

## **EXAMINING FEDERAL EFFORTS TO ENSURE QUALITY OF CARE AND RESIDENT SAFETY IN NURSING HOMES**

### **House Committee on Energy and Commerce Subcommittee on Oversight and Investigations Hearing**

September 6, 2018

#### **STATEMENT OF THE CENTER FOR MEDICARE ADVOCACY**

The Center for Medicare Advocacy thanks the Committee for holding this important hearing on nursing home quality. Both the Government Accountability Office and the HHS Office of Inspector General have issued many reports in the last two decades about the poor care that many residents receive. Congressional oversight and legislative action are critically needed.

The Nursing Home Reform Law (1987) sets the standards of care for all skilled nursing facilities and nursing facilities in the country that choose to receive reimbursement under the Medicare and Medicaid programs for providing care to residents. The Law requires facilities to provide each resident with all of the care and services that are necessary for the resident to attain and maintain “the highest practicable physical, mental, and psychosocial wellbeing.” Nearly every facility in the country voluntarily participates in both federal payments and is governed by these outcome-oriented, resident-focused standards.

Unfortunately, the federal standards for quality of care and quality of life are not meaningfully enforced. As a matter of policy, the Centers for Medicare & Medicaid Services (CMS) imposes financial sanctions only when it calls facilities’ noncompliance either “actual harm” or “immediate jeopardy,” terms that are assigned to less than 5% of deficiencies nationwide. Most noncompliance is called “no harm” and is essentially ignored by the regulatory system, even as facilities’ noncompliance actually endangers and harms residents. (See attached *Elder Justice: What “No Harm” Really Means for Residents*, Vol. 1, Issue 8, pages 5-8.)

Non-enforcement of federal standards of care is highlighted by the treatment of Special Focus Facilities (SFFs), the small handful of facilities in each state that are identified as having more deficiencies than average, and more serious deficiencies, over an extended period of time. The Center for Medicare Advocacy recently looked at the SFFs that had been identified as SFFs as of June 21, 2018 and July 19, 2018. Although the 18 newly-identified SFFs were cited with the highest level of deficiencies (66 jeopardy deficiencies and 23 harm deficiencies since 2016), CMS imposed few and small civil money penalties (CMPs) against them. Only 12 of the 18 facilities

had *any* CMPs imposed over the prior three years and the CMPs for these 12 facilities averaged only \$27,562 per facility per year over the three-year period. (See attached Center report, *Special Focus Facilities: Poor Care for Residents, Limited Enforcement Consequences for Residents*, Jul. 27, 2018, pages 9-16.)

The Administration has recently taken steps to reduce CMPs going forward. Among many changes that reduce enforcement, CMS has shifted from per day CMPs (that reflect the duration of a facility's noncompliance) to per instance CMPs (that are one-time fines that cannot exceed approximately \$20,000). Already minimal enforcement for the poorest quality facilities is declining even further, as federal enforcement data document a dramatic shift to per instance CMPs. (See attached CMS's Civil Money Penalty Reports for 2016 and 2018, pages 17-18.)

Another key cause of poor quality of care and quality of life is the virtually non-existent oversight, at both the federal and state levels, of who owns and manages facilities. The issue came vividly and painfully into public consciousness last Spring, when Skyline/Cottonwood, a New Jersey-based company, imploded. Since 2015, Skyline had assumed management of more than 100 nursing facilities in between six and eight states. Between late March and late April 2018, Skyline/Cottonwood had stopped paying many of its workers and vendors and the company collapsed. The states where Skyline owned or managed facilities rushed to court to get authority to take over the facilities, actions that were necessary to assure that residents would continue to receive food, medicine, and care. How did this catastrophe happen? How was an unknown company, with an increasingly poor record, able to take over so many facilities in such a short period of time? States and the federal government have the duty and responsibility to assure that owners and managers are competent to provide care, but they appear to approve changes in ownership and management without meaningful review.

Skyline is the most recent example of failed oversight of owners and managers, but it is not the only example. In 2015, another company with facilities in several Midwestern states collapsed. Its owner had started a new company, Deseret Health Group, in 2006 and repeated the pattern he established in California 20 years earlier: poor care for residents, bankruptcy, and abandonment of the nursing facilities and their residents, forcing states to go to court to take over the facilities. How was this owner, with a criminal record, allowed to begin a new nursing home company and get its facilities licensed by the states and certified for Medicare and Medicaid? (See attached article, "Buying and Selling Nursing Homes: Who's Looking Out for the Residents?" CMA Alert, May 23, 2018, pages 19-21.)

On September 1, 2018, the *Boston Globe* reported that the New Jersey-based Synergy Health Centers started buying nursing facilities in Massachusetts in late 2012, although the company had no record of owning facilities before. It continued to buy facilities and get state licenses and federal certification for Medicare and Medicaid for its facilities, despite increasing reports of health and safety deficiencies. Now, eight of its ten Massachusetts facilities are under court-ordered receivership, two of its facilities are Massachusetts' only SFFs, and the Attorney General is investigating the company's failure to pay its employees' health insurance premiums, despite deducting premiums from their paychecks. Kay Lazar, "Troubled Massachusetts nursing home chain in 'dire' straits," Sep. 1, 2018, <https://www.bostonglobe.com/metro/2018/08/31/troubled->

[massachusetts-nursing-home-chain-director-court-monitor-warns/WtywMujnoo7Fy2qYdlvdxL/story.html](https://www.mass.gov/info-details/massachusetts-nursing-home-chain-director-court-monitor-warns/WtywMujnoo7Fy2qYdlvdxL/story.html).

Nursing facilities report that quality of care is improving, pointing to the quality measures reported on *Nursing Home Compare*. However, these measures are self-reported and unaudited by CMS. *The New York Times* reported in 2014 that nursing facilities game the federal rating system and report resident assessment information that gives them high scores in quality measures. Katie Thomas, “Medicare Star Ratings Allow Nursing Homes to Game the System,” *The New York Times* (Aug. 14, 2014), <https://www.nytimes.com/2014/08/25/business/medicare-star-ratings-allow-nursing-homes-to-game-the-system.html>.

The practice of gaming continues. Last month, the Center found that 13 of the 33 SFFs (39%) on CMS’s July 19, 2018 list of SFFs that “have not improved” had five stars, CMS’s highest rating, in their self-reported quality measures. Not only is it highly unlikely that these SFFs that “have not improved” provided good care, but the self-reported measures also boosted the facilities’ overall scores on *Nursing Home Compare* from one star to two stars, making them appear to provide better care than they actually provided. (See CMA Alert on report, “Special Focus Nursing Facilities that ‘Have Not Improved:’ Poor Care for Residents, Overall Ratings Artificially Boosted by 5-Star Ratings in Self-Reported Quality Measures,” Aug. 15, 2018, page 22.).

