

**Special Report:  
 CMS Releases Fifth Cumulative List of Focused Infection Control Surveys**

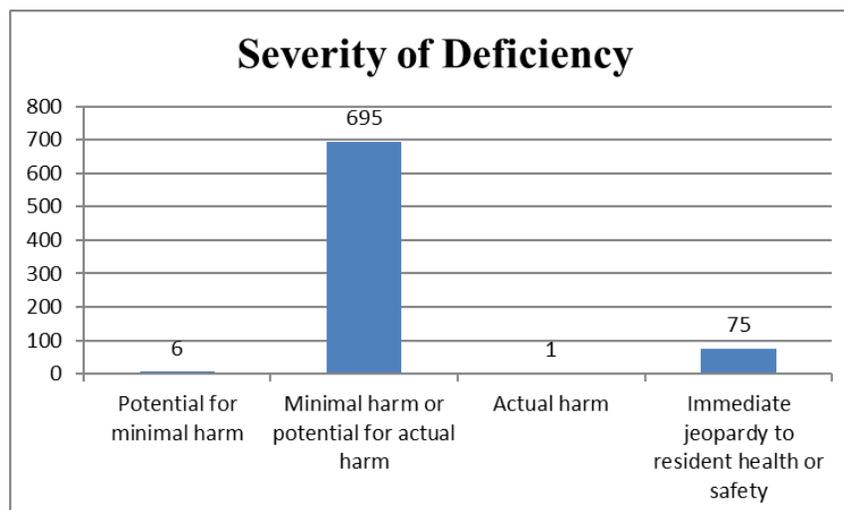
On September 30, 2020, the Centers for Medicare & Medicaid Services (CMS) released its fifth cumulative report on focused infection control surveys in nursing facilities. Like previous reports, the fifth report shows that comparatively few facilities are cited with deficiencies and that most deficiencies are called “no harm.” On August 14, 2020, CMS reported that it had cited more than 180 facilities with immediate jeopardy infection control deficiencies (triple the rate in 2019) and imposed civil money penalties of nearly \$10 million, averaging \$55,000 for each facility.<sup>1</sup> As reported by the Center,<sup>2</sup> CMS told residents’ advocates in an August 19 call that information about these surveys, to date, was reported only on an internal CMS database. All the survey reports identified by CMS nearly two months ago have still not been publicly reported. As described below, publicly reported infection control data, released by CMS on September 30 (and covering the period through August 31), continue to show many fewer immediate jeopardy infection control deficiencies than CMS reports having cited in mid-August – 75, compared to 180.

News reports continue to indicate that more deficiencies have been cited and more penalties have been imposed than CMS publicly reports. For example, *ABC News* reported that since March 1, 2020, New York State has cited infection control deficiencies at 62 nursing facilities, about one in ten facilities in the state, and determined that six violations placed residents in immediate jeopardy. *ABC News* also reported that the state imposed fines totaling \$328,000 at 23 facilities for infection control deficiencies. The largest fine, \$50,000, was imposed at Humboldt House Rehab and Nursing Center in Buffalo, where residents with and without COVID-19 were commingled.<sup>3</sup>

**CMS’s September 30 cumulative data release**

On September 30, 2020, CMS made public the fifth cumulative release of 32,681 targeted infection control surveys, covering the period March 4 through August 31. The surveys cited 777 infection prevention and control deficiencies in 742 facilities (711 facilities were cited with one deficiency, 27 facilities were cited with two deficiencies, and four facilities were cited with three deficiencies).

Of the 777 infection control deficiencies, 75 deficiencies (9.7%) were cited at the immediate jeopardy level.



