



# Nursing Home Inspection and Enforcement Activities

Report to the 113<sup>th</sup> Tennessee General Assembly

Submitted by the Health Facilities Commission

February 2024



# Table of Contents

Executive Summary	Page 3
Background and Summary of the Law	Page 4
Key Findings	Page 6
Complaints	Page 6
Deficiencies	Page 7
Nursing Home Complaint Activity	Page 7
Deficiencies Cited in Nursing Homes	Page 9
Top Ten Most Frequently Cited Deficiencies in Nursing Homes	Page 12
Civil Monetary Penalties	Page 12
Nursing Home CMP Quality Improvement Program	Page 13
Nursing Home Quality Improvement Update	Page 13
Antipsychotic Drug Use Reduction Initiative	Page 14
Conclusion	Page 17

# Executive Summary

This report addresses activities and outcomes under both state and federal laws and regulations. The Health Facilities Commission (HFC) through the Board for Licensing Health Care Facilities (BLHCF), annually licenses nursing homes. HFC performs certification, complaint, and life safety surveys on behalf of CMS to ensure compliance with the Medicare health and safety standards for nursing homes, laboratories, acute and continuing care providers including hospitals, ambulatory surgical centers, intermediate care facilities, home health agencies (“HHAs”), end-stage renal disease (“ESRD”) facilities, hospices, and other facilities serving Medicare and Medicaid beneficiaries. As the contracted State Survey Agency (SA) for the Centers for Medicare and Medicaid Services (CMS), HFC also certifies health care facilities currently participating or seeking participation in the CMS program. In this role, HFC conducts initial licensure/certification surveys, annual recertification surveys, triennial state licensure surveys, and complaint investigations to ensure compliance with state and federal statutes and regulations.

This report was previously prepared by the Department of Health. In 2022, the General Assembly passed Public Chapter 1119, which moved the Office of Health Care Facilities from the Department of Health to the Health Services and Development Agency (HSDA) and renamed HSDA to the Health Facilities Commission.

As the CMS State Survey Agency, HFC uses the guiding principles set forth in the CMS State Operations Manual (SOM). Effective October 24, 2022, CMS made sweeping modifications to Chapter 5 of the SOM that change facility reporting requirements necessitating changes to the facility reporting incident (FRI) portal and increasing the number of complaints. HFC 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 property. The survey process is complaint-driven.

# Background and Summary of the Law

Surveys performed per Section 1864 of the Social Security Act (the Act) are referred to collectively as the certification process. Our state survey agency duties include, but are not limited to:

1. Identifying Potential Participants - Payment for health services furnished in or by entities that meet stipulated requirements of the Act. Identification includes those laboratories seeking to participate in the CLIA program.
2. Conducting Investigations and Fact-Finding Surveys - Verifying how well the health care entities comply with the "conditions of participation" (CoPs) or requirements. This is referred to as the "survey process."
3. Certifying and Recertifying - Certifications are periodically sent to the appropriate Federal or State agencies regarding whether entities, including CLIA laboratories, are qualified to participate in the programs.
4. Explaining Requirements - Advising providers and suppliers, and potential providers and suppliers regarding applicable Federal regulations to enable them to qualify for participation in the programs and to maintain standards of health care consistent with the CoPs and Conditions for Coverage (CfCs) requirements.

HFC 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 316 nursing homes that were licensed in Tennessee at the end 2023, 312 were also certified by CMS to participate in the Medicare and Medicaid reimbursement programs. HFC conducts complaint surveys and federal recertification surveys which are conducted between nine (9) and (15) months. Like all facility types, these surveys are unannounced to the nursing home.

The Executive Director of HFC has the ability to assess Type A, B, and C civil monetary penalties and a suspension of admissions (SOA) based on surveyor findings, pursuant to Tenn. Code Ann. 68-11-252 with a prompt hearing before the Board or an Administrative Law Judge. In addition to the Executive Director, the Board for Licensing Health Care Facilities, which is administratively attached to the Health Facilities Commission, may also issue state licensure discipline, separate and apart from CMS issued federal enforcement remedies. Surveyors employed by the HFC,

conduct surveys of each licensed nursing home, every fifteen (15) months, pursuant Tenn. Code Ann. 68-11-210, and in response to complaints to ensure compliance with applicable state rules adopted by the Board for Licensing Health Care Facilities.

