



Nursing Home Inspection and Enforcement Activities

Report to the 113th Tennessee General Assembly

Tennessee Health Facilities Commission

February 2023

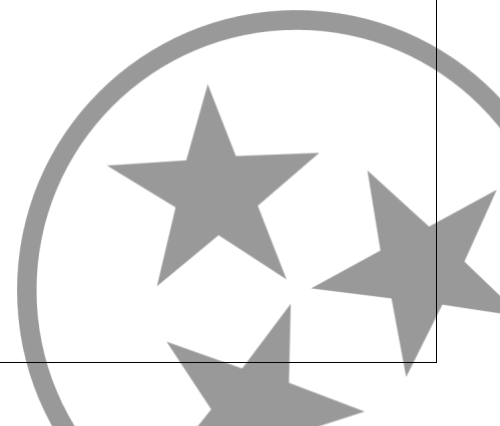


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Executive Summary

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 license/certification renewal 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.

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. State survey agency (SA) 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.
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 nursing homes 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 of 2022, 311 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 9 and 15 months. All surveys are unannounced.

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 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 1st 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.¹ Legislation to transfer this responsibility from the Department of Health to the Health Facilities Commission is recommended.

¹ Tenn. Code Ann § 68-1-120.

Key Findings

Complaints

When a problem is experienced with a specific licensed and/or certified facility, a complaint is filed by calling, 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 HFC regional offices for investigation. A standard or abbreviated survey is conducted to investigate complaints.

Below are key findings related to Tennessee's nursing home complaints in calendar year 2022.

- A total of 3,977 complaints were investigated for all health care facility types. 2,437 (61%) of complaints were nursing home complaints. Compared to calendar year 2021, there has been a 27.6% increase in the number of complaints captured in nursing homes. This coincides with a 26.8% increase for the total number of complaints entered for all health care facility types.
- Of the 2,437 nursing home complaints, 356 (14.6%) of complaints have been found to be substantiated after investigation. This is stable from a 14.7% substantiation rate for calendar year 2021.
- A total of 2,312 surveys conducted have a complaint investigation component to them for all health care facility types. 1,221 (52.8%) of these surveys were specific to nursing home complaint investigations. There has been a 16.7% decrease in complaint-related surveys in nursing homes compared to calendar year 2021. This may be explained by the shifting focus to recertification surveys, or surveyors investigating more complaints per survey, thus decreasing the total amount of complaint-related surveys.

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 2022.

- The two most frequently cited health related deficiencies in 2022 were: (1) Free of Accidents Hazards/Supervision/Devices and (2) Infection Prevention & Control.
- The two most frequently cited life safety code deficiencies in 2022 were: (1) Cooking Facilities; and (2) Sprinkler System – Maintenance and Testing.

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:

- 2,437 nursing homes complaints entered in 2022, of these complaints 356 (14.6%) were substantiated after investigation. (Fig. 1 & 3)
- 1,917 (78.6%) of nursing home complaints were prioritized either as an IJ or Non-IJ High, a 3.8% increase from calendar year 2021. (Fig. 2)
- 289 nursing homes have received at least one complaint, and 85 of these facilities have over 10 complaints on file for calendar year 2022. (Fig. 5 & 6)
- 156 nursing homes account for 356 substantiated complaints. The number of substantiated complaints increased by 26.6% compared to calendar year 2021, nearly proportional to the increase of nursing home complaints entered. (Fig. 3 & 4)

