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Vermont State Auditor

# *Department of Disabilities, Aging and Independent Living*

DAIL Needs to Comply with  
Requirements for Timeliness of  
Inspections of Assisted Living  
Residences and Residential Care Homes,  
and Make Other Changes, to Ensure  
Vulnerable Vermonters Are Safe



## Mission Statement

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The mission of the Auditor's Office is to hold State government accountable by evaluating whether taxpayer funds are being used effectively and identifying strategies to eliminate waste, fraud, and abuse.

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Dear Colleagues,

Vermont is dutybound to ensure the safety of older, vulnerable Vermonters living in long-term care facilities by enforcing the laws and regulations that govern the facilities. This audit assesses how well the Department of Disabilities, Aging and Independent Living (DAIL), the responsible state agency, performs this vital work.

Vermont has three types of long-term care facilities – nursing homes, Assisted Living Residences (ALRs), and Residential Care Homes (RCHs). Nursing homes are subject to strict federal safety requirements, while ALRs and RCHs are only subject to a narrower set of Vermont regulations.

The State should be equally concerned about the wellbeing of all older Vermonters regardless of which type of facility they live in. Since nursing home residents already receive stronger protections, this audit focused on ALRs and RCHs.

The objectives of the audit were to: (1) determine how often DAIL identified that assisted living residences and residential care homes did not substantially meet regulatory requirements, and (2) determine what actions DAIL took to ensure that the protection of and quality of care for residents improved. We reviewed the results of DAIL site inspection visits from January 1, 2016, through June 30, 2022.

We found that of the 691 inspections DAIL conducted, 53 percent detected substantial noncompliance, meaning that the facility's noncompliance risked residents' wellbeing, or, in the most severe instances, the facility caused or was likely to cause serious injury, serious harm, impairment, or death.

We also found that DAIL failed to inspect facilities as often as required by law; as a practice, they strove to inspect each facility every two years, but statute requires annual inspections. In fact, as of March 2, 2023, 11 facilities had not been inspected since 2018.

When DAIL found deficiencies that could cause injury or death, they revisited the facilities to verify that the problems were corrected, but it took them between 54 and 125 days to do so. For the next most severe deficiencies, DAIL did not follow up at all more than half the time and took between 35 and 148 days to go back when they did.

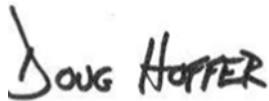
The time that DAIL took to follow-up on deficiencies at ALRs and RCHs contrasts sharply with mandatory timelines for nursing homes. When the most severe deficiencies are found at a nursing home, DAIL is required to follow-up within 23 days; for the next most severe deficiencies, DAIL must follow up within 60 days.

Deficiencies that occur in a state-licensed facility should not be treated differently from the same deficiencies that occur in a nursing home. **In both cases, vulnerable Vermonters are at risk.**

We've made a number of recommendations to DAIL to improve their performance under the current statutory and regulatory framework. Importantly, though, we recommend to the Legislature that it pass legislation adopting the same inspection timelines for ALRs and RCHs that are in place for nursing homes. Doing so will improve the safety of vulnerable older Vermonters regardless of the type of facility in which they live.

I would like to thank DAIL staff for their cooperation and professionalism throughout the course of this audit.

Sincerely,



DOUGLAS R. HOFFER  
State Auditor

ADDRESSEES

The Honorable Jill Krowinski  
Speaker of the House of Representatives

The Honorable Philip Baruth  
President Pro Tempore of the Senate

The Honorable Phil Scott  
Governor

Ms. Kristin Clouser  
Secretary, Agency of Administration

Mr. Adam Greshin  
Commissioner, Department of Finance and Management

Ms. Monica White  
Commissioner of Department of Disabilities, Aging and  
Independent Living

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# Highlights

The State of Vermont has a duty to protect the safety of its citizens, especially the vulnerable and elderly. As of July 1, 2021, census estimates show that 21 percent of the population was 65 years or older. Thousands of elders require the services provided by different types of long-term care facilities.

Vermont has three types of state-licensed long-term care facilities for elderly Vermonters: (1) nursing homes, (2) assisted living residences (ALRs), and (3) residential care homes (RCHs). The Division of Licensing and Protection within the Department of Disabilities, Aging and Independent Living (DAIL) enforces federal and state statutes and regulations for these providers. The Division of Licensing and Protection’s philosophy is to provide “balanced and assertive regulation to ensure that vulnerable Vermonters receive care with dignity, respect, and independence.”

Most nursing homes operate under federal regulations, whereas ALRs and RCHs are only regulated by the state. Therefore, we decided to examine DAIL’s efforts to regulate ALRs and RCHs to ensure these facilities were safe for vulnerable Vermonters. Our objectives were to: (1) determine how often DAIL identified that assisted living residences and residential care homes did not substantially meet regulatory requirements, and (2) determine what actions DAIL took to ensure that the protection of and quality of care for residents improved. We reviewed the results of DAIL’s site visits from January 1, 2016, through June 30, 2022, and the actions DAIL took when facilities did not substantially comply with regulations.

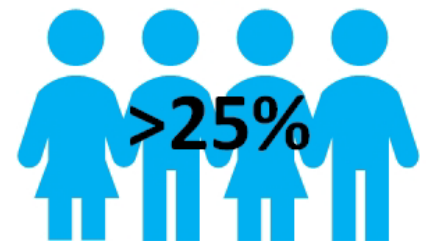
## Objective 1 Finding

DAIL conducted 691 inspections at ALRs and RCHs between January 1, 2016 and June 30, 2022, and identified substantial noncompliance in 363 (53 percent) of those inspections. Because DAIL’s database system cannot run summary reports for ALRs and RCHs we had to manually input the results of individual inspections into spreadsheets. From this

## Aging in Vermont



Vermont has the second oldest population in the nation



Estimate of Vermonters over the age of 65 by 2030



ALR & RCH facilities with 3,283 beds



Nursing homes with 2,980 beds

Sources: U.S. Census Bureau and DAIL. As of 10/21/22.

data, we determined that DAIL failed to conduct annual inspections as required by statute. **In addition, as of June 30, 2022, DAIL had not inspected 15 facilities since 2018.**

### **Objective 2 Finding**

DAIL responded in a variety of ways when they found deficiencies at facilities but did not always take enforcement actions when facilities failed to promptly provide DAIL with a plan to correct their deficiencies. DAIL established a timeline for this process, but even for the most egregious deficiencies—involving injuries or deaths—DAIL did not ensure adherence to this timeline. For the six inspections where DAIL identified the most severe deficiencies impacting residents, the delays in this process ranged from 2 days to 54 days.

Similarly, when DAIL found the most severe deficiencies, they did not conduct a follow-up inspection as quickly as they would have if the facility were a federally regulated nursing home (DAIL conducts inspections of nursing homes on behalf of federal regulators). A follow-up inspection is intended to determine whether the facility corrected previously identified deficiencies. When the facilities are federally regulated nursing homes, DAIL is required to follow-up within 23 days of the inspection for the most serious deficiencies. However, **DAIL took from 54 to 125 days to follow up on serious deficiencies at ALRs and RCHs, which included resident deaths**, because DAIL has not established due dates for conducting follow-up inspections at ALRs and RCHs.

**DAIL does not have a formal process to identify repeat deficiencies at facilities, limiting DAIL's effectiveness at enforcing compliance.** For example, 35 facilities had the same deficiency on a following licensure inspection. However, DAIL does not classify these as uncorrected deficiencies for purposes of imposing penalties because these repeat findings were detected on a *licensure inspection*, not a *follow-up inspection*. Therefore, due to this narrow and rigid interpretation, DAIL's enforcement is limited to re-telling the facility to correct their deficiency. Effectively, a facility is granted more leniency for repeat mistakes based on the type of inspection.

DAIL's regulations list a number of tools for enforcement actions against noncompliant facilities, such as fines, banning the admission of new residents, or revoking the facility's license to operate. From 2017 to 2019, DAIL assessed fines against five facilities, ranging from \$600 to \$70,000, but has not assessed any fines since 2019. During this time, DAIL also placed eight facilities in receivership (one entity owned four of these facilities while another entity owned three).

### **Recommendations**

We made several recommendations to improve DAIL's efforts to regulate these long-term care facilities. For example, we recommended that DAIL perform trend analysis of deficiencies found to identify facilities in need of additional attention.



## Background

### Three Types of Long-Term Care Facilities – Nursing Homes, ALRs, and RCHs

Nursing homes provide 24-hour skilled nursing services that are only available through institutional care. ALRs may retain residents who develop illnesses requiring nursing home level of care if the facility is capable of meeting those needs. This is referred to as “aging in place.” RCHs cannot provide nursing home level of care and must discharge residents if they develop the need for that level of care. Thus, RCHs do not allow for “aging in place.”

The number of ALR and RCH facilities and beds are shown in Exhibit 1 below. While nursing homes are not in the scope of this audit, we included the number of facilities and beds for comparison.

**Exhibit 1: Number of Facilities and Number of Licensed Beds, as of October 21, 2022**

Type of Facility	Number of Facilities	Number of Licensed Beds
Assisted Living Residences	17	964
Residential Care Homes	97	2,319
Nursing Homes	37	2,980
<b>Total</b>	<b>151</b>	<b>6,263</b>

### The Inspection Process

The Survey and Certification section of the Division of Licensing and Protection within DAIL has the responsibility for licensing health care organizations and ensuring they meet minimum state and federal regulations. DAIL conducts inspections<sup>1</sup> at health care facilities on a recurring basis, and the results of the inspections can give rise to fines and other corrective actions, leading up to revoking the license of an organization to operate.

DAIL’s inspection regime differs based upon whether the facility is subject to federal requirements. Most nursing homes must follow regulations from the federal Centers for Medicare and Medicaid Services (CMS), in addition to state requirements, because they are CMS certified. ALRs and RCHs are inspected to ensure those facilities comply with State regulations,<sup>2</sup> which are separate from CMS requirements for nursing homes.

<sup>1</sup> DAIL uses the term “survey” which is consistent with CMS terminology. We use the term “inspection” for simplicity.


<sup>2</sup> ALR regulations are [here](#). RCH regulations are [here](#).

DAIL’s inspections are unannounced, so facilities do not know when DAIL is coming and cannot prepare beforehand. DAIL primarily inspects facilities for the following reasons: (1) licensure, initial or re-licensure, (2) complaints, and (3) as a follow-up to earlier inspections. The licensure inspection compares facility performance to regulations, whereas the complaint inspection is focused only on the complaints. A follow-up inspection is conducted to determine whether previously identified problems have been corrected.

When DAIL inspects a facility, they are looking to find instances of noncompliance with regulations, called “deficiencies.” DAIL assigns a “scope and severity” rating to show how severe each deficiency is and how many residents of the facility may be at risk (scope).

“Immediate jeopardy to resident health or safety” (Immediate Jeopardy) is the most severe rating on the severity scale. When a facility has a deficiency of this level, they must implement an “Immediate Corrective Action” plan. The second most severe rating is “actual harm that is not immediate jeopardy” (Actual Harm) as shown in Exhibit 2 below. While both severity levels refer to harm to residents, Immediate Jeopardy refers to an ongoing threat very likely to cause serious harm or death. Actual Harm indicates harm that impacts the way residents live their lives; it is harm that is more than minimal but is not Immediate Jeopardy.