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

The Nursing Home Compassion, Accountability, Respect and Enforcement Reform Act of 2003 requires the Tennessee Department of Health to submit a report by February 1 of each year to the Governor and to each House of the General Assembly regarding HFC's nursing home inspection and enforcement activities during the previous year.<sup>1</sup> Legislation to transfer this responsibility from the Department of Health to the Health Facilities Commission is recommended.

---

<sup>1</sup> Tenn. Code Ann § 68-11-819.

# Key Findings

## Complaints

When a problem is experienced with a specific licensed and/or certified facility, a complaint is filed by phone call, email, fax, APS referral, Facility Incident Report filing, or mailing HFC. Upon receipt of the complaint, the HFC Complaint Intake Unit staff review the complaint and assign it a priority level according to the severity of the alleged violation.

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

Below are key findings related to Tennessee's nursing home complaints in calendar year 2023.

- A total of 4,070 complaints were triaged for complaints originating from nursing homes, a 63% increase from the previous year.
- 2,536 complaints were investigated by survey staff, a 40% increase compared to calendar year 2022. 1,354 of these complaints were found to be substantiated in some way, meaning there was at least some validity to the complaint.
- 782 of surveys conducted have a complaint investigation component to them, a slight decrease from last year. The decrease in complaint investigation surveys combined with an increase in complaints investigated suggests there is a greater average number of complaints investigated per complaint investigation survey.

## Deficiencies

Deficiencies are cited by HFC surveyors 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 2023.

- The two most frequently cited health related deficiencies in 2023 were: (1) Free of Accident – Hazards/Supervision/Devices and (2) Free From Abuse and Neglect
- The two most frequently cited life safety code deficiencies in 2023 were: (1) Sprinkler System – Maintenance and Testing, and (2) Hazardous Areas-Enclosure.

---

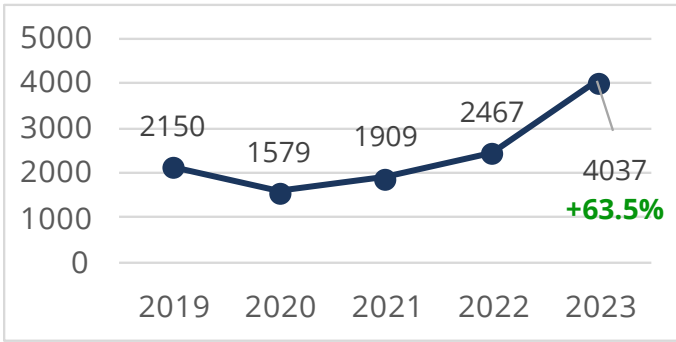
<sup>2</sup>CFR § 488.308(e)(2).

## ***Nursing Home Complaint Activity***

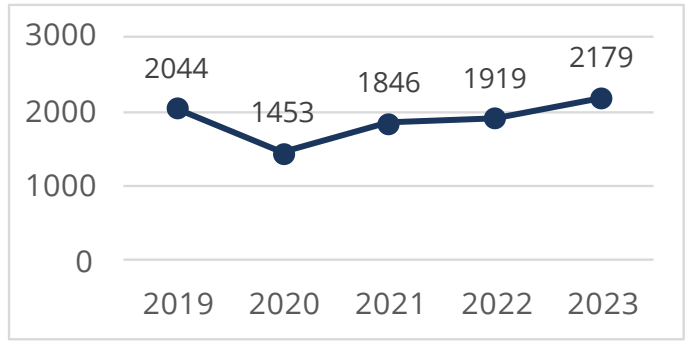
The number and type of complaints received by HFC are monitored and maintained on a federal software program. The software program tracks complaints on all health care facilities. The following statistical data is derived from the program:

- 4,037 nursing homes complaints triaged by intake staff in 2023, of these complaints 2,179 (58%) were triaged either as an IJ or Non-IJ High. (Fig. 1, 2)
- 300 nursing homes have received at least one complaint, and 142 of these facilities have over 10 complaints on file for the year. (Fig. 5, 6)
- 2,536 complaints have been investigated by survey staff. 1,354 (53.3%) complaints were found to be substantiated after an investigation. (Fig. 3, 7)
- 139 nursing homes have at least 1 substantiated complaint on file from the complaints have been investigated. (Fig. 4)
- Since the adoption of the State Operations Manual Chapter 5 in October 2022, there has been a 537% increase in complaints.

