

ADVERSE ACTIONS LISTS FOR CERTIFIED NURSE AIDES AND DIRECT SERVICE WORKERS

LOUISIANA DEPARTMENT OF HEALTH

PERFORMANCE AUDIT SERVICES

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January 8, 2025

The Honorable J. Cameron Henry, Jr.
President of the Senate
The Honorable Phillip R. DeVillier,
Speaker of the House of Representatives

Dear Senator Henry and Representative DeVillier:

This report provides the results of our evaluation of the Louisiana Department of Health's (LDH's) oversight of its adverse actions lists for Certified Nurse Aides (CNAs) and Direct Service Workers (DSWs) with findings of abuse and neglect.

We found that LDH does not have formal criteria for what incidents of abuse and neglect should result in findings for CNAs/DSWs on the adverse actions lists. Such guidance would help ensure CNAs/DSWs are treated consistently for similar incidents.

LDH also does not have formal criteria for how long CNA/DSW evidence reviews should take. We found that the department took an average of 390 days for CNAs and 375 days for DSWs to add findings to the adverse actions lists after facilities reported allegations of abuse or neglect.

In addition, we identified individuals who potentially worked as CNAs and DSWs in prohibited healthcare settings after being added to the adverse actions lists. We used quarterly wage data from the Louisiana Workforce Commission and identified 10 (11.1%) of 90 CNAs who worked for a nursing facility and 16 (4.2%) of 380 DSWs who worked for intermediate care facilities for individuals with developmental disabilities after being added to the adverse actions lists.

The report contains our findings and recommendations. I hope this report will benefit you in your legislative decision-making process.

We would like to express our appreciation to the Louisiana Department of Health for its assistance during this audit.

Respectfully submitted,



Michael J. "Mike" Waguespack, CPA
Legislative Auditor

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LDHADVERSEACTIONSLIST



Louisiana Legislative Auditor

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Adverse Actions Lists for Certified Nurse Aides and Direct Service Workers Louisiana Department of Health

January 2025

Audit Control #40230040

Introduction

We evaluated the Louisiana Department of Health's (LDH) oversight of its adverse actions lists for Certified Nurse Aides (CNA) and Direct Service Workers (DSW) with findings, or substantiated allegations, of abuse and neglect.¹ LDH is required by state regulations and state law to maintain lists of CNAs and DSWs with findings of abuse and/or neglect that occurred while employed in licensed healthcare facilities,² because these individuals are prohibited from working as CNAs/DSWs.³ This report is the third in a series of audits that we conducted related to LDH's activities to address abuse and neglect of individuals with developmental disabilities.⁴

The LDH **adverse actions lists** are databases of individuals and providers who are sanctioned, which may include exclusions, for-cause terminations, or disbarment through LDH Health Standards.

A **finding** is an allegation of abuse or neglect that is placed against a CNA or DSW on an LDH adverse actions list.

CNAs and DSWs work with vulnerable populations such as aging adults and individuals with disabilities in a range of healthcare settings such as nursing facilities or intermediate care facilities for individuals with developmental disabilities (ICFs), and with individuals receiving home and community-based services (HCBS). Nursing facilities only employ CNAs; when a CNA works in a healthcare setting other than a nursing facility, they are considered a DSW. Both CNAs and DSWs assist individuals with activities of daily living, such as eating, bathing, and

¹ LDH is also required to add CNAs/DSWs to these lists for substantiated allegations of misappropriation, financial exploitation, and Medicaid fraud. This audit focuses on abuse and neglect findings added by LDH's Health Standards Section (HSS). The adverse actions list is also referred to as the "State Exclusions List."

² Louisiana Administrative Code (LAC) 48:10033 for the CNA Registry, and Louisiana Revised Statute (La R.S.) 40:2179 and LAC 48:9202 for the DSW Registry. Throughout most of this report, these registries are referred to as adverse actions lists.

³ Other healthcare professionals such as doctors and nurses have oversight boards such as the Louisiana State Board of Medical Examiners and Louisiana State Board of Nursing that monitor for compliance with practice standards.

⁴ Louisiana Legislative Auditor, "[Abuse and Neglect in Intermediate Care Facilities for Individuals with Developmental Disabilities – Louisiana Department of Health](#)", July 2024; and "[Abuse and Neglect in Home and Community-Based Services – Louisiana Department of Health](#)", December 2024.

mobility, but have different competency expectations. CNAs are required have 80 hours of training and pass a competency exam. DSWs complete provider-specific training, but are not required to pass an exam. As of December 31, 2023, there were 41,303 registered CNAs in Louisiana.⁵ However, it is not possible to know how many DSWs are working in Louisiana, because DSWs are not required to register with LDH.

LDH maintains two lists depending on where the abuse/neglect occurred. For most of this report, we refer to both lists as adverse actions lists.

1. The CNA Registry includes findings for CNAs working at a nursing facility or skilled nursing facility (nursing facility).
2. The adverse actions list includes findings for DSWs and for CNAs working in settings other than nursing facilities.

Healthcare providers such as nursing facilities and ICFs are required by state regulations⁶ to access the adverse actions lists to determine if there is a finding against a prospective hire. If there is a finding that the CNA/DSW committed abuse or neglect, the provider is prohibited from hiring the individual.

During fiscal years 2019 through 2023, LDH added findings against 80 CNAs and 431 DSWs to the adverse actions lists; Exhibit 1 shows the findings for those CNAs/DSWs. LDH receives allegations of potential abuse and neglect by CNAs/DSWs in various ways including complaints made by family members, inspections of healthcare facilities conducted by LDH staff, and incidents reported to LDH by healthcare providers. When LDH receives an allegation, staff conduct investigations, referred to as evidence reviews, to determine whether there is adequate evidence to support a finding against the CNA/DSW. After due process, which includes an opportunity for the CNA/DSW to appeal,⁷ LDH will place the finding and the CNA/DSW's name on the adverse actions lists.

