STATE OF MICHIGAN
DEPARTMENT OF ATTORNEY GENERAL

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March 7, 2022

The Department of Attorney General's Review of the Office of Auditor General's January 12, 2022 Report on Deaths in Long-Term Facilities[1]

On January 12, 2022, the Office of Auditor General (OAG) issued a report regarding the number of COVID-19 deaths in long-term care (LTC) facilities in Michigan. In response, the Michigan Department of Health and Human Services explained that its efforts to update death certification records in the Michigan Disease Surveillance System as "COVID-19 deaths" is ongoing, and that it is independently vetting the deaths that OAG identified in its report as LTC COVID-19 deaths. In light of MDHHS's continuing work, the Department of Attorney General (Department) preliminarily reviewed OAG's report and, for the reasons explained below, determined that further investigation into the reported numbers is unwarranted at this time.

Below, the Department summarizes the OAG report; identifies some of the apparent bases for discrepancies in MDHHS's official LTC COVID-19 death counts and OAG's LTC COVID-19 death counts; and addresses some potential flaws in OAG's analysis.

At the top, the Department notes that the characterization by legislators and various media outlets—suggesting that MDHHS intentionally underreported and misrepresented the number of COVID-19 deaths at LTC facilities—is not supported by OAG's report.[2] OAG's report acknowledges that, for much of the discrepancy

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[1] The information contained in this preliminary review was obtained from publicly available materials. If additional information is received, this review, including the recommendations, may be modified as appropriate.

[2] During his testimony before the House Oversight Committee, Auditor General Ringler noted that even characterizing MDHHS's data as "underreport[ing]" was inaccurate. See Gongwer, *Auditor General: No 'Undercount' In DHHS Nursing*

between the MDHHS's official number of LTC COVID-19 deaths and OAG's separate count, the discrepancy is based on OAG's inclusion of LTC facilities that are not included in MDHHS's count. In addition, OAG's report does not suggest any malintent by MDHHS whatsoever. And, OAG's report does not discuss or address the Governor's Executive Orders related to LTC facilities during the pandemic.

A. Summary of the OAG Report

The OAG report is broken into four sections: (1) a review of all COVID-19 deaths in Michigan; (2) a review of COVID-19 deaths at LTC facilities; (3) a review of MDHHS's processes and procedures for reporting COVID-19 deaths; and (4) a summary of MDHHS's attempt to verify LTC COVID-19 death count between its data systems.

1. Total COVID-19 deaths

Through Michigan's Coronavirus Dashboard, MDHHS reported that 20,906 people died from COVID-19 in the State between January 1, 2020 and July 2, 2021.[3] In its report, OAG found that there were 21,577 deaths in the State during this same period. The discrepancy between MDHHS's official count and OAG's finding is 671 deaths, which amounts to 3.2% more COVID-19 deaths in OAG's count.[4]

The OAG report identified 671 more deaths than reported by MDHHS primarily because it included individuals whose death certification records are not yet recorded in the Michigan Disease Surveillance System (MDSS) as "COVID-19 deaths." The OAG report acknowledges that many of these deaths have simply not been marked as "COVID-19 deaths" in MDSS and that MDHHS "update[s] the record in MDSS" once a record is identified as meeting the criteria as a 'COVID-19 death.'" (OAG Report at 9.) Thus, it appears that many (if not all) of the 671 cases may ultimately be considered "COVID-19 deaths" by MDHHS, but the data utilized by MDHHS simply has not been updated yet.

Home Death Data (Jan. 20, 2022) (quoting the Auditor General's testimony: "We didn't feel the 'underreport' was fair. So we cited it as a difference.").

[3] The Coronavirus Dashboard is available at https://www.michigan.gov/coronavirus/0,9753,7-406-98163_98173---,00.html.

[4] OAG originally reported a 822-total-death discrepancy in its October 13, 2021 update letter to Representative Steven Johnson. As noted in the cover letter for the final OAG report, after discussions with MDHHS and reducing its total death count, OAG revised this discrepancy to 671 deaths.

2. LTC COVID-19 deaths

According to MDHHS's official data, there were 5,675 deaths at LTC facilities. MDHHS's data is exclusively based on self-reporting by certain LTC facilities. Specifically, MDHHS's data only includes COVID-19 deaths self-reported by LTC facilities that were required to report this data to MDHHS.[5] Such facilities include nursing home or skilled nursing facilities (SNFs), homes for the aged (HFA) facilities, and adult foster care facilities licensed for 13 or more beds (AFC-13).

OAG determined that 8,061 total deaths were linked to LTC facilities but specified that only 7,010 of these deaths were associated with the LTC facilities required to self-report. Thus, OAG acknowledges that 1,051 of the 8,061 deaths its reports are from facilities that were not required to report COVID-19 deaths and, thus, would not be included in MDHHS's official count of LTC COVID-19 deaths. Accordingly, the true discrepancy between MDHHS's count of LTC COVID-19 deaths and OAG's count is between those deaths at facilities that were required to report, which is 5,675 to 7,010—a difference of 1,355 deaths.

