Department of Health and Human Services

OFFICE OF INSPECTOR GENERAL

ASPR COULD IMPROVE ITS OVERSIGHT OF THE HOSPITAL PREPAREDNESS PROGRAM TO ENSURE THAT CRISIS STANDARDS OF CARE COMPLY WITH FEDERAL NONDISCRIMINATION LAWS

Inquiries about this report may be addressed to the Office of Public Affairs at Public.Affairs@oig.hhs.gov.

Christi A. Grimm
Inspector General

January 2023
A-01-21-01502

Office of Inspector General

https://oig.hhs.gov

The mission of the Office of Inspector General (OIG), as mandated by Public Law 95-452, as amended, is to protect the integrity of the Department of Health and Human Services (HHS) programs, as well as the health and welfare of beneficiaries served by those programs. This statutory mission is carried out through a nationwide network of audits, investigations, and inspections conducted by the following operating components:

Office of Audit Services

The Office of Audit Services (OAS) provides auditing services for HHS, either by conducting audits with its own audit resources or by overseeing audit work done by others. Audits examine the performance of HHS programs and/or its grantees and contractors in carrying out their respective responsibilities and are intended to provide independent assessments of HHS programs and operations. These audits help reduce waste, abuse, and mismanagement and promote economy and efficiency throughout HHS.

Office of Evaluation and Inspections

The Office of Evaluation and Inspections (OEI) conducts national evaluations to provide HHS, Congress, and the public with timely, useful, and reliable information on significant issues. These evaluations focus on preventing fraud, waste, or abuse and promoting economy, efficiency, and effectiveness of departmental programs. To promote impact, OEI reports also present practical recommendations for improving program operations.

Office of Investigations

The Office of Investigations (OI) conducts criminal, civil, and administrative investigations of fraud and misconduct related to HHS programs, operations, and beneficiaries. With investigators working in all 50 States and the District of Columbia, OI utilizes its resources by actively coordinating with the Department of Justice and other Federal, State, and local law enforcement authorities. The investigative efforts of OI often lead to criminal convictions, administrative sanctions, and/or civil monetary penalties.

Office of Counsel to the Inspector General

The Office of Counsel to the Inspector General (OCIG) provides general legal services to OIG, rendering advice and opinions on HHS programs and operations and providing all legal support for OIG's internal operations. OCIG represents OIG in all civil and administrative fraud and abuse cases involving HHS programs, including False Claims Act, program exclusion, and civil monetary penalty cases. In connection with these cases, OCIG also negotiates and monitors corporate integrity agreements. OCIG renders advisory opinions, issues compliance program guidance, publishes fraud alerts, and provides other guidance to the health care industry concerning the anti-kickback statute and other OIG enforcement authorities.

Notices

THIS REPORT IS AVAILABLE TO THE PUBLIC

at https://oig.hhs.gov

Section 8M of the Inspector General Act, 5 U.S.C. App., requires that OIG post its publicly available reports on the OIG website.

OFFICE OF AUDIT SERVICES FINDINGS AND OPINIONS

The designation of financial or management practices as questionable, a recommendation for the disallowance of costs incurred or claimed, and any other conclusions and recommendations in this report represent the findings and opinions of OAS. Authorized officials of the HHS operating divisions will make final determination on these matters.

Report in Brief
Date: January 2023
Report No. A-01-21-01502

U.S. DEPARTMENT OF HEALTH & HUMAN SERVICES
OFFICE OF INSPECTOR GENERAL

ASPR Could Improve Its Oversight of the Hospital Preparedness Program To Ensure That Crisis Standards of Care Comply With Federal Nondiscrimination Laws

Why OIG Did This Audit

In 2020, during the COVID-19 pandemic, individuals with disabilities and their advocates filed complaints with HHS's Office for Civil Rights (OCR) asserting that six States had language in their Crisis Standards of Care (CSCs) that could result in individuals being denied treatment because of their disabilities.

Our objective was to determine whether the Administration for Strategic Preparedness and Response's (ASPR's) oversight of the Hospital Preparedness Program (HPP) could be improved with respect to recipients adopting CSCs that comply with Federal nondiscrimination laws.