Without question, the single biggest obstacle to good care is inadequate nurse staffing levels, both professional nurses (registered nurses, licensed practical nurses, and licensed vocational nurses) and paraprofessional nurses (certified nurse assistants). Nearly 70% of facilities had overstated their staffing levels for many years, on average by 12%, when *Nursing Home Compare* posted self-reported staffing data, as *The New York Times* and *Kaiser Health News* reported after CMS shifted this Spring from self-reported data to a payroll-based system for reporting nurse staffing. Jordan Rau, “‘It’s Almost Like a Ghost Town.’ Most Nursing Homes Overstated Staffing for Years,” July 7, 2018, <https://www.nytimes.com/2018/07/07/health/nursing-homes-staffing-medicare.html>. While the new payroll-based system provides more accurate staffing information, the inadequate nurse staffing levels, now clearly documented, cry out for meaningful, enforceable federal legislation to improve staffing in nursing facilities.

Thank you, again, for holding this hearing. The Center for Medicare Advocacy stands ready to assist the Committee as it moves forward in its oversight of the nursing home industry.

The Center for Medicare Advocacy (Center) is a national, private, non-profit law organization, founded in 1986, that provides education, analysis, advocacy, and legal assistance to assist people nationwide, primarily older people and people with disabilities, to obtain necessary health care, therapy, and Medicare. The Center focuses on the needs of Medicare beneficiaries, people with chronic conditions, and those in need of long-term care and provides training regarding Medicare and health care rights throughout the country. It advocates on behalf of beneficiaries in administrative and legislative forums, and serves as legal counsel in litigation of importance to Medicare beneficiaries and others seeking health coverage.

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Toby S. Edelman  
Senior Policy Attorney

Center for Medicare Advocacy  
[tedelman@MedicareAdvocacy.org](mailto:tedelman@MedicareAdvocacy.org)

Dara Valanejad  
Policy Attorney  
Center for Medicare Advocacy  
Long Term Care Community Coalition  
[dvalanejad@MedicareAdvocacy.org](mailto:dvalanejad@MedicareAdvocacy.org)

## **Elder Justice**

### **What “No Harm” Really Means for Residents**

Volume 1, Issue 8

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#### **Introduction: What is a “No Harm” Deficiency?**

Effective monitoring and oversight of nursing home care are critical to ensuring the safety and dignity of residents, as well as the integrity of the public programs which pay for a majority of nursing home care. Nevertheless, numerous studies over the years have indicated that, too often, the state agencies responsible for ensuring that nursing homes meet minimum standards of care fail to identify when residents experience substandard care, abuse, or neglect. Furthermore, [CMS data](#) indicate that, even when state surveyors *do* identify a health violation, they only identify the deficiency as having caused any harm to a resident about four percent (4%) of the time.

The failure to identify resident harm when it has occurred has pernicious implications on many levels. Fundamentally, it signifies a lack of recognition of resident suffering, degradation and even, occasionally, death. Importantly, from a policy perspective, it means that there is likely no accountability because nursing homes rarely face financial or other penalties for “no harm” deficiencies. The absence of any penalty sends a message to nursing homes that such substandard care, abuse, and neglect will be tolerated.

The purpose of this newsletter is to provide the public with examples of these “no harm” deficiencies, taken from Statements of Deficiencies (SoDs) on [Nursing Home Compare](#). Surveyors classified all of the deficiencies discussed here as “no harm,” meaning that they determined that residents were neither harmed nor put into immediate jeopardy for their health or well-being. **We encourage our readers to read these residents’ stories and determine for themselves whether or not they agree with the “no harm” determinations.**

*The failure to identify resident harm when it has occurred has pernicious implications on many levels.*

## Elderwood at Amherst, NY

### Four-star facility fails to prevent, address, and care for a resident’s pressure ulcer.

The resident assessment showed that, although the resident did not have any pressure ulcers, she was at risk for developing them.<sup>1</sup> While observing the resident in her room, the surveyor saw the resident in bed with “an open bleeding area on the bridge of her right nostril.” When the certified nurse aide (CNA) came into the room to provide morning care, the surveyor was able to see that the resident’s pressure ulcer was the same size and shape as the nose pad on the resident’s glasses. According to the surveyor, the CNA did not “relay any information regarding skin problems [to the licensed practical nurse], stated her care was done and left.”

When subsequently interviewed, a registered nurse (RN) gave a summary of the resident’s problems but failed to report any skin conditions. The RN told the surveyor that the CNA had not reported any skin problems. During a later observation, the surveyor asked the RN to remove the resident’s glasses for a skin inspection. After seeing the resident’s damaged skin, she said that someone should have told her. The RN left the resident’s glasses on but said that she would “come up with a plan for the resident.”

The surveyor cited the facility for failing to “ensure that, a resident receives care, consistent with professional standards of practice, to prevent pressure ulcers and . . . not develop pressure ulcers unless the individual’s clinical condition demonstrates that they were unavoidable.” Despite the resident’s having developed a pressure ulcer, the surveyor cited this failure as causing neither harm nor immediate jeopardy to the resident’s well-being.

## Community Care Center, CA

### Five-star facility’s staff member spits on resident’s face during an argument.

The assessment showed that the resident’s cognition was intact and that the resident did not exhibit behavioral issues, such as “hitting, pushing, threatening, and screaming.”<sup>2</sup> Nevertheless, the facility’s records indicated that the resident became angry after a certified nursing assistant (CNA) told her that she could not go into another resident’s room. During a subsequent argument between the resident and the CNA, the CNA reportedly spat on the resident’s face.

Two staff members witnessed the encounter between the resident and the CNA. Both staff members informed the facility’s investigator that the CNA did in fact spit on the resident’s face. The CNA was terminated from his position at the facility after spitting on the resident’s face. While speaking with the facility’s special treatment program counselor, the surveyor learned that the resident “felt mistreated” by the incident and believed that “it was not accident.”

Although the facility fired the CNA, the surveyor cited the facility for failing to ensure that the resident “was free from mistreatment.” Despite the resident’s stating that she felt violated, the surveyor still determined that this incident did not harm the resident.

Share your thoughts with us on Twitter using **#HarmMatters**.

For more information on the nursing home standards of care, please see LTCCC’s **Issue Alerts**.

