Audit of Type AA and A Violations
The Illinois Department of Public Health (IDPH) released a Preliminary Report on March 31, 2015 entitled, “Audit of Type AA and A Violations.” This report was made pursuant to Public Act 98-0104, which amended the Nursing Home Care Act requiring IDPH to conduct a one-time audit of Type AA and Type A violations cited in 2014. This report of the results of the audit will be submitted to the Illinois General Assembly after review and comment by the Long-Term Care Advisory Board.

The Nursing Home Care Act was amended by PA 98-0104 as follows:
(210 ILCS 45/3-301) (from Ch. 111 1/2, par. 4153-301)

Sec. 3-301.
(b) The Department shall perform an audit of all Type "AA" or Type "A" violations between January 1, 2014 and January 1, 2015. The purpose of the audit is to determine the consistency of assigning Type "AA" and Type "A" violations. The audit shall be completed and a report submitted to the Long Term Care Advisory Committee by April 1, 2015 for comment. The report shall include recommendations for increasing the consistency of assignment of violations. The Committee may offer additional recommendations to be incorporated into the report. The final report shall be filed with the General Assembly by June 30, 2015.
(Source: P.A. 98-104, eff. 7-22-13.)

Overview of the Contents of the Report
The focus of the Type AA and Type A violation audit was to determine if the criteria to determine level of violation was applied consistently to violations cited in nursing homes licensed under the Nursing Home Care Act (210 ILCS 45) and to determine if these violations were represented statewide.

Approximately 1,169 facilities are regulated under the Illinois Nursing Home Care Act and/or federal certification requirements for Medicare/Medicaid participation. Of this number, 798 are licensed under the Nursing Home Care Act. Only those facilities licensed under the Nursing Home Care Act that had Type AA and Type A violations were included in this audit. These included Skilled Nursing and Intermediate Care Facilities and Sheltered Care Facilities.

Nursing homes throughout the state of Illinois in all of IDPH’s eight designated regions were represented in this audit. Since the number of nursing homes and available beds varies by region, the actual number of surveys and violations cited in each region will vary. IDPH survey teams conduct Annual Inspections, Complaint Investigations and Incident Report Investigations at nursing homes licensed under the Nursing Home Care Act. These survey teams work in the Division of Long-Term Care Field Operations and may be comprised of nurses, sanitarians,
The upcoming Specifications should be directed to Q & A relating to the April 2015 data specifications release. Questions regarding the PBJ Specifications (V1.00.0) CMS will host a PBJ software developer/vendor call on news, updates, and conference call information.

https://www.qtso.com/vendor/post.php software developers or vendors to participate in voluntary vendor registration at attendance vendors to evaluate the technical specifications. Nursing homes are encouraged to forward this link to their software developers and payroll or time and facilities to submit staffing and census information, this system, the Payroll-Based Journal (PBJ), will allow staffing information to be collected on a regular and more frequent basis than currently collected. It will also be auditable to ensure accuracy. All long term care facilities will have access to this system.

Information about this system is posted at: http://www.cms.gov/Medicare/Quality-Initiatives-Patient-Assessment-Instruments/NursingHomeQualityInits/Staffing-Data-Submission-PBJ.html

This posting provides information such as the timing of submissions, sample entry screens and how we expect facilities to electronically submit their staffing data, whether through a payroll vendor or through manual entry. Nursing homes are encouraged to forward this link to their software developers and payroll or time and attendance vendors to evaluate the technical specifications. Furthermore, nursing homes should encourage software developers or vendors to participate in voluntary vendor registration at https://www.qtso.com/vendor/post.php. This information will be used to contact vendors with important PBJ news, updates, and conference call information.