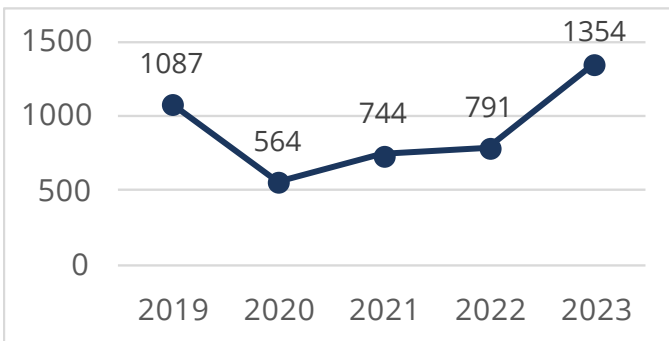
**Fig. 1 - # of NH Complaints Triaged, 2019-2023**



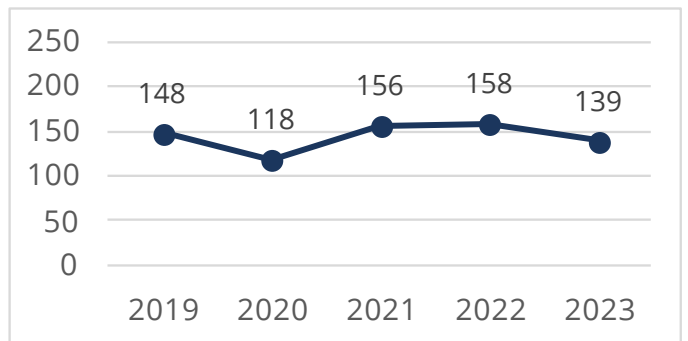
**Fig. 2 - # of NH Complaints Triaged as IJ or Non-IJ High, 2019-2023**



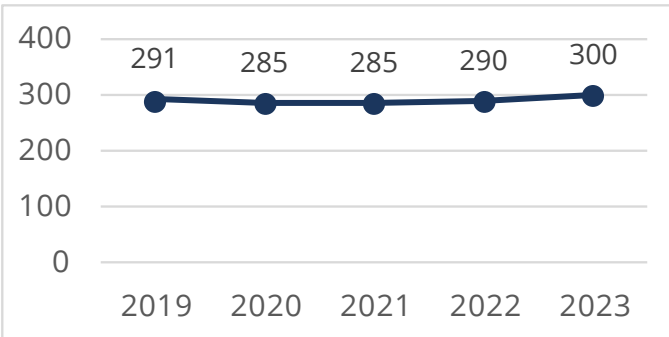
**Fig. 3 - # of substantiated NH Complaints, 2019-2023.**



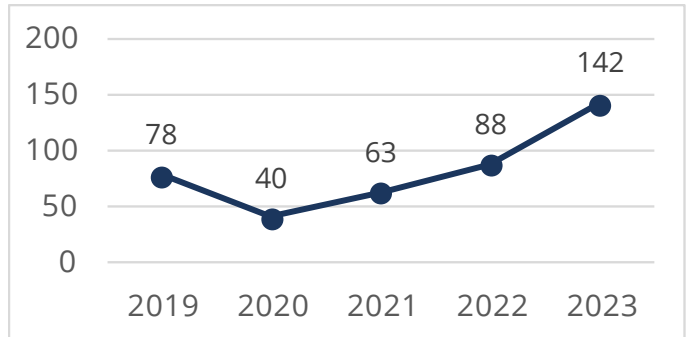
**Fig. 4 - # of NH with at least 1 substantiated complaint, 2019-2023.**



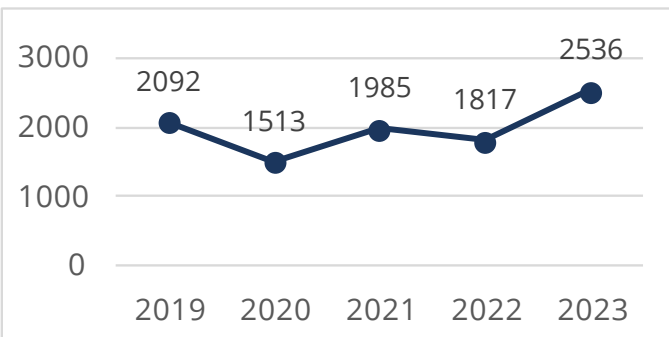
**Fig. 5 - # of NHs with at least 1 complaint, 2019-2023**



