

I. Introduction

How to read this report

Part I (this introduction) provides critical background information on nursing home enforcement and context for the data presented in this report and our findings. It also provides useful information on the components of the research, including methodology, sources, and the role of the CMS Regional Offices.

Part II (Data and Analysis) is the main section of this report, presenting data on and insights into nursing home enforcement. It covers several key topics which we believe are both important and useful in assessing the effectiveness of government efforts to ensure that nursing homes are held accountable for providing good care, including **Overall Citations, Antipsychotics, Infection Control, Pressure Ulcers, Quality of Life, Resident Rights, Staffing, and Fines**. Each category includes:

- An introduction,
- Key findings,
- A map depicting rates of (1) state enforcement, (2) states' identification of harm or immediate jeopardy, (3) U.S. totals and averages,
- A table with state data, and
- A table with regional data.

Part III (Discussion & Recommendations) contains a discussion of our findings on oversight and enforcement at the state, regional, and federal levels and how these data can inform public policy moving forward. Further, it offers seven recommendations for CMS to ensure that State Agencies – and the Regional Offices charged with overseeing them – fulfil their shared mission to protect residents.

Part IV (Appendix) provides references and sources with links to original datasets.

Background: The Government's Broken Promises

U.S. nursing homes provide care, support services, and housing to over one million people every day and millions of people each year. In addition to those individuals, their families and loved ones have a substantial personal stake in the quality of care and quality of life nursing homes provide. With the advent of the aging “Baby Boomer” generations, these numbers will undoubtedly rise. As reported in *U.S. News and World Report*, “[s]omeone turning age 65 today has almost a 70% chance of needing some type of long-term care, and 20% of people will need it for longer than five years.”¹

¹ Levine, David and Esposito, Lisa, *U.S. News and World Report*, “How to Pay For Nursing Home Costs” (October 15, 2021), citing LongTermCare.gov. Available at <http://health.usnews.com/health-news/best-nursing-homes/articles/2013/02/26/how-to-pay-for-nursing-home-costs>.

While many of us have – or will have – a personal stake in nursing home care, **all** of us will share a financial stake. Spending on care in U.S. nursing homes and continuing care retirement communities totaled \$168.5 billion in 2018.² The average rate for nursing home care in the U.S. is now over \$250 per day.³ The large share of these costs is paid by taxpayers through the Medicaid and Medicare programs.

Despite the significant need for both long-term and short-term nursing home care – and the billions of dollars we invest every year – significant problems in resident care, quality of life, and dignity are pervasive across the country. **Our laws and regulatory standards are strong, providing that each resident be treated with dignity and receive the care and services that they need to attain, and maintain, their highest practicable physical, emotional, and social well-being. The fact that this level of care is the exception, rather than the rule, is a result of the failure (in fact multiple failures, every day) to adequately enforce those standards and protections.**

In short, nursing homes too often have inadequate care staff and fail to provide appropriate care with dignity because nothing is stopping them from doing otherwise. **As the data in this report indicate, the government is breaking its promise to ensure that residents are safe and treated with dignity.** There is often little or no punishment when nursing homes fail to provide care that meets the standards they are paid to achieve, even when such failures result in significant resident suffering or avoidable death.

As the data in this report indicate, the government is breaking its promise to ensure that residents are safe and treated with dignity.

The systemic acceptance of subpar care does not only perpetuate resident neglect and abuse; it has a significant financial cost. As noted above, taxpayers pay for the majority of nursing home care. We count on the federal Centers for Medicare and Medicaid Services (CMS) and the State Survey Agencies (SAs) to assure that public monies are spent appropriately. When care is poor it means we are not getting good value for the money we spend. And when that poor care results in the need for additional care, whether it be medication to fight an unnecessary infection or hospitalization due to a medication error, the public foots the bill for that, too.

