



# Health Regulation Division Update

Senate Aging and Long-Term Care Committee | March 9, 2022

PROTECTING, MAINTAINING AND IMPROVING THE HEALTH OF ALL MINNESOTANS



**MDH Mission:**  
*“To protect, maintain and improve  
the health of all Minnesotans.”*

# Agenda

- Brief look back at 2017-2019
- COVID activities & impact on HRD regulatory activities
  - CMS guidance
  - COVID waivers
- Complaints/reports & findings overview
- AL licensure update
- Continued system improvements
- Overarching issues
- Legislative proposals

# Where We Were 2017-2019

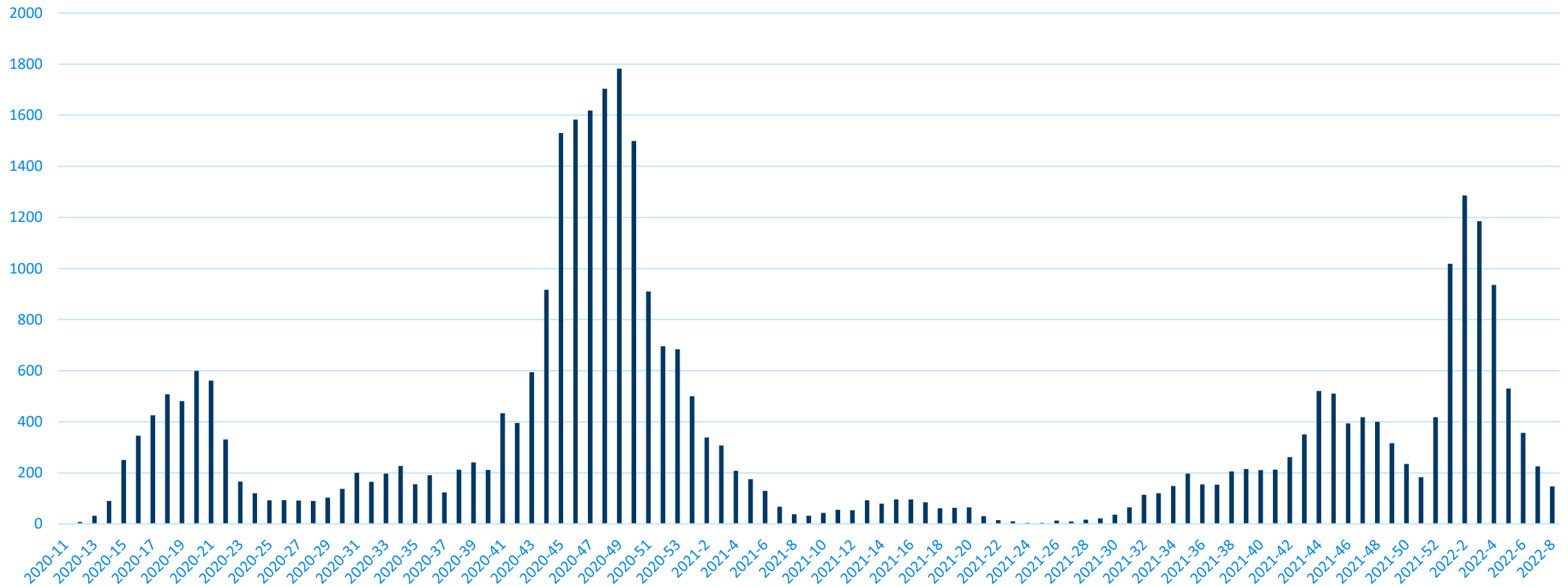
- Increasing numbers of self (facility) and consumer reports, growing backlogs in reviewing and investigating reports
- Intense media attention
- Commissioner transition
- Consumer and OLA reports to the Governor
- Debate but no bill in 2018
- Informal work groups convened: Assisted Living (AL) licensing, AL report card, dementia care certification, electronic monitoring, prevention strategies
- Bipartisan support of final AL legislation in May 2019

# Key Accomplishments 2020-2021

- On time launch of Assisted Living Licensure on August 1, 2021
- Organizational transformation within the Health Regulation Division
- Strengthened stakeholder relationships through regular consultation

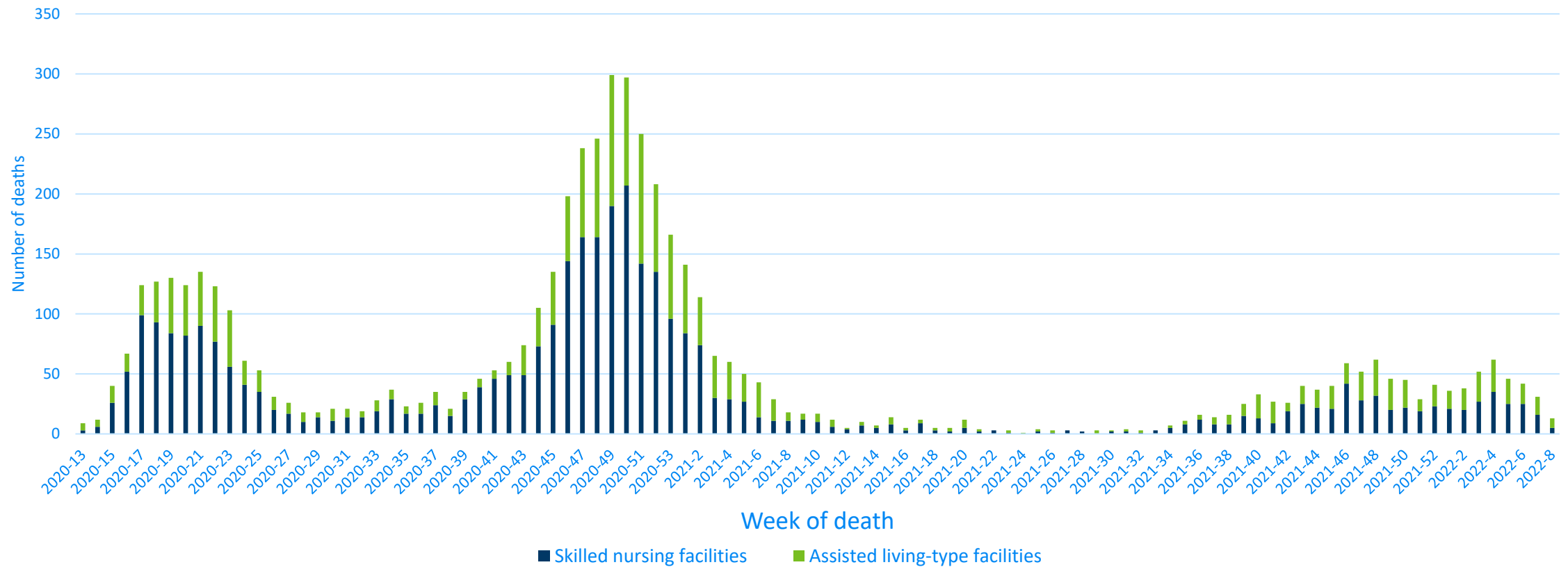
# Trends in Long Term Care COVID-19 Cases