**Exhibit 2: Scope and Severity Matrix**

		SCOPE			
		Isolated	Pattern	Widespread	
<b>SEVERITY</b>	Highest  Lowest	Immediate jeopardy to resident health or safety.	J	K	L
	Actual harm that is not immediate jeopardy.	G	H	I	
	No actual harm with potential for more than minimal harm that is not immediate jeopardy.	D	E	F	
	No actual harm with potential for minimal harm.	A	B	C	

If a facility has a deficiency at the lowest severity scale, DAIL considers the facility to substantially comply with regulatory requirements. Substantial noncompliance is a deficiency at level “D” and above.

DAIL documents the results of the inspection in a “Statement of Deficiencies” and provides the statement to the facility. If a facility has a deficiency that needs to be corrected, the facility must provide DAIL with a “Plan of Correction.” If DAIL approves the plan, DAIL assumes that the facility has corrected the deficiencies and generally does not perform a follow-up

inspection unless the deficiencies were at a severity level of Actual Harm or higher. When this process is complete, DAIL posts the statement of deficiencies, along with the Plan of Correction, on their [website](#). Exhibit 3 below shows an example of the first page of the statement.

**Exhibit 3: Example Statement of Deficiencies and Plan of Correction**

FEB 12 2016 PRINTED: 01/21/2016 FORM APPROVED

Division of Licensing and Protection		(X1) PROVIDER/SUPPLIER/CLIA IDENTIFICATION NUMBER:  0174	(X2) MULTIPLE CONSTRUCTION A. BUILDING: _____ B. WING: _____	(X3) DATE SURVEY COMPLETED  01/12/2016
STATEMENT OF DEFICIENCIES AND PLAN OF CORRECTION		NAME OF PROVIDER OR SUPPLIER  MISTY HEATHER MORN COMMUNITY CARE H		
		STREET ADDRESS, CITY, STATE, ZIP CODE 174 BLISSVILLE ROAD HYDEVILLE, VT 05750		
(X4) ID PREFIX TAG	SUMMARY STATEMENT OF DEFICIENCIES (EACH DEFICIENCY MUST BE PRECEDED BY FULL REGULATORY OR LSC IDENTIFYING INFORMATION)	ID PREFIX TAG	PROVIDER'S PLAN OF CORRECTION (EACH CORRECTIVE ACTION SHOULD BE CROSS-REFERENCED TO THE APPROPRIATE DEFICIENCY)	(X5) COMPLETE DATE
R100	Initial Comments: An unannounced on-site Residential Care Home (RCH) re-licensure survey was conducted on 1/12/16 by the Division of Licensing and Protection. The following regulatory violations were identified:	R100		
R145 SS=D	RESIDENT CARE AND HOME SERVICES  5.9.c (2)  Oversee development of a written plan of care for each resident that is based on abilities and needs as identified in the resident assessment. A plan of care must describe the care and services necessary to assist the resident to maintain independence and well-being.  This REQUIREMENT is not met as evidenced by: Based on staff interview and record review the RCH failed to ensure that each resident's care plan addressed all of the resident's assessed and identified needs for 1 applicable resident. (Resident #2) Findings include:  Per record review, the care plan for Resident #2 failed to reflect mental health concerns associated with a recent hospitalization due to self harm and ongoing generalized anxiety disorder and depression. Although the admission resident assessment dated 12/7/15 had identified some of the resident's psychosocial needs, there was a failure to incorporate specific interventions to assist staff in addressing and monitoring the resident's behaviors.	R145	Revise resident care plan to address self harm, anxiety + depression - (all these issues were discussed with staff - she was on hourly checks, also medications were taken in front of staff - also staff were instructed on how to handle panic attacks we were in communication with her Psychiatrist + her care manager multiple times - also her family	01-14-16
Division of Licensing and Protection LABORATORY DIRECTOR'S OR PROVIDER/SUPPLIER REPRESENTATIVE'S SIGNATURE <i>Facetta Liu</i>		TITLE RW		(X6) DATE 02-10-16
STATE FORM 0899 RW7J11		If continuation sheet 1 of 11		

R145 - R302 POCs accepted Allie Findenhead/ame

**Change of Ownership**

Regulations require that when a change of ownership is planned, the licensee or prospective licensee must file a new application for a license at least ninety

days prior to the change date. Regulations also require DAIL to inspect a facility prior to issuing a license.

#### Enforcement Tools

DAIL is authorized by statute to enforce compliance with regulations. Authorized enforcement actions range from assessing administrative penalties; suspending or revoking the license to operate a facility; prohibiting the admission of new residents; or placing the facility in receivership, a process where DAIL petitions the court to have an outside entity manage the facility.

## Objective 1: DAIL Often Identified Substantial Noncompliance and Did Not Conduct Inspections as Frequently as Required by Statute

**DAIL identified substantial noncompliance in 53 percent of inspections of ALRs and RCHs.** The two deficiencies that DAIL found most frequently were (1) the lack of a written or updated care plan for each resident and (2) the lack of documented annual training for staff. In addition, DAIL did not conduct licensure inspections annually, as statutorily required. As a result, no facility was inspected annually as required by law, and 15 facilities had not received any inspection since 2018. Finally, we found that DAIL did not finalize nine inspection reports.

### DAIL Frequently Found Facilities Did Not Substantially Comply with Regulations

From January 1, 2016, through June 30, 2022, DAIL performed 691 inspections and identified 1,601 deficiencies, as shown in Exhibit 4. Of these inspections of all types, DAIL found 363 (53 percent) with substantial noncompliance (a D or higher in Exhibit 2). There may be additional deficiencies, but DAIL did not finalize all the inspection reports. DAIL found deficiencies ranging from complex issues, such as resident-on-resident physical abuse, to simple issues, such as failure to keep trash cans clean.

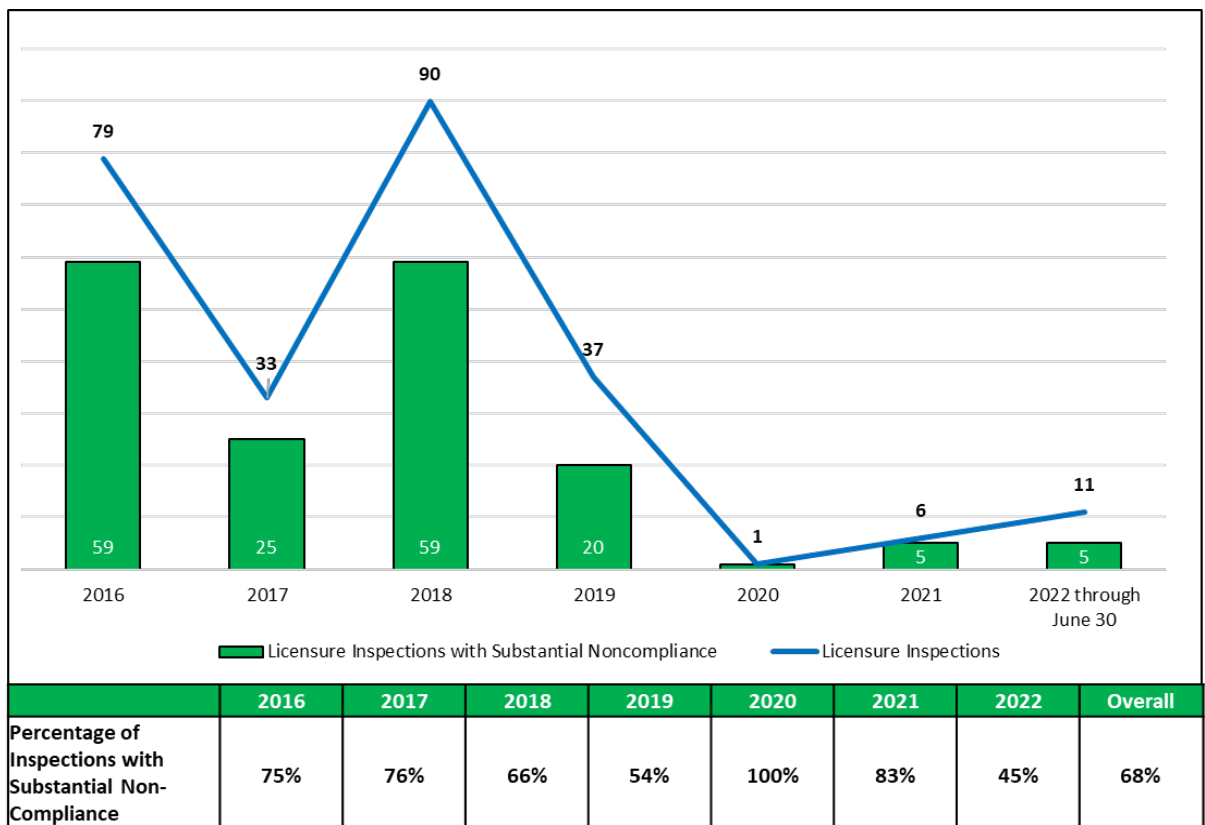
**Exhibit 4: Summary of Inspections Performed, January 1, 2016 – June 30, 2022**

Type of Facility	Number of Inspections <sup>a</sup>	Number of Deficiencies
ALR	103	195
RCH	588	1406
<b>Total</b>	<b>691</b>	<b>1601</b>

<sup>a</sup> The number of inspections does not include multiple types of inspections on the same date, for example a licensure inspection on the same day as a follow-up inspection.

More than 68 percent of the time, DAIL identified deficiencies during the more thorough licensure inspections at the level where facilities did not substantially comply with regulations. Exhibit 5 below is a yearly comparison of the number of licensure inspections DAIL performed and the number of those inspections where DAIL identified facilities that did not substantially comply with regulations.

**Exhibit 5: Licensure Inspections Identifying Substantial Noncompliance, January 1, 2016 – June 30, 2022**



<sup>a</sup> Percentage is based upon inspections conducted from January 1 through June 30, 2022.

Between January 1, 2016, and June 30, 2022, DAIL inspectors found 29 facilities with deficiencies at the Actual Harm severity level or worse. Cumulatively, these facilities had 93 deficiencies at the Immediate Jeopardy and Actual Harm severity levels. Exhibit 6 is a summary of the number of inspections by facility type that had Immediate Jeopardy or Actual Harm deficiencies.

**Exhibit 6: Facilities with Identified Deficiencies of Immediate Jeopardy or Actual Harm**

Scope and Severity Ratings	Number of Facilities with Deficiencies <sup>a</sup>		Number of Inspections with Deficiencies <sup>a</sup>	
	ALR	RCH	ALR	RCH
Immediate Jeopardy	1	5	1	5
Actual Harm	3	20	7	27
<b>Subtotal</b>	<b>4</b>	<b>25</b>	<b>8</b>	<b>32</b>
<b>Total</b>	<b>29</b>		<b>40</b>	

<sup>a</sup> Some inspections results contained both Immediate Jeopardy and Actual Harm deficiencies. These are only counted in Immediate Jeopardy facilities and inspections totals.

Examples of **Immediate Jeopardy deficiencies** that DAIL identified included:

- three instances where noncompliance with regulations contributed to resident deaths, and
- two facilities under the same ownership went nine months without a registered nurse.

Examples of **Actual Harm deficiencies** found included:

- the improper lifting or moving of residents leading to falls that resulted in injury or death,
- staff members abusing residents, and
- staff leaving a resident with a healing hip fracture on a couch overnight and not responding to cries for help.

**Frequently Identified Deficiencies**

ALRs and RCHs both had the same top two reoccurring deficiencies. The most common deficiency was the lack of a written care plan for each resident or that the facility did not update the care plan. The care plan is vital because it is a written description of the steps the facility should take to meet the psychiatric, social, nursing, and medical needs of a resident. DAIL identified

problems with care plans 117 times during the scope of the audit. One example of this deficiency occurred at an ALR where a care plan noted that the resident wore a compression stocking to reduce swelling (edema), but there was no discussion about the edema or goals or interventions to address it.