## The Manor of Farmington Hills, MI

Four-star facility fails to report an allegation of neglect after a resident was left on top of his bed pan for an hour and a half.

During the inspection, a resident told the surveyor that care at the facility was not good.<sup>3</sup> The resident recalled that he had to call his wife three or four times to get him off his bed pan because he was on it for an hour and half. The resident explained that the wait times after hitting the call light have been as long as two hours on some occasions. He also told the surveyor that he requested “an x-ray after being left on the bed pan because it hurt so bad.”

A subsequent review of the resident’s clinical records showed that the resident complained of right buttock pain, with pain from his spine to his hip. The nurses’ notes indicated that an x-ray was ordered and the wound progress notes showed a “superficial excoriation on the coccyx area.” A later physician’s note detailed that the resident’s back pain improved but that the resident has a history of chronic pain “that became aggravated after prolonged sitting on [the] bed pan which caused increased low back and buttock pain.”

The surveyor spoke to the administrator, who acknowledged that not providing care to residents may lead to allegations of neglect. However, the administrator stated that the incident involving this resident was not reported because “during the investigation there was no abuse determined . . . I wouldn’t have reported that because it’s not abuse.” The administrator did not respond when asked whether the incident could have been considered an allegation of neglect.

The surveyor determined that the facility failed “to report an allegation of neglect to the State Agency . . . resulting in an allegation of neglect not being investigated . . . and the potential for unidentified and continued neglect.” Despite this finding, the surveyor cited the deficiency as causing neither harm nor immediate jeopardy to the resident’s health and safety.

## Willow Crest Nursing Pavilion, IL

One-star facility fails to identify bed rails as a physical restraint and to reassess use after a resident was found “wedged between the wall and her bed.”

The facility’s incident log showed that the resident was found on the floor in her room.<sup>4</sup> A second recorded incident showed that the resident was “wedged between the wall and her bed[,] with her head wedged between the upright side-rail and the mattress . . .” The record included that that the resident had some of her weight on her left knee but that “most of her weight was dangling, pulling on her neck.”

When the surveyor spoke to the resident’s roommate, the roommate noted that the resident attempted to get out of her bed often and that “she fell just the other evening trying to get out.” A certified nurse aide (CNA) told the surveyor that the resident’s dementia was getting worse and that the resident had two falls. The CNA explained that it was difficult to pull out the release knob to raise and lower the side rails and that there was “[n]o way” the resident could move these side rails.

The director of nursing (DON) told the surveyor that “side rail use should be assessed quarterly and prn (as needed).” The DON said that the resident’s recent incident was “definitely a prn situation and reassessing the



use of her bed rails is definitely necessary.” The DON added that “there has been no reassessment done and it is definitely a safety issue now . . . .”

The surveyor ultimately cited the facility for failing to “identify the use of bed rails as a restraint and fail[ing] to reassess their use after a resident attempted to climb over the bed rail.” Despite repeated incidents and the resident’s potential to strangle on the bed rails, the surveyor cited the violation as “no harm.”

## A Note on Residents’ Rights

Under the federal Nursing Home Reform Law, every nursing home must provide each resident with services that help attain or maintain the resident’s “highest practicable physical, mental, and psychosocial well-being.” This federal law and its implementing regulations offer residents specific rights and protections to ensure quality of care and quality of life in nursing homes. While CMS’s enforcement of the nursing home standards of care may be lacking, the nursing home standards must still be followed. Our organizations encourage residents and families to remain vigilant, learn about resident protections, and continue advocating for the rights of their loved ones. **For more information about the nursing home standards of care, please see [www.nursinghome411.org](http://www.nursinghome411.org) and [www.medicareadvocacy.org](http://www.medicareadvocacy.org).**

### Further Reading from LTCCC & the Center:

1. [\*The New York Times\* Shows Nursing Homes Are Not Meeting Staffing Requirements](#)
2. [LTCCC’s Action Center: Speak Out in Support of Nursing Home Residents!](#)
3. [Fighting the Rollback of Nursing Home Protections](#)
4. [Nursing Home “In-House” Managed Care Plans May Harm Residents](#)
5. [Special Focus Facilities: Poor Care for Residents, Limited Consequences for Providers](#)

<sup>1</sup> Statement of Deficiencies for Elderwood at Amherst, CMS (April 4, 2018),

<https://www.medicare.gov/nursinghomecompare/InspectionReportDetail.aspx?ID=335056&SURVEYDATE=04/04/2018&INSPTYPE=STD&profTab=1&state=NY&lat=0&lng=0&name=ELDERWOOD%2520AT%2520AMHERST&Distn=0.0>.

<sup>2</sup> Statement of Deficiencies for Community Care Center, CMS (April 4, 2018),

<https://www.medicare.gov/nursinghomecompare/InspectionReportDetail.aspx?ID=05A109&SURVEYDATE=04/04/2018&INSPTYPE=CMPL&profTab=1&Distn=0.0&state=CA&lat=0&lng=0&name=COMMUNITY%20CARE%20CENTER..>

<sup>3</sup> Statement of Deficiencies for The Manor of Farmington Hills, CMS (April 19, 2018),

<https://www.medicare.gov/nursinghomecompare/InspectionReportDetail.aspx?ID=235508&SURVEYDATE=04/19/2018&INSPTYPE=STD&profTab=1&state=MI&lat=0&lng=0&name=THE%2520MANOR%2520OF%2520FARMINGTON%2520HILLS&Distn=0.0>.


<sup>4</sup> Statement of Deficiencies for Willow Crest Nursing Pavilion, CMS (May 31, 2018),

<https://www.medicare.gov/nursinghomecompare/InspectionReportDetail.aspx?ID=145712&SURVEYDATE=05/31/2018&INSPTYPE=CMPL&profTab=1&state=IL&lat=0&lng=0&name=WILLOW%2520CREST%2520NURSING%2520PAVILION&Distn=0.0>.



## Special Focus Facilities: Poor Care for Residents, Limited Enforcement Consequences for Facilities

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 [medicareadvocacy.org/special-focus-facilities-poor-care-for-residents-limited-enforcement-consequences-for-facilities](https://medicareadvocacy.org/special-focus-facilities-poor-care-for-residents-limited-enforcement-consequences-for-facilities)

Nursing facilities that are identified as among those providing the poorest quality care to their residents face limited, if any, enforcement actions. This Report looks at these nursing facilities.

