPE

Of the 268 providers in Florida as of July 29, 2022, we selected a non-statistical sample of 20 for review. We selected these providers based on their geographic location and the number of their participants.

To evaluate the State agency's oversight of facilities, we conducted unannounced site visits at the 20 selected facilities between April 3 and April 7, 2023. We conducted fieldwork in the cities of Clermont, Coral Springs, Ft. Myers, Greenacres, Hialeah, Jacksonville, Kissimmee, Lake Mary, Lehigh Acres, Margate, Miami, Ocala, Pompano Beach, and Tampa.

During our audit, we did not review the overall internal control structure of the State agency or the Medicaid program. Rather, we reviewed only the internal controls that pertained directly to our objective.

METHODOLOGY

To accomplish our objective, we:

- reviewed applicable Federal laws, State statutes, and regulations for facilities;
- discussed with State officials how the State agency monitors its facilities;
- developed a health, safety, and administrative requirement checklist, from State requirements, as a guide for conducting site visits;
- conducted unannounced site visits at the 20 providers selected for review;
- evaluated provider compliance using the health, safety, and administrative requirement checklist;
- reviewed State agency inspection reports for the 20 providers selected for review; and
- discussed the results of our review with State officials.

We conducted this performance audit in accordance with generally accepted government auditing standards. Those standards require that we plan and perform the audit to obtain sufficient, appropriate evidence to provide a reasonable basis for our findings and conclusions based on our audit objectives. We believe that the evidence obtained provides a reasonable basis for our findings and conclusions based on our audit objectives.

APPENDIX B: RELATED OFFICE OF INSPECTOR GENERAL REPORTS

Report Title	Report Number	Date Issued
<i>Washington State’s Oversight Could Better Ensure That Adult Family Homes Comply With Health and Safety and Administrative Requirements</i>	<u>A-09-23-02002</u>	11/13/2024
<i>Georgia Did Not Comply With Federal Waiver and State Requirements at All 20 Adult Day Health Care Facilities Reviewed</i>	<u>A-04-22-00134</u>	3/14/2023
<i>New York’s Oversight of Medicaid Managed Care Organizations Did Not Ensure Providers Complied With Health and Safety Requirements at 18 of 20 Adult Day Care Facilities Reviewed</i>	<u>A-02-18-01027</u>	3/26/2020
<i>California Needs To Improve Oversight of Community-Based Adult Services Providers’ Compliance With Health and Safety and Administrative Requirements</i>	<u>A-09-18-02002</u>	9/30/2019
<i>Kentucky Did Not Comply With Federal Waiver and State Requirements at 14 of 20 Adult Day Health Care Facilities Reviewed</i>	<u>A-04-18-00123</u>	7/9/2019
<i>Four States Did Not Comply With Federal Waiver and State Requirements in Overseeing Adult Day Care Centers and Foster Care Homes</i>	<u>A-05-19-00005</u>	5/16/2019
<i>Wisconsin Did Not Comply With Federal Waiver and State Requirements at All 20 Adult Day Service Centers Reviewed</i>	<u>A-05-17-00030</u>	10/15/2018
<i>Mississippi Did Not Comply With Federal Waiver and State Requirements at All 20 Adult Day Care Facilities Reviewed</i>	<u>A-04-17-00116</u>	8/20/2018
<i>Illinois Did Not Comply With Federal Waiver and State Requirements at 18 of 20 Adult Day Service Centers Reviewed</i>	<u>A-05-17-00028</u>	7/24/2018
<i>Minnesota Did Not Comply With Federal Waiver and State Requirements for All 20 Adult Day Care Centers Reviewed</i>	<u>A-05-17-00009</u>	5/30/2018
<i>Minnesota Did Not Comply With Federal Waiver and State Requirements for 18 of 20 Family Adult Foster Care Homes Reviewed</i>	<u>A-05-16-00044</u>	10/31/2017

APPENDIX C: FEDERAL REGULATIONS AND STATE REQUIREMENTS

FEDERAL REGULATIONS

Section 1915(c) of the Social Security Act authorizes the Secretary of Health and Human Services to waive certain Medicaid statutory requirements so that a State may offer HCB services to a State-specified target group of Medicaid recipients who need a level of institutional care that is provided under the Medicaid State plan.

