

LTC Professional Liability

Considerations for Managing and Financing Risk in the Current Market

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Market Conditions

LTC Liability Market is getting “Hard”

- Premium is going up
- Deductibles are getting higher
- Fewer Insurance Companies Providing Coverage

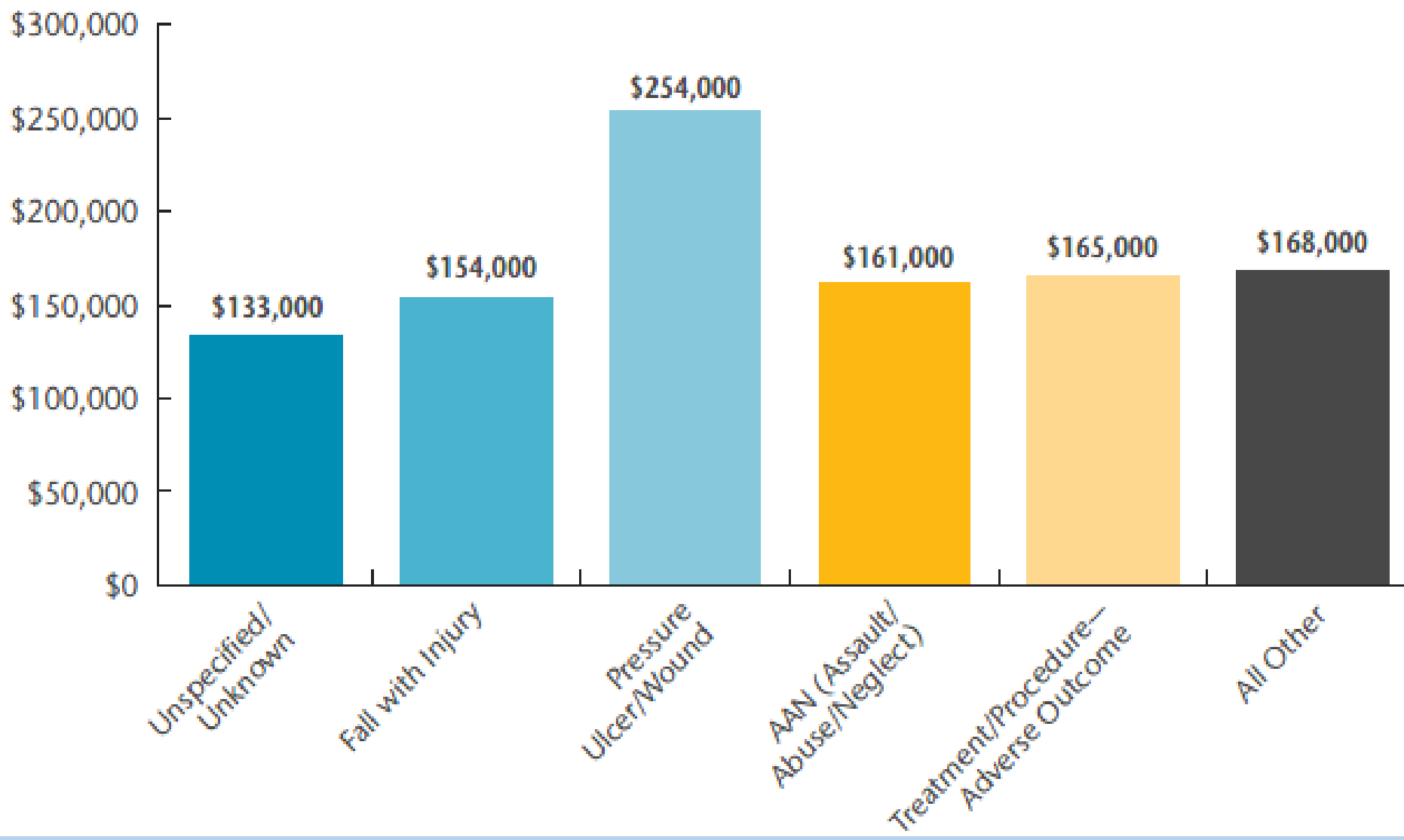
Why?

Insurance Company Concerns -Reported LTC Liability Trends- Countrywide

- Increased Frequency of Claims (Litigation)
 - 2007 to 2017 – 45% Increase
 - .71 to 1.03 claims / 100 Licensed SNF Beds
- Increased Severity of Claims
 - 2007 to 2017 – 36% Increase in Avg Claim
 - 165,000. to 223,000.(232,000. 2018 projection)
- Multi-million Dollar Jury Awards
 - Numerous and Unpredictable
- Loss Cost / Bed – Defending and Paying Claim
 - 2007 to 2017 – 97% Increase
 - \$1,170. to \$2,300. / Occupied Bed (2018- \$2,450)

Note: Stats from 2017 Aon Actuarial Study

Average Claim Size Countrywide Capped at \$1,000,000.



Insurance Company Concerns - Mega Verdicts (Since 2010)-

Verdict

\$114 Million

Abuse, Malnourishment, etc.

\$42.75 Million

Dehydration

\$91.5 Million

Malnourished, Falls

\$677 Million

Staffing

Case

Jackson v. Integrated
Health Services, FL

Offutt v. Harborside of
Madisonville, KY

Douglas v. HCR Manor
Care, WV

CA v. Skilled Healthcare,
CA

Plaintiff Verdicts Past 36 Months Ending 1/31/2017

• Less than \$1M	24%
• \$1M to \$2M	29%
• \$2M to \$5M	21%
• \$5M to \$10M	8%
• \$10M +	18%

Total Number Reported Plaintiff Verdicts – 38

Insurance Company Concerns - Reported LTC Liability Trends- New Jersey

- **Frequency of Claims (Litigation)**
 - *2007 to 2017 – Fairly Level*
 - *1.36 – 1.29 / 100 Licensed SNF Beds*
- **Increased Severity of Claims**
 - *2007 to 2017 – 107% Increase in Avg Claim*
 - *\$103,000. to \$213,000.*
- **Loss Cost / Bed – Defending and Paying Claim**
 - *2007 to 2017 – 94% Increase*
 - *\$1,410. to \$2,740. per Occupied Bed*

