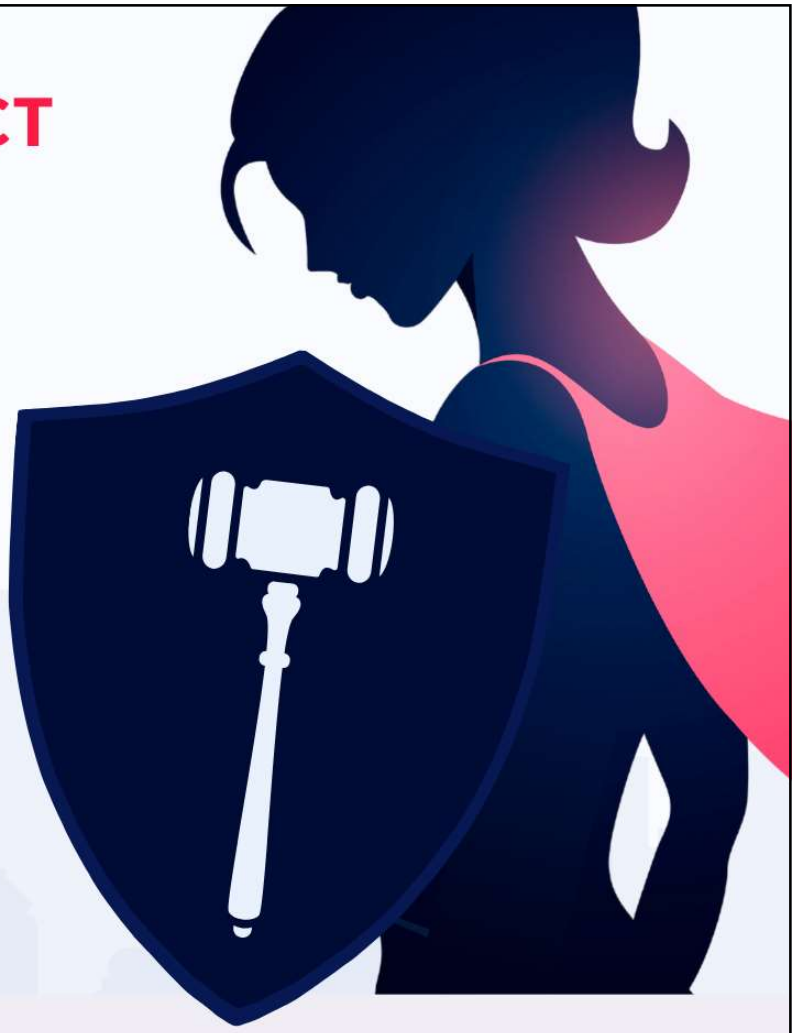
FREE WEBINAR **JUN 10 | 1 PM CT**

Data Defenders

How to represent your MDS & facility data in the courtroom



Steven Littlehale
Zimmet Healthcare

Drew Graham
Hall Booth Smith, P.C.

ZIMMET HEALTHCARE SERVICES GROUP, LLC

R² Reimbursement Reimagined

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ATTORNEYS AT LAW
Serving to Achieve Excellence

simple.
a Netsmart solution

YOUR SPEAKERS

Steven Littlehale
Chief Innovation Officer
Zimmet Healthcare Services, LLC

Drew Graham
Attorney
Hall Booth Smith, P.C.

ZIMMET HEALTHCARE SERVICES GROUP, LLC

R² Reimbursement Reimagined

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The content of this webinar does not constitute legal advice. Examples discussed are for purposes of illustration only. Please consult your own legal counsel.

Learner Objectives

Identify the various data, metrics, and measures that are often used and misunderstood by external stakeholders

Recall case studies where data was weaponized to support allegations and the effective data-driven response

Establish risk mitigation strategies using your publicly available data story

The growing use of public data in litigation

2010

The *Affordable Care Act* required SNFs to submit staffing information electronically, based on payroll information and other auditable data

2017

CMS first released a downloadable data set—the PBJ—for the preceding quarter

2018

New York Times
"It's Almost Like a Ghost Town"

'It's Almost Like a Ghost Town.' Most Nursing Homes Overstated Staffing for Years

Stan Hugo with his wife, Donna, who is a resident at the Beechtree Center for Rehabilitation and Nursing in Ithaca, N.Y. Mr. Hugo tracks staffing levels at the skilled nursing facility.
Heather Ainsworth for The New York Times

2020

Department of Justice Launches a *National Nursing Home Initiative*

2022

Pres. Biden announced a plan to improve the public transparency of facility ownership and to establish a minimum nursing home staffing requirement

2023

CMS announces minimum staffing requirement

Courtesy of Drew Graham, Hall Booth Smith, PC

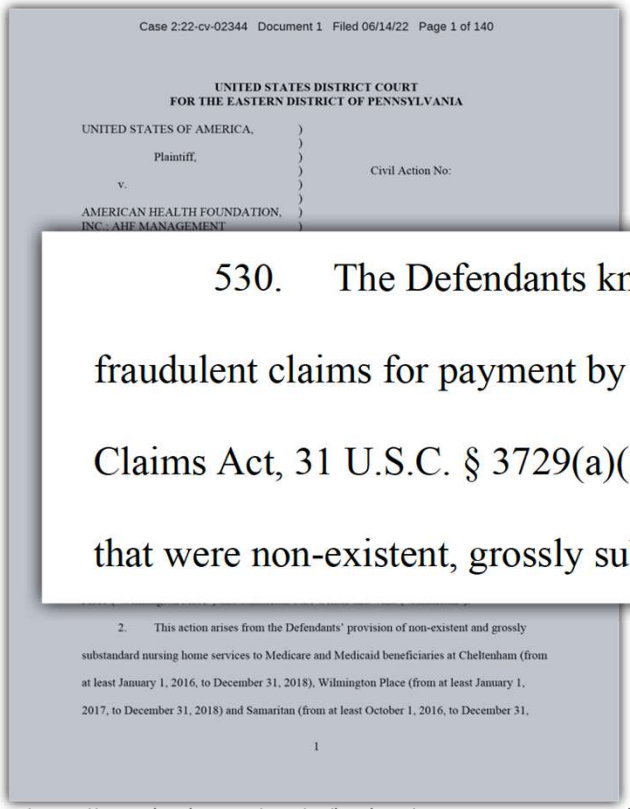
Department of Justice Launches a National Nursing Home Initiative March 3, 2020

"Attorney General William P. Barr announced today the launch of the Department of Justice's National Nursing Home Initiative, which will coordinate and enhance civil and criminal efforts to pursue nursing homes that provide grossly substandard care to their residents."

https://www.justice.gov/opa/pr/department-justice-launches-national-nursing-home-initiative

Courtesy of Drew Graham, Hall Booth Smith, PC

Justice Department Sues American Health Foundation and Its Affiliates for Providing Grossly Substandard Nursing Home Services June 15, 2022



Case 2:22-cv-02344 Document 1 Filed 06/14/22 Page 1 of 140

UNITED STATES DISTRICT COURT
FOR THE EASTERN DISTRICT OF PENNSYLVANIA

UNITED STATES OF AMERICA,
Plaintiff,
v.
AMERICAN HEALTH FOUNDATION, INC.; AHF MANAGEMENT

Civil Action No:

2. This action arises from the Defendants' provision of non-existent and grossly substandard nursing home services to Medicare and Medicaid beneficiaries at Cheltenham (from at least January 1, 2016, to December 31, 2018), Wilmington Place (from at least January 1, 2017, to December 31, 2018) and Samaritan (from at least October 1, 2016, to December 31,

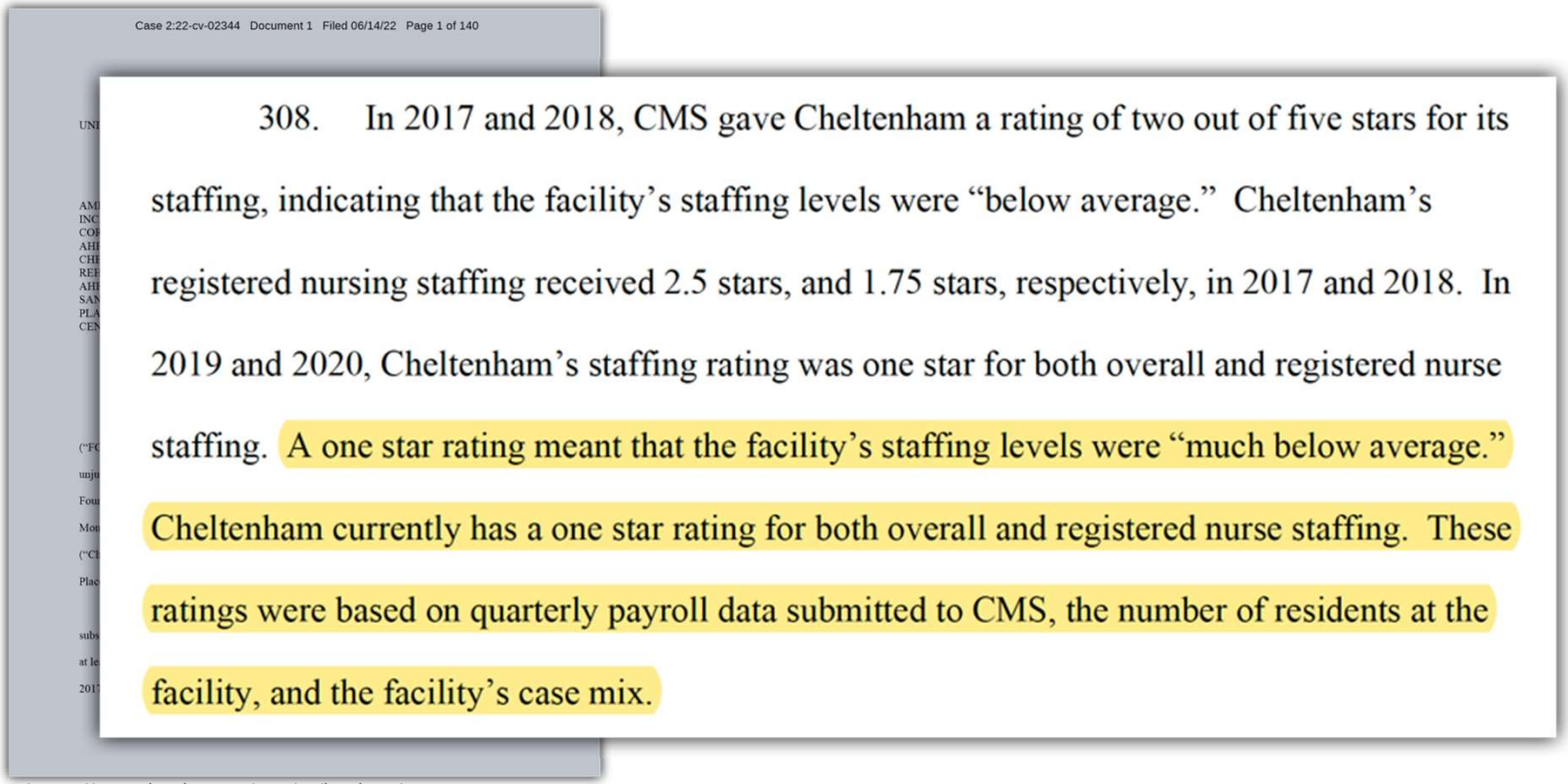
1

530. The Defendants knowingly presented or caused to be submitted false or fraudulent claims for payment by the Medicare and Medicaid programs, in violation of the False Claims Act, 31 U.S.C. § 3729(a)(1)(A). These claims were for nursing home care and services that were non-existent, grossly substandard, or in violation of the NHRA.