## COVID-19 Cases in Assisted Living and Skilled Nursing Facility Residents



# Trends in Long Term Care COVID-19 Deaths

## COVID-associated deaths in LTC residents



# Supporting LTC During COVID

- LTC Battle Plan team
  - Crisis staffing support, testing, vaccination
- COVID case managers
- Infection control support/consultation
- MNNG Response Teams
- Alternate Care Sites/hospital decompression sites



# Impact of COVID-19 on Division Operations

- At peak, upwards of 80% of HRD staff reassigned to support COVID-19 emergency response
- CMS directed states to prioritize and focus their work differently:
  - Complaints at the highest triage level
  - Focused Infection Control surveys
- State survey work has used similar prioritization process
- Frequent changes in federal guidance for LTC, with increased need for education and Technical Assistance for providers
- Temporary relief from certain requirements for some license types

# MDH Health Regulation COVID Waivers

HRD approved waivers for the following areas during the pandemic:

- [Health Occupations](#)
- [Home Care](#)
- [Hospitals](#)
- [Mortuary Science](#)
- [Nursing Homes](#)
- [Office of Health Facility Complaints](#)
- [Supplemental Nursing Service Agencies](#)

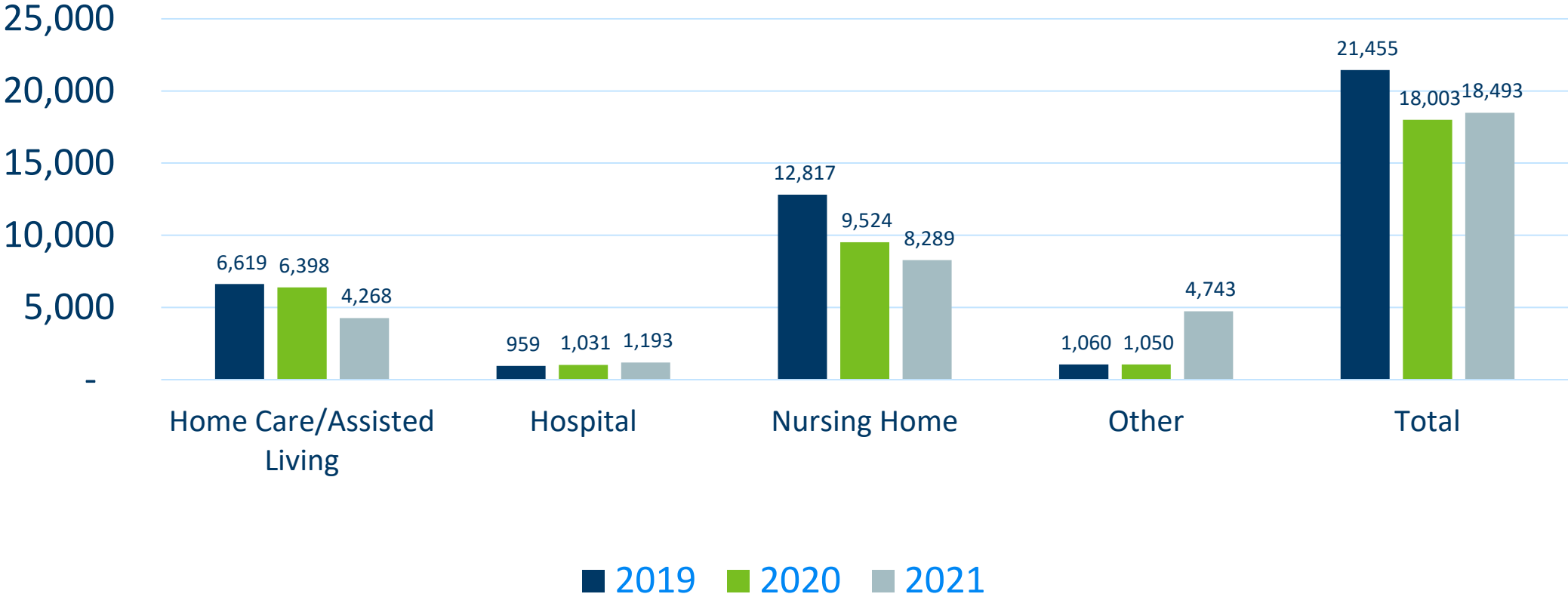
# Current COVID Waivers

In January MDH reinstated waiver flexibilities for Temporary Emergency Provider Relief to address:

- Hospital and Nursing Home Moratorium Bed Waivers
- Nursing Home layaway bed

# Comparative Data

## Complaints and Reports Received 1/1 - 12/31



# Federal Complaints Triaged as Immediate Jeopardy (IJ)

## State FY 2019

- Triaged as an IJ = 794
- 323 resulted in substantiated complaints

## State FY 2020

- Triaged as an IJ = 1,438
- 517 resulted in substantiated complaints

## State FY 2021

- Triaged as an IJ = 2,913
- 734 resulted in substantiated complaints

# Federal Citations Frequently Cited

## State FY2019

- F689 Freedom from accident hazards
- F880- Infection Control
- F684 Quality of Care
- F677 ADL Care for dependent residents
- F609 Failure to report alleged violations of abuse/neglect