Fig. 1 - # of NH Complaints Entered, 2018-2022

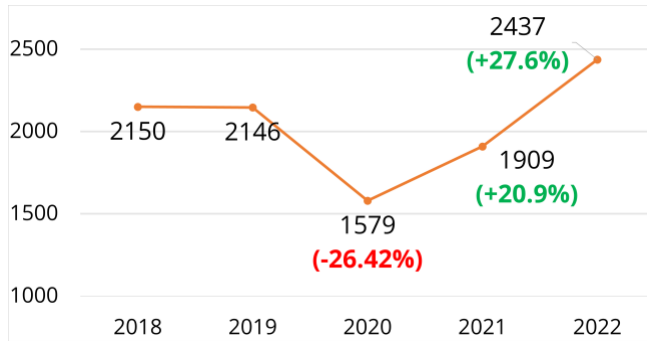


Fig. 2 - # of NH Complaints prioritized as IJ or Non-IJ High, 2018-2022

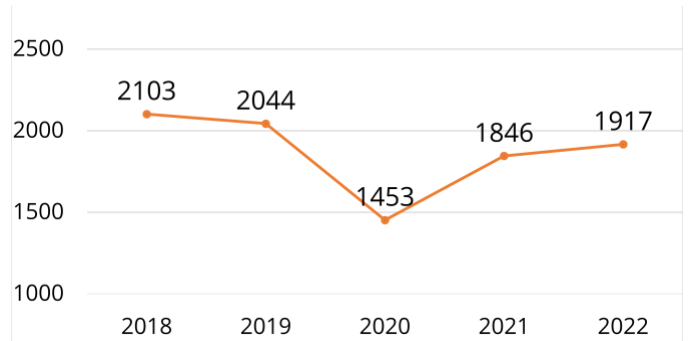


Fig. 3 - # of substantiated NH Complaints, 2018-2022

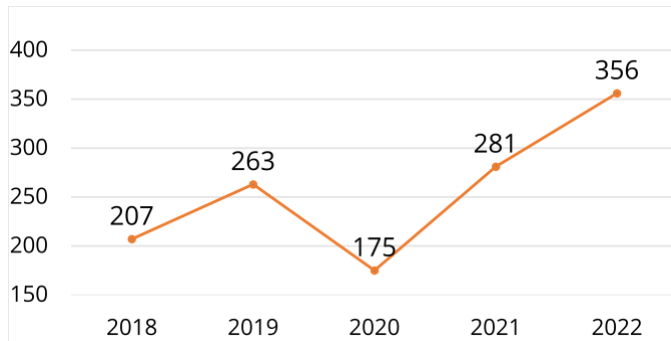


Fig. 4 - # of NH with at least 1 substantiated complaint, 2018-2022

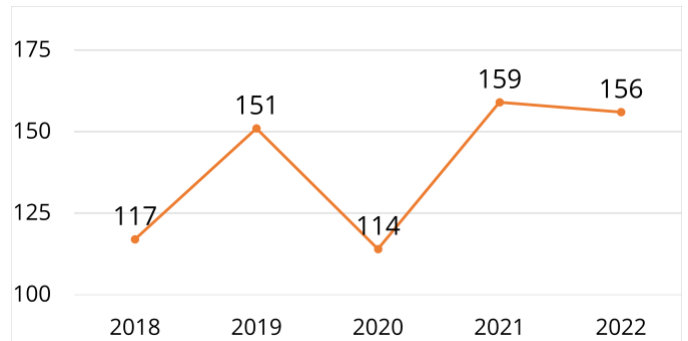


Fig. 5 - # of NHs with at least 1 complaint, 2018-2022

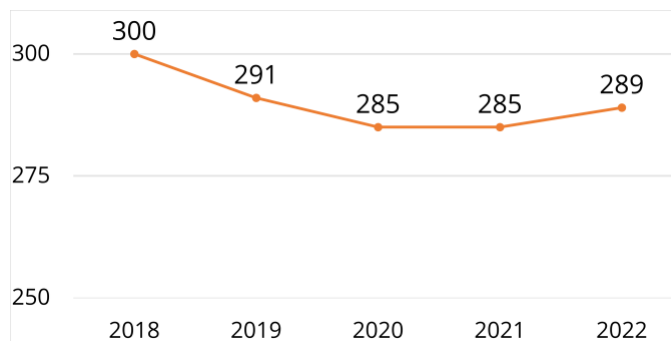
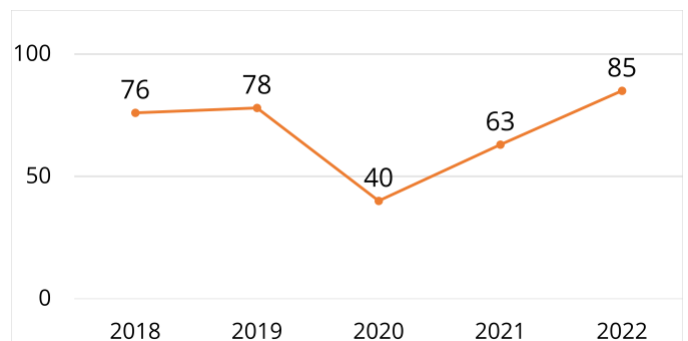