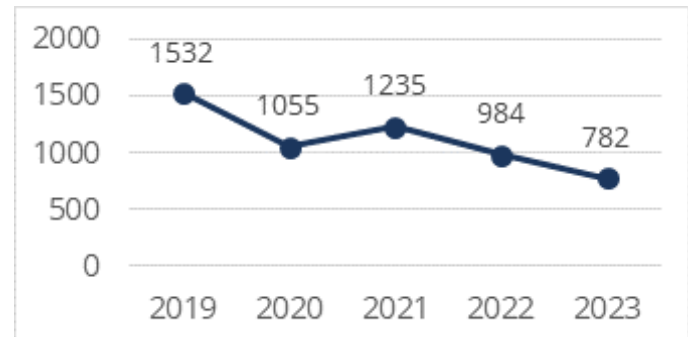
**Fig. 6 - # of NHs with at least 10 complaints, 2019-2023**



**Fig. 7 - # of NH Complaints Investigated, 2019-2023**



**Fig. 8 - # of NH Surveys with a Complaint Investigation Component, 2019-2023**





## Deficiencies Cited in Nursing Homes

A scope and severity matrix is used by the State Survey Agency when conducting Medicare and Medicaid certification surveys. 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 Immediate Jeopardy (IJ) to resident health or safety. Scope and severity of the deficiency are primary factors in determining corrective action. Corrective actions can include termination of participation in Medicare and Medicaid, civil monetary penalties, state monitoring, transfer of residents, denial of payment for new admissions and closure of the facility. Figure 4 is the scope and severity matrix utilized for nursing home deficiencies.

Figure 4: Scope and severity matrix for nursing home deficiencies

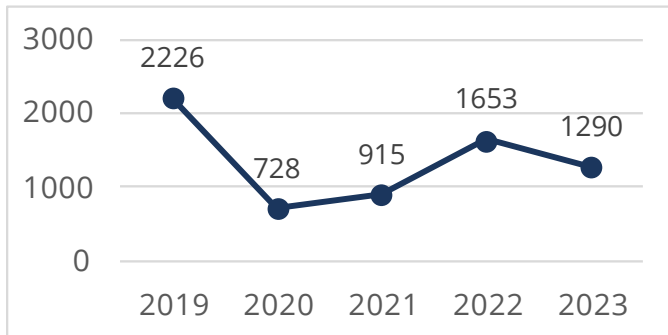
		Scope of the Deficiency		
		Isolated	Pattern	Widespread
Severity of the Deficiency	Immediate jeopardy to resident health or safety	J	K	L
	Actual harm that is not immediate jeopardy	G	H	I
	No actual harm with a potential for more than minimal harm, but not immediate jeopardy	D	E	F
	No actual harm with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

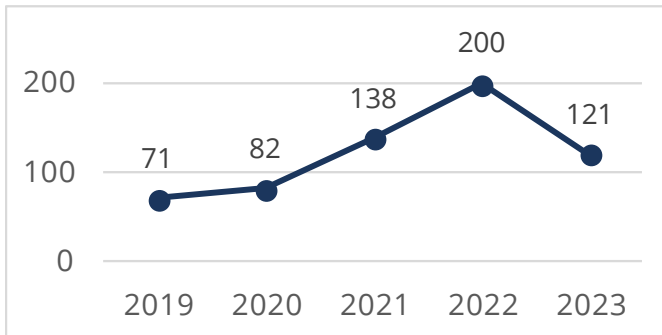
Below are findings specific to the scope and severity of deficiencies cited within Nursing Homes across Tennessee in 2023.

