

Special Report

Infection Control Surveys at Nursing Facilities Reported Released by CMS in June 2020: 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 facilities¹ 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 9,899 targeted infection control surveys and immediate jeopardy surveys going back to March 2020. These surveys included the 5,724 targeted infection control and immediate jeopardy surveys that CMS had released on June 4, 2020.³ The Center for Medicare Advocacy issued reports on the surveys released June 4 and on the non-cumulative surveys released June 24. This report analyzes all 9,899 surveys that were released, cumulatively, on June 4 and on June 24. (CMS will continue to update the data on the last Wednesday of each month.)

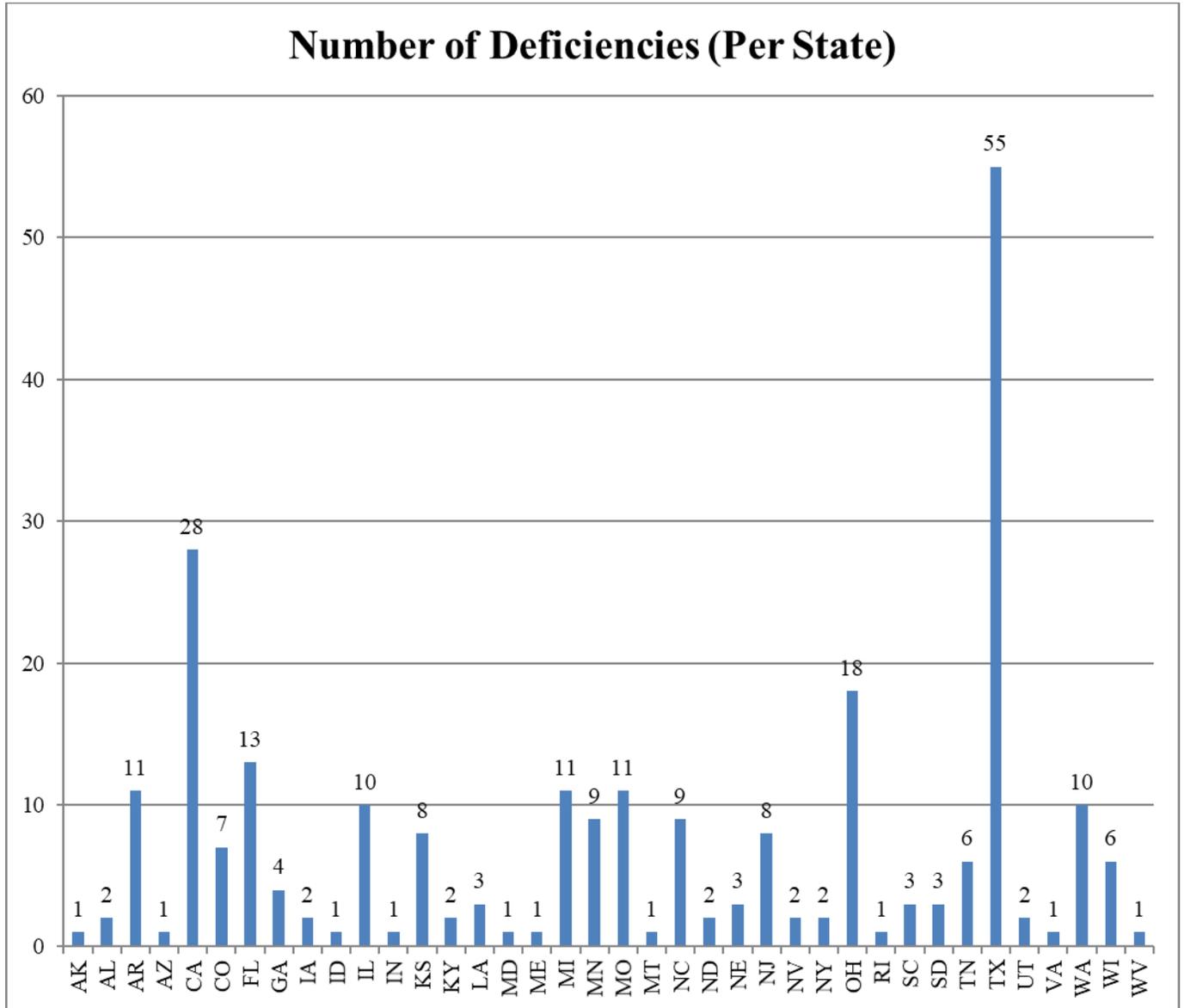
CMS reported that of the 9,899 targeted infection prevention and control surveys and complaint/facility-reported incidents triaged as immediate jeopardy, which it released on June 4 and June 24, a total of 262 infection control deficiencies were cited at 260 facilities. Analysis of the cumulative data documents that **only a very small fraction of surveys, 2.6%, led to an infection prevention and control deficiency and that 98.5% of the deficiencies were classified as “no harm” or “substantial compliance,”** the two lowest levels of noncompliance for which financial penalties are rarely imposed. Review of the star ratings finds that facilities cited with infection prevention and control deficiencies provided poor quality care. More than 60% of the facilities had one or two stars in health inspections (on a five-star scale, with five being the highest) and nearly half had one or two stars in staffing as well. Facilities scored well only on the self-reported quality measures domain; more than 55% had four or five stars in quality measures. Finally, 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 cumulative data reflected 9,899 targeted infection prevention and control surveys and immediate jeopardy surveys (there is some overlap in the two categories), identified a total of 262 deficiencies at 260 facilities for infection prevention and control (F-880).⁴ These 262 deficiencies represent just 2.6% of the total of infection prevention and control surveys/immediate jeopardy surveys that were conducted since March that were reported on June 4 and June 24.