Fig. 6 - # of NHs with at least 10 complaints, 2018-2022



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 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 7 is the scope and severity matrix utilized for nursing home deficiencies.

Figure 7: 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 2022.

- 1,845 total federal citations were issued during all surveys (Life Safety, Health) conducted in nursing homes for calendar year 2022. 201 (10.8%) of the citations were categorized as IJ (J, K, L Scope/Severity). Total number of IJ citations saw an increase of 45.6% compared to calendar year 2021. (Fig. 8 & 9)
- 129 nursing home recertifications were conducted in 2022. Each recertification includes a Life Safety and Health component. On average, there were 6.6 health deficiencies cited per health survey (not including revisits). (Fig. 10 & 11)
- 237 nursing homes have had at least 1 federal health safety deficiency cited. 84 nursing homes have had at least 1 federal life safety deficiency cited. (Fig. 12 & 13)
- There were two nursing homes involuntarily terminated by CMS from participation in the Medicare and Medicaid programs in 2022. These two nursing homes were Waters of Robertson and Summit View of Farragut.

- One (1) SOA was issued under the Department of Health from January 1 to June 30, 2022. From July 1 until December 31, 2022, HFC has issued six (6) SOAs. All discipline issued from July 1, 2022 until December 31, 2022, can be found at [Facility Action and Abuse Reports \(tn.gov\)](https://www.tn.gov/facility-action-and-abuse-reports).

Fig. 8 - # of federal deficiencies (Health, Life Safety) cited in NHs, 2018-2022

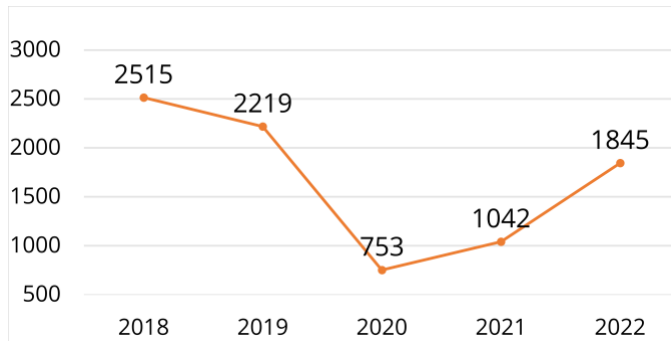


Fig. 9 - # of federal deficiencies (Healthy, Life Safety) scoped at IJ in NHs, 2018-2022