https://www.justice.gov/opa/pr/justice-department-sues-american-health-foundation-and-its-affiliates-providing-grossly

Courtesy of Drew Graham, Hall Booth Smith, PC

Justice Department Sues American Health Foundation and Its Affiliates for Providing Grossly Substandard Nursing Home Services June 15, 2022



Case 2:22-cv-02344 Document 1 Filed 06/14/22 Page 1 of 140

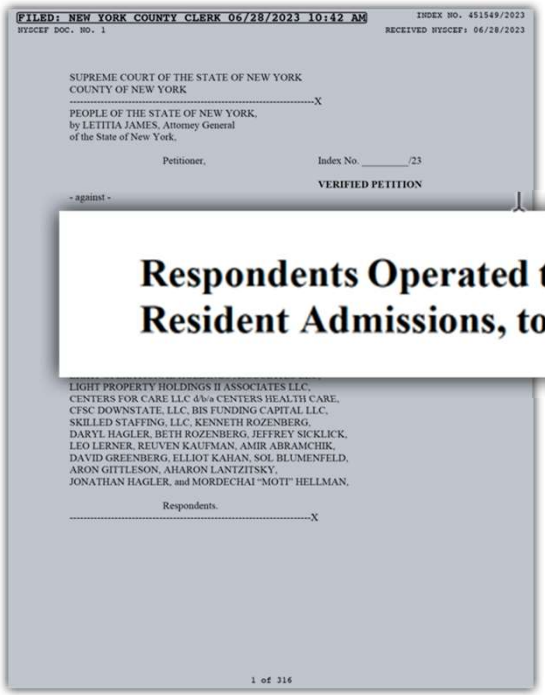
308. In 2017 and 2018, CMS gave Cheltenham a rating of two out of five stars for its staffing, indicating that the facility's staffing levels were "below average." Cheltenham's registered nursing staffing received 2.5 stars, and 1.75 stars, respectively, in 2017 and 2018. In 2019 and 2020, Cheltenham's staffing rating was one star for both overall and registered nurse staffing. A one star rating meant that the facility's staffing levels were "much below average." Cheltenham currently has a one star rating for both overall and registered nurse staffing. These ratings were based on quarterly payroll data submitted to CMS, the number of residents at the facility, and the facility's case mix.

https://www.justice.gov/opa/pr/justice-department-sues-american-health-foundation-and-its-affiliates-providing-grossly

Courtesy of Drew Graham, Hall Booth Smith, PC

Attorney General James Sues Owners and Operators of Four Nursing Homes for Financial Fraud and Resident Neglect

June 28, 2023



FILED: NEW YORK COUNTY CLERK 06/28/2023 10:42 AM INDEX NO. 451549/2023
NYSCEF DOC. NO. 1 RECEIVED NYSCEF: 06/28/2023

SUPREME COURT OF THE STATE OF NEW YORK
COUNTY OF NEW YORK

PEOPLE OF THE STATE OF NEW YORK,
by LETITIA JAMES, Attorney General
of the State of New York,

Petitioner,

Index No. _____/23

VERIFIED PETITION

- against -

LIGHT PROPERTY HOLDINGS II ASSOCIATES LLC,
CENTERS FOR CARE LLC d/b/a CENTERS HEALTH CARE,
CFSC DOWNSTATE, LLC, BIS FUNDING CAPITAL LLC,
SKILLED STAFFING, LLC, KENNETH ROZENBERG,
DARYL HAGLER, BETH ROZENBERG, JEFFREY SICKLICK,
LEO LERNER, REUVEN KAUFMAN, AMIR ABRAMCHIK,
DAVID GREENBERG, ELLIOT KAHAN, SOL BLUMENFELD,
ARON GITTLESON, AHARON LANTZITSKY,
JONATHAN HAGLER, and MORDECHAI "MOTI" HELLMAN,

Respondents.

1 of 316

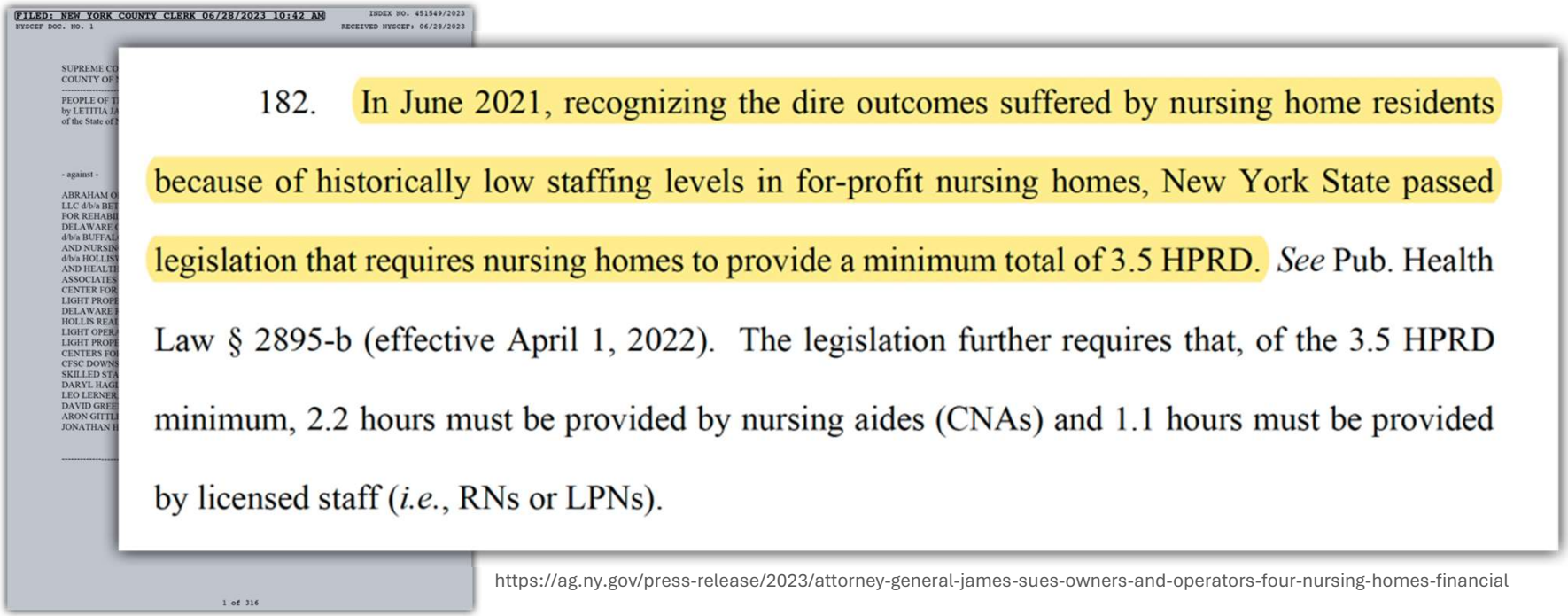
Respondents Operated the Nursing Homes with Chronic Insufficient Staffing But Continued Resident Admissions, to Maximize Their Fraudulent Up-Front Profit Taking

https://ag.ny.gov/press-release/2023/attorney-general-james-sues-owners-and-operators-four-nursing-homes-financial

Courtesy of Drew Graham, Hall Booth Smith, PC

Attorney General James Sues Owners and Operators of Four Nursing Homes for Financial Fraud and Resident Neglect

June 28, 2023



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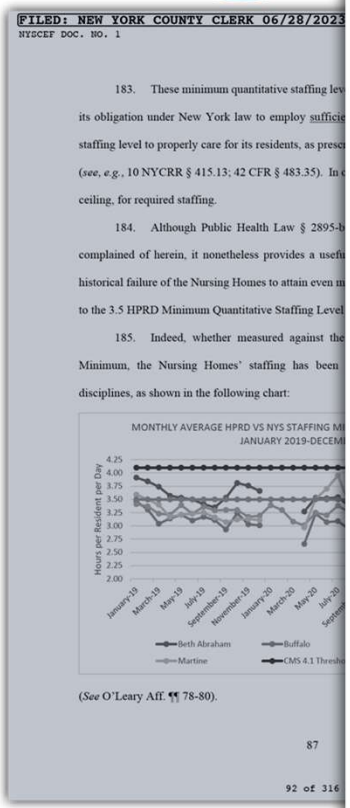
FILED: NEW YORK COUNTY CLERK 06/28/2023
NYSCEF DOC. NO. 1

183. These minimum quantitative staffing lev
its obligation under New York law to employ sufficie
staffing level to properly care for its residents, as presc
(*see, e.g.*, 10 NYCRR § 415.13; 42 CFR § 483.35). In
ceiling, for required staffing.

184. Although Public Health Law § 2895-b
complained of herein, it nonetheless provides a usefu
historical failure of the Nursing Homes to attain even m
to the 3.5 HPRD Minimum Quantitative Staffing Level

185. Indeed, whether measured against the
Minimum, the Nursing Homes' staffing has been
disciplines, as shown in the following chart:

MONTHLY AVERAGE HPRD VS NYS STAFFING MI
JANUARY 2019-DECEM

(*See* O'Leary Aff. ¶¶ 78-80).