Exhibit 1 Findings for CNAs and DSWs added to the Adverse Actions Lists Fiscal Years 2019 through 2023		
Finding	CNAs	DSWs
Physical Abuse	33	183
Neglect	15	124
Exploitation/Misappropriation	20	92
Mental/Emotional Abuse	11	37
Sexual Abuse	3	10
Verbal Abuse	9	23
Total*	91	469
*Total findings do not match the total number of CNAs/DSWs added to the adverse actions lists because some CNAs/DSWs had findings for multiple reasons. In addition, we excluded 13 records that did not include a reason. Source: Prepared by legislative auditor's staff using data provided by LDH.		

⁵ The vendor provides LDH with a count on an annual basis, so more recent data is not available.

⁶ LAC 48:10033 for CNAs and LAC 48:9202 for DSWs. Nursing facilities are required to check the CNA Registry, which for most of this report is referred to as an adverse actions list.

⁷ CNAs/DSWs may appeal LDH's determination by requesting an informal dispute resolution (IDR) or an administrative hearing.

The objective of this audit was:

To evaluate LDH's oversight of its adverse actions lists for Certified Nurse Aides and Direct Service Workers with findings of abuse and neglect.

To answer our objective, we researched legal requirements, met with agency staff to understand policies and processes, and obtained and analyzed the LDH adverse actions lists. Our results are summarized on the next page and discussed in detail throughout the remainder of the report. Appendix A contains LDH's response and Appendix B contains our scope and methodology.

Objective: To evaluate LDH's oversight of its adverse actions lists for Certified Nurse Aides and Direct Service Workers with findings of abuse and neglect.

Overall, we found that LDH could improve its oversight of the CNA/DSW adverse actions lists. Specifically, we found the following:

- **LDH does not have formal criteria for what incidents of abuse and neglect should result in findings for CNAs/DSWs on the adverse actions lists. Such guidance would help ensure CNAs/DSWs are treated consistently for similar incidents.** In addition, LDH rescinded 64 (51.2%) of 125 findings, after the CNA/DSW requested an appeal, meaning no finding was placed on the adverse actions lists.
- **LDH does not have formal criteria for how long CNA/DSW evidence reviews should take. We found that LDH took an average of 390 days for CNAs and 375 days for DSWs to add findings to the adverse actions lists after facilities reported allegations of abuse or neglect. According to LDH, it does not have adequate staff to conduct CNA/DSW evidence reviews timely.** LDH took an average of 228 days for CNAs and 208 days for DSWs to assign the reviewer/initiate the evidence review from the day the CNA/DSW team received the referral. CNAs and DSWs are allowed to continue working while LDH conducts the reviews.
- **We identified individuals who potentially worked as CNAs and DSWs in prohibited healthcare settings after being added to the adverse actions lists. Some healthcare providers, such as home and community-based service (HCBS) providers, conduct automatic nightly checks to identify DSWs who should not be providing care.** We used quarterly wage data from the Louisiana Workforce Commission and identified 10 (11.1%) of 90 CNAs who worked for a nursing facility and 16 (4.2%) of 380 DSWs who worked for intermediate care facilities for individuals with developmental disabilities (ICFs) after being added to the adverse actions lists.

Our findings and recommendations are discussed in more detail on the pages that follow.

LDH does not have formal criteria for what incidents of abuse and neglect should result in findings for CNAs/DSWs on the adverse actions lists. Such guidance would help ensure CNAs/DSWs are treated consistently for similar incidents.

When LDH becomes aware of an allegation of abuse or neglect committed by a CNA/DSW, LDH survey staff investigates the incident to determine if the healthcare provider is in compliance with all requirements. In addition, the LDH CNA/DSW team conducts an evidence review to determine if there is adequate evidence to support a finding against the CNA/DSW. According to LDH, the criteria for substantiating allegations and placing a finding on the lists is based on the definitions of abuse and neglect (*see text box at right*). In addition, LDH considers the intent of the CNA/DSW and the actual impact to the individual who experienced the abuse or neglect.

Abuse is the willful infliction of physical or mental injury to an individual or causing an individual's deterioration to such an extent that his/her health, moral, or emotional well-being is endangered.

Neglect is the failure to provide proper or necessary medical care, nutrition, or other care necessary for an individual's well-being.

According to LDH, each incident and evidence review is unique and CNA/DSW staff use professional judgement. However, LDH does not provide guidance to its reviewers for what incidents should result in a finding, including the factors that should be used to determine intent and impact. According to LDH, it may find that the actions of the CNA/DSW were inappropriate but do not meet the definition of abuse or neglect, or there may be neglect but it was not intentional by the CNA/DSW, or there was no negative outcome for the resident. According to LDH, these incidents may not rise to the level of a finding being placed on the adverse actions lists.

We reviewed a selection of CNA/DSW evidence reviews that took place in five months during fiscal years 2020 through 2023⁸ and found that LDH received 36 CNA referrals and 213 DSW referrals. Of the 36 referrals for CNAs, 8 (22.2%) resulted in a finding, and of the 213 referrals for DSWs, 35 (16.4%) resulted in a finding. Examples of incidents that resulted in a finding being placed on the lists include a DSW who hit a resident in the face and a CNA who slammed a resident on the bed. However, incidents are not always so straightforward.⁹

According to LDH, it uses the Medicaid State Operating Manual and internally-generated documents as guidance. However, compiling and augmenting this information into a formal policy or procedure would help LDH staff make

⁸ We selected non-consecutive months representing more recent periods in our audit scope: May 2021, September 2021, July 2022, November 2022, and March 2023.

⁹ Our work did not assess if LDH made the appropriate determinations of whether abuse/neglect occurred.

consistent and fair determinations of findings. Best practices state that regulatory agencies should take consistent enforcement actions. In addition, a policy or guidance that clearly defines expectations also facilitates consistent policy implementation and documentation, and allows LDH to evaluate CNA/DSW review staff for compliance with those expectations.