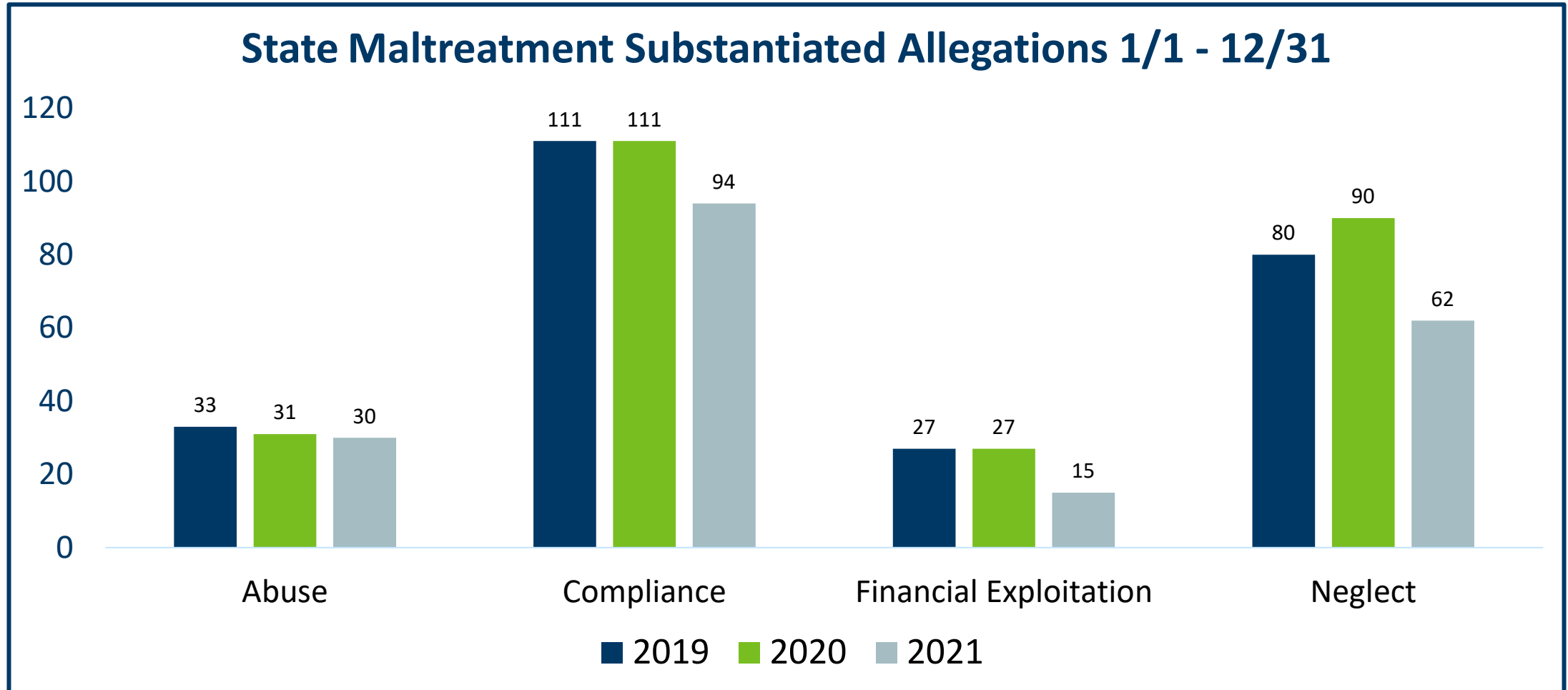
## State FY2020

- F880- Infection Control
- F689 Freedom from accident hazards
- F609 Failure to report alleged violations of abuse/neglect
- F684 Quality of Care
- F610 Failure to investigate allegations of abuse/neglect

## State FY2021

- F884- Reporting to NHSN
- F880 Infection Control
- F609 Failure to report alleged violations of abuse/neglect
- F689 Freedom from accident hazards
- F610 Failure to investigate allegations of abuse/neglect

# State Maltreatment Substantiated Findings



# SFY 2022 Home Care/Assisted Living Top Deficiencies

## Home Care State FY 2022

7/1/2021 to 2/1/2022

1. Content of Service Plan (144A.4791, subd. 9(f))
2. TB Infection Control (144A.4798 subd. 1)
3. Individual Abuse Prevention Plan (144A.479 subd. 6(b))
4. Required Annual Training (144A.4796 subd. 6)
5. Employee Records (144A.479 subd. 7)

## Assisted Living State FY 2022

8/1/2021 to 2/1/2022

1. Infection Control Program (144G.41 subd. 3)
2. Food Code (144G.41 subd. 1 (13)(i)(B))
3. Fire Protection and Physical Environment (144G.45 subd. 2 & 144G.81 subd. 1)
4. Resident Grievances/Reporting Maltreatment (144G.41 subd. 7)
5. Disaster Planning and Emergency Preparedness (144G.42 subd. 10)