Before the enactment of section 1915(c), the Medicaid program provided limited coverage for long-term services and support in noninstitutional settings but offered full or partial coverage of institutional care. Section 1915(c) was enacted to enable States to address the needs of individuals who would otherwise receive costly institutional care by furnishing cost-effective services while the individuals remain in their households and communities.

Federal regulations for section 1915(c) waivers require States to provide assurance that necessary safeguards will be taken, including adequate standards for provider participation, to protect the health and welfare of individuals serviced under the waiver and to assure financial accountability for funds expended for those services (42 CFR § 441.302).

As part of the waiver, the State agency is required to ensure the health and welfare of participants through oversight and monitoring of providers (42 CFR § 441.302(a)(2); 1915(c) waiver, Appendix C).

STATE REQUIREMENTS

The State identifies provider licensure requirements for the operation of ADC facilities in its Florida Statutes, title 30, chapter 429, part 3, section 429.907, "License requirement; fee; exemption; display." In addition, the State identifies rules for licensing and operation of ADC facilities in its Florida Administrative Code, chapter 59A-16, "Adult Day Care."

Administrative Code

Florida Administrative Code, chapter 59A-16

59A-16.102. Governing Authority, Administration and Staffing

(1)(a)1. Within forty-five days prior to admission to the Center, each person applying to be a Participant shall provide a statement signed by a physician licensed under chapters 458 and 459, F.S., a Florida licensed health care provider under the direct supervision of a physician, or a county public health unit . . . and must state that the applicant is free from tuberculosis in the

communicable form and free from signs and symptoms of any other communicable disease

- (4) The Center shall employ qualified Staff to provide the services, personal assistance and safety measures required by the Participants.
- (5) The Owner or Operator shall:
 - (a) Develop a written job description for each Staff member containing a list of qualifications, duties, responsibilities and accountability required of each Staff member.
 - (b) Establish and maintain a personnel file for each Staff member to include:
 - 1. Name, home address, phone number,
 - 2. Education and experience,
 - 3. Job assignment,
 - 4. Evaluation of performance at least yearly,
 - 5. Dates of employment and termination,
 - 6. Character references, including former employers and supervisors,
 - 7. A signed statement from a Florida licensed physician, a Florida licensed health care provider under the direct supervision of a physician, or a county public health unit, that the employee is free from tuberculosis in a communicable form, and free from apparent signs and symptoms of other communicable diseases. The statement must be signed no less than forty-five days prior to beginning work in the Center.
 - 8. Training certificates
- (7) The Owner or Operator shall ensure that each employee:
 - (b) Refrains from abusive, immoral or other unacceptable conduct such as the use of alcohol, illegal use of narcotics or other impairing drugs, and behavior or language which may be injurious to Participants
- (8) The Owner or Operator or Assistant Operator shall be responsible for enforcing the following minimum personnel staffing for Adult Day Care Centers and shall designate substitute Staff to be available in emergencies.
 - (a) A minimum Staff ratio of one Staff member who provides direct services for every six Participants shall be present in the Center at all times.
 - (b) No less than two Staff members, one of whom has a certification in an approved first aid course and CPR, shall be present in the Center at all times.

(c) At all times staffing shall be maintained to meet the needs of the Participants as required by the Participant Files

59A-16.104. Program Requirements

(4) There shall be a written description of the range of services to be provided to Participants.

(5) A monthly schedule of daily activities shall be maintained on a current basis and displayed in a conspicuous place

59A-16.105. Basic Services.

(1) To be licensed as an Adult Day Care Center, the following minimum Basic Services shall be provided:

(a) A protective environment that promotes a non-institutional atmosphere where supervision for the health, safety and well-being of adults who have Functional Impairments is provided

59A-16.106. Supportive and Optional Services

(6) Adult day health care services for disabled adults or aged persons, provided the Center complies with the following

(b) Provide or coordinate . . . the following adult day health care services:

1. Medical screening emphasizing prevention and continuity of care which includes routine blood pressure checks or blood glucose diabetic maintenance checks,
2. Nursing services including a configuration of services at different levels of intensity as determined by the nursing assessment, Participant Care Plan, and physician's orders. Services shall include:
 - a. Health education and counseling including nutritional advice, liaison with the Participant's personal physician, and notification of the Participant's physician, as well as the caregiver or family of any changes in the Participant's health status,
 - b. Coordination of the provision of other health services provided outside the Center,
 - c. Supervision of health services provided by program aides.

