Special Report
Additional Infection Control Surveys at Nursing Facilities Show Same Results: Few Deficiencies, Most Called "No Harm;" Poor Ratings on *Nursing Home Compare*

On March 4, 2020, the Centers for Medicare & Medicaid Services (CMS) suspended non-emergency inspections of health care facilities[1] and on March 20, CMS limited surveys to two types: targeted infection prevention and control surveys and complaint/facility-reported incidents triaged as immediate jeopardy.[2] On June 24, 2020, CMS released the results of 9899 targeted infection control surveys going back to March 2020. These surveys included the 5724 targeted infection control surveys that CMS had released on June 4, 2020.[3] Accordingly, this report analyzes the 4175 targeted infection prevention and control surveys that were released for the first time on June 24. (CMS will continue to update the data on the last Wednesday of each month.)
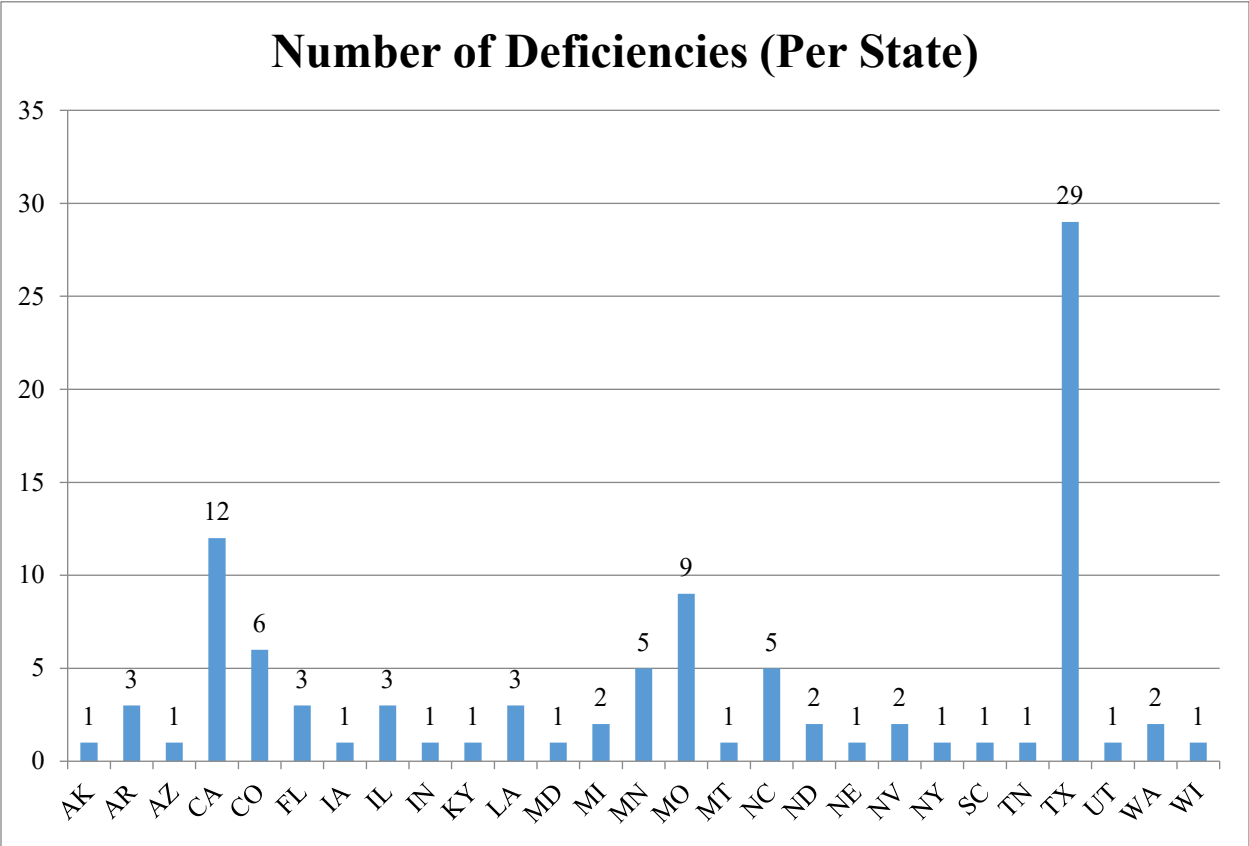
Ninety-nine new infection prevention and control deficiencies were cited following the 4175 targeted infection control surveys that were released on June 24. The results are similar to the results from the first group of 5724 infection prevention and control surveys that CMS released on June 4. Analysis of the newly released surveys again indicates that **only a very small fraction of facilities, 2.37%, received a deficiency for infection prevention and control and 96% of the deficiencies were classified as "no harm" or "substantial compliance."** Moreover, and as shown below, facilities cited with infection prevention and control deficiencies were also more likely than facilities that were not cited with such a deficiency to be operated on a **for-profit** basis, to have had the **remedies** of civil money penalties or denial of payment for new admissions imposed in the prior three years, and to be **Special Focus Facilities or candidates** for the Special Focus Facility program