How OIG Did This Audit

We reviewed complaints filed by individuals with disabilities and their advocates with OCR as well as their subsequent resolutions. We also conducted interviews with officials from ASPR and 11 States with a focus on their development of CSC planning documents and their considerations of and compliance with Federal civil rights laws from July 2019 through June 2021. Furthermore, we reviewed the HPP cooperative agreements as well as Federal nondiscrimination laws and regulations. Of the States included in our interviews, six had complaints that had been filed and resolved with OCR during the COVID-19 pandemic. We judgmentally selected the other five States to provide input from various regions in different stages of CSC planning.

What OIG Found

Although ASPR has taken steps to improve its oversight of the HPP by promoting the adoption of nondiscriminatory CSCs that comply with Federal nondiscrimination laws, it can take additional steps. The HPP cooperative agreement did not previously specify that States should consider Federal nondiscrimination laws when developing CSCs because prior to the COVID-19 pandemic, ASPR did not identify CSC compliance with Federal nondiscrimination laws as a high-risk area. Additionally, ASPR stated that it is not required to review CSCs for legal and regulatory compliance. CSCs that do not comply with Federal nondiscrimination laws increase the risk that individuals could be denied access to lifesaving care during a public health emergency.

What OIG Recommends and ASPR Comments

We recommend that ASPR consider additional updates to the current HPP cooperative agreement to promote that HPP recipients adopt CSCs that comply with Federal nondiscrimination laws. We acknowledge that ASPR has taken steps in previous HPP updates to promote compliance with Federal nondiscrimination laws; however, we believe that additional steps can be taken. Such steps could include an additional update to the HPP cooperative agreement to encourage recipients to engage with advocacy groups in decision making related to crisis care planning.

In written comments on our draft report, ASPR said that it accepts our recommendation to include additional updates in the HPP cooperative agreement to promote the adoption of CSCs that comply with Federal nondiscrimination laws. ASPR stated that when the audit began in 2021, it acted immediately to address the findings noted during the meetings and discussions with OIG auditing staff. At the time of the audit, ASPR was in the process of developing the fiscal year 2021 HPP cooperative agreement continuation guidance. ASPR stated that based on the discussions and gaps identified during the auditing process, it was able to modify the guidance at that time to ensure that it met the CSC Concept of Operations requirements. In addition, ASPR stated that the action it has taken to update the HPP cooperative agreement addresses the recommendation and that no further action is necessary.

TABLE OF CONTENTS

INTRODUCTION

WHY WE DID THIS AUDIT

The Department of Health and Human Services' (HHS's) Administration for Strategic Preparedness and Response (ASPR)[1] provides funding to recipients through the Hospital Preparedness Program (HPP) to support the development of guidelines, known as Crisis Standards of Care (CSCs), to help organizations deliver care and allocate resources during public health emergencies.[2] COVID-19 has created extraordinary challenges for the delivery of health care and human services to the American people. In 2020, during the COVID-19 pandemic, individuals with disabilities and their advocates filed complaints with the HHS Office for Civil Rights (OCR) asserting that six States had discriminatory language in their CSCs that could result in individuals being denied treatment because of their disabilities.

OBJECTIVE

Our objective was to determine whether ASPR's oversight of the HPP could be improved with respect to recipients adopting CSCs that comply with Federal nondiscrimination laws.

BACKGROUND

The Administration for Strategic Preparedness and Response

Within HHS, ASPR leads the Nation's preparedness for disasters and public health emergencies. ASPR works with hospitals, health care coalitions (HCCs), biotech firms, community members; State, local, Tribal, and territorial governments; and other partners nationwide to improve readiness and response capabilities.[3]

As part of its emergency preparedness responsibilities, ASPR writes the National Health Security Strategy (NHSS) on behalf of the Secretary of HHS. Congress requires this document and a

---

[1] ASPR was formerly known as the Office of the Assistant Secretary for Preparedness and Response.