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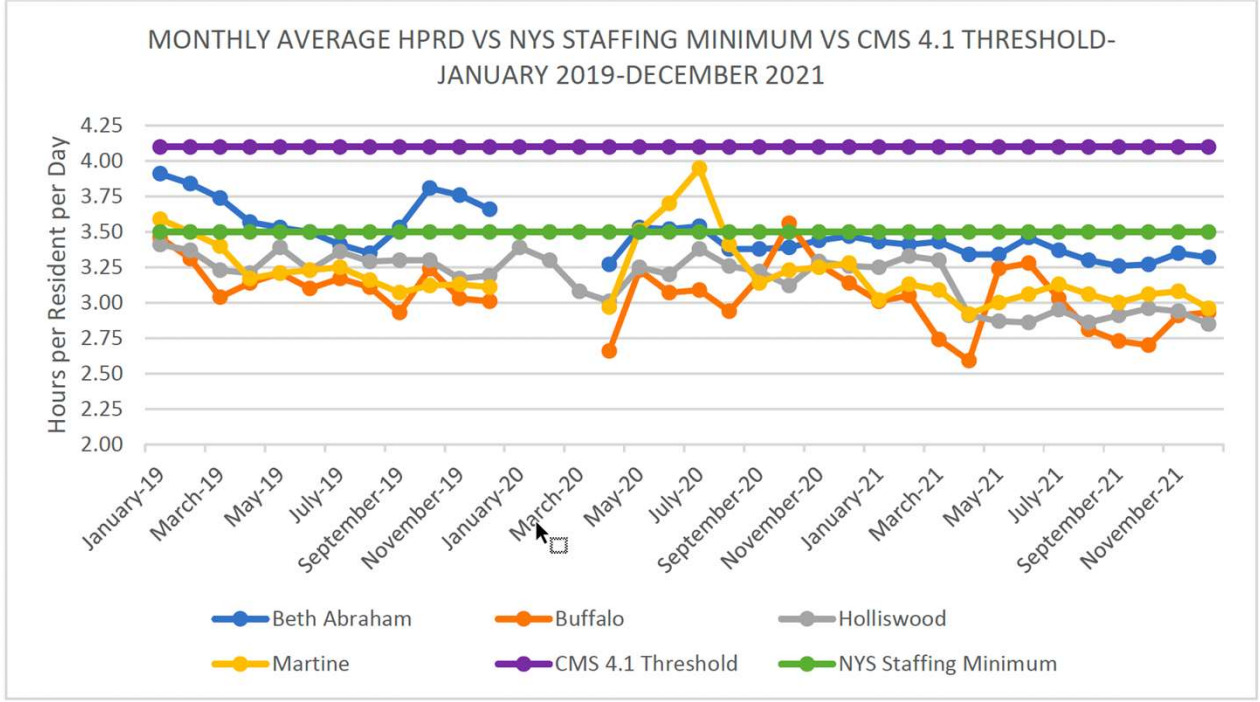
92 of 316



(*See* O'Leary Aff. ¶¶ 78-80).

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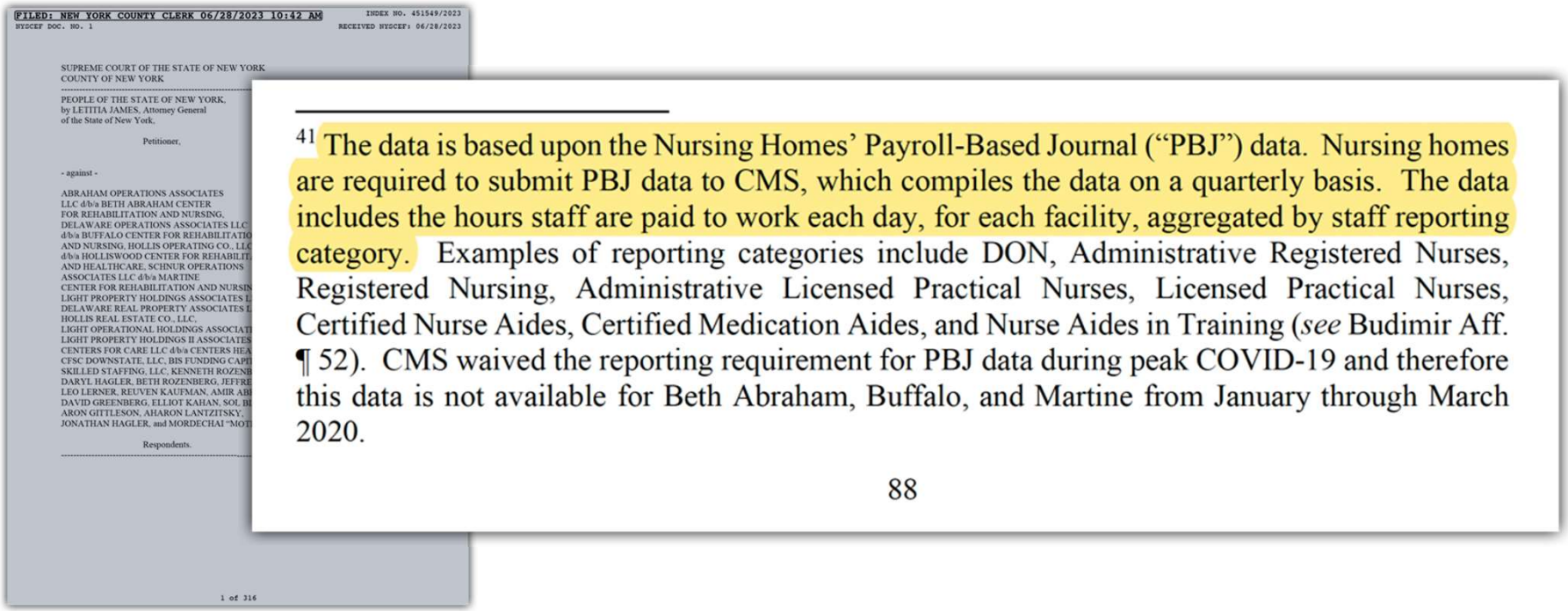

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SUPREME COURT OF THE STATE OF NEW YORK
COUNTY OF NEW YORK

PEOPLE OF THE STATE OF NEW YORK,
by LETITIA JAMES, Attorney General
of the State of New York,

Petitioner,

- against -

ABRAHAM OPERATIONS ASSOCIATES
LLC d/b/a BETH ABRAHAM CENTER
FOR REHABILITATION AND NURSING,
DELAWARE OPERATIONS ASSOCIATES LLC
d/b/a BUFFALO CENTER FOR REHABILITATIO
AND NURSING, HOLLIS OPERATING CO., LLC
d/b/a HOLLISWOOD CENTER FOR REHABILIT
AND HEALTHCARE, SCHNUR OPERATIONS
ASSOCIATES LLC d/b/a MARTINE
CENTER FOR REHABILITATION AND NURSIN
LIGHT PROPERTY HOLDINGS ASSOCIATES L
DELAWARE REAL PROPERTY ASSOCIATES L
HOLLIS REAL ESTATE CO., LLC,
LIGHT OPERATIONAL HOLDINGS ASSOCIAT
LIGHT PROPERTY HOLDINGS II ASSOCIATES
CENTERS FOR CARE LLC d/b/a CENTERS HEA
CFSC DOWNSTATE, LLC, BIS FUNDING CAPI
SKILLED STAFFING, LLC, KENNETH ROZENB
DARYL HAGLER, BETH ROZENBERG, JEFFRE
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ARON GITTLESON, AHARON LANTZITSKY,
JONATHAN HAGLER, and MORDECHAI "MOT

Respondents.

1 of 316

[41] The data is based upon the Nursing Homes' Payroll-Based Journal ("PBJ") data. Nursing homes are required to submit PBJ data to CMS, which compiles the data on a quarterly basis. The data includes the hours staff are paid to work each day, for each facility, aggregated by staff reporting category. Examples of reporting categories include DON, Administrative Registered Nurses, Registered Nursing, Administrative Licensed Practical Nurses, Licensed Practical Nurses, Certified Nurse Aides, Certified Medication Aides, and Nurse Aides in Training (*see* Budimir Aff. ¶ 52). CMS waived the reporting requirement for PBJ data during peak COVID-19 and therefore this data is not available for Beth Abraham, Buffalo, and Martine from January through March 2020.

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Courtesy of Drew Graham, Hall Booth Smith, PC