Infection Control Deficiencies Cited during the Pandemic

The June 24 data release reflected 4175 targeted infection prevention and control surveys (not duplicating surveys released June 4), which identified a total of 99 deficiencies at 99 facilities for infection prevention and control, F-880.[4] These 99 deficiencies represent just 2.37% of the total of infection prevention and control surveys that were conducted since March but were not reported June 4.

State Data

As shown on the next page, a total of 99 infection prevention and control deficiencies, F-880, were reported in 27 states. Texas cited the highest number of infection prevention and control deficiencies, 29; California cited 12 infection prevention and control deficiencies. Thirteen states cited a single infection prevention and control deficiency following targeted infection prevention and control surveys.

Number of Deficiencies (Per State)

A bar chart titled "Number of Deficiencies (Per State)" with the vertical axis ranging from 0 to 35 and the horizontal axis listing states. Values per state:

State	AK	AR	AZ	CA	CO	FL	IA	IL	IN	KY	LA	MD	MI	MN	MO	MT	NC	ND	NE	NV	NY	SC	TN	TX	UT	WA	WI
Count	1	3	1	12	6	3	1	3	1	1	3	1	2	5	9	1	5	2	1	2	1	1	1	29	1	2	1

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.

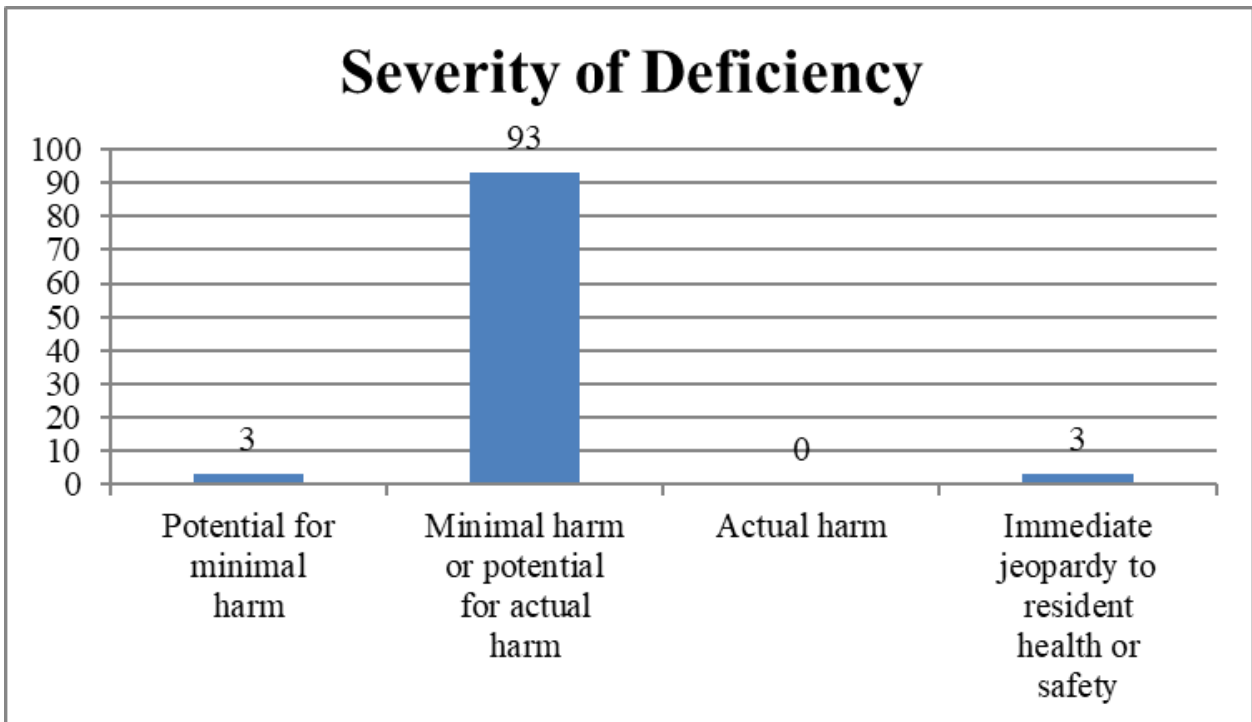Four levels of severity of deficiencies, from least to most severe, are:

> 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.

The bar graph below reflects the number of residents affected by the infection prevention and control deficiency. Nearly half the deficiencies (45) were considered widespread, affecting many residents.

Scope of Deficiency

| Few	Some	Many
32	22	45
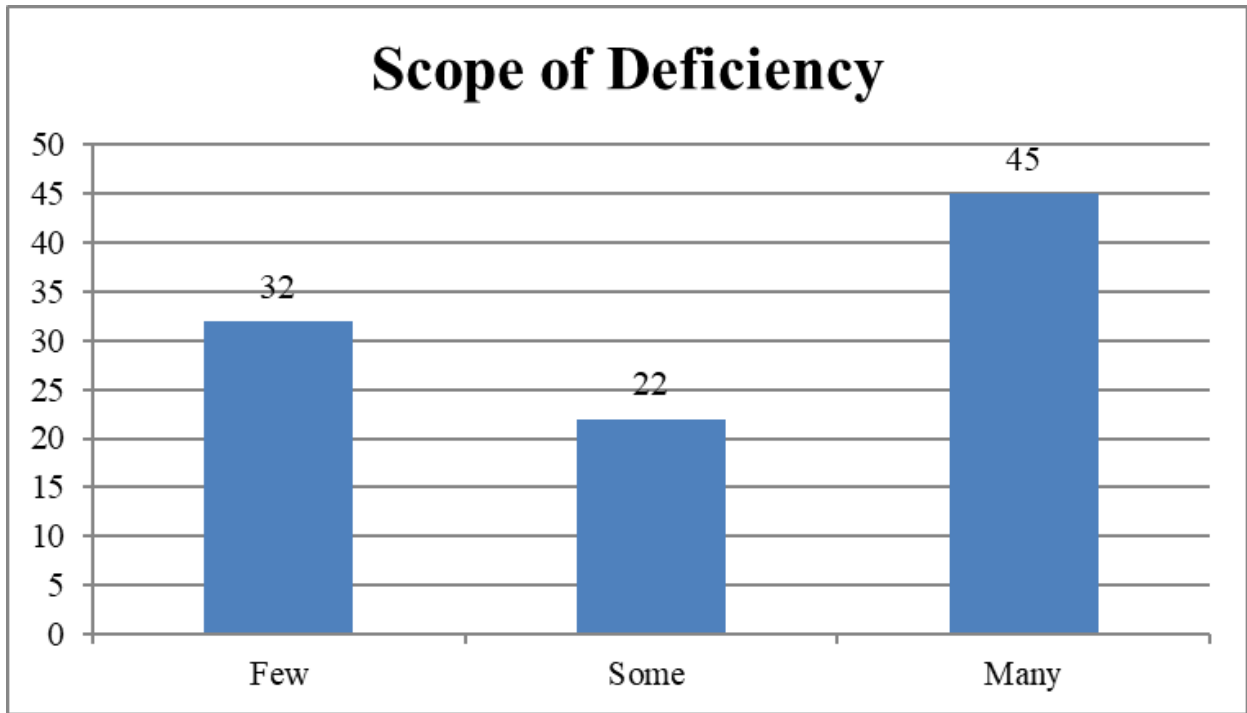
The bar graph below reflects the seriousness of the infection prevention and control deficiency that was cited. As shown, 96% of deficiencies were cited as "no harm" or "substantial compliance;" only three deficiencies were cited as "immediate jeopardy."

