



Nursing Home Inspection and Enforcement Activities

A Report to the 112th Tennessee General Assembly

Tennessee Department of Health | Division of Health Licensure and Regulation,

Office of Health Care Facilities | February 2022



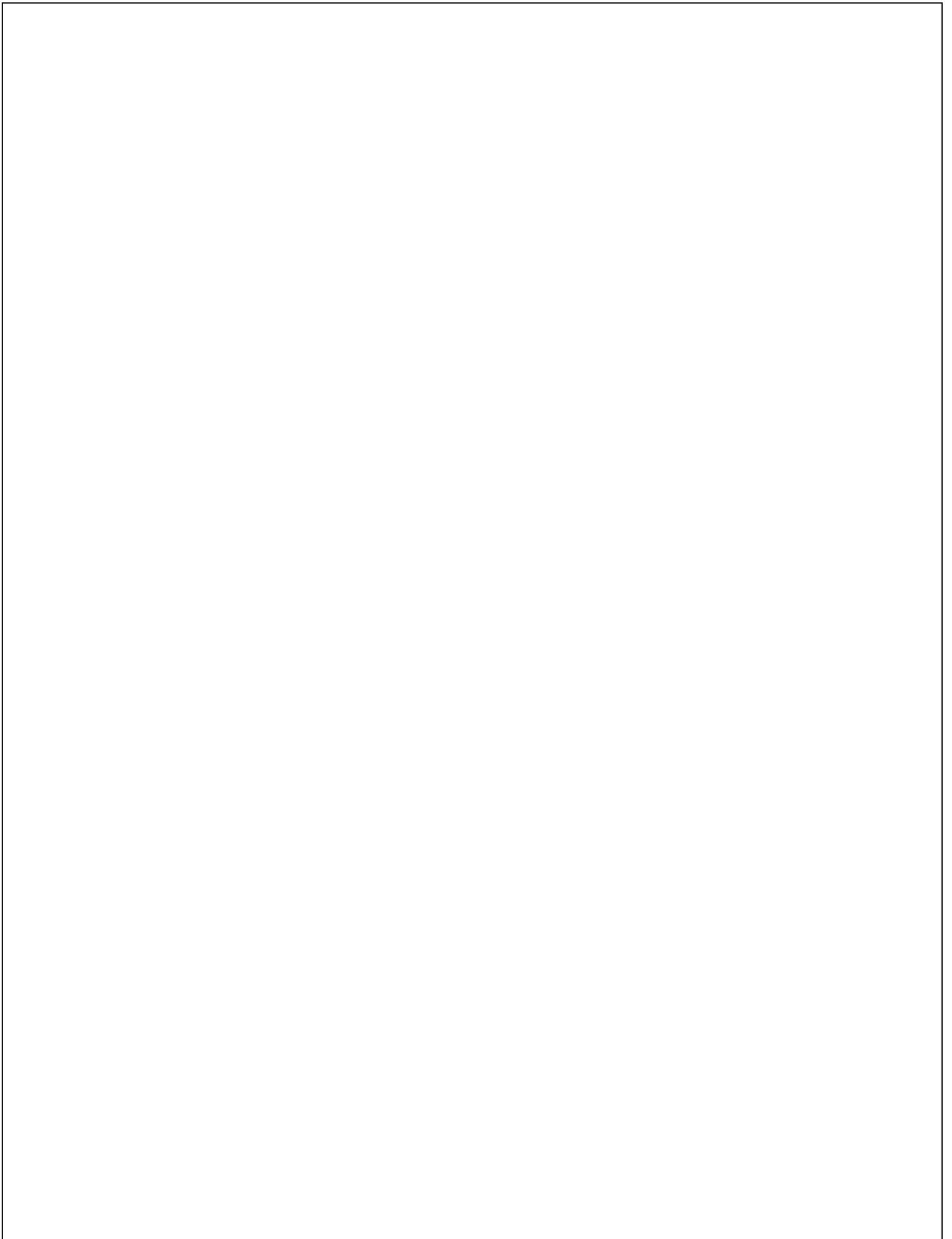


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Executive Summary

This report addresses activities and outcomes under both state and federal laws and rules. The Office of Health Care Facilities (OHCF) within the Division of Health Care Licensure and Regulation for the Tennessee Department of Health (TDH), through the Board for Licensing Health Care Facilities, annually licenses nursing homes, among other facility types. As the contracted State Survey Agency (SA) for the Centers for Medicare and Medicaid Services (CMS), the TDH OHCF also certifies health care facilities currently participating or seeking participation in the CMS program. In this role, OHCF conducts initial licensure/certification surveys, annual license/certification renewal surveys, and complaint investigations to ensure compliance with state and federal statutes and regulations.