In addition, LDH's process for conducting evidence reviews does not involve a formal supervisory review prior to placing the finding on the lists. CNAs/DSWs that feel that a finding was placed in error may request an informal dispute resolution (IDR). The IDR process provides the CNA/DSW an opportunity to refute the allegation. According to LDH, during fiscal years 2019 through 2023, it conducted 125 IDRs for CNAs and DSWs. Of those, 64 (51.2%) were rescinded, meaning no finding was placed on the adverse actions lists. Adding a formal supervisory review step in the evidence review process may reduce the number of IDRs and rescinded findings, as well as help increase the consistency of decisions.

Recommendation 1: LDH should establish formal criteria such as a policy or guidance for CNA/DSW reviewers for what factors should be considered when determining whether incidents of abuse/neglect should result in a finding on the adverse actions lists.

Summary of Management's Response: LDH disagrees with this recommendation. LDH stated that it currently utilizes definitions in State Regulations Minimum Licensing Standards LAC 48:1.9201 when determining whether incidents of abuse and/or neglect warrant a finding on the adverse actions lists. However, considering this finding and recommendation, LDH will update its policies and procedures to mirror the criteria established in licensing and/or federal regulations for determining CNA/DSW incidents that result in a finding on the adverse actions lists. See Appendix A for LDH's full response.

LLA Additional Comments: The updated policies and procedures should also include guidance for CNA/DSW reviewers on what incidents should result in a finding, including the factors that should be used to determine intent and impact, in addition to the definitions contained in state regulations. For instance, LDH should clarify when behavior is inappropriate rather than abuse/neglect to help ensure consistency among reviewers.

Recommendation 2: LDH should conduct a formal supervisory review of findings before they are placed on the CNA/DSW adverse actions lists to help ensure that CNAs/DSWs are treated consistently for similar incidents.

Summary of Management's Response: LDH disagrees with this recommendation and stated that all CNA/DSWs may request an Informal Dispute Resolution and Administrative Hearing of adverse findings to determine whether such finding was appropriate or not. However, considering this finding and recommendation, LDH will conduct supervisory reviews of a sample size of CNA/DSW abuse or neglect incident referrals

before a finding is placed on the adverse action list to determine if supervisory reviews are beneficial to the formal CNA/DSW evidence review process. See Appendix A for LDH's full response.

LDH does not have formal criteria for how long CNA/DSW evidence reviews should take. We found that LDH took an average of 390 days for CNAs and 375 days for DSWs to add findings to the adverse actions lists after facilities reported allegations of abuse or neglect. According to LDH, it does not have adequate staff to conduct CNA/DSW evidence reviews timely.

When LDH becomes aware of an allegation of abuse or neglect committed by a CNA/DSW, it refers the allegation to its CNA/DSW team to review the evidence for the incident.¹⁰ However, LDH does not have formal criteria such as a policy or guidance for how long CNA/DSW evidence reviews should take; and does not track all key dates in the process. As a result, LDH is not able to monitor the timeliness of its CNA/DSW evidence reviews. CNAs and DSWs are allowed to continue working while LDH conducts the reviews.

We found that LDH took an average of 390 days for CNAs and 375 days for DSWs to add findings to the adverse actions lists from the day the facility reported an allegation of abuse or neglect.¹¹ The risk is that CNAs/DSWs with a substantiated allegation of abuse and neglect may continue to work with vulnerable populations during the time it takes for LDH to add the CNA/DSW to the adverse actions lists. Two examples of substantiated allegations of physical abuse that were added to the adverse actions lists are:

- A CNA restrained two residents with advanced dementia by tying them to chairs with bedsheets. LDH took 383 days to add this CNA to the adverse actions list from the day it was notified of the incident.
- A resident entered a sensory room and curled into a fetal position. The DSW appeared in the sensory room, stood over the resident, and proceeded to stomp on the back of the resident's neck with his/her foot. LDH took 679 days to add this DSW to the adverse actions list from the day it was notified of the incident.

¹⁰ LDH also investigates the incident to determine if the healthcare provider is in compliance with all requirements.

¹¹ This analysis was based on facility-reported incidents, which are self-reported by nursing facilities and ICFs. While we conducted reasonableness testing on this data, we did not verify the reliability of this data.

We reviewed a selection of 34 incidents submitted to LDH by nursing facilities and 46 incidents submitted by ICFs during fiscal years 2019 through 2023 in which a CNA/DSW had an allegation of abuse or neglect and was added to the adverse actions lists.¹²

On average, it took 390 days for CNAs and 375 days for DSWs from the date the incident was reported to the effective date of the finding for the CNA/DSW on the adverse actions lists. The average, minimum, and maximum number of days are shown in Exhibit 2.

Exhibit 2			
Time to Add CNAs/DSWs to the Adverse Actions Lists from the Date an Incident was Reported to LDH Fiscal Years 2019 through 2023			
Finding	Average	Minimum	Maximum
CNAs	390	64	718
DSWs	375	140	951

Source: Prepared by legislative auditor's staff using data provided by LDH.

LDH does not have formal criteria, such as a policy or guidance for how long CNA/DSW evidence reviews should take. In addition, LDH does not track all key dates in the process such as the date it assigns a reviewer or initiates the evidence reviews.¹³ Formal criteria, such as a policy or guidance that provides LDH staff with specific timeframe expectations for conducting evidence reviews will help ensure timely additions to the adverse actions lists. In addition, tracking and monitoring key dates in the process will allow LDH to monitor CNA/DSW review staff for compliance with timeframe requirements.

