



Regulatory Update

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Objectives

- Identify the topmost commonly cited deficiencies and ways to improve to avoid these areas of noncompliance. And how the medical director can assist with oversight to improve in these areas of noncompliance.
- Discuss the proposed federal NH staffing requirements and provide an overview of the Florida minimum standards.

Objectives, cont.

- Provide brief overview of Senate Bill 558- Qualification Medication Aides.
- Discuss key revisions to Quality Assurance and Performance Improvement (QAPI).
- Summarize the 2022 to 2023 immediate jeopardy findings for nursing homes and discuss how the role of the medical director, nurse leaders and pharmacist can help the nursing homes identify areas for improvement to avoid immediate jeopardy findings.

Highlights of Top 10 Florida Nursing Home Federal Tags

- The 10 top tags are the same for 2021 and 2022, but different ranking
- Top ranking tag for 2022 is the same as 2021
- Three of the top 10 tags relate to Quality of Care
- Two of the top 10 tags relate to Quality of Life
- F880 citations have decreased in 2021 and 2022

Top Ten Florida Nursing Home Federal Tags

January 1, 2022
December 31, 2022

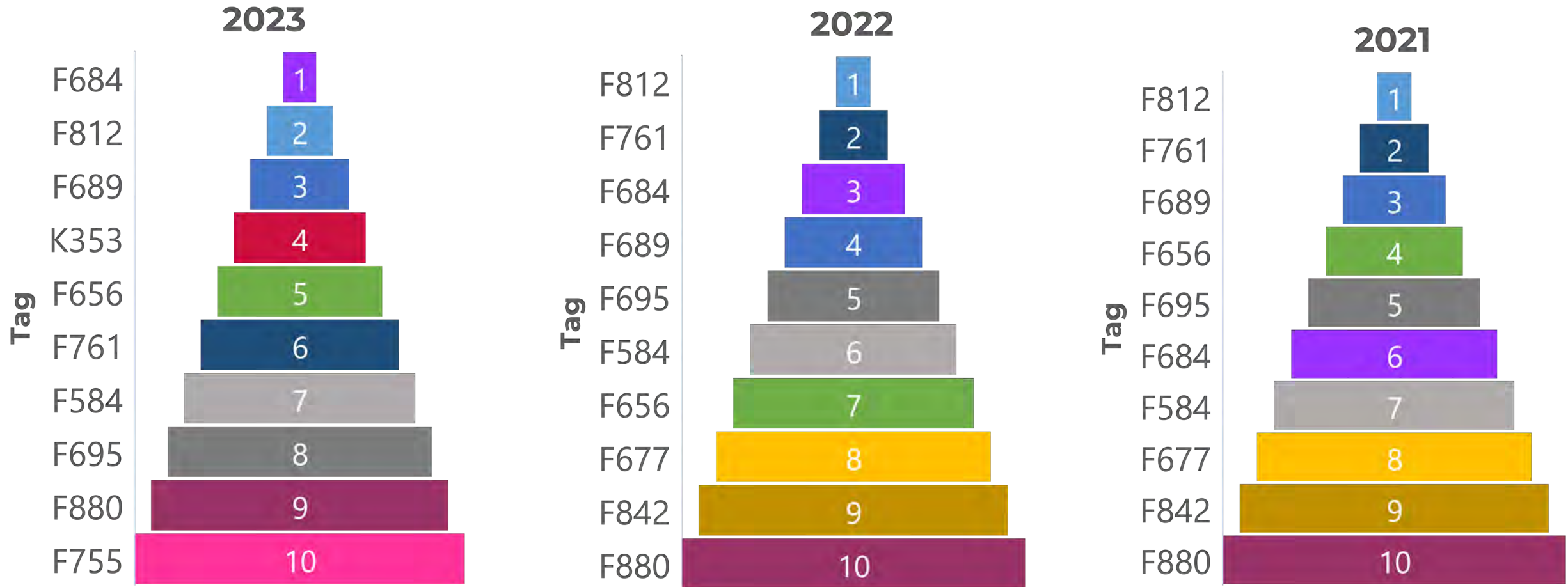
Rank	Tag	Tag Title
1	F812	Food Safety Requirements
2	F761	Label/Store Drugs & Biologicals
3	F684	Quality of Care
4	F689	Free of Accident Hazards/Supervision/Devices
5	F695	Respiratory/Tracheostomy Care and Suctioning
6	F584	Safe/Clean/Comfortable/Homelike Environment
7	F656	Develop/Implement Comprehensive Care Plan
8	F677	ADL Care Provided for Dependent Residents
9	F842	Resident Records - Identifiable Information
10	F880	Infection Prevention & Control