The second most common deficiency identified was a failure to ensure and document that staff received 12 hours of mandatory training on specific topics. DAIL found this deficiency 85 times during the scope of the audit. For example, at one ALR, DAIL noted that there was no evidence that four of the five employees had received training on fire safety and emergency evacuations in 2019. See Appendix III for the top five most frequently identified deficiencies at ALRs, and Appendix IV for the top five most frequently identified at RCHs.

## DAIL Did Not Conduct Licensure Inspections at Statutorily Required Frequencies

### Licensure Inspections

DAIL did not conduct licensure inspections of facilities annually as required by statute. [State statute](#) reads:

*The licensing agency [DAIL] shall inspect a facility prior to issuing a license under this chapter.*

[Section 7105](#) of that chapter states:

*Licenses issued under this chapter shall expire one year after date of issuance.*

Therefore, DAIL is required to inspect the facility each year before issuing the new license. However, DAIL established a two-year inspection cycle instead of an annual one. DAIL officials asserted state statute and regulation allowed for biannual “relicensing” inspections despite the plain language cited above and without approval from the Legislature. DAIL was inspecting most facilities every other year until the pandemic, but they did not follow their own practices when pandemic conditions improved. Eighty-six percent of facilities have not had a licensure inspection since 2019. As of June 30, 2022, **15 facilities had not received any type of inspection from DAIL since 2018.** As of March 2, 2023, DAIL had inspected three of these facilities. Another of the uninspected facilities has since closed. See Appendix VIII for a listing of these facilities.

When we pressed DAIL about the annual licensure inspection requirement, they indicated this would be “best practice” but confirmed they did not ask for additional staff from at least state fiscal year 2016 through state fiscal year 2022. DAIL requested six additional personnel for FY2023.<sup>3</sup>

DAIL’s regulations require the facilities to update each resident’s care plan. Without annual inspections, though, DAIL will be unable to find instances where these important medical records are out-of-date. As previously stated, this was the most frequently identified deficiency during the scope of the audit.

### Initial Licensure Inspections

DAIL is required to conduct an inspection of a new facility before issuing a license. However, there are certain regulations for which compliance cannot be assessed without staff working at the facility or residents living at the facility, such as how much training staff have completed or if fire drills are occurring.

In the case of new facilities, DAIL staff reported that they work with the facility before it opens to ensure that paperwork is adequately prepared and conduct a walk-through of the facility before issuing the initial license (prior to commencement of operations). However, this inspection procedure is different from the one DAIL uses after a facility has begun operating.

Regulations do not specify how long after a facility opens DAIL should inspect it, but the following example shows how important this inspection could be. At one facility, which opened in November 2016, within the first year of operation, DAIL identified 7 deficiencies of Actual Harm and 38 additional deficiencies of a lesser severity. Therefore, it is vital that DAIL perform a full facility inspection shortly after the facility opens to verify that the facility is operating in accordance with regulations.

### Change of Ownership Licensure Inspections

Similar to initial licensure, regulations require a licensee or prospective licensee to file a new application for a license when a change of ownership is planned, but they are silent in requiring an inspection after the change has occurred. DAIL officials stated that they did not think it was necessary to conduct an inspection after changes in ownership because in their experience, when the owner changed, nothing else about the facility changed.

<sup>3</sup> DAIL received authorization for five additional positions to be used for the Survey and Certification section. Three of these positions are for the individuals that perform the inspections. As of March 13, 2023, DAIL has hired three inspectors and one administrative manager, and has one additional position, for an administrative assistant, left to fill.



DAIL was unable to provide a list of facilities that underwent changes in ownership between 2016 and June 2022. Through alternate procedures, we identified that at least two ownership changes occurred between 2021 and 2022. One facility had an ownership change in 2021 but has not received a licensure inspection since then (the last time DAIL performed a licensure inspection at this facility was in 2019). One 2022 complaint inspection after the change in ownership at this facility found issues such as 87 falls in the 90 days preceding the inspection and the failure to conduct an assessment of a resident shortly prior to their death. Altogether, DAIL found seven deficiencies during this inspection.

## DAIL Did Not Finalize All Inspection Results

During our review of all inspections conducted between January 1, 2016, and June 30, 2022, we found nine inspection results that DAIL never finalized. As of February 9, 2023, only one of these results has been finalized and posted on DAIL's website. The dates the inspectors visited the facilities ranged from 2016 through 2022. DAIL officials stated that these inspections were usually not completed because either the inspector had received but not determined whether to accept the Plan of Correction or the inspector had never provided the facility with the Statement of Deficiencies. In one instance, DAIL was unable to determine a cause for delay.

Providing a facility with a Statement of Deficiencies is part of DAIL's regulatory duties. Similarly, DAIL is obligated to ensure that a facility's Plan of Correction is acceptable. See Appendix VI for a listing of these unfinalized results.

## Objective 2: DAIL Could Have Taken More Action to Enforce Regulatory Requirements

To ensure the protection of and quality of care for residents, DAIL requires Plans of Correction to address deficiencies and may enforce punitive measures on facilities that fail to correct their deficiencies. However, DAIL did not always ensure that facilities submitted Plans of Correction within the required timeframe. Additionally, DAIL's procedures only "strongly recommend" that they follow-up to confirm whether the facilities corrected significant deficiencies. Moreover, DAIL does not have a system to identify trends, which would allow DAIL to better ensure facilities remain compliant with regulations and help alert DAIL when facilities have repeat deficiencies. DAIL does not use its enforcement tools as often as they could.

## DAIL Did Not Ensure Prompt Plan of Correction Submissions and Did Not Require Follow-Up Inspections to Ensure Facilities Corrected Deficiencies

### Immediate Corrective Action Plans

When deficiencies are identified that rise to the level of Immediate Jeopardy, DAIL's procedures manual dictates that they must inform the facility immediately and then send a notice to the facility within two working days stating that an immediate corrective action plan is required. The facility then must submit this plan to DAIL within five working days of DAIL's inspection. This plan lowers the deficiency's severity to less than Immediate Jeopardy but may not bring the facility into compliance, which is the role of the Plan of Correction.

In the six instances of Immediate Jeopardy deficiencies found in our scope, all six facilities implemented an immediate corrective action plan within the required timeline. However, DAIL sent a notice for the need of one Immediate Corrective Action plan 13 working days after they completed an inspection, which is 11 days later than their procedures required.

### Plans of Correction

According to DAIL's regulations, which have the force of law, DAIL has 10 calendar days to provide the Statement of Deficiencies to facilities outlining all deficiencies found by DAIL. However, DAIL's procedures manual states that DAIL has 10 working days to provide this information. Once the facilities receive this information, DAIL's procedures give the facility 10 calendar days to provide the Plan of Correction back to DAIL.

We found multiple instances of DAIL receiving Plans of Corrections significantly later than timelines outlined in regulations and procedures. This includes when there were instances of Immediate Jeopardy and Actual Harm deficiencies. For example:

- of the six inspections that had Immediate Jeopardy deficiencies, none of them had a Plan of Correction within the required timeline. Delays ranged from 2 to 54 days after the required timeframe.
- of the 37 inspections that had Actual Harm deficiencies, over half of the Plans of Correction (19) were not within the required timeframe. One facility closed shortly after receiving the Statement of Deficiencies and did not submit a Plan of Correction.

These timelines are not adhered to because either (1) DAIL did not send the Statement of Deficiencies on time, (2) the facility did not submit the Plans of

Corrections on time, or (3) because both DAIL and the facility failed to meet their timelines. DAIL officials indicated that sometimes timelines are missed while DAIL works with facilities to produce an acceptable Plan of Correction.

When a facility does not submit a Plan of Correction, regulation mandates that DAIL inform the facility, through written notice, of DAIL's intention to impose specific sanctions. However, DAIL does not have a centralized system to inform them when Plans of Corrections have not been returned from the facilities. DAIL leaves it up to the staff that performed the inspections to track and manage the timelines of this process.

### Immediate Jeopardy Follow-ups

When DAIL identifies Immediate Jeopardy deficiencies, their procedures manual states that they must conduct follow-up inspections to determine if the facility corrected the deficiencies. However, DAIL has not set a deadline for when they must conduct these follow-up inspections.

DAIL conducted follow-up inspections for all six facilities in the scope of our audit where DAIL found Immediate Jeopardy deficiencies. However, **DAIL took from 54 to 125 days to perform these follow-up inspections**, which is significantly longer than they would have taken had these facilities been federally regulated nursing homes. The Immediate Jeopardy deficiencies included: **(1) three instances of resident deaths, (2) two facilities that did not have a registered nurse for nine months, and (3) a facility that incorrectly used physical restraints and did not notify DAIL of their use as required.**

DAIL's follow-up timeliness for Immediate Jeopardy deficiencies at state-licensed long-term care facilities contrasts starkly with the correction timeline required for federally regulated nursing homes. If DAIL does not confirm that a federally regulated nursing home has addressed the Immediate Jeopardy noncompliance within 23 days of the initial inspection, federal regulations require the facility be removed from Medicare and Medicaid programs.

One example of untimely follow-up is shown in the Exhibit 7 below which describes how, if this facility followed federal nursing home regulations, DAIL would have had to conduct its two follow-up inspections 65 and 69 days sooner than they actually conducted them.

This series of inspections began in April 2018, when DAIL identified three Actual Harm deficiencies after a resident was dropped out of a mechanical lift, suffered a broken pelvis, and subsequently died.

When DAIL conducted the follow-up inspection, which was 65 days after an inspection would have been required if the facility was a nursing home, the DAIL inspector found that the facility had not corrected all of the original deficiencies. The inspector also identified a new Immediate Jeopardy deficiency. The inspector discovered that the facility **apparently gave a resident on hospice two dosages of morphine ten times above the amount prescribed shortly before the resident died**. This necessitated a second follow-up inspection to confirm that the facility corrected the Immediate Jeopardy deficiency. Again, had this facility been a federally regulated nursing home, DAIL would have needed to conduct the follow-up inspection at least 69 days sooner. Exhibit 7 below shows how much later DAIL followed up at this facility compared to the date the follow-up inspections must have occurred by were this a federally regulated nursing home.

### Exhibit 7: Comparison of Nursing Home to Residential Care Home Follow-up Timeliness

	Date Follow-up Would Have Been Required for A Federally Regulated Nursing Home	Date of DAIL's Follow-up	Days Beyond Federally Regulated Nursing Home Requirement
1 <sup>st</sup> Follow-up Inspection	6/10/2018	8/14/2018	65
2 <sup>nd</sup> Follow-up Inspection	9/6/2018	11/14/2018	69

Overall, it took the residential care home in question, Our Lady of Providence, **186 days to correct the originally identified deficiencies**.

#### Actual Harm Follow-ups

DAIL's procedures manual states, "...onsite follow up is **strongly recommended...**" [emphasis in original text] when deficiencies are found with a scope and severity of Actual Harm. For federally regulated nursing homes, these follow-up inspections are mandatory and must occur within 60 days after identifying the Actual Harm deficiency. This means that Vermont's inspection system is more protective of vulnerable adults depending upon the facility type in which they live, even if they have the same care needs.

DAIL conducted follow-up inspections less than half of the time (18 of 37) they found Actual Harm deficiencies.

Examples of Actual Harm deficiencies that DAIL did not follow up on include:

- **a resident went into withdrawal after the facility failed to resupply their antianxiety medication in a timely manner.**

- **a resident with a psychiatric illness refusing care and subsequently dying.**
- **multiple instances of abuse.**

When DAIL did conduct a follow-up inspection for deficiencies of Actual Harm, the inspections occurred between 35 and 148 days after the initial inspection.