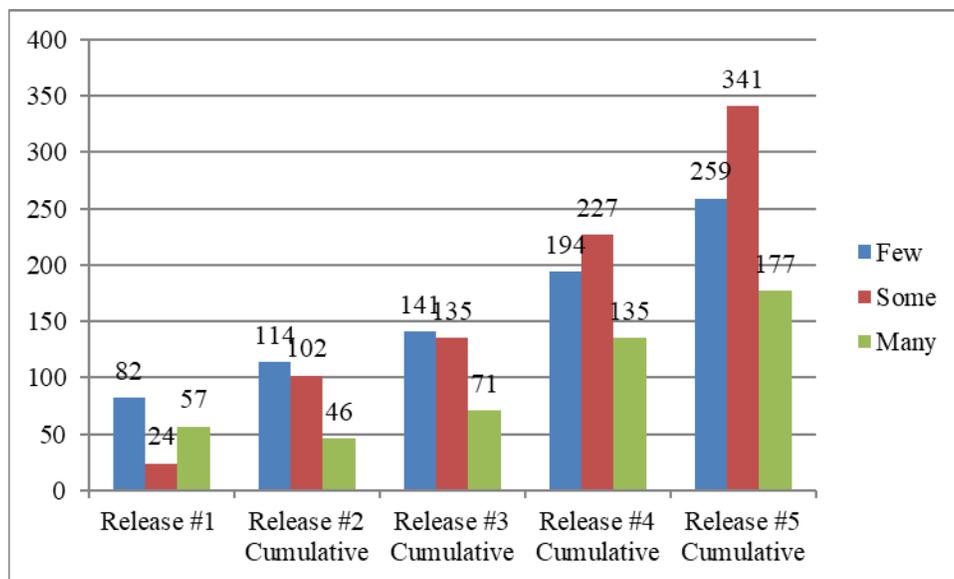
Although all five releases of infection control surveys and deficiencies show that less than 3% of focused infection control surveys cited deficiencies, an increasing percentage of these deficiencies has been classified as immediate jeopardy.

Date of CMS release	Number of surveys	Number (%) of infection control deficiencies cited	Number (%) of infection control deficiencies classified as immediate jeopardy
June 4	5,724	163 (2.8%)	1 (1.0%)
June 24	9,899	262 (2.6%)	4 (1.5%)
July 29	16,987	347 (2.0%)	22 (6.6%)
August 26	25,593	556 (2.2%)	48 (8.6%)
September 30	32,681	777 (2.4%)	75 (9.7%)

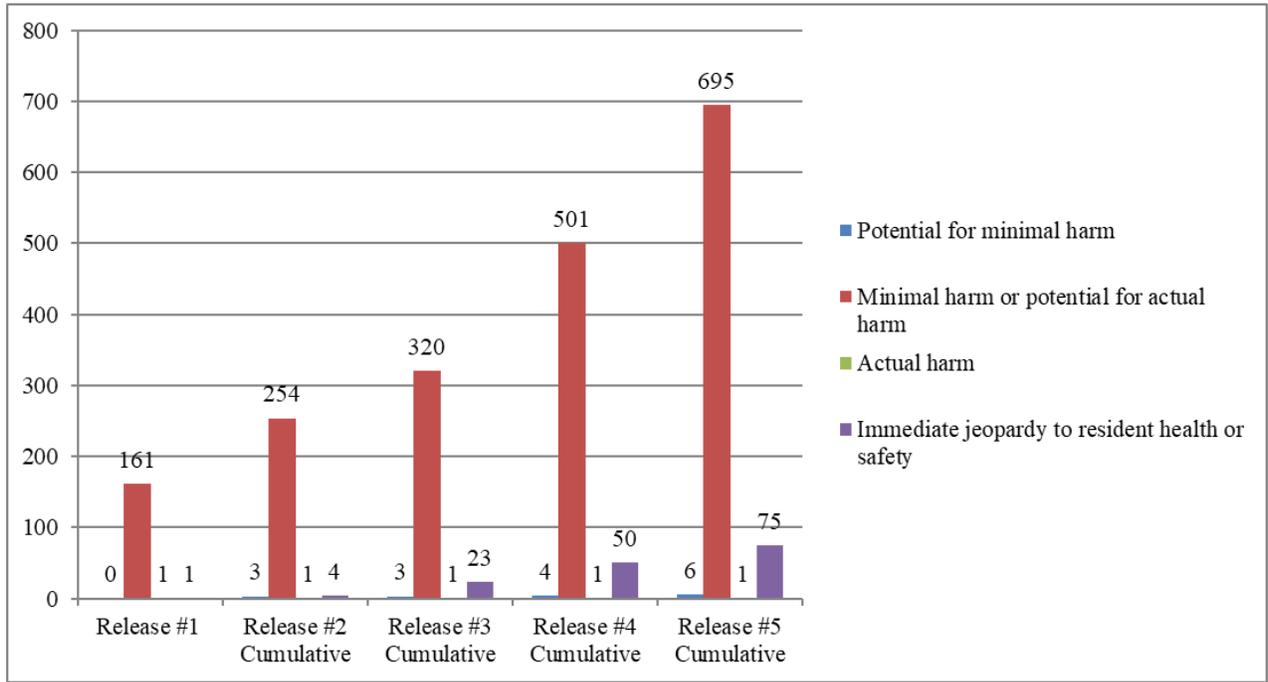
Other results of the surveys released in September are reported below.