Minnesota

## Assisted Living Licensure

# Licensure Structure Background

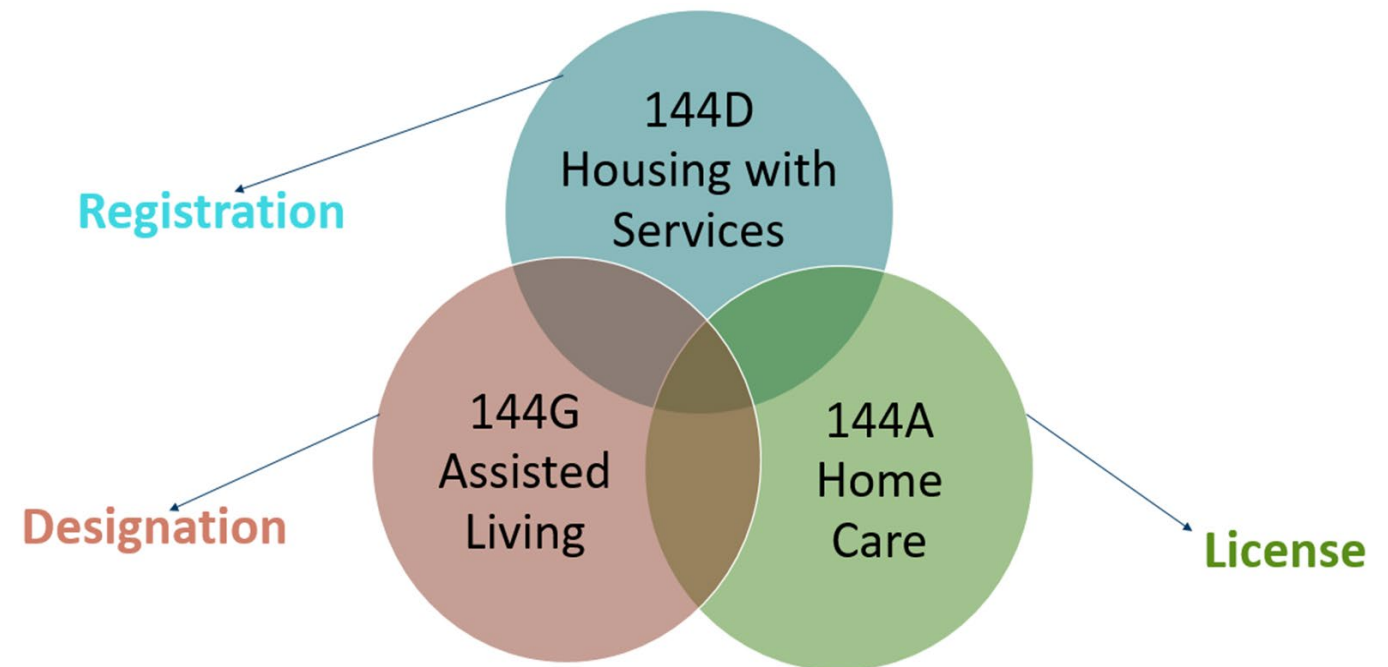
## Assisted Living Establishments

### 1980's

- 0 Assisted Living Establishments

### Before August 1, 2021

- 2,480 Housing With Services
- 1,663 Home Care Providers

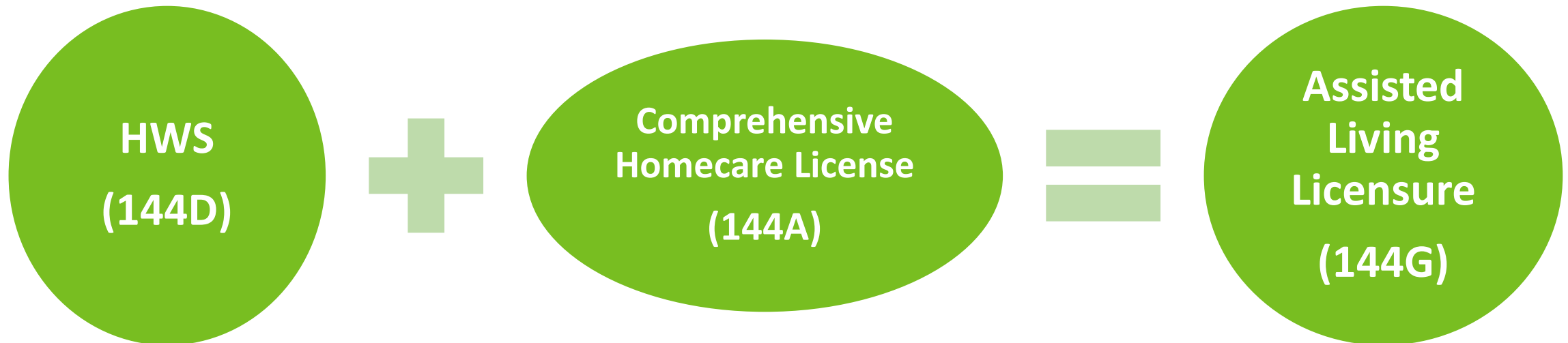


# Assisted Living Licensure

May 2019

## Passage of Assisted Living Licensure Law (144G)

- Established Assisted Living Licensure and removed Housing with Services Registration
- Effective August 1, 2021



# Licensing and Rulemaking Timeline

## Licensing Timeline

- 2019 Assisted Living Licensure was adopted
- MDH held 17 teleconference calls in addition to many conference presentations to help providers, residents, and others better understand regulations
- 2020 December Special Session passed technical revisions for proper implementation
- April 30, 2021 – June 1, 2021, MDH took in 2000+ applications
- MDH processed through 2000+ applications in 3 months
- Providers licensed August 1, 2021, licensure active

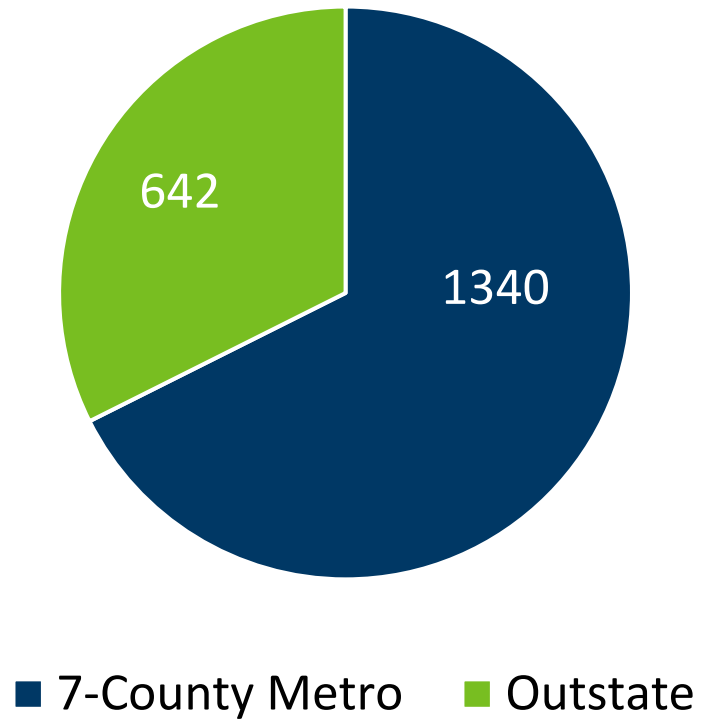
## Rulemaking Timeline

- Expedited Rulemaking process began in 2019
- Rulemaking Advisory Committee established
- Statement of Need and Reasonableness (SONAR) released November 2020 with draft rules
- November 2020 MDH contracted Cost Analysis of draft rules
- December 2020 public comment period opened
- January 2021 public hearing held, with revisions February - May 2021
- MDH filed order adopting rules on June 11, 2021
- Notice of Rule adoption published on July 19, 2021

- Assisted Living Licensure Rules cover 18 areas
- Engaged public comments and stakeholder feedback, countless hours involved
- OAH Chief Judge Jenny Starr commended and applauded MDH and stakeholders for “carefully crafting rules”