For deficiencies of Actual Harm found at federally regulated nursing homes, the facility must correct the deficiency, and DAIL must confirm compliance, within 60 days. If compliance is not achieved within three months, Medicare and Medicaid will no longer cover new residents admitted to the facility. If noncompliance continues for six months, federal regulations require the facility to be terminated from the Medicare and Medicaid programs.

## DAIL Lacks a Systematic Process for Identifying Trends, Limiting DAIL's Effectiveness at Enforcing Compliance

DAIL repeatedly found the same deficiencies at some facilities across multiple years. However, DAIL lacks a systematic process to identify repeat deficiencies. Without a systematic process, DAIL lacks insight into which facilities need additional regulatory enforcement to prevent reoccurring deficiencies.

In 2016, DAIL hired a consultant to help DAIL reduce the need to place facilities into receivership. The consultants recommended that DAIL staff should use the inspection reports to prepare a list of all deficiencies within a given year and that DAIL should formally review the list as it should lead to the identification of frequent and/or consistent conditions of concern that could benefit from proactive responses.

DAIL does not compile and analyze deficiencies found at the facilities because the current system DAIL uses does not generate such a report, and they have not established another method to collect this information. As part of this audit, we created spreadsheets containing all inspection reports and all deficiencies identified between January 1, 2016 and June 30, 2022. Our analysis of all types of inspections found 4 ALRs and 15 RCHs that were cited by DAIL as having the same deficiency three or more separate times during the audit scope period. DAIL cited one facility **six** separate times during this

period for not updating the care plans for each resident.<sup>4</sup> DAIL cited three other facilities as having this same deficiency four separate times.

Our analysis also found 4 ALRs and 31 RCHs which had repeat deficiencies in subsequent licensure inspections. However, DAIL rarely noted that these were repeat deficiencies.

Without formal collection and analysis of all deficiencies and inspections, DAIL cannot ensure that they have the operational data sufficient to fully understand the status of the facilities they are entrusted to regulate.

## DAIL Did Not Use Punitive Tools as Often as They Could Have to Enforce Compliance

DAIL has a variety of authorized tools to regulate ALRs and RCHs and enforce compliance with regulations. These tools range from requiring Plans of Correction to petitioning a court to order a facility into receivership. See Appendix V for details on receiverships. While DAIL has used both of these tools, there are other enforcement tools that they rarely use. As a consultant hired to help DAIL with receiverships noted, “to prevent a receivership in the future will require additional intensive reviews of Residential Care Facilities by [DAIL] as well as earlier intervention if an [ALR or RCH] appears to be on the brink of failing...”

### Fines

[Statute](#) authorizes DAIL to assess fines against facilities that do not correct deficiencies. However, per DAIL’s procedures manual, DAIL only views “failure to correct a deficiency” for the purpose of assessing fines if it is found only during a “follow-up inspection” specifically for that deficiency.

As a result of DAIL’s procedures narrowly interpreting statute, even if DAIL identifies repeat deficiencies during other inspections, such as licensure or complaint inspections, DAIL will not consider fining that facility. **We found 35 facilities that had repeat deficiencies from one licensure inspection to the next**, and DAIL did not fine these facilities under the current procedures.

The following situations demonstrate the adverse effect on DAIL’s ability to enforce regulations by having such a narrowly defined view of when a facility may be fined for repeat deficiencies:

<sup>4</sup> This facility was cited four separate times in 2017, once in 2018, and again in 2021.

- FINED – DAIL fined the Thompson Residential Home RCH because DAIL found three repeat deficiencies during a follow-up inspection seven months later specifically for those deficiencies.
- NOT FINED – DAIL found a repeat deficiency each of the last two times they conducted a licensure inspection at the Washington Elms RCH. However, because of DAIL’s narrow definition of when to fine for a repeat deficiency, **DAIL’s enforcement was limited to requesting another Plan of Correction after each inspection.**
- NOT FINED – DAIL performed two complaint inspections **five months apart** at Meadows at East Mountain ALR. Both inspections found the same deficiency. However, because of DAIL’s narrow definition of when to fine for a repeat deficiency, **DAIL’s enforcement was limited to requesting another Plan of Correction for the deficiencies.**

Furthermore, DAIL does not always fine facilities even when they do find repeat deficiencies during follow-up inspections. For example, on a follow-up inspection DAIL found that the Blue Spruce Home for the Retired failed to correct deficiencies from the prior inspection. These uncorrected deficiencies included: (1) not having a registered nurse complete an annual assessment of a resident, (2) not having the care plan include all needs of the resident, and (3) failure of the registered nurse to assess the side effects of medications. The facility’s failure to correct these reoccurring deficiencies could have prompted DAIL to fine the facility, but they did not do so.

According to DAIL officials, one consideration they make when determining to fine is whether the facility can afford the fine.

DAIL fined five facilities from 2017 through 2019. As shown in Exhibit 8 below, DAIL could have fined at least another two facilities beginning in 2016.

**Exhibit 8: Facilities with Repeat Deficiencies and Description of Fines**

Facility Name	Number of Repeat Deficiencies <sup>c</sup>	Fine Issued	Date Fine Assessed
Spring Village at Essex <sup>a</sup>	6	\$70,590	9/14/2017
Our Lady of Providence	5	\$8,325	9/7/2018
Blue Spruce Home for the Retired	4	No fine	Not applicable
Bradford Oasis	3	\$720	6/7/2017
Thompson Residential Home – 1 <sup>st</sup> follow-up	2	\$600	2/15/2017
Harvey House	3	\$5,200 <sup>b</sup>	8/9/2019
Our Lady of the Meadows	1	No fine	Not applicable
<b>Totals</b>	<b>24</b>	<b>\$85,435</b>	

- <sup>a</sup> This facility has since been renamed to Maple Ridge Memory Care.
- <sup>b</sup> Harvey House did not pay this fine because they ceased operations.
- <sup>c</sup> We only counted deficiencies reaching substantial noncompliance.

**Immediate Enforcement Actions**

Regulation allows DAIL to take Immediate Enforcement Action to eliminate a condition which can reasonably be expected to cause death or serious physical or mental harm to residents or staff. The actions that DAIL may impose immediately include a temporary ban on admissions until compliance is achieved.

During the scope of the audit, DAIL temporarily banned admissions at seven facilities. Six of these facilities, the four Our House facilities,<sup>5</sup> Pillsbury Manor-South, and Allenwood at Pillsbury Manor, did not improve, and DAIL later successfully petitioned to place them into receivership.

DAIL also imposed a ban on admissions at Spring Village at Essex. This facility had a 219 day ban on admissions because the facility failed to come into compliance with regulations. DAIL also fined this facility \$70,000 for 181 days between an initial inspect and three additional inspections before compliance was achieved. The facility changed management in April 2018. The former management company agreed in a settlement with the State to never again own, operate, or manage a long-term care facility in Vermont and was forced to pay \$120,000 as part of the [settlement](#).

DAIL’s procedures manual states that Immediate Enforcement Actions can be taken for all deficiencies that rise to the level of Actual Harm or above. As stated previously, there were 29 facilities (21 percent of all facilities inspected) that had deficiencies rising to this level or higher during the scope

<sup>5</sup> The four facilities are: Our House, Our House Too, Our House Outback, and Our House at Park Terrace.



period. However, DAIL only used Immediate Enforcement Actions on seven facilities.

### DAIL Should Have Informed the Department of Vermont Health Access of Facilities' Noncompliance to Potentially Stop Medicaid Payments

The majority of long-term care facilities offer services that permit them to bill Medicaid. To receive Medicaid payments, facilities **must** maintain compliance with DAIL's regulations.

However, DAIL never informed the Department of Vermont Health Access (the State Medicaid administrator) when facilities were noncompliant, and no facility lost the ability to bill Medicaid. For example, Our House Too was fined by DAIL for noncompliance while still being allowed to bill Medicaid during that time.

Federal nursing home regulations state that in the event a federally regulated nursing home does not correct deficiencies within three months, the facility will not be able to bill Medicaid for new residents. DAIL's regulations for ALRs and RCHs do not contain a similar penalty. DAIL's procedure manual is also silent on this issue.

In calendar year 2022, the Department of Vermont Health Access made at least \$14.3 million in Medicaid payments to ALRs and RCHs.<sup>6</sup>

## Other Matters

### DAIL's Website Lacks Some Information and Is Less Helpful Than Similar State and Federal Websites

#### Website Did Not Contain All Inspection Reports

We found 3 ALR inspections and 5 RCH inspections that DAIL had not posted on their website. By not posting all inspection results, the public cannot get a complete picture of a facility's compliance with health and safety regulations.

In addition, if DAIL did not find any deficiencies during a follow-up inspection, they did not post the results of that inspection on their website. When DAIL performed other types of inspections and found no deficiencies, DAIL posted those results on their website. By not posting when a follow-up inspection finds no deficiencies, DAIL is not informing the public that the facility corrected the deficiencies.

<sup>6</sup> We did not assess the reliability of this data.

### Many Inspection Reports Were Difficult to Read

Inspection reports, consisting of Statements of Deficiencies and Plans of Correction, are posted on DAIL's website. These documents are scanned copies, and some of them are difficult to read and in some cases they are illegible. Some of the Plans of Correction consist of handwritten notes, which pose an additional hindrance to comprehension. This results in documents that are unable to inform the public what deficiencies were found at a facility and the steps that were taken by the facility to correct the deficiencies. See Appendix VII for examples.

### DAIL's Website Does Not Contain a Complete Picture of a Facility's Compliance

The website where the inspection reports are posted does not have any record of: (1) fines assessed, (2) temporary bans on admissions imposed, or (3) facilities in receivership. As a result, the public is unaware of any punitive actions taken against facilities that failed to meet requirements. This information is vital for Vermonters looking to make an informed choice about which facility will be best for them or a family member.

### Other Entities Conveying Similar Information Have More Informative and Intuitive Websites

DAIL's website contains less information and is less organized than other websites that convey similar types of information. For example, the Agency of Human Services' Child Development Division [website](#) shows the "Bright Futures" Child Care Information System. This system includes information on the type of provider, current vacancies, program information, accreditations, and the results of site visits with detailed information on observations for each regulation and the number and type of violations found. Each provider is assigned a rating, from one to five stars, based on the staff qualifications, program assessment, operating policies, etc. From this website, a parent searching for a provider could easily compare facilities, with detailed information readily available and simple to use.

Additionally, CMS's Care Compare [website](#) contains information about federally regulated nursing homes, including penalties assessed, ownership type, staffing levels, and quality measures. In addition, each facility is given a zero-to-five-star rating based on the nursing home's performance on three sources: (1) health inspections, (2) staffing, and (3) quality measures. These are all features that DAIL's website lacks but would be beneficial for Vermonters.

## DAIL's Procedures Manual Has Been in Draft Form for More Than a Decade and is Lacking Timelines and Enforcement Procedures

DAIL's procedures manual has been in draft form since July 2012. Per the [State's internal control standards](#), documentation of policies and procedures is critical to the daily operations of a department. These documents set forth the fundamental framework and the underlying methods and processes all employees rely on to do their jobs. They provide specific direction to and help form the basis for decisions made every day by employees. Without this framework of understanding by employees, conflict can occur, poor decisions can be made, and serious harm can be done to the department's reputation. Further, the efficiency and effectiveness of operations can be adversely affected.

The procedures manual lacks enforcement timelines. State statute mandates that DAIL enforce provisions of the statute to protect residents of facilities. Statute allows DAIL to require a facility to take corrective action to eliminate a violation of rule within a specified period of time but does not define how long that specified period is, and the procedures manual is similarly silent on the issue.