Background and Summary of the Law

The Board for Licensing Health Care Facilities, which is administratively attached to the TDH OHCF, is the entity responsible for state licensure of nursing homes and, if necessary, the discipline thereof. Surveyors employed by the TDH OHCF, conduct surveys, also called inspections, of each licensed nursing home, on an annual basis (every nine to fifteen months) and in response to complaints to ensure compliance with applicable state rules adopted by the Board for Licensing Health Care Facilities.

The TDH is by designation (Section 1864 of the Social Securities Act) the SA for CMS. TDH OHCF surveyors inspect each nursing home that participates in the Medicare and Medicaid reimbursement program to ensure compliance with applicable federal laws and rules. Of the 318 nursing homes that were licensed in Tennessee in 2021, 315 were also certified by CMS to participate in the Medicare and Medicaid reimbursement programs. Similar to state licensure surveys, the TDH OHCF surveys federally certified facilities on an annual basis (every 9 -15 months) as well as in response to complaints.

If a nursing home is both state licensed and federally certified, TDH OHCF surveyors conduct both surveys concurrently to promote efficiency. When TDH OHCF surveyors complete a survey conducted pursuant to the federal laws and rules, the findings are reported to CMS. CMS makes the final deficiency determinations. This report addresses enforcement activities under both state and federal laws and rules.

The TDH is required to investigate complaints filed by the public and any incidents that a facility self-reports, that constitutes abuse, neglect, or misappropriation of resident property¹.

The Nursing Home Compassion, Accountability, Respect and Enforcement Reform Act of 2003 requires the TDH to submit a report by February 1 of each year to the Governor and to each House of the General Assembly regarding the TDH OHCF’s nursing home inspection and enforcement activities during the previous year.²

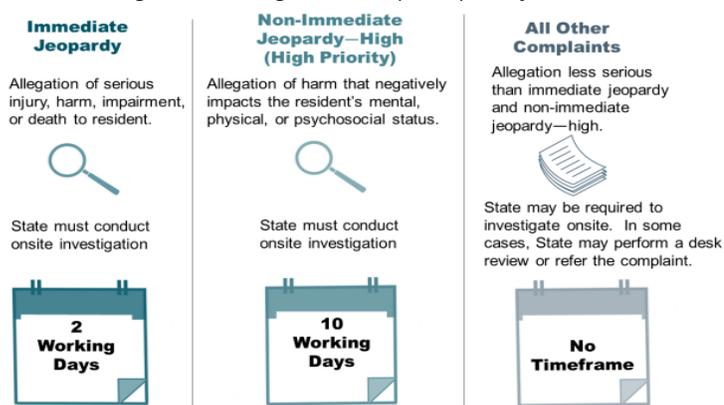
Key Findings

Complaints

When a problem is experienced with a specific licensed and/or certified facility, a complaint is filed by calling or mailing OHCF. Upon receipt of the complaint, the Centralized Complaint Intake Unit staff review the complaint and assign it a priority level according to the severity of the alleged violation.

Figure 1 below indicates priority levels for complaints.

Figure 1: Nursing home complaint priority levels



Source: CMS State Operations Manual, ch. 5, "Complaint Procedures," (Revised 120, 09-19-14).

¹ Tenn. Code Ann § 68-11-210 (b) (4) (2) (D) (E) and § 68-11-211.

² Tenn. Code Ann § 68-1-120.

The complaint is then forwarded to the appropriate OHCF regional office for investigation. Figure 2 below outlines the categories of complaints or allegations that are investigated by OHCF surveyors. A standard or abbreviated survey is conducted to investigate complaints.³

Figure 2: Complaint categories

Complaint Categories	
Resident abuse	Proficiency testing
Resident neglect	Falsification of records/reports
Resident rights	Unqualified personnel
Patient dumping	Quality control
Environment	Specimen handling
Care or services	Diagnostic discrepancy/erroneous test results
Dietary	Fraud/false billing
Misuse of funds/property	Fatality/transfusion fatality
Certification/unauthorized testing	Other

Source: CMS Form 562.

Below are key findings related to Tennessee's nursing home complaints in calendar year 2021.