3. Social services including: counseling for Participants' families and caregivers; compilation of a social history and psychosocial assessment of formal and informal support systems; mental and emotional status; caregiver data; information on planning for discharge; and referral for persons not appropriate for adult day care
.....

(c) In addition to the minimum staffing required in chapter 59A-16, F.A.C., provide the following Staff

2. A registered nurse (RN) or licensed practical nurse (LPN) shall be on-site during the primary hours of program operation and on-call during all hours the Center is open. Arrangements shall be formalized for obtaining the services of an LPN or RN in anticipation of potential absences, planned and unplanned, of the regular nursing Staff

(d) Documentation of services provided under this section must be in the Participant Care Plan and stored in the Participant File. Participant Care Plans must be reviewed at least quarterly by a multidisciplinary team. At a minimum, narrative nursing, social work, and activity notes must be entered in the participant's record quarterly, indicating the Participant's progress toward achieving health goals. More frequent notes are required if indicated by the Participant's condition.

59A-16.107. Participant and Program Data, Comprehensive Emergency Management Plan

(2) The Participant File shall include a Participant Data Sheet which shall be completed for each Participant within forty-five days prior to or twenty-four hours after admission to the Center and which shall include:

- (a) Full name, birthday, address;
- (b) Date admitted as a Participant and services to be provided;
- (c) Next of kin, and address and phone number of such person;
- (d) Guardian or Responsible Person and address and phone number of that person;
- (e) Medicaid and Medicare identification and other health insurance numbers;
- (f) Emergency contact person, home or office address and phone numbers of such person;
- (g) Name and telephone number of attending physician to be contacted when there appears to be significant deviation from normal appearance or state of well-being of a Participant; physician's or hospital discharge statement no older than forty-five days indicating prescribed medications

and dosage which is updated as changes are made by physicians or, until a statement is received, a dated and signed statement by the Participant, guardian or responsible person, stating that specific medication may be given as ordered by the attending physician; notation of physical and emotional conditions requiring care and medications administered; diet and mobility restrictions; and a statement that the Participant is free from tuberculosis in a communicable form;

(h) The Participant File shall be updated when there is a Significant Change in the Participant, or at least quarterly;

(i) The Owner or Operator or Staff designated by the Owner or Operator shall review and approve each Participant care plan.

(3) The Operator shall be responsible for the recording, reporting and availability of Participant data, including those records required for each Center Participant, and program data, including those records required for services made available to and provided to Participants by the Adult Day Care Center. Such records shall include

(d) Business hours of operation shall be posted in a conspicuous place. Business hours shall mean a time period established by the Center, as defined in its policies, and shall be no less than five hours per day on week days of Center operation and may include a reduced schedule of weekend hours.

(4) Documentation shall be made of services, medication and special diets provided or administered to the Participants and shall be kept current in the Participant's File. Such documentation shall consist of a written, signed and dated notation or statement

(7) A written record shall be kept of Major Incidents affecting Participants, Staff, Volunteers or the Center

(10) Pursuant to section 429.929(1)(g), F.S., as a part of the licensure process, each Center shall develop and follow a written Comprehensive Emergency Management Plan for emergency care during an internal or external disaster in accordance with Emergency Management Planning Criteria for Adult Day Care Facilities

(a) The Comprehensive Emergency Management Plan shall include the following:

1. Provisions for both internal and external disasters and emergencies which could include hurricanes, tornadoes, fires, power outages, floods, bomb threats, acts of terrorism, bio-terrorism, hazardous materials and

nuclear disasters.

2. Provisions for care and services to Participants during the emergency including: pre-disaster preparation, notification of family members or responsible parties, securing the Center, supplies, staffing and emergency equipment.

3. Provisions for care and services, including emergency evacuation transportation, to Participants who must remain in the Center and those who must evacuate during the emergency.

4. Identification of Staff positions responsible for implementing each aspect of the Plan.

5. Identification of and coordination with designated agencies including the Red Cross and the local emergency management agency.