Note: Stats from 2017 Aon Actuarial Study

NJ Settlements – Google it

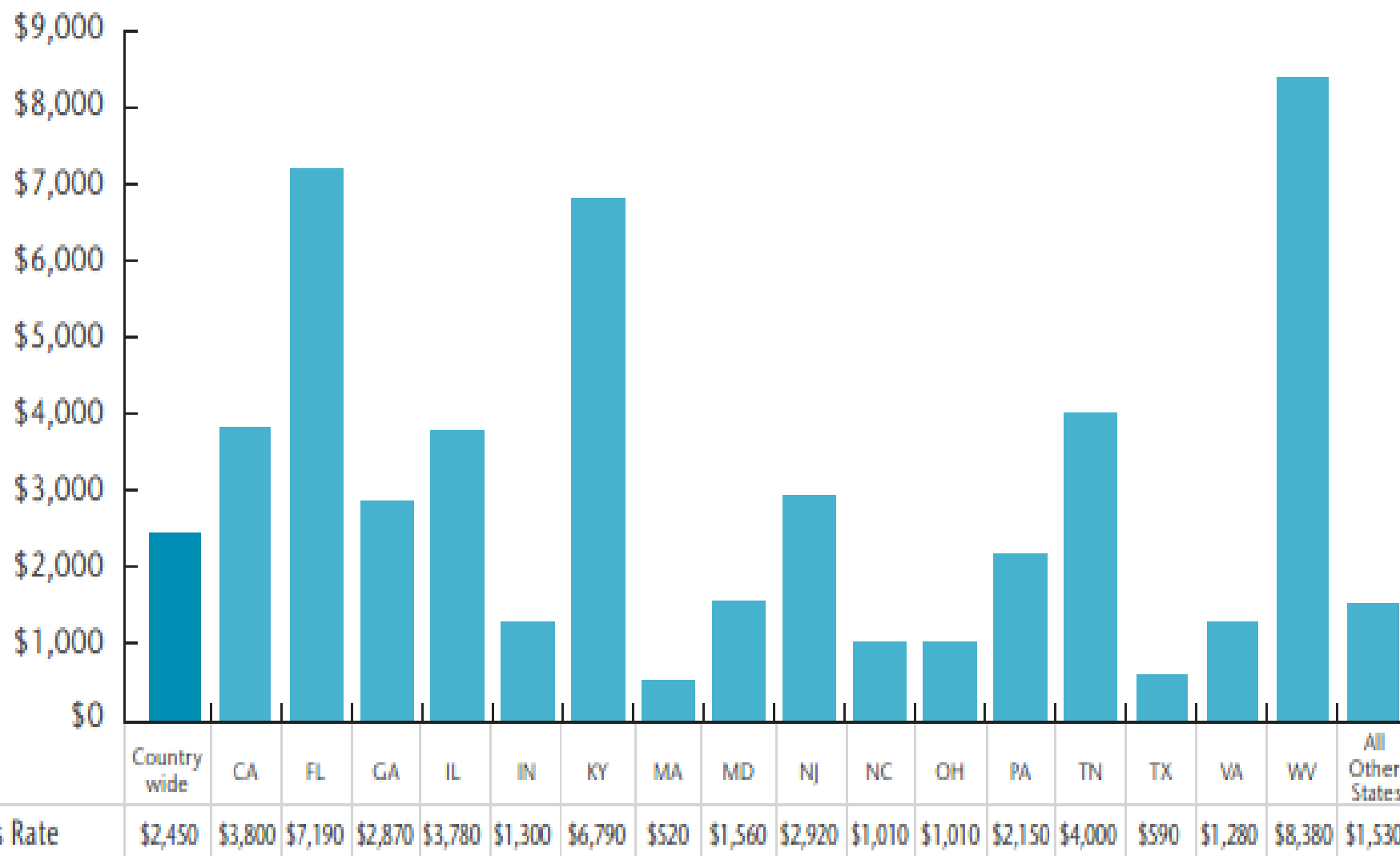
- **\$1,400,000** settlement against New Jersey Veterans – man who died from choking on his food when left unattended by nursing home staff in violation of the care plan and New Jersey regulations.
- **\$1,000,000** settlement against an assisted living facility for injury and wrongful death of a resident.
- **\$750,000** settlement against a nursing home for the development of maggots in a pressure ulcer and wrongful death.
- **\$620,000** settlement against a nursing home and hospital for a fall as well as the development of pressure sores.
- **\$500,000** nursing home settlement for a woman who sustained a fractured hip, loss of mobility, and pressure sores suffering a fall at a dialysis center.
- **\$450,000** settlement against a nursing home and hospital for a fall resulting in a hip fracture and sacral pressure ulcer.
- **\$375,000** settlement against a nursing home for a man who suffered a fall which resulted in a subdural hematoma and surgery.
- **\$400,000** settlement for a woman who sustained a left heel pressure ulcer and wrongful death.
- **\$365,000** settlement for a woman who suffered multiple falls, fractured hip, subdural hematoma, and death.
- **\$350,000** settlement for a man who suffered a fractured hip and wrongful death.
- **\$250,000** settlement against a group home for a man who suffered a fall from a wheelchair which resulted in a fractured hip and death.

States with known Nursing Home Verdicts of \$10,000,000. or Higher

- Alabama
- Arizona
- Arkansas
- California
- Delaware
- Florida
- Georgia
- Idaho
- Kentucky
- Massachusetts
- Mississippi
- **New Jersey**
- New Mexico
- New York
- North Carolina
- Oklahoma
- Texas

New Jersey vs other States

Comparison of Projected 2018 Loss Rates Limited to \$1 Million per Occurrence



Insurance Industry Concerns

- Historic Underwriting Results
- Reported Loss and Litigation Trends
- Activity of Plaintiffs' Bar
- Constant Publicity of Negative Eldercare Issues
- Extraordinary Jury Awards
- Political and Public Scrutiny of Eldercare
- Availability of Government and Proprietary "Quality" Performance Data/Web Sites/Rankings
- Claims Defense Capabilities

Insurance Industry Reaction

- Data is Data
- “Broad Brush” Underwriting
- Don’t Finance Risk in “Bad” Venues
- Only Insure “The Best” Nursing Facilities
- Underwrite with Great Care – Conservative Underwriting
- Require Risk Retention / Deductibles
- Financial Underwriting Considerations
- Get out of the Business

Fewer Markets Writing LTC Liability Insurance than just a few years ago

Companies among those that “Got Out”:

- AIG / Lexington
- Allied World (AWAC)
- American Safety (ASI)
- CFC / Lloyds
- CIMI
- Colony
- Hiscox (SNF's)
- Munich
- Montpelier
- One Beacon
- Pacific
- Gotham
- GuideOne
- Rockhill

The “Broad Brush” underwriting approach is inappropriate.

- Setting base rates according to geographical location, facility size, and percentage of more acute residents – minimal or no consideration toward level of quality care or type of ownership.
- Common sense suggests that facilities rendering high quality care have lower risk than those rendering poor care – reluctance to commit to estimates of proportional risk.
- We are in / entering a “seller’s market”. \$\$

Impact of Current Market Trends on LTC Providers Countrywide

- Large premium increases and risk retention (Deductible) requirements are adding financial pressures to an industry segment that is already strained financially.
- In certain venues facilities are “going bare”, self insuring and/or reducing limits of coverage.
- Higher premiums and claims costs take money from operations, including quality improvement and risk management activities.