### Background

In cooperation with states, the Centers for Medicare & Medicaid Services (CMS), identifies nursing facilities that have a history of serious noncompliance. These facilities – which are called Special Focus Facilities (SFFs)[1] – are among the worst performing facilities in the country. Nursing facilities identified as SFFs have an additional standard survey each year and are expected, within 18-24 months, to “graduate” from the SFF program, to be terminated, or to remain (if they have made substantial improvement or are expected to be sold). Each month, CMS identifies new SFFs and identifies which current SFFs have not improved, have improved, or have been terminated.

The Nursing Home Reform Law governs the standards of care (called Requirements of Participation) that Medicare and Medicaid facilities must meet in order to be eligible for reimbursement under the federal payment programs; the survey process used to determine compliance with federal standards of care; and remedies or penalties that may be imposed for noncompliance.[2]

CMS categorizes deficiencies that are cited as a result of unannounced surveys according to their scope (how many residents are affected) and severity (how serious the noncompliance is). Nationwide, in 2014, only 0.9% of deficiencies were cited as immediate jeopardy (the highest category of noncompliance) and 2.2%, as harm (the second highest level of noncompliance).[3] Most deficiencies are identified as causing residents no-harm.[4] The remaining deficiencies are identified as causing residents no-harm or as substantial compliance.[5] CMS imposes penalties primarily for jeopardy- and harm-level deficiencies. Among the remedies that CMS may impose are civil money penalties (CMPs), either per day or per instance CMPs.

Per day CMPs for jeopardy-level deficiencies range from \$6394 to \$20,965; per instance CMPs for jeopardy-level deficiencies range from \$2097 to \$20,965.[6] The difference between the two types of CMPs is that per day CMPs increase with the number of days a facility is cited as being out of compliance with federal standards of care, while per instance CMPs reflect a flat fine unrelated to the duration of noncompliance.

CMS's website *Nursing Home Compare* reports ratings for each nursing facility that participates in Medicare or Medicaid, or both, on three domains: health survey (based on unannounced annual and complaint surveys that are conducted by state survey agencies); nurse staffing data (based, since May 2018, on payroll-based information<sup>[7]</sup>); and quality measures (based primarily on self-reported and unaudited resident assessment information provided by facilities). CMS assigns star ratings to each of the three domains and an overall score, which starts with the health survey rating and revises the overall rating downward or upward to reflect, respectively, one-star and five-star ratings on the staffing and quality measure domains. Ratings in each domain and in the overall rating range from one to five stars, with one star reflecting the lowest performance and five stars, the highest performance.

*Nursing Home Compare* reports two of the federal penalties – CMPs<sup>[8]</sup> and denials of payment for new admissions (DPNAs).<sup>[9]</sup> When facilities appeal CMPs, the CMPs are not reported on *Nursing Home Compare* unless and until they are upheld and final.

The federal Nursing Home Reform Law requires nursing facilities to have RNs on site eight hours per day, seven days per week.<sup>[10]</sup> *Nursing Home Compare* includes an icon to identify facilities that report seven or more days in the quarter without a registered nurse on site, fail to report auditable data, or fail to report nurse staffing data.<sup>[11]</sup> CMS reports that 6% of facilities nationwide had inadequate RN coverage in the fourth quarter of calendar year 2017, as so defined.

## **The Data Below**

The June 21, 2018 list of newly-identified SFFs (that is, nursing facilities that have been included on the list of SFFs for one to three months) includes 13 nursing facilities in nine states; the July 19, 2018 report added five facilities in five states.<sup>[12]</sup> The Center looked at *Nursing Home Compare* to identify how many jeopardy-level and harm-level deficiencies the 18 SFFs had in the current and prior survey cycles, whether any CMPs or DPNAs were imposed in the prior three years, whether the SFFs lacked mandated RN coverage or had other problems in staffing data, and their quality measure ratings.

The chart below reports the number of jeopardy and harm deficiencies in the current survey cycle and immediately prior year. Two years' data are reported because the survey star rating is based on two years of survey results, as frozen for a year in November 2017.<sup>[13]</sup> The chart separately identifies jeopardy and harm deficiencies cited in 2018. As noted above, *Nursing Home Compare* reports only final CMPs; CMPs that are on appeal are not included. This practice may result in the under-reporting of additional CMPs that CMS has imposed against these SFFs. The chart also reports CMPs and DPNAs that were imposed in the prior three years.

*Nursing Home Compare* reports the following information about these 18 facilities.

### **Special Focus Facilities, Newly-Added, as of June 21, 2018 and July 19, 2018**

Name of facility	State	Survey rating (stars)	Staff rating (stars)	Quality measure rating (stars)	Overall rating (stars)	Number of jeopardy and harm deficiencies (most recent and prior years)	Enforcement actions (3 years)
<b>Added June 21, 2018</b>							
Chulio Hills Health & Rehab	GA	1	2	1	1	15 jeopardy	2 CMPs totaling \$23,627; no DPNA
Helia Healthcare of Champaign	IL	1	1	4	1	1 harm (2018: 3 jeopardy)	2 CMPs totaling \$20,777; no DPNA
Richmond Pines Healthcare and Rehab Ctr	NC	1	1	1	1	9 jeopardy	4 CMPs totaling \$123,708; 1 DPNA
The Heights of Summerlin	NV	1	4	3	2	None	No CMPs; no DPNA
Isabelle Ridgway Post Acute Care Campus	OH	1	1	4	1	2 harm	2 CMPs totaling \$20,125; no DPNA
Pristine Senior Living & Post Acute Care of Portsmouth	OH	1	3	4	1	1 jeopardy; 1 harm	1 CMP of \$120,619; no DPNA
Falling Spring Nursing & Rehab Ctr	PA	1	2	4	1	1 jeopardy; 1 harm	No CMPs; no DPNA
Gardens at West Shore	PA	1	2	2	1	1 jeopardy; 1 harm (2018: 2 harm)	2 CMPs totaling \$116,896; 3 DPNAs

Benbrook Nursing & Rehab Ctr	TX	1	3	1	1	12 jeopardy; 1 harm	No CMPs; 1 DPNA
Inspire New Boston	TX	1	1	1	1	10 jeopardy; 3 harm	6 CMPs totaling \$233,427; 3 DPNAs
Bay at Maple Ridge Health & Rehab	WI	1	2	3	1	3 jeopardy	1 CMP of \$12,675 2 DPNAs
Trinity Health Care of Logan	WV	1	3	2	1	2 jeopardy	1 CMP of \$142,433; no DPNA
Cheyenne Health Care Center	WY	1	4	4	2	5 harm	2 CMPs totaling \$110,708; 2 DPNAs
<b>Added July 19, 2018</b>							
Worcester Health Center	MA	1	3	4	1	6 jeopardy; 1 harm	\$58,787; No DPNA
Dover Center for Health & Rehabilitation	NH	1	2	4	1	None	None
New Grove Manor	NJ	1	4	4	2	3 jeopardy	None
Emerald South Nursing and Rehabilitation Center	NY	1	1	5	2	1 harm	None
Pines Rehab & Health Ctr	VT	1	4	2	2	4 harm	1 CMP of \$8,453; No DPNA