**CMS will host a PBJ software developer/vendor call on May 6, 2015** related to the PBJ Data Submission Specifications (V1.00.0). To receive information about this call, please register through the link in the preceding paragraph. This call will cover a high level overview of the PBJ Data Submission Specifications as well as submitted Q & A relating to the April 2015 data specifications release. Questions regarding the PBJ Data Submission Specifications should be directed to NursingHomePBJTechIssues@cms.hhs.gov by May 1, 2015, in order to inform the upcoming PBJ software developer/vendor call. We will have an open Q & A session at the end of this call.

**Electronic Staffing Data Submission – Payroll Based Journal (PBJ)**

CMS is developing an electronic staffing data submission process pursuant to Section 6106 of the Affordable Care Act. This section was enacted on March 23, 2010 and amended section 1128(l) of the Act to incorporate specific provisions pertaining to the collection of staffing data for long term care facilities. Section 1128(l)(g) of the Act specifies that the Secretary shall require a facility to electronically submit to the Secretary direct care staffing information (including information with respect to agency and contract staff) based on payroll and other verifiable and auditable data in a uniform format (according to specifications established by the Secretary in consultation with such programs, groups and parties). Such specifications shall require that the information submitted under the preceding sentence specify the category of work a certified employee performs (such as whether the employee is a registered nurse, licensed practical nurse, licensed vocational nurse, certified nursing assistant, therapist or other medical personnel), include resident census data and be reported on a regular schedule. The Impact Act of 2014 provided funding to implement this provision. The submitting of electronic staffing data is voluntary starting on October 1, 2015, but will become mandatory on July 1, 2016. See also S&C 15-35 noted under Important Rules, Regulations and Notices later in this edition of Regulatory Beat.

Therefore, CMS has developed a system for facilities to submit staffing and census information. This system, the Payroll Based Journal (PBJ), will allow staffing information to be collected on a regular and more frequent basis than currently collected. It will also be auditable to ensure accuracy. All long term care facilities will have access to this system.

Click here for the full report explaining the methods used, the audit results, comparisons and recommendations.
Please note that CMS policies related to PBJ are not the focus of the vendor calls. These calls are for technical or software related information and questions only. PBJ policy related questions/comments should be sent to nhstaffing@cms.hhs.gov.

V1.00.0 of the PBJ Data Submission Specifications is posted at the link above. This version supports the voluntary submission of payroll that begins October 1, 2015. Registration for the voluntary submission PBJ system will begin in August, however data collection (electronic data submission and/or manual data entry) will begin October 1, 2015. Please do not register at this time if you are not planning on participating during the voluntary submission period.

The following files contain technical information related to PBJ and are now available:

- PBJ Policy Manual DRAFT – General background and information about the submission requirements, such as sample submission screens, submission deadlines and definitions of job categories.
- PBJ 1.0 Submission Specs V1.00.0 for the October 1, 2015 Release:
  - PBJ data specs PDF files ZIP – Full data spec report and the unduplicated edits report, as well as the Overview document.
  - PBJ data dictionary ZIP – The Access database used to maintain the items and edits, as well as generate the reports.
  - PBJ data specs CSV files ZIP – Comma-separated value (CSV) files of the items and item values.
  - PBJ data specs HTML files ZIP – Set of HTML files that can be used to navigate the items and edits in a browser.
- PBJ data specs XML and XSD files ZIP – Sample PBJ XML submission file and its associated XSD file for performing some of the validations in the specs.

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**Trending Statistics**

*Each issue of Regulatory Beat features an interesting statistic or trend in the long term care regulatory arena.*

CMS recently published a report entitled “Total Deficiencies Cited by Region V States and Nation by Severity Level on Standard and Complaint Surveys.” The report included data on the level and number of tags cited by Region V States (and US/national) for both standard and complaint surveys; the average number of deficiencies cited per both standard and complaint surveys; and the Top Ten citations by Region V States and Nation on standard and complaint surveys. The report also included several graphs showing the percentage of IJ citations in standard and complaint surveys over the last several years and the percentage of harm citations for both standard and complaint surveys over the past several years. The final piece of the report was a listing of remedies in effect for the Region V States and the Nation. Click here for the full report.