Severity of Deficiency

Potential for minimal harm	Minimal harm or potential for actual harm	Actual harm	Immediate jeopardy to resident health or safety
3	93	0	3

CMS combines scope and severity into 12 categories of deficiencies.

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

The bar graph below shows the number of deficiencies by letter category. Ninety-three of the deficiencies were cited as no harm, levels D, E, or F; three deficiencies were cited as substantial compliance, level B. Only three deficiencies were cited as immediate jeopardy, levels J and K.

Number of Deficiencies By Scope/Severity Category

Category	Value
B	3
D	31
E	42
F	20
J	1
K	2
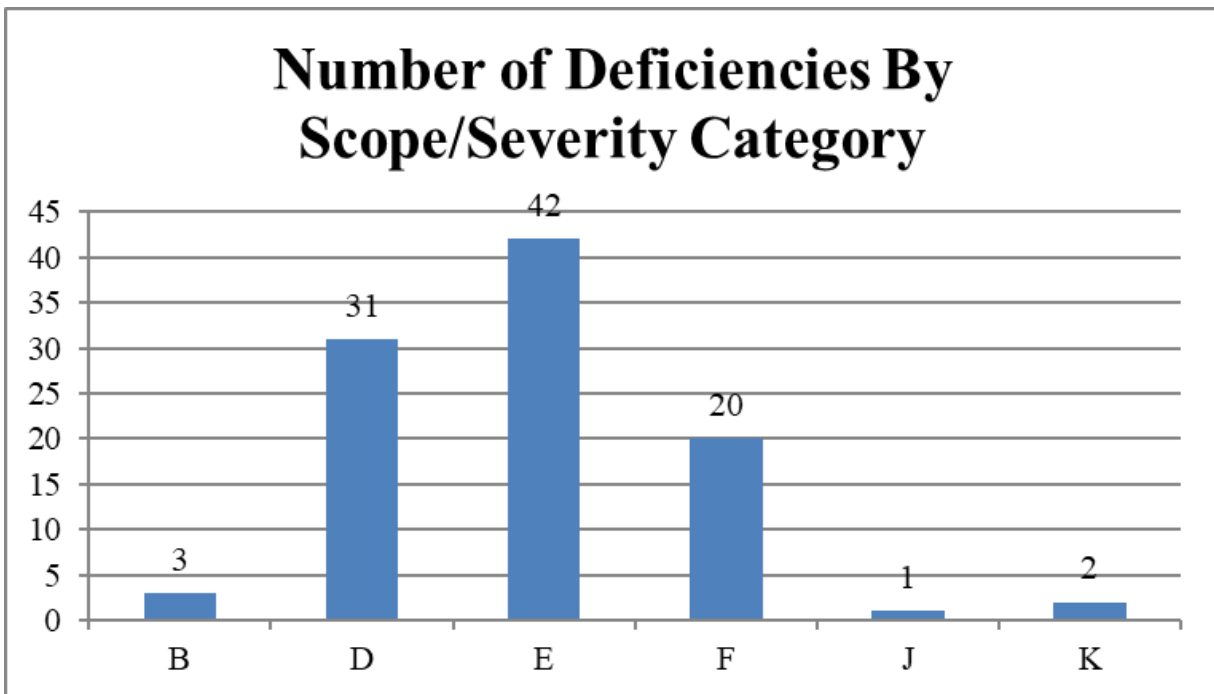
The table below shows the scope/severity of deficiencies by state. Many states have deficiencies in multiple categories, a combination of D, E, and F.

|	B	D	E	F	J	K	Total
AK				1			1
AR		1	2				3
AZ		1					1
CA	2	3	4	3			12
CO		1	2	3			6
FL		2		1			3
IA						1	0
IL		1	2				3
IN			1				1
KY		1					1
LA		2	1				3
MD			1				1
MI	1	1					2
MN		2	2			1	4
MO		4	3	2			9
MT			1				1
NC		2	1	1	1		5
ND		1	1				2
NE				1			1
NV		1		1			2
NY			1				1
SC			1				1
TN		1					1
TX		7	16	6			29
UT			1				1
WA			1	1			2
WI			1				1
Total	3	31	42	20	1	2	99

Star Ratings

CMS provides star ratings on a five-point scale (with five stars the best) for Medicare and Medicaid-certified facilities for each of three categories – health inspections (standard surveys, complaint surveys, all unannounced), staffing, and quality measures (primarily self-reported). CMS then calculates an overall rating for each facility. The overall rating begins with the health inspection rating and is increased by one star for four or five stars in staffing or five stars in quality measures (or both) or is reduced by one star for one star ratings in staffing or quality measures (or both). A common pattern, illustrated below in the facilities discussed here, is that facilities boost their overall ratings by reporting resident assessment information that gets them five-star ratings in the quality measure domain.