# License Data – Facilities by Region

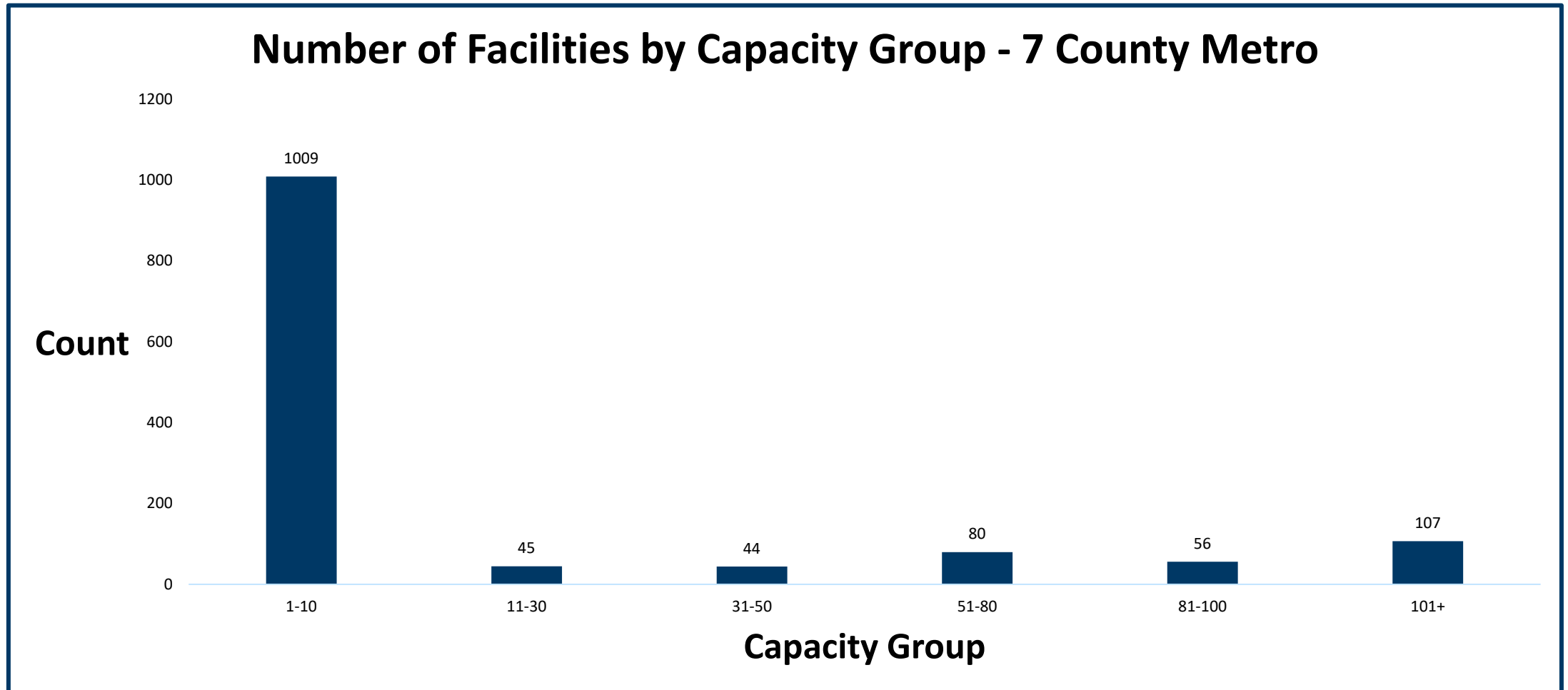
## ALF & ALFDC Facility Count by Region



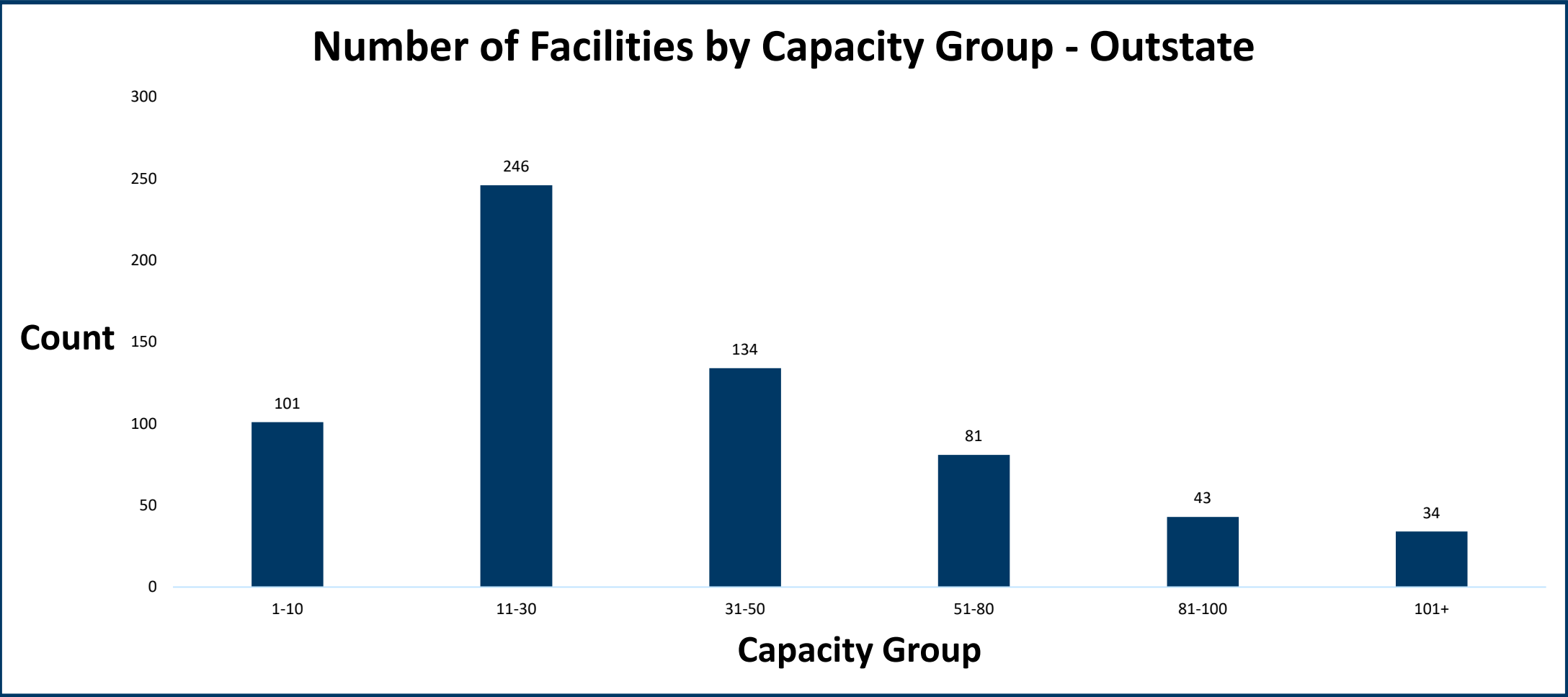
# STATS



# License Data – Facilities by Capacity Group, Metro

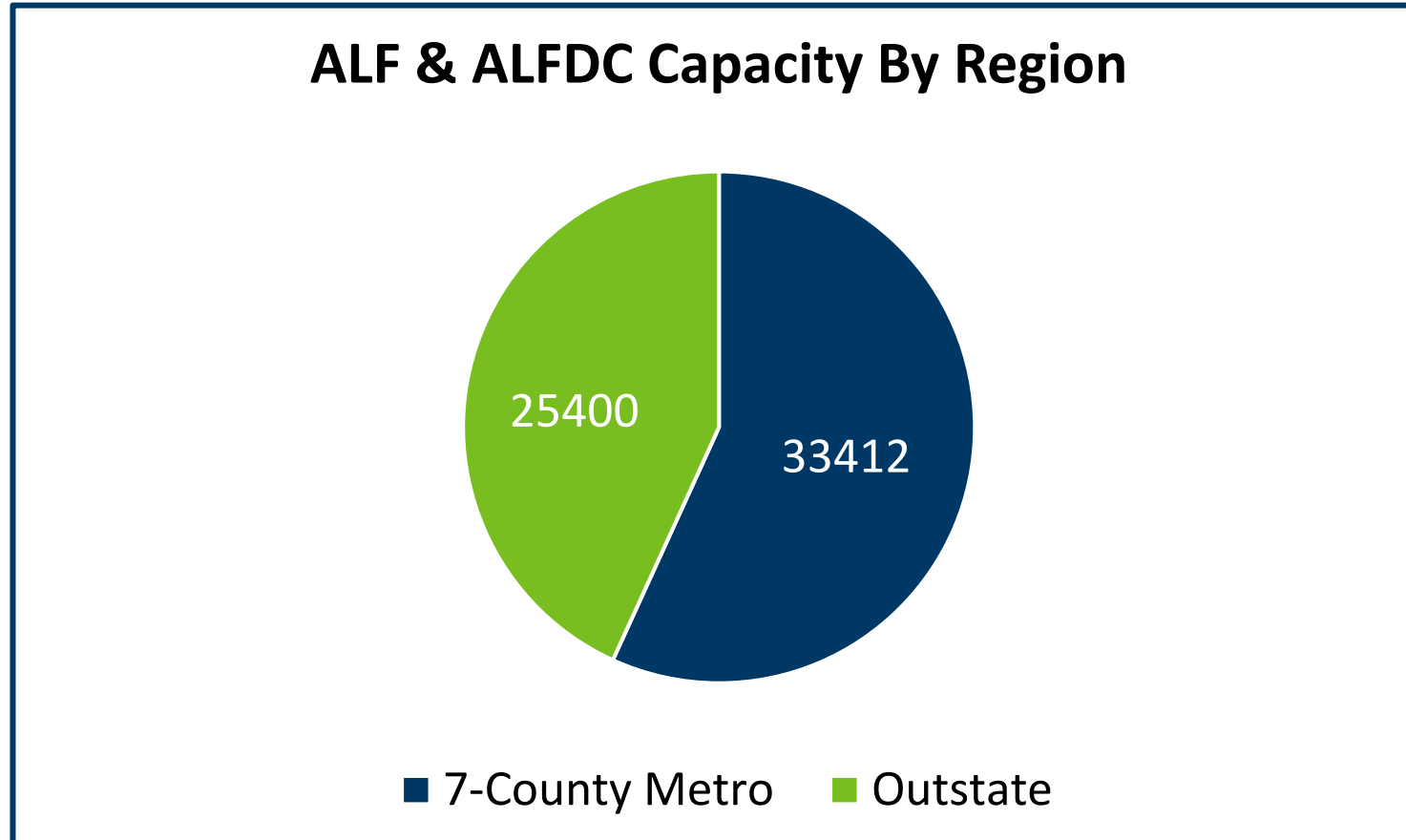


# License Data – Facilities by Capacity Group, Outstate





# License Data - Capacity by Region



- Added resident protections and rights, including 24 awake staff requirement for providers
- Requirements for Licensed Assisted Living Director and 24-hour awake staff
- Ability to survey physical plant

# Continued Improvements

- Public dashboard finishing development
- SSIS project nearing build completion
  - Will link MN's three lead investigative agencies into one common software system