<b>Total</b>						<b>66 jeopardy; 23 harm</b>	<b>\$992,235 11 DPNA's (6 facilities)</b>
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The 18 newly-identified SFFs can be described as follows:

#### Deficiencies

- 12 SFFs were cited with jeopardy-level deficiencies
- 4 SFFs were cited only with harm-level deficiencies
- 2 SFFs were cited with neither jeopardy-level nor harm-level deficiencies

#### Penalties

The 18 SFFs had CMPs totaling \$992,325 and 12 DPNA's over a 3-year period

- 12 SFFs had CMPs imposed ranging from 1 CMP (\$8453) to 6 CMPs totaling \$233,517 over a 3-year period
  - 6 of the SFFs had CMPs over \$100,000 (\$123,708, \$120,619, \$116,896, \$233,517, \$142,433, \$110,708)
  - 5 of the SFFs with CMPs also had DPNA's imposed; 7 did not
- 1 SFF had DPNA but no CMP
- 5 SFFs had neither CMPs nor DPNA's imposed

#### Nurse staffing

3 SFFs did not submit staffing data, reported large numbers of days with no RN coverage, or submitted data that could not be verified

- 1 of these SFFs had both CMPs and DPNA's imposed
- 2 of these SFFs had only CMPs

#### Quality measure domain

- 6 SFFs had 4 stars on the quality measures domain
- 1 SFF had 5 stars on the quality measure domain

### Discussion

What do we learn about these facilities from *Nursing Home Compare*?

1. **The SFFs provide exceptionally poor care**, as reflected by the high numbers of jeopardy and harm deficiencies cited in the current and immediately prior years. These 18 SFFs, together, were cited with 66 jeopardy deficiencies and 23 harm deficiencies over a two-year period.

2. **Enforcement actions are relatively minor.** While 12 of the 18 SFFs had CMPs imposed in the three prior years, the average CMP for the 12 facilities that had at least one CMP imposed was \$27,562 per year per facility. If the total CMPs for the 3-year period (\$992,325) are attributed to all 18 SFFs, the average CMP per year for each SFF is \$18,375.

Moreover, five of the 18 SFFs (28%) had neither CMPs nor DPNA imposed in the prior three years.

Enforcement actions are declining. In 2016, the Obama Administration issued guidance to impose per day CMPs as the default.<sup>[14]</sup> In 2018, the Trump Administration replaced the Obama guidance with new guidance calling for per instance CMPs as the default.<sup>[15]</sup> The result, already, is fewer per day CMPs and more per instance CMPs.<sup>[16]</sup>

In Fiscal Year (FY) 2016, under the Obama Administration, there were 1,728 per day CMPs (averaging \$53,846) and 942 per instance CMPs (averaging \$3,162). To date in FY 2018, 563 per day CMPs (averaging \$71,635.77) and 1,262 per instance CMPs (averaging \$9,576.83) have been imposed.<sup>[17]</sup> CMS will impose lower total CMPs going forward.

3. **Three SFFs reported high numbers of days without any registered nurse (RN) coverage, failed to report nurse staffing data, or failed to submit auditable nurse staffing data.**

Nearly 17% of newly-identified SFFs fall into this category.

Nurse staffing levels are lower than reported on *Nursing Home Compare*. *The New York Times* recently reported that the new staff reporting system documents that on at least one day in the last quarter of 2017, 25% of nursing facilities reported at least one day without an RN on site.<sup>[18]</sup> The *Times* finds that nurse staffing levels have been overstated for many years and that the new system, while better than the prior self-reported system, does not reflect facilities' erratic and fluctuating staffing levels.

4. **Six SFFs report resident assessment information that results in four stars in the quality measure domain (defined as above average performance) and 1 SFF reports resident assessment information that results in five stars in the quality measure domain (defined as much above average performance).** Since facilities that are among the poorest quality facilities in the country do not provide high quality care, the self-reported quality measure domain is highly misleading, if not fraudulent.

*The New York Times* reported in 2014 that nursing homes game the Five-Star Rating System by reporting assessment information that gives them high ratings in the quality measure domain.<sup>[19]</sup>

An analysis of the first five years of the Five Star Rating System, prepared for CMS by Abt Associates, found that the percentage of facilities receiving four or five stars on the quality measure domain increased from 35.2% in 2009 to 50.5% in 2013, while the percentage of facilities receiving one star in the quality measure domain declined from 22.7% to 10.5% over the same five-year period.<sup>[20]</sup>

## Conclusion

Facilities that are identified as among the most poorly performing facilities in the country provide extremely poor care and may fail to have sufficient numbers of RNs, but they face limited, if any, fines. Going forward, nursing facilities are likely to have even lower fines.

CMS needs to strengthen the SFF program to take more effective action against facilities that provide poor care. It also needs to revise *Nursing Home Compare* to more accurately reflect nurse staffing levels at all nursing facilities nationwide and to discontinue using the quality measure domain in rating facilities.

**July 27, 2018**

**Toby S. Edelman**

**Senior Policy Attorney**

**Center for Medicare Advocacy**

[1] CMS, *Special Focus Facility ("SFF") Initiative*, <https://www.cms.gov/Medicare/Provider-Enrollment-and-Certification/CertificationandCompliance/Downloads/SFFList.pdf>.

[2] 42 U.S.C. §§1395i-3(a)-(h), 1396r(a)-(h), Medicare and Medicaid, respectively.

[3] CMS, *Nursing Home Data Compendium 2015 Edition*, Table 2.5.e, page 85, [https://www.cms.gov/Medicare/Provider-Enrollment-and-Certification/CertificationandCompliance/Downloads/nursinghomedatacompendium\\_508-2015.pdf](https://www.cms.gov/Medicare/Provider-Enrollment-and-Certification/CertificationandCompliance/Downloads/nursinghomedatacompendium_508-2015.pdf).

[4] The Center for Medicare Advocacy and the Long Term Care Community Coalition jointly publish a monthly newsletter of so-called "no harm" deficiencies. See <http://www.medicareadvocacy.org/newsletter-elder-justice-what-no-harm-really-means-for-residents/>.