Health Inspections

Two facilities did not have star ratings; one was a recent graduate of the SFF program; the other was too new to rate.

As shown below, facilities with poorer survey results were more likely to be cited with an infection prevention and control deficiency. Of the 97 facilities with star ratings that cited with an infection prevention and control deficiency, 62 facilities (64%) had one or two stars in health inspection surveys. Only 16 facilities with four or five stars (16%) in health inspection surveys were cited with an infection prevention and control deficiency.
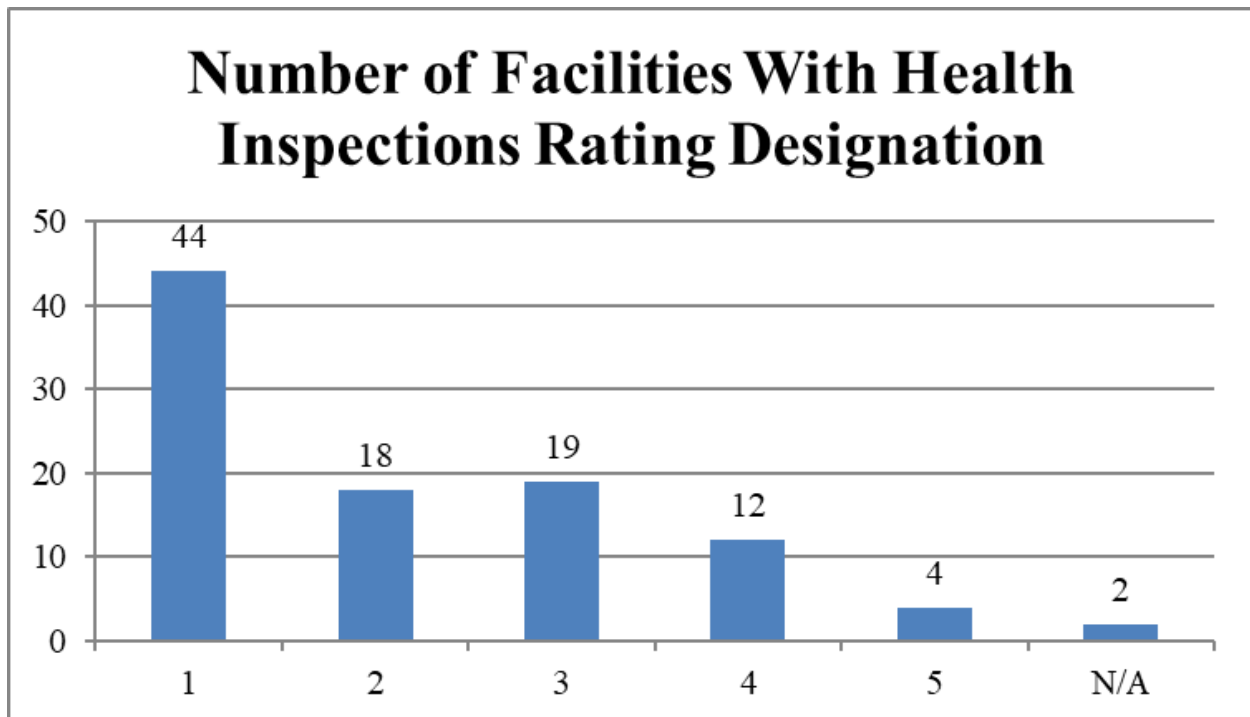
Staffing Rating

Two facilities did not have star ratings; one was a recent graduate of the SFF program; the other was too new to rate.