- Beginning to explore implementation of Collaborative Safety

# Collaborative Safety Overview

- Built on the work of DHS, our partner regulatory agency, to integrate the Collaborative Safety approach to safety science
- Safety science principles align with MDH mission, vision, and values
- Note: This new process does not replace our current enforcement process

# Overarching Issues Facing LTC

- Trend of declining SNF population; dramatically accelerated during COVID
  - Median occupancy rate dropped from 85% in January 2020 to 68% in January 2021 (US)
- Ongoing staff shortages
  - Many providers limiting admission of new residents
- Rapidly increasing wage pressure/competition for workers

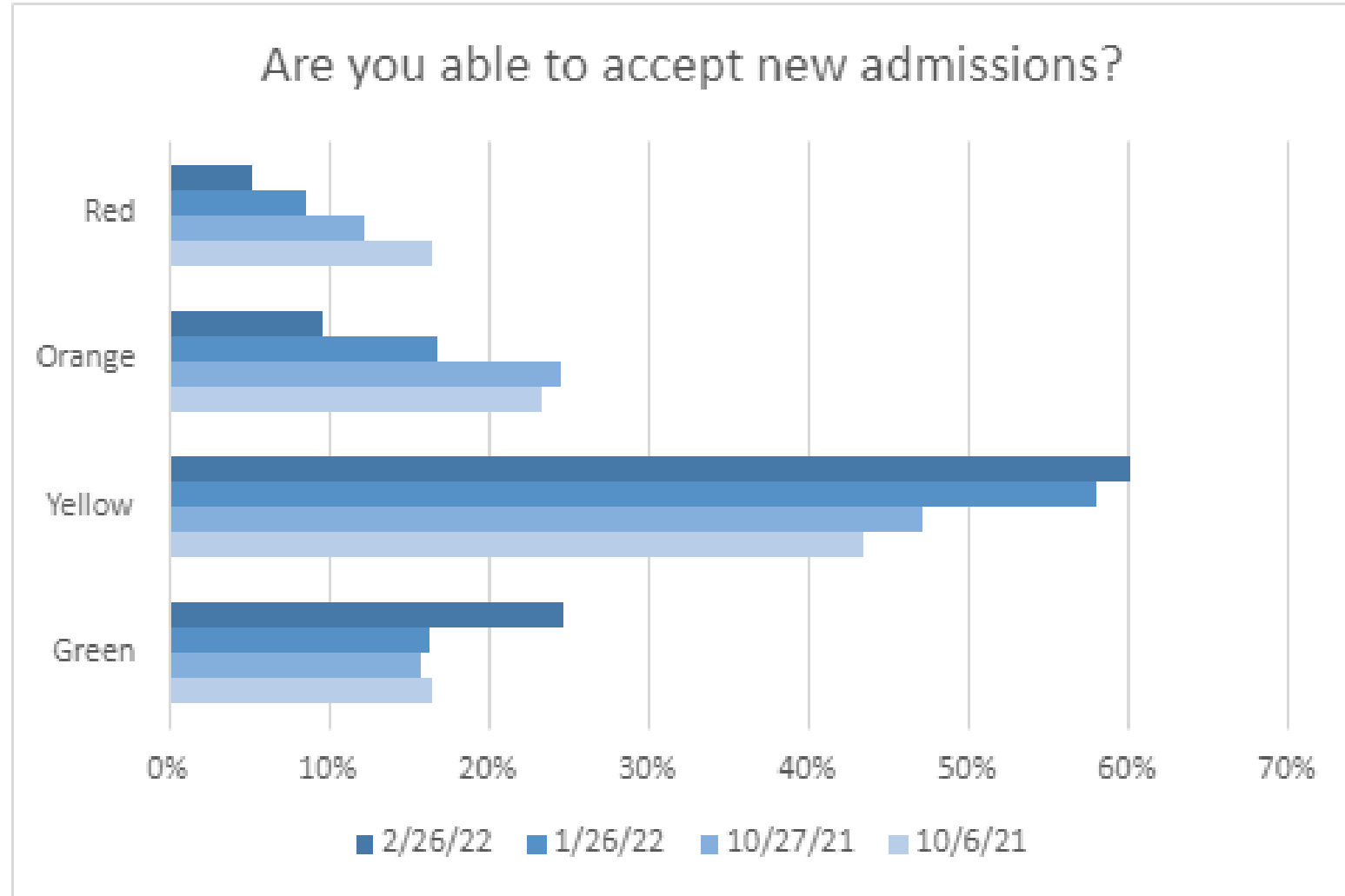
# Staffing Self-Assessment: SNFs Accepting New Admissions