Examining LTC Liability Insurance Underwriting Procedures

“Soft Market” Underwriting

- Completed Application
- 5 Years Loss Data
- Competitive Premium/Coverage Information
- Written & Onsite Risk Surveys (Maybe)

“Hard Market” Underwriting

- Completed Applications with Supplemental apps including; Ownership profile, Resumes DON & Administrator, Written Policies and Procedures, Surveys and POC's, Financials, Loss Data back as far as possible.
- Review of Information on CMS Nursing Home Compare
- Proprietary Models based on Public Data (Some Underwriters)

Many Risk / Quality Assessment Tools and Methodologies are Inaccurate, Faulty and Subjective.

- CMS's "Nursing Home Compare"
- OSCAR (Online Survey, Certification and Reporting) Data-
Inspection results can vary with inspection teams and are subjective evaluations of regulatory compliance.
- CMS's Quality Indicator's (QI's) and Quality Measures (QM's)
– CMS's QI's & QM's do not provide definitive measures of quality of care or adequately monitor resident status.
Prevalence vs.. Incident based data. Data Integrity.
- Staffing Ratio's - Often based on arbitrary criteria.

Medicare's "Nursing Home Compare"

- [About the Nursing Home](#): including the number of beds and type of ownership.
- [About the Residents of the Nursing Home](#): including the percent of residents with pressure sores, urinary incontinence, physical restraints, unplanned weight gain or loss, restricted joint motion, behavior symptoms and who are very dependent in eating, bedfast, etc.
- [About the Nursing Home Inspection Results](#): inspection reports are available online
- [About Nursing Home Staff](#): including the number of registered nurses, licensed practical or vocational nurses, and nursing assistants in each nursing home.
- [Star Rating](#): Overall, Inspections, Staffing & Quality Measures

The significant limitations can cause misinterpretation of data and unwarranted scrutiny of institutional quality and capability".

Concerns with OSCAR (Online Survey, Certification and Reporting) Data

- Data Accuracy
- Size Bias
- Geographic Bias
- Ownership Bias
- Payer Bias
- Case Mix Bias

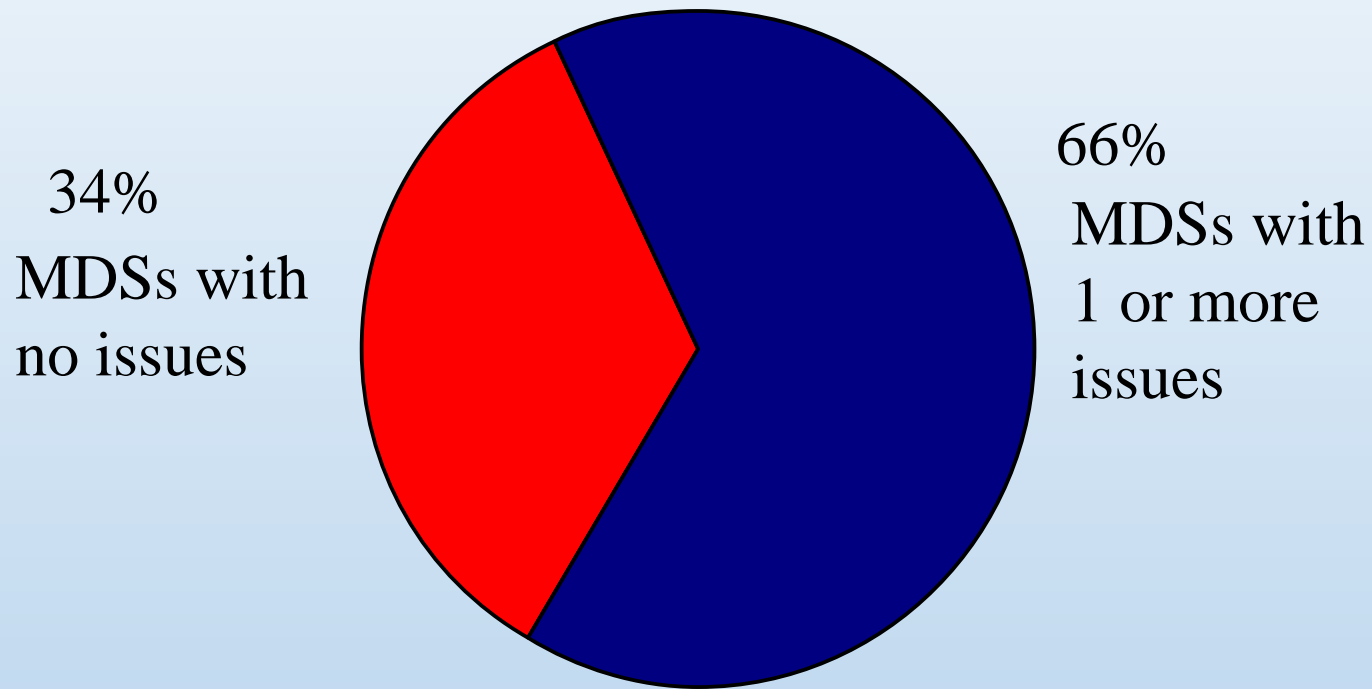
How good is the Data?