- A total of 3,090 complaints (including provider self-reported incidents) were investigated during 2021 for all health care facilities.⁴
- Out of the 3,090 complaints, 562 were substantiated⁵; an approximate 18.1% substantiation rate which is consistent with the substantiation rate range over the past three years.⁶
- Overall, 4640 surveys were conducted for all health care facilities in 2021, which includes annual surveys, complaint investigations, and unusual incident and revisit surveys.⁷
- This compliment of 2021 surveys conducted is approximately 48% less than surveys conducted in 2019 and approximately 14% more surveys conducted for all health care facilities in 2020. This reduction is the result of the Executive Order number 83 which temporarily suspended surveys due to the public health emergency.

³ 42 CFR § 488.308(e)(2).

⁴ Intake Interval Report, all facility types, calendar year 2021, 1/5/2022, Automated Complaint Tracking System.

⁵ Intake Interval Report, substantiated, calendar year 2021, 1/5/2022, Automated Complaint Tracking System.

⁶ Intake Interval Report, calendar year 2021, 1/5/2022, Automated Complaint Tracking System.

⁷ All Facility Surveys Report, calendar year 2021, 1/5/2022, Automated Survey Processing Environment.

Deficiencies

Deficiencies are cited by OHCF surveyor when a violation of a licensure or certification regulation is identified. Below are key findings regarding deficiencies cited in nursing home facilities across the state of Tennessee in 2021.

- The 2020 most cited health related deficiency was Infection Prevention and Control, which was replaced in 2021 by Reporting – National Health Safety Network, a finding autogenerated by the CMS reporting system in 2021.⁸
- The two most frequently cited life safety code deficiencies in 2021 were: (1) Electrical Equipment – Power Cords, and (2) Hazardous Areas – Enclosure. Both deficiencies are noted as being in the top five deficiencies over the past two years.⁹

Nursing Home Complaint Activity

The number and type of complaints received by the TDH are monitored and maintained on a federal software program. The software program tracks complaints on all health care facilities. The following statistical data is derived from the program.

- In 2021, there were 318 licensed nursing homes in the state of Tennessee of which 315 are federally certified.
- Out of 3,090 total complaints, 1,910 or 62% were specific to nursing homes.¹⁰
- There were 301 nursing homes with at least one complaint filed, constituting approximately 94.6% of the total nursing homes.¹¹
- There were 58 nursing homes with ten or more complaints filed, constituting approximately 18.2% of the total 318 nursing homes; an increase of 6.3% from 2020.¹¹

Figure 3 depicts the number of nursing homes with at least one substantiated complaint from 2016 until 2021.

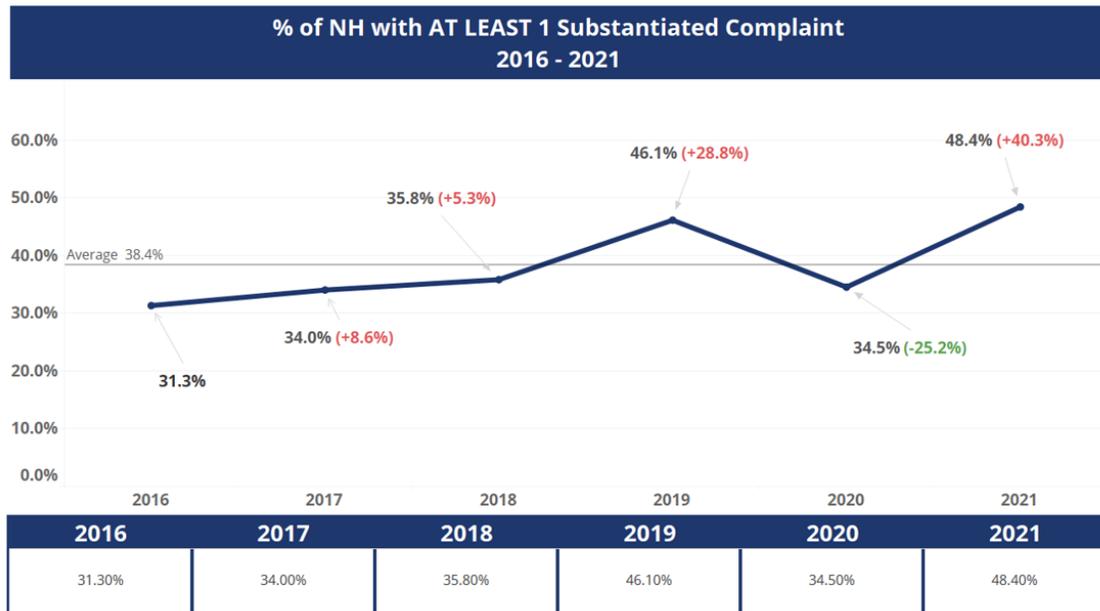
⁸ Citation Frequency Report, Health, calendar year 2021, 1/2/2022, Certification and Survey Provider Enhanced Reporting System.