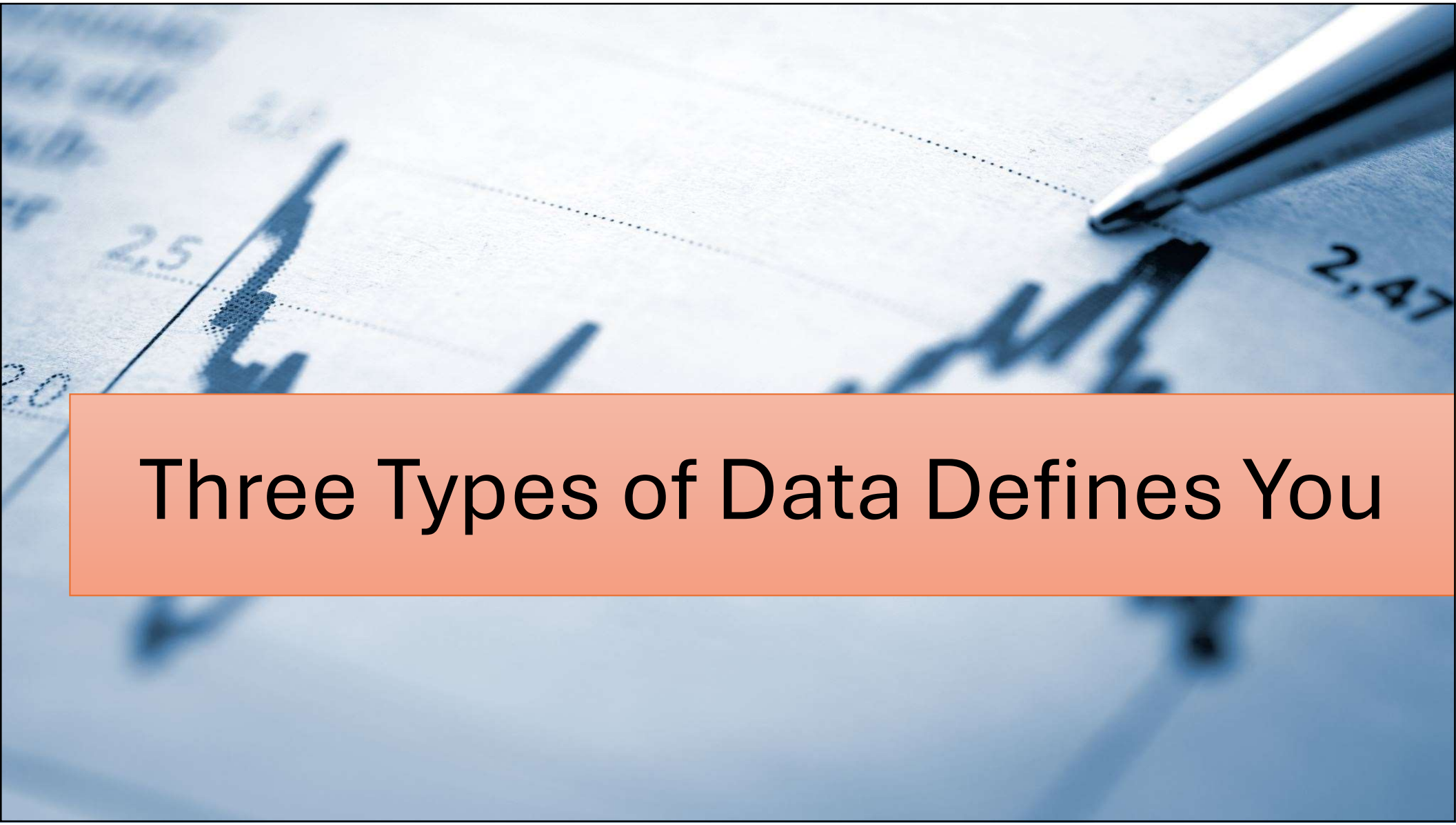
The Weaponization of SNF data

What data are we talking about and how is it being used?

Who’s Looking at your Data?

External Stakeholders

- Consumers
- Referrers/Conveners
- Media/Politicians
- Lenders/Banks
- REITs/Private Equity
- Insurance
- Attorneys
- Potential employees


Three Types of Data Defines You

The Data That You Generate

Nursing Home

- Ownership/Affiliation
- Aggregate Performance
- SPO Measures

Residents

- MDS & SPO Measures
- Staffing
- Satisfaction

Staff

- Salary/Benefits
- Turnover
- Satisfaction

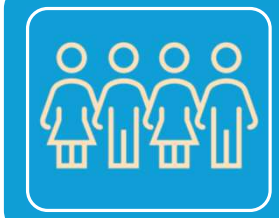
The Data That The Government Generates

Survey/Certification Performance

- Facility and Aggregate Performance
- Substantiated Complaints
- Benchmarks

Quality

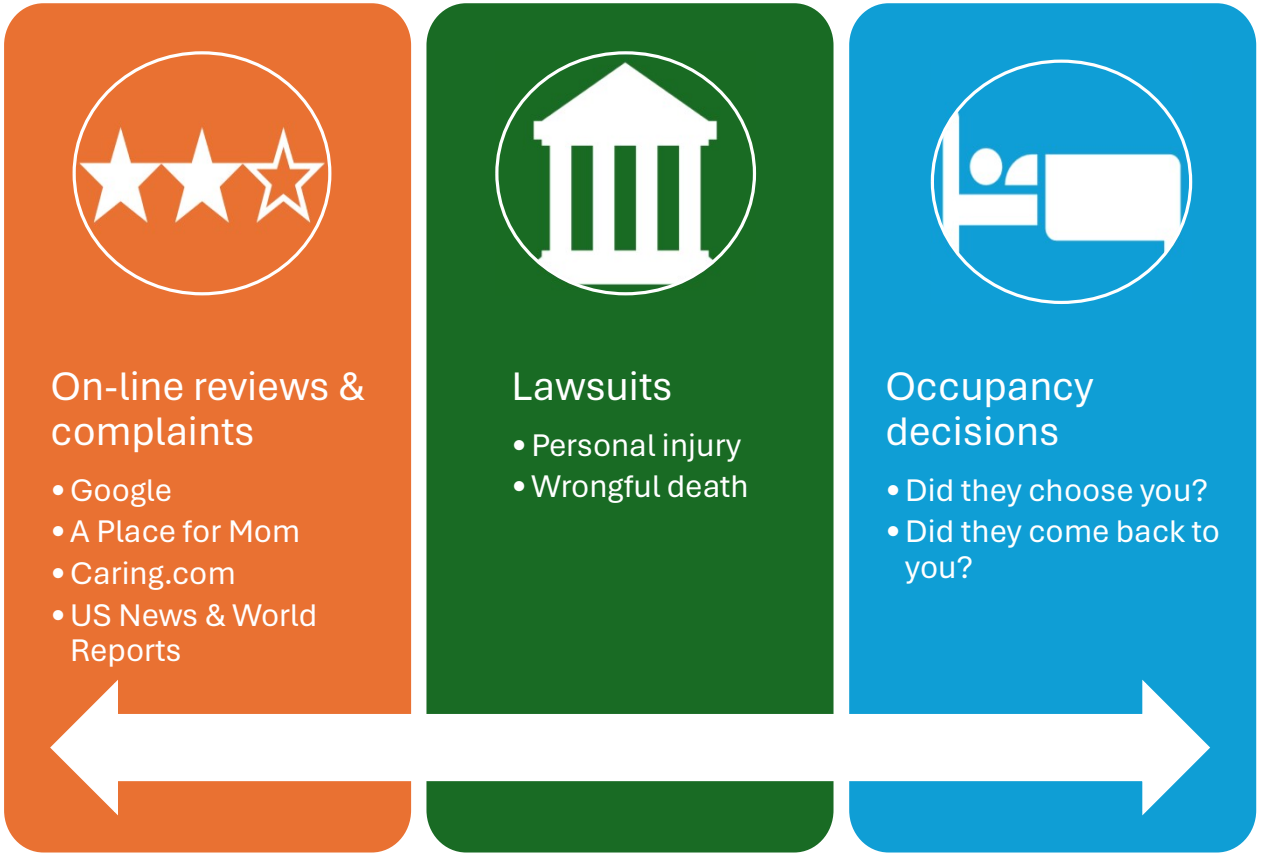
- MDS and Claims-based Measures
- QRP
- Five-Star



Staff

- Case-mix adjustment
- Minimums
- Registries

The Data That Consumers Generate

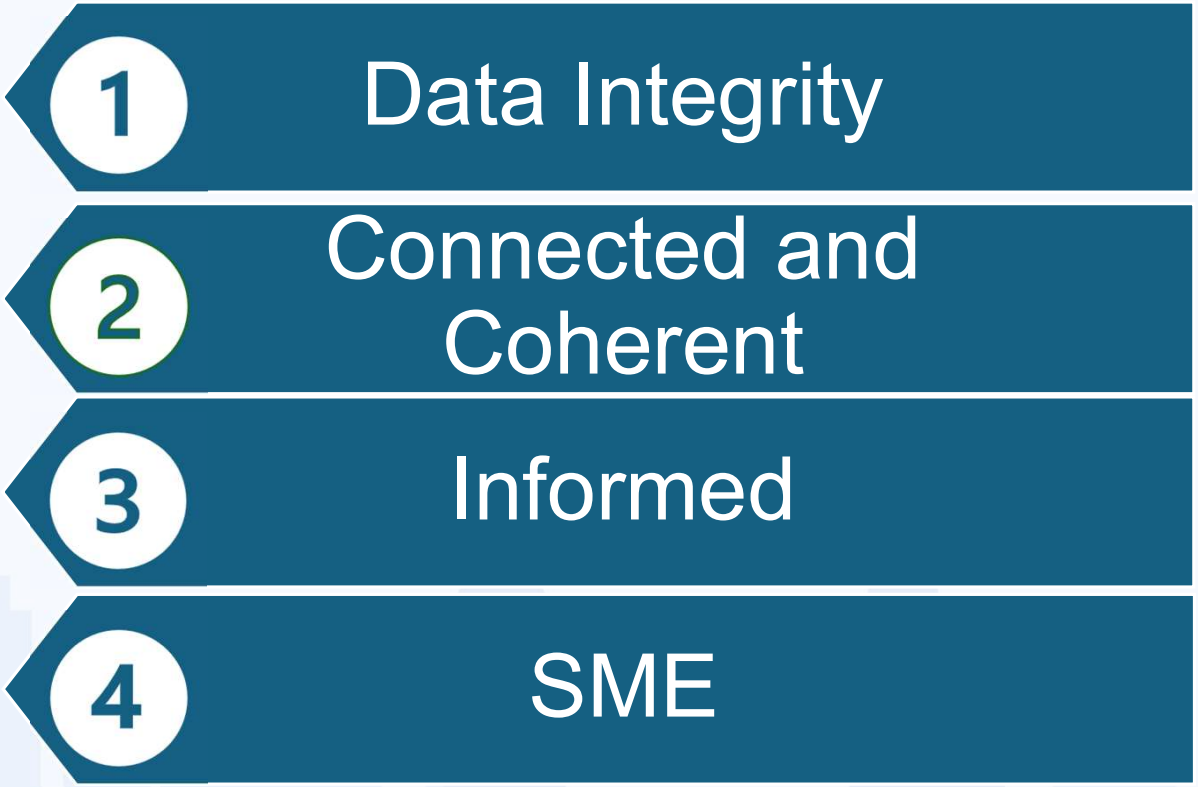


Disparate Data Often Suggests Different Conclusions: Staffing

- Cost Report*
- PBJ*
- Staffing sheets
- Time punch cards
- Five-Star staffing
- Staff satisfaction surveys
- Consumer satisfaction
- NHSN Self Report

- Timecard vs. PBJ vs. Cost reports vs. Staffing sheets
- Cost Report vs. PBJ
- NHSN Self Report

