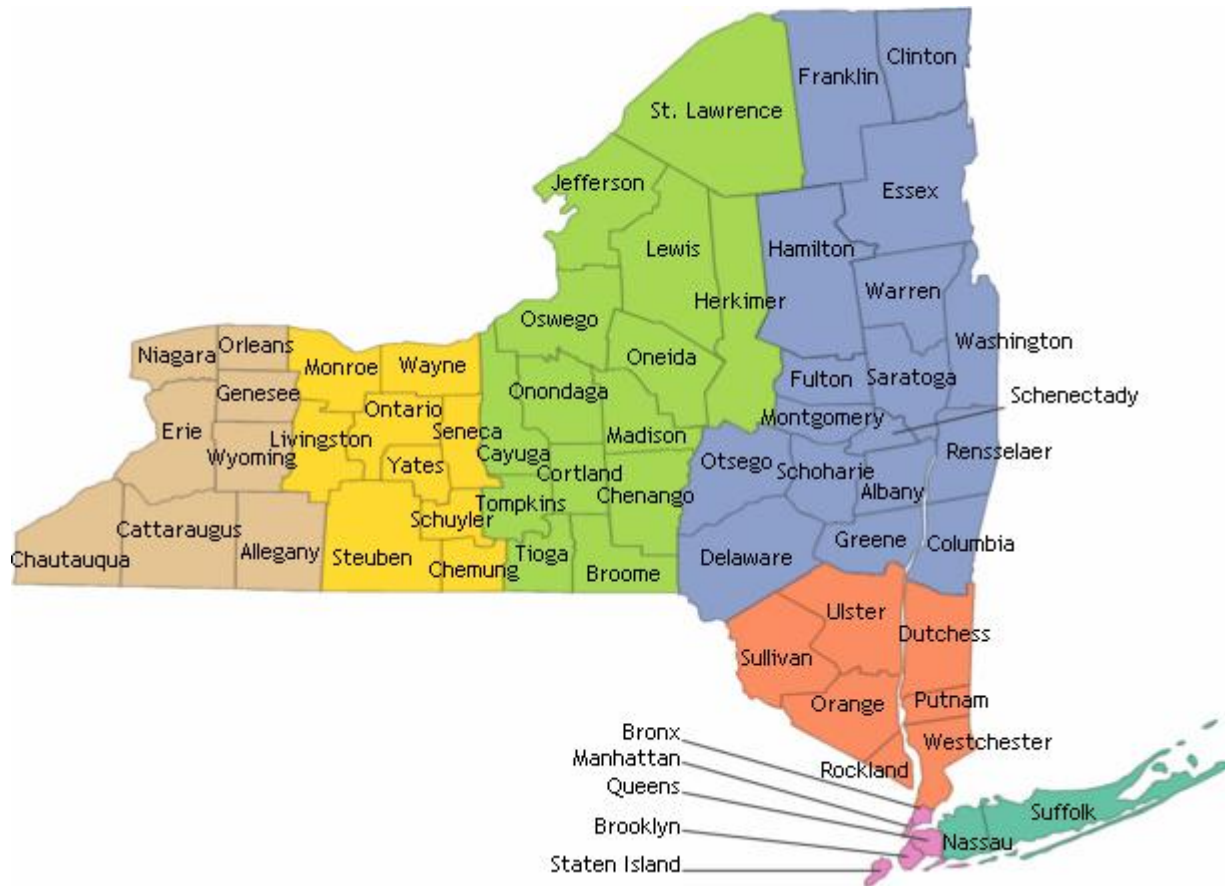


Nursing Home Oversight in New York State: A Regional Assessment



Nursing Home Regional Offices

[Capital District Regional Office](#)

[Central New York Regional Office](#)

[Western Region - Buffalo](#)

[Western Region - Rochester](#)

[New York Metropolitan - New Rochelle](#)

[New York Metropolitan - Long Island](#)

[New York Metropolitan - New York City](#)

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EXECUTIVE SUMMARY

BACKGROUND. Vulnerable nursing home residents depend on the state to hold nursing home providers accountable for the care they receive by identifying problems that need correction during regular inspections and investigations of complaints. Thus, the state surveyor's ability to accurately identify problems is crucial. Unless problems are identified and rated accurately in terms of their seriousness and number of residents impacted, they may not be corrected or seen as important by the facility. In 2005, the Long Term Care Community Coalition released a report on New York State's ability to protect nursing home residents through its inspection or surveillance program. The comparison of New York's performance to that of other states and the federal government revealed a number of serious weaknesses in New York's ability to protect residents.

PREMISE. Low state citation rates may not indicate that a nursing home is giving good care, but rather that existing problems are not being identified. Recent studies have indicated nationwide problems related to the identification and ratings of nursing home issues. The U.S. Government Accountability Office (GAO), referring to states across the country, found that the continuing prevalence of state surveyor understatement of actual harm deficiencies is disturbing. This report also stated that significant weaknesses in federal and state nursing home oversight, which GAO has identified in a series of reports and testimonies since 1998, included periodic state inspections that understated the extent of serious care problems and considerable state delays in investigating complaints alleging harm to residents.

GOAL. This study was conducted as a follow-up to our 2005 study to further analyze the effectiveness of New York's oversight system by examining and comparing the state's regional offices in order to identify specific strengths and weaknesses and develop recommendations to improve the oversight functions in each of the offices and, thus, for nursing home residents statewide.

METHODOLOGY. Quantitative data from the CMS's Medicare Website and the NYS Department of Health's Website were analyzed. Qualitative data were taken from a random sample of 10 percent of the latest survey findings in each of the seven regions (see map on report cover for outline of regions and the counties falling within each).

SELECTED FINDINGS.

- Identification of care problems is a problem in all of the regions. All regions were found to be below the national average. New York City's performance was the worst while the Central office's was the best.
- Complaint substantiation rates were low across the regions. Less than six percent of all complaints are substantiated (e.g., a statement of

deficiencies was written related to the complaint). Buffalo had the highest substantiation rate while New Rochelle had the lowest.

- All of the regions' deficiency ratings of harm were below national averages. Most of the state deficiencies cited were rated as having only the potential to cause harm. However, compared to the other regions, the Capital region stands out by writing the most deficiencies at the actual harm level. On the other hand, New Rochelle wrote no deficiencies at this level and almost none as immediate jeopardy. New York City wrote the most deficiencies at the immediate jeopardy level.
- Except in the Capital region, most of the deficiencies cited in NYS were rated as isolated - affecting only a few residents. The Capital region rated over half of its deficiencies as being a pattern.
- Over one-third of all facilities are fined in the state. New York City lags behind the rest of the state in this area while Rochester fined the highest percentage of facilities. Overall, NYS fines below national averages.

EXAMPLES OF SURVEYOR SEVERITY RATINGS THAT ARE TOO LOW

A sulfa drug was repeatedly administered to a resident with a known allergy to sulfa containing drugs. The resident was documented as being in pain, swelling of the face, eyes, lips and both legs, shortness of breath, increased agitation, difficulty breathing, unresponsiveness and foaming at the mouth. The negative effects on the resident lasted for four days and the resident was transferred to the hospital with hypoxia, congestive heart failure and probable pneumonia.

Citation was rated as causing no harm.

A resident, who is alert, who was to be taken to the toilet every two hours, was found sitting in a urine soaked bed. She said she had been wet for a few hours. **Citation was rated as causing no harm.**

A resident's blood pressure was not monitored as ordered. The resident was transferred to the emergency room multiple times with uncontrolled hypertension. **Citation was rated as causing no harm.**

REASONS FOR DIFFERENCES. The study looked at many variables to discover why some regions were better than others.

- Confusion about how to define actual harm and immediate jeopardy as well as surveyor experience level and use of contract surveyors seemed to make a difference in surveyor performance.
- Our finding that similar deficiencies were rated differently by different surveyors (both within and across region) indicated a level of uncertainty.
- Regions with more state employees and no contract staff, or more experienced workers (three years+), identified more problems and wrote the most deficiencies.

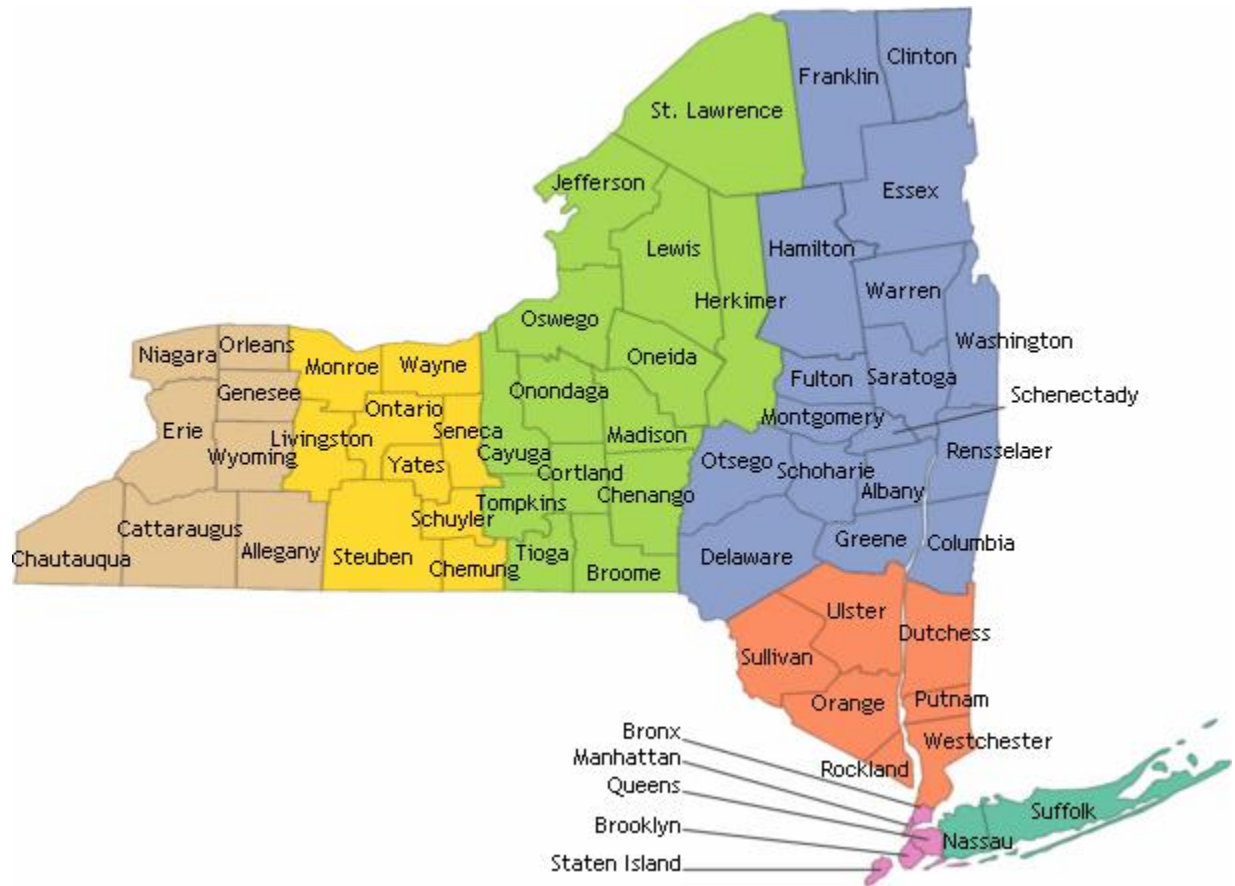
- Neither timing of surveys, staffing levels in the nursing homes nor the use of resident/family/significant other interviews appeared to have a positive correlation with the identification of deficiencies.

CONCLUSION. The fact that all regions had areas of strength, or comparable strength, and weaknesses may indicate that DOH concentrates its surveyor training on one or two identified weak areas. Although the reason for this may be limited resources, this seems to indicate a “crisis mode” manner of operation in which problems in a region are “triaged” at the expense of developing a whole system that maintains good conditions. Working on only the most egregious problems at a time may mean DOH misses a chance to improve the entire nursing home survey and certification process, and ultimately the quality of care nursing home residents are receiving.

SELECTED RECOMMENDATIONS TO THE DEPARTMENT OF HEALTH

1. Address surveyor turnover by hiring an independent consultant to evaluate either why it is so difficult to hire surveyors and/or why surveyors leave before getting enough experience to be effective in those regions where the data indicate problems.
2. If contract workers must be used, make sure that only experienced ones are hired.
3. Analyze the strengths and weaknesses in each region and introduce findings into surveyor training.
4. Evaluate effectiveness of surveyor training by conducting pre- and post-testing of the effectiveness of the surveyor training that evaluates whether the training changed actual surveyor outcomes, not merely if the surveyors understood the training.
5. Increase the use of resident and family/significant other interviews to document citations by requiring all surveyors to document such interviews for each care related deficiency cited. Require all surveyors to telephone a family member/significant other for an interview for all residents determined to be ineligible for interviewing themselves.
6. Develop a process to prevent repeat deficiencies by mandating that all successful plans of corrections be in place until the following survey or until DOH determines that the plan is no longer needed by going onsite. In addition, DOH should mandate that if a facility wants to change the plan of correction, it must get approval from DOH and DOH must monitor any changes to plans of corrections.

Nursing Home Oversight in New York State: A Regional Assessment



INTRODUCTION

The vulnerable residents in our state's nursing homes depend on the state to hold nursing home providers accountable for the care they receive. This is accomplished by identifying problems that need correction during regular state inspections and through investigations of consumer complaints.

Because these state oversight mechanisms are crucial to ensuring resident safety, the ability of surveyors (the state personnel who conduct nursing home inspections, or surveys) to accurately identify and cite problems in a nursing home is essential. Unless problems are identified, and rated accurately, they may not be corrected or seen as important by the facility. Deficiencies are written by a surveyor when he or she finds that a facility does not meet a federal or state standard of care. Each deficiency, once identified, is rated for severity and scope. Severity relates to the level of harm (real or potential) to the residents and scope relates to the number of residents potentially or actually affected. Does the deficiency have the potential to cause more than minimal harm? Has it caused harm? Is it isolated, a pattern or widespread? The

accuracy of the determination of scope and severity is very important as it determines how quickly a problem needs to be corrected, the type of penalty that might be imposed and how serious the citation will be viewed by the facility.

In 2005, the Long Term Care Community Coalition released a report on New York State's ability to protect nursing home residents through its inspection and surveillance program. The comparison of New York State to other states and to federal oversight mechanisms indicated that New York is lagging in its ability to protect nursing home residents. Among its important findings, the report (available at http://www.ltccc.org/publications/documents/LTCCCMay2005Report_D7.pdf) indicated that New York State did not identify deficiencies very well and when it did identify problems, it did not rate them very well in terms of severity and scope. In addition, New York State's complaint substantiation rate was found to be lower than 40 other states.

PREMISE

Low numbers of citations or deficiencies may not mean that a nursing home is giving good care, but rather that problems are not being identified. Recent studies have indicated nationwide problems related to the identification and ratings of nursing home problems. The Government Accountability Office (GAO), referring to states across the country, found that the continuing prevalence of state surveyor understatement of actual harm deficiencies is disturbing.¹ This report also stated that significant weaknesses in federal and state nursing home oversight, which GAO has identified in a series of reports and testimonies since 1998, included periodic state inspections that understated the extent of serious care problems and considerable state delays in investigating complaints alleging harm to residents. Another study demonstrated a sharp drop in the percent of facilities that received one or more deficiencies that caused harm or immediate jeopardy from 2000 to 2003.² The authors point to other studies indicating an understatement of serious problems, rather than an improvement in care. And Senator Charles Grassley, Chairman of the Committee on Finance, who has held many hearings on the survey system, wrote to the administrator of the federal Centers for Medicare and Medicaid Services (CMS) in July 2004 to discuss a study his staff conducted on the nursing home survey and certification process from the surveyors' perspective. He stated that surveyors told his staff that their hands are "tied" routinely and that there is pressure to overlook or downgrade deficiencies. According to the surveyors interviewed, the scope and severity of surveys is being "low-balled." If a high level deficiency is cited, most of the time it is reduced to a lower level.³

¹ All footnotes refer to a reference list at the end of the report. GAO Report, July 2003.