Top Ten Florida Nursing Home Federal Tags

January 1, 2023
September 15, 2023

Rank	Tag	Tag Title
1	F684	Quality of Care
2	F812	Food Safety Requirements
3	F689	Free of Accident Hazards/Supervision/Devices
4	K0353	Sprinkler System - Maintenance and Testing
5	F656	Develop/Implement Comprehensive Care Plan
6	F761	Label/Store Drugs & Biologicals
7	F584	Safe/Clean/Comfortable/Homelike Environment
8	F695	Respiratory/Tracheostomy Care and Suctioning
9	F880	Infection Prevention & Control
10	F755	Pharmacy Services/Procedures/Pharmacist/ Records

Top 10 FL Federal NH Tag Ranking Comparison



2023 Legislative Update



Senate Bill 558 - Qualified Medication Aides

- Authorizes nursing homes (NH) to allow Registered Nurses (RN) to delegate some medication tasks to certified nursing assistants (CNA).
- The Department of Health (board), in consultation with AHCA shall establish by rule standards and procedures that a CNA must follow when administering medication to a resident of a nursing home. (This must be done before implementation.)

Training Requirements

- CNAs must take a six-hour medication course with an additional 34 hours of training approved by the Board of Nursing.
- *(Six hours is the initial delegation course already in FS 464.2035 which was passed in 2021.)*

Medications QMAs Allowed To Administer:

- Oral
- Transdermal
- Ophthalmic
- Otic
- Inhaled
- Topical

The 34 Hour Training Will Include:

- Medication administration and associated tasks, including, but not limited to, blood glucose level checks, dialing oxygen flow meters to prescribed settings, and assisting with continuous positive airway pressure devices.

Competency

- QMAs must demonstrate clinical competency by successfully completing a supervised clinical practice in medication administration and associated tasks conducted in the facility.

Criteria for Staff

- CNAs must hold a clear, active certification from the Florida Department of Health for at least a year prior to delegation.
- QMAs must complete annual validation and two hours of inservice in medication administration and medication error prevention.

SB 558 - Qualified Medication Aides

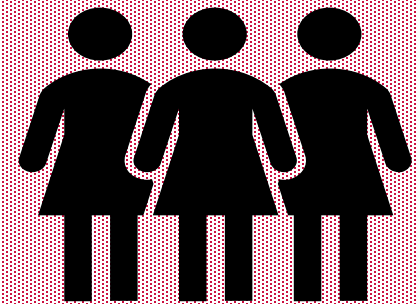
- Medication administration can be delegated to a QMA by a **Registered Nurse**.
- Medication administration is under the direct supervision of a **Licensed Nurse**.
- Medication administration must be included in the performance improvement activities.

SB 558 - Qualified Medication Aides

- CNAs performing the duties of QMA may not be included in computing hours for CNAs or licensed nurses.

Nursing Home Staffing

Federal and State



Proposed Medicare and Medicaid Programs: Minimum Staffing Standards (CMS-3442-P)

- On September 1, 2023, the Centers for Medicare & Medicaid Services (CMS) issued the Minimum Staffing Standards for Long-Term Care.
- The rule also proposes to enforce the new standards solely through the survey and enforcement system.
- Comments are due to CMS no later than November 6, 2023.

Staffing Standards

- CMS **proposes** staffing ratios for two categories of nurses:
 - RN's 0.55 hours per resident per day (HPRD)
 - Nurse aides 2.45 HPRD
- Requirement to have a RN onsite 24 hours a day, seven days a week
- Enhanced facility assessment requirements.
- CMS does not propose a staffing standard for licensed practical nurses (LPN's)

Enhanced Facility Assessment Requirements

- Clarify nursing homes must use evidence-based methods when care planning for their residents.
- Require facilities use of the facility assessment to assess the specific needs of each resident in the facility and to adjust as necessary based on any significant changes in resident population.
- Input from facility staff, including, leadership, management, direct care staff, other staff.
- Develop a staffing plan to maximize recruitment and retention of staff.

Regulatory Flexibility

- CMS proposes to allow for a hardship exemption in limited circumstances.
 - workforce unavailability based on location;
 - good faith efforts to hire and retain staff; and
 - financial commitment to staffing by documenting the total annual amount spent on direct care staff.
- Prior to being considered, the NH must have a survey to assess the health and safety of residents.