[2] The HPP provided funding to 62 recipients that include the 50 States; the District of Columbia; the local governments of Chicago, Los Angeles County, and New York City; and the territorial governments and freely associated States of American Samoa, the Commonwealth of the Northern Mariana Islands, the Federated States of Micronesia, Guam, Puerto Rico, the Republic of the Marshall Islands, the Republic of Palau, and the U.S. Virgin Islands.

[3] ASPR defines an HCC as a group of individual health care and response organizations (e.g., hospitals, emergency medical services, emergency management organizations, and public health agencies) in a defined geographic location that play a critical role in developing health care system preparedness and response capabilities.

related Implementation Plan and Evaluation of Progress to be issued every 4 years.[4] The NHSS "describes potential emergency health security threats and identifies the process for achieving the preparedness goals . . . to be prepared to identify and respond to such threats and shall be consistent with the national preparedness goal" (42 U.S.C. § 300hh-1(a)). To carry out the NHSS, ASPR issued the *Health Care Preparedness and Response Capabilities* document, which describes the activities that must be met for the Nation's health care system to achieve a state of ideal readiness.

The Hospital Preparedness Program

ASPR administers the HPP, which provides funding through a cooperative agreement in 5-year periods to health department recipients in all 50 States, 8 territories and freely associated States, 3 metropolitan areas (i.e., Los Angeles County, Chicago, New York City), and Washington, DC, to improve the capacity of health care systems by planning for large-scale emergencies and disasters.[5, 6] Currently, the HPP follows the *2017–2022 Health Care Preparedness and Response Capabilities* (the Capabilities document).[7] The Capabilities document outlines the high-level objectives that the Nation's health care delivery system, including HCCs and individual health care organizations, should undertake to prepare for, respond to, and recover from emergencies. The Capabilities document illustrates the range of preparedness and response activities that, if conducted, represent the ideal state of readiness in the United States. The Capabilities document includes a focus on building and sustaining health care preparedness for medical surges. A medical surge is the ability of a health care system to provide conventional care during a crisis, such as a pandemic or disaster, that exceeds the limits of the normal medical infrastructure. For example, the need for ventilators could exceed the current supply during a pandemic in spite of mitigation efforts.

The HPP provides funds to recipients to support HCCs. These networks of individual and private organizations work together to prepare heath care systems to respond to emergencies and disasters, ultimately increasing local and regional resilience. ASPR's 2012–2017 HPP cooperative agreement included requirements for recipients to develop CSC guidance for

---

[4] The next NHSS will be for the period 2023–2026 and is expected to be issued in 2022.

[5] The current HPP funding period is from July 2019 through June 2024. Although ASPR continues to use the name "Hospital Preparedness Program," beginning in 2012 and continuing to the present, ASPR shifted the program's focus away from individual hospitals and toward HCCs.

[6] In a cooperative agreement, a Federal agency awards financing and other assistance to a recipient to carry out a public purpose rather than acquiring property or services for the agency. The Federal agency maintains substantial involvement in carrying out the activity funded by the award.

[7] ASPR identified four Capabilities: (1) Foundation for Health Care and Medical Readiness, (2) Health Care and Medical Response Coordination, (3) Continuity of Health Care Service Delivery, and (4) Medical Surge. Available online at https://www.phe.gov/Preparedness/planning/hpp/reports/Documents/2017-2022-healthcare-pr-capablities.pdf. (Accessed on August 10, 2022.)

health care organizations to assist with treatment decisions for a surge of casualties during periods of scarce resources. The 2017–2022 cooperative agreement included requirements for recipients to document their processes to oversee CSC planning and to coordinate all local or regional planning efforts.

For the 2019–2023 funding period, ASPR updated the HPP cooperative agreement to require that recipients submit a new or updated CSC Concept of Operations (CONOPS) by June 30, 2021. A CONOPS is a document describing the characteristics of a proposed system and generally includes a description of how a set of capabilities may be employed to achieve desired objectives. The CONOPS does not specify clinical care requirements, which are determined by clinical care providers as they would be responsible for allocating scarce medical resources to patients during a medical surge. In April 2020, ASPR updated the cooperative agreement to clarify that the CONOPS provides a description of State-level activities during crisis situations and does not require a comprehensive CSC plan.[8] A comprehensive CSC plan contains planning documents extending from the recipient level through the provider level where patient care occurs. However, ASPR noted that it highly encouraged the continued development of comprehensive CSC plans.

