

Special Report

Infection Control Surveys at Nursing Facilities: CMS Data are Not Plausible

On March 4, 2020, the Centers for Medicare & Medicaid Services (CMS) suspended non-emergency inspections of health care facilities¹ and on March 20, CMS limited surveys to two types: targeted infection control surveys and complaint/facility-reported incidents triaged as immediate jeopardy.² Three months later, CMS released infection control survey data for 5724 nursing facilities that were conducted during the COVID-19 pandemic. These data show a dramatic and implausible decline in infection control deficiencies. Less than three percent of infection control surveys since March cited an infection control deficiency and 161 of 163 of the deficiencies (cited in 162 facilities) were classified as causing residents “no harm.” Even if some additional deficiencies were cited but are not publicly reported because the facilities have appealed them, the number of reported deficiencies is startlingly low.

Infection prevention and control is a serious longstanding problem in nursing facilities. The General Accounting Office reported in May 2020 that between 2013 and 2017, 82 percent of nursing facilities nationwide were cited with one or more infection control deficiencies, including 48 percent of facilities with infection control deficiencies cited in multiple consecutive years.³ *Kaiser Health News* has reported that infection control is the most commonly cited deficiency in nursing facilities, but that most infection control deficiencies are cited at such a low level of severity that financial penalties are not imposed.⁴

While no national data were available for three months, media at the state and local level had begun to analyze infection control surveys.

An analysis of 35 of 79 infection control surveys conducted in New York City found that in 25 facilities where more than 600 residents had died from COVID-19, no infection control deficiencies were cited.⁵ One New York City nursing facility had a second infection control survey, following families’ complaints about the spread of the virus. Neither survey cited a deficiency, although 54 residents in the 227-bed facility had died of confirmed or presumed COVID-19.

In Kentucky, 154 of Kentucky’s 285 licensed nursing facilities, “including facilities that have reported some of the highest number of cases,” had infection control surveys. Kentucky cited just two facilities with infection control deficiencies (both involving only problems with face masks).⁶ In 2019, 102 Kentucky nursing facilities were cited with an infection control deficiency. If the same percentage (36 percent) of facilities received an infection control deficiency during the focused infection control surveys as in 2019, approximately 55 facilities

would have been cited with infection control deficiencies. Two hundred thirty-nine Kentucky nursing home residents and two staff members have died of COVID-19, reflecting 60 percent of Kentucky's COVID-19 deaths.

The limited number of facilities cited with infection prevention and control deficiencies during the focused infection control surveys cited in these reports is similar to the findings of the Center for Medicare Advocacy. Analyzing 171 infection control surveys conducted between late March and late April 2020, which CMS sent to advocates, the Center found that 76 percent of the surveys did not cite any infection control deficiencies and that most of the deficiencies that were cited were labeled “no harm.”⁷ Twelve of the 20 states with infection control surveys (Alabama, Indiana, Kansas, Kentucky, Louisiana, Massachusetts, Oklahoma, Pennsylvania, Rhode Island, South Dakota, Tennessee, and Texas), with 73 surveys (43 percent of the infection control surveys conducted), did not cite any infection control deficiencies. Illinois, with 20 of the 171 surveys, cited an infection control deficiency in 16 surveys (80 percent). These 16 surveys represented 42 percent of the 171 surveys nationwide that cited an infection control deficiency.

Finally, on June 4, 2020, CMS released the results from 5724 targeted infection control surveys, out of the more than 8,300 infection control surveys completed by CMS and state inspectors since March 4, 2020.⁸ Analysis of the data released by CMS indicates that only a very small fraction of facilities, 2.83 percent, received deficiencies for infection control. Nursing homes are the epicenter of the current coronavirus pandemic, accounting for almost 40 percent of coronavirus deaths, as of June 2, 2020.⁹ It is not possible or believable that the infection control surveys accurately portray the extent of infection control deficiencies in U.S. nursing facilities.

INFECTION CONTROL DEFICIENCIES CITED DURING THE PANDEMIC

The 5724 targeted infection control surveys cited a total of 163 deficiencies at 162 facilities for infection prevention and control, F-880.¹⁰ These 163 surveys represent just 2.85% of total infection control surveys. The Appendix displays these deficiencies, by state and facility.