State Data

As shown below, 262 infection prevention and control deficiencies, F-880, were reported in 38 states. Texas cited the highest number of infection prevention and control deficiencies, 55; California cited 28 infection prevention and control deficiencies. Ten states cited a single infection prevention and control deficiency following targeted infection prevention and control/immediate jeopardy surveys.



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 (“substantial compliance”)

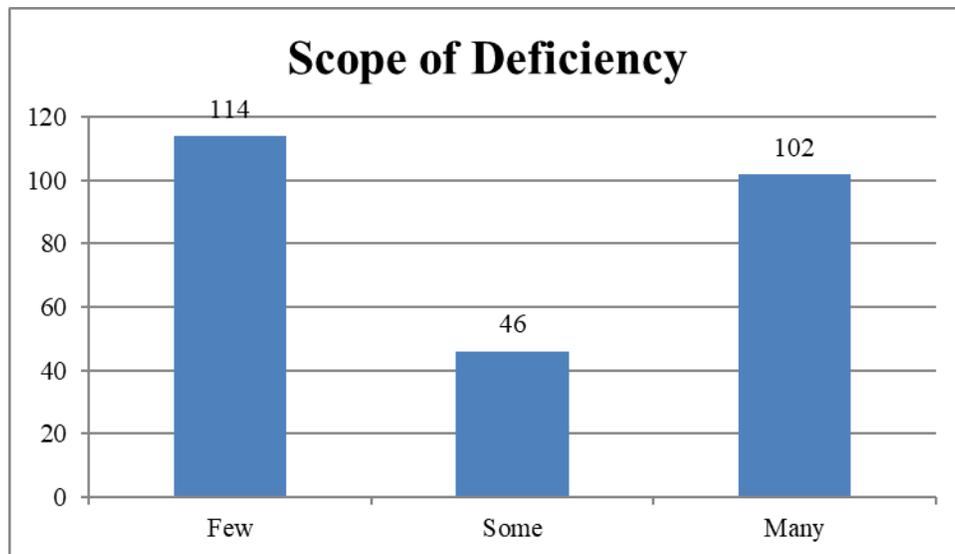
No actual harm with the potential for more than minimal harm (“no harm”)