The shift in the scope of deficiencies that first appeared with the August release continued with the September release. While the first three cumulative releases showed that the largest category of deficiencies was cited as “few,” the fourth and fifth cumulative releases both show that “some” is now the largest category with respect to scope of deficiencies.

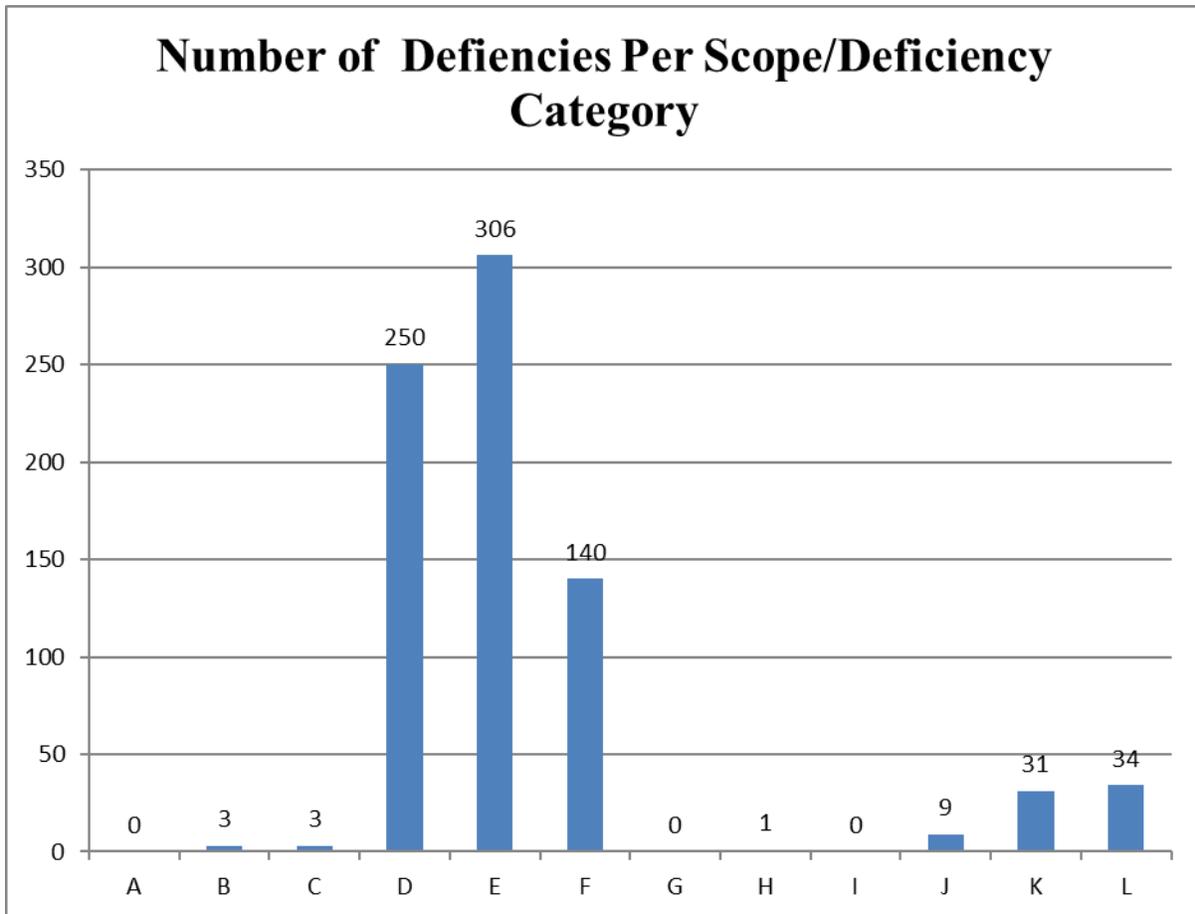
Scope	Release #1	Cumulative Release #2	Cumulative Release #3	Cumulative Release #4	Cumulative Release #5
Few	82	114	141	194	259
Some	24	102	135	227	341
Many	57	46	71	135	177
Total	163	262	347	556	777