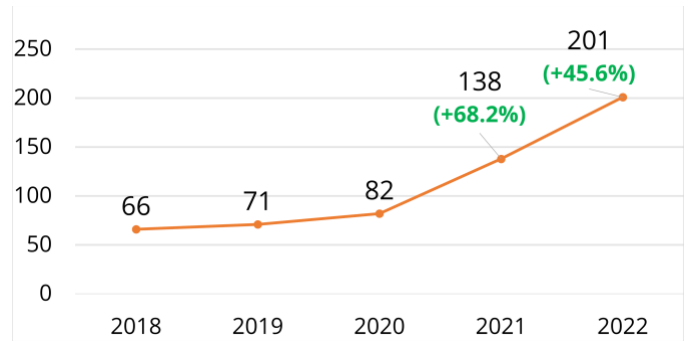


Fig. 10 - # of recertifications conducted in NHs, 2018-2022

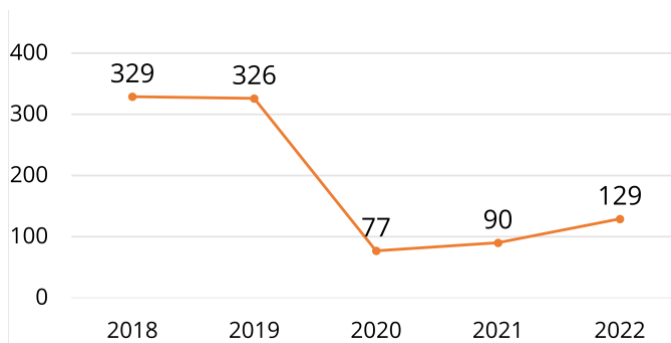


Fig. 11 - # of federal deficiencies cited per recertification survey (Health portion) in NHs, 2018-2022

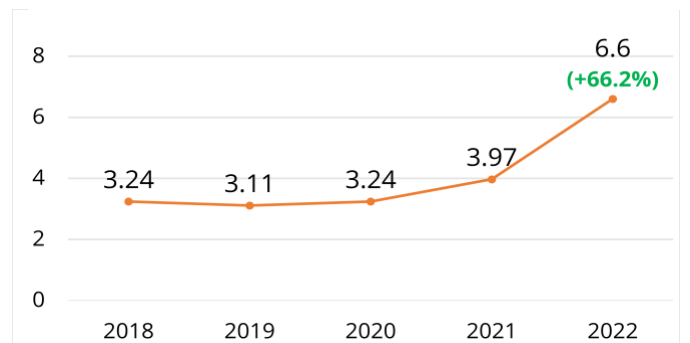


Fig. 12 - # of NHs with at least 1 federal health related deficiency cited, 2018-2022

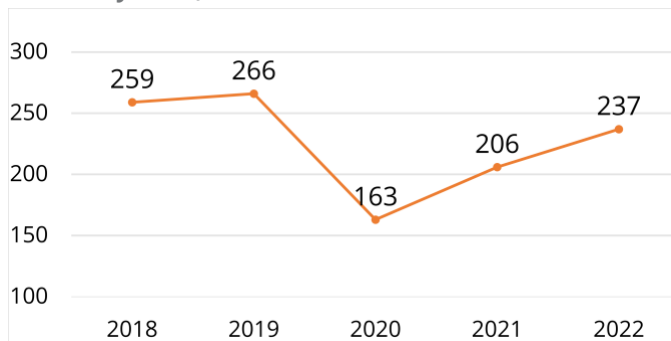
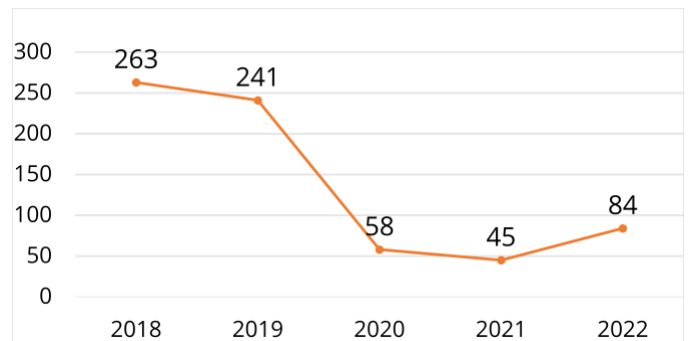


Fig. 13 - # of NHs with at least 1 federal life safety deficiency cited, 2018-2022



Top 10 Most Frequently Cited Deficiencies in Nursing Homes

The most common deficiencies cited in nursing homes in 2022 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. F0880 Infection Prevention & Control
3. F0812 Food Procurement, Store/Prepare/Serve-Sanitary
4. F0600 Free from Abuse and Neglect
5. F0609 Reporting of Alleged Violations
6. F0656 Develop/Implement Comprehensive Care Plan
7. F0657 Care Plan Timing and Revision
8. F0684 Quality of Care
9. F0550 Resident Rights/Exercise of Rights
10. F0610 Investigation/Prevention/Correction of Alleged Violation of Abuse