² Harrington, 2004.

³ Grassley, C., July 7, 2004. Letter to Mark McClellan, Administrator, Centers for Medicare and Medicaid

GOAL OF THIS STUDY

This study was conducted as a follow-up to our 2005 study to further analyze the effectiveness of New York State's inspection and complaint systems by comparing the seven different nursing home regional offices in New York State to each other, in terms of deficiency writing and complaint substantiation. In addition, the use of fines was examined. Each regional office inspects the nursing homes in their region. What are the weaknesses and strengths in each region? If there are differences in regions, the study hopes to further the state's capability to oversee the regions' ability to protect residents by making recommendations for improvement.

METHODOLOGY

Project staff analyzed a number of different quantitative and qualitative data. The following quantitative data was collected from the CMS Medicare.gov and the NYS Department of Health's website during the months of August to September 2005:

1. Staffing levels of every nursing home
2. Dates of every survey for every nursing home over the last three years
3. Total number of beds for every home
4. Total numbers of deficiencies (broken down by severity and scope)
5. Percent of substantiated complaints

In addition, information on state fines was gathered as of February 9, 2006. The amounts included all fines from 2002. Other quantitative data consisted of survey staff numbers (including years of experience and source of employers) by region.

Qualitative data consisted of a random sample of 10 percent of the latest survey findings (SODs – Statements of Deficiencies) in each region. If the original random sample did not contain 10 percent of facilities with deficiencies to evaluate, additional facilities were selected. In all, 70 SODs were reviewed. Two evaluators read each SOD, recorded documented sources of findings and scope and severity of each citation. In addition, scores were made of the number of times both evaluators disagreed or agreed with a surveyor's rating of scope and severity. After all evaluations were documented on a table, agreements and disagreements were discussed. If the two evaluators could not agree, the findings were removed and are not part of the final findings.

THE REGIONS⁴

<u>REGION</u>	<u>NUMBER OF BEDS TO MONITOR</u>	<u>NUMBER OF HOMES TO MONITOR</u>	<u>SPONSORSHIP OF THE HOMES</u>	<u>HOSPITAL-BASED HOMES</u>
Buffalo	12,082	83	Profit – 38, Nonprofit – 36, Government – 9	Yes – 12, No – 71
Capital	9,240	68	Profit – 19, Nonprofit – 34, Government – 15	Yes – 9, No – 59
Central	13,311	92	Profit – 33, Nonprofit – 53, Government – 6	Yes – 13, No – 79
Long Island	16,430	78	Profit – 59, Nonprofit – 16, Government – 3	Yes – 6, No – 72
New Rochelle	14,409	89	Profit – 43, Nonprofit – 40, Government – 6	Yes – 9, No – 80
New York City	45,956	181	Profit – 97, Nonprofit – 78, Government – 6	Yes – 9, No – 172
Rochester	9,092	62	Profit – 26, Nonprofit – 29, Government – 7	Yes – 12, No – 50
Total NYS	112,128	653	Profit – 315, Nonprofit – 286, Government – 52	Yes – 70, No – 583

FINDINGS

IDENTIFYING DEFICIENCIES: HOW WELL DOES EACH REGION IDENTIFY PROBLEMS AND WRITE DEFICIENCIES?

Number of Deficiencies Cited

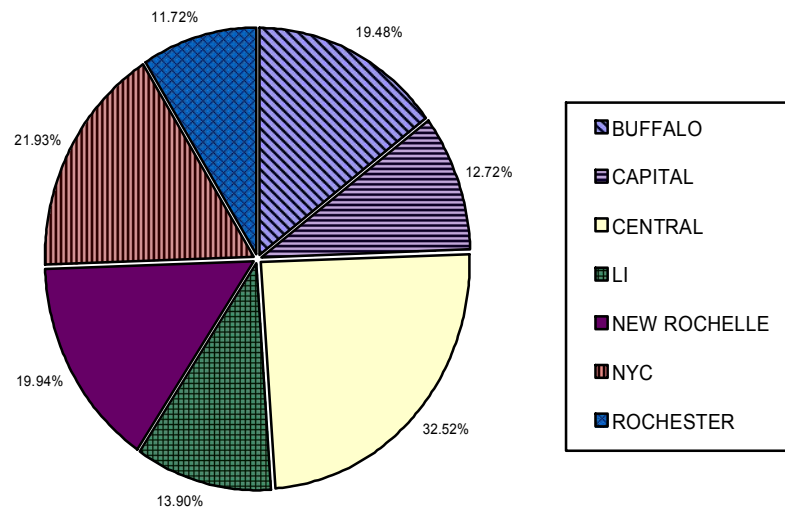
All regions were found to be below the national average of deficiencies per facility – 9.2 in 2004⁵. Looking at the regions separately, the study found that even though the surveyors in the New York City had to inspect the care of almost four times the average number of nursing home residents (see the Regions table above), and over twice the number of nursing homes as those in the other regions, they did not cite the most deficiencies. Of the 2,911 deficiencies cited statewide, most were cited by the Central regional office

⁴ Data from CMS website: www.medicare.gov.

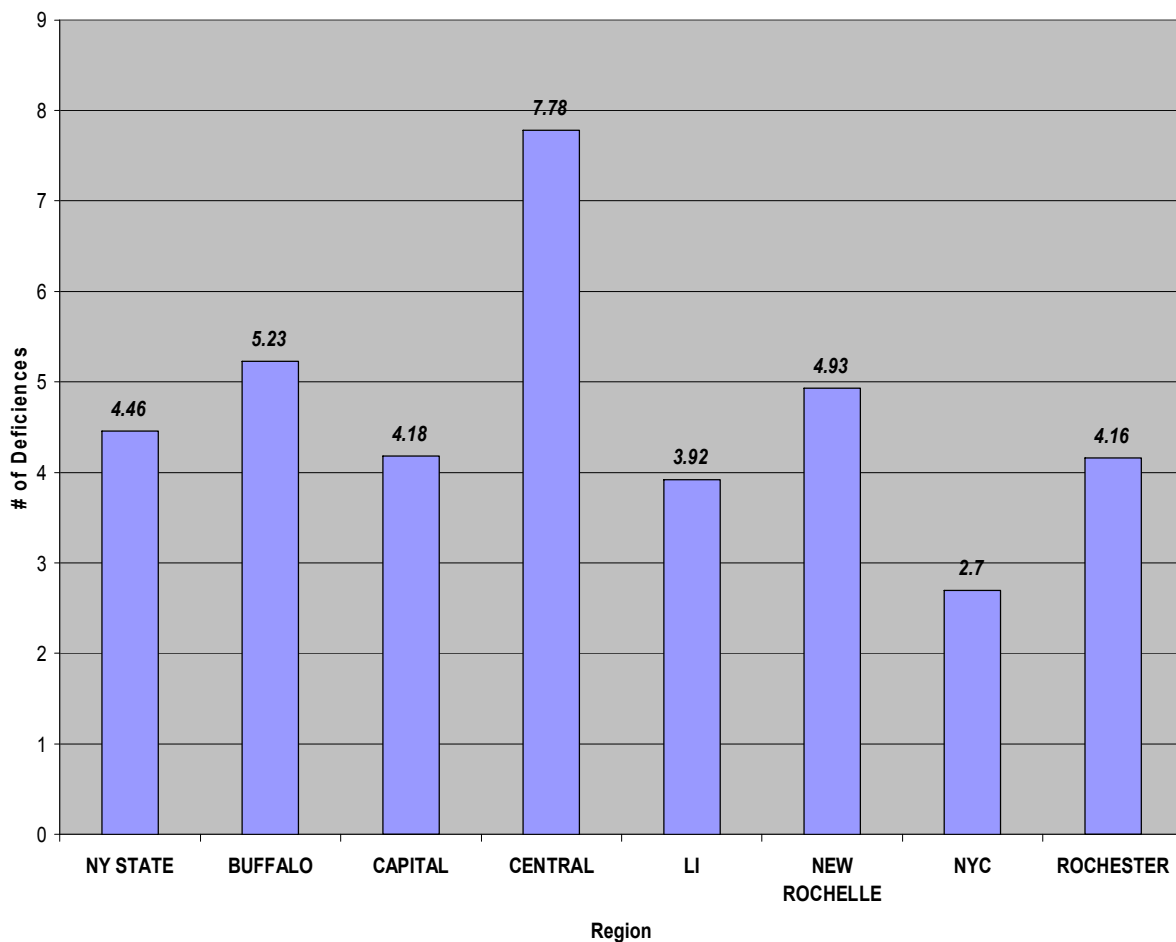
⁵ Harrington, C., August 2005.

(32.5%). New York City cited only 21.9% of the total and the least were cited by Rochester (11.7%). The Central regional office cited the highest average number of deficiencies per facility (7.78) while NYC cited the lowest (2.7), well below the average statewide number per facility (4.46) and the national average. The other regions average rate ranged from 4-5 deficiencies per facility, well below the national average.

Graph 1: Regional Percentage of Total New York State Deficiencies



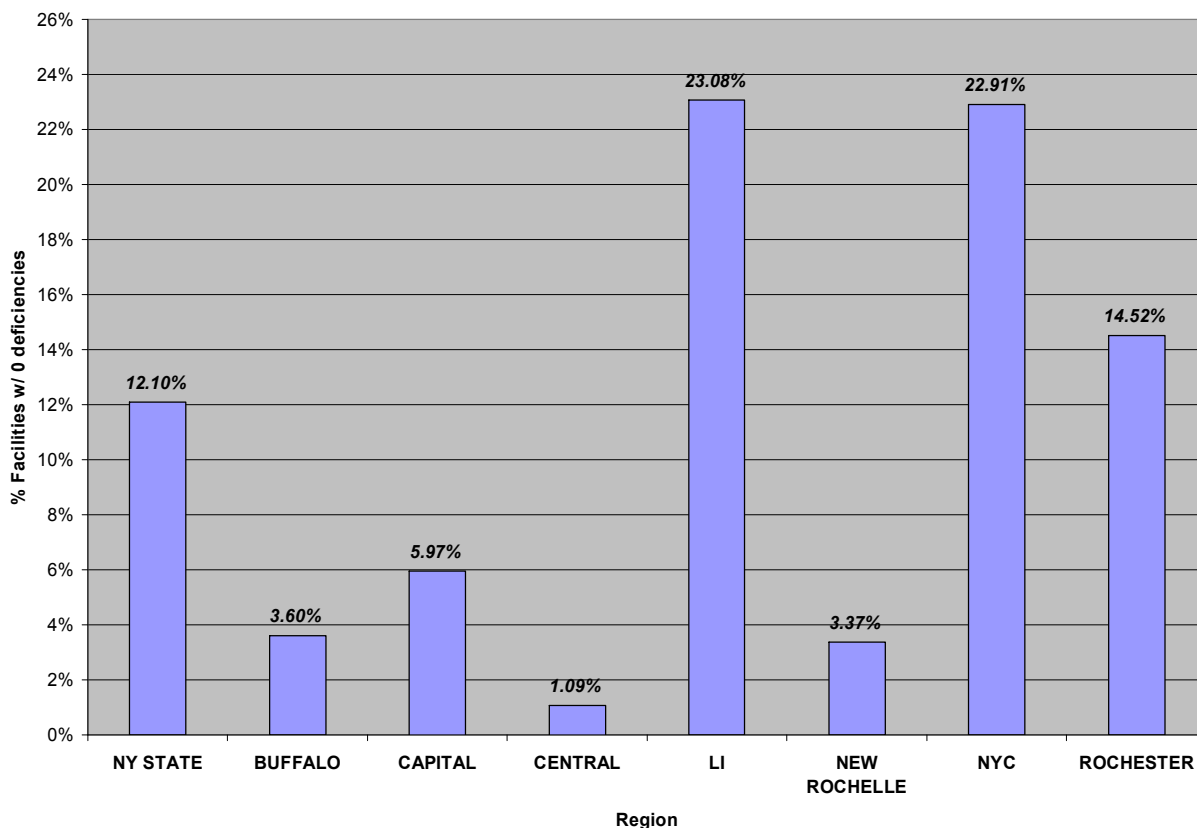
Graph 2: Average Number of Deficiencies per Facility within Region



In terms of deficiency-free facilities, only 1% of the facilities in the Central region were found to be deficiency-free, which is significantly lower than the national average of 9.5% in 2004⁶. [In other words, the Central region identified problems in 99% of its facilities.] Long Island and New York City found almost a quarter of their facilities deficiency-free (23% and 22.91% respectively) – well above both the statewide average of 12.10% and the national average.

⁶ Ibid.

Graph 3: Percent of Facilities with No Deficiencies within Region

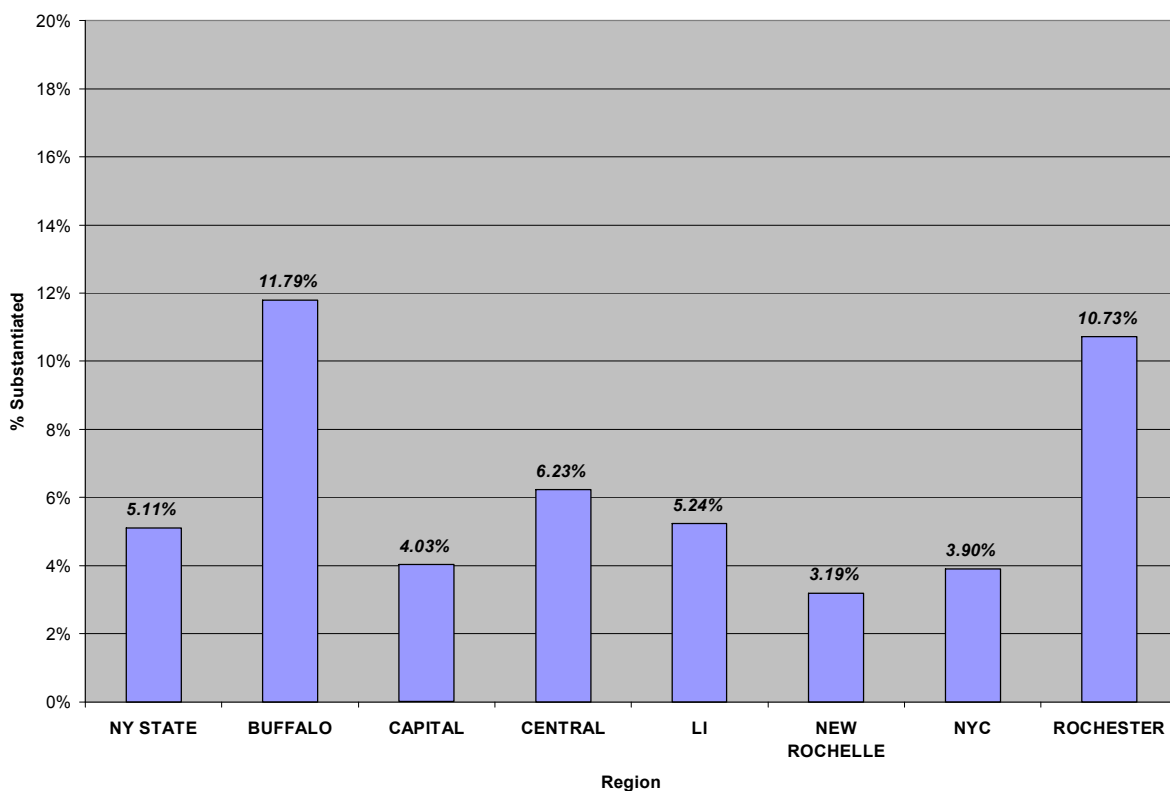


Substantiating Complaints

Substantiation rates across the state were found to be generally low. Less than six percent of all complaints are substantiated. According to its website, the New York State Department of Health considers a complaint "substantiated," if the Department actually issued an SOD to the nursing home for violation of regulation. Thus, if the surveyor (investigator) does not find that the facility violated a regulation, the complaint is not substantiated.

The region with the highest substantiation rate is Buffalo with almost 12% of its complaint investigations leading to citations. New Rochelle has the lowest substantiation rate with only a little over 3% of its responses to complaints leading to citations.