The procedures manual is also missing information on how to take enforcement actions. While the type of fines allowable is detailed in statute and regulation, there are no definitions of what types of deficiencies lead to which level of fine. For example, DAIL may assess fines for violations of rules that were adopted primarily for administrative purposes but it has not been defined which rules meet the definition of "administrative." The procedures manual also does not detail at which scope and severity level the fines can be assessed. In addition, there are no criteria stating how long a facility needs to be noncompliant before DAIL can assess a fine. Without detailed procedures, DAIL runs the risk of treating facilities unequally.

## Matters for Legislative Consideration

CMS has strict requirements for federally regulated nursing homes which include deadlines for following up on Immediate Jeopardy and Actual Harm deficiencies. Vermont statute is silent on these requirements, leading to a two-tiered level of protection for elderly Vermonters.

DAIL's procedures manual states that uncorrected deficiencies are only subject to enforcement when verified by a *follow-up* inspection. DAIL's procedures manual does not permit them to use enforcement tools if they detect the exact same uncorrected deficiencies, during a *licensure* or *complaint* inspection. Because DAIL performs infrequent follow-up

inspections, and because follow-ups are not required except for Immediate Jeopardy deficiencies, DAIL is not able to detect additional uncorrected deficiencies for which detection and enforcement could improve conditions inside the facilities.

### Suggestions for Legislative Considerations

- Statutorily require DAIL to set timelines establishing when DAIL must re-visit a facility at which Immediate Jeopardy or Actual Harm deficiencies have been found to confirm those deficiencies no longer exist. One way to accomplish this, and to create parity for vulnerable Vermonters, would be to require DAIL to follow CMS timelines for follow-up inspections.
- Statutorily define an uncorrected deficiency and specify when DAIL must take enforcement actions against facilities with uncorrected deficiencies.

## Conclusions

DAIL’s job is to enforce compliance at ALRs and RCHs with regulations that are designed to promote the safety and well-being of residents. DAIL’s failure to inspect these facilities annually, as required, limits the State’s ability to regulate these facilities and protect vulnerable adults.

That we needed to create our own system to identify trends and patterns speaks to the need for DAIL to have a better data system to analyze the information they create during each inspection. While DAIL has taken enforcement actions against some facilities, without a formal system to analyze deficiencies they are missing additional opportunities to protect the safety of elderly Vermonters.

## Recommendations

We make the recommendations in Exhibit 9 to the Commissioner of DAIL.

### Exhibit 9: Recommendations and Related Issues

Recommendation	Report Pages	Issue
1. Develop and implement a system to ensure licensure inspections are conducted annually, in accordance with statute and regulation.	9-10	DAIL was not inspecting facilities annually as required by statute and regulation.
2. Immediately inspect facilities that have gone four years without any inspections.	9	Fifteen facilities had not received any type of inspection from DAIL in more than four years.

Recommendation	Report Pages	Issue
3. Develop and implement a facility licensure process to include a full inspection shortly after residents move in.	10	DAIL conducted “walk-throughs” of facilities before issuing licenses but does not conduct full inspections. Some regulations cannot be assessed until residents and staff are present.
4. Inspect any facilities that had a change in ownership during audit scope and had not had a subsequent licensure inspection.	10-11	DAIL did not conduct new inspections for changes in ownership, as required by regulation.
5. Update procedures to match regulations such that facilities with a change of owner or manager receive an inspection, in alignment with regulations.	10-11	DAIL was not conducting new inspections for changes in ownership, as required by regulation.
6. Develop and implement a system to identify when DAIL has not finalized the results of inspections.	11	We found nine inspections that were never finalized due to a lack of oversight from DAIL.
7. Finalize the unfinished statements of deficiencies.	11	We found DAIL never finalized nine inspections dating as far back as 2016; though as of February 9, 2023, one has been finalized.
8. Develop and implement a system to identify delays in providing Statement of Deficiencies and receiving Plans of Correction.	12-13	We found multiple instances of DAIL receiving Plans of Corrections significantly later than timelines outlined in regulations and procedures.
9. Develop and implement a system to track trends and repeat deficiencies across all inspection types.	15-16	In 2016, a DAIL consultant recommended that DAIL should formally review trends to allow DAIL to have more proactive responses. DAIL does not have a system to identify repeat deficiencies found outside of “follow-up” inspections.
10. Expand the definition of “failure to correct a deficiency” to include uncorrected deficiencies also found during licensure and complaint inspections.	16-17	DAIL has a narrow interpretation of an uncorrected deficiency and will only consider fining a facility if they find the uncorrected deficiency during a “follow-up inspection” specifically for that deficiency.
11. Update website to include all inspection results, ensure those results are legible, and include other records of enforcement actions against facilities.	19-20	The website was missing results of inspections including those inspections where DAIL followed up on a previous deficiency and found the facility had corrected it. Inspection results were also sometimes illegible. DAIL does not post punitive enforcement actions, such as fines, on their website.
12. Finalize draft procedures with the addition of a: (1) requirement to visit new facilities and facilities with new owners within set time after license issuance, (2) set timeline for follow up on Immediate Jeopardy deficiencies, (3) procedures and timelines for following up on Actual Harm deficiencies, and (4) procedures for immediate enforcement actions, including timelines.	21	Procedures have been in draft form since 2012 and are missing timelines and enforcement procedures.

## Management's Comments and Our Evaluation

On March 23, 2023, DAIL's Commissioner provided written comments on a draft of this report. These comments are reprinted in Appendix IX. Our evaluation of these comments is contained in Appendix X.

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## Appendix I

### Scope and Methodology

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To address both our objectives we reviewed state statutes and administrative rules; interviewed DAIL staff; and reviewed DAIL's procedures manual, DAIL budget documents, and CMS regulations.

#### Objective 1

To address this objective, we obtained a listing from DAIL of all ALR and RCH inspections they conducted between January 1, 2016, and June 30, 2022. We obtained and reviewed all of the inspection reports for those facilities DAIL had inspected that were publicly posted on DAIL's website. We followed up with DAIL regarding any missing inspection reports.

Because DAIL's inspection system cannot run summary reports on individual ALRs and RCHs, we manually entered the results of the inspections, consisting of facility names, inspection dates and types, deficiencies identified, and scope and severity ratings, into spreadsheets. Using these spreadsheets, we were then able to analyze the deficiencies to determine:

- the number of inspections and the number and severity of deficiencies found during these inspections, at which facilities, and which year these inspections occurred,
- the number of facilities which had inspections that found deficiencies of Immediate Jeopardy, Actual Harm, or Substantial Noncompliance, the year these inspections occurred, and how many deficiencies were identified,
- which deficiencies were most frequently found by DAIL, and
- the frequency and occurrence of licensure inspections at each facility, and which facilities had gone a prolonged period without a licensure inspection.

#### Objective 2

To address this objective, we reviewed all inspections that found deficiencies of Immediate Jeopardy and Actual Harm to determine:

- if the deficiency(ies) required an Immediate Corrective Action plan, and if so, if the facility was notified and returned the plan within the required timeframe,
- the number of days it took for the Plan of Correction to be returned to DAIL, to determine if it was returned within the allotted timeframe,
- if any facilities failed to submit a Plan of Correction, and

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## Appendix I

### Scope and Methodology

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- if DAIL conducted a follow-up inspection, and if so, how many days it occurred after the initial inspection.

We reviewed a 2016 consultant's report regarding DAIL's use of receivership. We inquired of DAIL officials about their ability to identify trends and repeat deficiencies. We performed analysis to identify how many facilities had three or more of the same deficiencies within the scope of the audit.

We obtained from DAIL the amount of fines they assessed ALRs and RCHs during the scope of the audit. We compared that information to the fines recorded in the State's accounting system to assess the reliability of the information provided by DAIL. We obtained and reviewed DAIL's letters to facilities regarding the fine amount and why they were fined. We performed analysis to identify how many facilities potentially could have been fined for repeat deficiencies.

We reviewed documentation of facilities that were placed into receivership during the scope period as well as documentation regarding bans on admission imposed by DAIL during the scope period.

We considered internal control criteria<sup>7</sup> and identified that the deployment of control activities through established policies and procedures was significant to audit objective 2. Specifically, we: (1) determined whether DAIL had documented procedures to follow up within a certain timeframe for inspection results with Immediate Jeopardy and/or Actual Harm severity levels; and (2) determined whether DAIL was in compliance with any follow-up requirements identified in step 1.

We also reviewed Medicaid payments from the Department of Vermont Health Access to ALRs and RCHs for the year 2022. We did not assess the reliability of the payment data.

#### Compliance with Auditing Standards

We conducted this performance audit in accordance with Generally Accepted Government Auditing Standards, which requires that we plan and perform the audit to obtain sufficient, appropriate evidence to provide a reasonable basis for our findings and conclusions based on the audit objectives. We believe the evidence obtained provides a reasonable basis for our findings and conclusions based on our audit objectives.

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<sup>7</sup> 2013 Internal Control – Integrated Framework© Committee of Sponsoring Organizations of the Treadway Commission (COSO). All rights reserved. Used with permission. Internal Control Standards: A Guide for Managers (Vermont Department of Finance and Management, Edition 2.0, September 3, 2019).



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## Appendix II Abbreviations

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ALR	Assisted Living Residence
CMS	Centers for Medicare and Medicaid Services
DAIL	Department of Disabilities, Aging and Independent Living
RCH	Residential Care Home
SAO	State Auditor's Office

## Appendix III

### ALR Top Five Most Frequent Deficiencies, with Examples

DAIL found the following as the top five most frequent deficiencies at the Assisted Living Residences. Exhibit 10 shows which regulation the facilities were not in compliance with, along with examples of the conditions DAIL found at the facility.

**Exhibit 10: ALR Top Five Most Frequent Deficiencies**

Regulation	Example of Deficiency Identified
Oversee development of a written care plan for each resident.	While the application and removal of the compression stockings is documented in the electronic record, per review of the plan of care, there is no indication the resident has an issue with edema, no goals, or interventions to address the edema or regarding possible needs around the use of a diuretic medication for this resident who is at high risk for falls.
Staff must receive at least 12 hours of annual training a year on specific topics.	Per review of five employee education files, there was no evidence that four of the five employees reviewed received the required fire safety and emergency evacuation education in 2019.
If a resident requires medication administration, unlicensed staff may administer medications if 1) teaching designated staff proper techniques for medication administration 2) establishing a process for routine communication with designated staff about the resident's condition and the effects of medications, and 3) assessing the resident's condition and the need for any changes in medications.	Based on staff interview and record review, the registered nurse failed to develop a process to monitor and evaluate staff performance in carrying out the nurse's instructions related to procedures for accounting for controlled medication per facility policy. This proactive and the potential to affect residents receiving controlled medications...the facility was missing controlled narcotic medication morphine sulfate...It was discovered during the investigation that med techs and Licensed Practical Nurses were not following the facility's policy/procedures for narcotic count...and the RN confirmed they had not performed any random audits of the narcotic count process.
All perishable food and drink shall be labeled, dated, and held at proper temperatures: (1) At or below 40 degrees Fahrenheit, (2) At or above 140 degrees Fahrenheit when served or heated prior to service.	Per observation...[the refrigerator] contained food that was unlabeled or beyond the discard date. There were two large serving pans...containing food and covered by saran wrap which were not labeled to the content or the date. There was also a container of chopped garlic not labeled as to the content or date. Additionally, there was a large container of mashed potatoes which were dated 6/5 which were beyond the 7-day expiration date.
The home must maintain a safe, functional, sanitary, and homelike environment	Per record of review of three residents assessed as high risk for falls, there are no fall prevention interventions found in the initial plan of care and limited additional interventions included as a response to falls. Resident #1 had a fall, and the alarm did not go off due to a faulty connector. There was no evidence that after identifying a problem with alarm function, action was taken to assure that alarms remain functional.