3. OAG's summary of MDHHS's reporting processes

OAG next provides a summary of MDHHS's processes and procedures for identifying COVID-19 deaths and specifically deaths at LTC facilities.

For total COVID-19 deaths, MDHHS developed a "mortality COVID-19 surveillance protocol based on the CDC case surveillance definitions" to track COVID deaths in MDSS. In sum, MDHHS would count a death as a "COVID-19 death" when a death certificate uploaded to the Electronic Death Registration System (EDRS) identified COVID-19 as a cause of death and "natural" as the manner of death. Where the individual was not already identified in MDSS as a COVID-19 death, MMDHHS would conduct a case investigation as follows:

- If the decedent had a positive COVID test within 30 days of death, but was not yet marked as deceased in MDSS, the decedent's record would be updated in MDSS to be marked a COVID-19 death.
- If the decedent did not have a record in MDSS, MDHHS would search for COVID-19 test results for the decedent. If there was no negative test within 90 days of the individual's death, the individual would be considered a probable COVID-19 positive and would be counted as a COVID-19 death.

[5] MDHHS developed a mortality COVID-19 surveillance protocol that required licensed LTCs to self-report information in accord with the CDC case surveillance definitions and track the total deaths where COVID-19 played a role.

For LTC COVID-19 deaths, as noted above, MDHHS required certain LTC facilities to self-report deaths. MDHHS obtained licensure information from LARA to ensure that all LTC facilities required to self-report were registered in the data platforms necessary to enable self-reporting. MDHHS also provided assistance with the data registration process and self-reporting as needed. In addition to tracking the self-reported deaths, MDHHS conducted "high-level" reviews to ensure LTC facilities required to self-report were, in fact, self-reporting. For facilities that did not report or were "flagged" during MDHHS's data integrity reviews, MDHHS contacted the LTC facilities to ensure compliance. Of note, the OAG report characterizes MDHHS's data integrity and reasonableness checks of the data reported as "limited" without providing any explanation for this characterization.

4. MDHHS's attempt to verify LTC COVID-19 data

Finally, the OAG report documents MDHHS's attempt to verify the self-reported data from LTC facilities using death certificate data from EDRS. In each attempt, MDHHS relied on the "location of death" field in EDRS to identify deaths that occurred at LTC facilities. In addition, MDHHS identified COVID-19 deaths where the "resident address" field in EDRS matched an LTC facility to identify individuals who lived in a LTC facility but died at a hospital.

According to the OAG report, MDHHS attempted this review three times. All three attempts yielded figures significantly below the total number of self-reported LTC COVID-19 deaths. Accordingly, MDHHS determined that it was not reliable to use the addresses of LTC facilities to identify LTC COVID-19 deaths and instead continued to rely on the self-reported LTC COVID-19 deaths as its official count.

B. Cause of the discrepancies in the LTC COVID-19 death counts

Based on our review of the OAG report, there appear to be two reasons why OAG's LTC COVID-19 death counts differ from MDHHS's counts.

1. The LTCs considered in OAG's count

As noted above, MDHHS reports its LTC COVID-19 deaths based on the self-reporting of LTC facilities that are specifically required to report such deaths to MDHHS. The only LTC facilities that were required to self-report COVID-19 deaths were nursing home or skilled nursing facilities (SNFs), homes for the aged (HFA) facilities, and adult foster care facilities licensed for 13 or more beds (AFC-13).

The OAG report includes additional deaths at LTC facilities that were not required to self-report COVID-19 deaths. Specifically, OAG included deaths at adult foster care facilities licensed for 12 or fewer beds (AFC-12), "exempt HFA facilities," and

"Hospice only SNFs." By expanding which LTC facilities were included in their count, OAG's count of LTC COVID-19 deaths is naturally higher because additional facilities are considered.

It is not clear why OAG included these additional facilities in its calculation. However, the OAG report does make clear that it included facilities that were not required to self-report COVID-19 deaths, and thus would not be included in MDHHS's data.

Excluding the deaths from facilities that are not required to self-report, OAG's count of LTC COVID-19 deaths totals 7,010.

2. OAG's analysis of death records is simply not comparable to the self-reported data that MDHHS relies upon

Even considering the 7,010 LTC COVID-19 deaths that OAG identified at LTC facilities that were required to self-report deaths, this number is significantly different from the 5,675 LTC COVID-19 deaths reported by MDHHS. But this difference is irrelevant because it relies on an apples-and-oranges comparison.