To Be A Master Of Your Data Profile



Case Studies

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Case Study One

Refinancing – Change of Ownership

The Assessment of a Nursing Home Portfolio: Health Inspection

Nursing Homes: 9

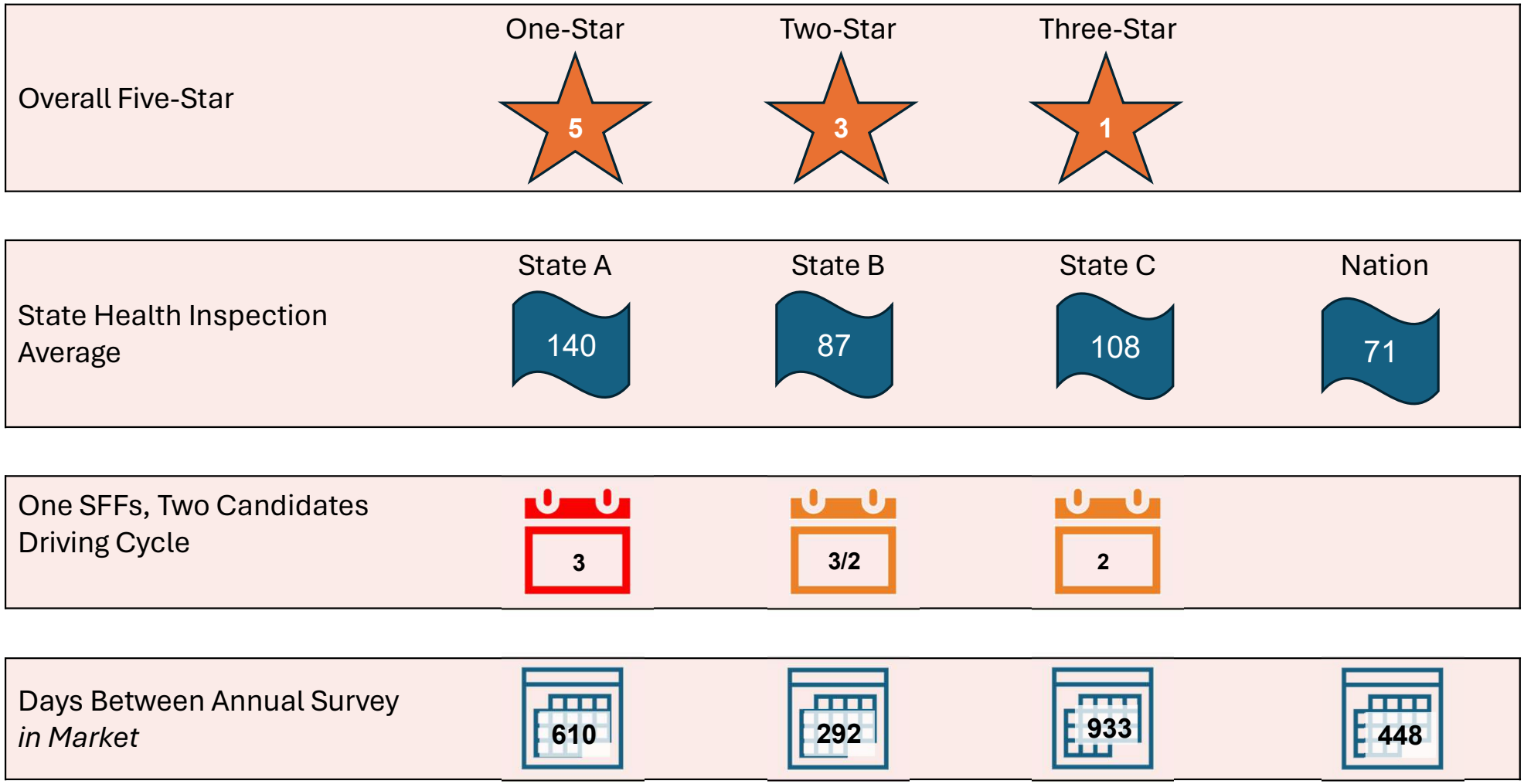
States: Three

One SFF, Two candidates

3 Nursing Homes with Abuse Tag

Acquisition: 18 months prior

The Assessment of a Nursing Home Portfolio



The Health Inspection Domain

State Health Inspections- Foundation for final rating and carries the most weight –AND- 3 most recent surveys and 36 months of complaint inspections and focused infection control surveys

71% of nursing homes have gone at least 16 months without a standard survey. How long ago was your third-cycle survey

GUEST COLUMNS

Revamping CMS survey data integration amid regulatory lag in nursing home oversight

STEVEN LITTLEHALE

DECEMBER 8, 2023

SHARE

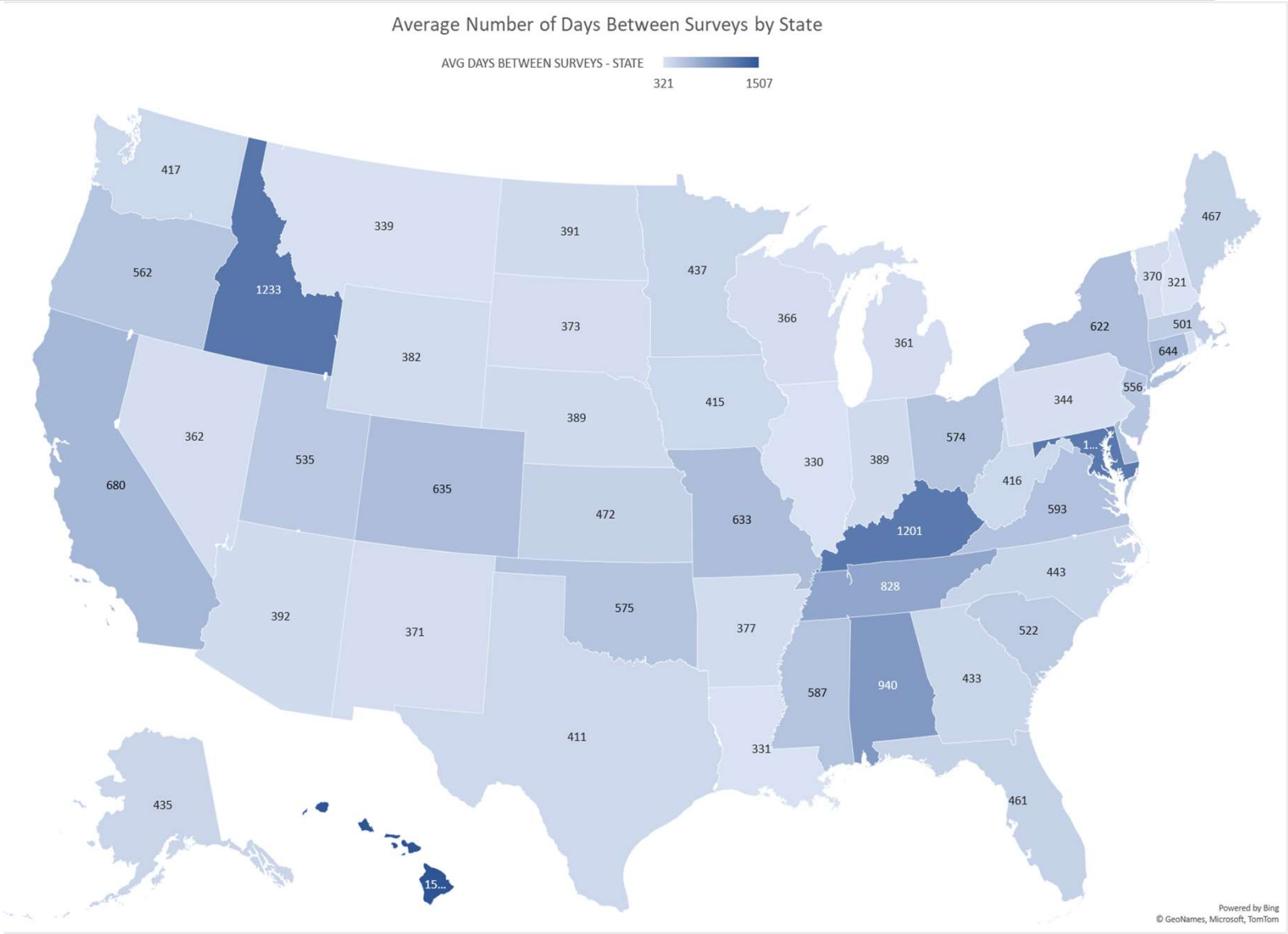
The report titled "Uninspected and Neglected" by the majority staff of the US Senate Special Committee on Aging brings attention to a pressing issue: the severe understaffing of inspection agencies causing significant delays in surveys. While some providers may temporarily appreciate the respite from annual surveys, this situation exacts a heavy toll on providers and, more alarmingly, jeopardizes the well-being of residents and potential residents.

NEWS

High administrator turnover sinks nursing home margins, say researchers who look for regulators to intervene

NEWS

Failure to account for cognitive limitations threatens reliability of



CT: 644
MD: 1180
NJ: 767
WI: 524
WV: 679

The Assessment of a Nursing Home Portfolio: Staffing

Nursing Homes: 9
Agency use: Ranged from 9 – 47%
8 Declined in staffing from last quarter
5 staffing at a “one-star”, 8 below county average for staffing
Operator reported in three facilities they were a one-star “couldn’t meet RN requirements”