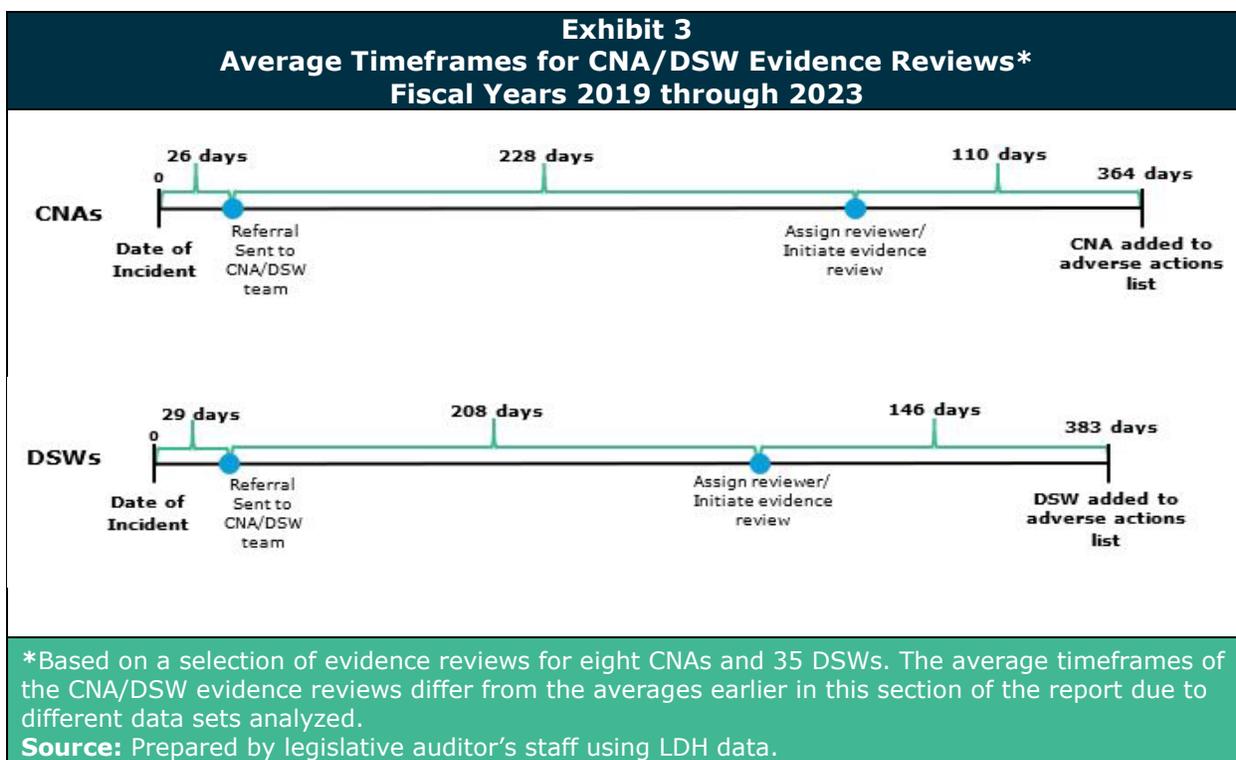
We found that LDH took an average of 228 days for CNAs and 208 days for DSWs to assign a reviewer/initiate the evidence review¹⁴ from the day the CNA/DSW team received the referral. When LDH becomes aware of an allegation of abuse or neglect committed by a CNA/DSW, it refers the allegation to its CNA/DSW team to review the evidence for the incident. We reviewed a selection of evidence reviews for eight CNAs and 35 DSWs that were added to the adverse actions lists in five months during fiscal years 2020 through 2023.¹⁵ LDH took an average of 228 days for CNAs and 208 days for DSWs to assign a reviewer/initiate the evidence reviews after it received the referral. Exhibit 3 shows the average timeframes for CNA and DSW evidence reviews.

¹² The total number of incidents reported and substantiated by facilities from fiscal year 2019 through 2023 was 446 for CNAs from nursing facilities and 1,051 for DSWs from ICFs. To identify our selection for analysis, we identified CNAs/DSWs with allegations of abuse and neglect who were added to the adverse actions lists (34 CNAs and 46 DSWs). See our scope and methodology in Appendix B for more details.

¹³ LDH does track some dates in the process, such as the date that additional evidence is requested from the facility and the date that a certified letter is sent to the CNA/DSW.

¹⁴ LDH does not track the date it assigns a reviewer, or the date it initiates the evidence review. Therefore, we used the first date associated with each evidence review, which according to LDH, "indicates that the matter is in review."

¹⁵ We selected non-consecutive months representing more recent periods in our scope: May 2021, September 2021, July 2022, November 2022, and March 2023.



While LDH did not assign a reviewer in a timely manner, once LDH initiated its evidence review, it took an average of 110 days for CNAs and 146 days for DSWs for LDH to place a finding on the adverse actions lists, which meets Medicaid timeframe requirements. According to Medicaid requirements for CNAs, LDH should add findings to the adverse actions lists within a maximum of 170 days after it makes a preliminary determination that abuse or neglect has occurred. Medicaid does not have timeframe requirements for DSWs; however, LDH stated that it applies the same CNA timeframe criteria for DSWs.

LDH stated that it has not been adequately staffed to conduct CNA/DSW evidence reviews timely. According to LDH, the number of perpetrators referred for evidence reviews increased from approximately 55.4 per month in late fiscal year 2021¹⁶ to approximately 72.8 per month in fiscal year 2024, an increase of 31.4%. During that time, LDH had one full-time and two part-time reviewers. The full-time staff member retired in August 2024 and was replaced in November 2024. LDH moved one employee to the CNA/DSW team in a backup role until the full-time position was filled. According to LDH, the backlog of evidence reviews is approximately 354 referrals as of August 2024 and additional staff are needed to resolve the backlog and add CNAs/DSWs to the adverse actions lists timely.

Recommendation 3: LDH should establish formal criteria such as a policy or guidance that includes timeframes for how long its process to conduct evidence reviews for CNAs/DSWs and add findings to the adverse actions

¹⁶ LDH provided referral counts for fiscal year 2021 starting on February 9, 2021.

lists should take. This policy should include timeframe expectations for assigning a reviewer and for LDH staff to complete its evidence reviews.

Summary of Management's Response: LDH agrees with this recommendation and stated that it acknowledges the benefit of additional updates to its policies and procedures regarding the CNA/DSW Registry and/or Adverse Action List. LDH is currently updating these policies and procedures to include a process for managing delays caused by lags in communication from the healthcare providers regarding LDH's inquiries into CNA/DSW allegations. See Appendix A for LDH's full response.

Recommendation 4: LDH should track key timeframes in the evidence review process such as the date it assigns a reviewer and the date it initiates the evidence review, and monitor CNA/DSW review staff for compliance with timeframe expectations.