Graph 4: Percent of Substantiated Complaints within Region



RATING DEFICIENCIES: HOW WELL DOES EACH REGION RATE SEVERITY AND SCOPE?

Severity of Deficiencies Cited

Most of the deficiencies cited were rated at a very low level of severity or seriousness. 81.76% of all deficiencies cited in NYS were rated as not causing actual harm but having only the potential to cause harm.

When a deficiency is found, the surveyor rates the severity of each citation. There are four levels of severity⁷:

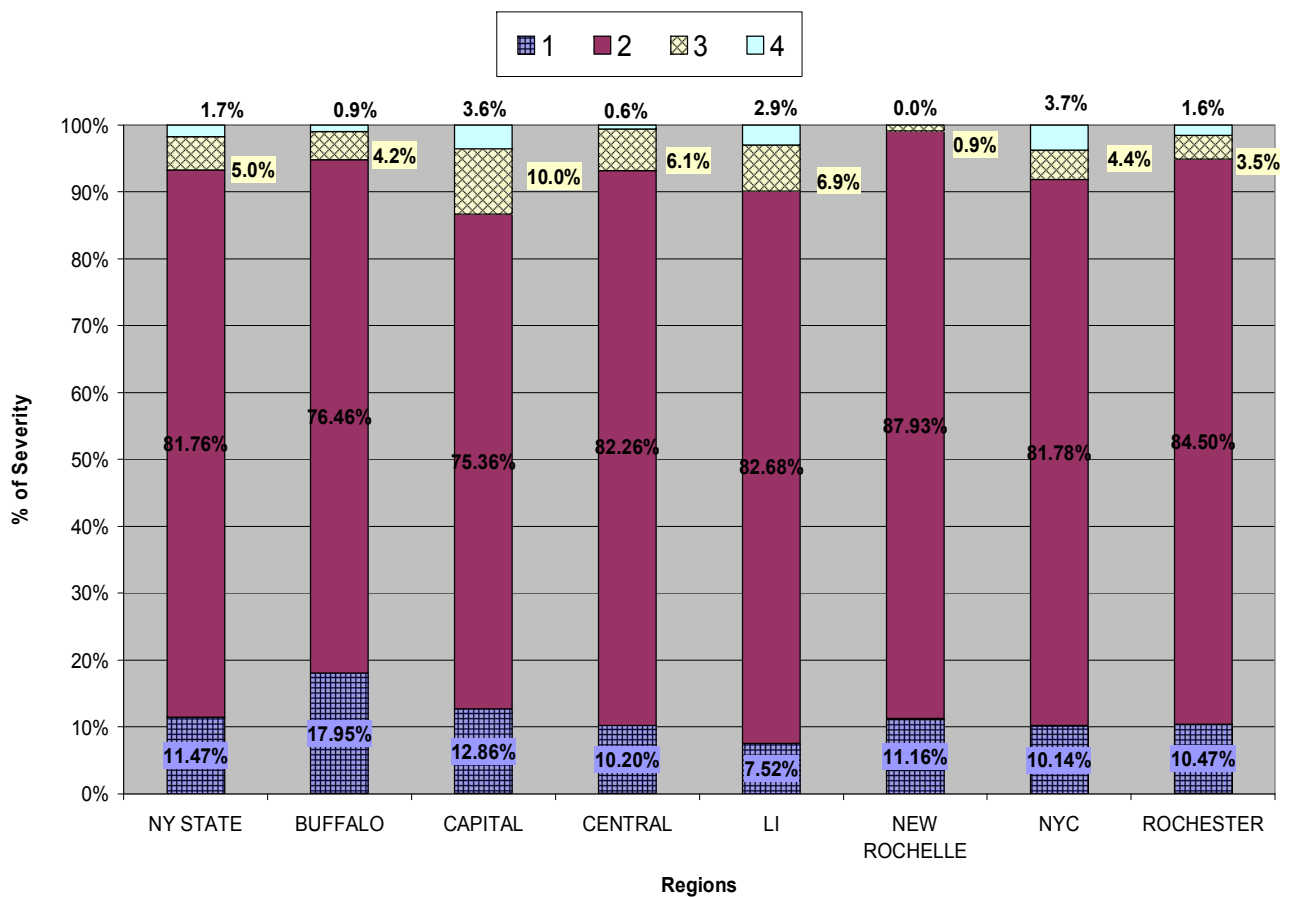
- *level 1* – there is no actual harm and the deficiency has the potential of causing no more than a minor negative impact on the resident;
- *level 2* – there is no actual harm but the deficiency has the potential to result in more than minimal discomfort to the resident and/or has the potential to compromise the resident's ability to maintain and/or reach his/her highest practicable well-being;
- *level 3* – actual harm has occurred – the deficiency results in a negative outcome that has compromised the resident's ability to maintain and/or reach highest well-being; and

⁷ See Appendix A for a description of the federal definitions of severity and scope.

- level 4 – deficiency has put a resident(s) in immediate jeopardy of serious injury, harm or death or has caused serious injury, harm or death.

All of the regions' harm and above ratings (levels 3 and 4) were below the national averages (15.5% in 2004⁸). However, compared to the other regions, the Capital region stands out by writing the most deficiencies at level 3, or the actual harm level (10%). On the other hand, New Rochelle wrote no deficiencies at this level and almost no deficiencies at level 4. Almost 88% of New Rochelle's deficiencies were rated as only potentially causing harm, the highest amount in the state. The New York City region wrote the most deficiencies at level 4 (4.4%).

Graph 5: Percent of Severity of Deficiencies within Region



Scope of Deficiencies Cited

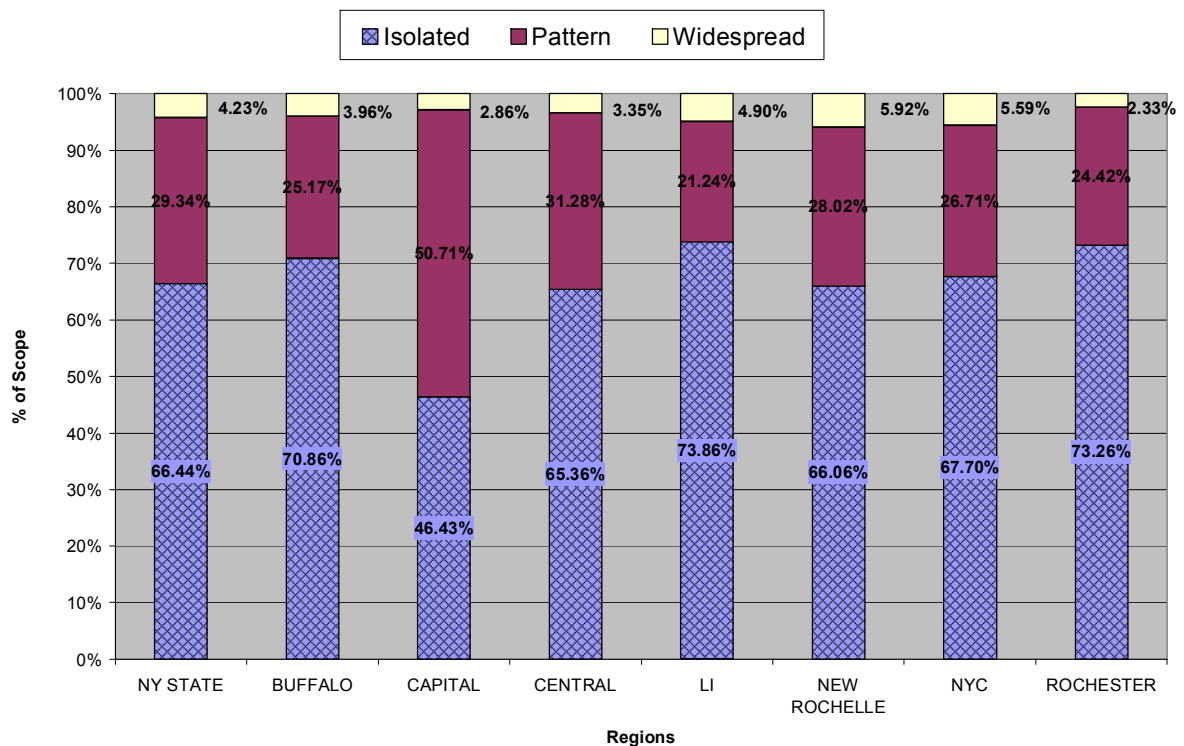
Except in the Capital region, most of the deficiencies cited in NYS were rated as isolated - affecting only a few residents (66.44% of all NYS deficiencies). There are three levels of scope:

⁸ Harrington, 2005.

- *isolated* – one or a very limited number of residents or staff are affected or involved, and/or the situation has occurred only occasionally or in a very limited number of locations;
- *pattern* – more than a very limited number of residents or staff are affected or involved and/or the situation has occurred in several locations and/or the same resident(s) have been affected by repeated occurrences of the same deficient practice; the effect is not pervasive;
- *Widespread* – problems are pervasive and/or represent systemic failure that affected or has the potential to affect a large portion or all of the residents or one unit; and/or systemic failure.

The Capital region rated over half of its deficiencies as being a pattern (50.71%). New Rochelle, Long Island and New York City had the highest ratings of widespread - between 5 and 6 % of its deficiencies.

Graph 6: Percent of Scope of Deficiencies within Region

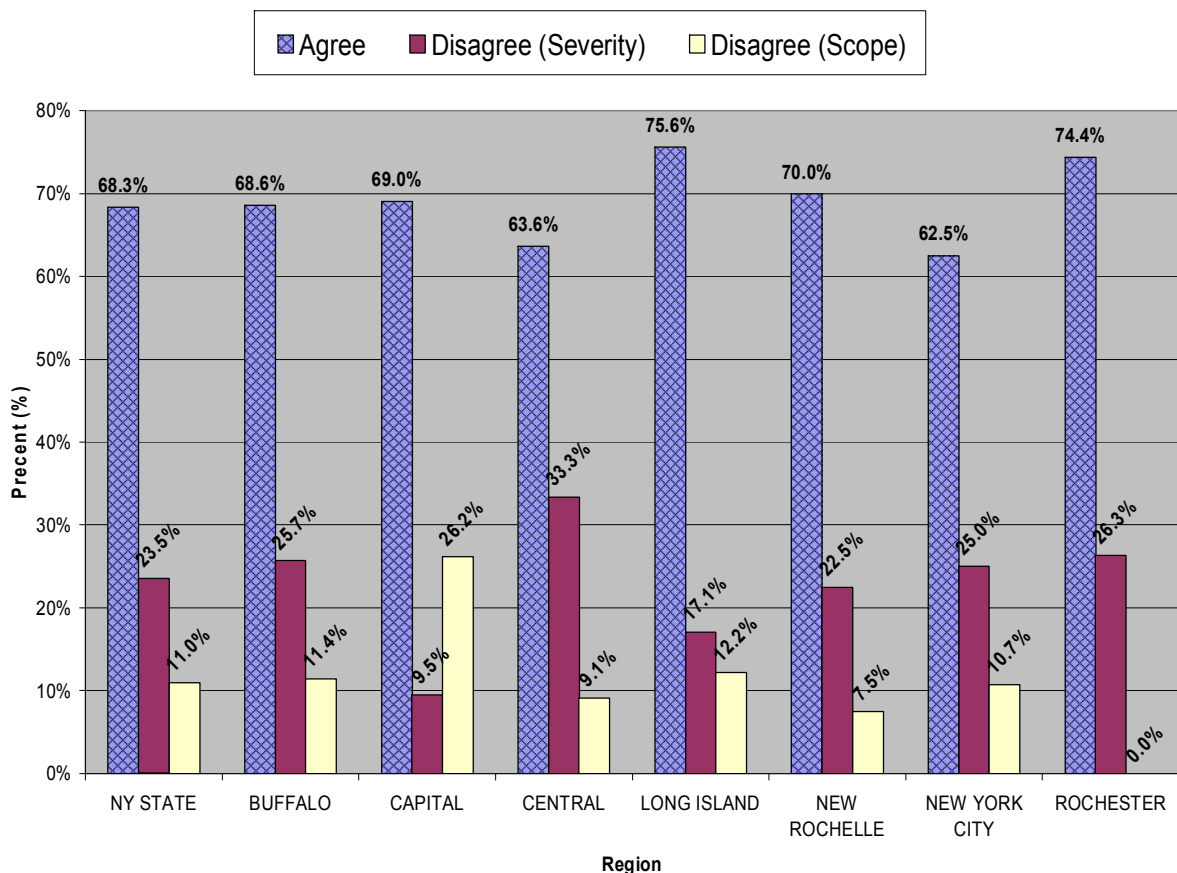


Evaluation of Sample Surveyor Findings on Severity and Scope

As stated above, a random sample of 10 percent of the latest survey findings in each region were read and evaluated by two evaluators. They recorded documented sources of survey findings (i.e., staff interviews, resident interviews, family/significant other interviews, records and observation) and

scope and severity of each citation. Each evaluator also decided whether he/she agreed with the surveyor scope and severity ratings. The graph and discussion below relate to evaluations where there was agreement between assessments of both evaluators (cases where our evaluators disagreed in their assessment were removed). As the graph below indicates, although evaluators agreed with most of the ratings, in some regions there were a large number of disagreements; disagreements ranged from 0% to 33.3%, depending on the region. It is important to note that, evaluators can only evaluate what is written on the SODs. They cannot know what else the surveyor looked at or questioned if it is not written on the SOD.

Graph 7: Evaluation of Deficiencies



Severity

Overall, the evaluators disagreed with surveyor findings of severity levels in New York State almost a quarter of the time (23.51%). However, the evaluators disagreed with 33.3% of the surveyor ratings of severity in the Central region, the highest percent of disagreement. The evaluators disagreed the least with the severity findings in the Capital region (9.52%). See Graph 7 above.

Scope

Overall, the evaluators disagreed with surveyor findings of scope levels 10.9% of the time. However, the evaluators disagreed with the Capital region the most on scope ratings (26.2%). The evaluators disagreed the least with the scope findings in the Rochester region (0%). See Graph 7 above.

Examples of Disagreements with Severity and Scope

REGION	SURVEYOR RATING	PROJECT EVALUATORS RATING
CENTRAL		
<i>Tioga Nursing Home</i> – Did not provide individualized assistance needed to help a resident maintain her continence. The resident (and RN) stated that she was continent, the other staff assumed she was incontinent and because of this she had to use a bedpan and then ring for help which came 30 to 60 minutes later.	No Harm: Potential to cause more than minimal harm	Harm (Quality of Life)
Did not have safeguards in place in the dementia unit to address unsafe wandering and attempts to leave the locked unit. Residents, at risk of elopement, have gotten out of the unit and/or keep attempting to leave.	No Harm: Potential to cause more than minimal harm	Immediate jeopardy (elopement is life-threatening)
<i>Auburn Nursing Home</i> - Did not contact the physician when a resident's condition deteriorated. The resident had edema, with pain and decreased ability to bear weight on her extremity for 10 days before the physician was notified and the resident was diagnosed with deep vein thrombosis.	Harm	Immediate jeopardy (life threatening condition)
<i>Cayuga Nursing Home</i> - Did not have pain management parameters. The resident complained of chronic hip pain, the pain medication was not giving satisfactory relief and the resident had to continue to ask for additional pain medication.	No Harm: Potential to cause more than minimal harm	Harm (Resident pain is harm)
<i>Vivian Teal</i> - One resident, identified as having a high risk for falls, fell, sustained a hip fracture and was hospitalized. The facility did not have a plan in place before the resident fell.	No Harm: Potential to cause more than minimal harm	Harm

One resident, who had experienced three episodes of unresponsiveness or choking which required the Heimlich maneuver, was not to have bread or thin liquids and was to be totally fed to prevent choking. The surveyor observed the resident on three or four occasions feeding herself, close to food that was unattended and consuming garlic bread.

No Harm:
Potential to
cause more
than minimal
harm

Immediate
jeopardy

Did not provide necessary care to prevent the development of and/or deterioration of pressure ulcers for nine of nine sampled residents. One resident's Stage IV pressure ulcer (the most severe) increased in length.