## Appendix IV

### RCH Top Five Most Frequent Deficiencies, with Examples

DAIL found the following as the top five most frequent deficiencies at the Residential Care Homes. Exhibit 11 shows which regulation the facilities were not in compliance with, along with examples of the conditions DAIL found at the facility.

**Exhibit 11: RCH Top Five Most Frequent Deficiencies**

Regulation	Example of Deficiency Identified
Oversee development of a written care plan for each resident.	A resident had a physician's order to change and flush a catheter daily. There was no record of this requirement in the resident's care plan.
Staff must receive at least 12 hours of annual training a year on specific topics.	Two of five staff had not received annual training in resident rights. One of five had not received training in mandatory reporting of abuse, neglect, and exploitation. None of the staff received training in fire safety or emergency response procedures or first aid. Four of five had not received training in Respectful and Effective Communication. One of five had not received training in Infection Control. One of five had not received training in general care and supervision of residents.
The RCH must maintain a safe, functional, sanitary, and homelike environment.	During a tour of the facility kitchen, it is observed that a vent in the ceiling over the sink where pots and pans are washed and where clean dishes are handled is heavily soiled with dust...additionally the facility has a milk cooler and there is no documented evidence that the temperatures are regularly checked to assure safe holding and serving temperatures.
Each resident shall be reassessed annually and at any point in which there is a change in the resident's physical or mental condition.	Resident #1 was utilizing a walker on the first floor and required assistance of one staff member during a transfer. The lack of re-assessment following Resident #1's change in mobility was confirmed with the Manager.
Each home shall have evacuation plans and conduct fire drills at different times of the day.	Per record review, the facility did not conduct fire drills later than 7 pm.

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## Appendix V

### Facilities Placed in Receivership

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DAIL may petition the court to place facilities into receivership and used this enforcement tool on eight facilities owned by three different entities during the scope period of the audit.

In 2016 DAIL petitioned to have Cota's Hospitality Home put into receivership. This receivership did not improve conditions at the home and within two weeks of the receivership, DAIL transferred all 17 residents to new homes on an emergency basis. As a result of this incident, DAIL contracted with a consultant to provide [recommendations](#) to avoid future incidents. The consultant made recommendations on a variety of topics including steps DAIL could take to prevent receiverships, who should assume management of a facility under receivership, and what should happen if the receivership fails to correct conditions at the facility. Seven additional facilities were court-ordered into receivership following the report from the consultant.

The three Pillsbury facilities were ordered into receivership in January 2019. For nine months previously, the ownership of the three facilities failed to invoice residents for rent or cash their checks for payment. The facilities also failed to pay necessary bills, including electricity, internet (needed for medical records), and all facilities relied on staff using their personal credit cards to purchase these necessary services. In October 2018, the facilities' \$24 million mortgage was called by the mortgage holder as being immediately due and the mortgage holder provided facilities' ownership with a Notice of Default. These facilities are now under new ownership and have been renamed.

The four Our House facilities were ordered into receivership in June 2021. The State found that, "...a series of troubling events have unfolded...showing a pattern of lack of training...and harm to residents including injuries to residents..." When discussing these events the State cited two incidents, one in which an employee was arrested for assaulting a resident, and another in which a resident sustained an injury following an altercation with an employee and then was sent to the hospital hours later where the resident died of a head injury.

DAIL officials stated that receivership decisions are made in a team which includes DAIL's Commissioner and the Attorney General. They base their decision on whether the facility is improving, if the facility management is trying to work with DAIL, and if the facility is profitable, as the state must pay for the receiver if it is not.

## Appendix VI

### Inspection Results Not Finalized

As of June 30, 2022, DAIL had not finalized nine inspection results, as shown in Exhibit 12 below. One report, The Village at White River Junction, was finalized by DAIL on December 2, 2022, 197 days later.

#### Exhibit 12: Inspection Reports Not Finalized as of June 30, 2022

Facility Name	Date of Survey	Years Unfinished	DAIL Explanation
Brownaway Residence	9/21/2016	5.8	DAIL must perform additional review.
The Residence at Otter Creek	9/22/2016	5.8	No accepted Plan of Correction found.
Allen Harbor Senior Living	10/3/2018	3.7	DAIL must perform additional review.
South Harbor Senior Living	10/3/2018	3.7	DAIL unable to determine why not finalized.
Shard Villa	6/30/2021	1.0	Delay in communicating findings.
Vista Senior Living	10/13/2021	0.7	Delay in communicating findings.
Pennington House	1/5/2022	0.5	DAIL has not yet approved Plan of Correction.
Single Steps	2/1/2022	0.4	Findings to be moved to a different facility.
The Village at White River Junction	5/19/2022	0.1	DAIL has not approved the Plan of Correction.

# Appendix VII

## Examples of Statements of Deficiencies Difficult to Read

DAIL's website contained statements of deficiencies that were difficult to read, as shown in Exhibits 13 and 14 below. This has the potential to prevent elderly Vermonters from being able to assess the facility's deficiencies and plans of correction.

**Exhibit 13: Screen Shot of Statement of Deficiencies Found on DAIL's Website**

PRINTED: 04/28/2018  
FORM APPROVED

Division of Licensing and Protection					
STATEMENT OF DEFICIENCIES AND PLAN OF CORRECTION		(X1) PROVIDER/SUPPLIER/CLIA IDENTIFICATION NUMBER:  0214	(X2) MULTIPLE CONSTRUCTION A. BUILDING: _____  B. WING: _____		(X3) DATE SURVEY COMPLETED  04/12/2016
NAME OF PROVIDER OR SUPPLIER  RIVERVIEW LIFE SKILLS CENTER		STREET ADDRESS, CITY, STATE, ZIP CODE 197 HIGHLANDER DRIVE JEFFERSONVILLE, VT 05464			
(X4) ID PREFIX TAG	SUMMARY STATEMENT OF DEFICIENCIES (EACH DEFICIENCY MUST BE PRECEDED BY FULL REGULATORY OR LSC IDENTIFYING INFORMATION)	ID PREFIX TAG	PROVIDER'S PLAN OF CORRECTION (EACH CORRECTIVE ACTION SHOULD BE CROSS-REFERENCED TO THE APPROPRIATE DEFICIENCY)	(X5) COMPLETE DATE	
R162	Continued From page 2  tabs (0.5 - 1 mg.) by mouth every 8 hours as needed". There is no indication for use listed, and there is a range of dosage with no parameters that would indicate which dose was appropriate to administer. Per interview on 4/12/16 at 1:45 PM, the Registered Nurse confirmed that this Lorazepam order was to treat seizures, not intended for anxiety issues, and that there was no diagnosis list present or physician order that indicated the intended use of the as needed medication, as well as a dosage range with no parameters indicated. There was also an order on the MAR of Resident #2 for "Saline Nasal Spray, 1-2 squirts in each nostril, 2-3 times daily". This order contained no information as to whether it was scheduled or PRN, and no indication for use, as well as a dosage and frequency range. This was also confirmed by the RN at 1:45 PM.  2. Per record review of Resident #3, there was no diagnosis list present in the chart that would indicate a supporting diagnosis or problem list to correspond to any of the medications administered to the resident by unlicensed staff. Resident #3 had orders on the February 2016 MAR for "Lorazepam 0.5 mg tabs, 2 tabs (1 mg.) by mouth up to twice daily as needed for agitation". There is also an order for "Clonazepam 1 mg. tabs, 1 Tab (1 mg.) by mouth twice daily as needed". There are no indications present in the record to direct staff as to when it would be appropriate to give this medication. On 4/12/16 at 2:00 PM, the Registered Nurse confirmed that there was no diagnosis/problem list in the record that would support the medications administered to Resident #3.  3. Per record review, Resident #4 was readmitted to the home on 2/15/16 after being hospitalized	R162	<p>RP will communicate with PCP to receive <sup>new</sup> orders to delete variances for current orders and orders in the future for this resident and all other residents in this facility. PRN orders for this resident and all other residents in this facility will have a clear direction of when dose, time, route, and include side-effect adverse effects for all PRN medications, as well as antipsychotic medication. RP will monitor on a weekly basis, and as necessary. Plan in progress and will be completed in 2-3 weeks.</p> <p>and how to administer PRN plan</p>		
Division of Licensing and Protection STATE FORM		FDZ11		# continuation sheet 3 of 8	



## Appendix VIII

### Facilities Not Inspected Since 2018

As of the end of the audit scope, June 30, 2022, DAIL had not inspected 15 facilities since 2018. As of March 2, 2023, DAIL had inspected 3 of the 15 facilities – Averill Place, Ave Maria Community Care Home, and Newport Residential Care Center. In addition, Valley View Home for the Retired has recently closed.

#### **Exhibit 15: Fifteen RCHs Did Not Receive Any Type of Inspection Since 2018**

Name of Facility	Date DAIL Last Inspected the Facility
Fairwinds Residential Care Home	April 2018
Loch Lomond	June 2018
Averill Place	August 2018
Meadowview Recovery Residence	August 2018
Autumn House	October 2018
Ave Maria Community Care Home	October 2018
Manes House	October 2018
Mayo Residential Care	October 2018
Michaud Memorial Manor	October 2018
Newport Residential Care Center	October 2018
Second Spring South	October 2018
Homestead Inc	November 2018
Averte - Bradford House	November 2018
Valley View Home for the Retired	December 2018
Riverview Life Skills Center	December 2018



## Appendix IX Management's Comments

On March 23, 2023, DAIL's Commissioner provided written comments on a draft of this report. The following is a reprint of management's response. Our evaluation of these comments is contained in Appendix X.



**Department of Disabilities, Aging and  
Independent Living  
Commissioner's Office**  
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Waterbury, VT 05671-2020  
[www.dail.vermont.gov](http://www.dail.vermont.gov)

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*Agency of Human Services*

March 23, 2023

Sent via email to [Doug.Hoffer@vermont.gov](mailto:Doug.Hoffer@vermont.gov)

Doug Hoffer  
Vermont State Auditor's Office  
132 State Street  
Montpelier, VT 05633-5101

***DAIL Management Response to the Vermont State Auditor's Report, Department of Disabilities, Aging and Independent Living: DAIL Did Not Inspect State Licensed Long-Term Care Facilities as Required to Ensure Vulnerable Vermonters Are Not at Risk.***

Dear Auditor Hoffer,

Thank you for the opportunity to respond to the State Auditor's Office (SAO) report regarding DAIL's inspections of state licensed long term care facilities – specifically, Assisted Living Residences (ALR) and Residential Care Homes (RCH).

We have been aware of and have acknowledged the need for increased regulatory oversight of state licensed long term care facilities. DAIL made a proposal to the Agency of Human Services in the spring of 2021, to acquire sufficient resources in that next budget cycle to enhance regulatory oversight for state licensed long term care facilities. The SFY23 Governor's recommended budget, unveiled in January 2022, included a request for five new positions to create a state licensed regulatory unit within the Survey and Certification Unit of DAIL's Division of Licensing and Protection to allow for increased oversight of state licensed long term care facilities. The Legislature approved funding for these five additional positions in the SFY23 Big Bill (one Long Term Care Manager, three Nurse Surveyors, and one Administrative Assistant). DAIL has since created this new state licensed long term care unit and has hired three Nurse Surveyors and one Long Term Care Manager to begin this work (the Administrative Assistant position will be filled shortly).