- 1,290 total federal citations were issued during all surveys (Life Safety, Health) conducted in nursing homes for calendar year 2023. They were cited while conducting complaint investigations and recertification surveys. 121 (9.3%) of the citations were categorized as IJ (J, K, L Scope/Severity). (Fig 7 & 8).
- 67 Nursing Home recertifications were conducted in 2023. Each recertification includes a Life Safety and Health survey component. On average, there were 7.7 health deficiencies cited per recertification survey. (Fig. 9,10)
- 155 nursing homes have had at least 1 federal health safety deficiency cited. 77 nursing homes have had at least 1 federal life safety deficiency cited. (Fig. 11,12)
- There were six nursing homes decertified by CMS from July 1, 2022, to December 31, 2023. These six nursing homes were Douglas Post-Acute and Rehabilitation Center, Cloria Oaks Post-Acute and Rehabilitation, Summitt View of Farragut, Waters of Robertson, Viviant Healthcare of Bristol, and Viviant Healthcare of Murfreesboro.
- As a result of the summary suspension, Tennessee also took the extraordinary step of bringing in a temporary management company to ensure resident safety, after a nursing home chain failed to make payroll. This action helped safeguard the health, safety, and welfare of seventy-five (75) patients in two facilities, using nursing home civil monetary penalty funds.
- From July 1, 2022, until December 31, 2023, HFC has issued six (6) SOAs. All discipline issued from July 1, 2022 until December 31, 2023, can be found at [Facility Action and Abuse Reports \(tn.gov\)](#).

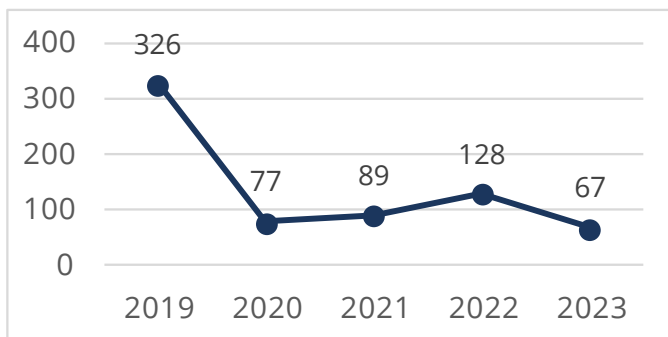
**Fig. 7 - # of federal deficiencies (Health, Life Safety) cited by surveyors in NHs, 2019-2023**



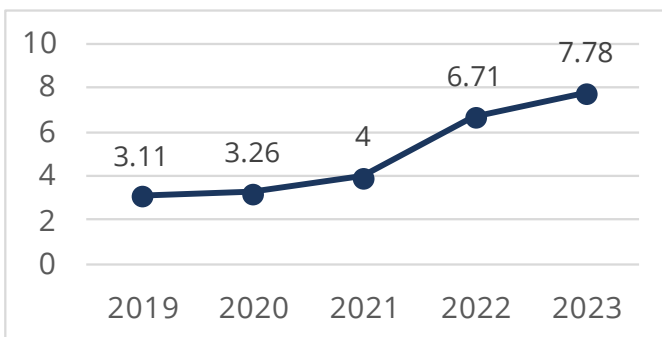
**Fig. 8 - # of federal deficiencies (Healthy, Life Safety) scoped at IJ in NHs, 2019-2023**



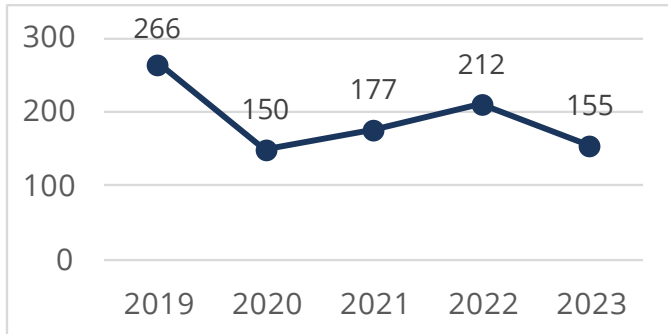
**Fig. 9 - # of Recertifications Conducted in NHs, 2019-2023**



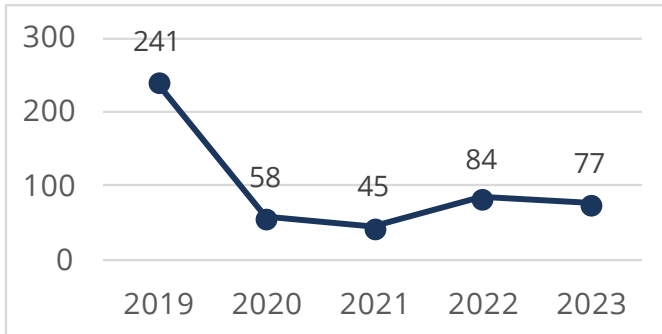
**Fig. 10 - Average # of Federal Deficiencies Cited Per Recertification Survey (Health portion) in NHs, 2019-2023**