State Data

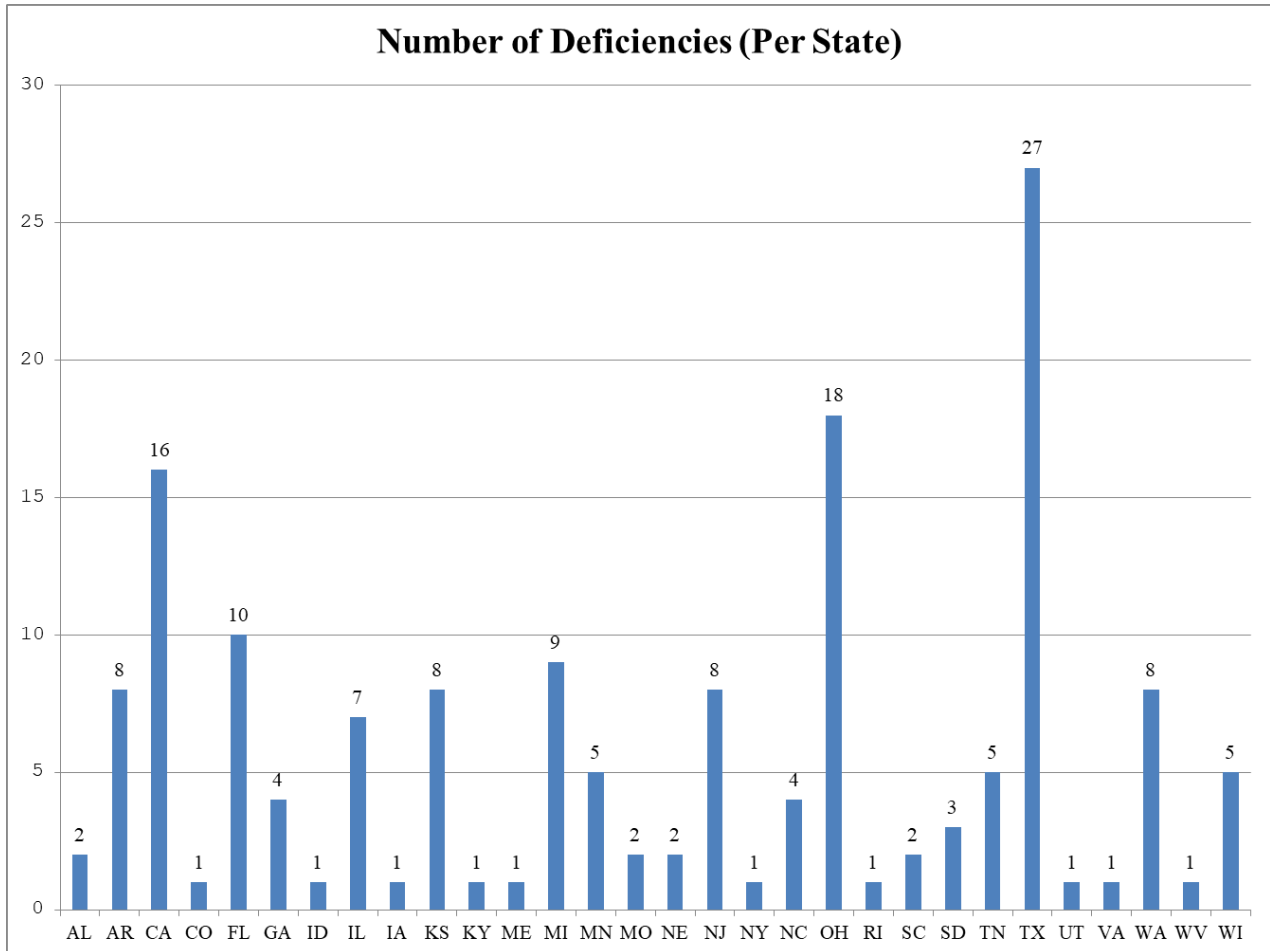
As Figure One shows, F-880 deficiencies were reported in 30 states, with the plurality (27 deficiencies, 17 percent) in Texas. At least ten deficiencies were found in three states: Ohio (18 deficiencies, 11 percent), California (16 deficiencies, 10 percent), and Florida (10 deficiencies, six percent).

The following states had between two and nine facilities cited with infection control deficiencies: Alabama, Arkansas, Illinois, Kansas, Michigan, Minnesota, Missouri, Nebraska, New Jersey, North Carolina, Ohio, South Carolina, South Dakota, Tennessee, Texas, Washington State, and Wisconsin.

