

Inspections Report

Nursing Facility Staffing Hours Verification

Liberty Health Care Center



**Inspector
General**

Texas Health
and Human Services

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OIG Report No. INS-23-007



Nursing Facility Staffing Hours Verification

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Results in Brief

Why OIG Conducted This Inspection

The Texas Health and Human Services (HHS) Office of Inspector General (OIG) Audit and Inspections Division (OIG Inspections) conducted an inspection of Liberty Health Care Center (Liberty Health), a skilled nursing facility.

In 2020, the U.S. Department of Health and Human Services Office of Inspector General conducted a review of nursing facility staffing levels for 2018. The report revealed staffing levels varied considerably from day to day, which raised concerns some facilities may not fully meet the needs of their residents.

OIG Inspections initiated this inspection because of potential health and safety concerns caused by staffing shortages at nursing facilities.

Summary of Review

The inspection objective was to determine whether the direct care licensed nursing hours recorded at Liberty Health supported the hours reported to CMS in compliance with federal requirements.

The inspection scope covered the period from January 1, 2021, through June 30, 2021.

Key Results

Liberty Health Care Center (Liberty Health) accurately reported direct care licensed nursing hours worked to the U.S. Centers for Medicare and Medicaid Services (CMS) for 298 (61.8 percent) of the 482 payroll records reviewed as part of this inspection. However, Liberty Health (a) overreported some direct care licensed nursing hours worked due to not accounting for all required meal break deductions and (b) did not have processes to consistently report correct direct care licensed nursing hours worked by contract staff to CMS.

Recommendations

Liberty Health should:

- Ensure its electronic timekeeping system consistently deducts the correct time for required meal breaks when employees do not record their meal break time.
- Ensure direct care licensed nursing hours worked by contract staff are accurately and completely recorded and submitted to CMS through the Payroll-Based Journal.
- Implement a quality review process to ensure the direct care hours worked by contract staff are accurately reported to the Payroll-Based Journal as required by CMS.

Management Response

Liberty Health agreed with the inspection recommendations and indicated corrective actions had been fully implemented.

For more information, contact: OIGInspectionsReports@hhs.texas.gov

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Inspection Overview

Overall Results

Liberty Health Care Center (Liberty Health), a skilled nursing facility, accurately reported direct care licensed nursing hours worked to the U.S. Centers for Medicare and Medicaid Services (CMS) for 298 (61.8 percent) of the 482 payroll records reviewed as part of this inspection. However, Liberty Health (a) overreported some direct care licensed nursing hours worked due to not accounting for all required meal break deductions and (b) did not have processes to consistently report correct direct care licensed nursing hours worked by contract staff to CMS.

The Texas Health and Human Services (HHS) Office of Inspector General (OIG) Audit and Inspections Division (OIG Inspections) offered recommendations to Liberty Health, which, if implemented, will help ensure that Liberty Health reports accurate and complete direct care licensed nursing hours to CMS. OIG Inspections communicated other, less significant issues to Liberty Health in a separate written communication.

OIG Inspections presented preliminary inspection results, issues, and recommendations to Liberty Health in a draft report dated September 26, 2022. Liberty Health agreed with the inspection recommendations and indicated corrective actions had been fully implemented. Liberty Health's management responses are included in the report following each recommendation.

OIG Inspections thanks management and staff at Liberty Health for their cooperation and assistance during this inspection.

Objective

The inspection objective was to determine whether the direct care licensed nursing hours recorded at Liberty Health supported the hours reported to CMS in compliance with federal requirements.

Scope

The inspection scope covered the period from January 1, 2021, through June 30, 2021.

Background

Liberty Health, owned and managed by Health Services Management Texas/Liberty, LLC (HSMTX), is a skilled nursing facility located in Liberty, Texas, and licensed for 118 beds.

Liberty Health provides institutional care to individuals whose medical conditions regularly require the skills of a licensed nurse. Liberty Health accepts Medicaid and Medicare to offer services such as:

- Speech therapy
- Physical therapy
- Occupational therapy
- Nutrition therapy
- Stroke recovery
- Quality of life programs
- Other special services

Direct Care Licensed Nursing Hours Reported to CMS

Nursing facilities must electronically submit payroll data to CMS quarterly through the Payroll-Based Journal reporting system,¹ which is a web-based system developed by CMS to document nursing facility payroll data, census information, and staffing levels.