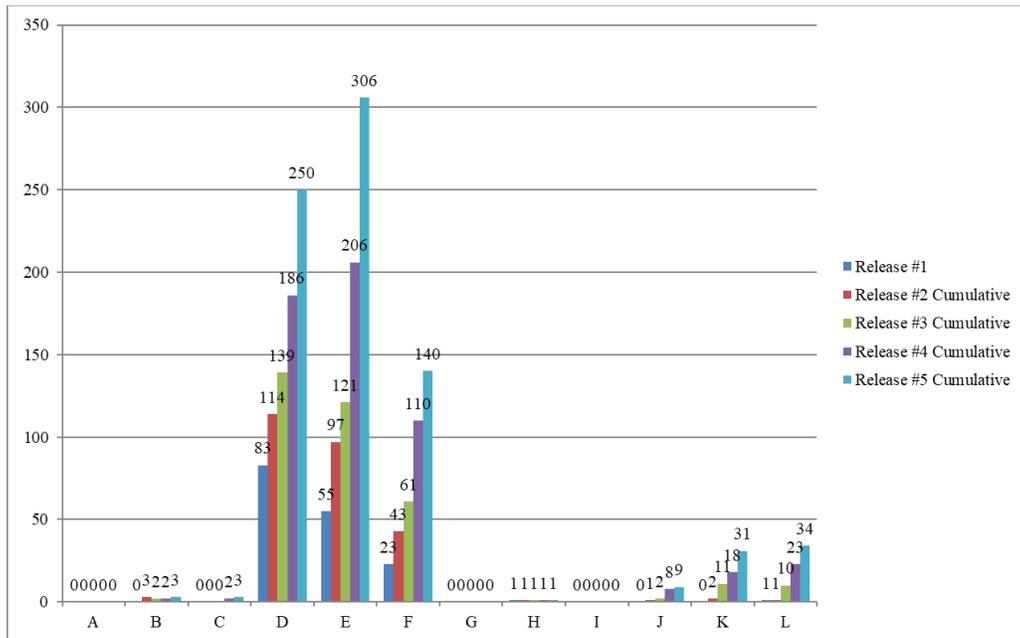
As categorized by the combined scope and severity classifications, most deficiencies (695 of 777 deficiencies, 89.4%) are cited as minimal harm or potential for actual harm (levels D, E, and F), also known as “no harm.”