MDS Data Quality

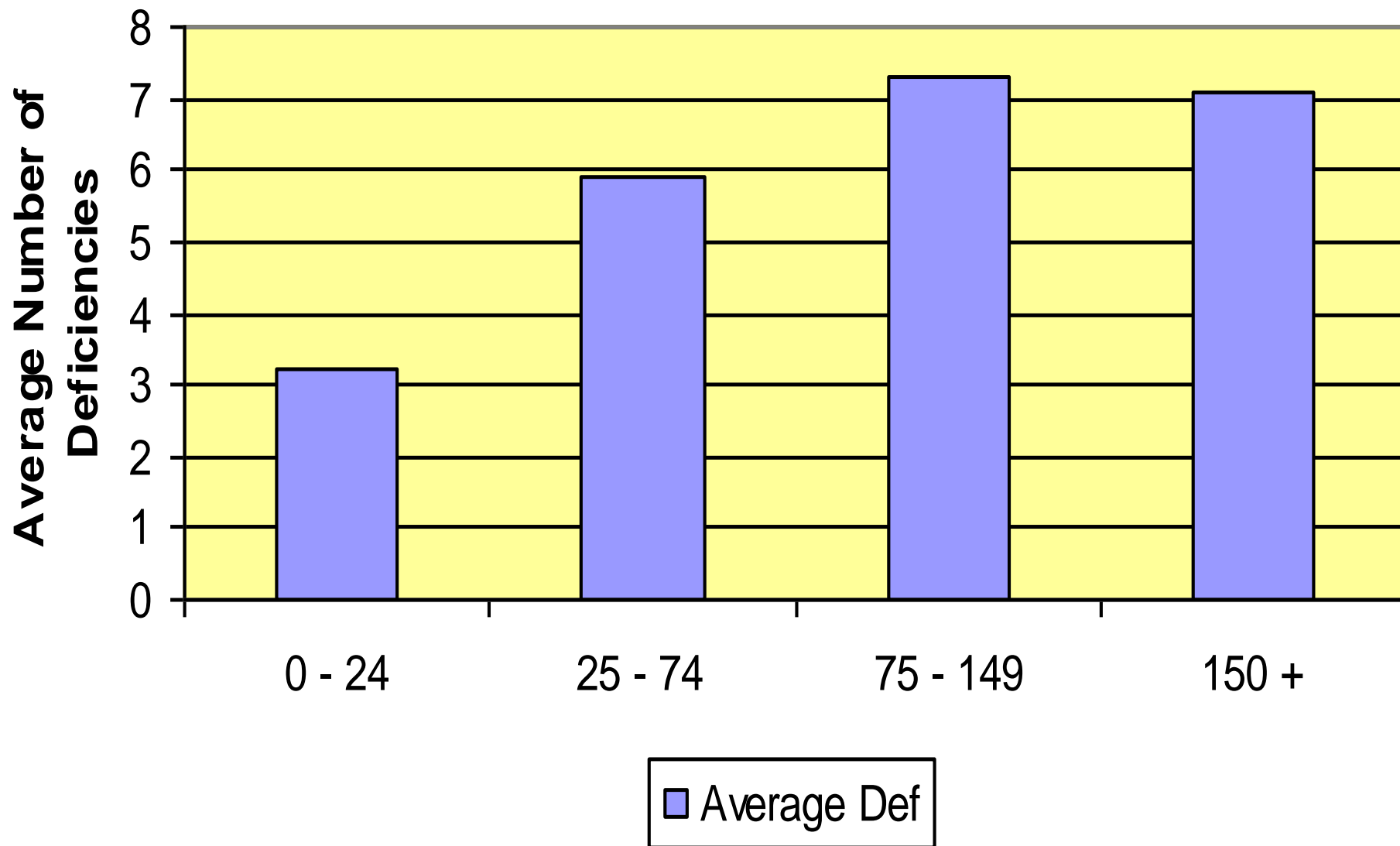
Reliability and Validity Studies

- Reliability in the workforce
 - Lack of training
 - Facility staff turnover
 - Usability of the MDS
 - Surveyor training
- MDS data integrity

**How often does an MDS have an Issue?
(from a set of 525,000 MDSs)**



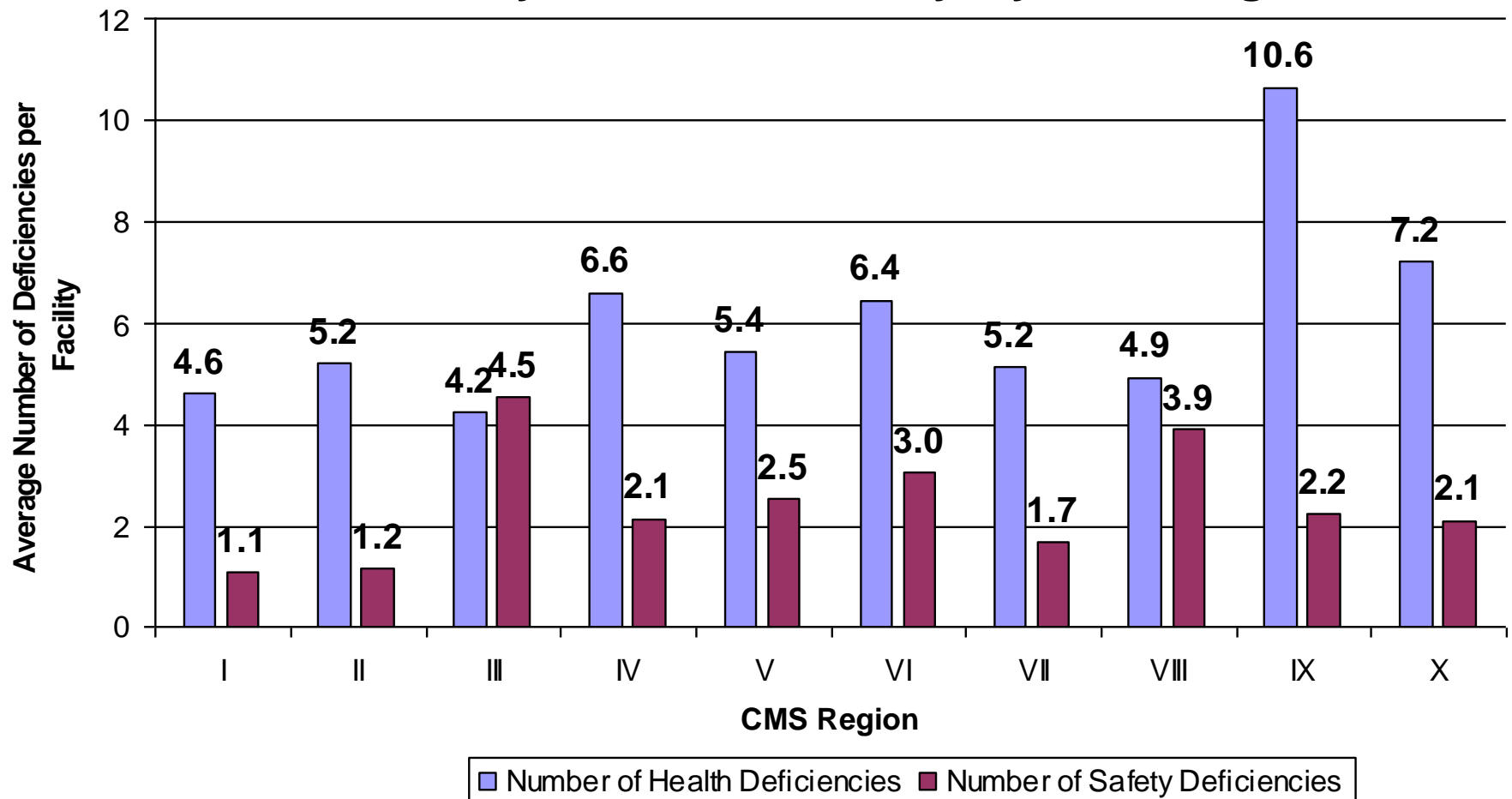
No Matter How You Slice It: Size Matters