All nursing facility data reported to CMS must include:

- Each direct care staff member's category of work.
- The hours of care provided by each category of staff.
- Full resident census data.
- Staff turnover and tenure information, including hours worked and length of employment.²

¹ The U.S. Centers for Medicare and Medicaid Services, Electronic Staffing Data Submission Payroll-Based Journal: Long-Term Care Facility Policy Manual, § 1.2, v. 2.5 (Oct. 2018).

² 42 C.F.R. § 483.70(q) (Sept. 16, 2019).

Employee Timekeeping and the Payroll-Based Journal Submission Process

At the time of the inspection, Liberty Health utilized Kronos, an electronic timekeeping system, to capture employee time entries through a fingerprint scan. Employees clocked in and out by scanning their fingerprint in the Kronos system, which recorded each employee's time entry. Timekeeping records from Kronos automatically interfaced with the Payroll-Based Journal system.

Every two weeks, Liberty Health's human resources department and facility administrator review employee time entries in Kronos for reasonableness, based on the established work schedule. After this review, Liberty Health requests a summary payroll report from HSMTX human resources, and Liberty Health human resources compares the summary report against Kronos for accuracy. If any changes are required to ensure the data is correct, Liberty Health human resources makes the necessary corrections to the time entries in Kronos. Once any corrections are complete, Liberty Health informs HSMTX human resources that payroll can be closed.

Monthly, HSMTX human resources submits data to the Payroll-Based Journal.

On July 25, 2022, Liberty Health converted its electronic timekeeping system from Kronos to Smartlinx.

What Prompted This Inspection

In 2020, the U.S. Department of Health and Human Services Office of Inspector General conducted a review of nursing facility staffing levels for 2018.³ The report revealed staffing levels varied considerably from day to day, which raised concerns some facilities may not fully meet the needs of their residents.

OIG Inspections initiated this inspection because of potential health and safety concerns caused by staffing shortages at nursing facilities.

³ U.S. Department of Health and Human Services Office of Inspector General, *Some Nursing Homes' Reported Staffing Levels in 2018 Raise Concerns; Consumer Transparency Could be Increased*, OEI-04-18-00450 (Aug. 3, 2020).

Detailed Results

OIG Inspections compared 482 Liberty Health facility payroll records, for 60 specific dates during the scope period, to the direct care licensed nursing hours Liberty Health reported to CMS in the Payroll-Based Journal for the following direct care positions:

- Director of Nurses
- Registered Nurses
- Licensed Vocational Nurses

The following sections of this report identify findings of noncompliance observed by OIG Inspections.

Observation 1: Liberty Health Did Not Deduct the Allotted Time for Meal Breaks as Required by CMS

Liberty Health did not always report complete and accurate direct care licensed nursing hours to CMS through the Payroll-Based Journal reporting system. Liberty Health overreported some direct care licensed nursing hours worked due to not accounting for all required meal break deductions.

OIG Inspections identified 152 of 482 (31.5 percent) payroll records overreporting direct care licensed nursing hours. All of the 152 payroll-record errors were caused by meal break deduction errors.

CMS requires nursing facilities to deduct a 30-minute meal break for each 8- to 12-hour shift staff record on time sheets even if staff did not take a meal break. A one-hour meal break deduction is required for a shift of 16 hours or more.^{4,5}

Liberty Health did not have processes to deduct the allotted time for meal breaks from the direct care licensed nursing hours reported to the Payroll-Based Journal. Specifically, Liberty Health employees did not always clock in or out for meal

⁴ The U.S. Centers for Medicare and Medicaid Services, *Electronic Staffing Data Submission Payroll-Based Journal: Long-Term Care Facility Policy Manual*, § 2.2, v. 2.5 (Oct. 2018).

⁵ The U.S. Centers for Medicare and Medicaid Services, *Electronic Staffing Data Submission Payroll-Based Journal (PBJ) Frequently Asked Questions* (Nov. 19, 2018).

breaks during their shift and Kronos was not programmed to automatically deduct (a) 30 minutes when employees worked 8- to 12-hour shifts or (b) 60 minutes when employees worked a shift of 16 hours or more.

Recommendation 1

Liberty Health should ensure its electronic timekeeping system consistently deducts the correct time for required meal breaks when employees do not record their meal break time.