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**Important Rules, Regulations & Notices**

1) The following federal Survey and Certification Letters were released since the last issue of Regulatory Beat:

- **S&C 15-32 – Hospitals/CAHs/ASCs** - Alert Related to Outbreaks of Carbapenem-Resistant Enterobacteriaceae (CRE) during gastrointestinal endoscopy, particularly Endoscopic Retrograde Cholangiopancreatography (ERCP). Duodenoscopes used to perform ERCP are difficult to clean and disinfect, even when manufacturer reprocessing instructions are followed correctly, and have been implicated in these outbreaks. The FDA has issued a Safety Communication warning, with related updates, that the design of duodenoscopes may impede effective cleaning. Hospitals, critical access hospitals
(CAHs) and ambulatory surgical centers (ASCs) are expected to meticulously follow the manufacturer’s instructions for reprocessing duodenoscopes, as well as adhere to the nationally recognized Multisociety consensus guidelines developed by multiple expert organizations and issued in 2011.

- **S&C 15-33 – OPT** - Clarification of Requirements for Off-Premises Activities and Approval of Extension Locations for Providers of Outpatient Physical Therapy (OPT) and Speech-Language Pathology Services and Off-Premises Activities. CMS has added guidelines to the State Operations Manual (SOM) Chapter 2 to clarify certification requirements for providers of OPTs. OPTs may only provide services at off-premises locations, such as ALFs/ILFs, on an intermittent basis when there is no ongoing or permanent presence of the OPT. CMS is clarifying that a patient’s room, and by extension, common areas within an assisted living facility (ALF) or independent living facility (ILF) may be considered a patient’s residence and may be exempt from the OPT two-person duty requirement. Extension locations may be approved when they are located outside the immediate vicinity of the primary site.

- **S&C 15-34 – NH** - Reinvestment of Federal Civil Money Penalty (CMP) Funds to Benefit Nursing Home Residents. Funding Opportunity CMS-1K1-14-001: CMS invited proposals for a grant opportunity to utilize Federal CMP Funds for the support and further expansion of the National Partnership to Improve Dementia Care in Nursing Homes. The Eden Alternative, Inc. was deemed to be the most eligible applicant and has been awarded a grant, in the amount of $293,129.00 for their project entitled, “Creating a Culture of Person-Directed Dementia Care.” [Click here](#) for information about the National Partnership to Improve Dementia Care in Nursing Homes.

- **S&C 15-35 – NH** - Implementation of Section 6106 of the Affordable Care Act - Collection of Staffing Data for Long Term Care Facilities. In this memorandum CMS notifies states of the posting of technical specifications and related information for the electronic submission of staffing information based on payroll data. This information is posted at: [http://www.cms.gov/Medicare/Quality-Initiatives-Patient-Assessment-Instruments/NursingHomeQualityInits/Staffing-Data-Submission-PBJ.html](http://www.cms.gov/Medicare/Quality-Initiatives-Patient-Assessment-Instruments/NursingHomeQualityInits/Staffing-Data-Submission-PBJ.html).

2) CMS released several notices/announcements since the last issue of Regulatory Beat. They include:

- The new website for the National Partnership to Improve Dementia Care is [http://www.cms.gov/Medicare/Provider-Enrollment-and-Certification/SurveyCertificationGenInfo/National-Partnership-to-Improve-Dementia-Care-in-Nursing-Homes.html](http://www.cms.gov/Medicare/Provider-Enrollment-and-Certification/SurveyCertificationGenInfo/National-Partnership-to-Improve-Dementia-Care-in-Nursing-Homes.html). The Advancing Excellence website will continue to be the repository for tools and resources associated with the Partnership.

- CMS recently announced ([click here](#)) a proposed rule to align mental health and substance use disorder benefits for low-income Americans with benefits required of private health plans and insurance. The proposal applies certain provisions of the Mental Health Parity and Addiction Equity Act of 2008 to Medicaid and Children's Health Insurance Program (CHIP). The Act ensures that mental health and substance use disorder benefits are no more restrictive than medical and surgical services.