Actual harm (“actual harm”)

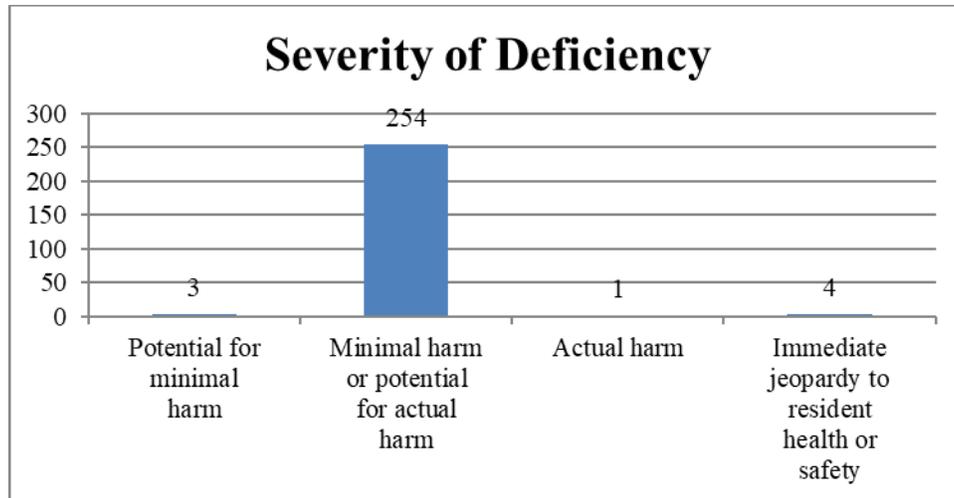
Immediate jeopardy (“immediate jeopardy”)⁵

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. One hundred two deficiencies (38.9%) were considered widespread, affecting many residents.



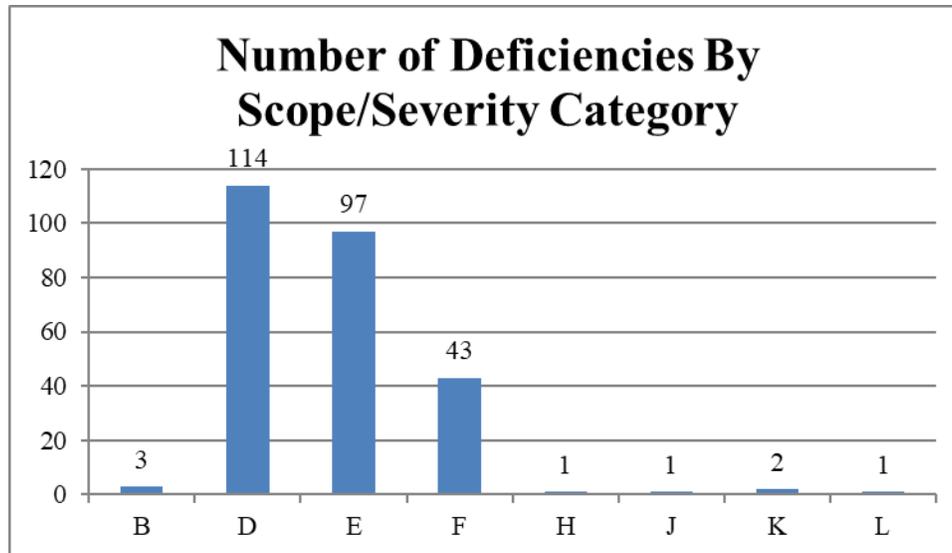
The bar graph below reflects the seriousness of the infection prevention and control deficiency that was cited. As shown, 98.1% of deficiencies were cited as “no harm” or “substantial compliance;” only four deficiencies were cited as “immediate jeopardy.”