[5] The Center for Medicare Advocacy and the Long Term Care Community Coalition jointly publish a monthly newsletter of so-called "no harm" deficiencies. See <http://www.medicareadvocacy.org/newsletter-elder-justice-what-no-harm-really-means-for-residents/>.

[6] 82 Fed. Reg. 9174, 9182 (Feb. 3, 2017), <https://www.gpo.gov/fdsys/pkg/FR-2017-02-03/pdf/2017-02300.pdf>.

[7] CMS, "Transition to Payroll-Based Journal (PBJ) Staffing Measures on the Nursing Home Compare tool on Medicare.gov and the Five Star Quality Rating System," QSO-18-17-NH (Apr. 6, 2018), <https://www.cms.gov/Medicare/Provider-Enrollment-and-Certification/SurveyCertificationGenInfo/Downloads/QSO18-17-NH.pdf>.

[8] 42 U.S.C. §§1395i-3(h)(2)(B)(ii), 1396r(h)(2)(A)(ii), 1396r(h)(3)(C)(ii); 42 C.F.R. §§488.430-.444,

[9] 42 U.S.C. §§1395i-3(h)(2)(B)(i), 1396r(h)(2)(A)(i), 1396r(h)(3)(C)(i); 42 C.F.R. §488.417.

[10] 42 U.S.C. §§1395i-3(b)(4)(C)(i), 1396r(b)(4)(C)(i)(II), Medicare and Medicaid, respectively; 42 C.F.R. §483.35(b)(1).

[11] CMS, "Transition to Payroll-Based Journal (PBJ) Staffing Measures on the Nursing Home Compare tool on Medicare.gov and the Five-Star Quality Rating System," QSO-18-17-NH, page 2 (Apr. 6, 2018), <https://www.cms.gov/Medicare/Provider-Enrollment-and-Certification/SurveyCertificationGenInfo/Downloads/QSO18-17-NH.pdf>.



- [12] CMS, *Special Focus Facility ("SFF") Initiative*, Table A, <https://www.cms.gov/Medicare/Provider-Enrollment-and-Certification/CertificationandCompliance/Downloads/SFFList.pdf>.
- [13] [13] In November 2017, CMS froze the survey ratings for a year (until Nov. 27, 2018) and indicated that it would base the health survey star rating on two years of survey and complaint data. CMS, "Temporary Enforcement Delays for Certain Phase 2 F-Tags and Changes to *Nursing Home Compare*," S&C 18-04-NH (Nov. 24, 2017), <https://www.cms.gov/Medicare/Provider-Enrollment-and-Certification/SurveyCertificationGenInfo/Downloads/Survey-and-Cert-Letter-18-04.pdf>.
- [14] CMS, "Mandatory Immediate Imposition of Federal Remedies and Assessment Factors Used to Determine the Seriousness of Deficiencies for Nursing Homes," S&C: 16-31-NH (Jul. 22, 2016), revised 7.29.16, <https://www.cms.gov/Medicare/Provider-Enrollment-and-Certification/SurveyCertificationGenInfo/Downloads/Survey-and-Cert-Letter-16-31.pdf>.
- [15] CMS, "Final Revised Policies Regarding the Immediate Imposition of Federal Remedies," QSO 18-18-NH (Jun. 15, 2018), <https://www.cms.gov/Medicare/Provider-Enrollment-and-Certification/SurveyCertificationGenInfo/Downloads/QSO18-18-NH.pdf>.
- [16] [https://qcor.cms.gov/enf\\_cmp.jsp?which=0&report=enf\\_cmp.jsp](https://qcor.cms.gov/enf_cmp.jsp?which=0&report=enf_cmp.jsp).
- [17] [https://qcor.cms.gov/enf\\_cmp.jsp?which=0&report=enf\\_cmp.jsp](https://qcor.cms.gov/enf_cmp.jsp?which=0&report=enf_cmp.jsp) (site visited Jul. 28, 2018).
- [18] Jordan Rau, "'It's Almost Like a Ghost Town.' Most Nursing Homes Overstated Staffing for Years," *The New York Times* (Jul. 9, 2018), <https://www.nytimes.com/2018/07/07/health/nursing-homes-staffing-medicare.html>.
- [19] Katie Thomas, "Medicare Star Ratings Allow Nursing Homes to Game the System," *The New York Times* (Aug. 14, 2014), <https://www.nytimes.com/2014/08/25/business/medicare-star-ratings-allow-nursing-homes-to-game-the-system.html>.
- [20] Abt Associates, Inc., *Nursing Home Compare Five Star Quality Rating System: Five Year Report [Public Version]* (Jun. 16, 2014), <https://www.cms.gov/Medicare/Provider-Enrollment-and-Certification/CertificationandCompliance/Downloads/NHC-Year-Five-Report.pdf>.

# Civil Money Penalty (CMP) Report

## Selection Criteria

**Provider and Supplier**

**Type(s):**

**Year Type:**

**Year:**

**Quarter:**

Dually Certified SNF/NFs - Medicare and Medicaid, Distinct Part SNF/NFs - Medicare and Medicaid, Skilled Nursing Facilities (SNFs) - Medicare Only, Nursing Facilities - Medicaid Only

Fiscal Year

2016

Full Year

Region	Total Number of CMPs		Total Dollar Amount		Average Dollar Amount		Average Days in Effect
	Per Diem	Per Instance	Per Diem	Per Instance	Per Diem	Per Instance	Per Diem
(I) Boston	113	107	\$3,722,253.95	\$251,529.40	\$32,940.30	\$2,350.74	44.09
(II) New York	19	12	\$745,692.80	\$89,040.50	\$39,246.99	\$7,420.04	53.89
(III) Philadelphia	63	24	\$12,768,363.18	\$75,103.05	\$202,672.43	\$3,129.29	137.84
(IV) Atlanta	362	98	\$27,570,834.14	\$222,604.15	\$76,162.53	\$2,271.47	80.59
(V) Chicago	429	265	\$15,364,426.94	\$993,894.07	\$35,814.52	\$3,750.54	44.80
(VI) Dallas	285	211	\$13,885,975.82	\$593,442.39	\$48,722.72	\$2,812.52	51.03
(VII) Kansas City	234	24	\$7,941,416.43	\$117,978.90	\$33,937.68	\$4,915.79	38.71
(VIII) Denver	33	65	\$1,187,245.50	\$186,802.40	\$35,977.14	\$2,873.88	45.45
(IX) San Francisco	115	45	\$4,322,980.61	\$206,950.70	\$37,591.14	\$4,598.90	79.60
(X) Seattle	78	92	\$5,771,824.18	\$216,163.65	\$73,997.75	\$2,349.60	54.17
National Total	1,731	943	\$93,281,013.55	\$2,953,509.21	\$53,888.51	\$3,132.04	58.67