**Fig. 11 - # of NHs with at least 1 federal health related deficiency cited by surveyors, 2019-2023**



**Fig. 11 - # of NHs with at least 1 federal life safety deficiency cited, 2019-2023**



## ***Top 10 Most Frequently Cited Deficiencies in Nursing Homes***

The most common deficiencies cited in nursing homes in 2023 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:**

1. F0689 Free of Accident – Hazards/Supervision/Devices
2. F0600 Free from Abuse and Neglect
3. F0880 Infection Prevention & Control
4. F0609 Reporting of Alleged Violations
5. F0812 Food Procurement, Store/Prepare/Serve-Sanitary
6. F0684 Quality of Care
7. F0657 Care Plan Timing and Revision
8. F0656 Develop/Implement Comprehensive Care Plan
9. F0550 Resident Rights/Exercise of Rights
10. F0761 Label/Store Drugs and Biologicals

### **Most frequently cited life safety code deficiencies include:**

1. K0353 Sprinkler System – Maintenance and Testing
2. K0321 Hazardous Areas-Enclosure
3. K0363 Corridor- Doors
4. K0222 Egress Doors
5. K0307 Electrical Equipment - Power Cords and Extension
6. K0324 Cooking Facilities
7. K0918 Electrical Systems – Essential Electrical System
8. K0345 Fire Alarm System - Testing and Maintenance
9. K0211 Means of Egress – General
10. K0712 Fire Drills

## **Civil Monetary Penalties**

Civil monetary penalties (CMP) are penalties that may be imposed by CMS on nursing homes for failing to meet federal regulations. Facilities not in compliance with federal regulations may be penalized by CMS based on these survey findings. A percentage 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 Health Facilities Commission. HFC administers grants to entities that develop project proposals which directly improve resident outcomes and meet proposal requirements set forth by HFC and CMS.

## **Nursing Home CMP Quality Improvement Program**

Pursuant to Public Chapter 1119, the Tennessee Nursing Home CMP Quality Improvement Program transferred from the Department of Health's Office of Patient Advocacy to the Health Facilities Commission. The CMP program implemented several initiatives to strengthen safety and health outcomes for nursing home residents. Since being administratively attached to the Health Facilities Commission, the CMP Program restructured the committee. The CMP Advisory Committee includes subject matter experts and long-term care stakeholders that serve as a link between the Tennessee CMP Reinvestment Program and the nursing home community. The CMP Advisory Committee convened to discuss emerging issues in nursing homes and funding focus areas. The CMP Advisory Committee convened in 2023 to discuss state level data, as well as Federal and State priorities that impact the quality of care and quality of life of nursing home facility residents in Tennessee. The CMP Advisory Committee continues to serve as a valuable link between the CMP program and long-term care stakeholders.

In 2024 Tennessee Nursing Home CMP Quality Improvement Program will accept application for funding for the following categories:

- Global Public Health Emergency Applications

- Communicative Technology funding for nursing homes to purchase tablets and accessories such as screen protectors, headphones, etc.
- Visitation I funding for nursing homes to purchase tents and plexiglass (or similar product).
- Visitation II funding for nursing homes to purchase portable fans and portable room air cleaners with high-efficiency particulate air (HEPA, H-13 or -14) filters to increase or improve air quality.