Harm

Immediate
jeopardy
(Stage IV is life-
threatening)

CAPITAL

Guilderland Nursing Home – Did not prevent a resident who entered the home without a pressure sore from developing one when it was avoidable.

No Harm:
Potential to
cause more
than minimal
harm

Harm (a
pressure sore is
harm)

Evergreen Valley - Problems on 2 of 2 units.
ROCHESTER

Pattern

Widespread

Episcopal Church Home - Did not develop and/or implement care plans to prevent recurrent falls and accidents. One resident "sustained a mild compression fracture of the thoracic spine."

No Harm:
Potential to
cause more
than minimal
harm

Harm

A sulfa drug was repeatedly administered to a resident with a known allergy to sulfa containing drugs. The resident was documented as being in pain (headache), swelling of the face, eyes, lips and both legs, shortness of breath which required a breathing treatment, increased agitation, difficulty breathing, unresponsiveness and foaming at the mouth. The negative effects on the resident lasted for four days and the resident was transferred to the hospital with hypoxia, congestive heart failure and probable pneumonia.

No Harm:
Potential to
cause more
than minimal
harm

Harm

<i>Hill Haven</i> - Did not ensure sufficient hydration. The resident was transferred to the hospital for dehydration.	No Harm: Potential to cause more than minimal harm	Harm
<i>Finger Lakes</i> - Did not give proper respiratory care (a repeat deficiency from an earlier survey). The resident was transferred to the hospital with pneumonia.	No Harm: Potential to cause more than minimal harm	Harm
BUFFALO		
<i>Fiddler's Green</i> - Did not give a written notice of transfer with right to appeal and did not have a system in place to do so. This was a systemic failure.	Pattern	Widespread (Systemic)
Did not ensure appropriate treatment to correct an assessed mental or psychological problem. A resident was agitated, verbally and physically abusive toward staff, refused medications, meals and activities and the facility did not deal with these behaviors.	No Harm: Potential to cause more than minimal harm	Harm (psychological)
<i>St. Francis Home of Williamsville</i> - A resident, who is alert, who was to be taken to the toilet every two hours, was found sitting in a urine soaked bed. She said she had been wet for a few hours.	No Harm: Potential to cause more than minimal harm	Harm (Quality of Life)
<i>The Waters of Houghton</i> - Did not prevent urinary tract infections (UTIs). The resident had 10 UTIs after being identified as needing extensive staff assistance and having the potential of UTIs because of an indwelling catheter and the surveyor observed inappropriate catheter care.	No Harm: Potential to cause more than minimal harm	Harm
<i>Pines</i> - Did not promote care that enhanced residents' dignity. Seven out of 26 residents were affected.	Isolated	Pattern
Did not ensure that services met professional standards. Twelve of 32 residents were impacted.	Isolated	Pattern

NEW ROCHELLE

Michael Malotz - One resident, on a ventilator, had a physician's order to be weaned. The surveyor found that there was no evidence of implementing weaning for a month and a half.

No Harm:
Potential to cause more than minimal harm

Harm
(Quality of Life)

New Sans Souci – Did not ensure proper identification of a resident without a DNR (Do Not Resuscitate Order). A resident who did not have a DNR order was labeled as having a DNR order (and thus may have not been resuscitated in an emergency).

No Harm:
Potential for more than minimal harm

Immediate jeopardy
(Danger of death)

Did not assess the continuing need of an indwelling catheter. Staff indicated no need for the catheter and the resident stated the catheter was uncomfortable and caused him pain.

No Harm:
Potential to cause more than minimal harm

Harm
(Quality of life)

Mountain View - One resident's mood was improved after starting a medication. Things got worse when she began to refuse her evening dose after two months. She refused it 40 times. The resident said that she refused because the pill was too large; she was afraid to take it in the evening because she would choke on it, and once the pill got stuck in her throat. Although the nurse was aware of this she did not communicate the reason to the unit manager or the physician. The unit manager was not even aware the resident was refusing medication. The resident's mood had deteriorated and she was not being listened to.

No Harm:
Potential to cause more than minimal harm

Harm
(psychological)

LONG ISLAND

Crest Hall

Did not ensure that residents received effective interventions for elopement. Residents had eloped a number of times.

No Harm:
Potential to cause more than minimal harm

Immediate jeopardy

Did not attempt behavioral interventions prior to the administration of psychotropic medications. The resident was given medication to prevent her behavior from escalating even though some behavioral modification (removal) seemed to work.

NEW YORK CITY

Lutheran Augustana - Not monitoring a resident with pressure ulcers to prevent new ulcers. An ulcer was not noticed until it was Stage IV.

New Carlton - Not responding to resident grievances about food.

Not informing residents/families about advanced directives. Staff interviews indicated no system for documenting this notification.

The facility did not monitor a resident's blood pressure as ordered. The resident was transferred to the emergency room multiple times with uncontrolled hypertension.

Promenade - Not providing adequate monitoring and supervision to a resident who had a history of wandering and is at risk for elopement. Facility staff did not know how to respond to door alarms and ensure that wander guards function as designed and one resident did elope.

Fieldston - The physician ordered that two residents were to see an optometrist, neither saw one (5 to 8 months later). One resident stated she had a problem with her eyes and probably needs glasses. This deficiency was rated as not causing harm to the residents.

No Harm:
Potential to
cause more
than minimal
harm

Harm

No harm:
Potential for
only a minor
impact

No harm:
Potential for
only a minor
impact

No Harm:
Potential to
cause more
than minimal
harm

No Harm:
Potential to
cause more
than minimal
harm

No Harm:
Potential to
cause more
than minimal
harm

Harm
(Quality of Life)

Immediate
jeopardy

No harm:
Potential for
more than
minimal harm
or actual
quality of life
harm

No harm:
Potential for
more than
minimal harm

Harm

Immediate
jeopardy

Harm
(Quality of Life)

Reviewing Sufficient Number of Residents

The evaluators also questioned whether the surveyors are reviewing enough residents to make an accurate scope and severity rating. The examples below from the sample of SODs raise the question of whether the severity and scope ratings may be related to the number of residents' care that is being reviewed. The cases below are examples, given the findings written by the surveyor, where the evaluators felt that more residents should have been reviewed.

Central Region

Kinney - The facility was cited for care involving a resident with a feeding tube. The citation was rated as isolated with a potential for more than minimal harm. Since there was only one resident with a feeding tube in the sample, only the care of that resident was reviewed. Were there others outside the sample that should have been reviewed?

Capital Region

Orchard - The facility was cited for care involving podiatry services. The citation was rated as isolated with a potential for more than minimal harm. The surveyor reviewed two residents and found one with problems. Should more have been reviewed?

Examples Of Superior Surveying

Below are examples of cases where the evaluators found, what they believed, to be superior surveying – the surveyors took steps that seemed to give the surveyors all the information they needed. All examples are from the sample of SODs.

NYC

Lutheran Augustana Center - The facility was cited for not ensuring that foods were served at the appropriate temperatures. This surveyor took the following steps:

- Met with a group of residents and found that 8 of the 13 residents in the group were complaining that cold foods were not served cold and that hot foods were not served hot.
- Observed the tray line assembly in the kitchen noting the inappropriate temperatures of both the hot and cold foods.
- Observed the distribution of the food trays to the residents of one of the units.
- Tested the temperature of the food at that time.
- Noted inappropriate temperatures.
- Looked at the facility's policy for serving food and noted that the

- facility did not follow its own policy.
- Interviewed staff.

The facility was also cited at the immediate jeopardy level for failing to provide emergency care based upon a complaint investigation. The investigator took the following steps:

- Reviewed the facility Incident/Accident report which revealed that the resident experienced a cardiac arrest while being transported to a connecting hospital (on orders of the nurse practitioner) by an LPN and a CNA. The resident was not provided with CPR by the CPR certified LPN. The LPN left the resident with the CNA and came back with a stethoscope and blood pressure machine and an RN who did not perform CPR. The LPN or the RN did not call 911, or announce the facility code for medical emergencies. The resident expired.
- Interviewed the LPN and the CNA. The interviews revealed that the resident's ID bracelet was not checked for DNR status. The RN said she did not check the resident's chart which was with her for her CPR status.
- Reviewed the medical records and found the resident did not have a DNR order. The resident died of cardiopulmonary arrest.
- Observed the ID bracelets of a number of other residents with DNRs and those without DNRs and found that two did not have a tag to identify a DNR, another resident refused to wear the bracelet and the facility had no policy for dealing with this.
- Interviewed 35 other staff members to find that many did not know that the facility had a policy for identifying DNR status by the use of colored ID bracelets. Others identified the incorrect color. Some did not know that the facility had a code for a medical emergency.
- Interviewed the in-service instructor to find that there have been no in-services on this issue for 3 years.

Buffalo

The Pines - This facility was cited for not ensuring that services provided met professional standards of quality. Although the evaluators felt this surveyor did not rate the scope correctly - 12 of 32 residents on 3 of 3 units had issues – they felt that the surveyor took appropriate steps to investigate the problems. The surveyor:

- Reviewed records of one resident which revealed the resident's left arm and hand had non-reversible swelling and documented a plan to continue to monitor.
- Reviewed nurses' notes which revealed no monitoring.
- Reviewed care plan and physician order which revealed that a sleeve was to be applied except during sleep and hygiene.
- Observed the resident which revealed no sleeve.
- Interviewed head nurse who said the resident sometimes removes the

sleeve that is why it may not have been on.

- Reviewed all records to find no documentation of resident removing the sleeve.
- After the interview with the head nurse, the sleeve was put on.
- Observed the resident intermittently for 11 hours over 2 days to see that the resident had the sleeve on but never tried to remove it.

Kaleida - The facility was cited for not ensuring that residents were free from physical restraints imposed for purposes of convenience or discipline. Although the resident had short and long term care memory problems with moderate cognitive impairment, the surveyor interviewed the resident about the use of a vest restraint and documented that the resident did not like the restraint and felt she did not need it. Along with observation, record review and staff interview, this was used as part of the determination to cite the facility.

Central

Tioga - The facility was cited for not ensuring that one resident was free of significant medication errors and for not ensuring that the physician reviewed the medication regimen for accuracy. The investigation of the resident's medication regime was begun because the surveyor attempted to interview a resident but found that he exhibited difficulty staying awake. Based upon this observation, she/he reviewed the medication record and noted the resident was being given an antidepressant, an antipsychotic, an anti-seizure, an anti-anxiety, and a narcotic pain reliever. After examining records and interviewing staff, the surveyor concluded that the facility did not provide adequate medication oversight which led to resident harm.

Vivian Teal - The facility was cited for not honoring a resident's right to be fully informed about the cancellation of a surgical procedure. The surveyor:

- Interviewed the resident at breakfast about his upcoming laser surgery. The resident was very excited and hopeful it would help his vision. When breakfast arrived, the resident asked the CNA if he should eat before his surgery. The CNA checked and told him the surgery had been cancelled. The resident said he was very upset. He wanted to know why he was not informed and wanted to know the reason why the surgery was cancelled.
- Interviewed the unit manager who said she did not know the surgery was cancelled.

The facility was also cited for not assessing and evaluating restraint use for 2 residents. The surveyor:

- Reviewed fall risk assessments which revealed that one resident had an increased risk for falls.

- Reviewed nurse progress notes which indicated that the resident has experienced unobserved falls. Interventions were to be lap buddy and alarms and out of room unless in bed.
- Reviewed physical therapy notes which indicated an order for a wedge cushion on the wheel chair.
- Reviewed care plan and notes show no implementation of the wedge.
- Reviewed progress notes reveal that the interdisciplinary team did not assess the lap buddy as a restraint or that any other less restrictive devices were tried. In addition, there were no planned release periods and no mention of repositioning the resident.
- Observed the resident for many hours over a number of days and found the lap buddy in place whenever he was in his wheelchair.
- Interviewed staff who said they did not consider the lap buddy a restraint because the resident could remove it.
- Observed resident and did not see any attempt to remove the lap buddy and over 8 days of meal observations did not ever see it released during the meal. He had to eat by reaching over the lap buddy.
- Interviewed the resident and asked him to remove the lap buddy. He attempted to but could not. He said, "This side won't budge."

Long Island

Riverhead - The facility was cited for failing to maintain an environment free of accident hazards. The hot water was found to be at unsafe temperatures on 4 of 4 units. She rated this as immediate jeopardy. This surveyor:

- Measured the hot water temperature by taking 25 samples in resident and shower rooms between 10 and 1:30 PM.
- Interviewed maintenance staff who stated that he was not aware the shower rooms were resident use areas since residents were assisted with showers. Thus, he had not turned down the temperatures in the shower rooms. He said he would turn it down.
- After giving staff time to lower the temperature, measured temperatures in shower rooms and found the temperatures even higher than before.
- Measured temperatures again after an hour and found the temperatures the same or higher.
- Interviewed 16 CNAs who said the temperatures vary and at times the water was too hot to make it safe.
- Interviewed an alert resident who stated that the water is too hot at times and he will not bathe until staff adjusted the temperature.

The facility was also cited for not serving food at preferable temperatures.

The surveyor:

- Held a group interview and found that 5 out of 14 residents complained

that the breakfast they eat in their own rooms is often served cold and unappetizing. Three of these said they had complained to the resident council, the food committee and to the unit staff but the problem persists.

- Observed the breakfast tray on 4 units and found that the food was cold.
- Interviewed 6 residents on these units and 3 said the food was cold.
- Interviewed the Food Service Director who said she was new and had not been made aware of any problems.

Repeat Deficiencies

Consumers have long been concerned about facilities that go in and out of compliance from one survey to the next. Evaluators found a number of surveys in two regions with "repeat deficiencies" from earlier surveys. There seemed to be no consequence of this for the facility. Below are examples of repeat deficiencies.

Rochester

Avon Nursing Home - Did not conduct thorough investigation of a bruise to rule out abuse, neglect or mistreatment.

Finger Lakes Nursing Home - Did not have care plan interventions to prevent the potential for accidents and injury, lack of proper respiratory treatment and care, and significant medication error.

Penfield Place- Professional standards were not met and residents did not receive services to meet their highest practicable physical well-being.

Aaron Manor - Professional standards were not met and residents were not provided with necessary supervision or intervention to prevent injury.

Central

Vivian Teal Nursing Home - Comprehensive plans were incomplete and/or did not accurately reflect the residents' clinical status and care needs and there was no quality assurance program to identify issues that have the potential to cause serious injury or harm.

New Rochelle

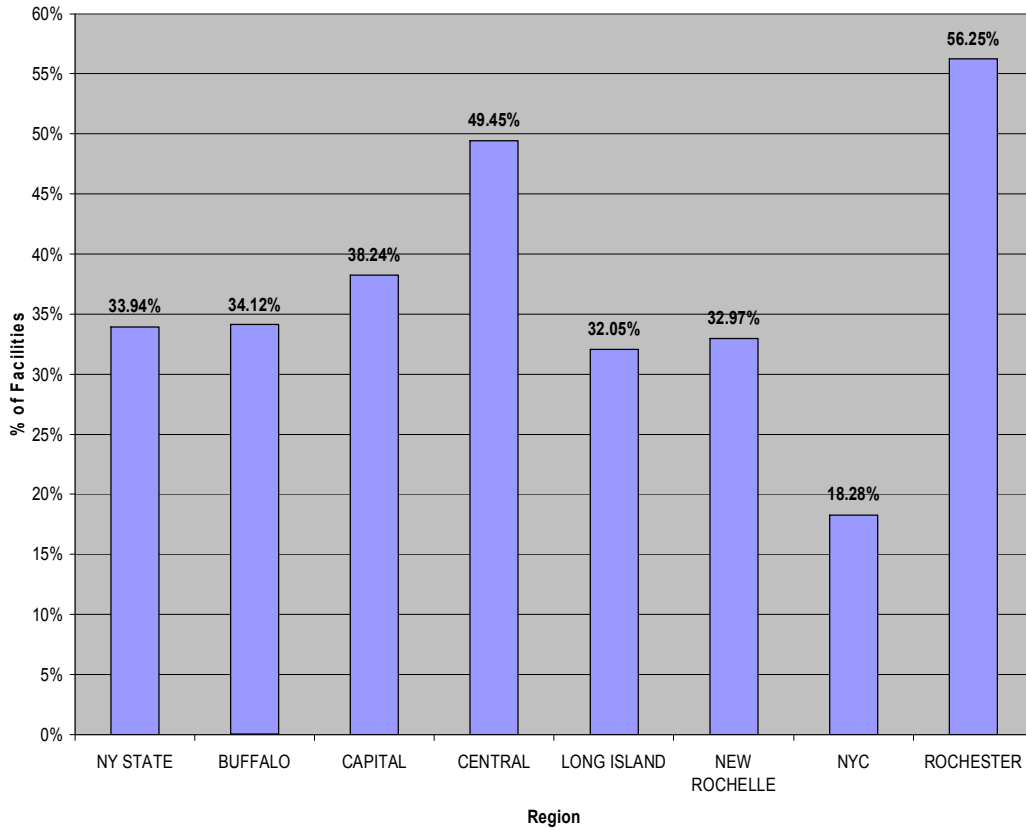
The Wartburg Home - It was not until the following survey that the surveyor found out that the home had not implemented a plan of correction to deal with a substantiated complaint relating to sexual abuse of a resident by another resident. The complaint investigation had concluded that although the complaint had been substantiated, the facility would not get a deficiency because it had responded appropriately and had a plan for dealing with the problem. The plan was to separate the two residents. However, this plan was not followed and the surveyor on the present survey found additional instances of the offending resident in the abused resident's room.