# Civil Money Penalty (CMP) Report

## Selection Criteria

**Provider and Supplier**

**Type(s):**

**Year Type:**

**Year:**

**Quarter:**

Dually Certified SNF/NFs - Medicare and Medicaid, Distinct Part SNF/NFs - Medicare and Medicaid, Skilled Nursing Facilities (SNFs) - Medicare Only, Nursing Facilities - Medicaid Only


Fiscal Year

2018

Full Year

Region	Total Number of CMPs		Total Dollar Amount		Average Dollar Amount		Average Days in Effect
	Per Diem	Per Instance	Per Diem	Per Instance	Per Diem	Per Instance	Per Diem
(I) Boston	60	103	\$2,785,101.92	\$1,014,873.51	\$46,418.37	\$9,853.14	36.32
(II) New York	16	98	\$1,090,626.10	\$641,941.27	\$68,164.13	\$6,550.42	67.75
(III) Philadelphia	43	72	\$6,164,573.90	\$769,907.12	\$143,362.18	\$10,693.15	79.12
(IV) Atlanta	153	233	\$12,016,487.77	\$1,639,126.18	\$78,539.14	\$7,034.88	58.62
(V) Chicago	139	342	\$8,813,023.90	\$3,622,937.11	\$63,403.05	\$10,593.38	53.79
(VI) Dallas	103	261	\$9,171,189.13	\$2,763,273.39	\$89,040.67	\$10,587.25	47.53
(VII) Kansas City	41	112	\$1,735,464.80	\$1,049,913.91	\$42,328.41	\$9,374.23	38.85
(VIII) Denver	28	35	\$2,530,626.21	\$346,416.00	\$90,379.51	\$9,897.60	48.36
(IX) San Francisco	35	93	\$3,101,244.00	\$927,919.30	\$88,606.97	\$9,977.63	70.09
(X) Seattle	91	91	\$4,057,579.79	\$856,704.20	\$44,588.79	\$9,414.33	53.85
National Total	709	1,440	\$51,465,917.52	\$13,633,011.99	\$72,589.45	\$9,467.37	54.03

## Buying and Selling Nursing Homes: Who's Looking Out for the Residents?

 [medicareadvocacy.org/buying-and-selling-nursing-homes-whos-looking-out-for-the-residents](http://medicareadvocacy.org/buying-and-selling-nursing-homes-whos-looking-out-for-the-residents)

In recent months, the buying and selling of nursing facilities and the transfers of licenses to new managers have raised questions about who the new owners/managers/lessees are and whether there are sufficient state and federal laws, regulations, and practices in place, meaningfully implemented and enforced, to protect residents.

The issue came vividly into public consciousness when Skyline/Cottonwood, a New Jersey-based company, imploded. Since 2015, Skyline had assumed management of more than 100 nursing facilities in between six and eight states, primarily facilities owned by the nursing home chain Golden Living. Between late March and late April 2018, Skyline/Cottonwood, which had stopped paying many of its workers and vendors, collapsed. The states sought court-approved receiverships or otherwise took over the facilities in order to assure that residents would continue to receive food and medicine and care.<sup>[1]</sup>

*The Philadelphia Inquirer* describes the issue with Skyline in stark terms: "The nursing home industry in recent years has been engulfed in wholesale changes in operators as Golden Living and other large companies, often under regulatory and financial pressures, abandon the business and lease bunches of facilities over to firms that emerge from nowhere."<sup>[2]</sup>

Some sales of nursing facilities involve purchasers with poor records. Avante, a Florida-based nursing home chain, announced the sale of all six of its North Carolina nursing facilities<sup>[3]</sup> to SentosaCare, New York's largest for-profit nursing home company. SentosaCare was the subject of an investigative article in *ProPublica* in 2015 that found that the company had a record of poor care in New York, with 11 of the 25 facilities "exceed[ing] the state average of 24 violations over the past three years," and three of the facilities having double that number of deficiencies.<sup>[4]</sup>

In some sales, ownership of nursing facilities is being transferred to real estate investment trusts. Genesis announced plans to sell 23 of its 24 Texas nursing facilities to Regency REIT, LLC by July 1, 2018.<sup>[5]</sup> HCR ManorCare was forced into bankruptcy and bought by its landlord Quality Care Properties, which, in turn, sold the company to ProMedica and Welltower, a real estate investment trust.<sup>[6]</sup>

Problems of questionable ownership and management are not new. In May 2015, Utah-based Deseret Health Group (founded in 2006) abruptly stopped paying for food, medical supplies, and workers' wages and benefits at various nursing facilities it owned, leading several states to pursue court receiverships or otherwise take control of the facilities and protect residents.<sup>[7]</sup> Twenty years earlier, the founder of Deseret Health Group had been involved in similar problems at other chains of nursing

facilities he owned – poor care for residents, bankruptcy, and abrupt closings of facilities.[8] After checking into rehabilitation for a cocaine addiction and also serving time in prison,[9] Robertson was able to start a new company – Deseret – and get licenses in multiple states.

Skyline/Cottonwood collapsed. Private equity firms and other owners are selling nursing facilities or transferring their operating licenses to companies with poor records. Owners with a seriously troubled history are able to start a new company and repeat the history. These practices raise questions about how states and the Federal Government are assuring that residents are protected when facilities, licenses, and management responsibilities are bought and sold or otherwise transferred.

Specifically, what processes do states use to review applicants for nursing home licenses? How do they assure that new managers are qualified and competent to receive licenses to operate the facilities? Are states simply rubber-stamping the new managers that the owners choose? Do state laws set adequate criteria for licensure to fulfill states' police power duty of protecting public health and safety?[10] Do states adequately implement the authority they have?[11]

Similar questions are raised about the federal role. How is the Federal Government assuring that new managers are qualified and competent to receive certification to participate in the Medicare and Medicaid programs? Are federal tools sufficient? Does the Federal Government effectively implement the authority it has?

As nursing home owners buy and sell facilities or transfer management responsibilities to others and as owners with poor records continue to accumulate additional facilities, who is protecting the residents?