- Activities to Improve Quality of Life

- Training to Improve Quality of Care

- Consumer Information

- Resident or Family Councils

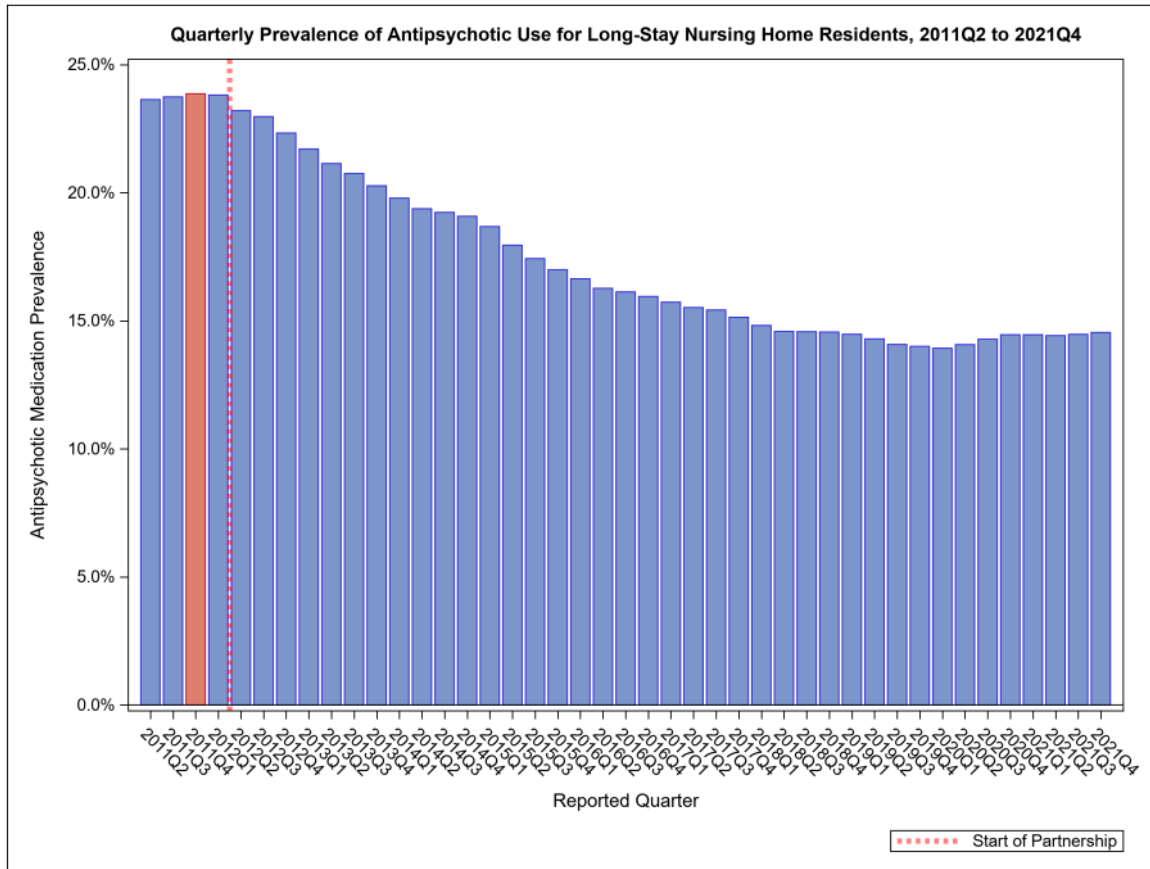
## ***Antipsychotic Drug Use Reduction Initiative***

In 2012, CMS announced the National Partnership to Improve Dementia Care in nursing homes. The goal was to deliver health care that is person-centered, comprehensive, and interdisciplinary with a specific focus on protecting residents from being prescribed antipsychotic medications unless there is a valid, clinical indication and a systematic process to evaluate each individual's need. The official measure of the Partnership is the percentage 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. The national rate for 2011Q4 was 23.9 percent of long-stay nursing home residents were receiving an antipsychotic medication, since then there has been a decrease of 39.1 percent to a national prevalence of 14.5 percent in 2021Q4. Tennessee has seen a reduction in the prevalence of Antipsychotic use since the implementation of the national initiative. In 2011Q4, 30 percent of Tennessee's long-stay nursing home residents were receiving an antipsychotic medication. By 2021Q4 15.7 percent of Tennessee's long-stay nursing home residents were receiving an antipsychotic medication<sup>3</sup>.

---

<sup>3</sup> National Partnership to Improve Dementia Care in Nursing Homes: Late Adopter Data Report (April 2022). Late Adopter Data Report (cms.gov)