Most frequently cited life safety code deficiencies include:

1. K0324 Cooking Facilities
2. K0353 Sprinkler System – Maintenance and Testing
3. K0918 Electrical Systems – Essential Electrical System
4. K0321 Hazardous Areas-Enclosure
5. K0345 Fire Alarm System - Testing and Maintenance
6. K0211 Means of Egress – General
7. K0222 Egress Doors
8. K0363 Corridor- Doors
9. K0712 Fire Drills
10. K307 Electrical Equipment - Power Cords and Extension

Civil Monetary Penalties

Civil monetary penalties (CMP) are penalties that may be imposed by CMS on nursing homes for failing to meet federal regulations. HFC performs periodic federal certification surveys of nursing homes. Facilities not in compliance with federal regulations may be penalized by CMS based on these survey findings. 90% 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. The total amount of federal Civil Monetary Penalty funds for nursing homes collected in the State Fiscal Year 2022 was \$1,581,822.29.

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 selected 2023 focus areas utilizing state level data, and Federal and State priorities that impact the quality of care and quality of life of nursing home facility residents. The CMP Advisory Committee continues to serve as a valuable link between the CMP program and long-term care stakeholders.

Utilizing feedback from the CMP Advisory Committee, 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.

2023 funding focus areas are as follows:

1. Infection Control
2. Staff Retention
3. Palliative Care
4. Person-Centered Care
5. Residents' Rights
 - a. Elder Abuse, Neglect, and Exploitation
 - b. Alzheimer's Disease and other dementias
6. Antipsychotic Drug Use Reduction
7. Emergency Preparedness

The funding focus areas are not comprehensive of CMP efforts in Tennessee. Roughly 81% of nursing homes in Tennessee received CMP COVID-19 funding for technology devices that allowed residents to engage in virtual visits with loved ones as well as telehealth visits. COVID-19 In-

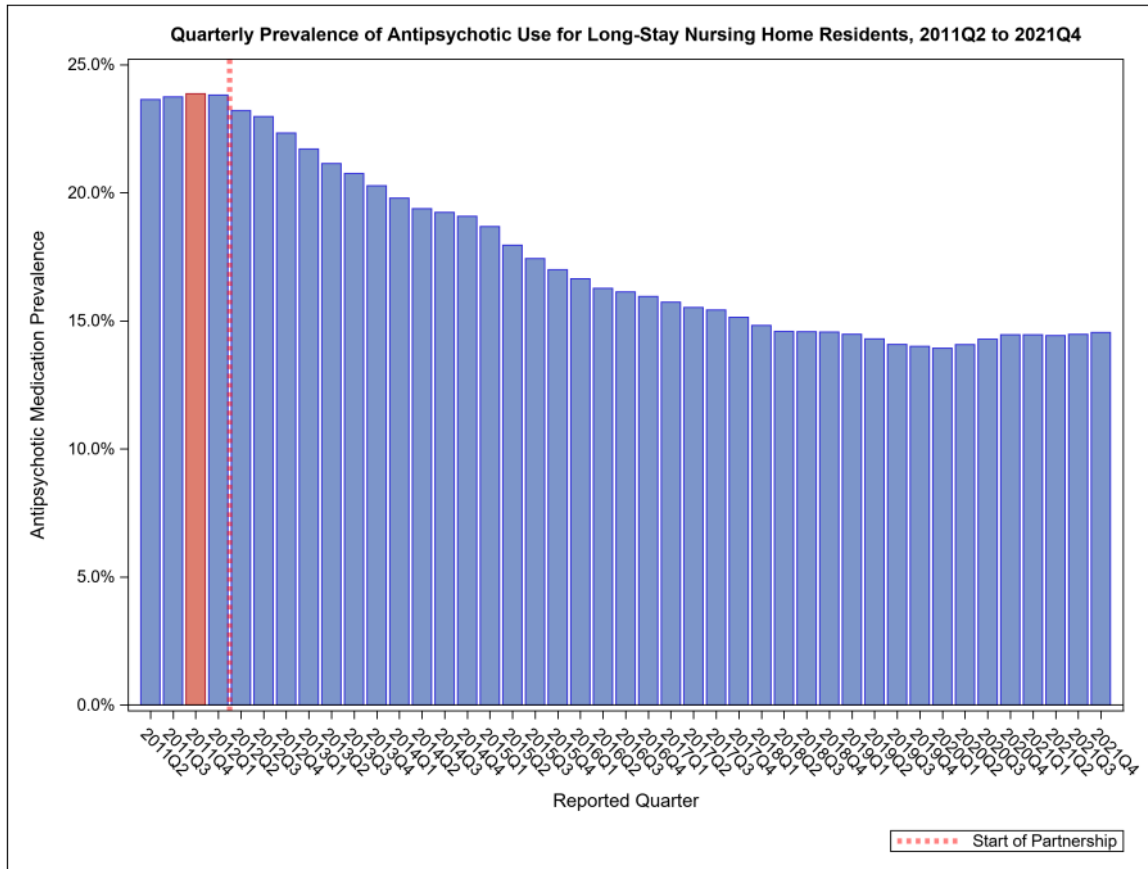
Person Visitation Aid funding was provided to nursing homes to purchase tents for outdoor visitation and/or clear dividers to create a physical barrier to reduce the risk of transmission during in-person visits. The CMP program also provided funding to nursing homes to purchase portable fans and portable air cleaners with high-efficiency particulate air (HEPA, H-13 or -14) filters to increase or improve air quality.