I appreciate the work that your team did on this audit, although I respectfully suggest the title of this report could be interpreted as widespread failings, which is not the case. The findings and recommendations of this State Auditor's Office report do generally align with the direction in which the new long term care regulatory unit will proceed. Our responses to the findings in this report are delineated below.

SAO FINDING: Objective 1 Finding (page 1 highlights): "Because DAIL does not have a master database of their inspections, we had to manually input the results of individual inspections into spreadsheets."

See our  
comment 1  
on page 41.

## Appendix IX Management's Comments

See our  
comment 2  
on page 41.

**DAIL RESPONSE:** DLP has a database that contains all surveys and investigations which internal staff have full access to and detailed knowledge of, but there was not a list in the format that the auditor's office could easily use for their purposes and we could not let them access the protected health information directly, as it contains all Vermont health care providers, not just RCH/ALR.

SAO FINDING: Objective 1 Finding (page 1 highlights): "From this data, we determined that DAIL failed to conduct annual inspections as required by statute. In addition, as of June 30, 2022, DAIL had not inspected fifteen facilities since 2018."

See our  
comment 3  
on page 41.

**DAIL RESPONSE:** State Statute reads "The licensing agency (DAIL) shall inspect a facility prior to issuing a license under this chapter. Section 7105 states "Licenses under this chapter shall expire one year after date of issuance.

Prior to this audit, DAIL determined this regulation called for an initial inspection when issuing a license to a new facility. Subsequent licenses were considered "re-licensure." As such, DAIL conducted licensing surveys every two years after the initial license was issued.

DAIL ceased some re-licensure inspections to allow for staff concentration on infection control activities when the COVID-19 pandemic began. The fifteen facilities noted in the report were indeed late. All but seven facilities have received an inspection. The remaining seven inspections will occur in the next three months.

SAO FINDING: Objective 2 Finding (page 2 highlights): Similarly, when DAIL found the most severe deficiencies, they did not conduct a follow-up inspection as quickly as they would have if the facility were a federally regulated nursing home.

See our  
comment 4  
on page 42.

**DAIL RESPONSE:** Throughout the audit document, regulation and enforcement of ALRs and RCHs is compared against CMS certified skilled nursing facilities (SNFs). Skilled Nursing Facilities are medical facilities whereas Residential Care Homes and Assisted Living Residences are not medical facilities. RCH are prohibited from caring for nursing home level of care residents without a variance from the Division of Licensing and Protection Survey and Certification Unit. The regulatory requirements and operating practices are vastly different from federally certified SNFs. This said, the new state licensed long term care unit will provide greater capacity for more timely follow-up inspections when needed.

SAO FINDING: Objective 2 Finding (page 2 highlights): DAIL does not have a formal process to identify repeat deficiencies at facilities, limiting DAIL'S effectiveness at enforcing compliance.

See our  
comment 5  
on page 42.

**DAIL RESPONSE:** This finding notes that facilities had the same deficiency on a subsequent licensure inspection and that DAIL did not classify these as uncorrected deficiencies for purposes of imposing penalties because these repeat findings were detected on a subsequent licensing inspection, not a follow-up. DAIL considers the same deficiency from one survey to another as a "repeat deficiency," not an uncorrected deficiency.

SAO FINDING: DAIL Did Not Conduct Licensure Inspections at Statutorily Required Frequencies (page 9 & 10): ... When we pressed DAIL about the annual licensure inspection

# Appendix IX Management's Comments

See our  
comment 6  
on page 42.

requirement, they indicated this would be “best practice” but confirmed they did not ask for additional staff from at least state fiscal year 2016 through state fiscal year 2022.

**DAIL RESPONSE:** DAIL recognized that we had insufficient capacity in this area and made a proposal to the Agency of Human Services in the spring of 2021, to acquire sufficient resources in the next budget cycle to enhance regulatory oversight for state licensed long term care facilities. The SFY23 Governor’s Recommended budget, unveiled in January 2022, included a request for five new positions to create a state licensed regulatory unit within the Survey and Certification Unit of DAIL’s Division of Licensing and Protection to allow for increased oversight of state licensed long term care facilities. The Legislature approved funding for these five additional positions in the SFY23 Big Bill (one Long Term Care Manager, three Nurse Surveyors, and one Administrative Assistant).

SAO FINDING: Change of Ownership Licensure Inspections (page 10): ...DAIL officials stated that they did not think it was necessary to conduct an inspection after changes in ownership because in their experience, when the owner changed, nothing else about the facility changed.

**DAIL RESPONSE:** Best practice is to conduct an inspection after a change in ownership. This practice will be evaluated by the new Long Term Care Manager and their recommendations will be operationalized.

SAO FINDING: DAIL Did Not Finalize All Inspection Results (page 11): During our review of all inspections conducted between January 1, 2016, and June 30, 2022, we found nine inspection results that DAIL never finalized.

See our  
comment 7  
on page 43.

**DAIL RESPONSE:** This reflects a 98.7% completion rate for inspection reports, of 692 survey actions. DAIL’s Division of Licensing and Protection is currently auditing and finalizing outstanding reports.

SAO FINDING: DAIL did not ensure prompt plan of correction submissions and did not require follow-up inspections to ensure facilities corrected deficiencies (page 12):

See our  
comment 8  
on page 43.

**DAIL RESPONSE:** The report notes instances when facilities were late sending in their plan of correction. DAIL requires an acceptable plan of correction. The Nurse Surveyor may need to work with the facility in advising them on creating an acceptable plan of correction. As such, the plan may be later than the ten calendar day timeframe.

See our  
comment 9  
on page 43.

**We acknowledge that follow-up inspections differ between state licensed and federally certified facilities. Federal requirements for follow-up inspections are more stringent than state processes.**

SAO FINDING: DAIL Lacks a Systematic Process for Identifying Trends, Limiting DAIL’s Effectiveness at Enforcing Compliance. (Page 15):

See our  
comment 10  
on page 43.

**DAIL RESPONSE:** DAIL can run reports to determine the most cited deficiencies during a specified timeframe. All state licensed facilities are required to be in compliance with all state regulations regardless of trends. Trends do not affect the enforcement cycle of state licensed facilities.

# Appendix IX Management's Comments

See our  
comment 11  
on page 44.

SAO FINDING: DAIL did not use punitive tools as often as they could have to enforce compliance (page 16):

**DAIL RESPONSE: DAIL has a variety of enforcement actions available. DAIL considers the effective use of enforcement actions and the application thereof, for each applicable scenario. The use of enforcement actions such as fines must be done judiciously. Facilities in Vermont range from the very small family owned and run facility to large corporate-owned entities. Not all facilities have the same resources and in some cases, monetary fines could serve to put a facility out of business. It is important to ensure an adequate system of care, which is part of the consideration when determining appropriate enforcement action.**

SAO FINDING: Other Matters. DAIL's website lacks some information and is less helpful than similar state and federal websites (page 19):

**DAIL RESPONSE: DAIL acknowledges that the Division of Licensing and Protection Survey and Certification Unit website is not as user friendly as it could be. We have consulted with Agency of Digital Services staff to outline a plan to make improvements, ideally to construct our website to be as helpful as the CMS Care Compare website.**

SAO FINDING: DAIL's Procedure manual has been in draft form for more than a decade and is lacking timelines and enforcement procedures (page 21):

See our  
comment 12  
on page 44.

**DAIL RESPONSE: Although the draft watermark has been on our Procedure Manual, the Manual has been used and updated since its inception. Because the Manual is continuously changing, the draft watermark signals potential subsequent modifications. DAIL will implement a clearer way to communicate this in the Manual. The Manual will be updated to incorporate the practices changed as a result of this audit and the addition of a state long term care unit, and timelines will be added.**

SAO FINDING: Matters for Legislative Consideration (page 21): Statutorily require DAIL to set timelines establishing when DAIL must re-visit a facility at which Immediate Jeopardy or Actual Harm Deficiencies have been found to confirm those deficiencies no longer exist. One way to accomplish this, and to create parity for vulnerable Vermonters, would be to require DAIL to follow CMS timelines for follow-up inspections.

See our  
comment 13  
on page 44.

**DAIL RESPONSE: Similar to how there are many different levels of care when someone is wholly unable to care for themselves independently, there must be different levels of licensure, requirements, and settings for individuals in need of support and/or care. As the new state unit gets established, timeframes for follow-ups will certainly be set; however, it is very important to allow flexibility. CMS allows for flexibility with the follow-up inspections, as enforcement of requirements in healthcare settings is extremely complex and depends on multiple factors. Setting timeframes in statute wouldn't allow for the flexibility required when regulating complex health care services.**

SAO FINDING: Matters for Legislative Consideration (page 21): Statutorily define an uncorrected deficiency and specify when DAIL must take enforcement actions against facilities with uncorrected deficiencies.

See our  
comment 14  
on page 45.

**DAIL RESPONSE: Enforcement requirements in healthcare settings is extremely complex and depends on multiple factors. Setting enforcement actions in statute would diminish**

## Appendix IX Management's Comments

**DAIL's ability to weigh whether these factors would lead to unintended consequences such as facility closures, which could lead to the displacement of residents from their homes.**

**SAO RECOMMENDATIONS (followed by DAIL RESPONSES):**

1. Develop and implement a system to ensure licensure inspections are conducted annually, in accordance with statute and regulation.

**DAIL's new state long term care unit will ensure that all ALRs and RCHs are surveyed annually.**

2. Immediately inspect facilities that have gone four years without any inspections.

**In the body of this report, the state auditors note that since collection of the information, DLP has inspected three of the fifteen noted facilities, and one of the fifteen has closed. In addition to those, as of March 20, 2023, DLP has inspected three additional facilities (Averill Place, Fairwinds Residential Care Home, and Manes House) and a fourth has been scheduled. The remaining seven are prioritized on the schedule and will be conducted within three months.**

3. Develop and implement a facility licensure process to include a full inspection shortly after residents move in.

**This recommendation will be operationalized within six months.**

4. Inspect any facilities that had a change in ownership during audit scope and had not had a subsequent licensure inspection.

**This recommendation will be operationalized within six months.**

5. Update procedures to match regulations such that facilities with a change of owner or manager receive an inspection, in alignment with regulations.

**This recommendation will be reviewed and criteria for change of owner or manager inspections will be developed within six months.**

6. Develop and implement a system to identify when DAIL has not finalized the results of inspections.

**This recommendation will be operationalized within three months.**

7. Finalize the unfinished statements of deficiencies.

**DLP will analyze the unfinished statements of deficiencies and as appropriate, communicate findings to the facilities and post to the website within three months.**

8. Develop and implement a system to identify delays in providing Statement of Deficiencies and receiving Plans of Correction.

**This recommendation will be operationalized within six months.**

## Appendix IX Management's Comments

9. Develop and implement a system to track trends and repeat deficiencies across all inspection types.

**The new long term care unit will evaluate the utility of this recommendation and operationalize as appropriate.**

10. Expand the definition of "failure to correct a deficiency" to include uncorrected deficiencies also found during licensure and complaint inspections.

**DLP will evaluate how we define facility compliance as it relates to repeated deficiencies on subsequent survey within twelve months.**

11. Update website to include all inspection results, ensure those results are legible, and include other records of enforcement actions against facilities.

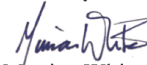
**DLP will assure all inspections are uploaded to the website. We will request providers write legibly when describing their plans of correction. We will consult with DAIL's Legal Unit to determine whether enforcement actions can be made public.**

12. Finalize draft procedures with the addition of a: (1) requirement to visit new facilities and facilities with new owners within set time after license issuance, (2) set timeline for follow up on Immediate Jeopardy deficiencies, (3) procedures and timelines for following up on Actual Harm deficiencies, and (4) procedures for immediate enforcement actions, including timelines.