6. Post-disaster activities including responding to family inquiries, obtaining necessary emergency medical attention or intervention for Participants, transportation and re-entry to the Center.

(b) The Plan shall be available for immediate access by Center Staff.

(c) The initial Plan shall be reviewed by the local Emergency Management Agency to ensure compliance with the Emergency Management Planning Criteria for Adult Day Care Facilities, dated July 2001.

(d) The local emergency management agency has 60 days in which to review and determine if the Plan satisfies the Emergency Management Planning Criteria or advise the Center of necessary revisions. Any revisions must be made and resubmitted to the local emergency management agency within 30 days of receiving notification from the local emergency management agency that the Plan must be revised.

(e) The Center shall review and update its Plan on an annual basis. The Plan shall be submitted annually, or more often if needed, to the local emergency management agency.

(11) Fire safety protection shall be governed by the local fire code applicable to Adult Day Care Centers. In areas where no local fire code applies, the standards contained in chapter 69A-40, F.A.C., Uniform Fire Safety Standards for Assisted Living Facilities, may be used to determine compliance with fire safety standards. In every instance, a Center shall comply with local and state standards before a license may be issued.

(a) A fire evacuation drill shall be conducted once a month for the Staff and once every three months for Participants;

(b) A written record of each fire drill, indicating the date, hour and general

description of each drill, the extent of Staff involvement, and the name of the person in charge shall be maintained and available for review;

(c) Evacuation routes shall be posted conspicuously in the Center.

59A-16.109. Physical Plant, Sanitary Conditions, Housekeeping Standards and Maintenance.

(1) The Center shall provide adequate, safe and sanitary facilities appropriate for the services provided by the Center and for the needs of the Participants. All Centers receiving federal funds shall meet regulations for access to the handicapped in compliance with the Americans With Disabilities Act of 1990

(12) Medicines, cleaning supplies, flammables and other potentially poisonous or dangerous supplies shall be stored out of the Participant's reach, and in such manner as to ensure the safety of Participants

(c) Medications shall be centrally stored when:

1. The preservation of medicines requires refrigeration

(d) Centrally stored medications shall be:

1. Kept in a locked cabinet or container, and refrigerated, if required;
2. Accessible only to the authorized Staff responsible for distribution of medication

(15) Every Center shall be maintained for the comfort and safety of the Participants and shall have an effective written maintenance plan that ensures preventive maintenance as well as immediate attention to and correction of hazardous or potentially hazardous conditions. The plan shall provide for:

(a) Keeping the building in good repair and free of hazards such as: cracks in floors, walls, or ceilings; warped or loose boards, tile, linoleum, handrails or railings; broken window panes; and any similar hazards.

(b) Keeping all heating, air conditioning, electrical, mechanical, water supply, fire protection and sewage disposal systems in a safe and functioning condition. Electrical wiring cords and appliances shall be maintained in a safe condition

(d) Painting the interior and exterior of the building as needed to keep it reasonably attractive. Loose, cracked or peeling wallpaper or paint shall be promptly replaced or repaired to provide a satisfactory finish.

(e) Keeping all furniture and furnishings clean and in good repair.

(f) Keeping the grounds and buildings in a safe, sanitary and presentable condition. Grounds and buildings shall be kept free from refuse, litter, and insect and rodent breeding areas.

59A-16.110. Adult Day Care Center Staff Training Requirements.

(1) Each Adult Day Care Center licensed under chapter 429, part III, F.S., shall provide the following training.

(a) All Staff in Direct Contact with ADRD Participants and Staff Providing Direct Care for ADRD Participants shall receive one initial hour of training within ninety days of employment, which shall satisfy the requirement referenced in section 429.917(1)(b), F.S. The curriculum for the initial one-hour training shall address the following subject areas:

1. Understanding Alzheimer's Disease and Related Disorders,
2. Characteristics of Alzheimer's Disease and Related Disorders; and,
3. Communicating with Participants with Alzheimer's Disease or Related Disorders.