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% of long-stay nursing home residents were receiving an antipsychotic medication. Since then, there has been a decrease of 39.1% to a national prevalence of 14.5% in 2021Q4. Tennessee has seen a reduction in the prevalence of Antipsychotic use since the implementation of the national initiative. In 2011Q4, 30% of Tennessee's long-stay nursing home residents were receiving an antipsychotic medication. By 2021Q4, 15.7% of Tennessee's long-stay nursing home residents were receiving an antipsychotic medication².

² National Partnership to Improve Dementia Care in Nursing Homes: Late Adopter Data Report (April 2022). Late Adopter Data Report (cms.gov)

Table 1: National prevalence of antipsychotic use in nursing homes



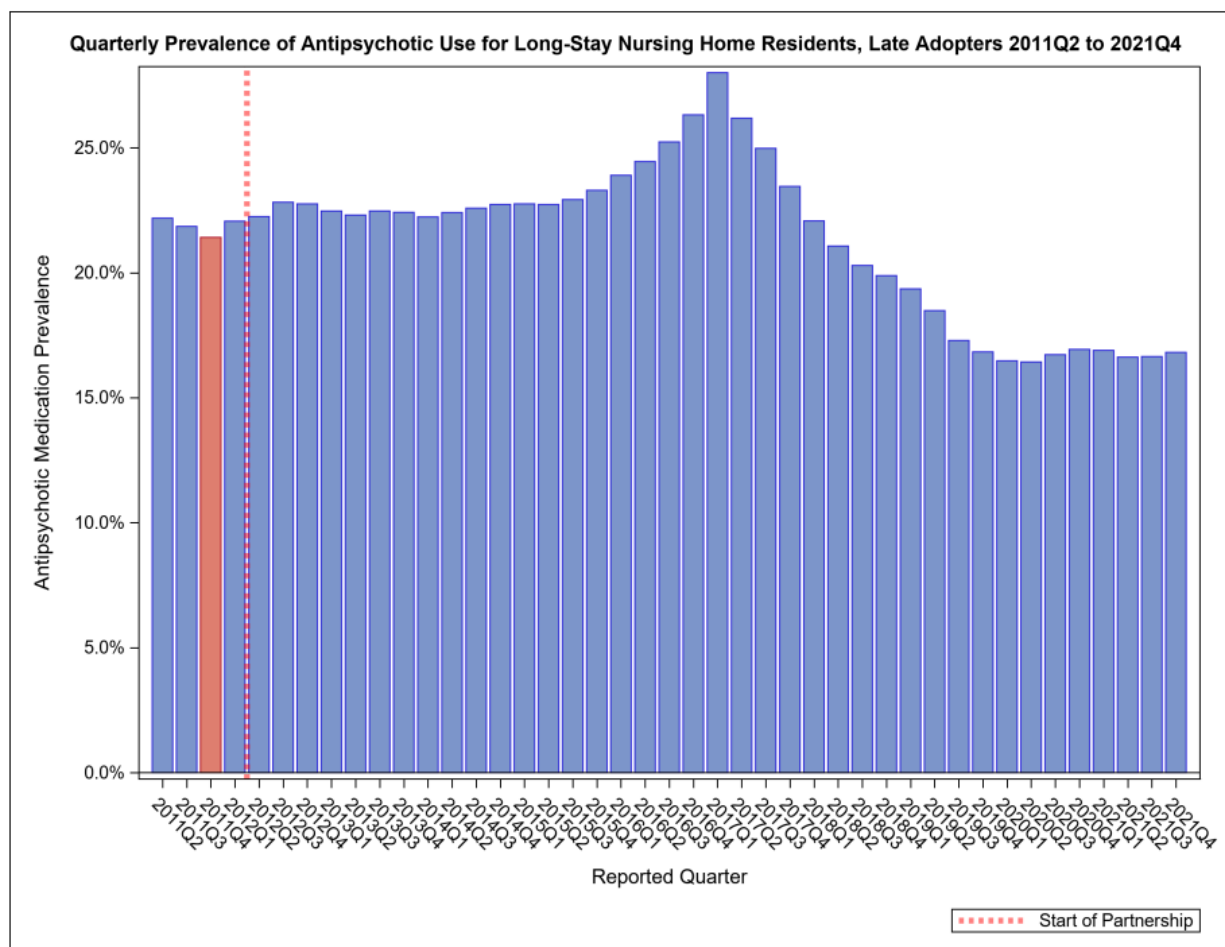
Additional resources through the CMP funds program continued to be disseminated to Tennessee nursing homes to educate and train facility staff in best practices for quality of care and quality of life without the use of antipsychotic medication.

CMP-funded projects in Tennessee were implemented to address antipsychotic drug use. Tennessee Eden Alternative Coalition’s Reframing Dementia through Person-Directed Practice project implemented practices to improve the care and lives of residents living with dementia. Through person-directed concepts and practical tools, direct care staff engaged other stakeholders in the reduction of antipsychotic use, while improving quality of life and quality of care for those they support. The Tennessee Arts Commission’s Tennessee Person-Centered Music Program, administered by the Tennessee Commission on Aging and Disability, is an individualized music intervention program focused on improving the quality of life and care for residents including those suffering from dementia and Alzheimer’s in nursing homes across Tennessee. The individualized music is incorporated into each resident’s individual care plan notes after their playlist has been created with special attention to clinical measures such as

reduced antipsychotic rates, depressive symptoms, and increased quality of life. Tennessee Technological University implemented the "Music and Memory" program to assist nursing homes in the Upper Cumberland region in the reduction of unnecessary antipsychotic medication use, improving person-centered care and physical, cognitive, and emotional functioning of residents diagnosed with Alzheimer's or other Dementias. Tennessee Technological University also implemented a statewide clinical art therapy project titled, "ArtTherapy4Life Tennessee". Priority for this project was given to rural, distressed/at-risk counties, Star 1, 2, or 3 Quality Rating and late adopters. AGE-u-cate," Compassionate Touch project is an evidenced informed approach that combined skilled touch techniques and specialized communication shown to help prevent behavioral expression in people with dementia. The project supported the effort to minimize the use of antipsychotic medications for dementia-related behaviors by providing a non-pharmacological tool. Funded CMP projects further promoted a continued steady decline in unnecessary antipsychotic use prevalence in Tennessee nursing homes.

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", Health Facilities Commission will work collaboratively with the QIO, 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 2: 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. HFC and 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/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.