⁹ Citation Frequency Report, Life Safety, calendar year 2021, 1/9/2022, Certification and Survey Provider Enhanced Reporting System.

¹⁰ Average Number of Deficiencies Report, Health, calendar year 2021, 1/2/2022, Certification and Survey Provider Enhanced Reporting System.

¹¹ Intake Interval Report, calendar year 2021, calendar year 2021, 1/5/2022, Automated Survey Processing Environment Complaint Tracking System.

Figure 3: Number of nursing homes with at least one substantiated complaint 2016-2021¹²



Deficiencies Cited in Nursing Homes

A scope and severity matrix is used by the SA when conducting Medicare and Medicaid certification. Scope is determined by the number of residents affected, whether a deficiency's impact is isolated, a pattern or widespread. The severity is determined by the level of harm or impact on residents and ranges from no actual harm to the potential of causing serious harm. Scope and severity of the deficiency are primary factors in determining corrective action.¹³ Corrective actions can include termination of participation in Medicare and Medicaid, civil monetary penalties, state monitoring, transfer of residents and closure of the facility.¹⁴ Figure 4 is the scope and severity matrix utilized for nursing home deficiencies.

¹² Nursing Homes with Substantiated Complaints, calendar years 2016-2021, Automated Survey Processing Environment.

¹³ 42 CFR § 488.404(b).

¹⁴ 42 CFR § 488.406(a).

Figure 4: Scope and severity matrix for nursing home deficiencies

Severity of the Deficiency	Scope of the Deficiency		
	Isolated	Pattern	Widespread
Immediate jeopardy to resident health or safety	J	K	L
Actual harm that is not immediate jeopardy	G	H	I
No actual harm with a potential for more than minimal harm, but not immediate jeopardy	D	E	F
No actual harm with potential for minimal harm	A	B	C

Note: Shading indicates substandard quality of care for the categories of quality of care, quality of life, and resident behavior and facility practices.

Below are findings specific to the scope and severity of deficiencies cited within Nursing Homes across Tennessee in 2021.

- In 2021, the average number of nursing home health deficiency citations per survey identified as a scope and severity D, E and F indicate a pattern of statistical significance as they are half or less the average for the CMS Region IV and nation.¹⁵
- The average number of health deficiency citations on a standard survey nationwide was 1.21 compared to 1.11 within CMS Region IV and .6 in Tennessee.¹⁶
- In 2021, 36 nursing home deficiency citations resulted in immediate jeopardy¹⁷.
- There were no nursing homes involuntarily terminated by CMS from participation in the Medicare and Medicaid programs in 2021, which is consistent with 2020.
- One nursing home in the West region voluntarily terminated out of the federal program but remains licensed with an inactive status in 2021.
- No nursing homes had admissions suspended in 2021, consistent with 2020.

¹⁵ Deficiency Count Report, Health, calendar year 2021, 1/2/2022, Certification and Survey Provider Enhanced Reporting System.

¹⁶ Average Number of Deficiencies Report, Health, calendar year 2021, 1/2/2022, Certification and Survey Provider Enhanced Reporting System.

¹⁷ Scope/Severity Summary, calendar year 2021, 1/19/2022, Automated Survey Processing Environment.

- One nursing home declared bankruptcy in 2021.

Top Fifteen Most Frequently Cited Deficiencies in Nursing Homes

The most common deficiencies cited in nursing homes in 2021 are divided into two groups- those cited in areas related to health (quality of care of residents) and life safety (construction code compliance).