Table 6: National prevalence of antipsychotic use in nursing homes

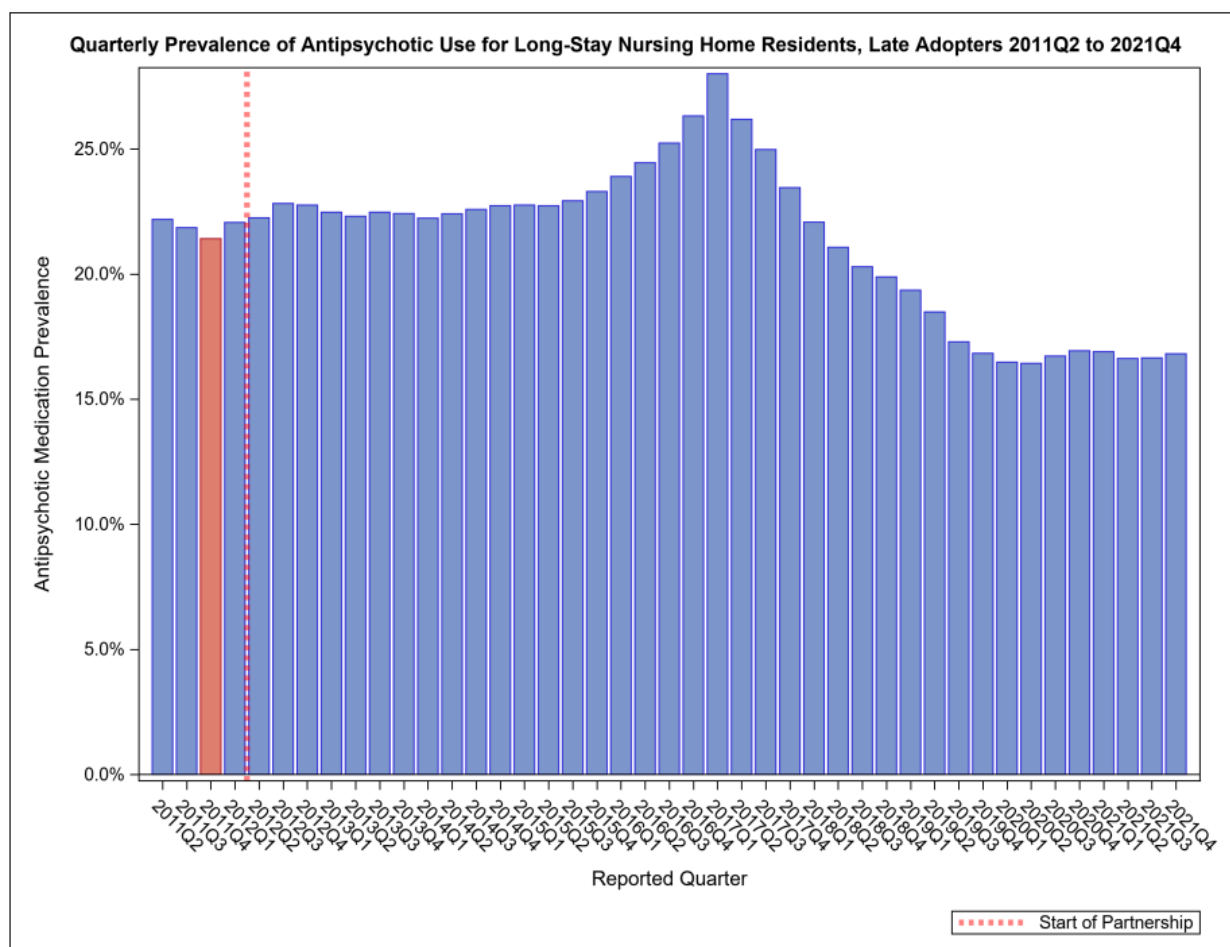


Additional resources through the CMP funds program continued to be disseminated to Tennessee nursing homes to educate and train facility staff in best practices for quality of care and quality of life without the use of antipsychotic medication.

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. For any of these Tennessee facilities, identified as "Late Adopters," Health Facilities Commission will work collaboratively with CMS Quality Improvement

Organizations<sup>4</sup>, the nursing home associations, CMP Advisory Committee, and other stakeholders to refocus efforts specifically toward these "late adopters" to understand the barriers and decrease antipsychotic medication use in this population.

Table 7: National prevalence of antipsychotic use in late adopters



<sup>4</sup> The QIO Program strives to improve the effectiveness, efficiency, economy, and quality of services dedicated to Medicare beneficiaries. <https://www.cms.gov/medicare/quality/quality-improvement-organizations>



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. 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/hsda/health-care-facilities/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-NursingHomes.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 Health Facilities Commission's responsibility to safeguard these individuals through routine inspections and complaint investigations. As the frontline for ensuring quality and safety in nursing homes, HFC 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.