Regulatory Flexibility, cont.

- Facilities would not be eligible for an exemption if:
 - Failed to submit their data to Payroll based journal system;
 - Identified as a specific focus facility (SFF);
 - Identified within the preceding 12 months as having widespread insufficient staffing with resultant resident actual harm or a pattern of insufficient staffing resultant resident actual harm or have been cited at the IJ level of severity with respect to insufficient staffing.

Staggering Implementation

- CMS proposes that implementation of the final requirements will occur in three phases over a 3-year period for all **non-rural** facilities.
 - Phase 1 facilities in urban areas to comply with facility assessment requirements 60-days after publication date of final rule;
 - Phase 2 facilities in urban areas to comply with the requirement for RN onsite 24/7 days a week two years after the publication of the final rule; and
 - Phase 3 facilities in urban areas to comply with minimum staffing requirements of 0.55 and 2.45 HPRD, three years after the publication of the final rule.

Staggering Implementation, cont.

- CMS proposes that implementation of the final requirements will occur in three phases over a 3-year period for **rural** facilities.
 - Phase 1 facilities to comply with facility assessment requirements 60-days after publication date of final rule;
 - Phase 2 facilities in urban areas to comply with the requirement for RN onsite 24/7 days a week three years after the publication of the final rule; and
 - Phase 3 facilities in urban areas to comply with minimum staffing requirements of 0.55 and 2.45 HPRD, five years after the publication of the final rule.

State Staffing Requirements- Current Law

- In 2022 HB 1239 revised Florida state staffing requirements.
- Definition of Direct Care Staff
 - Persons who, through interpersonal contact with residents or resident care management, provide care and services to allow residents to attain or maintain the highest practicable physical, mental, and psychosocial well-being, including, but not limited to, disciplines and professions that must be reported in accordance with 42 C.F.R. s. 483.70(q) in the categories of direct care services of nursing, dietary, therapeutic, and mental health.

Direct Care Staff

- **Does not include** a person whose primary duty is maintaining the physical environment of the facility, including, but not limited to, food preparation, laundry, and housekeeping.
- **Does not include** time spent on nursing administration, activities program administration, staff development, staffing coordination, and the administrative portion of the MDS and care plan coordination for Medicaid.
- Determined by each facility based on the facility assessment and the individual needs of a resident based on the resident's care plan.

Minimum Requirements

- Weekly (Sunday through Saturday) average of 3.6 hours of care by **direct care staff** per resident per day
- **2.0** hours of direct care by a CNA per resident per day
- May not staff below one CNA per 20 residents
- 1.0 hour of direct care by a licensed nurse per resident per day
- May not staff below one licensed nurse per 40 residents

Failure To Comply

- Facility that has failed to comply with state minimum-staffing requirements for **48 consecutive hours** is prohibited from accepting new admissions until the facility has achieved the minimum-staffing requirements for 6 consecutive days.

CMS QSO-23-21-NH (September 20, 2023)

- CMS makes several changes to *Care Compare*;
 - revises staffing domain,
 - replaces some quality measures, and
 - updates CMS forms.
- Revisions to staffing methodology so that providers who “fail to submit staffing data or submit erroneous data receive the lowest score possible for corresponding staffing turnover measures”