The Assessment of a Nursing Home Portfolio

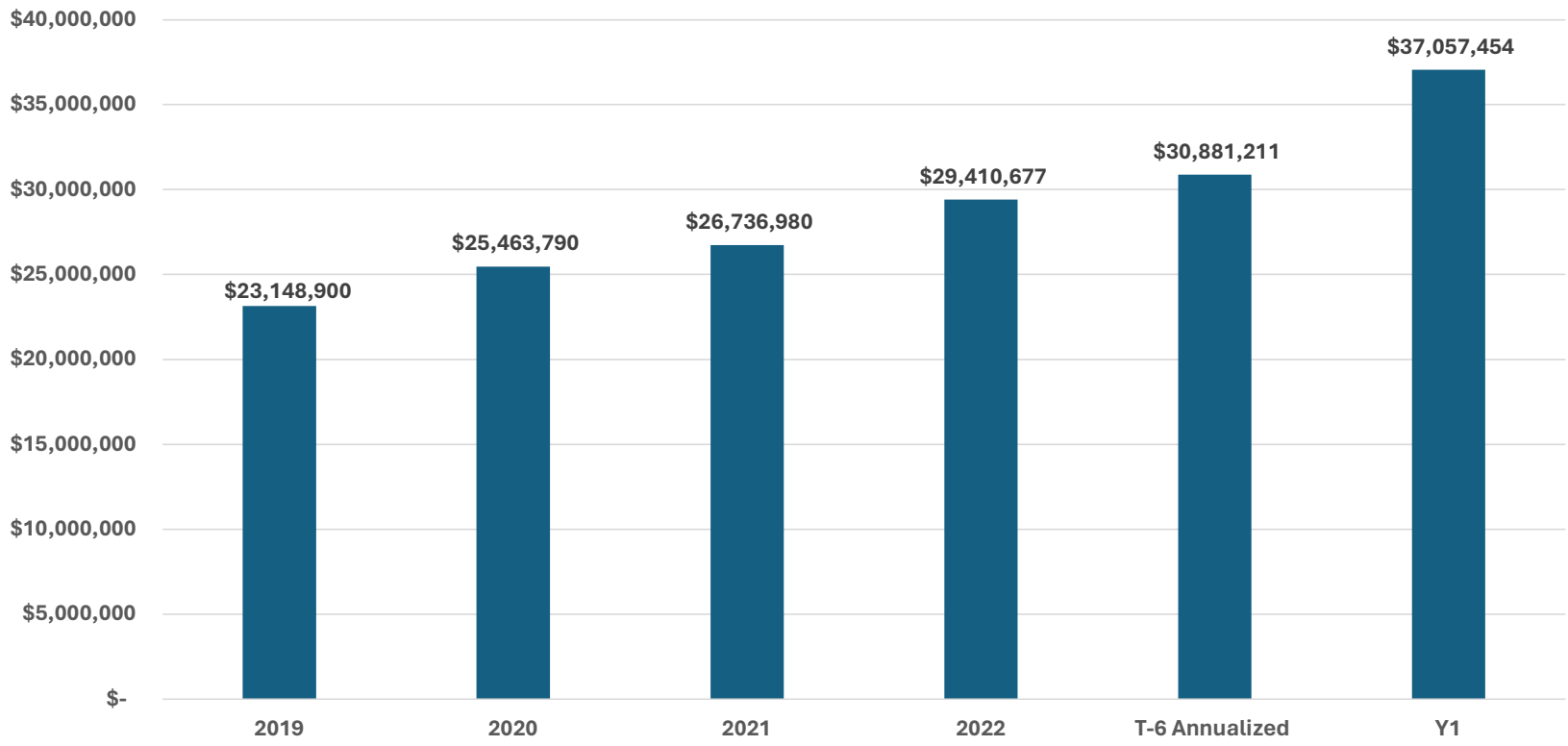
	One-Star	Declined	Below County
Staffing Five-Star	5	8	8