Summary of Management's Response: LDH agrees with this recommendation and stated that as of September 2024, it has implemented a new process of ensuring key timeframes are monitored to better track the status of investigations, investigation deadlines, and any pressure points that continue to cause delays in meeting timeframe deadlines. This new process includes the use of a new email box for all referrals received that is consistently monitored by all members of the evidence review team. In addition, the CNA/DSW incident referral log has been updated for user-friendly efficiency and functionality with additional fields to better track key dates and provide overview and status updates for the referral. See Appendix A for LDH's full response.

Recommendation 5: LDH should ensure it is adequately staffed to conduct CNA/DSW evidence reviews to help ensure timely additions to the adverse actions lists.

Summary of Management's Response: LDH agrees with this recommendation. LDH stated that there is currently a backlog of CNA/DSW incident evidence reviews due to the increase in CNA/DSW incident referrals. LDH is currently exploring options to manage the backlog and support the program desk in managing the increased workload. See Appendix A for LDH's full response.

We identified individuals who potentially worked as CNAs and DSWs in prohibited healthcare settings after being added to the adverse actions lists. Some healthcare providers, such as home and community-based service (HCBS) providers, conduct automatic nightly checks to identify DSWs who should not be providing care.

Prior to hiring a CNA or DSW, employers such as nursing facilities and ICFs are required by state regulations to access the adverse actions lists.¹⁷ Nursing facilities are required to access the CNA Registry, and other healthcare provider types such as ICFs and HCBS are required to check the adverse actions list. Employers access the adverse actions lists via portals on the LDH website¹⁸ and are able to check employees by name or by Social Security number (SSN). If a prospective hire has a finding on the adverse actions lists, the employer is prohibited from hiring them as a CNA or DSW.¹⁹ LDH conducts periodic inspections of providers such as nursing facilities, ICFs, and HCBS to determine if those employers are checking the adverse actions lists as required. According to LDH, it issued 154 deficiencies to nursing facilities, ICFs, and HCBS for employing CNAs or DSWs on the adverse actions lists during fiscal years 2019 through 2023.

We identified individuals who potentially worked as CNAs and DSWs in prohibited healthcare settings after being added to the adverse actions lists. CNAs/DSWs with findings on the adverse actions lists may pose a threat to vulnerable residents in any healthcare setting. We used quarterly state wage data from the Louisiana Workforce Commission (LWC)²⁰ and identified 10 (11.1%) of 90 CNAs who worked for a nursing facility after being added to the adverse actions lists and 16 (4.2%) of 380 DSWs who worked for an ICF after being added.²¹ In addition, we identified 157 instances of CNAs/DSWs working in other healthcare settings such as home health, assisted living facilities, and other types of residential care after being added to the adverse actions lists.²² The LWC data only provides wage data, and not the specific position or job duties. As a result, we are not able to determine if the CNAs/DSWs on the adverse actions lists who later worked in prohibited healthcare settings provided care or worked in other capacities such as administration, janitorial, food service, etc.

¹⁷ LAC 48:10033 for CNAs and LAC 48:9202 for DSWs. Nursing facilities are required to check the CNA Registry, which for most of this report is referred to as an adverse actions list.

¹⁸ <https://adverseactions.ldh.la.gov/SelSearch> (DSWs) and <https://tlc.dhh.la.gov/> (CNAs)

¹⁹ LAC 48:10033 and 40:10045 for CNAs; and LAC 48:9202 for DSWs.

²⁰ This wage data is self-reported by employers to LWC. While we conducted reasonableness testing on this data, we did not verify the reliability of this data.

²¹ We tested CNAs and DSWs added to the adverse actions lists at any point during fiscal years 2019 through 2023 and used LWC wage data for wages paid at any point during fiscal year 2019 through December 2023. The denominators are the numbers of CNAs/DSWs with matching SSNs in the LWC data.

²² LAC 48:9202 requires any health care facility, agency, or entity licensed and/or certified by LDH to access the registry (adverse actions list) prior to hiring any employee as a DSW.

Nursing facilities are required to access the CNA Registry prior to hiring a prospective employee but are not required to access the adverse actions list. As a result, nursing facilities may not be aware of CNAs with findings that occurred while working in healthcare settings other than nursing facilities. LDH is required by state regulations to maintain a list of CNAs, called the CNA Registry, that includes information about each CNA such as name, SSN, and reported work history. The CNA Registry also includes findings of abuse, neglect, and other misconduct. Prior to hiring a CNA, nursing facilities are required by state regulations to access the CNA Registry. If a prospective hire has a finding on the CNA Registry, the employer is prohibited from hiring them as a CNA.

LDH maintains two lists:

1. The **CNA Registry** includes findings for CNAs working at a nursing facility or skilled nursing facility (nursing facility).
2. The **adverse actions list** includes findings for DSWs, and for CNAs working in settings other than nursing facilities.

However, nursing facilities are not required to check the adverse actions list. This is important because, when a CNA works in a healthcare setting other than a nursing facility, the worker is considered a DSW. For example, a CNA working at an ICF is considered a DSW. According to LDH, for a finding to be placed on the CNA Registry, the incident must have occurred in a nursing facility. Therefore, if a CNA has a substantiated allegation of abuse/neglect while working as a DSW, LDH places that finding on the adverse actions list, not the CNA registry. As a result, the nursing facility would not be aware of the finding against the CNA. LDH should require that nursing facilities check the adverse actions list in addition to the CNA Registry to verify whether an individual that a provider intends to hire is not prohibited from working due to findings placed against him/her on the adverse actions list.

In addition, nursing facilities are not required to recheck the CNA registry or the adverse actions list for currently-employed CNAs. The risk is that a CNA may be added to the registry after being hired, coupled with the lag that currently exists before LDH adds individuals to the lists. LDH should require that nursing facilities recheck the CNA registry and the adverse actions list on a regular basis. For example, ICFs must recheck the adverse actions list every six months for DSWs.