OSCAR Bias

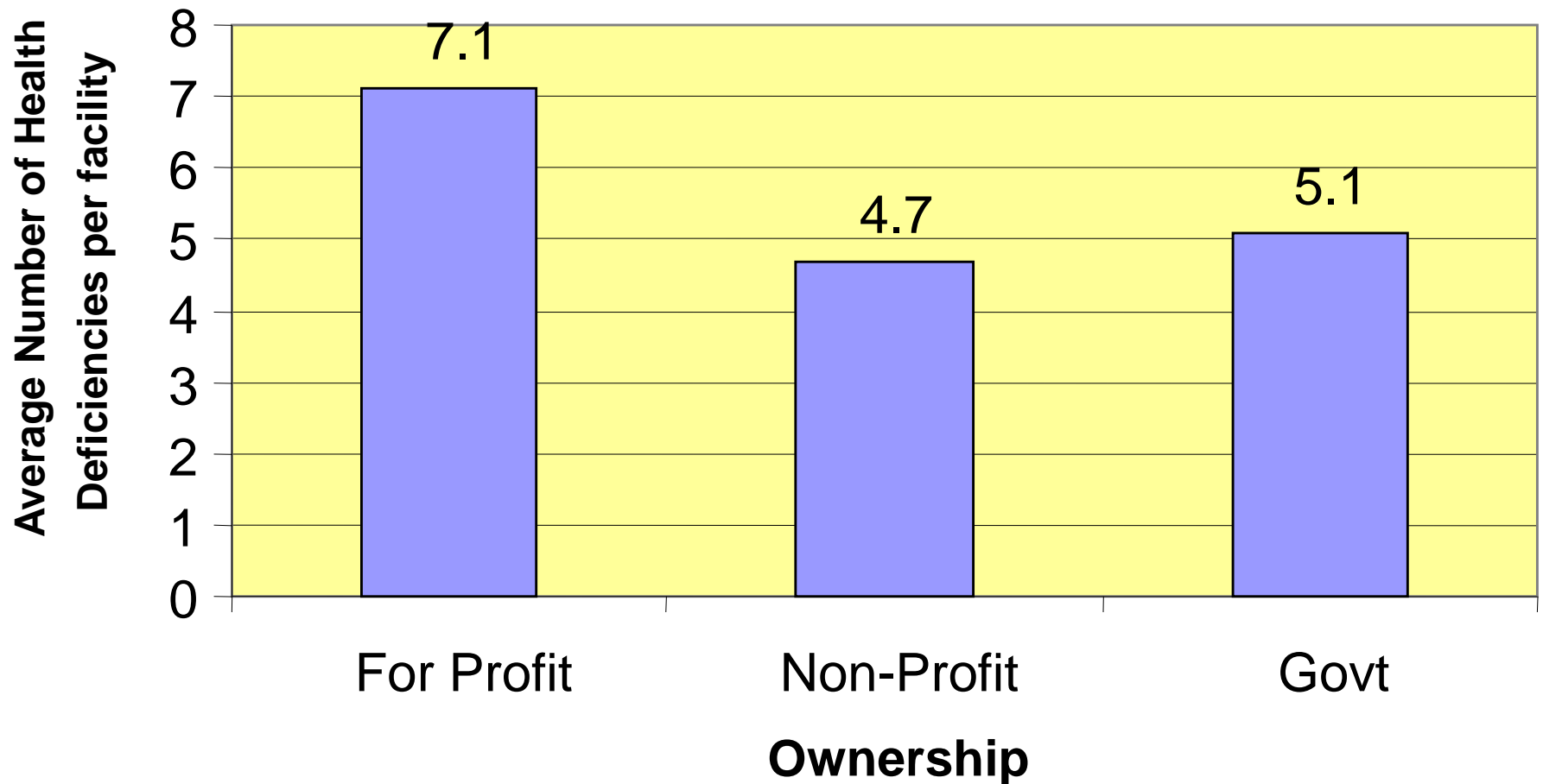
Example: Geographic

Health and Safety Deficiencies Vary By CMS Region



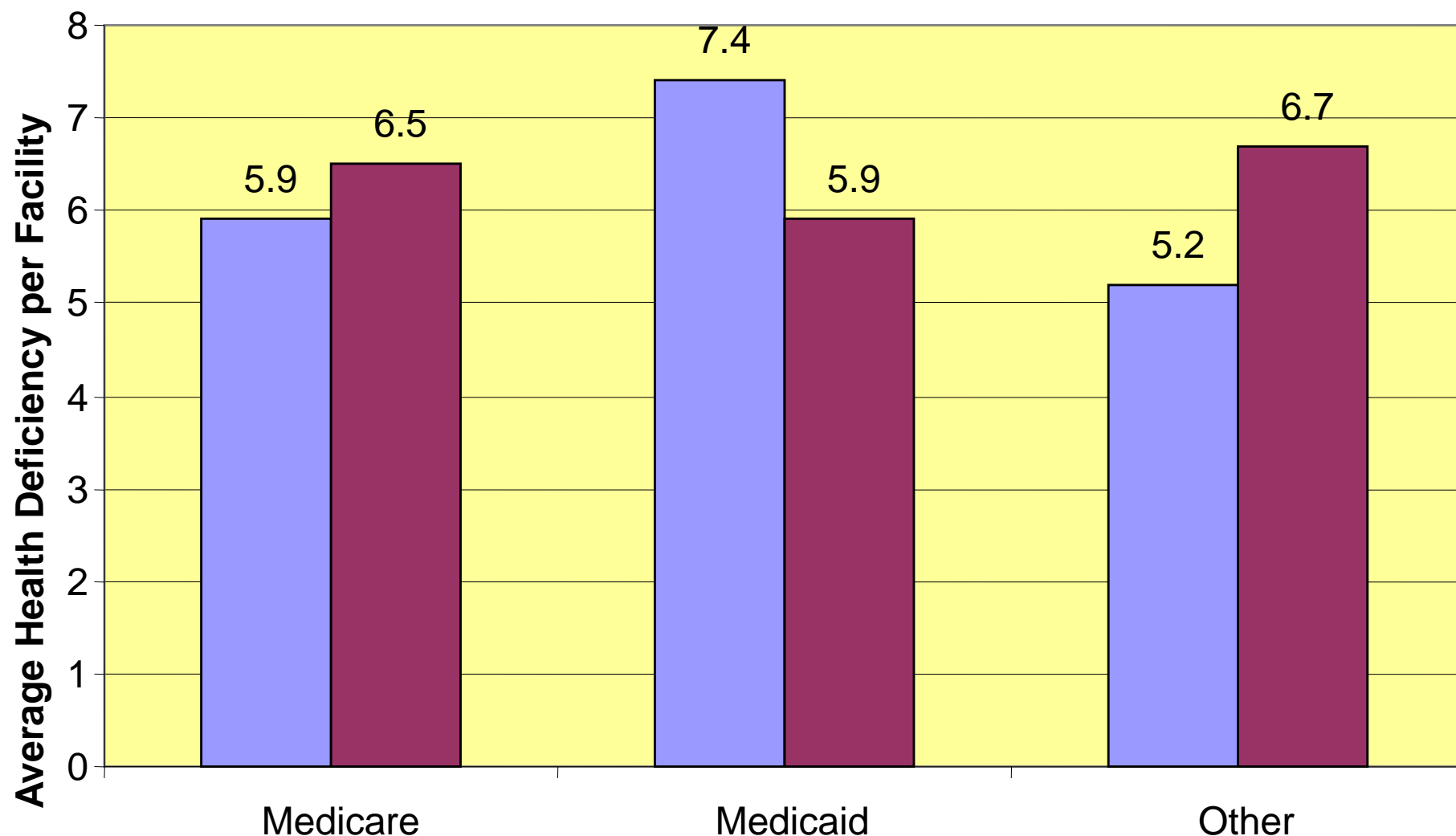
Survey Performance is
Best Predicted by Zip Code