	Below	Same	Above
Agency Use Percent Compared to Market	2	1	6

RN Less Than Market	7	2	0

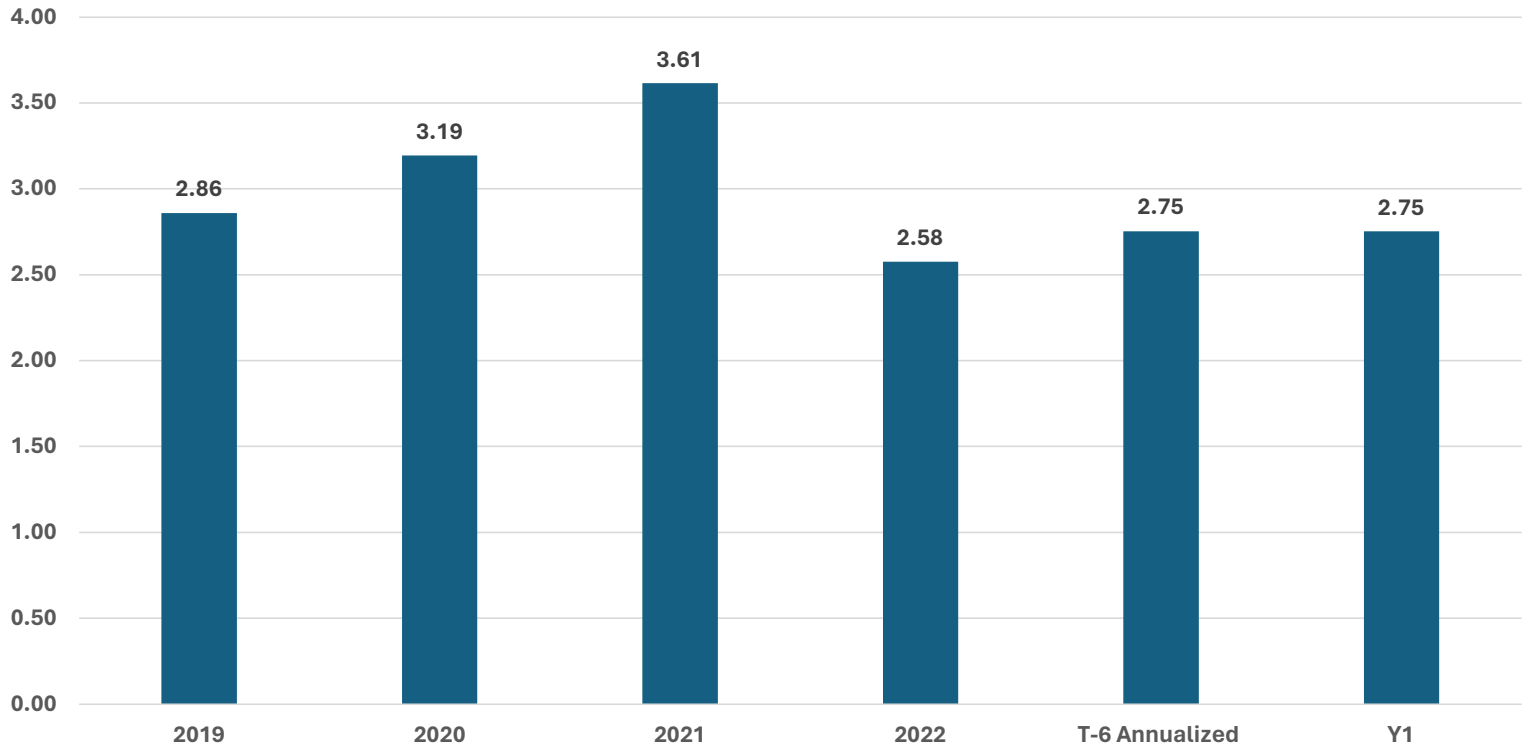
Turnover Compared to Market	5	0	0	53%

Total Nursing Spend



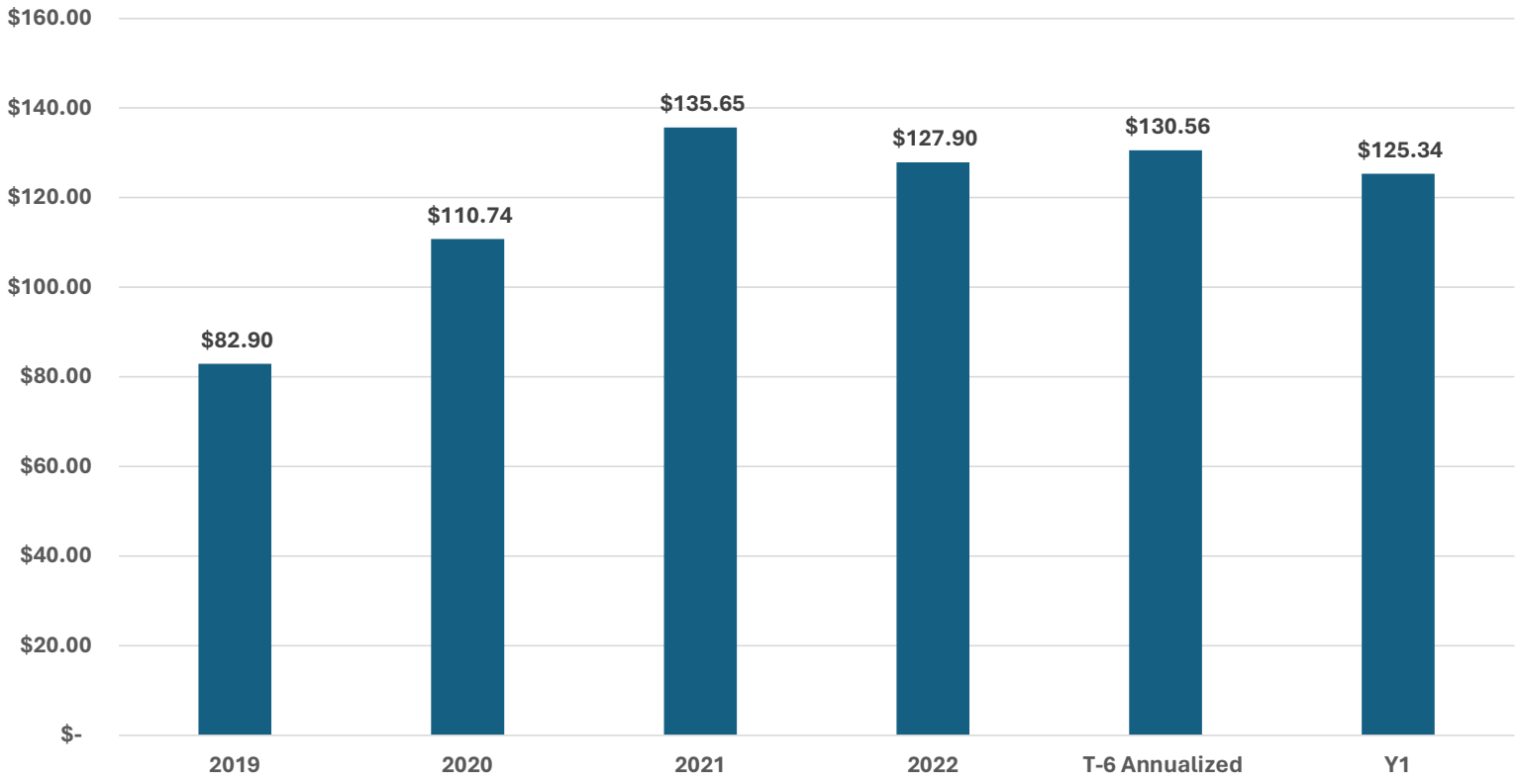
Courtesy eCap Intel

Case Mix Adjusted Hours PPD



Courtesy eCap Intel

Cost Per Patient Day



Courtesy eCap Intel

The Assessment of a Nursing Home Portfolio: Quality Measures

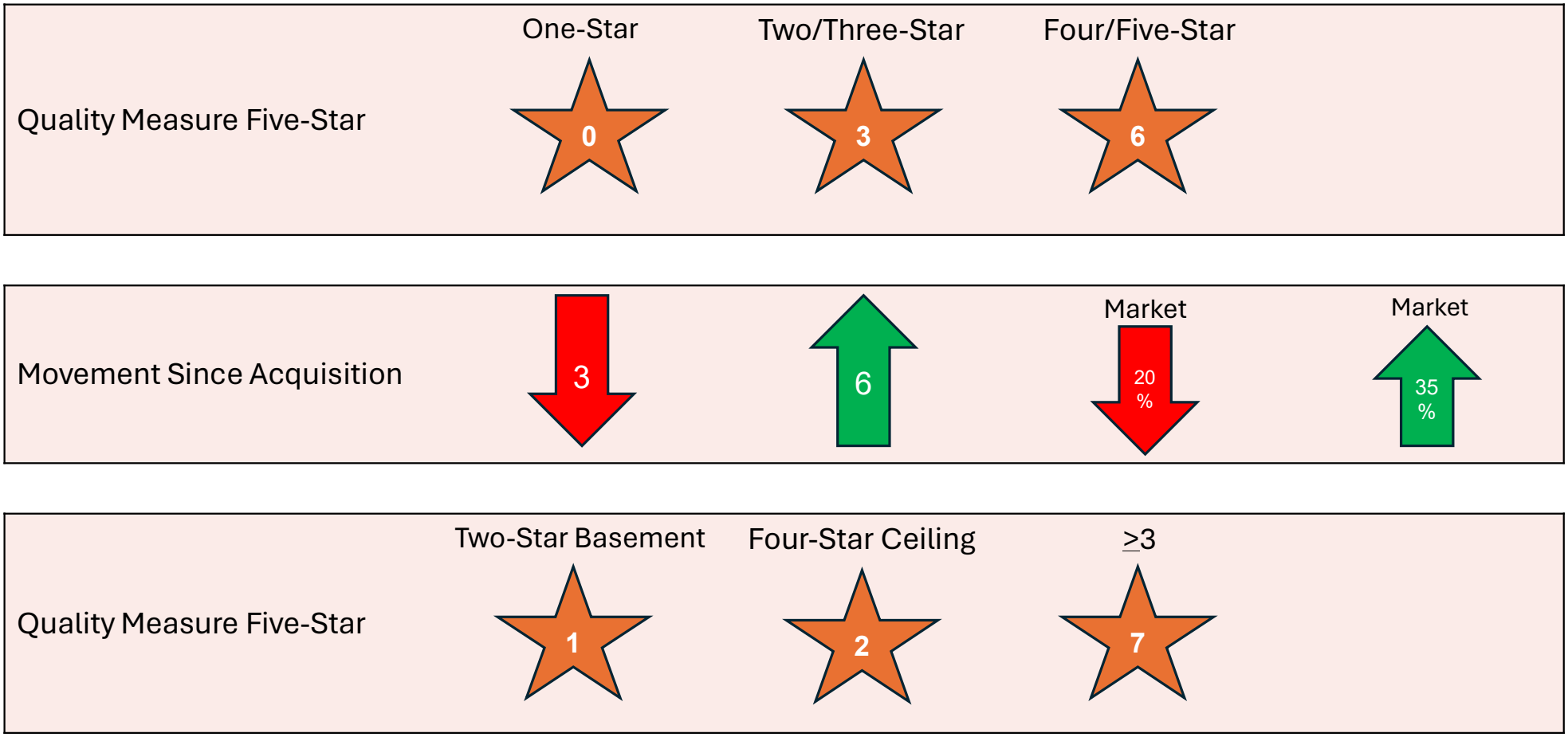
Nursing Homes: 9

3 Outperforming State Average

3 Declined in quality from last quarter

Quality Domain ranges from 2 - 5

The Assessment of a Nursing Home Portfolio



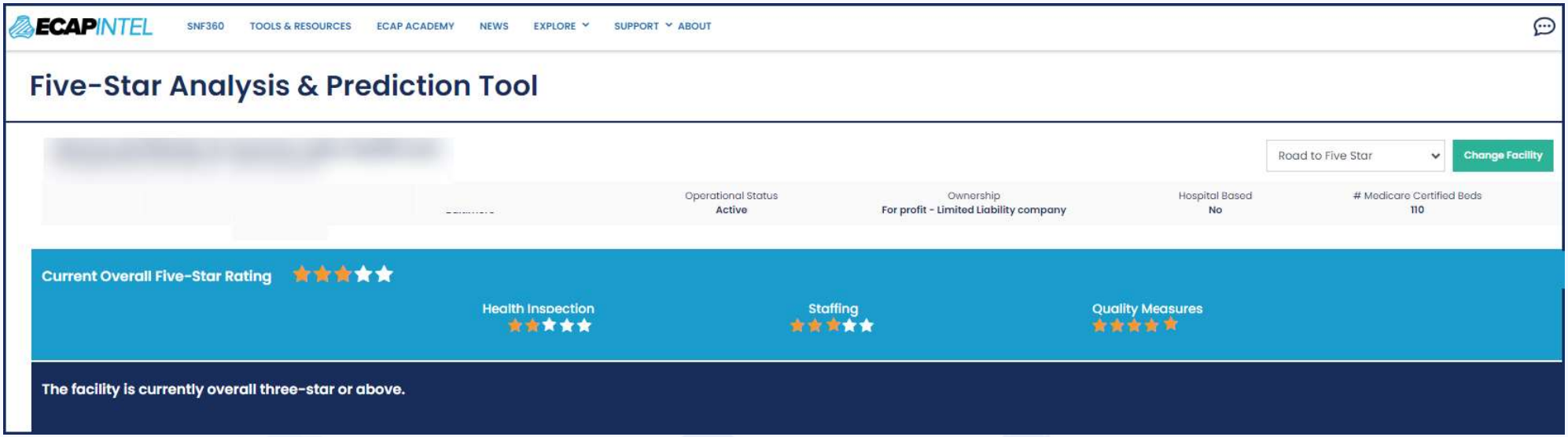
Case Study Two

Pressure Ulcers!

The Assessment of a Nursing Home Portfolio: Health Inspection

Nursing Home Based in MD
Overall Three-Stars
Survey: 2 Staffing: 3 Quality 5
PUs below average
Good survey history
Resident in NH 3 weeks

Confirmation of Public Data



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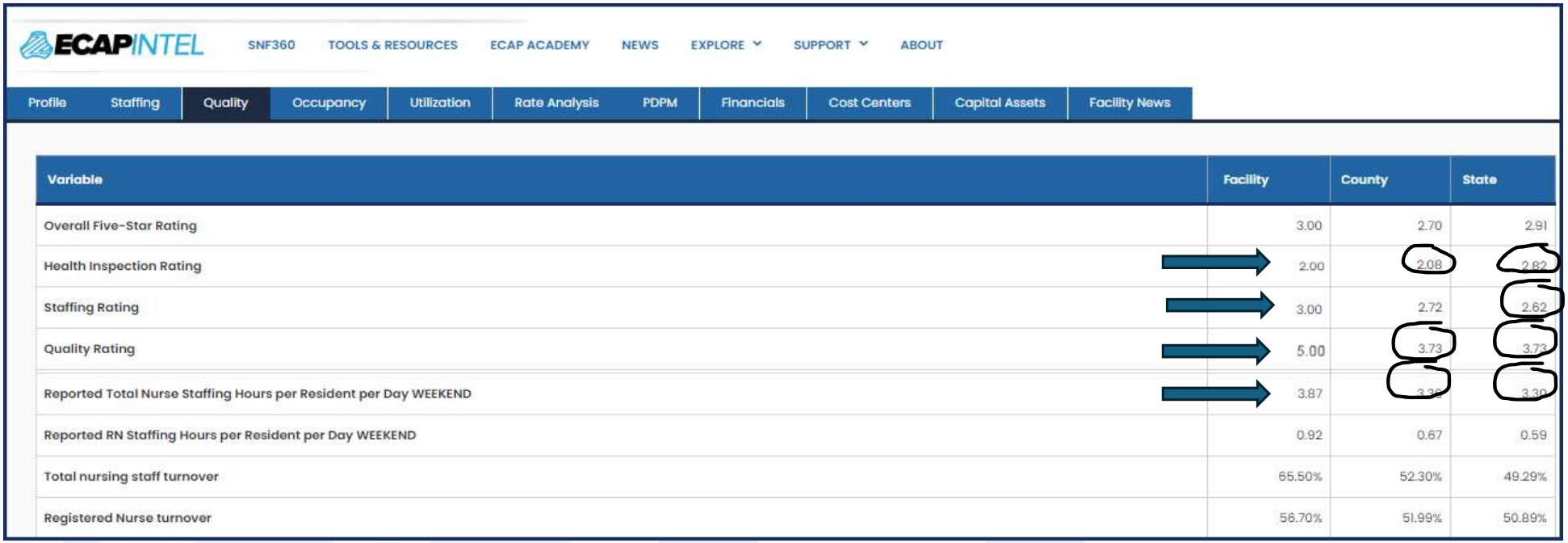
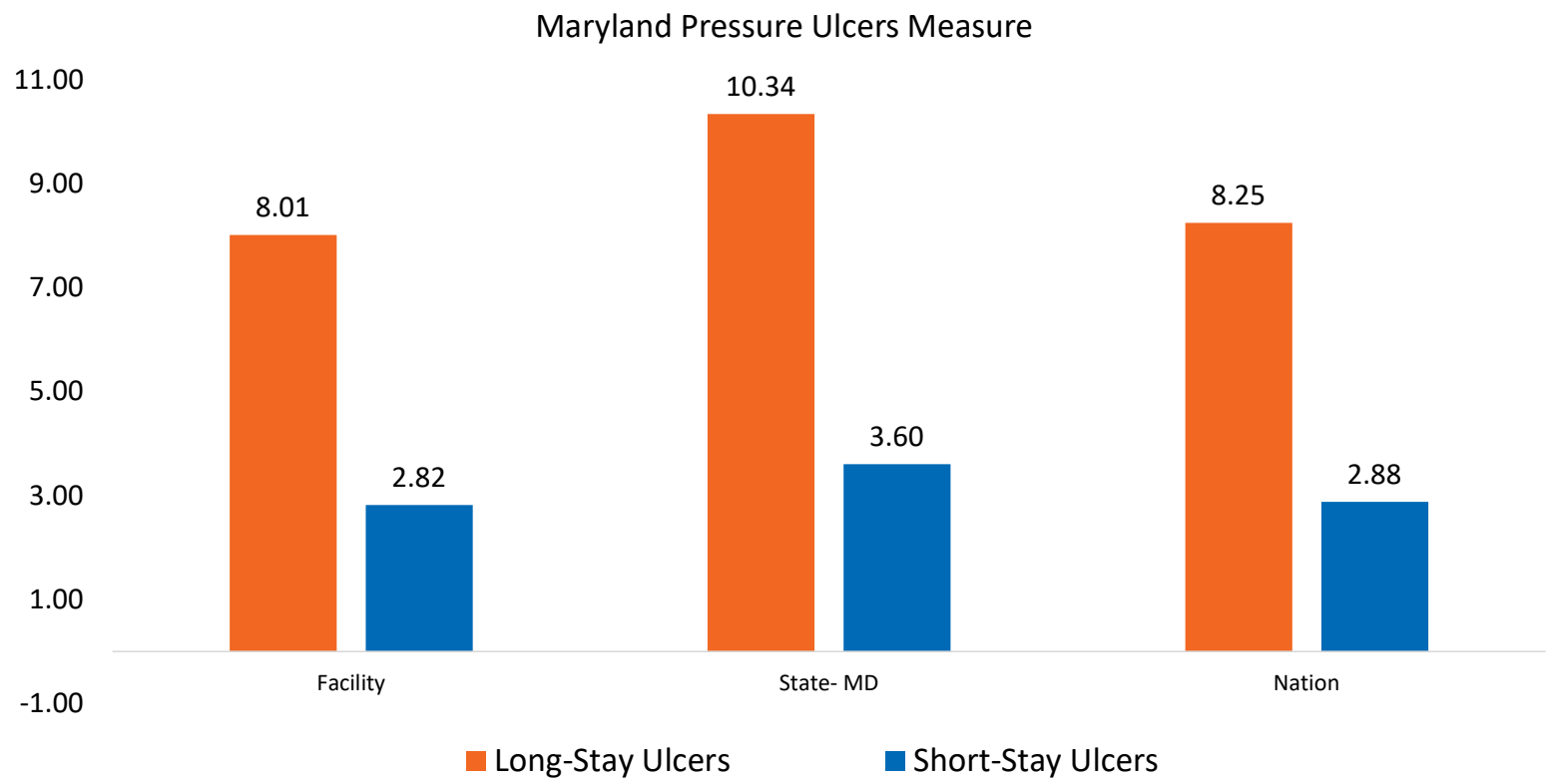