Sixty of the 97 facilities with star ratings that were cited with an infection prevention and control deficiency (62%) had one or two stars in staffing; 16 facilities (16%) were cited with four or five stars in staffing. One-star facilities, those with the lowest staffing levels, were more than seven times as likely to be cited with an infection prevention and control deficiency as facilities with five stars, the highest rating in staffing.

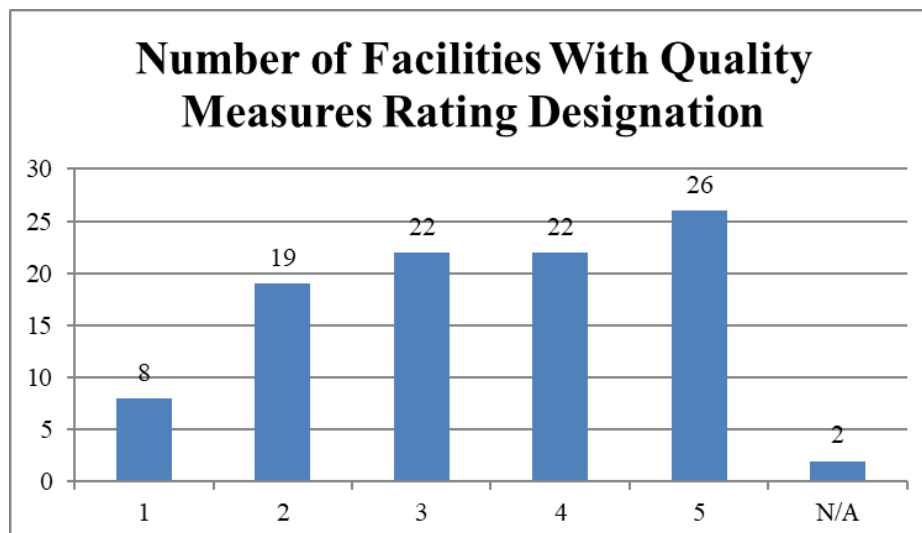**Number of Facilities With Staffing Rating Designation**
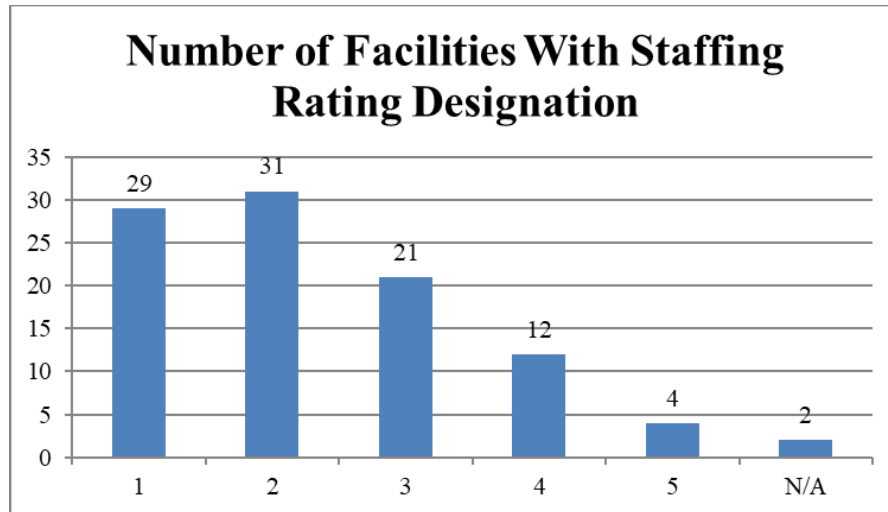
Quality Measures Rating

Two facilities did not have star ratings; one was a recent graduate of the SFF program; the other was too new to rate.

As shown below, most facilities have a high rating in the quality measures domain and very few facilities have a low rating in quality measures. Nearly half of facilities (48 of 97 facilities with star ratings) (49%) have four or five stars in the quality measures domain. Only 27 of 97 facilities (28%) have one or two stars in quality measures.