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. Two hundred fifty-four of the 262 deficiencies (96.9%) were cited as no harm, levels D, E, or F; three deficiencies were cited as substantial compliance, level B. Only four deficiencies (1.5%) were cited as immediate jeopardy, levels J, K, and L.



The table below shows the scope/severity of deficiencies by state. Many states have deficiencies in multiple categories, most typically, a combination of D, E, and F. Only four of 28 states – Iowa, Minnesota, North Carolina, Ohio – cited an immediate jeopardy deficiency in infection prevention and control.

State	B	D	E	F	H	J	K	L	Total
AK				1					1
AL		1	1						2
AR		1	10						11
AZ		1							1
CA	2	11	12	3					28
CO		1	2	4					7
FL		8	3	1	1				13
GA		2	2						4
IA		1					1		2
ID			1						1
IL		7	2	1					10
IN			1						1
KS		3	2	3					8
KY		1	1						2
LA		2	1						3
MD			1						1
ME		1							1
MI	1	4	4	2					11
MN		5	4				1		10

MO		4	5	2					11
MT			1						1
NC		6	1	1		1			9
ND			1	1					2
NE			1	2					3
NJ		4	4						8
NV		1		1					2
NY		1	1						2
OH		10	1	6			1		18
RI			1						1
SC		2	1						3
SD		3							3
TN		6							6
TX		21	26	9					56
UT		1	1						2
VA		1							1
WA		3	4	3					10
WV		1							1
WI		1	2	3					6
Total	3	114	97	43	1	1	2	1	262

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). Each of the domains is separately scored, as described in the Technical Users’ Guide.⁶

The health domain is based on the number, scope, and severity of deficiencies identified during the three most recent annual surveys and most recent 36 months of complaint investigations; ratings are based on relative performance within a state, with the top 10% of facilities receiving five stars; the middle 70% of facilities receiving two, three, or four stars, and the bottom 20% receiving one star.

The staffing domain uses two measures: registered nurse (RN) hours per resident per day and total nurse staffing hours (RNs, licensed practical nurses, and nurse aides) per resident per day. Scoring is done on a national basis, with reference to CMS’s 2001 staffing study for the RN component.

The quality measures domain is based on 15 quality measures, nine long-stay measures and six short-stay measures. Facilities are scored on national data, with no limits on percentages of facilities scored at each star level.

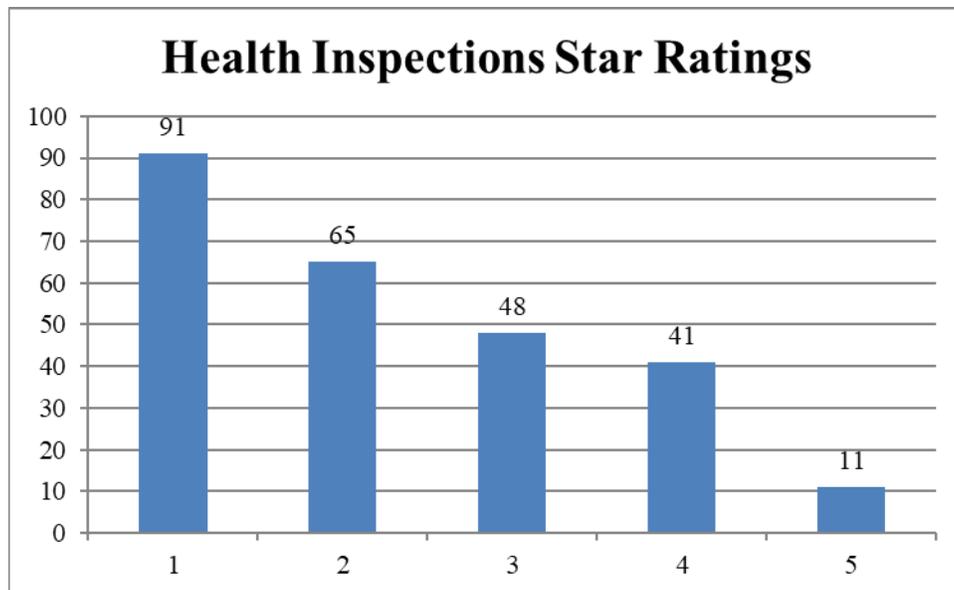
CMS calculates an overall rating for each facility. The overall rating begins with the health inspection rating and is increased by one star each for four or five stars in staffing or five stars in quality measures (or both) or is reduced by one star each for one-star ratings in staffing or quality measures (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.