For Profit Facilities Have More Health Deficiencies (N=16,333)



Groups are significantly different ($p < .01$)

Payer Mix Affects Likelihood of Health Deficiencies



Highest 25% different for all payer

types $p < .001$

■ Facilities with High Concentration ■ All Others

Disease and Conditions

- Association between disease and conditions
- Mission statement, location, referral relationships often impact these characteristics
- Challenge of meeting standards with specialty populations
- Surveyor perceptions are influenced by outward appearances
- Surveyor not clinically prepared to apply regulations/standards to specialty population's clinical and acuity issues

Pitfalls of OSCAR Analysis

- Simple counts of survey deficiencies can be misleading unless the scope, severity, and type of each deficiency is considered.
- Percentages of residents with particular conditions, e.g., pressure ulcers, don't distinguish between problems inherited from the hospital and those that occurred for the first time at the nursing home as well as clinically unavoidable outcomes.
- Surveyors' methods, severity, and consistency vary from CMS to CMS region, State to State and within regions of a State.
- Survey bias seem to be associated with certain types of residents.

Our View

- NH Compare, OSCAR & QI's - Misused
 - Insurance Underwriters
 - Prosecuting Attorneys
 - Public
 - Consumer Advocates
- At best these tools can identify the top 10% and bottom 10% of LTC nursing facilities
- There are many in a "Dark Room"

What can LTC Providers do?

Are there Solutions / Opportunities?

Absolutely!

- Understand and Avoid Risk Deficiencies that lead to Litigation
- Manage Liability Risk – Standard and Advanced Methods.
- Improve Accuracy of Assessment Data and Resulting QI's and QM's – MDS Data Integrity
- Maximize Claims Defense Capabilities
- Understand the underwriting process and make certain your facility is properly presented to liability underwriters
- Proactively Manage Claims

Types of Litigation Risk Deficiencies

- Failure to follow physicians' orders.
- Failure to treat.
- Physical or verbal abuse.
- Medication error.
- Failure to monitor adequately.
- Improper care.
- Resident rights violation.
- Failure to diagnose.
- Unsafe environment.
- Inadequate management of incontinence.
- Inadequate prevention or treatment of pressure ulcers.
- Fall hazards.
- Nutrition-related deficiencies.

Manage Liability Risk

Standard and Advanced Methods

- Identify “High Risk” Claims Situations / Causes and Establish Protocols for Assessing, Mitigating and Managing the Risk.
 - Falls / Fractures
 - Pressure Ulcers
 - Wandering / Elopement
 - Medication Management
 - Abuse and Neglect
 - Restraints
 - Emergency Preparedness / Response
 - Communication with Attending Physicians

Example of Risk Management Facts and Considerations

- Falls / Fractures - *Risk Management Considerations:*
 - Identify risk factors (conditions) that increase the likelihood of falls, for example cancer, diabetes, osteoarthritis, neurological conditions, certain medications, and treat accordingly. Well-managed related conditions will reduce the risk of falls.
 - Implement a falls prevention program These programs traditionally identify patients at risk to fall; eliminate environmental contributions to falls; minimizing injury by strengthening bone density and muscles; prompt response to falls, including a complete assessment of the fall.

Manage Liability Risk

Standard and Advanced Methods

- Continuously Monitor & Improve Quality Care
 - MDS Data Quality, Measures and Benchmarking
 - Education and Training
- Adherence to Claims Avoidance Techniques & Procedures - Physical Plant, Human Practice & Human Relations
 - Staff Relations, Workloads and Satisfaction
 - Family and Patient Relations
 - Setting Patient Outcome Expectations
- Professional Risk Managers with Data

Maximize Claims Defense Capabilities

- First, last and always provide optimal patient care.
- Establish quantifiable methods to demonstrate that industry care standards are recognized and achieved.
- **Firewall and Defend:** Develop and implement a tight matrix of policies, procedures, agreements, training and resources designed to minimize liability and improve quality. Defend claims.

Note: Work closely with Health Law & Government Relations law firms in the research of effective “Firewall and Defense” procedures.

Understand the Underwriting Process and How your Facility is Being Represented

- Loss History
 - Know the details and how they are being mitigated
 - Outlier, Expected, Systemic
- Quality of Care
- Acuity of Residents
- Staffing Ratios
- Complaints
- Deficiencies

Claims / Loss Review Know the Details

PL	Open	Potential claim involving injuries.	\$	75,000.00
PL	Open	Rape accusation approx 1 month prior to date in question; passed away later on.	\$	125,000.00
PL	Open	Bodily injury.	\$	13,000.00
PL	Open	Attorney letter of rep - slip & fall.	\$	2,000.00
PL	Open	Claimant left building without signing out & his whereabouts is unknown.	\$	300,000.00
PL	Open	Suing for negligent care.	\$	75,005.00
PL	Open	Records request.	\$	64,157.00
PL	Open	Attorney LOR records request.	\$	125,005.00
PL	Open	Records request for claimant per attorney.	\$	100,005.00
PL	Open	Request for medical records.	\$	200,000.00
PL	Open	Attorney requesting medical records.	\$	80,005.00