**RED Crisis Level:** Unable to take admissions today and likely for the foreseeable future

**ORANGE Crisis Level:** Unable to take admissions today and possibly for the foreseeable future

**YELLOW Crisis Level:** Assessing admissions based on acuity levels-only taking those with minimal care needs

**GREEN Crisis Level:** Normal admission practices are uninterrupted



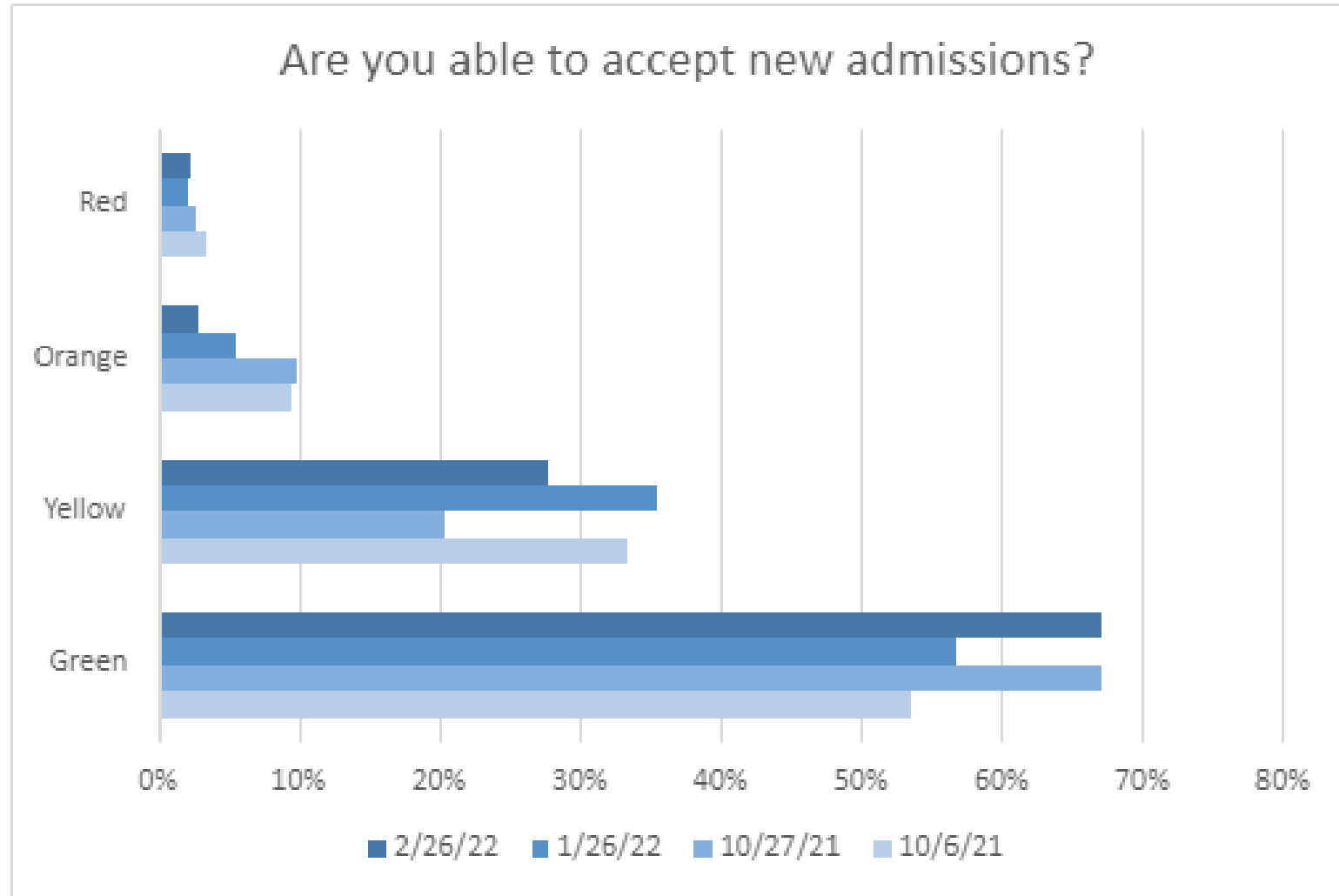
# Staffing Self-Assessment: ALs Accepting New Admissions