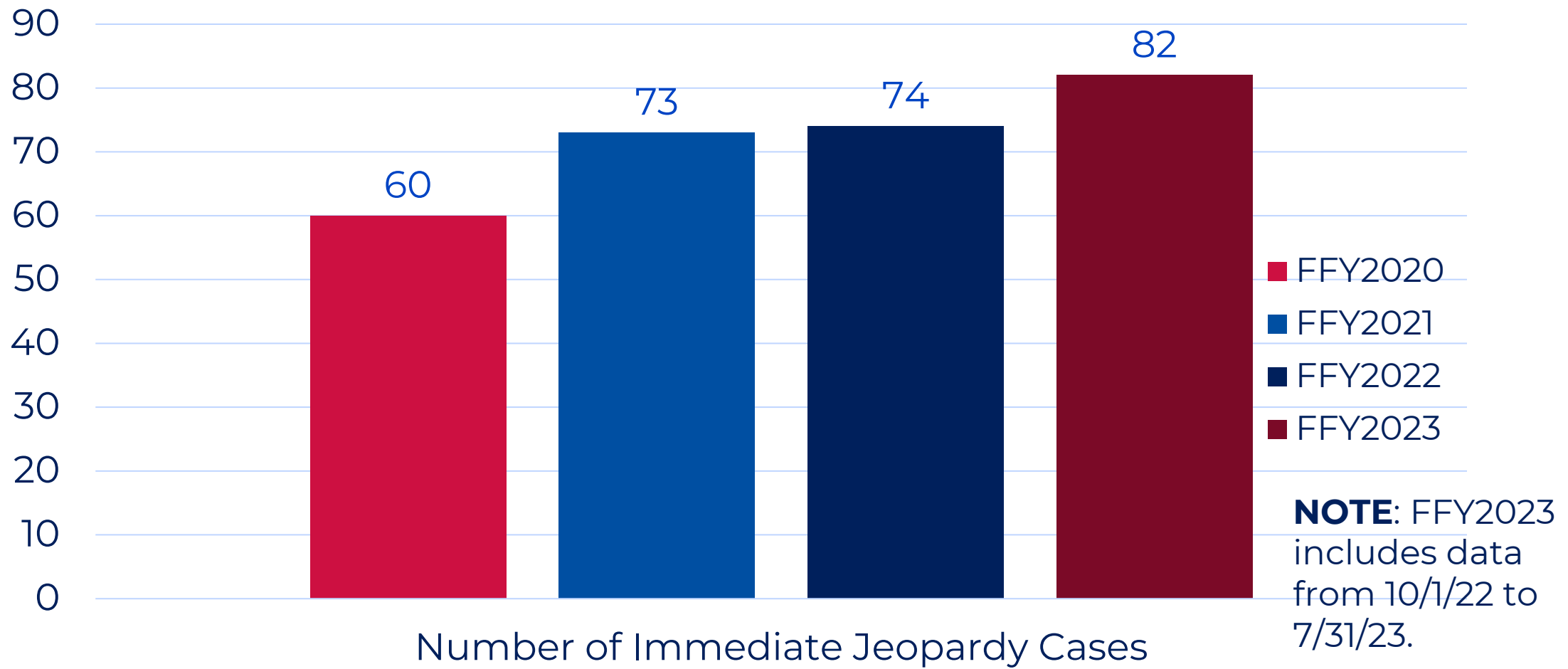
Adjusting Staffing and Quality Measures

- October 2023, items in the MDS (Section G) will be eliminated and replaced by new (Section GG) items.
- Beginning April 2024, CMS will freeze the staffing measures for three months
- In July 2024 CMS will post nursing home staffing measures based on the Patient Driven Payment Model (PDPM)