Management Response

Action Plan

- Our timeclocks now ask the employee at end of their shift if they took their 30-minute lunch, they have the option to answer yes or no.
- PBJ Reporting – Smartlinx gives us the option to deduct meal breaks for reporting purposes.
- Deducting meal breaks for reporting purposes is now accessible and utilized in our current payroll system, Smartlinx.
- This will be done monthly.

Responsible Manager

Corporate Payroll Supervisor

Target Implementation Date

August 1, 2022

Observation 2: Liberty Health Did Not Accurately Report All Direct Care Licensed Nursing Hours Worked by Contract Staff to CMS

Liberty Health did not have processes for maintaining and reporting complete and accurate direct care licensed nursing hours worked by contract staff to CMS through the Payroll-Based Journal. As a result, Liberty Health both overreported and underreported some direct care licensed nursing hours worked by contract staff.

The time entries for direct care licensed nursing hours worked by contract staff at Liberty Health were not recorded in Kronos; instead, contract staff members reported their direct care licensed nursing hours worked to the staffing agency that employed them. For each contract staff member, the staffing agency submitted an invoice to Liberty Health that detailed the contract staff member's direct care licensed nursing hours worked.

Of the 482 payroll records reviewed as part of this inspection, 44 were for contract staff who provided direct care. Of these 44 payroll records for contract staff, OIG Inspections identified 27 (61.4 percent) with overreported or underreported direct care hours. Specifically, for these 27 payroll records, Liberty Health (a) did not report some direct care hours worked by contract staff, (b) reported some direct care hours worked for the wrong dates, or (c) reported some direct care hours worked for the wrong contract staff member.

Recommendation 2a

Liberty Health should ensure direct care licensed nursing hours worked by contract staff are accurately and completely recorded and submitted to CMS through the Payroll-Based Journal.

Management Response

Action Plan

- This information is now being housed inside of our payroll system (for reporting purposes only) and the agency employees can now utilize our timeclocks when they are in the building.
- Agency staff is now housed inside of our payroll system and can utilize our timeclocks.
- This information will be reviewed daily.

Responsible Managers

Facility Administrator
Human Resources

Target Implementation Date

October 1, 2022

Recommendation 2b

Liberty Health should implement a quality review process to ensure the direct care hours worked by contract staff are accurately reported to the Payroll-Based Journal as required by CMS.

Management Response

Action Plan

- With housing all of PBJ inside of the payroll software, reports are more accurate and can be reviewed prior to submissions.
- Housing all of PBJ data inside of the payroll system allows accurate reports to be generated and reviewed prior to submission to CMS.
- The facility will manage this information daily. Corporate will manage this information monthly.

Responsible Managers

Corporate Payroll Supervisor
Facility Administrator

Target Implementation Date

August 1, 2022

Appendix A: Methodology, Standards, and Criteria

Detailed Methodology

To achieve the inspection objective, OIG Inspections collected information through (a) discussions and interviews with HHS Long Term Care Regulation staff and Liberty Health staff and (b) a review of:

- Regulations, policies, and procedures that address the objective.
- Payroll records for Liberty Health licensed nursing staff.
- Daily postings by Liberty Health stating the current number of licensed and unlicensed nursing staff, per shift, directly responsible for resident care.
- Payroll-Based Journal data.
- Provider information data used in the Five-Star Quality Rating System.⁶

In June 2021, there were 1,209 nursing facilities located in Texas. To choose the nursing facility to inspect, OIG Inspections considered the following criteria:

- CMS quality rating score.
- Ownership and organization type, such as private owned, corporate-owned, for-profit, and nonprofit.
- Facility size.

OIG Inspections generated a random sample of ten dates for each of the six months from January 1, 2021, through June 30, 2021, for review as part of this inspection.

⁶ The U.S. Centers for Medicare and Medicaid Services' Five-Star Quality Rating System gives each nursing facility participating in Medicare or Medicaid a rating between one and five stars for staffing, quality of care, and health inspection results. Nursing facilities with one-star ratings are considered to have below-average quality, and nursing facilities with five-star ratings are considered to have above-average quality.