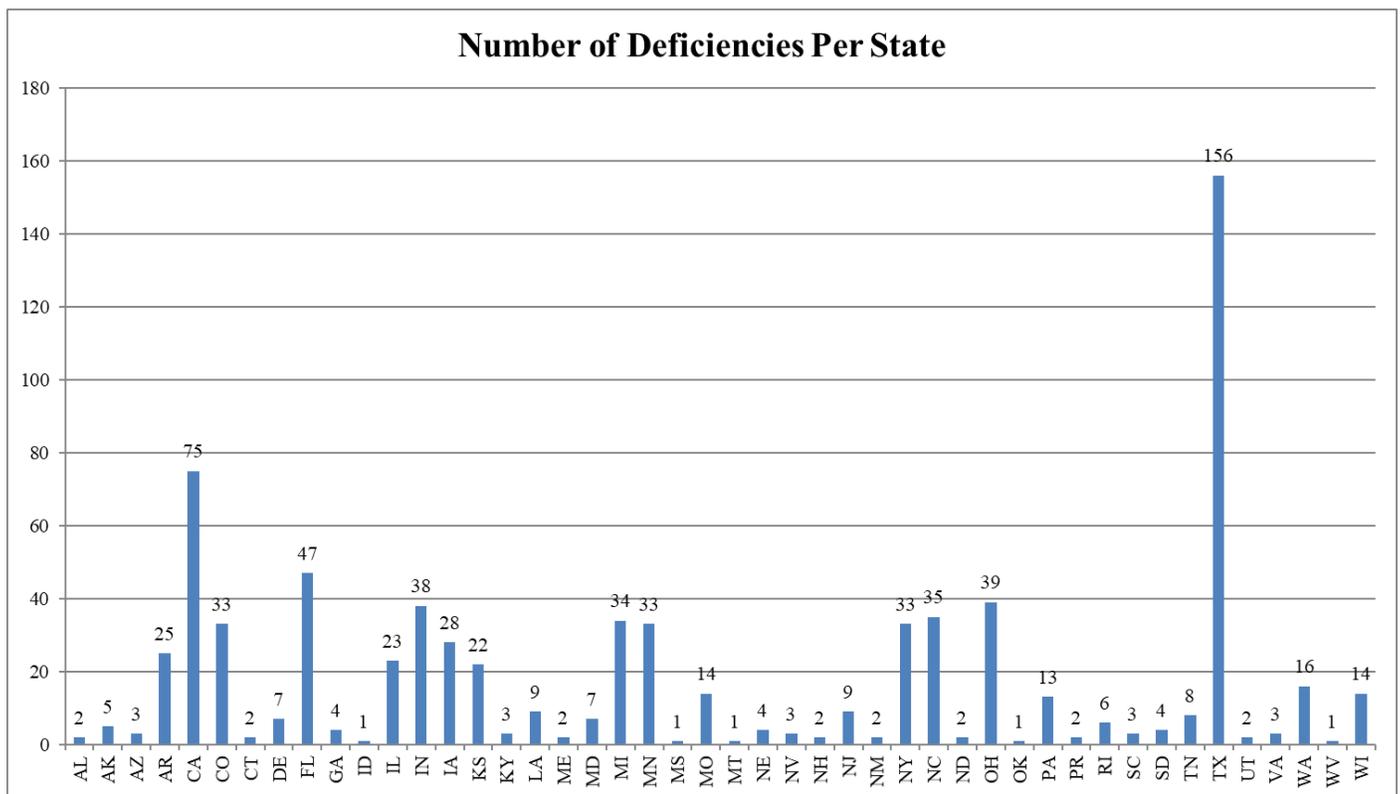
More specifically, the largest number of deficiencies has been called “no harm” and affect “some” residents (level E).



“No harm” deficiencies (levels D, E, and F) were predominant in all four cumulative releases of infection control surveys.



As in previous releases, Texas cited more infection control deficiencies than any other state – 156 of 777 deficiencies (20%). Five states – Hawaii, Massachusetts, Oregon, Vermont, and Wyoming – have not cited a single infection control deficiency since March 2020.



## Conclusion

Fewer than 3% of focused infection control surveys cite an infection control deficiency; an increasing percentage of the deficiencies is classified as immediate jeopardy. Nevertheless, the 77 immediate jeopardy infection control deficiencies publicly reported in September, and covering the period through August 31, are still far fewer than the nearly 180 number claimed by CMS in August.

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<sup>1</sup> CMS, “Trump Administration Has Issued More Than \$15 Million in Fines to Nursing Homes During COVID-19 Pandemic” (Press Release, Aug. 14, 2020), <https://www.cms.gov/newsroom/press-releases/trump-administration-has-issued-more-15-million-fines-nursing-homes-during-covid-19-pandemic>.

<sup>2</sup> CMA, “Responding to CMS Announcement on Nursing Home Enforcement – Infection Control Deficiencies in Nursing Facilities: QCOR Data” (CMA Alert, Aug. 20, 2020), <https://medicareadvocacy.org/responding-to-cms-announcement-on-nursing-home-enforcement-infection-control-deficiencies-in-nursing-facilities-qcor-data/>.

<sup>3</sup> Marina Villeneuve, Associated Press, “Inspections found nursing home lapses as COVID-19 raged,” ABC News (Sep. 24, 2020), <https://abcnews.go.com/Health/wireStory/inspections-found-nursing-home-lapses-covid-19-raged-73223780>.