Most frequently cited health related deficiencies include:¹⁸

1. F0884 Reporting – National Health Safety Network
2. F0880 Infection Prevention & Control
3. F0689 Free of Accident – Hazards/Supervision/Devices
4. F0600 Free from Abuse and Neglect
5. F0812 Food Procurement, Store/Prepare/Serve-Sanitary
6. F0609 Reporting of Alleged Violations
7. F0761 Label/Store Drugs and Biologicals
8. F0610 Investigate/Prevent/Correct Alleged Violation
9. F0684 Quality of Care
10. F0657 Care Plan Timing and Revision
11. F0656 Develop/Implement Comprehensive Care Plan
12. F0550 Resident Rights/Exercise of Rights
13. F0867 Quality Assurance and Performance Improvement (QAPI)/Quality Assessment and Assurance Improvement Activities (QAA)
14. F0580 Notify of Changes (Injury/Degrade/Room, etc.)
15. F0686 Treatment/Services to Prevent/Heal Pressure Ulcer

Most frequently cited life safety code deficiencies include:¹⁹

1. K0920 Electrical Equipment – Power Cards and Extensions
2. K0712 Fire Drills
3. K0321 Hazardous Areas-Enclosure
4. K0324 Cooking Facilities
5. E0004 Develop Emergency Preparedness (EP) Plan, Review and Update Annually
6. K0918 Electrical Systems – Essential Electrical System

¹⁸ Citation Frequency Report, Health, 1/2/2022, Certification and Survey Provider Enhanced Reporting System.

¹⁹ Citation Frequency Report, Life Safety, 1/2/2022, Certification and Survey Provider Enhanced Reporting System.

7. K0353 Sprinkler System – Maintenance and Testing
8. E0039 EP Testing Requirements
9. K0761 Maintenance, Inspection and Testing- Doors
10. K0222 Egress Doors
11. E0006 Plan Based on All Hazards Risk Assessment
12. K0355 Portable Fire Extinguishers
13. E0025 Arrangement with Other Facilities
14. K0363 Corridor- Doors
15. K0921 Electrical Equipment – Testing and Maintenance

Civil Monetary Penalties

Civil monetary penalties (CMP) are penalties that may be imposed by CMS on nursing homes for failing to meet federal regulations. TDH's OHCF perform periodic federal certification surveys of nursing homes. Facilities not in compliance with federal regulations may be penalized by CMS based on these survey findings. Ninety percent of funds collected are then returned to the State to improve the quality of life and quality of care of nursing home residents in certified nursing home facilities. Tennessee's CMP Fund is administered by the TDH. Programmatic oversight lies within the Office of Patient Care Advocacy in partnership with the OHCF. TDH administers grants to entities that develop project proposals which directly improve patient outcomes and meet proposal requirements set forth by TDH and CMS. The total amount of CMP for Nursing Homes in 2021 is \$2,259,000.²⁰

Nursing Home CMP Quality Improvement Program

The Tennessee CMP Reinvestment Program developed a Strategic Plan that outlines the areas of program focus to guide the disbursement and use of CMP funds. The Strategic Plan spotlights the short-term goals, long-term goals, and focus areas listed below.

The CMP Reinvestment Program follows a Quality Assurance Performance Improvement (QAPI) approach utilizing multiple clinical measures to target funding priorities. The program's 2021 focus areas are as follows:

1. Healthcare-Associated Infections
2. Distressed and At-Risk Counties
3. Preventable Hospitalizations
4. Person-Centered Care and Trauma Informed Care
5. Residents' Rights
 - a. Elder Abuse, Neglect, and Exploitation

²⁰ Civil Monetary Penalty Report, calendar year 2021, 1/9/2022, Certification and Survey Provider Enhanced Reporting System.

b. Alzheimer's disease and other dementias

Funding focus areas were selected utilizing CMS and state priorities which impact the quality of care and quality of life of nursing home facility residents. Healthcare-associated infection measures show how often patients in a particular facility contract infections during the course of their medical treatment. According to CMS, when following guidelines for safe care, these infections can often be prevented. The changing landscape of health care access brings new challenges to Tennesseans, particularly those in rural areas, including mitigating hospital closures and issues in workforce recruitment and retention. CMP Reinvestment funds were targeted to aid nursing homes in counties ranking among the 10 percent most economically distressed counties in the nation. Factors determining a county's distressed status includes per capita market income and the poverty rate. This focus area is in alignment with Governor Lee's executive order to accelerate the transformation of rural areas. On July 1, 2020, Governor Lee announced Tennessee had the fewest distressed counties statewide since 2017, down from fifteen in 2019 to eleven counties, signaling improved economic conditions. The CMP program focused on the continued support of nursing home residents in rural areas, especially distressed counties, and at-risk counties. By utilizing CMP Reinvestment funds to implement initiatives to improve quality measures (falls, preventable hospitalizations, etc.), resident care and quality of life would also improve. Due to the growing number of individuals aged 65 and older diagnosed with dementia/Alzheimer's, the number of tags associated with elder abuse and neglect, and feedback from the CMP Reinvestment Advisory committee, the Tennessee CMP Reinvestment Program decided to include residents' rights as one of the focus areas. The aforementioned funding areas are not comprehensive of CMP efforts in Tennessee, the program also funded projects related to COVID-19, emergency preparedness, telemedicine, and pain management/opioid safety. The CMP program also provided nursing homes with funding for COVID-19 communication technology devices and COVID-19 in-person visitation aids.