Only 256 of the 260 facilities had star ratings. Two facilities were Special Focus Facilities (SFF), for which ratings are not reported; one facility had just graduated from the SFF program; and one facility was too recently certified to have star ratings.

Health Inspections

Four facilities did not have star ratings. Two facilities were SFFs; one facility was a recent graduate of the SFF program; and the fourth facility was too recently certified to be rated.

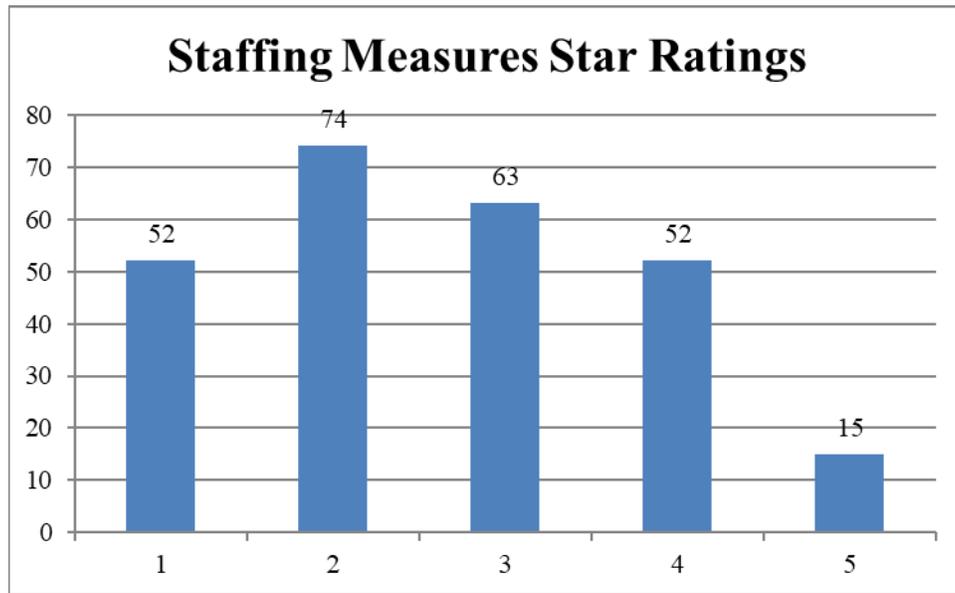
As shown below, facilities with poorer survey results were more likely to be cited with an infection prevention and control deficiency. Of the 256 facilities with star ratings that cited with an infection prevention and control deficiency, 156 facilities (60.9%) had one or two stars in health inspection surveys. Only 52 facilities with four or five stars (20.3%) in health inspection surveys were cited with an infection prevention and control deficiency.



Staffing Rating

Four facilities did not have star ratings. Two facilities were SFFs; one facility was a recent graduate of the SFF program; and the fourth facility was too recently certified to be rated.

One hundred twenty-six of the 256 facilities with star ratings that were cited with an infection prevention and control deficiency (49.2%) had one or two stars in staffing; 67 facilities (26.2%) were cited with four or five stars in staffing. One-star facilities, those with the lowest staffing levels, were more than three times as likely to be cited with an infection prevention and control deficiency as facilities with five stars, the highest rating in staffing.