(b) All Staff Providing Direct Care for ADRD Participants shall receive three hours of additional training, within nine months of employment, which shall satisfy the requirement referenced in section 429.917(1)(c), F.S. The curriculum for the three hours of additional training must address the following subject areas as they apply to Alzheimer's Disease and Related Disorders:

1. Behavior management,
2. Assistance with Activities of Daily Living to promote the patient's independence,
3. Activities for Participants,
4. Stress management for the caregiver,
5. Family issues,
6. Participant environment; and,
7. Ethical issues

59A-16.111. Specialized Alzheimer's Services Adult Day Care Center Staff Training Requirements

(2) Within three months of employment, all Staff in Direct Contact with ADRD Participants and all Staff Providing Direct Care for ADRD Participants at a Center designated as a Specialized Alzheimer's services adult day care center . . . must obtain four hours of Alzheimer's disease and related disorders training

(3) Within six months of employment, all Staff Providing Direct Care for ADRD Participants at a Center designated as a Specialized Alzheimer’s services adult day care center . . . must obtain an additional four hours of dementia-specific training approved by the Department

APPENDIX D: INSTANCES OF NONCOMPLIANCE AT EACH FACILITY

Provider	Health and Safety		Administrative			Total
	Physical Environment	Participant Welfare	Staffing and Policies	Personnel Records	Participant Records	
1	4	0	2	0	1	7
2	1	1	1	1	2	6
3	0	0	1	1	0	2
4	2	1	4	6	5	18
5	4	1	4	5	2	16
6	0	0	0	1	1	2
7	0	0	0	0	0	0
8	0	0	1	2	1	4
9	0	0	0	2	0	2
10	2	0	2	3	2	9
11	0	0	0	1	0	1
12	0	1	1	1	0	3
13	0	0	0	0	0	0
14	3	0	1	1	2	7
15	2	0	0	0	0	2
16	3	0	0	3	0	6
17	3	0	0	4	0	7
18	4	0	2	4	1	11
19	3	0	1	1	0	5
20	4	0	1	4	3	12
Total	35	4	21	40	20	120

Note: We provided to the State agency under a separate cover the specific facilities reviewed and their specific violations.

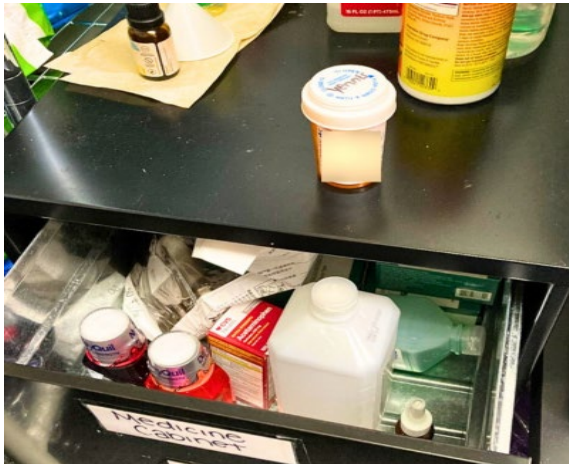
APPENDIX E: ADDITIONAL PHOTOGRAPHS OF NONCOMPLIANCE



Photograph 7: Open Sharps Container.



Photograph 8: Blocked Exit.



Photograph 9: Unlocked Medicine Cabinet.



Photograph 10: Pests.



Photograph 11: Unlocked Medicine.



Photograph 12: Mold.



Photograph 13: Unlocked Medicine and Alcoholic Beverages.



Photograph 14: Insufficient Maintenance.



Photograph 15: Insufficient Maintenance.



Photograph 16: Insufficient Maintenance.



Photograph 17: Exposed Wiring.



Photograph 18: Water Damage.

APPENDIX F: STATE AGENCY COMMENTS



RON DESANTIS
GOVERNOR

JASON WEIDA
SECRETARY

March 22, 2024

Lori S. Pilcher
Regional Inspector General for Audit Services
Office of Audit Services, Region IV
61 Forsyth Street, SW, Suite 3T41
Atlanta, GA 30303

Re: Report Number: A-04-23-00135

Dear Ms. Pilcher:

Enclosed is the Florida Agency for Health Care Administration's comments on the Department of Health and Human Services, Office of Inspector General (OIG), draft report, *Florida Did Not Comply With Federal Waiver and State Requirements at 18 of 20 Adult Day Care Facilities Reviewed*.