This report builds on LTCCC's 2015 study, "[Safeguarding NH Residents & Program Integrity: A National Review of State Survey Agency Performance](#),"⁴ which reviewed nursing home quality

² National Center for Health Statistics, *National health expenditures, average annual percent change, and percent distribution, by type of expenditure: United States, selected years 1960–2018* (data compiled from various sources by the Centers for Medicare & Medicaid Services). <https://www.cdc.gov/nchs/fastats/health-expenditures.htm>
Note: CMS does not provide separate data for nursing homes and continuing care retirement communities.

³ Genworth, *2020 Cost of Care Survey*. <https://www.genworth.com/corporate/about-genworth/industry-expertise/cost-of-care.html>

⁴ <https://nursinghome411.org/national-report-safeguarding-nh-residents-program-integrity-a-national-review-of-state-survey-agency-performance/>.

assurance indicators based on a resident-centered approach. Though oversight is typically assessed on a facility basis, the 2015 study and this report assess enforcement rates adjusted for a state's nursing home resident population. In our view this is critical, since the purpose of nursing home standards is to ensure that residents, as individuals, receive care that complies with professional standards and are treated with dignity.

This report presents the results of an analysis of survey and enforcement data at the state, regional, and federal levels with a focus on all U.S. states and the 10 Regional Offices of the federal Centers for Medicare and Medicaid Services (CMS) tasked with overseeing the performance of the state enforcement agencies in their respective regions of the country. To assess performance in enforcement, **we assessed the surveyor citation rate and citation severity in seven critical areas of nursing home care** based on surveys (inspections) over the most recent three-year period (2018-20). These areas are:

- [Overall Citations](#)
- [Antipsychotic Drugging](#),
- [Infection Control](#),
- [Pressure Ulcers](#),
- [Quality of Life](#),
- [Resident Rights](#), and
- [Sufficient Staffing](#).

For each area of nursing home care, we provide key enforcement performance metrics including **citation rates** (how often a state/region cited its nursing homes, adjusted for resident population) and **percent of G+ citations** (the proportion of citations categorized as having caused any resident harm or immediate jeopardy). Individual care categories (excluding Overall Citations) also include examples of so-called "no harm" deficiencies (citations categorized as A through F).^{5,6}

Note: [Federal Fines](#) (average dollar amount and frequency, adjusted for resident population) are also assessed in this report.

States and regions are ranked in each enforcement performance metric (most frequent/severe citation rates and penalties ranking first; least frequent/severe ranking last). Wherever possible, we provide color-coded maps that illustrate state and regional disparities in enforcement performance.

The wide range of enforcement data provided in this report can be used to identify strengths and weaknesses among states in respect to their ability to ensure nursing home safety

⁵ Most "no harm" examples obtained from *The Elder Justice "No Harm" Newsletter* at <https://nursinghome411.org/news-reports/elder-justice/>. The example provided in Quality of Life is available at <https://nursinghome411.org/wp-content/uploads/2021/10/QOL-F675-Pico-Rivera.pdf>.

⁶ See the Appendix for the Scope & Severity Grid which surveyors used to rank deficiencies.

standards are realized for their residents. Additionally, it can be used to gain insights into regional trends based on performance among the 10 CMS Regional Offices covering the country. Lastly, the federal data can be used to provide context for state and regional data, and in most cases, demonstrate the universality of U.S. nursing home enforcement performance trends.

CMS Regional Offices/Locations

CMS’s Regional Offices are responsible for overseeing the enforcement agencies of the states within their region of the country. The 10 regional offices are located in Boston, New York, Philadelphia, Atlanta, Dallas, Kansas City, Chicago, Denver, San Francisco, and Seattle. More information on each CMS Region and its nursing home demographics (based on MDS Reports)⁷ are listed in the map and table below. **Note:** CMS has renamed the Regional Offices as “Locations.” However (as of October 2021), the term “Regional Office” still appears on the CMS website. For this reason, and because it is more descriptive, this report uses “Regional Office.”