ENFORCEMENT: HOW WELL DOES EACH REGION ENFORCE THE REGULATIONS?

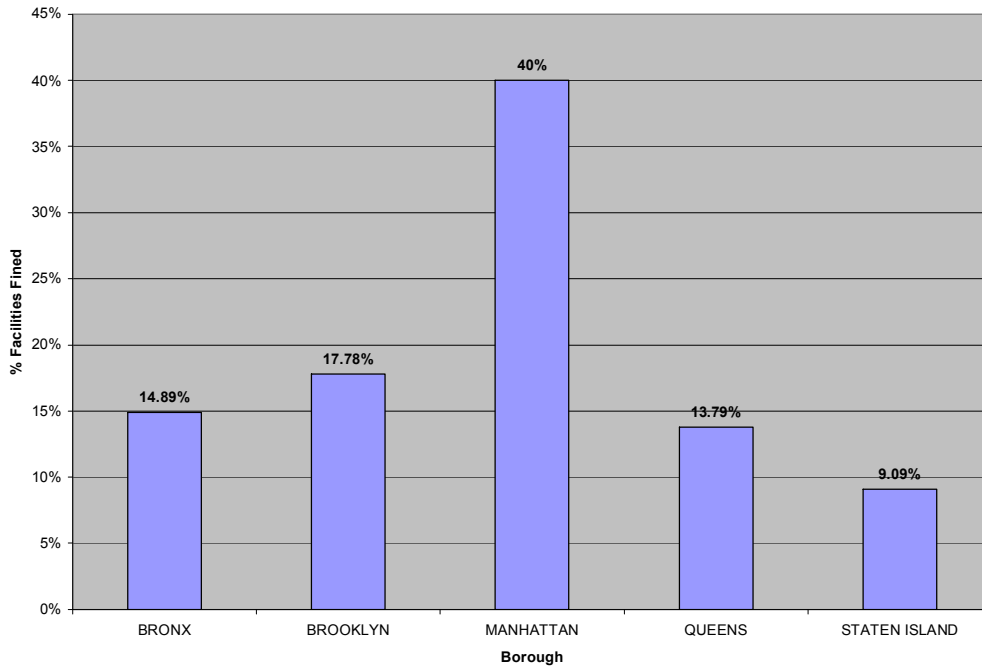
Fines are one way of enforcing the regulations. On average, New York State fines approximately 33.94% of its facilities.⁹ The Rochester region fined the largest percentage of its facilities, fining over half (56.25%) since 2002. Here too, New York City's performance is weak. It fined the fewest number of its facilities (only 18.28%, see graph 8a). This number would be even lower if the Manhattan area of the region was removed, since most of the facilities fined were in the borough of Manhattan; 40% of the facilities in Manhattan have had fines levied since 2002 with the other boroughs much below the other regions' levels (see graph 8b).

⁹ All data on fines were collected from the NYS Department of Health website. It includes all fines listed on the site from 2002 until February 2006.

Graph 8a: Percent of Facilities Fined per Region



Graph 8b: Percent of NYC Facilities Fined per Borough



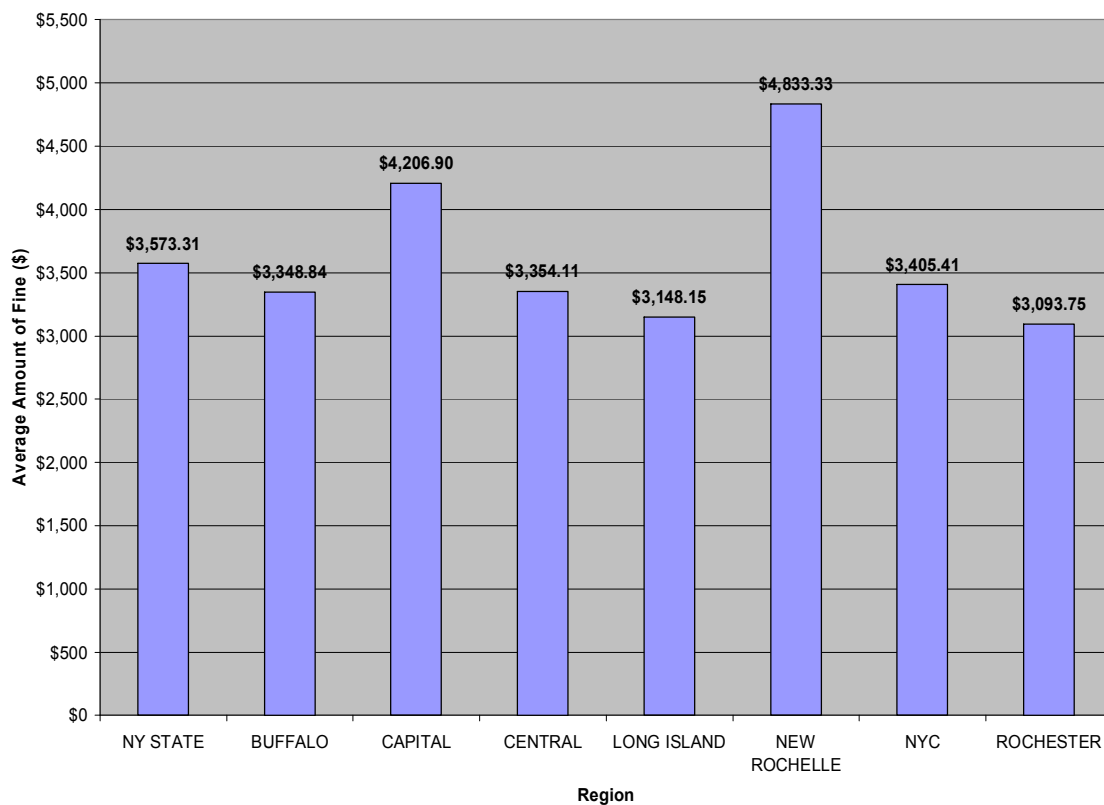
The Central region collected the greatest total amount of funds (\$204,600) with Long Island collecting the least (\$85,000). New Rochelle collected the

most per facility (\$4,833.33), while Rochester collected the least (\$3,093.75, see graph 9). On the whole, New York State's average fine is below national averages. The average fine across the country is \$6918¹⁰; in New York State, it is almost half at \$3574.

Table 1: Total Amount of Fines Collected within Region

REGION	TOTAL AMT COLLECTED
NY STATE	\$1,004,100
BUFFALO	\$144,000
CAPITAL	\$122,000
CENTRAL	\$204,600
LONG ISLAND	\$85,000
NEW ROCHELLE	\$174,000
NYC	\$126,000
ROCHESTER	\$148,500

Graph 9: Average Amount of Fines per Facility within Region



¹⁰ Tsoukalas, T, Rudder, C, Mollot, R.J., Shineman, M, Lee, H.Y. and Harrington, C. "The Collection and Use of Funds from Civil Money Penalties and Fines from Nursing Homes, 2006." Unpublished. Go to www.ltccc.org to download a copy of the final report this article is based on.

FINDINGS REGION BY REGION¹¹

Buffalo

Strengths:

- Cites only 3.6% of its facilities as “deficiency-free” (national average is 9.9%¹²).

Better than other regions:

- Complaint substantiation rate is the highest in the state (11.8%).
- The second highest average number of deficiencies per facility (5.2).

Weaknesses

- Many deficiencies tend to be rated at the lowest level of seriousness and the lowest level of scope (severity – 18% at no harm and no potential for more than minimal harm; scope – 71% isolated).
- Fines facilities at amounts less than the state average (\$3349).

Capital

Better Than Other Regions

- Cites most actual harm and the second highest immediate jeopardy deficiencies of any region (10.3%).
- Cites over half of its deficiencies as pattern or widespread.
- Fines above average percentage of facilities (38%).
- Average fine is above state average (\$4207).

Weaknesses

- Numbers of deficiencies per facility are below the average for the state (4.2).
- Complaint substantiation rate is below the state average (4%).

Central

Strengths

¹¹ “Strengths” mean better than other regions and as good as or better than national averages, “Better than other regions” means it may not be as good as or better than national averages – national averages may not be applicable; “Weaknesses” means compared to other regions and to national averages, if such averages are known.

¹² Harrington, 2005.

- Has the fewest “deficiency-free” facilities (1.1%).

Better Than Other Regions

- Cites the highest number of deficiencies per facility (7.78).
- Substantiation of complaints is above the state average (6.2%).
- Fines a higher percentage of its facilities than five other regions (49.5%).

Weaknesses

- Rates few of its deficiencies at the highest level of severity (immediate jeopardy) (0.6%).
- Fines at an amount below state average (\$3354).

Long Island

Better Than Other Regions

- Cites high levels of seriousness (9.8% harm and above).

Weaknesses

- Cites fewer deficiencies per facility than all regions except New York City (4%).
- Finds more of its facilities deficiency-free than any other region (23%).
- Below average complaint substantiation rate (5%).
- Fines a smaller average amount per facility than any other region (\$3148).

New Rochelle

Strengths

- Finds few facilities “deficiency-free” (3.4%).

Better Than Other Regions

- Cites the most widespread deficiencies in the state (6%).
- Fines the highest amount per facility (\$4100).

Weaknesses

- Substantiates the least amount of complaints in the state (3.2%).
- Cites the lowest amount of actual harm and immediate jeopardy deficiencies in the state (0.9%).

New York City

Better Than Other Regions

- Rates its deficiencies at the highest severity than four other regions and higher scope than five other regions (severity – 4.4% are immediate jeopardy; scope – 32.3% are pattern and widespread).

Weaknesses

- Cites the fewest deficiencies per facility in the state (2.7%).
- Finds almost a quarter of its facilities deficiency-free.
- Only New Rochelle has a lower complaint substantiation rate (3.9%).
- Fines the lowest percentage of facilities of any region (18.3%).

Rochester

Better Than Other Regions

- Substantiates more complaints in the state than all but one region (10.7%).
- Fines the highest percentage of its facilities (56%).

Weaknesses

- Identification of deficiencies is below the state average (4%).
- Rates many of its deficiencies at low levels of severity and scope (severity – 5.1% at levels 3 and 4; scope – 24% at pattern and 2.3% at widespread).
- Fines the least average amount per facility in the state (\$3094).

DISCUSSION

General Discussion

What might be the reasons for differences among the regions? The July 2003 GAO report looked at possible causes of poor state surveyor performance and variation between states. The report identified several factors leading to understatement of nursing home problems nationwide, including surveyor “confusion about the definition of harm; inadequate state review of surveys to identify potential understatement; large numbers of inexperienced state surveyors; and a continuing problem with survey timing being predictable to

nursing homes."¹³ These factors could account for some of the regional variation.

Confusion on Severity and Scope

It is possible that some of the surveyors are confused about how to define actual harm and immediate jeopardy. The fact that similar deficiencies were rated differently by surveyors in different regions and/or in the same region may be indicative of this. On June 1, 2006 new guidance to surveyors was released by CMS. The Psychosocial Outcome Severity Guide¹⁴ will help surveyors determine the severity of psychosocial outcomes. A number of the guide examples give credence to the findings of the sample SODs by our evaluators. For example, negative outcomes, such as loss of interest or psychomotor agitation accompanied by sadness, should be categorized as level 3 or actual harm. This example seems to be similar to the ones described above for Fiddler's Green in Buffalo or Mountain View in New Rochelle. Both were rated as level 2, having only a potential for harm.

Numbers of Survey Staff¹⁵

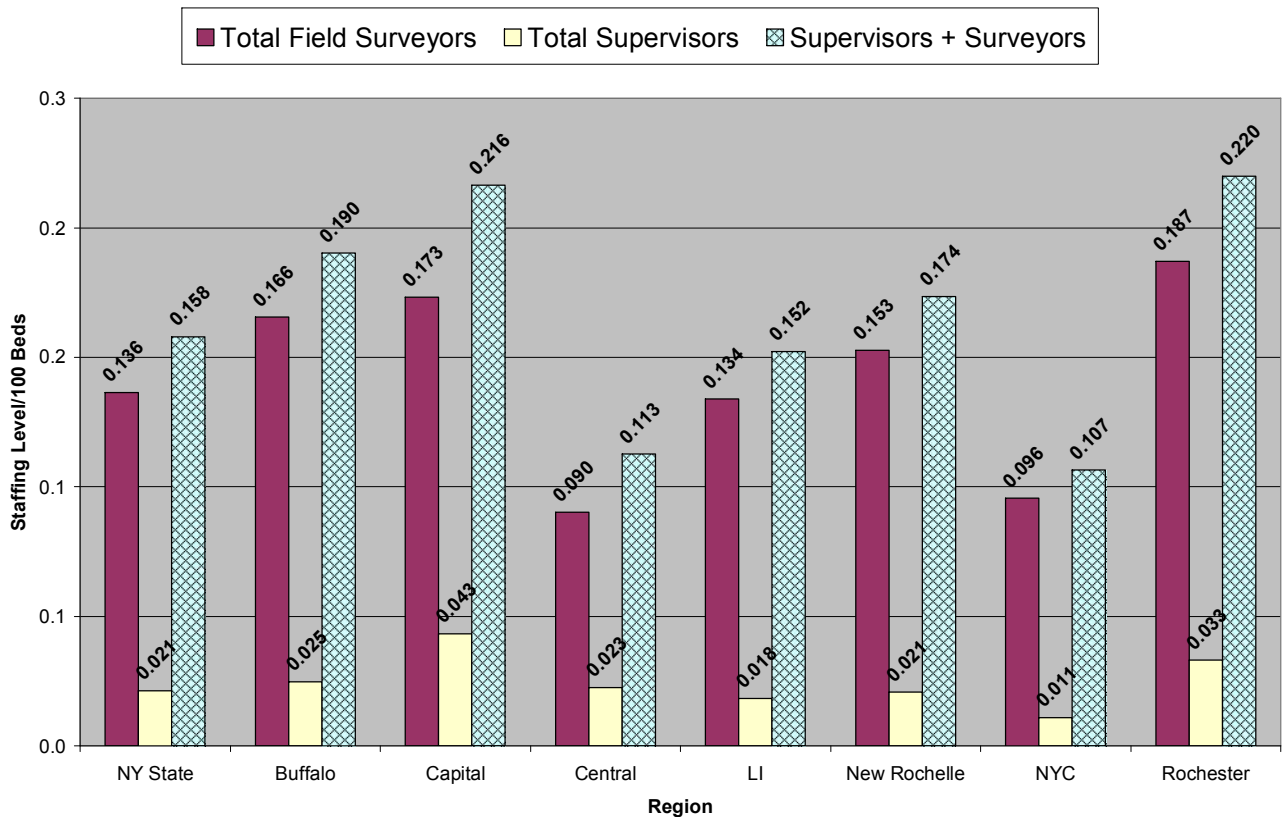
The numbers of staff available to inspect facilities may be a factor in each region's ability to cite deficiencies and substantiate complaints. However, this does not seem to be a consistent factor in the seven regions. The Rochester region, with the highest total survey staff ratios per 100 beds, rates high on complaint substantiation but only average on deficiency writing. The New York City region has low numbers of survey staff ratios and has the lowest record of writing deficiencies. However, the Central region, with the lowest total survey staff ratios of all the regions and the second lowest combined supervisors and field surveyor ratios, cites the highest number of deficiencies per facility.