The Florida Agency for Health Care Administration reviewed the draft report and has many concerns surrounding the method of the audit, the framing of the title, the lack of distinction between the role of the State versus the role of a privately owned entity, and the presumed findings without data to support the conclusions of the audit. Although we appreciate the professionalism of the staff of the Office of the Inspector General, our concerns found within the enclosed response ultimately led us to question the audit findings themselves.

We appreciate the opportunity to provide our comments.

Sincerely,

Jason Weida,
Secretary

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Agency for Health Care Administration Response to HHS/OIG Draft Report Office of Inspector General (OIG), draft report A-04-23-00135 “Florida Did Not Comply With Federal Waiver and State Requirements at 18 of 20 Adult Day Care Facilities Reviewed”.

Summary of Findings

The HHS/OIG Draft Report alleges Florida did not fully comply with requirements for regulating adult day care services providers. Of the 20 providers reviewed, HHS/OIG claims 13 did not comply with one or more health and safety requirements, and 17 did not comply with one or more administrative requirements. Florida’s Agency for Health Care Administration disagrees with the findings for the reasons found in the responses below.

State Survey Agency (SSA) Response

The Florida State Survey Agency (SSA) staff have reviewed the draft report entitled “*Florida Did Not Comply with Federal Waiver and State Requirements at 18 of 20 Adult Day Care Facilities Reviewed*”. Although we appreciate the professionalism of the Office of the Inspector General staff, we do have some concerns regarding the report title, and the audit methodology, ultimately leading us to question the audit findings themselves.

Title of Document

Management and staff at Adult Day Care Centers (ADCCs) are responsible for ensuring the safety and well-being of participants and complying with regulations. It is important to note that these are privately owned and operated facilities that the State of Florida does not run. Yet, the title of your report suggests that responsibility for maintaining compliance rests with the Florida State Survey Agency (SSA) rather than the providers themselves. Unless complaints are received by the Agency requiring an investigation, our survey staff conduct surveys of ADCCs every other year. The survey process is a "snapshot in time" of concerns identified while onsite, whether those issues are related to the environment, care, or other requirements as outlined in statute and rule. If non-compliance is identified during an inspection, our surveyors cite those concerns, requiring correction. But, as with any business entity, the ADCC providers must abide by all regulations impacting their enterprise. Continuous monitoring of these facilities would not only go beyond any state survey agency’s capability, but it would also lead to a grotesque overreach of government into the daily operation of these private entities and go well beyond our regulatory authority.

Conduct of the Review

Of note, the notice of audit letter dated February 1, 2023, stated the audit period was to be October 1, 2021, through December 31, 2021. Yet, none of the detailed findings indicated they were related to the defined audit period within the letter. This leads to many questions regarding the audit’s methodology, intent, and conclusions. Undoubtedly, environmental issues could not be assessed for a timeframe in the past. Additionally, the audit refers to emergency management plans beyond the defined audit period while referencing rules superseded by statutory changes in 2021.

The report indicates that the Office of Inspector General (OIG) staff found 120 instances of non-compliance. This is an inflated number as those specific concerns, such as environmental issues, would be counted as a single deficiency in a facility cited under the Florida Administrative Code.

Agency for Health Care Administration Response to HHS/OIG Draft Report Office of Inspector General (OIG), draft report A-04-23-00135 “Florida Did Not Comply With Federal Waiver and State Requirements at 18 of 20 Adult Day Care Facilities Reviewed”.

Examples:

- The environment was counted as non-compliance 35 times but only in 12 facilities. This would have been 12 counts of non-compliance under Florida Administrative Code 59A-16.105(1)(a), as all findings for a survey are noted in a single citation.
- Participant file concerns under the same requirement (Tag D0301, Florida Administrative Code 59A-16.107) were cited as multiple instances of non-compliance in two facilities (#4 - twice and #20 – three times).
- Just these two examples reduce the inflated number of 120 instances of non-compliance to 94.

The missing nuance is part of what leads our Agency to question the methodology of the auditors. Understanding the Florida procedures for determining non-compliance is critical to a fair and accurate review of our survey process.