Immediate Jeopardy Discussions

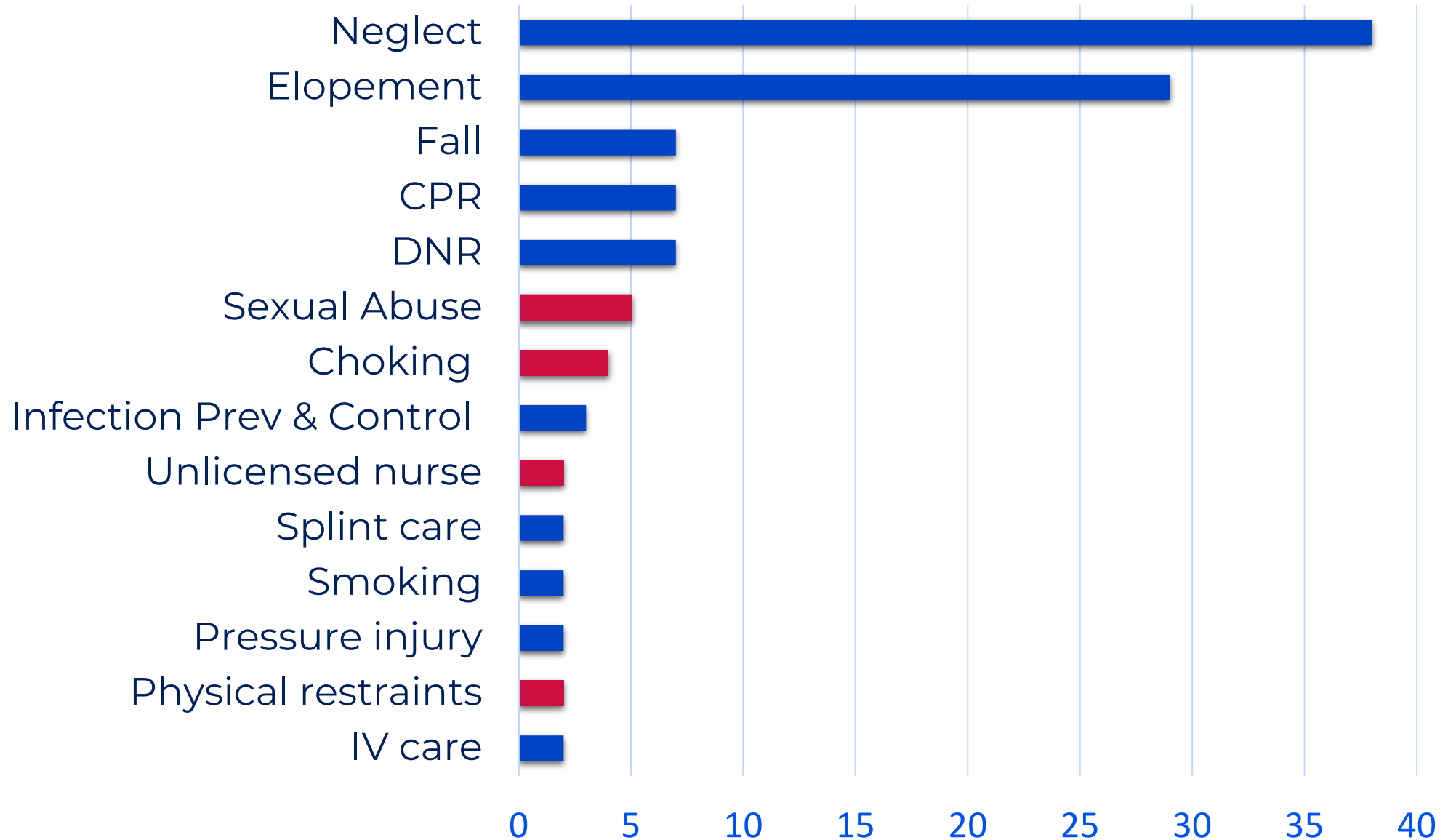


Number of Yearly Nursing Home Immediate Jeopardy Cases, FFY2020 to Present



10/1/2022 to
7/31/2023 Data

2023 Top Categories for IJ Noncompliance



Florida Nursing Home IJ Data Trends October 1, 2022 – July 31, 2023

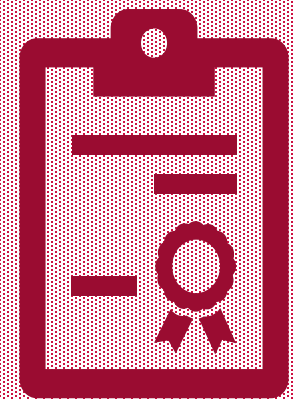
Majority of Immediate Jeopardy cases were removed, but *ongoing* IJ is on the rise.

Complaint surveys generated the most Immediate Jeopardies.

Many IJs came from self-reported incidents.

Majority of Immediate Jeopardy cases resulted in *likely* serious harm, followed by actual serious harm and death, with *actual harm on the rise*.

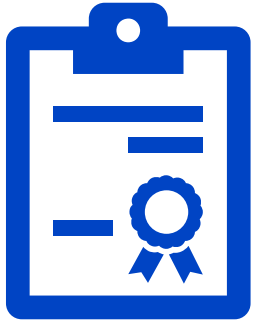
Quality Assurance and Performance Improvement (QAPI)



Key Revisions to Quality Assurance and Performance Improvement (QAPI)

- New guidance in F865 for the QAPI plan and program
- Requirements in F866 have been moved to F867
- New requirements for the QAPI program, feedback, data collection, analysis and monitoring, and improvement activities
- Expansion of required Quality Assessment and Assurance (QAA) required committee members
 - Infection Preventionist
- New QAPI training requirements

Survey Process for QAPI & QAA Review



- Before conducting this task, surveyors will ask for and review the QAPI Plan and policies and procedures
- This task has 2 parts
 - Review of the QAPI Policies & Procedures
 - Interview with the QAPI contact person, as well as other QAA Committee members

Survey Process for QAPI & QAA Review, cont.