¹³ U.S. Government Accountability Office. July 2003.

¹⁴ See www.cms.gov.

¹⁵ This information is from the NYSDOH and current as of December, 2005.

Graph 10: Survey Staffing Levels per 100 Beds within Region



Survey Staff Source and Experience¹⁶

The experience and source of survey staff appears to explain some of the differences among the regions. Those with more state employees and less contract staff, and those with more experienced workers (working three years or more), were found to identify more problems and write the most deficiencies.

Survey Staff Experience

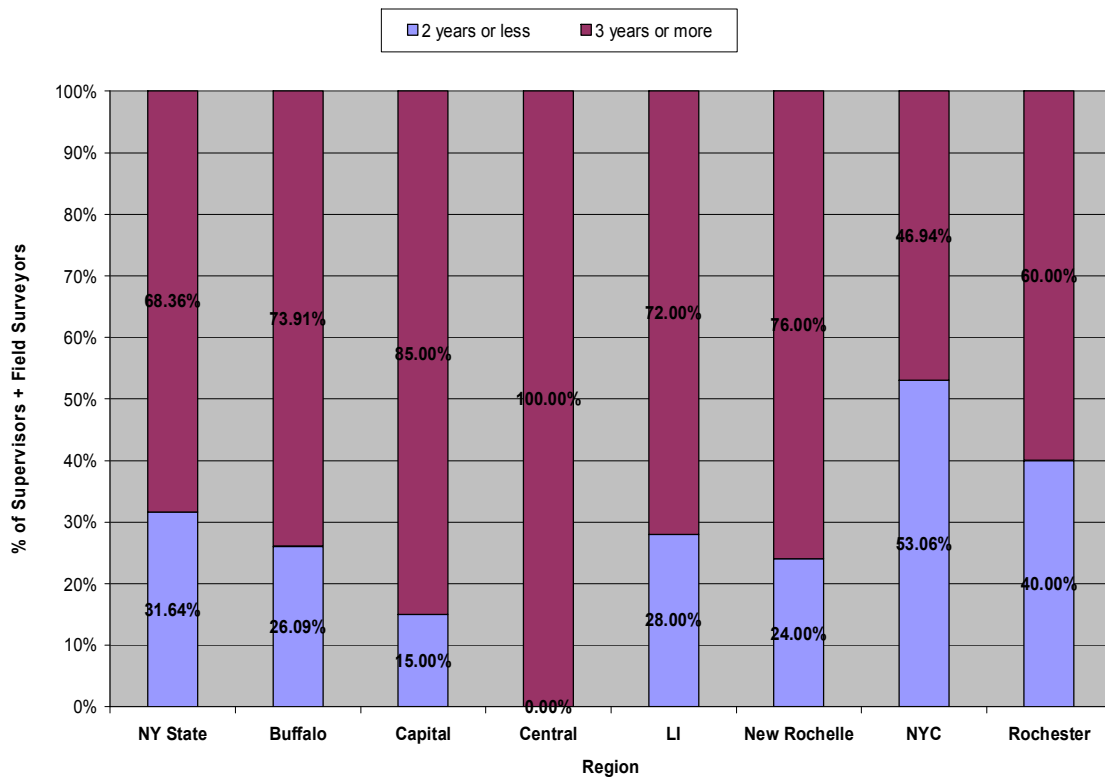
Survey staff experience is an important factor. A recent GAO study stated, "According to CMS and state officials, the first year for a new surveyor is essentially a training period with low productivity. It takes as long as 3 years for a surveyor to gain sufficient knowledge, experience, and confidence to perform the job well."¹⁷ An earlier GAO study reports that, "according to state officials, the large number of inexperienced surveyors, which ...is due to high attrition and hiring limitations, has also had a negative impact on the quality of

¹⁶ Ibid.

¹⁷ U.S. Government Accountability Office. December 2005.

surveys.”¹⁸ In terms of years on the job, about two-thirds of the state’s survey staff have worked three years or more, while the remaining staff have only worked two years or less. Central, the region writing the most deficiencies, has the most experienced staff (all have worked three years or more) while NYC, writing the least, has the least experienced staff (split almost 50-50 between three years or more and two years or less). The Capital region, rating deficiencies high in severity and scope, has the second highest number of experienced survey staff.

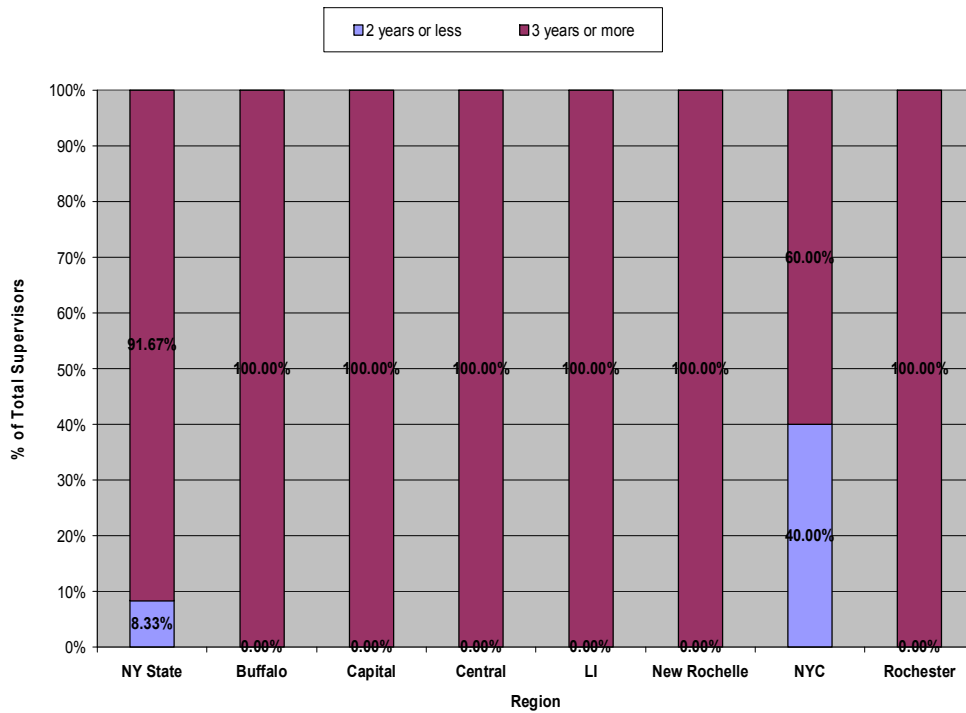
Graph 12: Percent of Supervisors and Field Surveyors' (Combined Staff) Level of Experience within Region



When supervisors’ and field surveyors’ experiences are looked at separately some differences are found. Looking at supervisors alone, all of the supervisors in six of the seven regions (NYC, the region with the lowest deficiency rate, is the only exception) have at least three years of experience. Within the NYC region, 40% of supervisors have only been working within the department for two years or less.

¹⁸ U.S. Government Accountability Office. July 2003.

Graph 13: Percent of Supervisors' Experience within Region



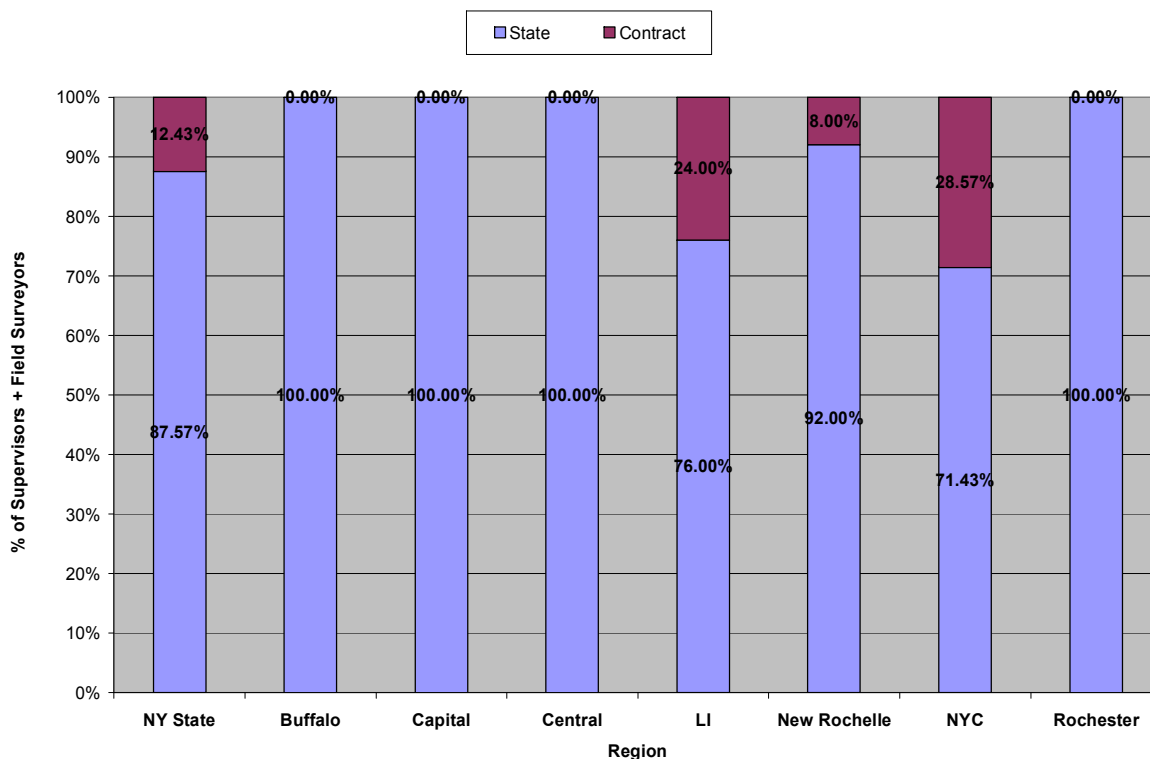
Looking at surveyors alone, findings are similar to those of the combined staff.

Source of Survey Staff

In New York State, on average, approximately 88% of all supervisors and surveyor staff combined are state employees and 12% are contract workers. Generally speaking, the regions writing the largest number of deficiencies do not use any contract employees; the two regions with lower numbers of deficiencies – NYC and Long Island - utilize contract workers to a large extent (28.6% and 24% respectively). However, in these regions most of the contract staff work only on complaints. Thus, there may be a connection between the low complaint substantiation rate in these regions and contract workers. When supervisors and field surveyor staff are looked at separately, similar percentages are found.¹⁹ It is possible that the underlying issue here is experience. In NYC almost all of the contract staff are inexperienced; in Long Island 2 out of 5 are inexperienced. Thus, it might not be that contracting out in and of itself is not a good thing; it may be that NYS should make sure that any contract workers it pays for are experienced.

¹⁹ See Appendix B for graphs showing supervisors and surveyors separately.

Graph 11: Percent of Supervisors and Field Surveyors' Source within Region



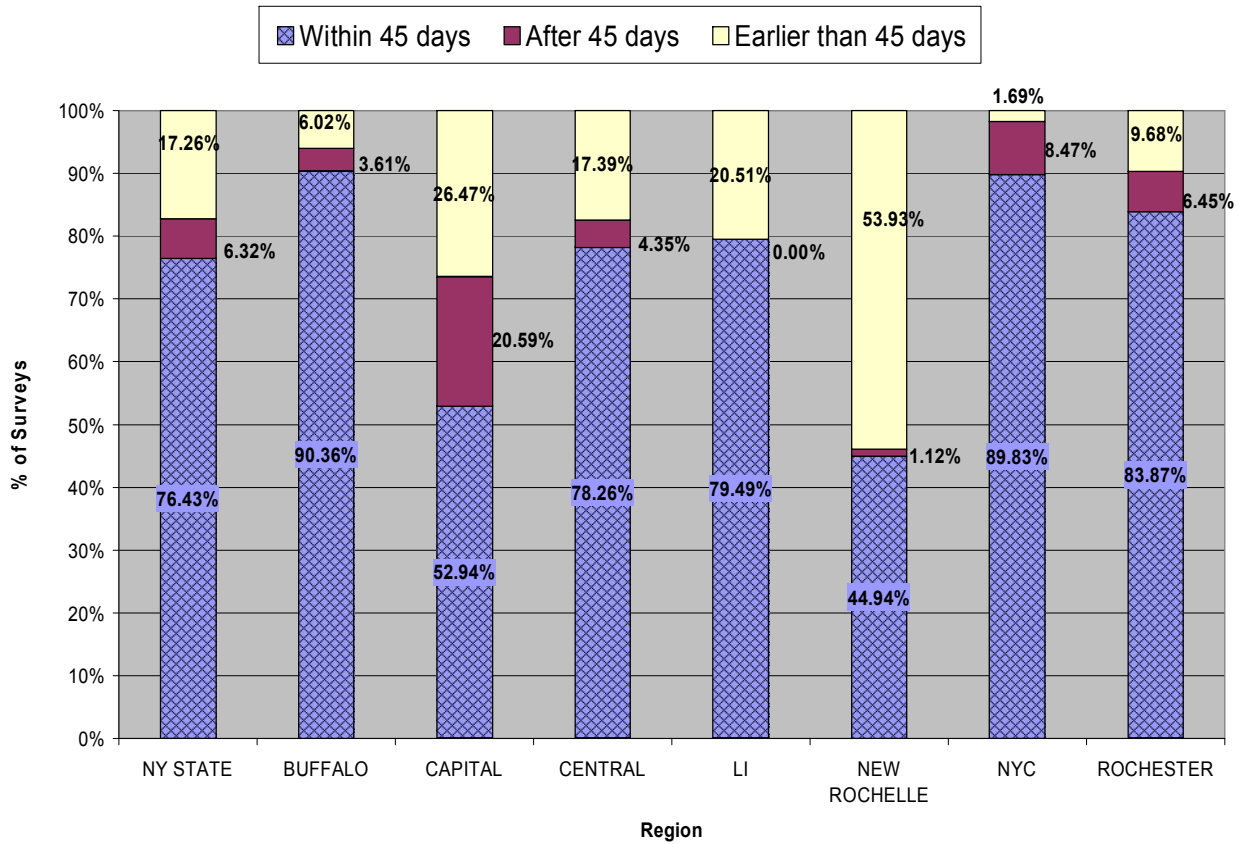
Timing of Surveys

Another factor explaining differences among the regions may be the timing of their surveys. If surveyors inspect nursing homes at the same, or almost the same time each year, the survey can lose its surprise element. As a result, providers may have the opportunity to prepare for the survey by temporarily increasing staffing levels, improving resident conditions or taking other steps to cover-up problems. As a result, surveyors may not be able to uncover problems that may exist during the rest of the year. The study looked at the timing of three annual surveys for all NYS facilities in the state. Looking at the dates of the last three surveys²⁰, it is clear that a number of regions have been trying to change the timing of their surveys, moving from annual surveys within 45 days of each other to earlier than or later than 45 days. For example, while 76.43% of all state surveys for the last 2 surveys before the most recent one were within 45 days of each other, this rate had dropped to 56.24% when the most recent survey was examined. Our findings indicate that some regions are trying to stagger their surveys even more. NYC went from almost 90% being within 45 days of each other to only 26.55%; Rochester from almost 84% to 57%; Central from 78 to 54%; and Capital from 53 to 37%. However a few regions either did not change or went the other way: New Rochelle went from 45% of its surveys within 45 days to