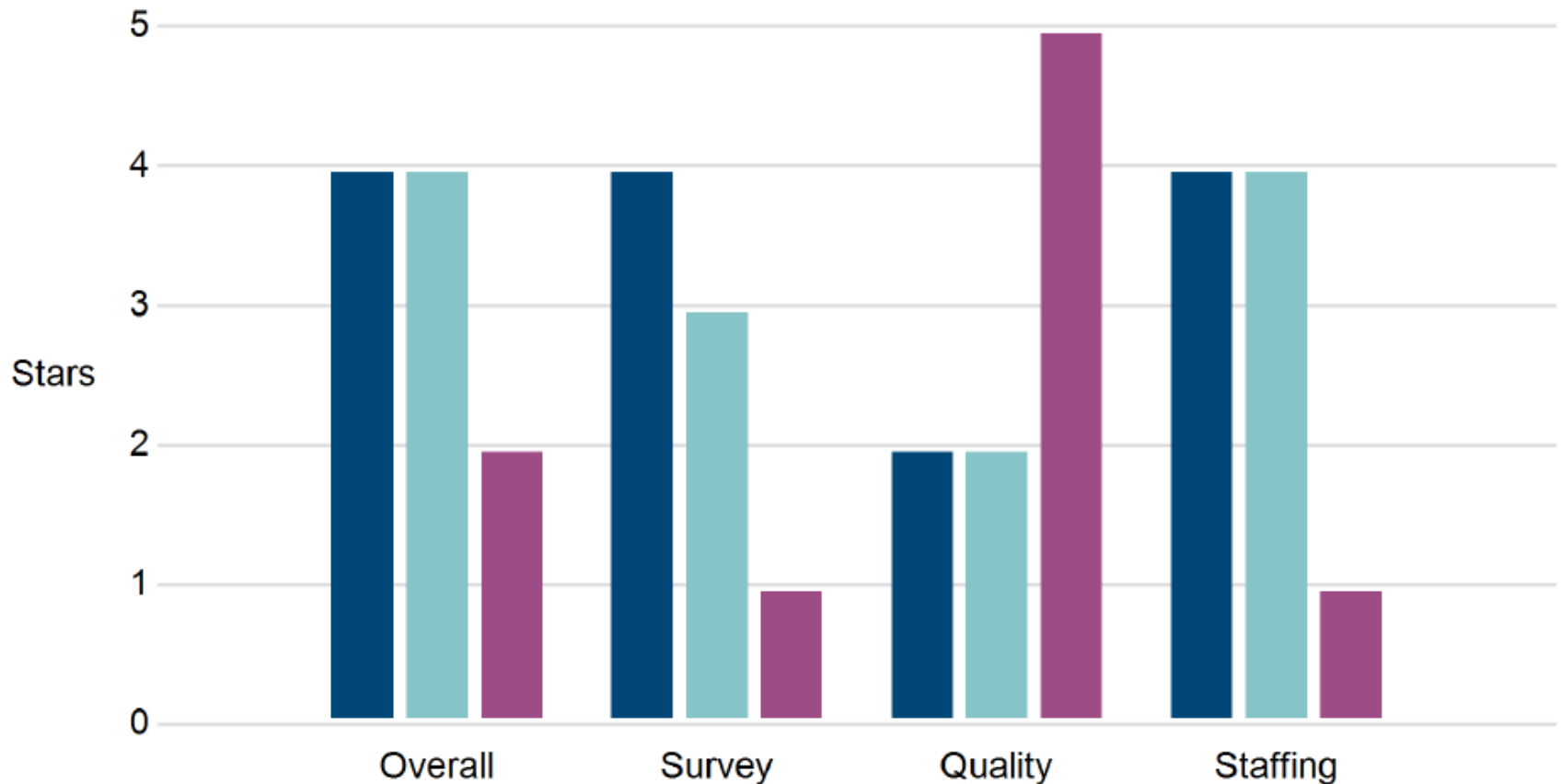
Quality & Risk Modeling

Evaluating and Presenting Public Data

Next 11 slides – 1 SNF in NJ

Public Ratings

CMS Five-Star Ratings



Occupancy and Payer Mix Survey Form 672

	Trend	NOV 2014	FEB 2016	APR 2017	Percentile	Survey District	State
Occupancy %		51%	47%	65%	9	85%	85%
Medicare %	↘	5%	5%	4%	18	9%	9%
Private Pay %		40%	30%	35%	70	26%	26%
Medicaid %		56%	65%	62%	49	62%	62%
Occupancy of Certified Beds	↗	31%	33%	42%	15	60%	60%

Case Mix Details

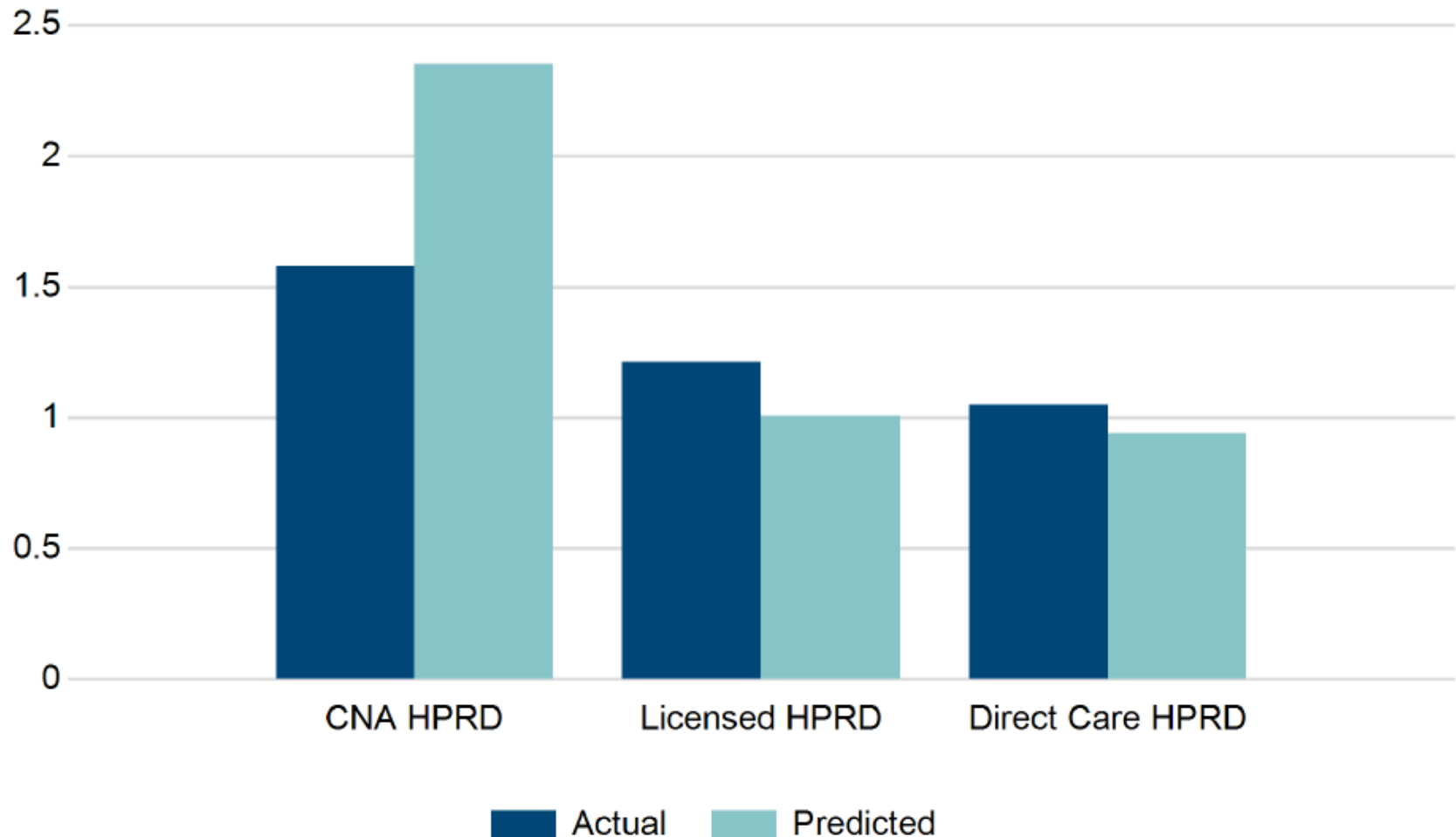
Form 672

	Trend	NOV 2014	FEB 2016	APR 2017	State
IVs and Transfusions	↘	5%	0%	0%	1%
Feeding Tubes		0%	5%	0%	3%
Ventilators		0%	0%	0%	0%
Dialysis		0%	5%	2%	2%
Eating Dependent	↘	44%	38%	22%	65%
Transfer Dependent		58%	65%	51%	93%
Chairbound		35%	63%	33%	69%
Bedfast	↗	2%	8%	9%	2%
Incontinent	↗	37%	60%	69%	63%
Behavior Problem		91%	35%	47%	21%
Mental Illness		28%	63%	49%	40%
Depression		42%	55%	2%	54%
Dementia		19%	28%	24%	44%