As a result of complaints filed with OCR during the COVID-19 pandemic, ASPR updated the CONOPS guidance in June 2021 to explicitly state that the CONOPS must comply with nondiscrimination laws and that civil rights are not suspended or waived in times of disaster, including COVID-19. ASPR also updated the HPP cooperative agreement to encourage recipients to engage the community and clinicians involved in crisis care planning and decision making, including those who have or may need to make future real-world CSC decisions. Furthermore, ASPR extended the deadline for the submission of the CONOPS to June 30, 2022, to allow recipients to make changes related to the nondiscrimination requirements.

ASPR officials stated that as of June 30, 2020, 33 of 62 HPP recipients (53 percent) reported they had completed their CONOPS, 28 recipients reported their CONOPS were in progress, and 1 recipient reported no progress toward the completion of its CONOPS.[9] During our interviews, ASPR stated that the CONOPS is a "living document." In fact, all recipients must submit a new or updated version by the end of fiscal year (FY) 2021. Therefore, over time, completed documents are expected to be updated and resubmitted. For example, a recipient may need to update its CONOPS to comply with additional nondiscrimination guidance. As of June 2021, 34 of 62 HPP recipients (55 percent) reported that they had completed their CONOPS, 24 recipients reported that their CONOPS was in progress, and 4 recipients reported no progress toward the completion of their CONOPS. ASPR is in the process of verifying recipient data for

[8] Starting in the April 2020 Cooperative Agreement update, ASPR referred to a CSCs as comprehensive CSC plans.

[9] The June 30, 2020, CONOPS statistics represented information that was the closest to the start of the pandemic and the best available at the time of our fieldwork.

the FY 2021. These data will be available in the near future for ASPR to measure the number of recipients submitting new or updated versions of their CONOPS.

Crisis Standards of Care Planning

The HPP funds CSC planning and other activities including training and exercises that prepare HCC organizations to handle emergencies. The HPP cooperative agreement assigns different responsibilities to recipients and HCCs to prepare for a potential medical crisis. For example, the 2019–2023 cooperative agreement requires recipients to develop a CONOPS and HCCs to develop "annexes," which are planning documents that address specific emergency events.[10]

According to the 2019–2023 cooperative agreement, the CONOPS must include ethical considerations and subject matter experts for consultation during emergencies, guidance for emergency medical services and providers on health care strategies, the indicators and triggers for State activation of CSCs, supportive actions the State will undertake in prolonged crisis situations, and an operational framework for State-level information management and policy development. This framework includes real-time engagement of subject matter experts for technical support with allocation decisions and the coordination and decision processes for the allocation of scarce resources (e.g., pharmaceuticals or personal protective equipment) to the health and medical sector. Furthermore, the CONOPS should include legal and regulatory actions to be taken that can support health care strategies during crisis care conditions.

ASPR further requires recipients to incorporate HCC annexes into their medical surge planning for awareness and to support coordination of resources. The cooperative agreement defines an annex as a specialty surge framework that is meant to help HCCs "manage a large number of casualties with specific needs."

In the 2019–2022 NHSS, ASPR stated that the collective group of stakeholders with responsibilities for national health security (including ASPR) must continue to address preparedness by ensuring that, among other things, CSCs "are clearly described and readily understood by healthcare providers." Additionally, State officials we interviewed informed us that CSCs will need to be continually updated and could include updates based on lessons learned from the COVID-19 pandemic.