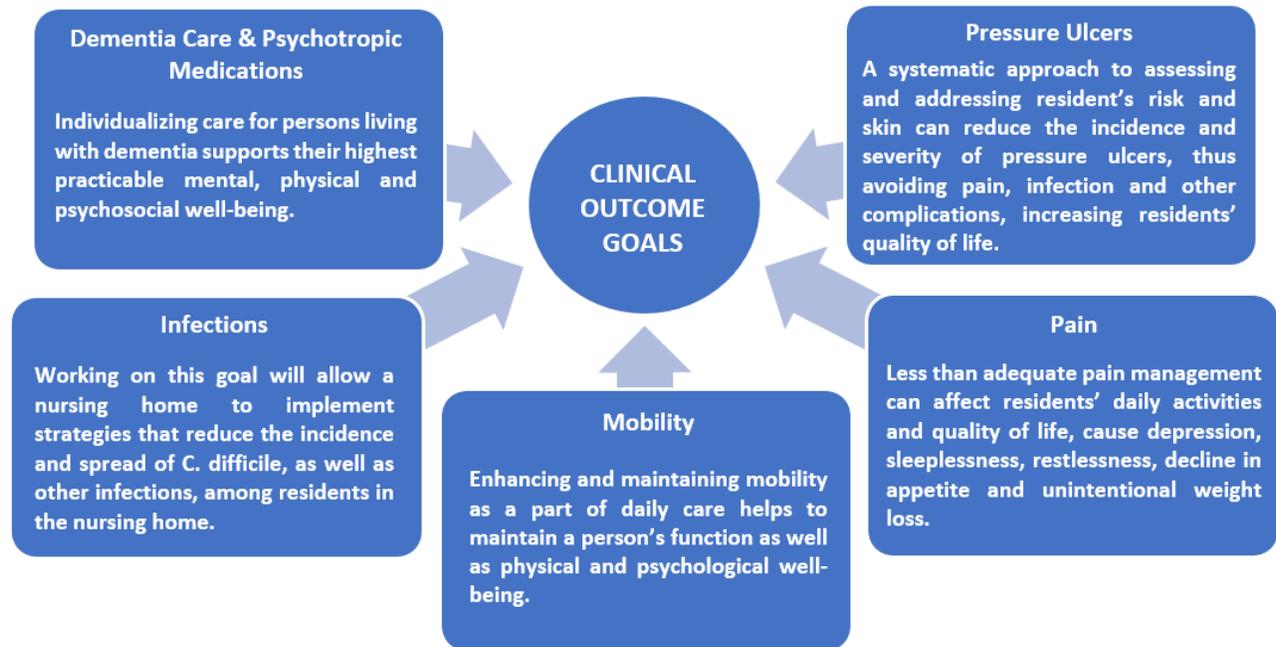
Nursing Home Quality Improvement Update

History of the Quality Initiative

In 2006, CMS was asked to develop a plan to implement the Government Performance and Results Act of 1993 goals. A major focus was the development of regional coalitions. The CMS Region IV Office in Atlanta engaged in collaborative efforts with CMS Central Office staff, other CMS Regional Offices, State Survey Agencies, Quality Improvement Organizations (QIO), Provider Associations, and the State Ombudsmen. This effort led to the launching of the coalition-based campaign Advancing Excellence in America's Nursing Homes. This campaign is a voluntary, non-punitive, non-regulatory, national effort to measurably improve the quality of care and quality of life for those living in America's nursing homes.

In 2016 the Advancing Excellence in Long Term Care Collaborative transferred operation of its project, Advancing Excellence in America's Nursing Homes Campaign, to the CMS. It was then rebranded as The National Nursing Home Quality Improvement (NNHQI) Campaign. NNHQI Campaign efforts continued quality improvement efforts through July of 2018. It consisted of (4) organizational goals and (5) clinical goals- see Table 5.

Table 5: Organizational and clinical goals



The NNHQI campaign continued its work providing providers, consumers and their advocates, and quality improvement professionals with free, easy access to evidence-based and model-practice resources to support continuous quality improvement. All nursing homes in the country are encouraged to register, use the Circle of Success for guidance, the

data collection tools and resources for quality improvement, and enter their aggregate data in the secure website section, a required step for active participation.