- CMS released the second quarterly report ([click here](#)) of Medicaid enrollment data that all states have been reporting through the Medicaid Budget and Expenditure System (MBES). The enrollment information is a state-reported count of unduplicated individuals enrolled in the state’s Medicaid program at any time during each month in the quarterly reporting period. The enrollment data identifies the total number of Medicaid enrollees, and for states that have expanded Medicaid, provides specific counts for the number of individuals enrolled in the new adult eligibility group, also referred to as the “VIII Group”.

- CMS for the first time introduced star ratings ([click here](#)) on Hospital Compare, the agency's public information website, to make it easier for consumers to choose a hospital and understand the quality of
care they deliver. The recent announcement builds on a larger effort across HHS to build a health care system that delivers better care, spends health care dollars more wisely, and results in healthier people.

- ICD-10 Updates
  - Join the CMS ICD-10 Social Media Rally
  - Results From March 2015 ICD-10 Acknowledgement Testing Week
  - Prepare for a Successful Transition to ICD-10 with Medicare Testing Resources

- CMS put on display at the Federal Register a proposed rule that will extend access to enhanced federal financial participation for Medicaid eligibility and enrollment systems past the current regulatory deadline of December 31, 2015. This additional time and funding will allow the states to complete fully modernized systems and will support the dynamics of national Medicaid eligibility and enrollment, and delivery system needs. This enhanced funding is only available for state projects that adhere to certain standards and conditions which are also being updated by this proposed rule. Public comments are due on this proposed rule by June 15, 2015. The proposed rule is available online at https://federalregister.gov/a/2015-08754. For more information about this proposed rule, please visit the Data and Systems page on Medicaid.gov.

- The Health Care Fraud and Abuse Control Program Protects Consumers and Taxpayers by Combating Health Care Fraud. The Affordable Care Act has helped the Government Fight Fraud, Strengthen Health Insurance Programs, Protect Consumers, and Save Taxpayer Dollars. Since 2010, the U.S. Department of Health & Human Services, Office of Inspector General (HHS OIG), the Centers for Medicare & Medicaid Services (CMS), and the U.S. Department of Justice (DOJ) have been using powerful, new anti-fraud tools to protect Medicare and Medicaid by shifting beyond a “pay and chase” approach toward fraud prevention. Through the groundbreaking Healthcare Fraud Prevention Partnership, stronger relationships have been built between the government and private sector to help protect all consumers (http://www.cms.gov/Newsroom/MediaReleaseDatabase/Fact-sheets/2015-Fact-sheets-items/2015-03-19.html).

3) The American Health Care Association (AHCA) recently sent out two memorandums of importance. They include:

- Summary of Announcement of Calendar Year (CY) 2016 Medicare Advantage Capitation Rates and Medicare Advantage and Part D Payment Policies and Final Call Letter. This memorandum provides a summary of final changes to MA plan payment rates as well as additional CMS guidance to plans that may be of interest to skilled nursing facilities (SNFs). The complete document may be accessed by clicking here.

- CMS releases 2016 payment and policy changes for Medicare Skilled Nursing Facilities. This has been a memorable week for our profession. In less than 24 hours we have witnessed two significant events, both of which I believe are good for our members and the profession. Yesterday we saw the historic passage of a permanent doc fix, ending the perennial cycle of Congress cutting providers to pay for short-term patches. Just a few hours ago, we learned that CMS has released its proposed fiscal year 2016 payment and policy changes for Medicare Skilled Nursing Facilities. (See the fact sheet and the full rule online.) The announcement today comes as somewhat of a surprise because CMS typically releases the rule just before May 1. Based on our initial analysis, however, the announcement is welcome news. Skilled nursing providers can expect to see a 1.4 percent increase in their reimbursements beginning October 1, 2015, representing $500 million for the profession. Additionally, there will be no changes to the therapy categories, cut points, or any of the other changes many expected to see.
4) The Illinois Department of Healthcare and Family Services (HFS) sent out a letter with regard to a change in procedure for the submittal of an authorized representative form for MMAI client enrollment or opt out. Click here for the full letter.