Some healthcare providers, such as those providing home and community-based services (HCBS), automatically check the adverse actions list nightly to identify DSWs who should not be providing care. Individuals with developmental disabilities who choose to receive services in their home are eligible to receive Medicaid funded HCBS, which are often provided by DSWs. Electronic visit verification (EVV) is a computer-based process that electronically verifies if service visits occur, meaning the DSW actually went to the HCBS recipient's home. According to LDH, the purpose of the EVV system is to verify that individuals are receiving services, reduce inappropriate billing/payment, safeguard against fraud, and improve program oversight.

The data collected as part of the EVV is also used to conduct an automated nightly match to the LDH adverse actions list and also to the U.S. Department of Health and Human Services, Office of Inspector General (OIG) List of Excluded Individuals/Entities (LEIE)²³ to identify DSWs who should not be providing services to HCBS recipients. According to LDH, as of October 2024, it had matched 653 unique SSNs of DSWs on either the LDH adverse actions list or the OIG LEIE during December 2016 through September 2024. While these matches require additional review by LDH and employers, and do not always reflect that services were provided by a prohibited DSW, the automated nightly match helps ensure DSWs on the adverse actions list do not continue to provide care to vulnerable populations. LDH has the statutory authority²⁴ to establish requirements for healthcare providers and it should require healthcare providers such as nursing facilities and ICFs to automate checks to the adverse actions list, similar to HCBS providers, to more timely identify CNAs/DSWs who should not be providing services.

Recommendation 6: LDH should require that nursing facilities check the adverse actions list in addition to the CNA Registry, and should require that nursing facilities recheck the CNA registry and the adverse actions list on a regular basis.

Summary of Management's Response: LDH agrees with this recommendation and stated that it will promulgate rule changes within LAC 48:I Chapter 97 requiring nursing facilities to check the adverse actions list in addition to the CNA Registry. The revised rules will also require that nursing facilities recheck the CNA Registry and the adverse actions list periodically. LDH stated that it anticipates final rule publication no later than July 1, 2025. See Appendix A for LDH's full response.

Recommendation 7: LDH should require healthcare providers such as nursing facilities and ICFs to automate checks to the adverse actions lists, similar to HCBS providers.

Summary of Management's Response: LDH agrees with this recommendation and stated that the implementation of this recommendation may be subject to legislative appropriation for a software solution that will automate checks of the adverse actions lists for CNAs and DSWs of healthcare facilities such as nursing facilities and ICFs. See Appendix A for LDH's full response.

²³ The U.S. Department of Health and Human Services, Office of Inspector General (OIG) maintains a list of excluded individuals and entities. OIG has the authority to exclude individuals and entities from Federally funded health care programs for a variety of reasons, including a conviction for Medicare or Medicaid fraud. Anyone who hires an individual or entity on the LEIE may be subject to civil monetary penalties.

²⁴ For example, for ICFs, LRS 40:2180.2 provides that LDH shall promulgate licensing standards, rules, and regulations, regarding: licensing requirements, operating and staffing requirements, practice standards to assure quality of supports and services, survey and complaint investigations, and other regulations of standards as will ensure proper care and treatment as may be deemed necessary for effective administration.

APPENDIX A: MANAGEMENT'S RESPONSE

Jeff Landry
GOVERNOR



Michael Harrington, MBA, MA

State of Louisiana
Louisiana Department of Health
Office of the Secretary

VIA EMAIL

December 12, 2024

Michael J. "Mike" Waguespack, CPA
Legislative Auditor
1600 North 3rd Street
P.O. Box 94397
Baton Rouge, LA 70804-9397

Report Number: 40230040

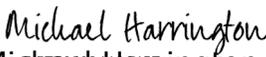
Dear Mr. Waguespack

Thank you for the opportunity to respond to the draft report (40230040), on the LDH's oversight of its *Adverse Actions Lists for Certified Nurse Aides and Direct Service Workers*. The Louisiana Department of Health (LDH) appreciates the Louisiana Legislative Auditor (LLA) allowing us the opportunity to review the findings for the audit periods reviewed.

As instructed by your letter dated November 21, 2024, attached is the completed checklist which includes LDH's written responses to each of the recommendations, and the improvement activities that LDH has developed and/or will develop to ensure that LDH addresses the potential limitations identified in the audit.

LDH appreciates the opportunity to respond to this audit. You may contact Tasheka Dukes/Deputy Assistant Secretary for HSS by telephone at (225) 342-4997 or by email at Tasheka.Dukes@LA.Gov with any questions concerning this matter.

Sincerely,

Signed by:

Michael Harrington, MBA, MA
Secretary

Signed by:

Ralph Abraham, MD
Surgeon General



MICHAEL J. "MIKE" WAGUESPACK, CPA
LOUISIANA LEGISLATIVE AUDITOR

Agency: Louisiana Department of Health

Audit Title: Adverse Actions Lists for Certified Nurse Aides and Direct Service Workers

Audit Report Number: 40230040

Instructions to Audited Agency: Please fill in the information below for each recommendation. A summary of your response for each recommendation will be included in the body of the report. The entire text of your response will be included as an appendix to the audit report.

Finding 1: LDH does not have formal criteria for what incidents of abuse and neglect should result in findings for CNAs/DSWs on the adverse actions lists. Such guidance would help ensure CNAs/DSWs are treated consistently for similar incidents.				
<i>Recommendation 1: LDH should establish formal criteria, such as policy or guidance for CNA/DSW reviewers for what factors should be considered when determining whether incidents of abuse/neglect should result in a finding on the adverse actions lists.</i>				
Does Agency Agree with Recommendation?		Agree	✓	Disagree
Agency Contact Responsible for Recommendation:				
<i>Name/Title: Tasheka Dukes / Deputy Assistant Secretary</i>				
<i>Address: P.O. Box 3767</i>				
<i>City, State, Zip: Baton Rouge, LA 70821</i>				
<i>Phone Number: 225-342-4997</i>				
<i>Email: Tasheka.Dukes@la.gov</i>				
<p>The Department disagrees with this finding and recommendation. State Regulations Minimum Licensing Standards LAC 48:1.9201, provides the following with regard to the Direct Service Worker Registry, "Abuse" is specifically defined as: "(1) the willful infliction of physical or mental injury; (2) causing deterioration by means including, but not limited to: (a) sexual abuse, (b) exploitation, or (c) extortion of funds or other things of value to such an extent that the health, moral or emotional well-being of the individual being supported is endangered; or (3) the willful infliction of injury, unreasonable confinement, intimidation or punishment which results in or which could reasonably be expected to result in physical or mental harm, pain or mental anguish. Lack of awareness or knowledge by the victim of the act which produced or which could have reasonably been expected to produce physical or mental injury or harm shall not be a defense to the charge of abuse." Additionally, "Neglect" is defined as: "the failure by a caregiver responsible for an adult's care or by other parties, to provide the proper or necessary support or medical, surgical, or any other care necessary for his/her well- being, unless the resident exercises his/her right to refuse the necessary care." Thus, the Department currently utilizes these</p>				