One deficiency was found in the following states: Colorado, Idaho, Iowa, Kentucky, Maine, New York, Rhode Island, Utah, Virginia, and West Virginia.

No infection control deficiencies were cited in the following states; Washington, D.C.; and the territories: Alaska, Arizona, Connecticut, Delaware, Hawaii, Indiana, Louisiana, Maryland, Massachusetts, Mississippi, Montana, Nevada, New Hampshire, New Mexico, North Dakota, Oklahoma, Oregon, Pennsylvania, Vermont, and Wyoming.

Figure One



Scope and Severity

CMS classifies deficiencies by the scope and severity of deficiencies.

Three levels of scope represent how many residents are affected by a deficient practice: isolated, pattern, and widespread.

Four levels of severity of deficiencies, from least to most severe, are:

- No actual harm with the potential for no more than minimal harm
- No actual harm with the potential for more than minimal harm
- Actual harm

Immediate jeopardy

The combination of scope and severity reflects both how many residents are affected and how serious the deficiency is.

Figure 2 reflects the number of residents affected by the infection control deficiency.

Figure 2

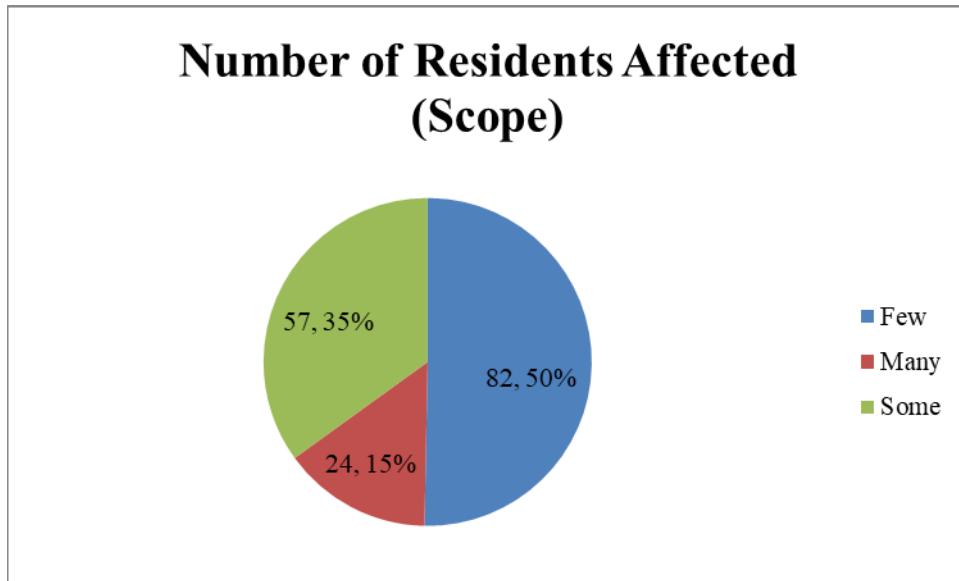


Figure 3 reflects the seriousness of the infection control deficiency.

Figure 3

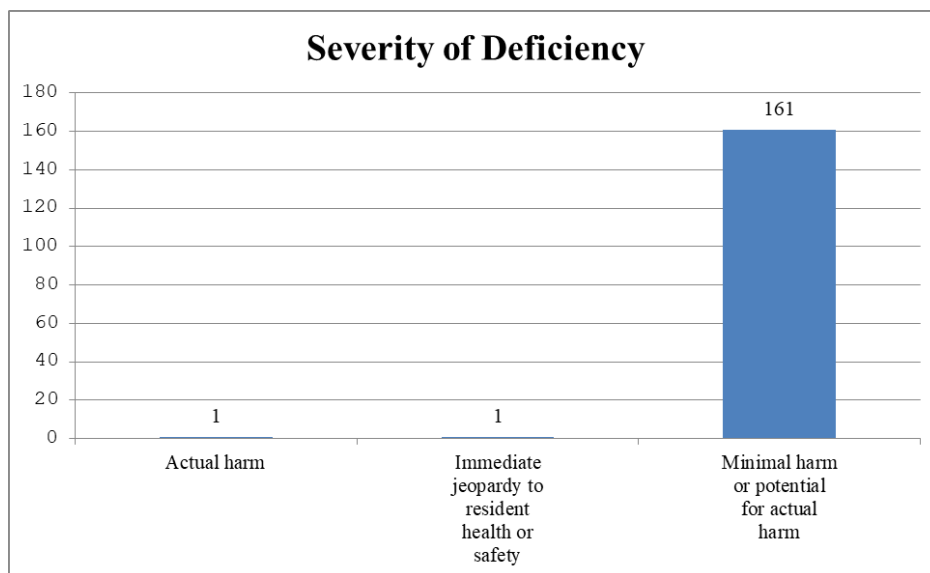


Figure 4 shows how CMS puts scope and severity together into 12 categories.