*May 23, 2018 – T. Edelman*

[1] See, for example, Kelsey Ryan and Andy Marso, "How a small company above a N.J. pizza parlor put Kansas nursing home residents at risk," *Kansas City Star* (Apr. 16, 2018),

<http://www.kansascity.com/news/business/health-care/article208521454.html>; Harold Brubaker, "Pa. ousts Skyline Healthcare from nine Pa. nursing homes," *Philadelphia Inquirer* (May 2, 2018), at <http://www.philly.com/philly/business/skyline-healthcare-ousted-nine-pa-department-health-nursing-homes-20180502.html>; Maggie Flynn, "Skyline Healthcare Collapsing in South Dakota, Could Dissolve Soon," *Skilled Nursing News* (May 1, 2018), <https://skillednursingnews.com/2018/05/skyline-healthcare-collapsing-south-dakota-dissolve-soon/>.

[2] Harold Brubaker, "Questions about Willow Terrace owner after nursing home collapses in Nebraska and Kansas," *The Philadelphia Inquirer* (Apr. 15, 2018).

[3] Richard Craver, "Avante plans to sell six NC nursing homes, including three in Triad," *Winston-Salem Journal* (Apr. 18, 2018), [http://www.journalnow.com/news/local/avante-plans-to-sell-six-n-c-nursing-homes-including/article\\_08c98302-148a-5796-8153-0b301a79d1ba.html](http://www.journalnow.com/news/local/avante-plans-to-sell-six-n-c-nursing-homes-including/article_08c98302-148a-5796-8153-0b301a79d1ba.html).

[4] Allegra Abramo and Jennifer Lehman, "How N.Y.'s Biggest For-profit Nursing Home Group Flourishes Despite a Record of Patient Harm," *ProPublica* (Oct. 27, 2015), <http://www.propublica.org/article/new->

york-for-profit-nursing-home-group-flourishes-despite-patient-harm#comments.

[5] "Genesis HealthCare Announces Planned Divestiture of Facilities in Texas" (Apr. 11, 2018), <https://www.nasdaq.com/press-release/genesis-healthcare-announces-planned-divestiture-of-facilities-in-texas-20180411-01214>.

[6] Kimberly Marselas, "HCR ManorCare, about to be sold to Quality Care Properties, is folded into second deal with ProMedica, Welltower," *McKnight's Long-Term Care News* (Apr. 26, 2018), <https://www.mcknights.com/news/hcr-manorcare-about-to-be-sold-to-quality-care-properties-is-folded-into-second-deal-with-promedica-welltower/article/761194/>.

[7] H.B. Lawson, "Nursing home faces closure; Deseret Health Group closing facilities in several states, Saratoga facility put on chopping block Friday," *The Saratoga Sun* (May 6, 2015), <http://www.saratogasun.com/story/2015/05/06/news/nursing-home-faces-closure/3898.html>.


[8] Eric Slater, "Entrepreneur Fades From View as Empire Collapses; Business: Critics say owner of shuttered nursing homes, including one in Reseda, lived lavishly amid unpaid bills," *Los Angeles Times* (Oct. 23, 1997), <http://articles.latimes.com/1997/oct/23/news/mn-45876>.

[9] The Associated Press, "Utah company facing bankruptcy; nursing home residents in limbo," *KSL* (May 12, 2015). at <https://www.ksl.com/?sid=34610109&nid=148>.

[10] *California Association of Health Facilities v. Department of Health Services*, 16 Cal.4th 284, 940 P.2d 323, 65 Cal.Rptr.2d 872, 885 (1997) (describing the police power as the oversight of public health and safety; describing the purpose of nursing home health and safety regulations as "preventing injury from occurring.")

[11] The California State Auditor's recent report finds the Department of Public Health's licensing decisions reflect "poor defined process and inadequate documentation." California State Auditor, *Skilled Nursing Facilities: Absent Effective State Oversight, Substandard Quality of Care Has Continued*, Report 2017-19 (May 2018), <https://www.auditor.ca.gov/pdfs/reports/2017-109.pdf>; Linda Stansberry, "State Audit Confirms Inadequacies in For-Profit Skilled Nursing," *North Coast Journal* (May 1, 2018), at <https://www.northcoastjournal.com/NewsBlog/archives/2018/05/01/state-audit-confirms-shady-doings-by-skilled-nursing-provider>.

## Special Focus Nursing Facilities that “Have Not Improved:” Poor Care for Residents, Overall Ratings Artificially Boosted by 5-Star Ratings in Self-Reported Quality Measures

 [medicareadvocacy.org/special-focus-nursing-facilities-that-have-not-improved-poor-care-for-residents-overall-ratings-artificially-boosted-by-5-star-ratings-in-self-reported-quality-measures](http://www.medicareadvocacy.org/special-focus-nursing-facilities-that-have-not-improved-poor-care-for-residents-overall-ratings-artificially-boosted-by-5-star-ratings-in-self-reported-quality-measures)

The Centers for Medicare & Medicaid Services (CMS) identifies some of the most poorly performing nursing facilities in the country as Special Focus Facilities (SFFs). In this Second Report on SFFs, the Center for Medicare Advocacy looks at one of four categories of SFFs – those that “have not improved” – and how they game and manipulate CMS’s Five-Star Quality Rating System and boost their overall scores to two stars by having five stars in the self-reported quality measures domain.

The July 19, 2018 list of SFFs that have not improved includes 33 nursing facilities in 22 states. The Center looked at the federal website Nursing Home Compare to identify how many jeopardy-level and harm-level deficiencies the 33 SFFs had in the current and prior survey cycles (and in 2018), whether any Civil Money Penalties or Denials of Payment for New Admissions were imposed in the prior three years, whether the SFFs lacked mandated RN coverage or had other problems in staffing data, and their quality measure ratings.

The most striking finding is that 13 of the 33 SFFs (39%) that had not improved had five stars in their self-reported quality measures domain, leading to an upward adjustment from one star to two stars for their overall ratings. Such high scores on quality measures are implausible for SFFs that have not improved.

Although these 33 SFFs were cited with the highest levels of deficiencies (131 jeopardy-level deficiencies and 94 harm-level deficiencies since 2016), Civil Money Penalties (CMPs) were minimal. Although 29 of the 33 SFFs had at least one CMP imposed over the prior three years, total CMPs for these 29 facilities averaged \$68,577 per facility per year over the three-year period. With the Trump Administration’s shift from per-day to per-incident CMPs, total CMPs will continue to drastically decline in the future.

The failure to impose meaningful enforcement actions against even the most poorly performing facilities in the country reflects an environment of ever-diminishing oversight and raises serious concerns for the safety and welfare of nursing home residents.

The Center’s full report is available at: <http://www.medicareadvocacy.org/special-focus-nursing-facilities-that-have-not-improved/>.