Office for Civil Rights Complaints

OCR enforces Federal laws that protect individuals' rights to nondiscrimination, conscience and religious freedom, and health information privacy and security. During the COVID-19

[10] The CONOPS focuses on State-level operations and includes, among other things and as applicable, the roles and responsibilities of State agencies during a crisis and regulatory actions the State may take during a crisis. A comprehensive CSC plan contains planning documents extending from the State level to the provider level where patient care occurs.

pandemic, individuals with disabilities and their advocates filed complaints with OCR asserting that six States had language in their CSCs that did not comply with Federal nondiscrimination laws.[11] The advocacy groups that filed the complaints were the designated protection and advocacy system within each State as required by Federal law.[12] Under Federal law, these systems have the authority to pursue legal, administrative, and other remedies to protect individuals with disabilities as well as investigate reported incidents of abuse and neglect against individuals with disabilities. These systems often work with other advocacy groups in their States to protect individuals with physical, mental, developmental, and other disabilities from abuse, neglect, and violations of their rights.

One complaint alleged that Utah's CSCs unlawfully disqualified persons with advanced neuromuscular disease, dementia, cystic fibrosis, and other disabilities that require assistance with daily living from receiving lifesaving care during a public health emergency. The complaint also alleged that the CSCs relied on assessment tools that deprioritized people with disabilities for conditions unrelated to their ability to survive COVID-19. Another complaint alleged that Tennessee's CSCs unlawfully disqualified individuals with advanced neuromuscular disease, metastatic cancer, traumatic brain injury, dementia, and other disabilities from use of ventilators in times of scarcity.

In response to these complaints, OCR worked with States and their HCCs to provide technical assistance in drafting updated CSCs that complied with Federal civil rights laws. Specifically, OCR worked with States and their HCCs to remove potentially discriminatory language and provisions from CSCs while incorporating language and provisions that added protections against potential future discriminatory provisions. All six complaints resulted in resolutions that were published by OCR.[13]

Although ASPR has no legal authority to enforce compliance with nondiscrimination laws, it has a leadership role with respect to CSC planning.[14] ASPR provides guidance documents, technical assistance, and a private online discussion board where recipients and other stakeholders can discuss CSC planning and other preparedness topics. Furthermore, ASPR can impact CSC planning through HPP requirements.

---

[11] The following States or their HCCs had complaints filed with OCR: Alabama, North Carolina, Pennsylvania, Tennessee, Texas, and Utah.

[12] Federal laws include the Developmental Disabilities Assistance and Bill of Rights Act, 42 U.S.C. § 15041 et seq.; Protection and Advocacy for Individuals with Mental Illness Act, as amended, 42 U.S.C. § 10801, et seq.; and Protection and Advocacy for Individual Rights Act, 29 U.S.C. § 794e.

[13] OCR published to the HHS.gov website the resolutions for Alabama, Pennsylvania, Tennessee, Utah, North Carolina, and Texas. (Accessed on January 9, 2023.)

[14] OCR is responsible for enforcing civil rights laws that apply to recipients of Federal assistance from HHS. Although ASPR does not have enforcement authority, its officials explained during our interviews that they view OCR as a partner with regard to civil rights compliance in CSC planning.

HOW WE CONDUCTED THIS AUDIT

We reviewed complaints filed by individuals with disabilities and their advocates with OCR asserting that six States had language in their CSCs that did not comply with Federal nondiscrimination laws as well as their subsequent resolutions (footnote 11). We also conducted interviews with officials from ASPR and 11 States with a focus on their development of CSCs and their considerations of, and compliance with, Federal civil rights laws from July 2019 through June 2021.[15] Furthermore, we reviewed the HPP cooperative agreements as well as Federal nondiscrimination laws and regulations. Of the States included in our interviews, six had complaints that had been filed and resolved with OCR during the COVID-19 pandemic.[16] We judgmentally selected the other five States to provide input from various regions in different stages of CSC planning.[17] We selected these additional States because they did not have complaints filed with OCR due to their CSC documents, and they represented different regions within the United States, which provided a nationwide perspective.

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

Appendix A contains the details of our audit scope and methodology.