Staffing to Acuity vs Arbitrary Benchmarks

CMS - 1 star Staffing

Milliman Max Staffing to Acuity - based on the most recent data



Care Process Details

Form 672

	Trend	NOV 2014	FEB 2016	APR 2017	Percentile	State
Advance Directives		98%	100%	98%	79	52%
Pain Management		37%	43%	4%	9	52%
Pneumonia Immunization		19%	73%	49%	31	61%
Influenza Immunization		70%	83%	51%	37	58%
Bladder Training		0%	20%	0%	0	19%
Behavior Programs	↘	91%	35%	24%	78	3%
Medication Error Rate		0%	0%	0%	0	0%
Antipsychotic Drugs		26%	23%	36%	85	18%
Anti-Anxiety/Hypnotic Drugs		40%	48%	42%	94	23%

Survey Based Quality Insight

Form 672

	Trend	NOV 2014	FEB 2016	APR 2017	Percentile	Survey District	State
Pressure Ulcer Prevalence		9%	5%	9%	83	5%	5%
Facility-Acquired Pressure Ulcers		2%	0%	2%	55	2%	2%
Catheter Prevalence		7%	8%	5%	49	5%	5%
Facility-Acquired Catheters		2%	5%	0%	0	0%	0%
Restraint Prevalence		0%	0%	0%	0	0%	0%
Facility-Acquired Restraints		0%	0%	0%	0	0%	0%
Facility Acquired Contractures		0%	0%	0%	0	1%	1%
Unplanned Weight Gain/Loss	↗	0%	3%	7%	40	8%	9%

Quality Measures MDS

Long-Stay QM	Trend	2014	2015	2016	Percentile	State	Nation
High Risk Pressure Ulcers	↗	13%	13%	17%	98	4%	5%
Moderate/Severe Pain		12%	13%	5%	63	4%	4%
Falls with Major Injury	↗	0%	0%	1%	7	3%	3%
Physical Restraints		0%	0%	0%	0	0%	0%
Increased Help with ADLs		18%	26%	20%	80	14%	15%
Low-Risk Incontinence		26%	14%	21%	9	42%	48%
Indwelling Catheters	↘	5%	2%	1%	30	1%	1%
Urinary Tract Infections	↘	8%	3%	3%	64	2%	3%
Excessive Weight Loss	↘	9%	7%	3%	6	7%	7%
Depressive Symptoms		6%	4%	17%	76	7%	2%
Influenza Vaccine-Given	↘	100%	96%	89%	12	97%	97%
Pneumonia Vaccine-Given		91%	84%	99%	47	99%	99%
Antipsychotic Med Use	↘	28%	19%	10%	25	15%	14%

Quality Measures MDS

Short-Stay QM	Trend	2014	2015	2016	Percentile	State	Nation
New/Worse Pressure Ulcers	↘	1%	0%	0%	0	0%	0%
Moderate/Severe Pain		21%	30%	12%	46	13%	12%
Influenza Vaccine-Given		78%	39%	47%	4	88%	87%
Pneumonia Vaccine-Given		54%	33%	98%	73	93%	90%
Antipsychotic Med Use	↗	0%	3%	3%	80	2%	1%

Complaints

Complaint Allegations

	Trend	SEP 14- AUG 15	SEP 15- AUG 16	SEP 16- AUG 17	Most Recent 6 Month	Percentile	Survey District	State
Complaint Surveys		2	1	9	2	92	3	3
Allegations		8	1	15	5	83	5	5
Substantiated Allegations		0	0	0	2	0	1	1

Standard Survey Details

	Trend	NOV 2014	FEB 2016	APR 2017	Percentile	Survey District	State
Health Deficiencies		5	2	21	98	4	4
PL-Associated Health Deficiencies	↗	0	0	2	88	0	0
Health Level G+ Deficiencies	↗	0	0	1	94	0	0
Immediate Jeopardy Deficiencies		0	0	0	94	0	0
Substandard QOC Deficiencies		0	0	0	0	0	0
Resident Assessment Deficiencies		1	0	3	97	0	0
Repeat of a Health Deficiency	↗	0	0	2	86	0	0
PL-Associated Repeat Deficiencies		0	0	0	0	0	0
Additional Revisits		0	0	0	0	0	0

Standard Survey Details

F-Tag	Category	Brief Description	Substd QOC	S & S	Repeat	Repeats Complaint	PL
F315	Quality of Care	Indwelling catheters		G	No	No	
F363	Dietary Services	Menu/nutritional adequacy		F	No	No	
F364	Dietary Services	Taste and appearance of food		F	No	No	
F371	Dietary Services	Sanitary conditions		F	Yes	No	
F329	Quality of Care	Unnecessary drugs		E	No	No	
F157	Resident Rights	Notification of clinical status changes		D	No	No	
F166	Resident Rights	Timely response to grievances		D	No	No	
F241	Quality of Life	Environment for dignity and respect		D	No	No	
F246	Quality of Life	Accommodation of needs		D	No	No	X
F252	Quality of Life	Clean, comfortable environment		D	No	No	
F278	Assessment	Accuracy of assessment		D	No	No	
F279	Assessment	Comprehensive care plan		D	No	No	
F280	Assessment	Care plan process details		D	No	No	
F313	Quality of Care	Vision/hearing devices/treatment		D	No	No	
F318	Quality of Care	Range of motion treatment/services		D	No	No	X
F333	Quality of Care	Medication errors		D	No	No	
F412	Dental Services	NF Dental Services		D	No	No	
F428	Pharmacy Services	Pharmacist review of drug regimen		D	No	No	
F502	Laboratory Services	Lab services provided or arranged		D	Yes	No	
F253	Quality of Life	Housekeeping and maintenance		B	No	No	
F465	Physical Environment	Size and furnishing of common rooms		B	No	No	

Conclusions

- Litigation and Claims Trends Continue to Worsen
- Insurance Market is Tightening
- Risk Modeling / Public Data Analysis is more Prevalent
- Understanding Professional Liability Risk Factors is Essential to Managing Same.
- Proper Insurance Representation is Critical to Securing Favorable Insurance Terms and Conditions

Insurance Representative Attributes

- Expertise / Access to Expertise
- Understanding of Underwriting Process and Risk Modeling
- Access and Analysis of Quality and Risk Data
- Market Relationships
- Risk Assessment and Risk Management Capabilities
- Claims Evaluation and Advocacy
- Responsive and Proactive