NNHQI participation helped nursing homes improve the quality of care and quality of life for the more than 1.5 million residents of America's nursing homes. A well-designed website with a rich array of goal related resources ensures every nursing home easy access to free, evidence based practical materials to help with their quality improvement activities. To be an active participant in the NNHQI campaign, a nursing home minimally had to during the first year:

1. Select two goals on which they would work.
 - Adopt one organizational goal (consistent assignments, staff stability, reducing hospitalizations or person-centered care) and enter monthly data on that goal.
 - Adopt a clinical goal (pain, pressure ulcers, mobility, infections, or medications) for which monthly data entry is optional in the first year but must be worked on in the second year unless the nursing home felt it had the interest and capacity to move on the clinical goal sooner.
2. After the first year a nursing home could continue with the two goals of the first year, entering data for both, and adopt additional goals as desired. Active participant status on a goal required at least six consecutive months of monthly data submissions on the goal.

Prior to the 2014 year it was possible for nursing homes to register and to be counted as "participating" without submitting outcomes data. As of 2014 that was no longer the case. Nursing Homes that registered on the website but did not select goals or did not enter aggregate data on the website were referred to as "registered homes". This revision promoted data integrity and data extrapolation of participating homes only. To maintain registration, at least one organizational goal and one clinical outcome goal had been selected.

Registration Statistics of each state captured on the website as compared to the nation, identifies Tennessee with a 92.4% registrations rate in 2018, with - 89% (281) of those registered nursing homes having also selected at least one Organizational Goal and one Clinical Goal to work on.

Antipsychotic Drug Use Reduction Initiative

In 2012, CMS announced the National Partnership to Improve Dementia Care in nursing homes. The goal was to reduce unnecessary antipsychotic medication use among long-stay nursing home residents living with dementia by 15 % by the end of 2013 and seek further reductions in subsequent years. In 2012, Tennessee nursing homes had the highest antipsychotic drug use rate in the Southeast at 30.1 % of residents, with the national average being 23.8 %. Tennessee nursing homes have now successfully reduced that rate to 15.7 %, dropping below the regional average of 15.9 %.

TDH in collaboration with stakeholders including the Tennessee Health Care Association, QSource, TennCare, The Eden Alternative and other culture change advocates partnering as the Tennessee Advancing Excellence Coalition has been instrumental in this effort. In October 2012, the TDH OHCF, working within the coalition, applied for federal funding for a project titled “Dementia Beyond Drugs” to conduct training symposiums across the state. This impactful training provided nursing home staff members, health care providers, the Long-Term Care Ombudsman, state agency surveyors, legislators, and other quality of care/quality of life advocates with tools and knowledge to effectively evaluate residents prescribed anti-psychotic medications and offered facility staff members proven methods for managing behaviors resulting from reduction of these drugs.

Vanderbilt University subsequently applied for civil monetary penalty funding from TDH for a project to reduce antipsychotic drug use in skilled nursing facilities through web-based staff training. Vanderbilt partnered with Qsource to identify facilities with low CMS Star Ratings to promote quality assessment and performance improvement. The project implemented six webinars in 30 nursing homes across the state and successes were published in *The Gerontologist* in 2017.

Two additional CMP-funded projects in Tennessee were implemented to address antipsychotic drug use. The Tennessee Eden Alternative Coalition continued its project to reframe dementia through person-centered practices to improve the care and lives of residents living with dementia. Tennessee Technological University implemented the “Music and Memory” program to assist nursing homes in the Upper Cumberland region in becoming Music and Memory Certified Care Organizations, improving person-centered care and physical, cognitive, and emotional functioning of residents diagnosed with Alzheimer’s or another dementia.

The TDH was one of five state public health agencies awarded a small grant in 2017 to promote cognitive functioning and address risk reduction factors associated with cognitive decline, dementia, and Alzheimer’s disease. TDH is working in collaboration with the Alzheimer’s Association, the Association of State and Territorial Health Officials and the Centers for Disease Control and Prevention. In addition to the creation of an “Alzheimer’s Disease and Brain Health” resource and information webpage, TDH developed a cognitive health toolkit to enhance awareness among public health professionals and created a brief titled 2019 Healthy Aging Brain Brief and Strategies for Action: Alzheimer’s and Other Dementias to raise awareness of brain health and potentially modifiable risk factors for reducing cognitive decline and to inform action in public health programming.