FINDING

Although ASPR has taken steps to improve its oversight of the HPP by promoting the adoption of nondiscriminatory CSCs that comply with Federal nondiscrimination laws, it can take additional steps. The HPP cooperative agreement did not previously specify that States should consider Federal nondiscrimination laws when developing CSCs because prior to the COVID-19 pandemic, ASPR did not identify CSC compliance with Federal nondiscrimination laws as a high-risk area. Additionally, ASPR stated that it is not required to review CSCs for legal and regulatory compliance. CSCs that do not comply with Federal nondiscrimination laws increase the risk that individuals could be denied access to lifesaving care during a public health emergency.

---

[15] The most recent cooperative agreement period covers FYs 2019 through 2023.

[16] We conducted interviews with State officials from Alabama, North Carolina, Pennsylvania, Tennessee, Texas, and Utah after the States or HCCs had worked with OCR to resolve the complaints filed against them.

[17] We conducted interviews with State officials from California, Nevada, North Dakota, Vermont, and Wisconsin in addition to the States that had complaints filed with OCR.

ASPR CAN IMPROVE ITS OVERSIGHT OF THE HOSPITAL PREPAREDNESS PROGRAM BY PROMOTING THE ADOPTION OF NONDISCRIMINATORY CRISIS STANDARDS OF CARE

Federal Nondiscrimination Requirements

Federal awarding agencies must administer awards in a manner that ensures funding is expended and programs are implemented in accordance with U.S. statutory requirements, including those that prohibit discrimination (45 CFR § 75.300(a)). Various Federal laws protect individuals from discrimination based on race, color, or national origin (Title VI of Civil Rights Act of 1964, 42 U.S.C. § 2000d); disability (§ 504 of Rehabilitation Act of 1973, 29 U.S.C. §701); and age (Age Discrimination Act of 1975, 42 U.S.C. § 6101).

Additionally, the Secretary of HHS must take steps to protect at-risk individuals, including during a public health emergency (42 U.S.C. § 300hh–16). HPP recipients must include preparedness and response strategies and capabilities that take into account the medical and public health needs of at-risk individuals in the event of a public health emergency. They must also provide and update novel and best practices of outreach to, and care of, at-risk individuals before, during, and following public health emergencies in as timely a manner as is practicable.

The 2019–2023 HPP cooperative agreement stated that recipients "must not discriminate on the basis of race, color, national origin, disability, age, and in some cases sex and religion." It also informed recipients that OCR provides guidance to recipients on how to comply with civil rights laws that prohibit discrimination. In June 2021, during our audit, ASPR updated the HPP cooperative agreement to specify that the CONOPS must comply with nondiscrimination laws and that civil rights are not suspended or waived in the times of disaster, including COVID-19.

ASPR Could Use the Hospital Preparedness Program To Better Promote Nondiscrimination

In the June 2021 updated HPP cooperative agreement, ASPR required recipients to submit a CONOPS that included actions to engage the community and clinicians for crisis care planning and decision making. However, ASPR could further use the HPP cooperative agreement to promote the importance of HPP recipients' adoption of CSCs that comply with Federal nondiscrimination laws. These updates to the HPP could include encouraging recipients to include advocacy groups that represent potentially vulnerable populations in crisis care planning and decision making. Members of these advocacy groups brought attention to the issue of discriminatory language in CSC documents through complaints filed with OCR. Most of the States that had complaints filed against their CSCs with OCR had not included advocacy groups in the CSC planning process prior to the start of COVID-19. We did note that some States began working with advocacy groups shortly before the complaints were filed with OCR (but after the start of COVID-19), intended to include advocacy groups in the planning process but were unable to due to COVID-19, or started working with advocacy groups after the complaints had been filed with OCR. Inclusion of advocacy groups as part of community engagement could provide an opportunity to share their perspectives and challenges in clinical crisis care decision making. Additionally, State officials we interviewed informed us that CSCs

will need to be continually updated and could include updates based on lessons learned from the COVID-19 pandemic.

In part, the complaints about discrimination occurred because prior to the current pandemic ASPR did not identify CSC compliance with Federal nondiscrimination laws as an area of high risk. ASPR was not aware of the problematic CSCs until complaints were filed with OCR. Additionally, ASPR officials stated that ASPR does not have a legal or regulatory requirement to review CSCs. Furthermore, ASPR stated that it is not a regulatory body and, although it can add requirements to the cooperative agreement, it cannot compel recipients to follow them as it is difficult to withhold Federal funding for noncompliance. CSCs that comply with Federal nondiscrimination laws help to protect individuals from being denied access to lifesaving care during a public health emergency.