Figure 4

Severity	Scope		
	Few	Some	Many
Immediate jeopardy to resident health or safety	J	K	L
Actual Harm	G	H	I
Minimal harm or potential for actual harm	D	E	F
No actual harm with potential for minimum harm	A	B	C

Figure 5 shows the number of deficiencies per letter category. A slight majority (51 percent – 83 deficiencies) are classified as D (Few/Minimal harm or potential for actual harm). The other letters represented by these deficiencies are: E (Some/Minimal harm or potential for actual harm) (34 percent – 55 deficiencies), F (Many/Minimal harm or potential for actual harm) (14 percent – 23 deficiencies), H (one deficiency) (Some/Actual Harm), and L (Many/Immediate jeopardy to resident health or safety) (one deficiency). The rest of the letters do not appear in this set of deficiencies.

Figure Five

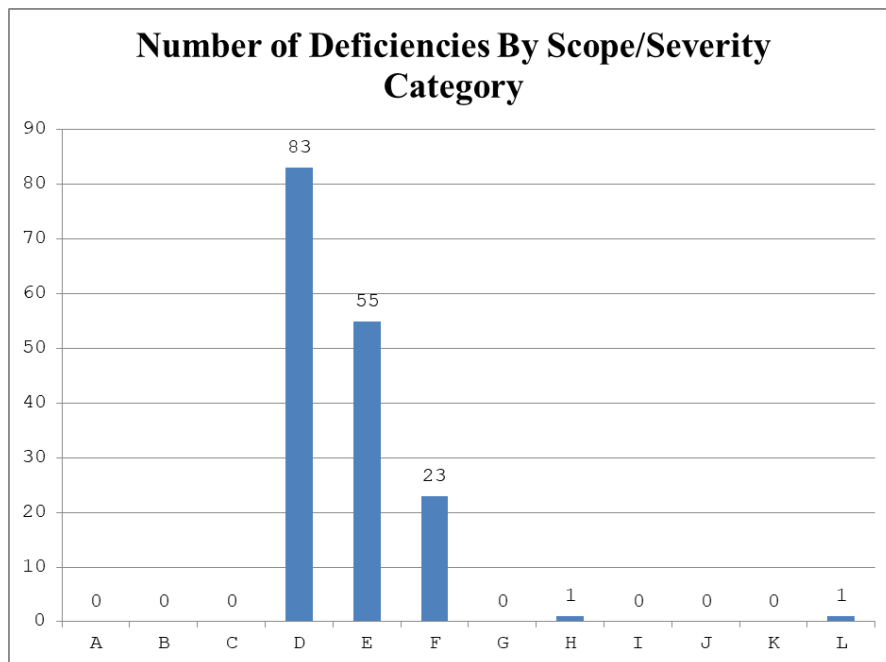


Figure Six shows the scope/severity of deficiencies by state. Many states have deficiencies in multiple categories, a combination of D, E, and F. Some states have deficiencies in just one category. Iowa, Maine, New York, North Carolina, South Carolina, South Dakota, Tennessee, Utah, Virginia, and West Virginia have one or more deficiencies in only D. Arkansas, Idaho, Kentucky, Missouri, and Rhode Island have one or more deficiencies in only E. F is the only category in just Colorado. H and L are not the sole category in any states; however, H is only in Florida, and L is only in Ohio.