Nursing facilities have been gaming the quality measures ratings for a long time; gaming is not a new phenomenon. Evaluating the first five years of the federal rating system, 2009-2013, Abt Associates reported that four- and five-star ratings in the quality measures domain increased from 34.1 percent in January 2009 to 67.0 percent in July 2013, while one- and two-star ratings declined from 42.8 percent to 14.2 percent during the same period.[5] *The New York Times* reached a similar conclusion about nursing homes' gaming of the rating system.[6]

Number of Facilities With Quality Measures Rating Designation
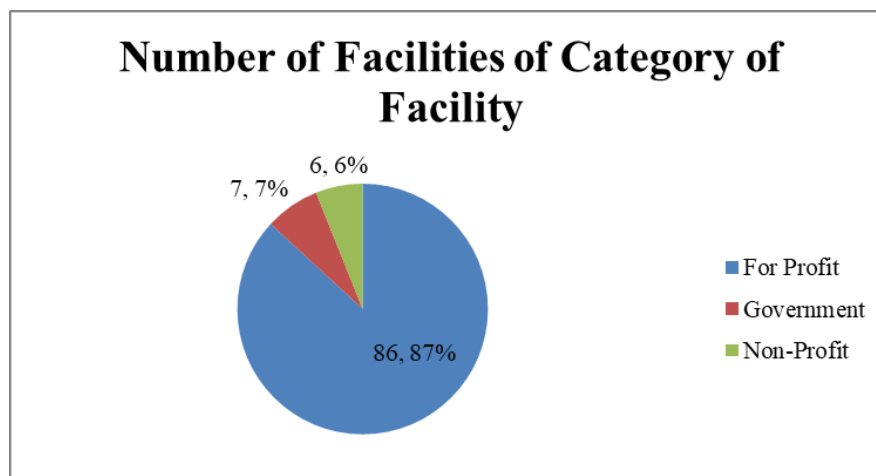
Overall Rating

Two facilities did not have star ratings; one was a recent graduate of the SFF program; the other was too new to rate.

The high ratings in the quality measures domain boost some facilities' overall ratings. Only 58 of 97 facilities with star ratings (60%) have one- or two-star overall ratings (compared to 62 of 97 facilities (64 %) receiving one or two stars in health inspection ratings). Twenty-three of 97 facilities (24%) have overall ratings of four or five stars (compared to 16 of 97 facilities (16%) receiving four or five stars in health surveys).

Number of Facilities With Overall Star Rating Designation

Rating	Number
1	38
2	20
3	16
4	13
5	10
N/A	2
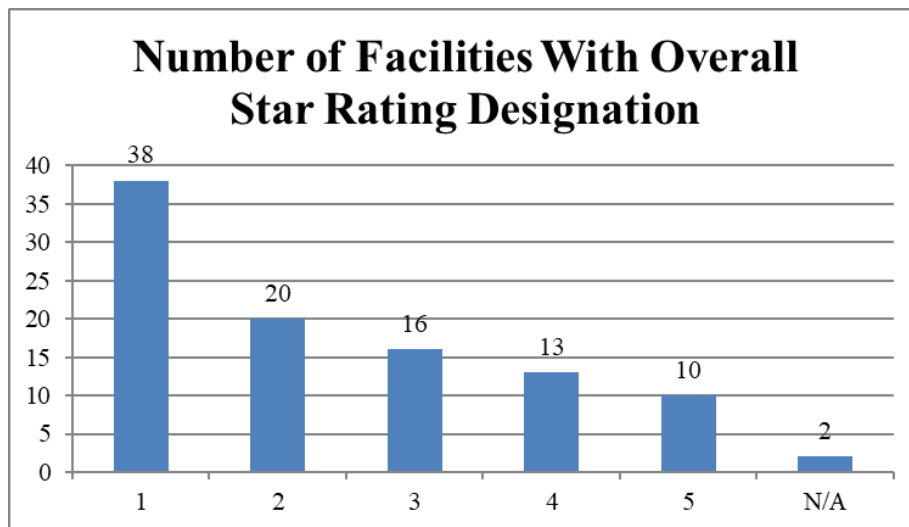
Ownership Status

Eighty-six (87%) of the infection prevention and control deficiencies were cited in for-profit nursing facilities. In 2016, for-profit facilities represented 69.3% of facilities nationwide.[7]

Number of Facilities of Category of Facility

Category	Number, Percent
For Profit	86, 87%
Government	7, 7%
Non-Profit	6, 6%

Remedies

Thirty-five of the 99 facilities with infection prevention and control deficiencies (35%) have had civil money penalties imposed; the average fine for the 35 facilities was $76,189.89. Sixty-four of the 99 facilities (64%) did not have fines imposed.