RECOMMENDATION

We recommend that the Administration for Strategic Preparedness and Response consider additional updates to the current HPP cooperative agreement to promote that HPP recipients adopt CSCs that comply with Federal nondiscrimination laws. We acknowledge that ASPR has taken steps in previous HPP updates to promote compliance with Federal nondiscrimination laws; however, we believe additional steps can be taken. Such steps could include an additional update to the HPP cooperative agreement to encourage recipients to engage with advocacy groups in decision making related to crisis care planning.

ADMINISTRATION FOR STRATEGIC PREPAREDNESS AND RESPONSE COMMENTS

In written comments on our draft report, ASPR said that it accepts our recommendation to include additional updates in the HPP cooperative agreement to promote the adoption of CSCs that comply with Federal nondiscrimination laws. ASPR stated that when the audit began in 2021, it acted immediately to address the findings noted during the meetings and discussions with OIG auditing staff. At the time of the audit, ASPR was in the process of developing the FY 2021 HPP cooperative agreement continuation guidance. ASPR stated that based on the discussions and gaps identified during the auditing process, it was able to modify the guidance at that time to ensure that it met the CSC CONOPS requirements. In addition, ASPR stated that the action it has taken to update the HPP cooperative agreement addresses the recommendation and that no further action is necessary.

ASPR also provided us written technical comments that we addressed as appropriate. ASPR's comments, excluding its technical comments, are included as Appendix B.

OTHER MATTERS: COMMENTS FROM STATE OFFICIALS

We noted that 29 recipients (28 recipients had made progress, but 1 recipient had not made progress toward completion) did not have a completed CONOPS in place as of June 30, 2020,

and ASPR did not provide these recipients with specific reminders to include nondiscrimination provisions in their CONOPS. During our audit, we conducted interviews with officials from 11 States.[18] State officials indicated that they found the technical resources provided by ASPR to be valuable in helping them to develop their CSCs. However, some State officials said that it would be beneficial if ASPR:[19]

- organized information on its website to be more relevant and user friendly,
- provided templates or matrixes of best practices for the development of CSCs,
- organized peer-to-peer forums or conferences to review lessons learned from the COVID-19 pandemic and to aid in ongoing CSC planning, and
- provided training designed for lawyers and others involved in legal issues of CSC planning.

[18] We conducted interviews with officials from Alabama, North Carolina, Tennessee, Utah, Pennsylvania, Vermont, Texas, Wisconsin, Nevada, California, and North Dakota.

[19] This is relevant to the improvement of the HPP as a whole and not specifically to promote the importance of adopting CSCs that comply with nondiscrimination laws.

APPENDIX A: SCOPE AND METHODOLOGY

SCOPE

We interviewed officials from six States that had complaints filed with OCR because of their CSCs. We also interviewed officials from five different States that did not have complaints against them because of their CSCs. These States were in different stages of the CSC planning process and did not all have a completed CONOPS. We focused on their development of CSCs that complied with Federal civil rights laws from July 2019 through June 2021. We assessed ASPR's controls over its design of HPP recipient requirements and HPP recipients' fulfillment of those requirements. We looked at how ASPR set the overall program requirements and controls and reviewed requirements and controls specific to CSC planning and compliance with Federal civil rights laws.

We conducted our fieldwork from January 2021 through November 2022.

METHODOLOGY

To accomplish our objective, we:

- reviewed Federal laws and regulations,
- reviewed cooperative agreements,
- reviewed nondiscrimination complaints filed by individuals with disabilities and their advocacy groups and OCR resolution of the complaints,
- interviewed OCR officials to obtain an understanding of the complaints filed and the resolution process,
- interviewed ASPR officials to obtain an understanding of the HPP program and CSC planning process,
- interviewed State officials to obtain information on difficulties they encountered during the CSC planning process, and
- discussed the results of the audit with ASPR officials.