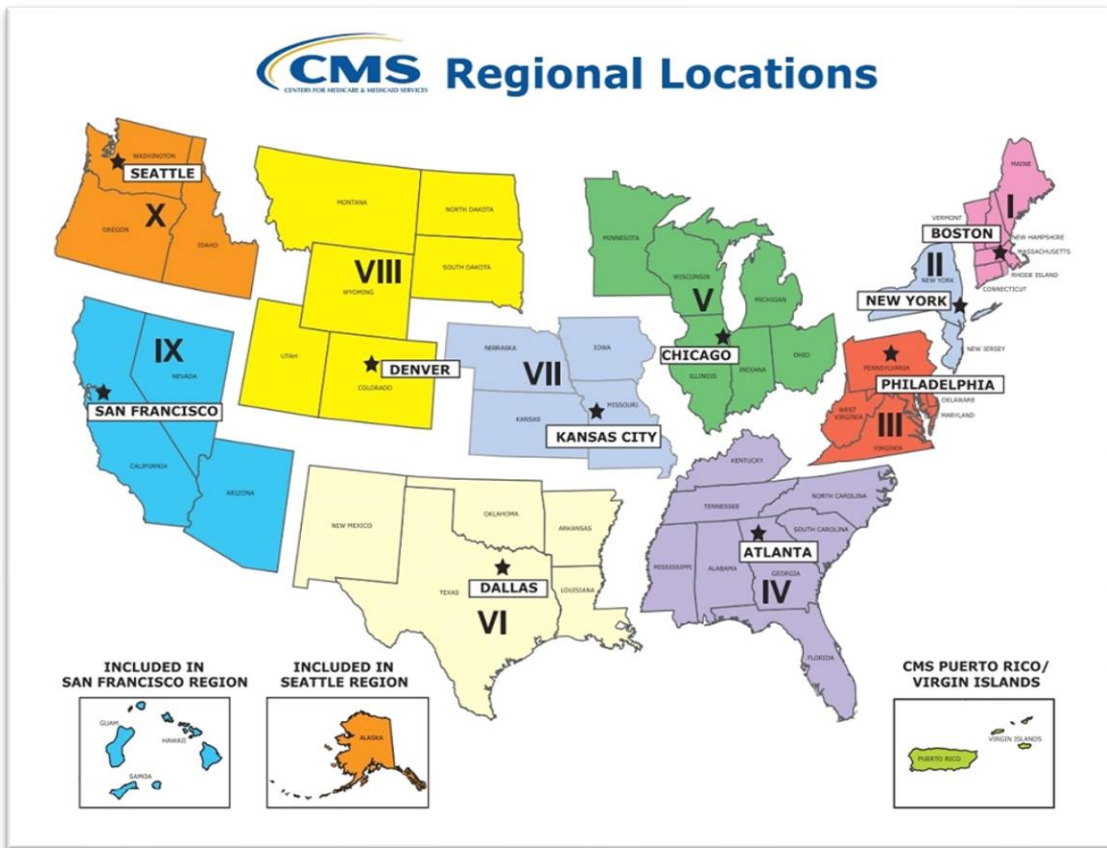


Figure 1: Map of CMS Regional Locations.

⁷ MDS 3.0 Frequency Reports (Q4 2019) available at <https://www.cms.gov/Research-Statistics-Data-and-Systems/Computer-Data-and-Systems/Minimum-Data-Set-3-0-Public-Reports/Minimum-Data-Set-3-0-Frequency-Report>.