Figure Six

State	<u>Letters</u>					Total
	D	E	F	H	L	
AL		1	1			2
AR		8				8
CA	8	8				16
CO			1			1
FL	6	3		1		10
GA	2	2				4
ID		1				1
IL	6		1			7
IA	1					1
KS	3	2	3			8
KY		1				1
ME	1					1
MI	3	4	2			9
MN	3	2				5
MO		2				2
NE		1	1			2
NJ	4	4				8
NY	1					1
NC	4					4
OH	10	1	6		1	18
RI		1				1
SC	2					2
SD	3					3
TN	5					5
TX	14	10	3			27
UT	1					1
VA	1					1
WA	3	3	2			8
WV	1					1
WI	1	1	3			5
Total	83	55	23	1	1	163

CONCLUSION

The 5724 surveys cited infection control deficiencies in 163 nursing facilities, essentially, just a handful of facilities. These data are simply not plausible during a pandemic, especially when infection control deficiencies were the most commonly-cited deficiencies before the pandemic. The Center for Medicare Advocacy will continue to analyze infection control surveys as CMS releases them.

Miriam Edelman, MPA, MSSW
T. Edelman

June 11, 2020

¹ CMS, “Suspension of Survey Activities,” QSO-20-12-All (Mar. 4, 2020), <https://www.cms.gov/files/document/qso-20-12-all.pdf>.

² CMS, “Prioritization of Survey Activities,” QSO-20-20-All (Mar. 23, 2020), <https://www.cms.gov/files/document/qso-20-20-all.pdf>.

³ Government Accountability Office, *Infection Control Deficiencies Were Widespread and Persistent in Nursing Homes Prior to COVID-19 Pandemic* (May 20, 2020), <https://www.gao.gov/assets/710/707069.pdf>. This report was discussed in CMA, “GAO on Infection Control Deficiencies in Nursing Facilities Before COVID-19 Pandemic: ‘Widespread,’ ‘Persistent,’ ‘Ignored’” (CMA Alert, May 21, 2020), <https://medicareadvocacy.org/gao-widespread-snf-deficiencies/>.

⁴ Jordan Rau, “As Coronavirus Cases Grow, So Does Scrutiny of Nursing Home Infection Plans,” *Kaiser Health News* (Mar. 4, 2020), <https://khn.org/news/as-coronavirus-cases-grow-so-does-scrutiny-of-nursing-home-infection-plans/> (reporting 61% of facilities had been cited with infection prevention deficiencies in the prior three years, including more than one-third that had been cited more than once); Jordan Rau, “Infection Lapses Rampant In Nursing Homes But Punishment Is Rare,” *Kaiser Health News* (Dec. 22, 2017), <https://khn.org/news/infection-of-lapses-rampant-in-nursing-homes-but-punishment-is-rare/> (reporting 74% of nursing homes cited for infection control deficiencies, more than any other deficiency, but only one is 75 facilities received a high-level deficiency that can lead to a financial penalty).

⁵ Susan Jaffe, “Hundreds Died of COVID at NYC Nursing Homes With Spotless Infection Inspections,” *The City* (May 27, 2020), <https://www.thecity.nyc/health/2020/5/27/21273143/hundreds-died-of-covid-at-nyc-nursing-homes-with-spotless-infection-inspections>.

⁶ Bailey Loosemore, “Most Kentucky nursing homes have passed COVID-19 inspections despite widespread outbreaks,” *Louisville Courier Journal* (May 28, 2020), <https://www.courier-journal.com/story/news/local/2020/05/27/coronavirus-most-kentucky-nursing-homes-pass-covid-19-inspections/5268217002/>.

⁷ CMA, “Infection Control Surveys at Nursing Facilities: It Looks Like Business As Usual” (Report, May 7, 2020), <https://medicareadvocacy.org/wp-content/uploads/2020/05/Special-Report-Infection-Control-5-7-2020.pdf>.

⁸ CMS, “Nursing Home COVID-19 Data and Inspection Results Available on Nursing Home Compare” (Press Release, Jun. 4, 2020), <https://www.cms.gov/newsroom/press-releases/nursing-home-covid-19-data-and-inspections-results-available-nursing-home-compare>. There were 5743 survey reports cited, but 20 were immediate jeopardy surveys. Since one infection control survey cited immediate jeopardy, this report reduces the total number of survey reports (5743) by 19 reports to discuss 5724 infection control surveys.

⁹ Suzy Khimm and Laura Strickler, “The government counts 26,000 COVID-19 deaths in nursing homes. That’s at least 14,000 deaths too low,” *NBCNews* (Jun. 2, 2020), <https://www.nbcnews.com/health/health-news/government-counts-26-000-covid-19-deaths-nursing-homes-s-n1221496>.

¹⁰ F-880, “Provide and implement an infection prevention and control program,” corresponds to deficiencies cited at 42 C.F.R. §483.80.