<p>definitions when determining whether incidents of abuse and/or neglect warrant a finding on the adverse actions lists. Considering this finding and recommendation, the Department will update its policies and procedures to mirror the criteria established in licensing and/or federal regulations for determining CNA/DSW incidents that result in a finding on adverse actions lists.</p>			
<p><i>Recommendation 2: LDH should conduct a formal supervisory review of findings before they are placed on the CNA/DSW adverse actions lists to help ensure that CNAs/DSWs are treated consistently for similar incidents.</i></p>			
Does Agency Agree with Recommendation?	<input type="checkbox"/>	Agree	<input checked="" type="checkbox"/> Disagree
<p>Agency Contact Responsible for Recommendation:</p>			
<p><i>Name/Title: Tasheka Dukes / Deputy Assistant Secretary</i></p>			
<p><i>Address: P.O. Box 3767</i></p>			
<p><i>City, State, Zip: Baton Rouge, LA 70821</i></p>			
<p><i>Phone Number: 225-342-4997</i></p>			
<p><i>Email: Tasheka.Dukes@la.gov</i></p>			
<p>All CNA/DSW may request an Informal Dispute Resolution and Administrative Hearing of adverse findings to determine whether such finding was appropriate or not. Considering this finding and recommendation, the Department will conduct supervisory reviews of a sample size of CNA/DSW abuse or neglect incident referrals before a finding is placed on the CNA/DSW adverse action list to determine if supervisory reviews are beneficial to the formal CNA/DSW evidence review process.</p>			

<p>Finding 2: LDH does not have formal criteria for how long CNA/DSW evidence reviews should take. We found that LDH took an average of 390 days for CNAs and 375 days for DSWs to add findings to the adverse actions lists after facilities reported allegations of abuse or neglect. According to LDH, it does not have adequate staff to conduct CNA/DSW evidence reviews timely.</p>			
<p><i>Recommendation 3: LDH should establish formal criteria, such as a policy or guidance that includes timeframes for how long its process to conduct evidence reviews for CNAs/DSWs and add findings the adverse actions lists should take. This policy should include a timeframe expectation for assigning a reviewer and for LDH to complete its evidence reviews.</i></p>			
Does Agency Agree with Recommendation?	<input checked="" type="checkbox"/>	Agree	<input type="checkbox"/> Disagree
<p>Agency Contact Responsible for Recommendation:</p>			
<p><i>Name/Title: Tasheka Dukes / Deputy Assistant Secretary</i></p>			
<p><i>Address: P.O. Box 3767</i></p>			
<p><i>City, State, Zip: Baton Rouge, LA 70821</i></p>			
<p><i>Phone Number: 225-342-4997</i></p>			

<i>Email: Tasheka.Dukes@LA.Gov</i>			
The Department acknowledges the benefit of additional updates to its policies and procedures regarding the CNA/DSW Registry and/or Adverse Action List, and it is currently updating these policies and procedures to include a process for managing delays caused by lags in communication from the healthcare providers regarding the Department’s inquiries into CNA/DSW allegations.			
<i>Recommendation 4: LDH should track key timeframes in the evidence review process such as the date it assigns a reviewer and the date it initiates the evidence review; and monitor CNA/DSW review staff for compliance with timeframe expectations.</i>			
Does Agency Agree with Recommendation?	<input checked="" type="checkbox"/>	Agree	<input type="checkbox"/> Disagree
Agency Contact Responsible for Recommendation:			
<i>Name/Title: Tasheka Dukes / Deputy Assistant Secretary</i>			
<i>Address: P.O. Box 3767</i>			
<i>City, State, Zip: Baton Rouge, LA 70821</i>			
<i>Phone Number: 225-342-4997</i>			
<i>Email: Tasheka.Dukes@LA.Gov</i>			
As of September 2024, the Department has implemented a new process of ensuring key time frames are monitored to better track the status of investigations, investigation deadlines, and any pressure points that continue to cause delays in meeting time frame deadlines. This new process includes the use of a new e-mail box for all referrals received. This e-mail box is consistently monitored by all members of the evidence review team. In addition, the CNA/DSW incident referral log has been updated for user-friendly efficiency and functionality with additional fields to better track key dates and provide overview and status updates for the referral.			
<i>Recommendation 5: LDH should ensure it is adequately staffed to conduct CNA/DSW evidence reviews to help ensure timely additions to the adverse actions lists.</i>			
Does Agency Agree with Recommendation?	<input checked="" type="checkbox"/>	Agree	<input type="checkbox"/> Disagree
Agency Contact Responsible for Recommendation:			
<i>Name/Title: Tasheka Dukes / Deputy Assistant Secretary</i>			
<i>Address: P.O. Box 3767</i>			
<i>City, State, Zip: Baton Rouge, LA 70821</i>			
<i>Phone Number: 225-342-4997</i>			
<i>Email: Tasheka.Dukes@LA.Gov</i>			
There is currently a backlog of CNA/DSW incident evidence reviews due to the increase in CNA/DSW incident referrals. The Department is currently exploring options to manage the backlog and support the program desk in managing the increased workload.			