Broken Promises: An Assessment of Federal Data on Nursing Home Oversight

CMS Region	Regional Office Location	States	Resident Population (Avg. 2018-20)	% Non-White	% 85+	% Male
1	Boston	Connecticut, Maine, Massachusetts, New Hampshire, Rhode Island, Vermont	81,394	14.6%	42.3%	35.2%
2	New York	New Jersey, New York, Puerto Rico, Virgin Islands	147,034	35.5%	38.1%	38.6%
3	Philadelphia	Delaware, District of Columbia, Maryland, Pennsylvania, Virginia, West Virginia	142,490	24.2%	37.7%	36.0%
4	Atlanta	Alabama, Florida, Georgia, Kentucky, Mississippi, North Carolina, South Carolina, Tennessee	249,017	29.7%	32.8%	36.3%
5	Chicago	Illinois, Indiana, Michigan, Minnesota, Ohio, Wisconsin	260,895	20.3%	35.5%	37.5%
6	Dallas	Arkansas, Louisiana, New Mexico, Oklahoma, Texas	158,662	33.3%	31.9%	37.3%
7	Kansas City	Iowa, Kansas, Missouri, Nebraska	87,815	11.5%	40.1%	35.5%
8	Denver	Colorado, Montana, North Dakota, South Dakota, Utah, Wyoming	39,270	16.5%	38.3%	38.8%
9	San Francisco	Arizona, California, Hawaii, Nevada, Pacific Territories	124,822	45.4%	30.3%	43.0%
10	Seattle	Alaska, Idaho, Oregon, Washington	27,943	15.8%	30.1%	41.0%

Methodology, Metrics, & Terminology

Survey Sample

This report explored citations from **surveys conducted from 2018 to 2020**. A total of 290,289 citations were recorded for surveys conducted during this three-year period.⁸ See [Appendix - Health Deficiencies \(2018-20\)](#) for more on citations data.

Federal rules require that the state survey agencies conduct a standard survey of their state's nursing homes, evaluating compliance with minimum standards, on average of once every 12 months (with a window of 9-15 months for an individual facility's inspection). Though the COVID-19 pandemic led to restrictions on state survey agency activities during 2020, we determined to include citations for this year to provide the most up-to-date data and gain insights into variations in enforcement during this period.

Annual Citation Rates

Annual citation rates for most categories (Overall Citations, Infection Control, Quality of Life, Resident Rights, and Sufficient Staffing) were calculated per **total resident population** (based on MDS 3.0 Frequency Reports from 2018-20).⁹ Some citations were scaled to per 100, per 1,000, or per 10,000 residents.

Annual citation rates were determined by dividing the three-year rate by three.

Antipsychotic Drugging and Pressure Ulcers

Citation rates for **Inappropriate Antipsychotic Drugging** and **Substandard Pressure Ulcer Care** were calculated by dividing the number of AP and PU citations, respectively, by the number of **residents receiving antipsychotics (RAP)** and the number of **residents diagnosed with unhealed pressure ulcers (RPU)** during the fourth quarter of 2019, based on MDS data.¹⁰ These metrics are referred to as **RAP Citation Rate** and **RPU Citation Rate**. This methodology was chosen to reflect the specific information we have on reported residents receiving antipsychotics and those with identified (and reported) pressure ulcers. The fourth quarter of 2019 was selected because it is the most recent full quarter prior to the COVID-19 pandemic.

⁸ Citation data based on CMS's Health Deficiencies which include health citations from surveys conducted in the three-year period from 2018 to 2020. Downloaded March 2021. Most recent dataset available at: <https://data.cms.gov/provider-data/dataset/r5ix-sfxw>.

⁹ Average residents in 12 quarterly MDS 3.0 Frequency Reports ("A0800: Identification Information – Gender) from 2018-20. Available at <https://www.cms.gov/Research-Statistics-Data-and-Systems/Computer-Data-and-Systems/Minimum-Data-Set-3-0-Public-Reports/Minimum-Data-Set-3-0-Frequency-Report>.

¹⁰ MDS 3.0 Frequency Reports (Q4 2019) for antipsychotics (N0410A: Medications - Medications Received – Antipsychotics) and pressure ulcers (M0210: Skin Conditions - Unhealed Pressure Ulcers). Available at <https://www.cms.gov/Research-Statistics-Data-and-Systems/Computer-Data-and-Systems/Minimum-Data-Set-3-0-Public-Reports/Minimum-Data-Set-3-0-Frequency-Report>.

Antipsychotic Drugging Acronyms

AP = Antipsychotic drug

RAP = Number of residents receiving antipsychotics

RAP % = Percentage of total residents receiving antipsychotics

AP Citation Rate = Number of AP citations per total resident population

RAP Citation Rate = Number of antipsychotic drugging citations per 1k residents receiving antipsychotics

RAP Citation Rate measures the number of antipsychotic drugging citations per 1,000 residents receiving antipsychotics (RAP).