Standards

OIG Inspections conducts inspections of Texas HHS programs, systems, and functions. Inspections are designed to be expeditious, targeted examinations into specific programmatic areas to identify systemic trends of fraud, waste, or abuse. Inspection reports present factual data accurately, fairly, and objectively, and present findings, conclusions, and recommendations in a persuasive manner to strengthen program effectiveness and efficiency. OIG Inspections conducted the inspection in accordance with *Quality Standards for Inspection and Evaluation* issued by the Council of the Inspectors General on Integrity and Efficiency.

Criteria

OIG Inspections used the following criteria to evaluate the information provided:

- 42 C.F.R. §§ 483.35(g) (2016) and 483.70(q) (2019)
- 40 Tex. Admin. Code § 19.1001(b) (2020) and 26 Tex. Admin. Code § 554.1001(b) (2021)
- The U.S. Centers for Medicare and Medicaid Services, *Electronic Staffing Data Submission Payroll-Based Journal: Long-Term Care Facility Policy Manual*, v. 2.5 (2018)
- The U.S. Centers for Medicare and Medicaid Services, *State Operations Manual, Appendix PP, "Guidance to Surveyors for Long Term Care Facilities,"* revision 173 (2017)
- The U.S. Centers for Medicare and Medicaid Services, *Electronic Staffing Data Submission Payroll-Based Journal (PBJ) Frequently Asked Questions* (2018)

Appendix B: Summary of Recommendations

Table B.1: Summary of Recommendations to Liberty Health

No.	Recommendation
1	Liberty Health should ensure its electronic timekeeping system consistently deducts the correct time for required meal breaks when employees do not record their meal break time.
2a	Liberty Health should ensure direct care licensed nursing hours worked by contract staff are accurately and completely recorded and submitted to CMS through the Payroll-Based Journal.
2b	Liberty Health should implement a quality review process to ensure the direct care hours worked by contract staff are accurately reported to the Payroll-Based Journal as required by CMS.

Source: OIG Inspections

Appendix C: Related Reports

- Nursing Facility Staffing Hours Verification: Mira Vista Court, [INS-22-008](#), August 16, 2022
- Nursing Facility Staffing Hours Verification: Winchester Lodge Healthcare Center, [INS-22-007](#), August 9, 2022
- Nursing Facility Staffing Hours Verification: Westchase Health and Rehabilitation Center, [INS-22-006](#), August 9, 2022
- Nursing Facility Staffing Hours Verification: The Villa at Mountain View, [INS-22-001](#), February 17, 2022

Appendix D: Resources for Additional Information

The following resources provide additional information about the topics covered in this report.

To view the U.S. Department of Health and Human Services Office of Inspector General Report OEI-04-18-00450, Some Nursing Homes' Reported Staffing Levels in 2018 Raise Concerns; Consumer Transparency Could Be Increased:

"Some Nursing Homes' Reported Staffing Levels in 2018 Raise Concerns; Consumer Transparency Could be Increased," U.S. Department of Health and Human Services Office of Inspector General,
<https://oig.hhs.gov/oei/reports/OEI-04-18-00450.asp>
(accessed September 1, 2022)

For more information on Liberty Health Care Center:

Homepage, Liberty Health Care Center,
<https://www.libertyhealthcarecenter.com/> (accessed September 1, 2022)

For more information on Health Services Management:

Homepage, Health Services Management, Inc., <https://www.hsmgroup.org>
(accessed September 1, 2022)

Appendix E: Report Team and Distribution

Report Team

OIG staff members who contributed to this inspection report include:

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- Bruce Andrews, CPA, CISA, Director of Inspections
- James Aldridge, Manager of Inspections
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- Kenin Weeks, Senior Inspector
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Report Distribution

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Liberty Health Care Center

- Brent Gardebled, Facility Administrator, Liberty Health Care Center
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Appendix F: OIG Mission, Leadership, and Contact Information

The mission of OIG is to prevent, detect, and deter fraud, waste, and abuse through the audit, investigation, and inspection of federal and state taxpayer dollars used in the provision and delivery of health and human services in Texas. The senior leadership guiding the fulfillment of OIG's mission and statutory responsibility includes:

- Sylvia Hernandez Kauffman, Inspector General
- Audrey O'Neill, Principal Deputy Inspector General, Chief of Audit and Inspections
- Susan Biles, Chief of Staff, Chief of Policy and Performance
- Erik Cary, Chief Counsel
- Christine Maldonado, Chief of Operations and Workforce Leadership
- Steve Johnson, Chief of Investigations and Reviews

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