All but three of the audits were conducted more than three months after the last biennial survey for the provider, many of them after a year or more. Reasonably, many changes can occur within a provider organization within that time, including physical plant deterioration and staff and participant changes. Organizations are not stagnant. This significant difference in the intervals between observations has the potential to impact many areas of an audit, including environmental findings (such as maintenance, emergency drills, unlocked hazards, lack of hot water, medication storage, pests, etc.), staffing levels, personnel records, facility policy availability, and postings (such as evacuation routes, activities, phone numbers and operating hours). One ADCC (#17) was noted to lack hot water. They are exempt from this rule, as they were initially licensed in 2013, and the rule for hot water was implemented on 8/3/2015, exempting providers licensed before that date. Another example of the type of information a skilled state surveyor would be aware of.

At least twelve audits were completed in facilities impacted by the devastation of Hurricane Ian (Category 4) in September 2022. As everyone is aware, this was a devastating storm causing catastrophic damage throughout Florida, including widespread destruction, storm surge, flooding, and at least three tornadoes in the Palm Beach County area (where two audits were completed). Four of the 18 facilities were in the Tampa Bay and Fort Myers areas hardest hit by the storm. At least four ADCCs were selected for review in other state regions with historically destructive storm surges and flooding due to Hurricane Ian (ADCCs #16, 18, 19, 20). The providers were in Seminole, Osceola, Marion, and Duval counties, all with documented overwhelming water damage. The audit reports concern with water damage in these facilities.

This was a nationally known weather event, and contractors have been scarce. Insurance companies were slow to pay (if at all), and these facilities had yet to be up for licensure renewal at the time of the audit, so surveyors had not performed an inspection since Hurricane Ian. Yet, for the two Tampa Bay area centers that Florida surveyors had surveyed around the time of this audit, there were no environmental concerns related to building maintenance and safety, attesting to the thoroughness of our survey process even during times of recovery from calamitous weather events (ADCCs #2 & #3).

Not only does the audit attempt to cast doubt on the legitimacy and thoroughness of the SSA's survey process many months after our inspection, but it does so without adequate knowledge to back up the assertions made by auditors methodology, which appears not to reflect standards

Agency for Health Care Administration Response to HHS/OIG Draft Report Office of Inspector General (OIG), draft report A-04-23-00135 “Florida Did Not Comply With Federal Waiver and State Requirements at 18 of 20 Adult Day Care Facilities Reviewed”.

for the Florida survey process. The audit needed to provide the necessary evidence for our staff to assess if other areas cited as concerns were valid.

These include:

- Staff hire dates and positions should have been provided for staff noted in the report as missing required training, background checks, training, or medical information. Without this information, we cannot determine if those staff were in place at the time of our previous survey or if the information suggested by the auditors as lacking was required.
- Furthermore, the report indicates that some Adult Day Health (ADH) providers lacked a nurse, yet no information was provided regarding how long a nurse had been absent. The report also did not reflect if there were any ADH participants during the timeframe in which no nurse was onsite. In Florida, Medicaid requirements reflect back on the survey agency (SA) standards. If there had been no clients during the time of the audit, those requirements would not be necessarily met. The standards apply to persons the provider charges for ADH services, not the building as a whole.
- The report also indicates that providers (including #12) did not provide medical screenings. It must indicate whether the participants were contracted to receive supportive and optional services under Florida Administrative Code 59A-16.106.
- No start of participation dates nor indication if participants were to receive supportive and optional services were included for participants noted as lacking items in their files such as quarterly updates, nursing notes, social worker notes, plans of care, or other required elements. Florida Administrative Code 59A-16.106 only applies to persons receiving supportive and optional services.
- The report had "findings," such as that some participant files were not updated quarterly for significant changes. Not only did the auditors fail to provide dates of initiation of services for these participants, but there was also no indication of which quarters were missing. The rule [59A-16.107(2)(h-i)] states, "The Participant File shall be updated when there is a Significant Change in the Participant, or at least quarterly." Therefore, if quarterlies were done and there was no indication of a significant change, the quarterly updates would suffice without mention of a lack of substantial change.
- Another example of auditors appearing to make assumptions and not obtain or provide complete information to determine compliance is related to a comment regarding insulin injection pens stored in an unlocked minifridge (along with alcoholic beverages). We were not notified if those insulin pens belonged to a current participant. Alcohol is not prohibited in the facility. The regulation [59A-16.102(7)(b-c)] states that staff refrain from the use of alcohol or other behaviors that may be injurious to participants. There is nothing to indicate staff were using alcohol during work hours, such as observations or interviews. Our trained surveyors would have known to investigate that rather than make assumptions. Also, nothing indicates the insulin pens were not centrally stored and at appropriate temperature and humidity (if they were for a current participant). No regulation indicates that other items cannot be stored in the same refrigerator as medications.