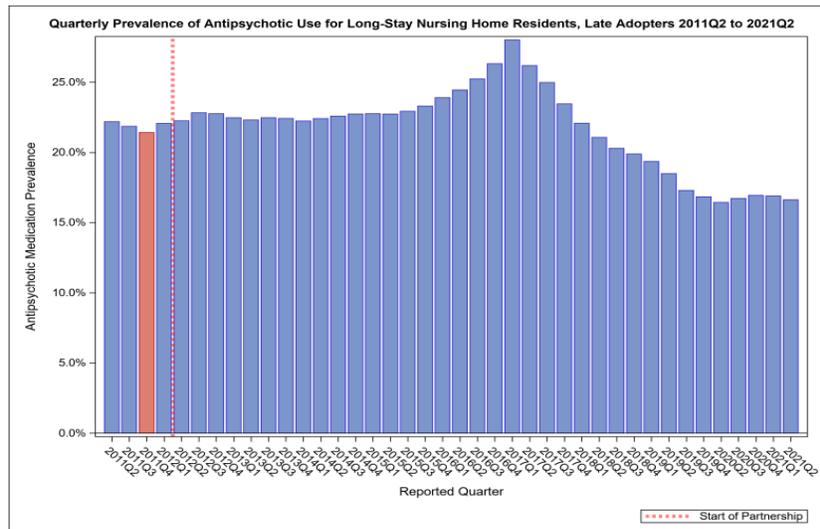
Additional resources through the CMP funds program continued to be awarded to Tennessee nursing homes to educate and train facility staff in best practices for quality of care and quality of life without the use of antipsychotic medication. This further promoted a continued steady decline in unnecessary antipsychotic use prevalence in Tennessee nursing homes and hospitals.

Not all facilities in all states however had achieved the expected reductive success in antipsychotic medication usage. Excluding facilities caring for large resident populations requiring antipsychotics, there were some in each state that had made little to no progress in decreasing their antipsychotic use, with some having increased since the start of the 2012 National Partnership reduction initiative. There were 27 such Tennessee facilities. For these 27 Tennessee facilities, identified as "Late Adopters", the TDH OHCF continues working collaboratively with the QIO, the nursing home association, and other stakeholders to refocus efforts specifically toward these "late adopters" to understand the barriers and decrease antipsychotic medication use in this population.

As of end of 2020, the last quarter of available data, antipsychotic medication use in Tennessee nursing homes was at 15.1%, a 10.45% reduction since the implementation of the national initiative.²¹ The bar chart in Table 5 reflects the national measure of long stay nursing home residents who are receiving an antipsychotic medication, excluding those residents diagnosed with schizophrenia, Huntington's Disease or Tourette's Syndrome.

²¹ National Partnership to Improve Dementia Care in Nursing Homes: Late Adopter Data Report (October 2021). Late Adopter Data Report (cms.gov)

Table 6: National prevalence of antipsychotic use in late adopters



Opportunities for improvement still exist within all health care settings. Fortunately for nursing homes in Tennessee, the CMP fund offers additional opportunities to aid these important efforts. TDH is dedicated to ensuring implementation of projects to further reduce antipsychotic medication use and other efforts to enhance health as we age. For more information on applying for CMP funds to enhance the quality of care and quality of life of nursing home residents in Tennessee, please visit the CMP reinvestment website <https://www.tn.gov/health/health-program-areas/nursing-home-civil-monetary-penalty--cmp--quality-improvement-program.html>.

Learn more about the CMS National Partnership to Improve Dementia Care and efforts to reduce antipsychotic medication use in nursing homes at <https://www.cms.gov/Medicare/Provider-Enrollment-and-Certification/SurveyCertificationGenInfo/National-Partnership-to-Improve-Dementia-Care-in-Nursing-Homes.html>.

Learn more about healthy aging at <https://www.tn.gov/health/cedep/environmental/healthy-places/healthy-places/health-equity/he/healthy-aging.html>.

Conclusion

Nursing homes are faced with an array of challenges in delivering high quality and person-centered care for Tennesseans who are aging or disabled. It is the TDH OHCF's responsibility to safeguard these individuals through routine inspections and complaint investigations. As the

frontline for ensuring quality and safety in nursing homes, the TDH OHCF partners with a wide array of stakeholders with shared interests and common goals. The information contained in this report is intended to leverage data that provides insights regarding these challenges in providing safe and high-quality care in nursing homes.