**RED Crisis Level:** Unable to take admissions today and likely for the foreseeable future

**ORANGE Crisis Level:** Unable to take admissions today and possibly for the foreseeable future

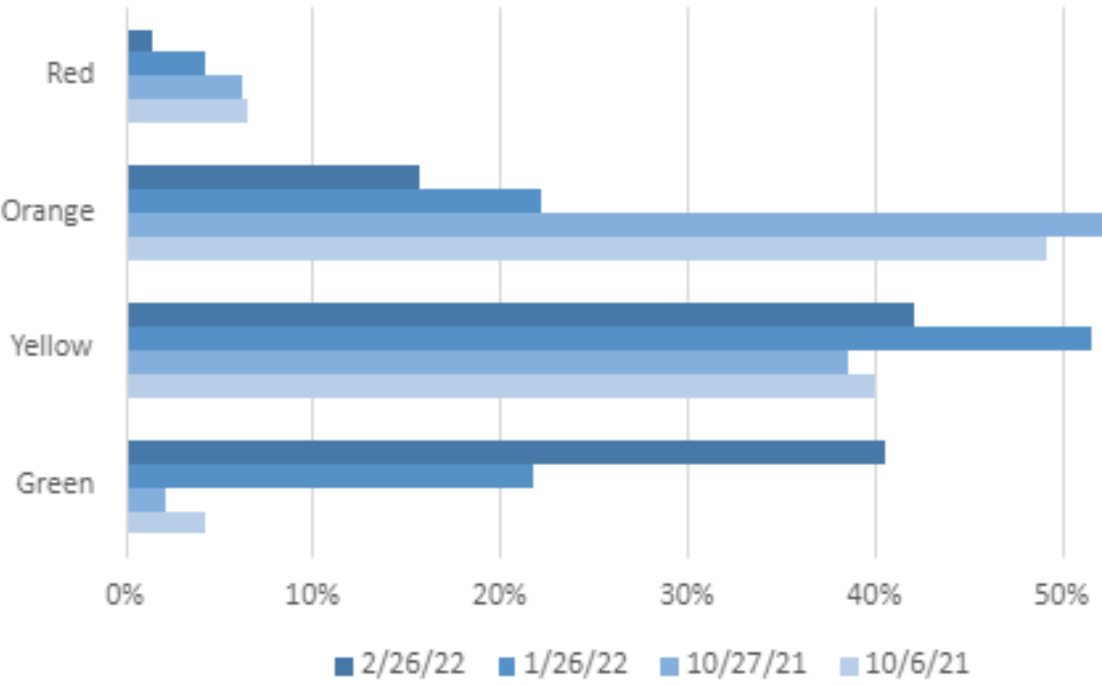
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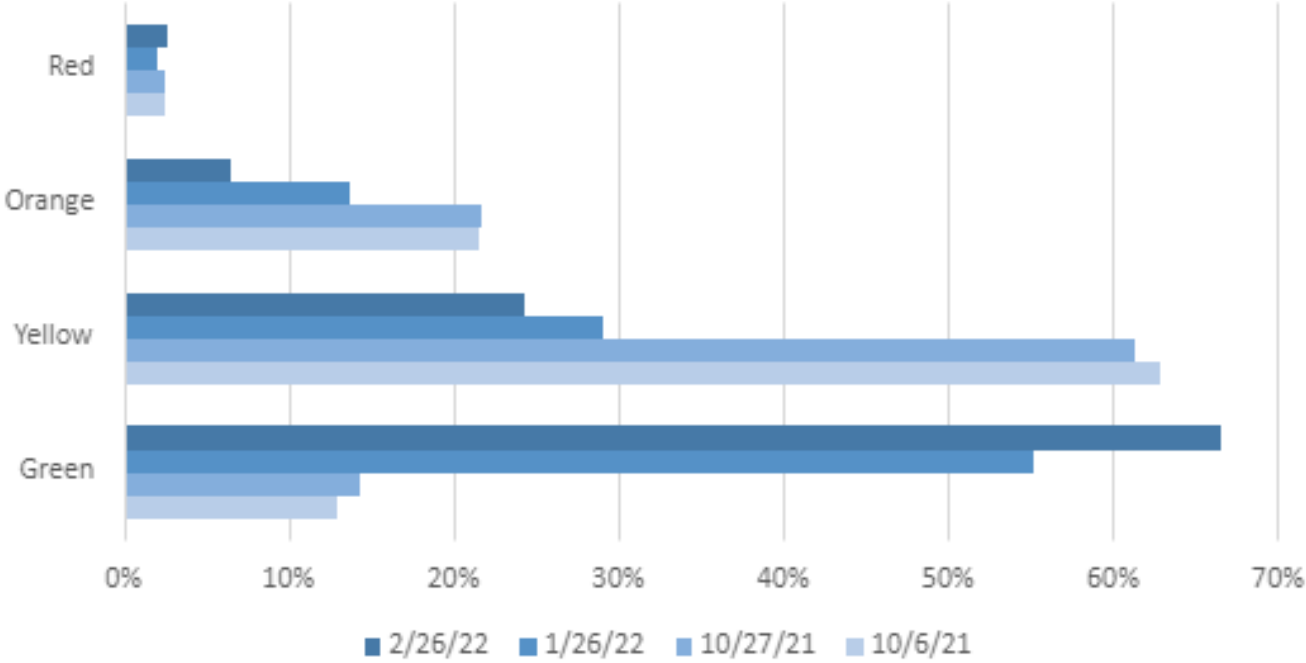


# Staffing Self-Assessment

SNF Total Average Score



ALF Total Average Score





# Overarching Issues Facing HRD

- Return to normal operations
  - Staffing challenges
  - Prioritization of surveys during pandemic = deferred work that now must be resumed
  - Resuming regular survey/certification cycle when providers are still under extreme stress

# Sustain Public Health Programs

Align fee resources with appropriations to ensure MDH can meet statutory requirements, provide expected services to fee-payers, and protect public health.

## **Assisted Living Licensure and Home Care \$4.168M SGSRF**

- Increases the appropriation within available fee revenue for both assisted living and home care licensures to ensure adequate staffing for oversight of health and safety requirements in assisted living facilities and home care agencies, to align with revenue, and to meet program demand.

## **Engineering Plan Review Fees \$170,000 SGSRF**

- Would enact an increase across all categories of engineering plan review fees to cover current expenses and close the shortfall resulting from the complexity and number of plan review requests increasing with the expansion and modernization of nursing homes and hospitals. Plan review fees vary based on the expected cost of the construction project and have not been increased in over a decade.

# Sustain Public Health Programs

## **Safety Improvements for LTC Facilities \$5.5M GF**

- Temporary 3-year competitive grant program for MDH-licensed LTC facilities (including skilled nursing facilities and assisted living facilities) to apply for grants for projects to reduce the risk of COVID transmission such as physical space improvements, technology improvements, and other modifications to increase the safety, quality of care, and well-being of residents.

# Sustain Public Health Programs

Policy changes to ensure MDH can provide expected services to fee-payors, and to protect public health.

## **COVID 19 Waivers**

- Hospital Construction and Moratorium or Bed Capacity and Fee
- Nursing Home Moratorium, Bed Capacity, Layaway or Nonlayaway Beds and Fees

## **Assisted Living Licensure Technical Changes**

- New needs and changes have emerged from the assisted living licensure implementation process. These revisions are based upon stakeholder engagement, licensing activities, and regulatory enforcement all of which are focused on the continued goal of ensuring resident safety, rights and quality care within this new licensure.

# Sustain Public Health Programs

## Case Mix Review

- Technical language changes to clarify when a Significant Change in Status Assessment (SCSA) after therapy and isolation needs to be completed. These changes will eliminate a significant amount of administrative burden for staff at a time when facilities are already challenged with staffing levels by reducing the number of SCSAs required to be completed by staff.

## Nursing Home Change of Ownership

- Brings the state change of ownership (CHOW) processes for nursing facilities into alignment with the stronger, existing Federal CHOW process, with the goal to prevent adverse outcomes for residents of nursing homes when changes of ownership occur. Supports more effective compliance review of long-term care facilities, identification of owners, and enforcement actions.

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