MDHHS's count of LTC COVID-19 deaths is based exclusively on self-reporting by LTC facilities. MDHHS made efforts to push LTC facilities to accurately report LTC COVID-19 deaths. For example, MDHHS's website notes:

> Ensuring accurate and timely reporting by those facilities subject to MDHHS reporting requirements is a priority for the State of Michigan. . . MDHHS conducts ongoing data validation processes and works with the Institute for Health Policy at Michigan State University to support additional validation exercises on the data. When a facility is flagged for a validation concern, the department may work with the Regional Health Care Coalition, conduct direct outreach, and provide technical assistance to the facility. Facilities are provided the opportunity to correct entry errors identified during the validation process on an ongoing basis[.][6]

Despite these attempts to validate the self-reported data, the data only remains valid if the LTC facilities accurately self-report. MDHHS does *not* verify its count based on any analysis of death certificate data or similar data.

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[6] See https://www.michigan.gov/coronavirus/0,9753,7-406-98163_98173-526911--,00.html

In contrast, OAG's count relies exclusively on its attempt to analyze death certificate records in MDSS.[7] OAG does not rely on any self-reported data.

Put simply, OAG and MDHHS each attempted to identify the number of LTC COVID-19 deaths in entirely different ways. Thus, it should not be unexpected that their results are different. Comparing the counts is largely meaningless because they each counted deaths differently.

C. Potential flaws in OAG's analysis

MDHHS has raised multiple concerns with OAG's attempt to rely on MDSS data to determine the number of LTC COVID-19 deaths.[8] Many of these concerns may be valid as described further below. However, assessing the validity of OAG's analysis would require an individual assessment of each death record during the designated time period. Note that, according to the OAG report, MDHHS is independently vetting each of the 8,061 deaths that OAG identifies in its report as LTC COVID-19 deaths. This vetting process remains ongoing.

1. Definition of a LTC COVID-19 death

To start, OAG's analysis does not apply the federally recognized definition of a LTC COVID-19 death. A LTC COVID-19 death is defined by the CDC's National Healthcare Safety Network as:

> residents who died from SARS-CoV-2 (COVID-19) related complications and includes resident deaths in the facility AND in other locations, such as an acute care facility, in which the resident with COVID-19 was transferred to receive treatment . . . . Residents discharged (specifically, not expected to return to the facility) from the facility are excluded from the count.[9]

OAG's analysis appears to include decedents who would not fall within this definition. For example, OAG acknowledges that it was not able to "exclude

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[7] As noted in the next section, there appears to be a handful of flaws in OAG's analysis.

[8] See Letter to Doug Ringler, Auditor General, from Elizabeth Hertel, Director of MDHHS, dated January 9, 2022, available at https://www.gongwer.com/public/DHHSletter.pdf.

[9] See *Instructions for Completion of the COVID-19 Long-term Care Facility (LTCF) Resident Impact and Facility Capacity Pathway Form*, National Healthcare Safety Network (Sept. 2021), available at https://www.cdc.gov/nhsn/pdfs/covid19/ltcf/57.144-toi-508.pdf (emphasis in original).

instances where a resident of an LTC facility tested positive for COVID-19, was discharged from the facility, and passed away at home or another location."

2. OAG's reliance on residents' addresses in MDCC

MDHHS also raised concerns related to the address data in MDCC, which OAG relied upon in its analysis. Specifically, MDHHS notes that the address data is manually entered into the address fields and is thus very difficult to accurately match to LTC facilities addresses (e.g., address could be entered with "Road," "RD," "Rd." or "Rd"). The address data may also be incorrect. For example, a family member may use a decedent's previous home address on a death certificate that is entered into MDSS despite the decedent residing in a LTC facility immediately prior to their death.

Within the report, OAG acknowledges that MDHHS "disagrees with 1,511 deaths" on the distinction between MDHHS's and OAG's counts "because it questioned the reliability of the MDSS address field." OAG contends that it further corroborated the addresses for the LTC COVID-19 deaths from other databases and thus believes that the address field in MDSS "is reliable."[10]

D. Summary and next steps

Based on the Department's analysis, the OAG report appears to be OAG's best attempt at determining the true number of LTC COVID-19 deaths . Because OAG assessed a different population of LTC facilities and relied on an analysis of death records in MDCC (rather than the facilities' self-reporting), OAG's count of LTC COVID-19 deaths differs significantly from MDHHS's count of LTC COVID-19 deaths. The analyses are simply distinct methods of trying to reach the same number, albeit of a different set of facilities. Thus, comparing the counts is largely meaningless. Moreover, neither count was generated through malice or ill intent. And, most importantly, neither MDHHS nor OAG suggests that any law has been broken.

For these reasons, based on a preliminary review and MDHHS's ongoing efforts, further investigation by the Department is unwarranted at this time.

[10] Notably, OAG notes in its January 12, 2022, letter accompanying the report that it did not audit the data from MDSS, EDRS, or any other data system that it used to generate its count.