**The new long term care unit will operationalize this recommendation within twelve months.**

In conclusion, I concur with the SAO's emphasis of the need to assure proper oversight of state licensed long term care facilities providing care to Vermonters. I truly appreciate the time the State Auditor's Office spent on review of DAIL's oversight of state licensed ALRs and RCHs, and the thought that went into crafting recommendations, which largely align with our plans for the new long term care unit within DAIL's Division of Licensing and Protection Survey and Certification Unit.

Sincerely,



Monica White  
Commissioner

## Appendix X

### SAO Evaluation of Management’s Comments

In accordance with generally accepted government auditing standards, the following tables contain our evaluation of management’s comments.

Comment #	Management’s Response	SAO Evaluation
1	<i>I respectfully suggest the title of this report could be interpreted as widespread failings, which is not the case.</i>	We changed the report title.
2	<i>DLP has a database that contains all surveys and investigations which internal staff have full access to and detailed knowledge of, but there was not a list in the format that the auditor’s office could easily use for their purposes and we could not let them access the protected health information directly, as it contains all Vermont health care providers, not just RCH/ALR.</i>	Changed verbiage on page 1, Objective 1 Finding from, “Because DAIL does not have a master database of their inspections,” to “Because DAIL’s database system cannot run summary reports for ALRs and RCHs...” Updated Appendix I to note that DAIL’s database cannot run reports on individual state facilities.
3	<i>State Statute reads “The licensing agency (DAIL) shall inspect a facility prior to issuing a license under this chapter. Section 7105 states “Licenses under this chapter shall expire one year after date of issuance. Prior to this audit, DAIL determined this regulation called for an initial inspection when issuing a license to a new facility. Subsequent licenses were considered “re-licensure.” As such, DAIL conducted licensing surveys every two years after the initial license was issued.</i>	Statute only uses the term “license.” There is nothing in statute establishing a different process for “re-licensure.” As such, there is no legal basis for performing a “re-licensure” inspection on a two-year interval. As noted on page 9, a plain language reading of statute requires DAIL to inspect a facility each year before issuing a license. DAIL did not provide us with any evidence as to how DAIL “determined” that statute allowed for “re-licensure” conducted at two-year intervals.

## Appendix X

### SAO Evaluation of Management’s Comments

Comment #	Management’s Response	SAO Evaluation
4	<p><i>Throughout the audit document, regulation and enforcement of ALRs and RCHs is compared against CMS certified skilled nursing facilities (SNFs). Skilled Nursing Facilities are medical facilities whereas Residential Care Homes and Assisted Living Residences are not medical facilities.</i></p>	<p>We did not suggest that the same operating practices and regulatory requirements should apply to all facilities. Rather, we note that DAIL should be as timely with inspections at ALRs and RCHs as they are in nursing homes when there are immediate jeopardy and/or actual harm deficiencies. Notwithstanding the differences between nursing homes, ALRs, and RCHs, there is no evidence that the Legislature’s intent was to establish two different levels of safety-related oversight based on which facilities are at issue. <b>Every adult in ALRs, RCHs, and nursing homes is classified as a vulnerable adult.</b> The definitions of immediate jeopardy and actual harm to residents are exactly the same regardless of facility type. Therefore, we contend that the timeliness of DAIL’s response to dangerous conditions should be the same regardless of the facility type in which the vulnerable adult lives. For example, as shown in Exhibit 7 on page 14, DAIL conducted a follow-up inspection at an RCH <u>69 days later</u> than what would have been required for a CMS certified skilled nursing facility (nursing home) after an immediate jeopardy incident involving a resident who died shortly after receiving incorrect morphine dosages.</p>
5	<p><i>DAIL considers the same deficiency from one survey to another as a “repeat deficiency,” not an uncorrected deficiency.</i></p>	<p>It is unclear why DAIL believes a repeat deficiency is not an uncorrected deficiency for the reason that the deficiency exists again the next time DAIL conducts an inspection leaving vulnerable Vermonters at risk. As shown on pages 15-17, we found multiple instances of repeat deficiencies, but because of DAIL’s limited interpretation of what constitutes an uncorrected deficiency they have limited themselves to re-telling the facility to correct the repeated issue and not using greater enforcement actions, such as fining the facility. For example, during a complaint inspection Meadows at East Mountain was found by DAIL to have a deficiency regarding their written plan of care for each resident. These plans describe the care and services necessary to assist the resident to maintain well-being. During another complaint inspection five months later DAIL again cited the facility for the same deficiency. While the facility may have corrected the care plans from the initial inspection the fact that DAIL found issues with other care plans just months later demonstrates that the facility had not corrected the underlying issues with insufficient care plans.</p>
6	<p><i>DAIL recognized that we had insufficient capacity in this area and made a proposal to the Agency of Human Services in the spring of 2021, to acquire sufficient resources in the next budget cycle to enhance regulatory oversight for state licensed long term care facilities.</i></p>	<p>DAIL refers here to insufficient capacity to perform annual licensure inspections, which confirms what we wrote in the report. DAIL didn’t seek additional resources for the previous seven fiscal years despite failing to meet statutory inspection timelines in each of those years.</p>



## Appendix X

### SAO Evaluation of Management's Comments

Comment #	Management's Response	SAO Evaluation
7	<i>This reflects a 98.7% completion rate for inspection reports, of 692 survey actions. DAIL's Division of Licensing and Protection is currently auditing and finalizing outstanding reports.</i>	As noted on page 11, the purpose of finalizing reports is to ensure that the facility's Plan of Correction is acceptable to resolve identified deficiencies. As noted on page 12, DAIL does not have a centralized system to inform them when Plans of Corrections have not been returned from the facilities. Therefore, anything less than a 100 percent completion rate can leave people at risk. For example, if a resident dies or is seriously injured at a facility with an incomplete Plan of Correction, DAIL's overall completion rate will be of little comfort to the family.
8	<i>The Nurse Surveyor may need to work with the facility in advising them on creating an acceptable plan of correction. As such, the plan may be later than the ten calendar day timeframe.</i>	DAIL's rules do not provide leeway for when they must provide the Statement of Deficiencies to a facility. As noted in the report on pages 12 -13, timelines are not adhered to because either (1) DAIL did not send the Statement of Deficiencies on time, (2) the facility did not submit the Plan of Correction on time, or (3) because both DAIL and the facility failed to meet their timelines. Therefore, DAIL advising facilities on creating an acceptable Plan of Correction does not account for all late Plans of Correction. We added to report on page 13 that DAIL officials indicated that some delays are due to DAIL working with facilities on producing an acceptable Plan of Correction.
9	<i>We acknowledge that follow-up inspections differ between state licensed and federally certified facilities. Federal requirements for follow-up inspections are more stringent than state processes.</i>	<b>Every adult in ALRs, RCHs, and nursing homes is classified as a vulnerable adult, and all should be afforded the same promptness in responding to deficiencies of Immediate Jeopardy and Actual Harm.</b> Notwithstanding the differences between nursing homes, ALRs, and RCHs, there is no evidence that the Legislature's intent was to establish two different levels of safety-related oversight based on which facilities are at issue. The definitions of immediate jeopardy and actual harm to residents are exactly the same regardless of facility type. Therefore, we contend that DAIL's follow-up to ensure these dangerous conditions no longer exist should not be different due to the facility type in which the vulnerable adult lives.
10	<i>DAIL can run reports to determine the most cited deficiencies during a specified timeframe. All state licensed facilities are required to be in compliance with all state regulations regardless of trends. Trends do not affect the enforcement cycle of state licensed facilities.</i>	As noted in the report, DAIL repeatedly found the same deficiencies at some facilities across multiple years. However, DAIL lacks a systematic process to identify repeat deficiencies. <b>DAIL can run a report that shows how frequently a specific deficiency was cited but this report does not show which facilities had this deficiency.</b> DAIL is unable to run a report on a given ALR or RCH that shows trends and repeat findings at that facility over multiple inspections. As noted on page 15 even DAIL's own consultant made a similar recommendation about identifying trends at a facility to proactively address conditions of concern. Trend analyses would help administrators detect localized and systemic problems proactively, allowing them to dedicate additional training, inspection, and/or enforcement resources to protect Vermonters.

## Appendix X

### SAO Evaluation of Management's Comments

Comment #	Management's Response	SAO Evaluation
11	<p><i>Not all facilities have the same resources and in some cases, monetary fines could serve to put a facility out of business. It is important to ensure an adequate system of care, which is part of the consideration when determining appropriate enforcement action.</i></p>	<p>This consideration was already reflected on page 17 of the report. This audit did not suggest that DAIL be required to levy fines for all eligible deficiencies. Rather, the audit found DAIL usually did not use enforcement tools for any level of infraction other than requiring the facility to submit a Plan of Correction. DAIL does not have a transparent policy upon which to base their decisions about which available level of enforcement tool is most appropriate to ensure residents safety and well-being. When there are instances of Immediate Jeopardy at CMS certified nursing homes, CMS mandates that monetary penalties be imposed. While SAO understands the importance of not placing an undue burden on facilities, DAIL's core responsibility as a licensing agency is to ensure that facilities are safe for vulnerable Vermonters. Facilities that repeatedly fail to ensure a safe environment for its residents should not escape regulatory enforcement due to more general concerns about insufficient capacity at the State level.</p>
12	<p><i>Although the draft watermark has been on our Procedure Manual, the Manual has been used and updated since its inception. Because the Manual is continuously changing, the draft watermark signals potential subsequent modifications. DAIL will implement a clearer way to communicate this in the Manual. The Manual will be updated to incorporate the practices changed as a result of this audit and the addition of a state long term care unit, and timelines will be added.</i></p>	<p>The last revision date noted on the Procedure Manual is July 30, 2012. As noted on page 21 of the report, the State's internal control standards note that documentation of procedures is critical to the daily operations of a department because employees rely on documented procedures to do their jobs.</p>
13	<p>The following is an excerpt of DAIL's response to our suggestion to the Legislature that they statutorily require DAIL to set timelines when re-visits must be performed after identifying Immediate Jeopardy or Actual Harm deficiencies to confirm those deficiencies no longer exist. <i>"CMS allows for flexibility with the follow-up inspections, as enforcement of requirements in healthcare settings is extremely complex and depends on multiple factors. Setting timeframes in statute wouldn't allow for the flexibility required when regulating complex health care services."</i></p>	<p>CMS requires follow-up revisits be conducted within 60 days of an inspection that identifies Immediate Jeopardy of Actual Harm deficiencies. <b>Every adult in ALRs, RCHs, and nursing homes is classified as a vulnerable adult, and all should be afforded the same promptness in responding to deficiencies of Immediate Jeopardy and Actual Harm.</b> The definitions of immediate jeopardy and actual harm to residents are exactly the same regardless of facility type. Therefore, we contend that DAIL's follow-up to ensure these dangerous conditions no longer exist should not be different due to the type of facility.</p>

## Appendix X

### SAO Evaluation of Management's Comments

Comment #	Management's Response	SAO Evaluation
14	<i>Setting enforcement actions in statute would diminish DAIL's ability to weigh whether these factors would lead to unintended consequences such as facility closures, which could lead to the displacement of residents from their homes.</i>	Our audit recommended that the Legislature define what is meant by "uncorrected deficiency" and at what point an enforcement action must be taken. The purpose of the statute is for the protection and benefit of long-term care residents not for the owners of facilities that they reside in. And statute requires DAIL to enforce those provisions to protect residents in long-term care facilities.