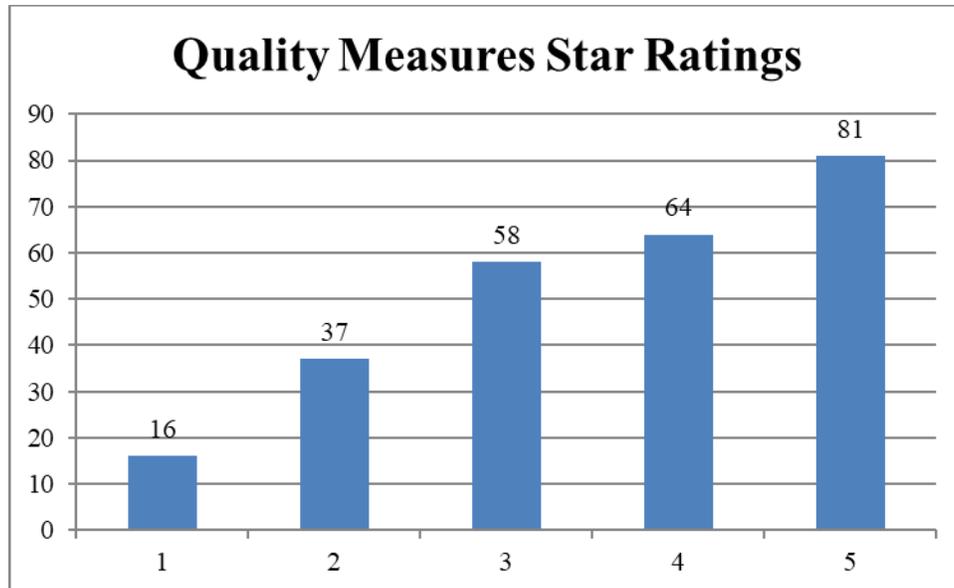


Quality Measures Rating

Four facilities did not have star ratings. Two facilities were SFFs; one facility was a recent graduate of the SFF program; and the fourth facility was too recently certified to be rated.

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. More than half of facilities (145 of 256 facilities with star ratings) (56.6%) have four or five stars in the quality measures domain. Only 53 of 256 facilities (20.7%) have one or two stars in quality measures.

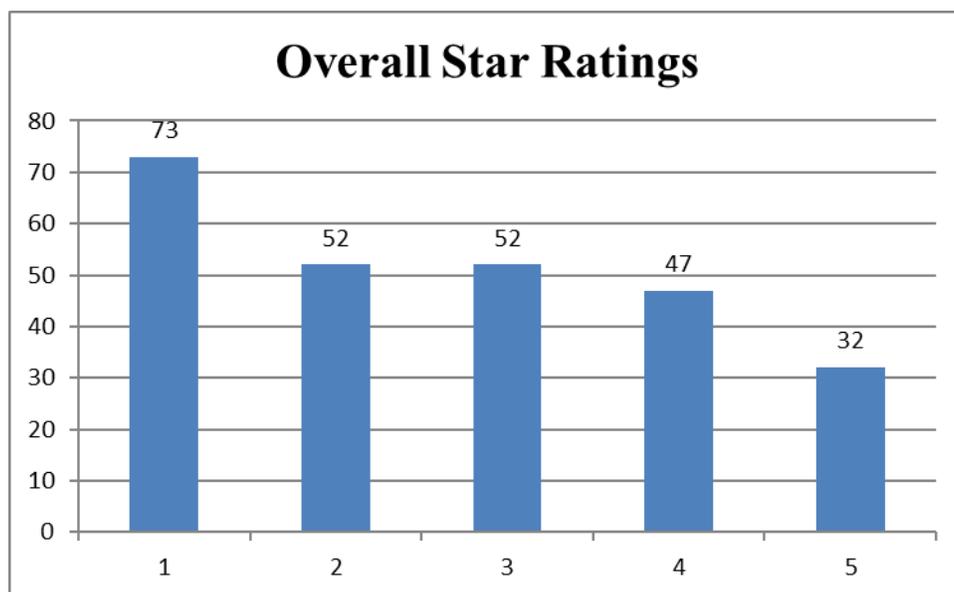
Nursing facilities have been gaming the quality measures ratings for a long time; gaming is not a new phenomenon. Evaluating the first five years of the federal rating system, 2009-2013, Abt Associates reported that four- and five-star ratings in the quality measures domain increased from 34.1 percent 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.⁷ *The New York Times* reached a similar conclusion about nursing homes' gaming of the rating system.⁸