Sixteen of the 99 facilities (16%) have had denial of payment for new admissions (DPNA) imposed. Twelve facilities had DPNA imposed once; three facilities had DPNA imposed twice; and one facility had DPNA imposed three times.

CMS does not provide comparative data on *Nursing Home Compare* to allow for the calculation of the percentages of facilities that are sanctioned, on either a statewide or national basis, with either of these remedies. Nevertheless, the rates of federal sanctions reported here are high; 35% of nursing facilities are not typically sanctioned with fines and 16% are not typically sanctioned with DPNA.

Special Focus Facility And Candidates

CMS and states collectively identify Special Focus Facilities (SFFs) that

- "More problems than other nursing homes (about twice the average number of deficiencies), •
- "More serious problems than most other nursing homes (including harm or injury experienced by residents), and
- "A pattern of serious problems that has persisted over a long period of time (as measured over the three years before the date the nursing home was first put on the SFF list)."[8]

There are 88 SFFs nationwide.

Since July 2019, CMS has also publicly released a list of approximately 400 additional facilities, between five and 30 facilities per state, that meet the criteria for the SFF program but are not included in the program, solely due to the lack of sufficient resources to conduct the additional surveys that are required for SFFs. These facilities are called SFF candidates.

One of the 99 facilities is a recent SFF graduate and five of the 99 facilities were on the SFF candidate list (total, 6%), as of June 24, 2020.

In 2017, there were approximately 15,483 nursing facilities in the United States.[9] The approximately 500 SFFs and SFF candidates reflect approximately 3% of the country's 15,483 nursing facilities.

Facilities cited with infection control deficiencies are approximately twice as likely to be an SFF or SFF candidate as other facilities.

Conclusion

The 4175 surveys (newly reported on June 24) cited infection prevention and control deficiencies in 99 nursing facilities, essentially, just a handful of facilities. These data are simply not plausible during the COVID-19 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.

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July 9, 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] On June 4, 2020, CMS released infection control survey data for 5724 nursing facilities that were conducted during the COVID-19 pandemic. These data showed 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." The Center for Medicare Advocacy issued two reports about these 163 infection control deficiencies. CMA, "Special Report: infection Control Surveys at Nursing Facilities: CMS Data are Not Plausible" (Jun. 11, 2020), https://medicareadvocacy.org/wp-content/uploads/2020/06/Infection-Control-Surveys-Report.pdf.; CMA, "Special Report: Nursing Homes Cited with Infection Control Deficiencies during the Pandemic: Poor Results in Health Inspections, Low Staffing Levels" (Jun. 18, 2020), https://medicareadvocacy.org/wp-content/uploads/2020/06/Coronavirus-Report-Infection-Control-Deficiencies-NHC.pdf.

[4] F-880, "Provide and implement an infection prevention and control program," corresponds to deficiencies cited at 42 C.F.R. §483.80.

[5] Abt Associations, "Nursing Home Compare: The First Four Years of the Five-Star Quality Rating System" (PowerPoint at GSA Annual Scientific Meeting, Nov. 2013), slide 16, https://www.cms.gov/Medicare/Provider-Enrollment-and-Certification/CertificationandComplianc/Downloads/2013-The-First-Four-Years-of-Five-Star.pdf.

[6] Katie Thomas, "Medicare Star Ratings Allow Nursing Homes to Game the System," *The New York Times* (Aug. 24, 2014), https://www.nytimes.com/2014/08/25/business/medicare-star-ratings-allow-nursing-homes-to-game-the-system.html?searchResultPosition=3.

[7] National Center for Health Statistics, Centers for Disease Control and Prevention, https://www.cdc.gov/nchs/fastats/nursing-home-care.htm.

[8] CMS, Special Focus Facility ("SFF") Program, https://www.cms.gov/files/document/sff-posting-candidate-list-may-2020.pdf.

[9] Priya Chidambaram, Kaiser Family Foundation, "Data Note: How might Coronavirus Affect Residents in Nursing Facilities?" (Mar. 13, 2020), https://www.kff.org/coronavirus-covid-19/issue-brief/data-note-how-might-coronavirus-affect-residents-in-nursing-facilities/.