- Prior to interviewing the facility staff about the QAA program
 - Review the Facility Rates for MDS Indicators, prior survey history, FRIs, and complaints, present concerns and repeat deficiencies
- For each area of non-compliance identified by the survey team, prior to initiating the QAPI/QAA Review, interview the QAA contact person and review evidence to determine if the QAA committee is aware of the issue; and if so, took corrective action; monitored the corrective action; analyzed the corrective action results; revised their corrective actions based on result; and tracked performance

Interview with QAPI Contact/QAA Committee Members



- Surveyors will ask about:
 - QAA Committee knowledge of a deviation from expected performance or a negative trend.
 - Mechanism for staff to report quality concerns to the QAA Committee.
 - Facility decision-making on which issues to work on.
 - Facility awareness of implementation, effectiveness and improvement of corrective actions.

QAPI & QAA Review Reminders

- Disclosure of documents generated by the QAA committee may be requested by surveyors only to determine compliance with QAPI regulations.
- Surveyors **must not use documentation** provided by the facility during the QAPI/QAA review **to identify additional concerns not previously identified by the survey team** during the current survey

QAPI/QAA Surveyor Review

- Request and review the documentation for the QAPI program and QAA Committee activities to determine:
 - Actions aimed at improving performance, establishing priorities for improvement activities.
 - Tracking and analyzing adverse events and medical errors and implementing preventative actions.
 - Facility's full range of facility care, and services is reflected in the collection, use and monitoring of data for QAPI program.
 - Use of feedback from residents, resident representative and facility staff.

QAPI/QAA Surveyor Review, cont.

- QAA Committee develops and implement plans of action to correct quality deficiencies or potential problems.
- How facility measures success and tracks performance after implementing action plans to improve performance?
- Facility conducts at least **1 performance improvement project (PIP) annually** that focuses on f high-risk or problem-prone areas.
- QAA committee regularly reviews and analyzes data collected under the QAPI program, including **drug regimen reviews** and acts to make improvements.

Committee

- Surveyor will review of QAA records, determine:
 - **The QAA committee includes the required members**
 - Director of Nursing Services
 - **Medical Director or his/her designee**
 - Nursing home administrator, owner, board member, or other individual in a leadership role
 - Infection Preventionist (IP)
 - Two other staff members
 - The committee meets as frequently as needed, but **not less than quarterly.**
 - The QAA committee report its activities to the facility's **governing body.**
 - The **IP participates on the QAA committee** and report on the Infection Prevention and Control Program (IPCP) on a regular basis.

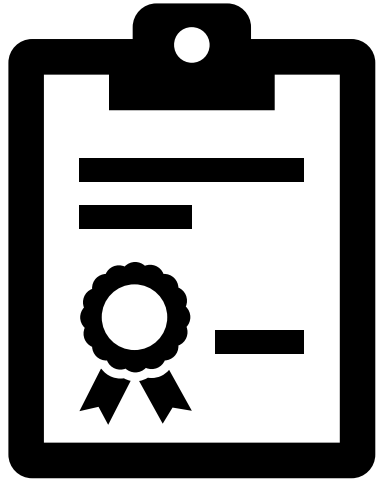
QAPI Program, Plan, Disclosure, and Governance and Leadership

- Surveyor will consider all of the information obtained through interviews and record review, and determine:
 - Has the facility developed, implemented, and maintained an effective QAPI program which:
 - Addresses the full range of care and services, including unique care and services, the facility provides;
 - Is comprehensive, data-driven and ongoing; and
 - Focuses on indicators of outcomes of care, quality of life, and resident choice.

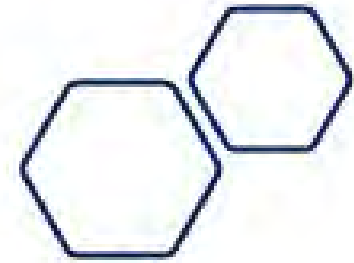
QAPI Program, Plan, Disclosure, and Governance and Leadership, cont.

- The facility must provide its QAPI plan to the surveyors during recertification survey or upon request.
- The facility maintains documentation and is able to present evidence of its ongoing QAPI program implementation and activities to demonstrate compliance with requirements.
- The facility's governing body and/or executive leadership maintains oversight of the QAPI program and activities per §483.75(f)(1)-6)

CMS Survey & Certification's Quality, Certification and Oversight Reports (QCOR)



- QCOR is available for providers – <https://qcor.cms.gov>
 - This website had nursing home reports, including citation frequency
 - QCOR can be a useful QAPI tool



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