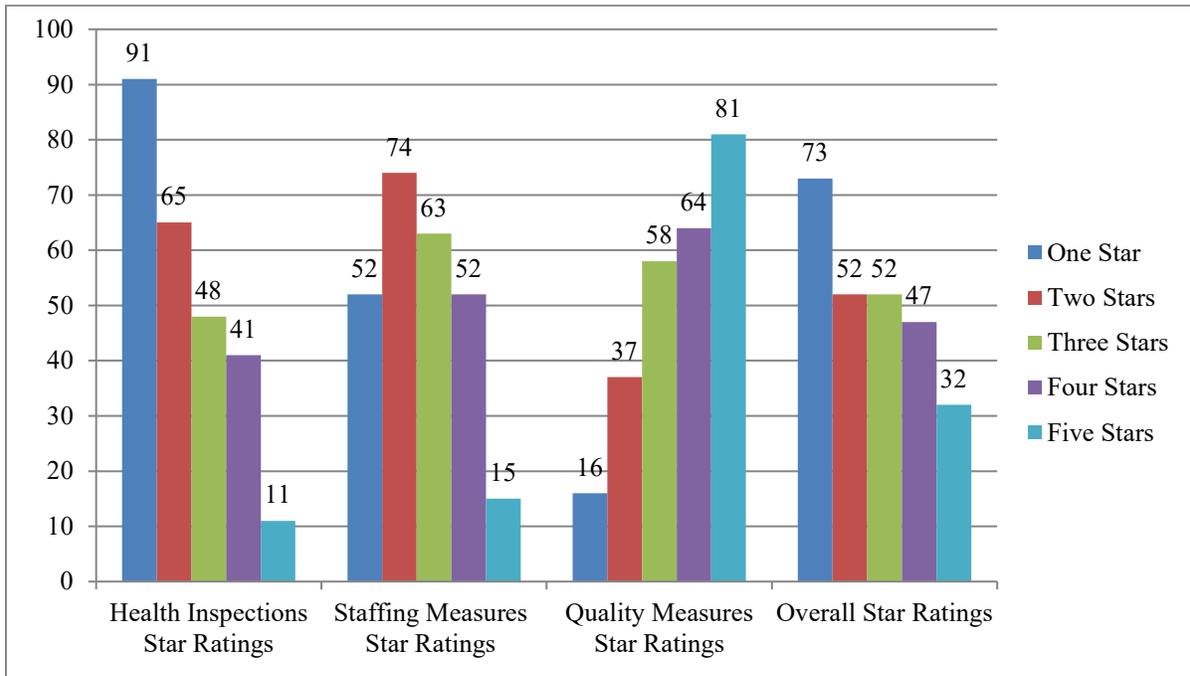
Overall Rating

Four facilities did not have star ratings. Two facilities were SFFs; one facility was a recent graduate of the SFF program; and the fourth facility was too recently certified to be rated.

The high ratings in the quality measures domain boost some facilities' overall ratings. Only 125 of 256 facilities with star ratings (48.8%) have one- or two-star overall ratings (compared to 156 of 256 facilities (60.9 %) receiving one or two stars in health inspection ratings). Seventy-nine of 256 facilities (30.8%) have overall ratings of four or five stars (compared to 52 of 256 facilities (20.3%) receiving four or five stars in health surveys).