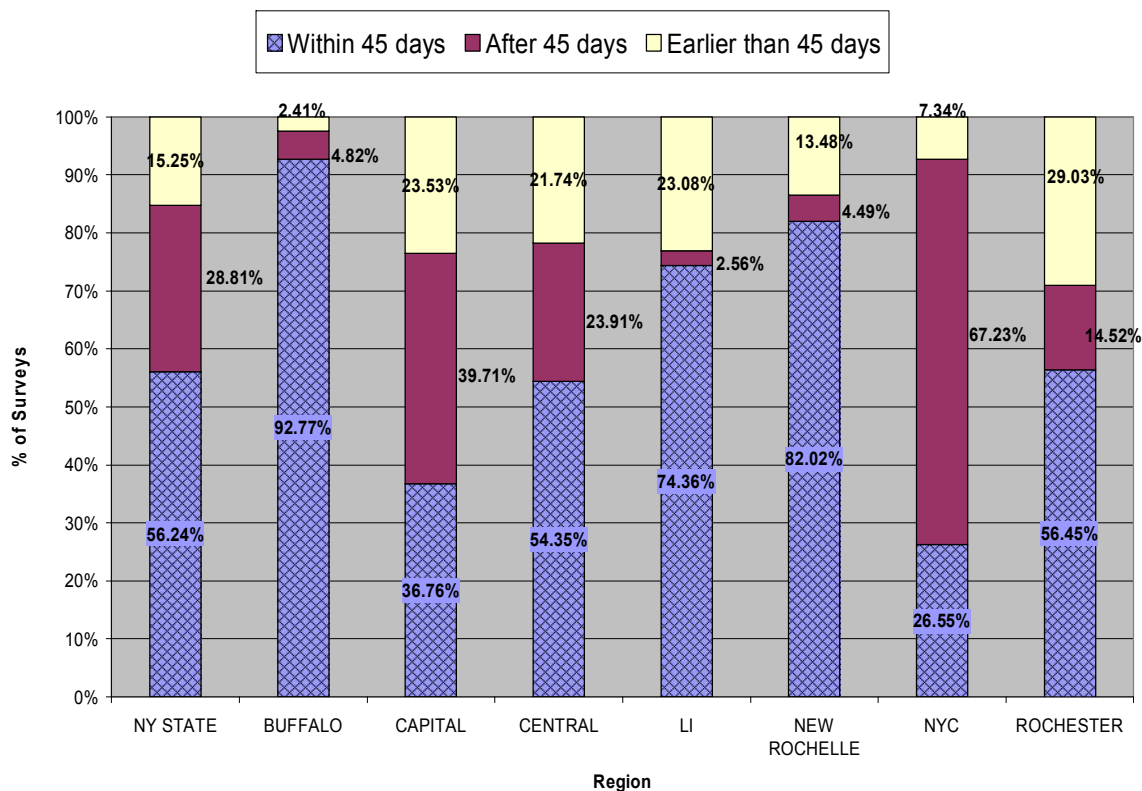
²⁰ Data is from the NYSDOH web site – August to September 2005

82% and Buffalo remained about the same with 93% of its surveys within 45 days of each other.

Graph 14a: Comparison of Surveys 1 Year Ago vs. 2 Years Ago
Within a Region



Graph 14b: Comparison of Surveys 1 Year Ago vs. Most Recent within a Region



We might expect more citations in those regions that managed to change their survey pattern. However, this is not generally the case. While we see more immediate jeopardy and widespread citations in NYC than in other regions, we do not see more citations. It is possible that it takes more than just the change in pattern. It might be that the pattern must be changed to inspecting earlier rather than later than the 45 day time frame in order to keep the surprise element. Looking at those surveys that were not within 45 days of each other, we found that NYC, which had the most change in its pattern of within 45 days, tended to survey after the 45 days rather than before the 45 day period, possibly limiting the element of surprise. In those regions that did not change its timing, we see little differences in numbers of citations or scope and severity of citations.

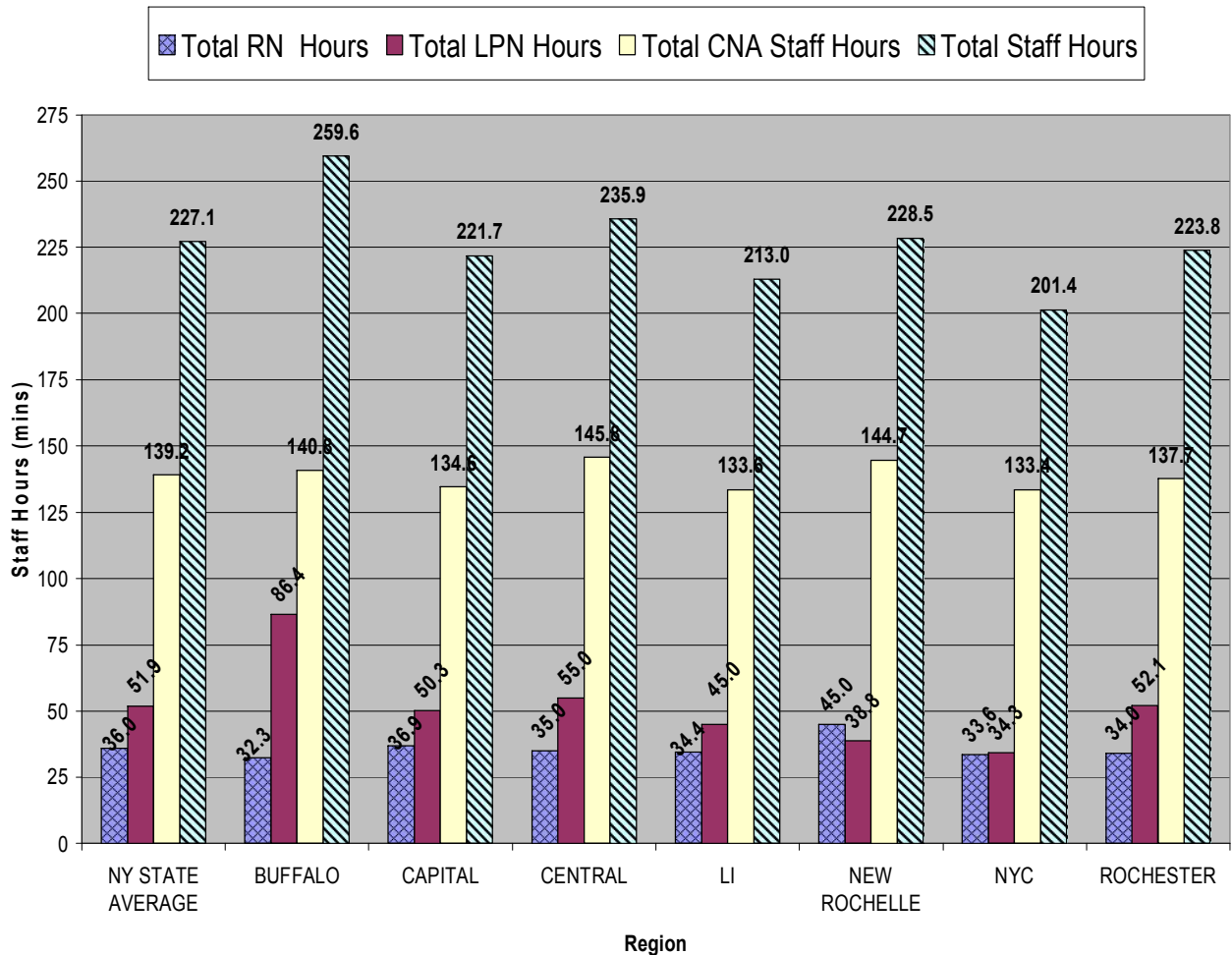
Staffing Levels in Nursing Homes

Many studies have shown the connection between quality of care and numbers of nursing staff.²¹ Thus, one might expect that regions where facilities had the lowest levels of nursing staff would cite the most deficiencies and would rate

²¹ Harrington et al 2000, Munroe 1990, Schnelle 2004, GAO 2002 report, NYS OAG 2006 report.

them high in severity and scope. However, our findings do not demonstrate this. The region with nursing homes with the lowest staff cited the least number of deficiencies – NYC.

Graph 15: Staffing Hours within Region



Sources of Documentation of Surveyor Citations

Sources of documentation of citations (interviews of staff, families and residents, personal observations and review of nursing home records) may be a factor in explaining the differences in the regions, especially the rating of deficiencies by level of severity. The use of resident and family/significant other interviews to document the citation may help to get a more accurate assessment of the severity of a violation because a resident or significant other may be the best source of information on negative impact. Thus, one might expect to see those regions citing high severity ratings where those that interviewed residents and families the most. However, this is not the case. The regions with the highest levels of severity were not the regions that used resident interviews the most. So few families were interviewed that little can be said about their effect overall or

in any one region. The lack of effect may be a result of the generally low uses of both resident and family/significant other interviews statewide. Many residents and family/significant others complain that surveyors are more apt to listen to staff than to them. In addition, they are concerned that a heavy reliance on records may not be a good idea because records can be altered. The new Psychosocial Outcome Severity Guide²² suggests the importance of getting complete information from residents in order to determine severity. A surveyor cannot determine whether a negative outcome is a potential for harm or actual harm unless he/she finds out how the resident has responded to the negative outcome. Our evaluators believe this means either interviewing the resident, observing the resident for non-verbal cues and/or interviewing family members/significant others. The results discussed below are based upon the review of the sample SODs. The low number of resident and family/significant other interviews does indicate how many were actually interviewed during the survey; we do not have that information. It only means that the percentages cited are those that were noted as a source of documentation by the surveyor. We can assume that if the surveyor did not note an interview it probably did not occur related to the cited deficiency (see table 2 below).

Residents

Only 18.5% of the cited NYS deficiencies used residents to help document the findings. There is a wide variation in regions. The Central region used resident interviews 30.3% of the time, yet was only about average in the percentage of level 3 and 4 deficiencies. New York City is the lowest at only 12.5% of the time, yet it wrote the most deficiencies at level 4. Others ranged from 14 to 20%. However, Long Island had the second highest percentage of level 3 and 4 deficiencies with the second highest percentage of using resident interviews for documentation.

Family/Significant Others

If residents are not able to be interviewed, families can help surveyors rate the severity of a deficiency; however, very few family/significant other interviews were used. Only 1.6% of all deficiencies cited in NYS used families to help document the citation. Three regions did not use families at all: Buffalo, Rochester and Long Island. New York City is 1.8% and the other regions range from 2.4 to 3%.

²² See www.cms.gov.

Observation

All of the regions use observation for most of the deficiencies they cite. Statewide, the percentage is 68.3%.

Staff Interviews

The most frequent source of documentation is the staff interview. Ninety-four percent (94%) of the state citations are documented by staff interviews. The regions ranged from a low of 82.9% in Buffalo to a high of 97.6% in Long Island.

Record Review

Eighty-four percent (84.3%) of the state citations were documented by record review. The regions range from a high of 92.3% in Rochester to a low of 68.3% in Long Island.

REGION	Observations	Staff Interviews	Resident Interviews	Family/Significant Other Interviews	Record Review
NY STATE	68.34%	94.04%	18.50%	1.57%	84.33%
BUFFALO	74.29%	82.86%	14.29%	0.00%	91.43%
CAPITAL	57.14%	95.24%	14.29%	2.38%	80.95%
CENTRAL	65.15%	96.97%	30.30%	3.03%	87.88%
LONG ISLAND	75.61%	97.56%	17.07%	0.00%	68.29%
NEW ROCHELLE	62.50%	97.50%	15.00%	2.50%	87.50%
NYC	76.79%	96.43%	12.50%	1.79%	82.14%
ROCHESTER	66.67%	87.18%	20.51%	0.00%	92.31%

Discussion – Region by Region

Buffalo - One of the reasons for the high identification of deficiencies may be that Buffalo has a high number of surveyor staff available to conduct investigations and surveys. This does not however, explain why the severity ratings for immediate jeopardy are so low. Perhaps these ratings are appropriate because this region's nursing homes have the highest nursing staff levels in the state. Or perhaps the fact that Buffalo used resident and family/significant other interviews²³ so infrequently for deficiency documentation may account for this.

²³ No region used family interviews very much. However, Buffalo was one of the three that did not use any.

Capital - Most of the surveyor staff in this region are experienced and may help explain why the region rates the deficiencies it does identify at a high severity and scope level, although that doesn't explain why so few deficiencies are identified or why so few complaints are substantiated.

Central - The experience of the surveyor staff in this region may explain its high identification of deficiencies. Although it has almost the least number of surveyors and supervisors per bed (only NYC has less), all of Central's field surveyors and supervisors have worked for three years or more. In addition, the high identification rate could also be due to surveyors in this region using family/significant other and resident interviews at a greater percentage than all other regions. However, this does not explain why the severity ratings for immediate jeopardy are low. It is possible that these ratings are appropriate because this region's nursing homes exhibit nursing staff levels above the state average.

Long Island - The fact that four other regions have more experienced survey staff and have higher ratios of supervisors and surveyors per nursing home bed, may explain why this region fines less facilities and identifies fewer deficiencies. Long Island's facilities have low nursing staffing levels; only the New York City region has lower levels. This may explain why Long Island exhibits a higher percentage of actual harm and immediate jeopardy deficiencies. However, this still does not explain why this region finds so few deficiencies and why facilities in this region are fined less and at lower amounts.

New Rochelle - Only two regions have more experienced surveyor staff than New Rochelle, which may explain the higher identification of deficiencies in this region. The lower ratios of survey staff per bed in this region compared to three other regions may explain why more complaints are not substantiated. They may not have enough surveyors to do investigation of complaints well.

NYC - Nursing homes in this region have the lowest total of staff hours in the state, which may explain the high number of immediate jeopardy and widespread citations compared to the other regions. However, we expected higher levels of fines because of the identification of more serious deficiencies. It is possible that fines related to these deficiencies may not have shown up on DOH's website yet. The region's low levels of deficiency identification may be due to its low numbers of experienced surveyors, the high numbers of contract staff and the low ratios of surveyor staff overall.

Rochester - This region has the highest ratio of supervisors and surveyors per bed in the state but many of these are not experienced. This may explain the discrepancy between high complaint substantiation and citation of few deficiencies overall.

CONCLUSION

Low numbers of experienced staff and the use of contract staff may be a major factor in the weaknesses of some of the regions. In addition, confusion of how to rate the severity and scope of a deficiency may also be a cause for some of the findings.

Identification of Deficiencies. Identification of deficiencies is a problem in all of the regions.

Complaint Substantiation. Complaint substantiation rates were low across the regions.

Severity and Scope Ratings. The Capital region is strong in this area – it cites many high severity and scope ratings; New Rochelle is extremely weak in this area – it cites no harm ratings and little immediate jeopardy ratings; New York City is strong in the highest level of severity – it wrote many immediate jeopardy ratings; however, New York City is weak in determining the scope of the impact of cited deficiencies on residents – it cites most of its deficiencies as isolated.

Fines. New York State overall is strong in this area. Over one-third of all facilities are fined in the state. However, New York City lags behind the rest of the state in this area.

The fact that all regions had areas of strength, or comparable strength, and weaknesses may indicate that DOH concentrates its surveyor training on one or two identified weak areas. Although the reason for this may be limited resources, this seems to indicate a “crisis mode” manner of operation in which problems are “triaged” at the expense of developing a system that maintains good conditions. Working on only the most egregious problems at a time may mean DOH misses a chance to improve the entire nursing home survey and certification process, and ultimately the quality of care nursing home residents are receiving.

RECOMMENDATIONS FOR DEPARTMENT OF HEALTH

1. Evaluate Surveyor Turnover. Adequate numbers of experienced surveyors are crucial to effective monitoring of nursing home care. We urge the Department of Health to hire an independent consultant to evaluate either why it is so difficult to hire surveyors and/or why surveyors leave before getting enough experience to be effective in those regions where the data indicate problems.
2. If contract workers must be used, make sure that only experienced contract workers are hired.