Pressure Ulcer Acronyms

PU = Pressure Ulcers

RPU = Number of residents with a reported pressure ulcer

RPU % = Percentage of total residents with reported pressure ulcers

PU Citation Rate = Number of PU citations per total resident population

RPU Citation Rate = Number of PU citations per 100 residents with reported pressure ulcers

RPU Citation Rate measures the number of PU citations per 100 residents with reported pressure ulcers (RPU).

“Harm” and “Immediate Jeopardy”

CMS categorizes deficiencies into four levels of severity based on letters A through L.

Level 1: No actual harm with potential for minimal harm (A, B, C).

Level 2: No actual harm with potential for more than minimal harm that is not immediate jeopardy (D, E, F).

Level 3: Actual harm that is not immediate jeopardy (G, H, I).

Level 4: Immediate jeopardy to resident health or safety (J, K, L).

Key Harm and Immediate Jeopardy metrics:

- **% G+ Citations:** Number of G+ citations (G, H, I, J, K, L) / total citations (A through L).
- **% Immediate Jeopardy Citations:** Number of J, K, or L citations / total citations (A through L).

Note: In this report, we review state, regional, and national citation rates by **1) Overall citations** (no matter the severity) and **2) G+ citations** (those in which the surveyors have found either harm or immediate jeopardy). **This distinction is important.** Overall citation rates reflect the extent to which state surveyors have identified a violation of minimum standards. However, the

*identification of resident harm is critical because, in the absence of identification of harm, it is extremely unlikely that a facility will face any penalty.*¹¹

Limitations

This report offers a wide variety of data on nursing home enforcement at the state and regional levels. It can be used to inform consumers, legislators, and the public during a critical moment in long-term care policymaking.

Limitations include:

- **Data accuracy:** Datasets may provide varying levels of accuracy. For example, recent reports have indicated an underreporting of rates of both pressure ulcers¹² and antipsychotic drugging¹³ of residents.
- **State/regional differences:** Conditions in a certain state/region may contribute to differences in performance metrics in nursing home care and/or nursing home enforcement. For example, unique geographic conditions in Alaska (as well as the state’s small population) may create different environments for surveyors that could lead to differences in enforcement performance metrics. Further, differences in resident demographics (i.e., age/race/gender) may contribute to disparities in care and/or enforcement outcomes.¹⁴
- **Limited surveys in 2020 due to COVID-19:** In response to the COVID-19 pandemic, CMS limited state survey agency activity nationwide for a good part of 2020 to infection control surveys and investigations of allegations of immediate jeopardy. This led to fewer surveys and citations than normally occur in a year. Only 52,000 citations were recorded in 2020 compared to 124,000 in 2019 and 115,000 in 2018. However, since the COVID-19 restrictions on state survey agencies were imposed nationwide, we determined that it would be most useful to include citations for this year since it provides the most up-to-date data available, as well as insights into how states and regions responded to the pandemic.

¹¹ For more information and insights into the identification of resident harm, see *The Elder Justice “No Harm” Newsletter* at <https://nursinghome411.org/news-reports/elder-justice/>.

¹² Integra Med Analytics, Underreporting in Nursing Home Quality Measures (Aug 25, 2020). <https://www.nursinghomereporting.com/post/underreporting-in-nursing-home-quality-measures>

¹³ Thomas, K., Gebeloff, R., and Silver-Greenberg, J., *The New York Times*, “Phony Diagnoses Hide High Rates of Drugging at Nursing Homes,” (Sept 11, 2021). <https://www.nytimes.com/2021/09/11/health/nursing-homes-schizophrenia-antipsychotics.html>

¹⁴ While an investigation of the potential impact of disparities in the resident population on state or regional survey performance is beyond the scope of this study, the authors hope that these data may be useful for further research in this area.