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

DEPARTMENT OF HEALTH & HUMAN SERVICES

Administration for Strategic Preparedness and Response
Washington, D.C. 20201

DATE: 11/21/2022

TO: Amy J. Frontz
Deputy Inspector General for Audit Services
Office of the Inspector General

FROM: Dawn O'Connell
Assistant Secretary for Preparedness and Response
Administration for Strategic Preparedness and Response

SUBJECT: OIG Draft Report: *ASPR Could Improve Its Oversight of the Hospital Preparedness Program To Ensure That Crisis Standards of Care Comply With Federal Nondiscrimination Laws,* A-01-21-01502

Thank you for sharing the results of the audit conducted by the Department of Health and Human Services' (HHS) Office of the Inspector General (OIG) which reviewed complaints filed with the Office of Civil Rights (OCR) during the COVID-19 pandemic. These complaints addressed concerns regarding states' Crisis Standards of Care (CSC) language, the Hospital Preparedness Program (HPP) cooperative agreement, and other federal nondiscrimination laws and regulations. The Administration for Strategic Preparedness and Response accepts OIG's recommendation to include additional updates in the HPP cooperative agreement to promote adoption of CSCs that comply with federal nondiscrimination laws.

In addition, it is important for the OIG to know that that, when the audit began in 2021, ASPR took actions immediately to address the findings noted during the meetings and conversations with OIG auditing staff. At the time of the audit in 2021, ASPR was in the process of developing the Fiscal Year (FY) 2021 HPP cooperative agreement continuation guidance. Based on the discussion and identified gaps during the auditing processing, ASPR was able to modify the guidance at that time to ensure it met the CSC concept of operations (CONOPS) requirement.

Specifically, in the HPP Budget Period 3 (BP3) / Fiscal Year (FY) 2021 continuation guidance instructions for the cooperative agreement, ASPR added language to the CSC CONOPS requirement that addressed OIG's recommendation: "ASPR has clarified that the CSC CONOPS **must** comply with federal nondiscrimination laws," (emphasis added) and that the CSC CONOPS "integrate the actions the state will take to engage the community and clinicians."[1] ASPR also added a note to clarify what the non-discrimination requirements entail: "If you receive an award under this announcement, you must not discriminate on the basis of race, color, national origin, disability, age, and in some cases sex and religion. You must ensure your contractors and sub-recipients also comply with federal civil rights laws. Civil Rights are not suspended or waived in the times of disaster, including COVID-19."[2]

[1] ASPR, HPP cooperative agreement BP3 continuation guidance, pages 21-22, FY21 HPP Cooperative Agreement Continuation Application Instructions (aspr.hhs.gov).
[2] Ibid.

Additionally, ASPR added to the CSC CONOPS requirement in the BP3 / FY 2021 continuation guidance, guidance stating that recipients should engage with the community and clinicians for CSC planning and decision making. Dialogue between community representatives and clinicians provide opportunities to understand different perspectives that affect real-world clinical crisis care decision making. ASPR also required that HPP recipients submit their new or updated CSC CONOPS in FY 2021 with their annual progress report.

Further, ASPR discussed CSC CONOPS with recipients during webinars to review continuation guidance instructions in both BP3/FY 2021 and Budget Period 4 (BP4)/FY 2022. ASPR Technical Resources, Assistance Center, and Information Exchange (TRACIE) also provides technical assistance related to CSC when requested and has reviewed and shared examples of CSCs for other states to emulate.

As demonstrated by these efforts, ASPR has already taken action to address OIG's recommendation to update the HPP cooperative agreement to require recipients to adopt CSCs that comply with federal nondiscrimination laws and encourage recipients to engage with their community for decision making related to CSC planning. As such, ASPR has determined no further action is needed, at this time, related to this Report and its findings.

We again thank OIG for bringing this matter to our attention and providing us the opportunity to come into compliance with these regulations.

Appendices

- Technical Comments*

* Office of Inspector General Note—Technical comments in the auditee's response to the draft have been redacted from the final report and all appropriate changes have been made.