3. Analyze the Strengths and Weaknesses in Each Region and Introduce Findings into Surveyor Training. Meet with region staff to discuss the strengths and weaknesses in each region. Why is the Capital region able to cite high levels of severity and scope and other regions are not? Why is NYC able to cite so many immediate jeopardy and other regions are not? Why is NYC so weak on other variables? Why are New Rochelle's harm ratings so low?
4. Evaluate Effectiveness of Surveyor Training. Interviews of top staff of the central office of the State Department of Health (DOH) indicate that DOH is looking at patterns of deficiency writing of both regional offices and individual survey teams. A statewide team reviews a random sample of all statements of deficiencies to monitor scope and severity ratings. If it finds any problems, it gives feedback to the regions in the form of recommendations and guidelines. This information also becomes part of the surveyor training policies and procedures.
5. The results of this study, as well as the results of the 2005 study, indicate that this system may not be achieving the needed results. Although we were happy to find that DOH staff indicated that DOH will bring in consumers to give surveyors the resident's perspective of the survey system and would like to videotape residents and staff in their "own environment," we are concerned about the effectiveness of the training. We urge DOH to conduct pre- and post-testing of the effectiveness of the surveyor training that evaluate whether the training changed actual surveyor outcomes, not merely if the surveyors understood the training. If behaviors and outcomes do not change the training must be modified.
6. Increase the Use of Resident and Family/Significant Other Interviews to Document Citations. Require all surveyors to document interviews with residents and family/significant others for each care related deficiency cited. If it is not appropriate for a resident to be interviewed, require the surveyor to note this and the reason it is not appropriate. Require all surveyors to telephone a family member/significant other for an interview for all residents determined to be ineligible for interviewing. Require a second phone call if the family member/significant other is unavailable for the first call.
7. Develop a Process to Prevent Repeat Deficiencies: "In and Out Compliance." The information obtained from DOH staff indicated that a post survey visit is conducted to make sure that all deficiencies rated at the harm level or above are corrected. If a deficiency is not considered to have caused harm, the regional office staff makes the decision whether to go to the facility to check for correction. If survey staff believe the deficiencies are related to deficiencies cited since the last survey, an

onsite visit is more likely to occur. If an onsite visit has not been conducted, a random review at the next survey is performed to determine if the problem has been corrected.

Although the process currently in place may be effective in monitoring correction of deficiencies rated as harm or above, some of the findings of this study indicate that in order to prevent repeat deficiencies at any level of severity, DOH should mandate that all successful plans of corrections be in place until the following survey or until DOH determines that the plan is no longer needed. In addition, DOH should mandate that if a facility wants to change the plan of correction, it must get approval from DOH and DOH must monitor any changes to plans of corrections.

8. Monitor Surveyor Review of Appropriate Numbers of Residents. If there are more residents with similar care issues in the facility being surveyed, make sure that the care of enough residents is reviewed before rating the citation isolated. Surveyors are already required to review appropriate number of residents. DOH should be monitoring whether this is happening.
9. Focus Surveyor Training on New CMS Psychosocial Outcome Severity Guide. On June 1, 2006, CMS introduced a new guide²⁴ to help surveyors determine severity of deficiencies causing psychosocial harm. Some of the examples found by the evaluators related to this issue. Surveyors were not rating some of these as harm. The new guide will also help surveyors rate psychosocial harm in those situations where a resident may not be able to verbalize his/her feelings.

²⁴ See www.cms.gov.

REFERENCES

- Grassley, C. July 7, 2004. Letter to Mark McClellan, Administrator, Centers for Medicare and Medicaid Services.
- Harrington, C., D. Zimmerman, S. L. Karon, J. Robinson, and P. Beutel. 2000. "Nursing Home Staffing and Its Relationship to Deficiencies." *Journal of Gerontology: Social Sciences* 55B (5): S278–87.
- Harrington, C., Ph.D., Carrillo, H., M.S. & Crawford, C., M.A. August 2004. "Nursing Facilities, Staffing Residents and Facility Deficiencies, 1997 Through 2003." Department of Social and Behavioral Sciences, UCSF.
- Harrington et al. August 2005. "Nursing Facilities, Staffing, Residents, and Facility Deficiencies, 1998 Through 2004," Department of Social and Behavioral Sciences, University of California.
- Munroe, D. J. 1990. "The Influence of Registered Nursing Staffing on the Quality of Nursing Home Care." *Research in Nursing and Health* 13 (4): 263–70.
- New York State Office of the Attorney General (OAG). 2006. *Staffing Levels in New York Nursing Homes: Important Information for Making Choices*. Albany, NY: Medicaid Fraud Control Unit.
- Schnelle, J.F., S.F. Simmons, C. Harrington, M. Cadogan, E. Garcia, and B.M. Bates-Jensen. 2004. "Relationship of Nursing Home Staffing to Quality of Care." *HSR: Health Services Research* 39(2): 225-50.
- U. S. General Accountability Office (GAO). 2002. *Nursing Homes: Quality of Care More Related to Staffing than Spending*, GAO-02-431R on Nursing Home Expenditures and Quality. Report to Congress. Washington, DC: General Accountability Office.
- U.S. General Accountability Office (GAO). July 2003. *Nursing Homes: Prevalence of Serious Quality Problems Remains Unacceptably High, Despite Some Decline*, GAO-03-1016T. Testimony to Committee on Finance, U.S. Senate. Washington, DC: General Accountability Office.
- U.S. General Accountability Office (GAO). December 2005. *NURSING HOMES: Despite Increased Oversight, Challenges Remain in Ensuring High-Quality Care and Resident Safety*, GAO-06-117. Report to Congressional Requesters. Washington, DC: General Accountability Office.

APPENDIX A

SCOPE AND SEVERITY GRID

Surveyors categorize each deficiency by its severity and scope and use both the grid and federal guidelines.

S E V E R I T Y	J	K	L	Immediate Jeopardy to resident harm and safety
	G	H	I	Actual harm that is not immediate jeopardy
	D	E	F	No actual harm with the potential for more than minimal harm
	A	B	C	Substantial compliance – no actual harm with the potential for no more than minimal harm
	Isolated	Pattern	Widespread	
	SCOPE			

FEDERAL GUIDELINES

Severity

- Severity is Level 1 if a deficiency that has the potential for causing no more than a minor negative impact on the resident(s).
- Severity is Level 2 if noncompliance that results in no more than minimal physical, mental and/or psychosocial discomfort to the resident and/or has the potential (not yet realized) to compromise the resident's ability to maintain and/or reach his/her highest practicable physical, mental and/or psychosocial well-being as defined by an accurate and comprehensive resident assessment, plan of care, and provision of services.
- Severity is Level 3 if noncompliance that results in a negative outcome that has compromised the resident's ability to maintain and/or reach his/her highest practicable physical, mental and psychosocial well-being as defined by an accurate and comprehensive resident assessment, plan of care, and provision of services. This does not include a deficient practice that only could or has caused limited consequence to the resident.

- Severity is Level 4 if immediate jeopardy, a situation in which immediate corrective action is necessary because the facility's noncompliance with one or more requirements of participation has caused, or is likely to cause, serious injury, harm, impairment, or death to a resident receiving care in a facility.

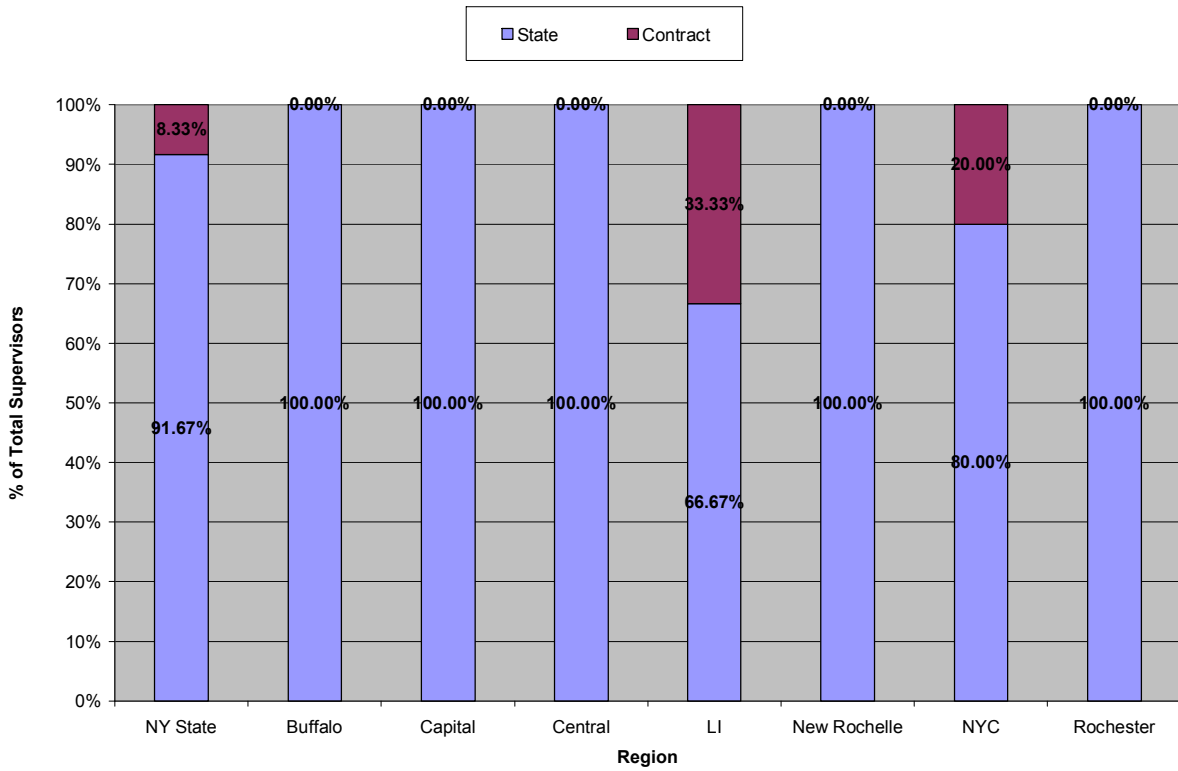
Scope

- Scope is isolated when one or a very limited number of residents are affected and/or one or a very limited number of staff are involved, and/or the situation has occurred only occasionally or in a very limited number of locations. If the deficiency affects or has the potential to affect one or a very limited number of residents, then the scope is isolated.
- Scope is a pattern when more than a very limited number of residents are affected, and/or more than a very limited number of staff are involved, and/or the situation has occurred in several locations, and/or the same resident(s) have been affected by repeated occurrences of the same deficient practice. The effect of the deficient practice is not found to be pervasive throughout the facility. If an adequate system/policy is in place but is being inadequately implemented in certain instances, or if there is an inadequate system with the potential to impact only a subset of the facility's population, then the deficient practice is likely to be pattern.
- Scope is widespread when the problems causing the deficiencies are pervasive in the facility and/or represent systemic failure that affected or has the potential to affect a large portion or all of the facility's residents. Widespread scope refers to the entire facility population, not a subset of residents or one unit of a facility. In addition, widespread scope may be identified if a systemic failure in the facility (e.g., failure to maintain food at safe temperatures) would be likely to affect a large number of residents and is, therefore, pervasive in the facility. If the facility lacks a system/policy (or has an inadequate system) to meet the requirements and this failure has the potential to affect a large number of residents in the facility, then the deficient practice is likely to be widespread.

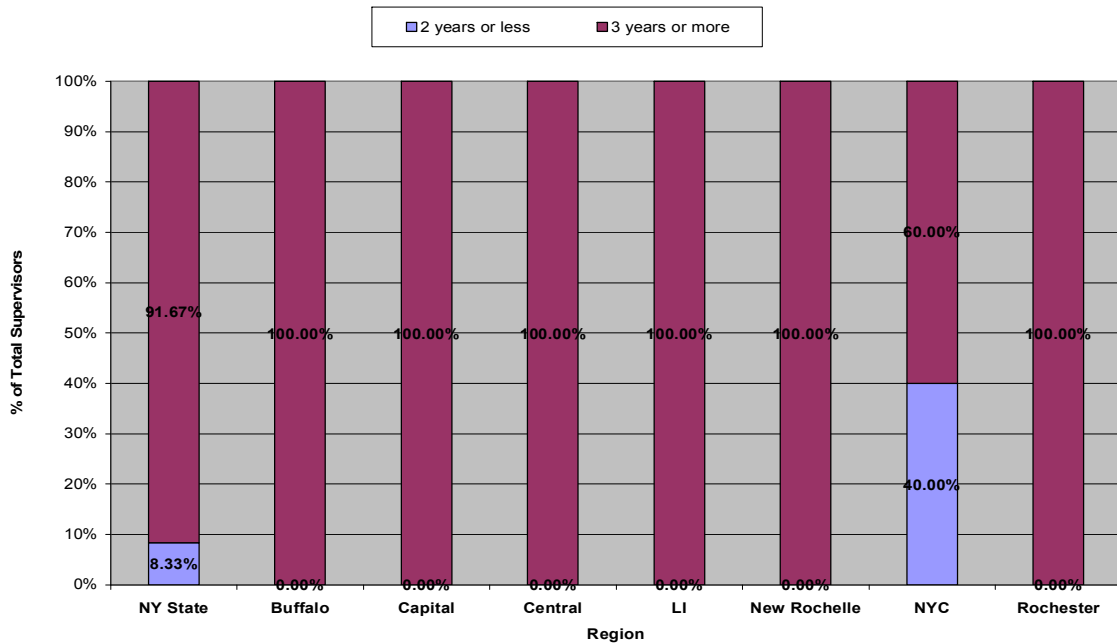
Note. If the evidence gathered during the survey for a particular requirement includes examples of various severity or scope levels, surveyors should generally classify the deficiency at the highest level of severity, even if most of the evidence corresponds to a lower severity level. For example, if there is a deficiency in which one resident suffered a severity 3 while there were widespread findings of the same deficiency at severity 2, then the deficiency would be generally classified as severity 3, isolated.

APPENDIX B

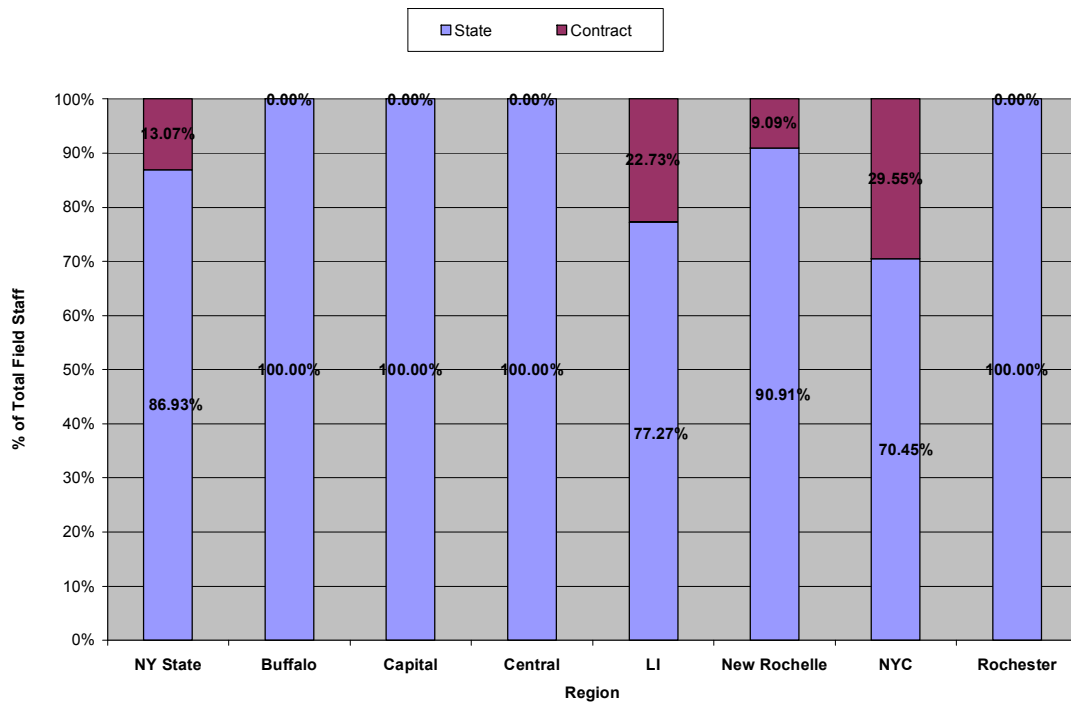
Graph 1: Percent of Supervisors' Source within Region



Graph 2: Percent of Supervisors' Experience within Region



Graph 3: Percent of Field Surveyors' Source within Region



Graph 4: Percent of Field Surveyors' Experience within Region