<p>Finding 3: We identified individuals that potentially worked as CNAs and DSWs in prohibited healthcare settings after being added to the adverse actions lists. Some healthcare providers, such as home and community-based service providers (HCBS), conduct automated nightly checks to identify DSWs that should not be providing care.</p>			
<p><i>Recommendation 6: LDH should require that nursing facilities check the adverse actions list in addition to the CNA Registry, and should require that nursing facilities recheck the CNA registry and the adverse actions list on a regular basis.</i></p>			
Does Agency Agree with Recommendation?	<input checked="" type="checkbox"/>	Agree	<input type="checkbox"/> Disagree
<p>Agency Contact Responsible for Recommendation:</p>			
<p><i>Name/Title: Tasheka Dukes / Deputy Assistant Secretary</i></p>			
<p><i>Address: P.O. Box 3767</i></p>			
<p><i>City, State, Zip: Baton Rouge, LA 70821</i></p>			
<p><i>Phone Number: 225-342-4997</i></p>			
<p><i>Email: Tasheka.Dukes@LA.Gov</i></p>			
<p>The Department will promulgate rule changes within LAC 48:I.Chapter 97 requiring nursing facilities to check the adverse actions list in addition to the CNA Registry. The revised rules will also require that nursing facilities recheck the CNA registry and the adverse actions list periodically. The Department anticipates final rule publication no later than July 1, 2025.</p>			
<p><i>Recommendation 7: LDH should require healthcare providers such as nursing facilities and ICFs to automate checks to the adverse actions lists, similar to HCBS providers.</i></p>			
Does Agency Agree with Recommendation?	<input checked="" type="checkbox"/>	Agree	<input type="checkbox"/> Disagree
<p>Agency Contact Responsible for Recommendation:</p>			
<p><i>Name/Title: Tasheka Dukes / Deputy Assistant Secretary</i></p>			
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<p><i>Phone Number: 225-342-4997</i></p>			
<p><i>Email: Tasheka.Dukes@LA.Gov</i></p>			
<p>The Department agrees with this recommendation. Please note that the implementation of this recommendation may be subject to legislative appropriation for a software solution that will automate checks of the adverse action lists for CNAs and DSWs of healthcare facilities such as nursing facilities and ICFs</p>			

APPENDIX B: SCOPE AND METHODOLOGY

This report provides the results of our performance audit of the Louisiana Department of Health's (LDH) oversight of its adverse actions lists for Certified Nurse Aides (CNAs) and Direct Service Workers (DSWs) with findings of abuse and neglect. We conducted this performance audit under the provisions of Title 24 of the Louisiana Revised Statutes of 1950, as amended. This audit covered fiscal years 2019 through 2023. Our audit objective was:

Objective: To evaluate LDH's oversight of its adverse actions lists for Certified Nurse Aides and Direct Service Workers with findings of abuse and neglect.

We conducted this performance audit in accordance with generally-accepted *Government Auditing Standards* issued by the Comptroller General of the United States. Those standards require that we plan and perform the audit to obtain sufficient, appropriate evidence to provide a reasonable basis for our findings and conclusions based on our audit objective. We believe the evidence obtained provides a reasonable basis for our findings and conclusions based on our audit objective.

We obtained an understanding of internal control that is significant to the audit objective and assessed the design and implementation of such internal control to the extent necessary to address our audit objective. We also obtained an understanding of legal provisions that are significant within the context of the audit objective, and we assessed the risk that illegal acts, including fraud, and violations of applicable contract, grant agreement, or other legal provisions could occur. Based on that risk assessment, we designed and performed procedures to provide a reasonable assurance of detecting instances of noncompliance significant to those provisions.

To answer our objective, we performed the following audit steps:

- Researched relevant federal and state laws, regulations, and policies related to CNAs/DSWs, the adverse actions lists (the CNA Registry and the DSW Registry), the due process for CNAs/DSWs who feel they have been wrongly accused, and employment requirements for healthcare providers that employ CNAs/DSWs.
- Researched best practices related to regulatory and oversight entities.
- Interviewed LDH management and staff to obtain an understanding of the oversight activities and the adverse actions lists, as well as the processes for conducting evidence reviews for allegations, and adding a CNA/DSW to the adverse actions lists.

- Obtained and analyzed LDH's adverse actions lists of substantiated findings for CNAs and DSWs to calculate statistics pertaining to the number of CNAs/DSWs added and the types of findings added to the lists during our scope.
- Obtained and analyzed Statewide Incident Management System (SIMS) data, which includes all facility reported incidents (FRIs) to calculate the length of time to add CNAs/DSWs to the adverse actions lists. The total number of incidents reported and substantiated by facilities during fiscal year 2019 through 2023 was 446 for CNAs from nursing facilities and 1,051 for DSWs from intermediate care facilities for individuals with developmental disabilities (ICFs).
 - To identify our selection for analysis, we identified those CNAs/DSWs with allegations of abuse and neglect who were added to the adverse actions lists (34 CNAs and 46 DSWs). This analysis is based on self-reported data from nursing facilities and ICFs. While we conducted reasonableness testing on this data by tracing a selection of evidence review documents provided by LDH to corroborate our analysis, we did not verify the reliability of this data.
- Obtained and analyzed LDH's internal CNA/DSW referral tracking data to calculate statistics pertaining to the number of referrals that resulted in a finding and placement on the adverse actions lists. We also used this data to calculate the length of time to initiate an evidence review and to add CNAs/DSWs to the adverse actions lists. We conducted reasonableness testing on this data, and LDH verified the dates for the selection used in the analysis.
- Obtained and analyzed quarterly state wage data from the Louisiana Workforce Commission (LWC) to test for instances of DSWs working for ICFs or other healthcare providers and CNAs working for nursing facilities or other healthcare providers after being added to the adverse actions lists. This analysis is based on self-reported quarterly wage data from employers to LWC. While we conducted reasonableness testing on this data, we did not verify the reliability of this data.
- LDH provided information about the electronic visit verification (EVV) system and its utilization by home and community-based service providers.
- Provided the preliminary results of our analyses to LDH to obtain feedback on our methodology, and to confirm results.