Variable	Facility	County	State
Overall Five-Star Rating	3.00	2.70	2.91
Health Inspection Rating	2.00	2.08	2.82
Staffing Rating	3.00	2.72	2.62
Quality Rating	5.00	3.73	3.73
Reported Total Nurse Staffing Hours per Resident per Day WEEKEND	3.87	3.39	3.39
Reported RN Staffing Hours per Resident per Day WEEKEND	0.92	0.67	0.59
Total nursing staff turnover	65.50%	52.30%	49.29%
Registered Nurse turnover	56.70%	51.99%	50.89%

Short-Stay and Long-Stay Pressure Ulcers



Associated F-Tags

	Facility	State- MD	Nation
F-686	0	35	2687
F-838	0	20	358
F-725	0	24	1046
F-727	0	1	505

Cost Center	TOTAL	PPD	TOTAL	PPD	TOTAL	PPD	TOTAL	PPD	TOTAL	PPD
Employee Benefits	$1,572,829	$28.89	$1,611,004	$30.47	$1,319,544	$31.58	$765,874	$26.05	$336,016	$24.17
Administrative & General	$2,805,986	$51.55	$2,964,548	$56.07	$2,643,884	$63.28	$1,910,748	$64.98	$1,124,797	$80.90
Plant Operation, Maintenance And Repairs	$770,724	$14.16	$921,308	$17.42	$775,231	$18.56	$639,214	$21.74	$240,079	$17.27
Laundry And Linen Services	$34,011	$0.62	$34,897	$0.66	$31,994	$0.77	$1,680	$0.06	$76,529	$5.50
Housekeeping	$634,461	$11.66	$643,968	$12.18	$672,185	$16.09	$447,403	$15.22	$184,384	$13.26
Dietary	$1,267,810	$23.29	$1,352,846	$25.59	$1,549,786	$37.09	$987,566	$33.59	$459,191	$33.03
Nursing Administration	$355,321	$6.53	$602,727	$11.40	$599,782	$14.36	$528,465	$17.97	$267,027	$19.21
Central Services And Supply	$391,610	$7.19	$348,520	$6.59	$826,995	$19.79	$441,938	$15.03	$194,402	$13.98
Pharmacy	-	-	-	-	-	-	-	-	$5,981	$0.43
Medical Records And Library	$277,996	$5.11	$147,492	$2.79	$199,645	$4.78	$82,292	$2.80	-	-
Social Service	$124,677	$2.29	$153,783	$2.91	$162,038	$3.88	$102,426	$3.48	$79,135	$5.69

Case Study Three

Fraudulent Documentation & Staffing

MDS 3.0 Quality Measures

USER'S MANUAL

Effective April 1, 2017

1. Ensure your data has integrity
2. Tell a connected and coherent story with your data
3. Ensure that your data story informs
4. Subject Matter Expertise is essential

ZIMMET HEALTHCARE SERVICES GROUP, LLC

Independent & Objective since 1993

120+ US-based employees dedicated to rationalizing the SNF-economy

Trusted by 4,000+ SNF provider & industry clients

Cross-Domain Consulting

Regulatory, Strategic, Workflow

- Reimbursement-Compliance
- Quality Innovations
- Reporting & Analytics
- Ancillary Innovations
- Advisory & Asset Monitoring
- Market Insights
- Payment System Reform

R² Reimbursement Reimagined

- Scalable PDPM/CMI Solutions
- Remote MDS Monitoring – full department Outsourcing
- HMO Authorizations
- Managed Care Contracting
- ISNP-Arbitrage
- In-House Corporate Support

zpax post-acute eXchange

- Consulting-enhanced software
- Open Development Platform & market
- Start-up incubator.

ConsulTech™ ECAPINTEL eCapIntel.com

- Comprehensive SNF analytics
- Rationalizing underwriting, business development, and policymaking.

ZHSG's diverse subject matter expertise spans Skilled Nursing's eight "Data Domains"; fragmented reimbursement, regulatory, and reporting silos that define the provider-profile. Our ability to cross-contextualize yields insights that are indiscernible from single-domain perspectives.

ZIMMET HEALTHCARE SERVICES GROUP, LLC

www.zhealthcare.com info@zhealthcare.com

R² Reimbursement Reimagined

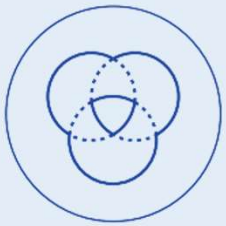
INTERVENTIONAL-REIMBURSEMENT:
Outsourced MDS & HMO Authorization

ECAPINTEL
eCapIntel.com

SNF INDUSTRY & PROVIDER ANALYTICS

zpax
post-acute eXchange
CONNECT

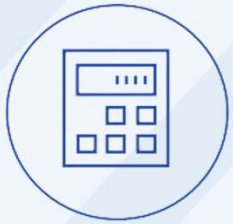
ConsulTech: Innovation @ the eXchange of Consulting & Technology



Transaction Advisory Asset Monitoring

Compliance Auditing

Clinical Reimbursement



Full-Spectrum Cost Reporting

Ancillary Innovations

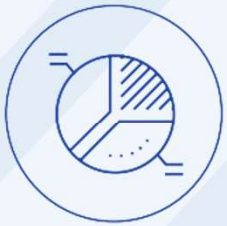
Innovative Solutions for the Post-Acute Care Industry

Regulatory Support

Quality Innovations – Five-Star Management

Litigation Support – Expert Witness

Managed Care / ISNP Rationalization



Strategy & Analytics

REGISTRATION NOW OPEN

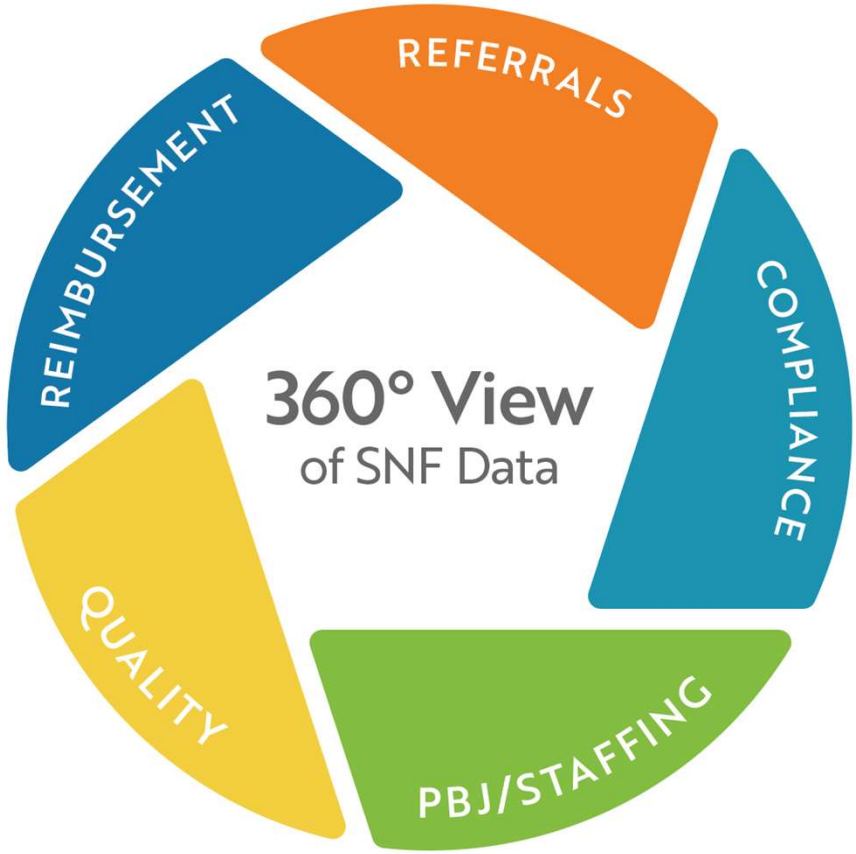
SCAN ME

ZIMMET HEALTHCARE SERVICES GROUP, LLC

SimpleComplete™

One simple suite for SNF success

The industry's only complete solution for reimbursement, referrals and regulatory compliance.



MDS predictive analytics.

Optimize PDPM, Five-Star/QMs and iQIES workflow

PBJ and staffing.

Simplify Payroll-Based Journal and staffing strategy

Referrals and reimbursement.

Build census and optimize claims revenue in real time

Scan code or visit simpleltc.com/demo to get started

QUESTIONS

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Thanks for joining us!

Webinar recording & slides available at:
www.simpleltc.com/data-defenders

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