Agency for Health Care Administration Response to HHS/OIG Draft Report Office of Inspector General (OIG), draft report A-04-23-00135 “Florida Did Not Comply With Federal Waiver and State Requirements at 18 of 20 Adult Day Care Facilities Reviewed”.

- In one comment, the auditor stated that a center (#4) did not have staff with a current CPR certification. Per rule [59A-16.102(8)(b)], no less than two staff members, one of whom has a certification in an approved first aid course and CPR, shall be present in the center at all times. Was this staff working with a CPR-qualified staff? The State of Florida survey was completed 13 months before this audit, but clarification would be helpful. No staff hire dates were provided to allow for state agency staff follow-up.
- For this same center (#4), the audit indicates the Comprehensive Emergency Management Plan (CEMP) expired on November 3, 2022. Florida statute 408.821 (adopted 2021) supersedes past rules regarding the CEMP. They are not required to obtain annual approval. The SSA surveyor would have asked for the last date they submitted the plan, as the provider has no control over the local authority approval timeframe. Even without that information provided by the auditors, based on the timeframe of our last onsite inspection, this is not a reflection of our survey process. This would also apply to ADCC #10, which was noted to not have a CEMP approval since 2021 (no month indicated by the auditor). Since our last survey was completed in October 2022, there is no indication that the facility would have been out of compliance at the time of our previous survey. Again, these concerns are outside the audit period.

In Conclusion

Although we have serious concerns with the method of the audit, the framing of the title and lack of distinction between the role of the State versus the role of a privately owned entity, and the presumed findings without data to support the conclusions of the audit, the SSA will continue to monitor the efficacy of our survey processes and provide ongoing training and feedback to staff to ensure appropriate implementation of ADCC regulations. The SSA will review the audit findings with Field Office Managers (FOMs) in our April 2024 meeting. We incorporated surveyor training on the ADCC survey process in a surveyor training in February 2024. We will also consider if any survey tools require amending related to this process.

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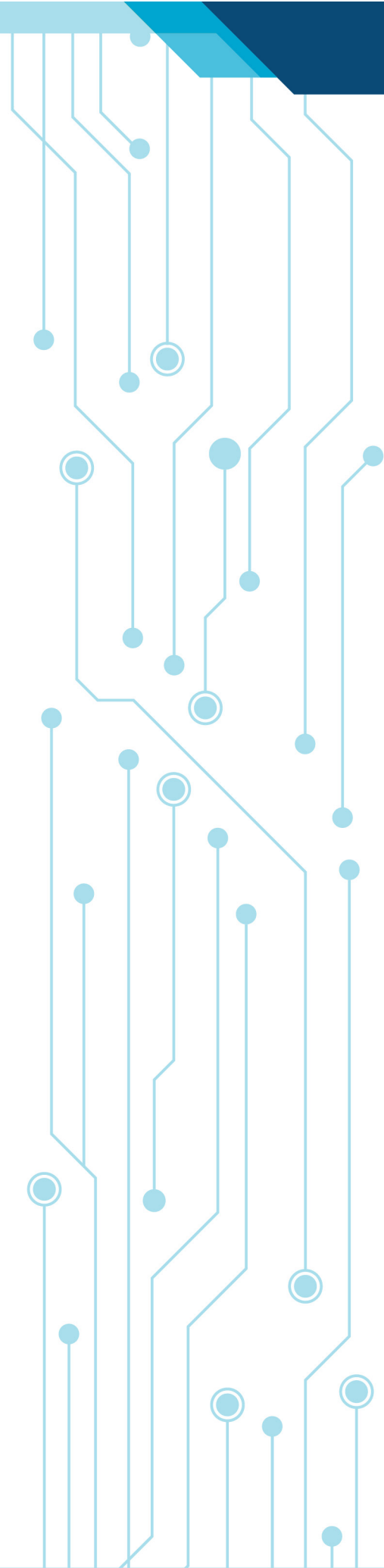
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