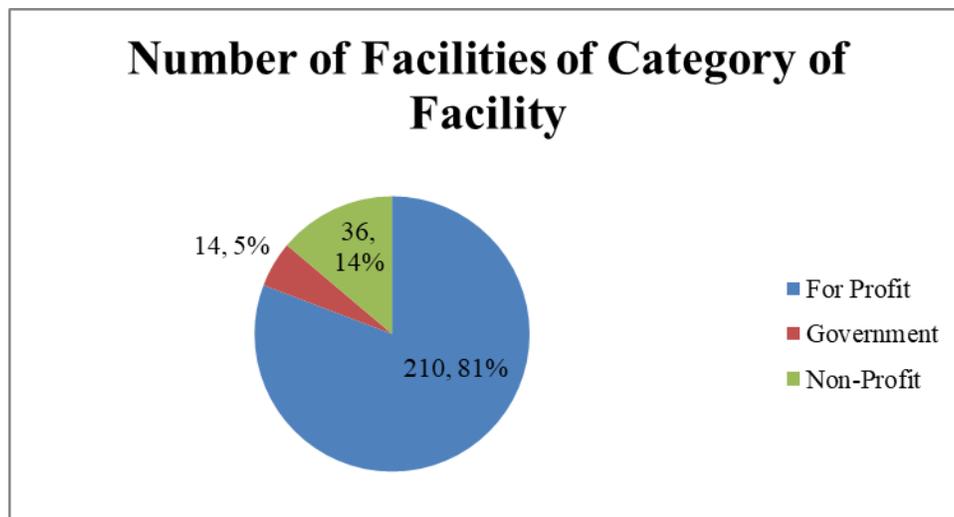


The star ratings for all of the measures are displayed below. The bar graph documents that many facilities have higher overall ratings than their health inspection ratings; their five-star quality measures ratings give them an additional star in their overall ratings.



Ownership Status

Two hundred ten (81%) 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.⁹



Remedies

Ninety-eight of 260 facilities with infection prevention and control deficiencies (37.7%) have had civil money penalties imposed; the average fine for the 98 facilities was \$50,615.78. One hundred sixty-two of the 262 facilities (62.3%) did not have fines imposed.

Thirty-six of the 260 facilities (13.8%) have had denial of payment for new admissions (DPNA) imposed. Thirty-two 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, for either of these remedies. Nevertheless, the rates of federal sanctions reported here are high; 37.7% of nursing facilities are not typically sanctioned with fines and 13.8% are not typically sanctioned with DPNA.

Special Focus Facility and Candidates

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

- “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).”¹⁰

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.¹¹

Two of the 260 facilities are SFFs; one facility is a recent SFF graduate, and 13 of the 260 facilities were on the SFF candidate list (total, 6.2%), as of June 24, 2020.

In 2017, there were approximately 15,483 nursing facilities in the United States.¹² 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, SFF candidate, or recent SFF graduate as other facilities.

Conclusion

The 9899 surveys reported by CMS in June 2020 cited 262 infection prevention and control deficiencies in 260 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 23, 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 42 C.F.R. §488.404(b)(1)(i)-(iv), 59 Fed. Reg. 56116k 56143 (Nov. 10, 1994), <https://www.govinfo.gov/content/pkg/FR-1994-11-10/pdf/FR-1994-11-10.pdf>.

⁵ CMS, Design for *Nursing Home Compare* Five-Star Quality Rating System: Technical Users’ Guide (Apr. 2020). <https://www.cms.gov/Medicare/Provider-Enrollment-and-Certification/CertificationandCompliance/Downloads/usersguide.pdf>.

⁷ 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/CertificationandCompliance/Downloads/2013-The-First-Four-Years-of-Five-Star.pdf>.

⁸ 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>.

⁹ National Center for Health Statistics, Centers for Disease Control and Prevention, <https://www.cdc.gov/nchs/fastats/nursing-home-care.htm>.

¹⁰ CMS, Special Focus Facility (“SFF”) Program, <https://www.cms.gov/files/document/sff-posting-candidate-list-june-2020.pdf>.

¹¹ *Id.*

¹² 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/>.