5) In the Friday (4-10-15) Illinois Register, IDPH (1) proposed a rule to the Assisted Living and Shared Housing Establishment Code which regulates all aspects of licensure for assisted living and shared housing establishments, including the licensure fees. As of December 2014, there were 348 licensed establishments in the state, with 25 pending license applications for new establishments. The Department’s Division of Assisted Living averages four new license applications per month. The Department’s regulatory responsibility over these facilities includes annual on-site surveys and investigating complaint allegations. Assisted Living establishments continue to outgrow skilled nursing facilities by a two-to-one margin, and the continued rapid growth of the assisted living industry, the Division’s current staff of one division chief, six health facilities surveillance nurses, and three clerical staff is not enough to meet demand. Doubling the license fees to $2,000, plus $20 per unit for assisted living establishments, and to $1,000 for shared housing establishments, will allow the Department to create two additional survey positions and two clerical positions for the Division, enhancing its ability to protect the health and safety of the state’s vulnerable populations; and (2) adopted a rulemaking to implement the statutory requirements of PA 98-271, which removed language from the Nursing Home Care Act that limited the administration of pneumococcal vaccination to residents aged 65 or older. This adopted rulemaking is included in all Codes under the Nursing Home Care Act and the MR/DD Community Care Act.

6) MedlinePlus recently published several articles of interest. They include:

- Urine Isn’t Free of Bacteria – New study links bacteria in urine to urinary incontinence.
- Leg Artery Procedure May Be Overused in Nursing Homes - Many patients were immobile or dead a year later, but some benefited.
- Unauthorized Breaches of Medical Records on the Rise – Researchers call for enhanced security as more patient information is stored online.

7) MedPage Today also had several recent articles of interest. They include:

- Vaccine Prevents Pneumonia Among Seniors – Trial results have already resulted in changes in U.S. immunization policy.
- Senate Passes Historic SGR repeal Bill By Vote of 92-8 – Measure now heads to President Obama, who said he will sign it.
- HIPAA Data Breaches on the Rise – Thievery accounts for more than half of the cases.

8) Click here for the Bi-Annual State Dementia Coalition Call – Summary Report – January 2015.

9) HealthData Management had several articles of interest. They include:

- Congress Continues to Block Nationwide Unique Patient Identifier. Though patient data mismatches remain a significant and growing problem in healthcare, ongoing congressional language in the Department of Health and Human Services appropriations prohibits HHS from using federal agency dollars to create a national unique patient identifier.
- Feds Update HIPAA Privacy, Security Guidance. The federal government has issued updated HIPAA privacy and security guidance to reflect an accelerated move to interoperable exchange of protected health information.
• **How to Prepare for Increased HIPAA Audits.** The Department of Health and Human Services Office of Civil Rights is on track to increase the number of HIPAA violation investigations starting in 2015 and to be prepared providers need to focus on risk analysis, privacy safeguards and training.

10) There were several recent articles in *McKnight’s* that are of interest. They include:

• **Wandering Residents and Elopement Prevention.** Adults with a history of Alzheimer's disease or dementia are at risk for wandering and elopement. Because this could result in an injury or fatality, consider evaluating existing organizational protocols and strategies to prevent elopement or wandering.

• **MedPAC Mulls Plan to Stop Covering Some “Low Value” Procedures.** Congress's advisory panel for Medicare payment policy is considering a plan that would stop covering certain “low-value” procedures and tests because their return on investment isn't good enough. Such procedures are costing the program nearly $6 billion a year while yielding little benefit, panel members noted — the latest in a series of developments driving value-based purchasing across the continuum of care.

• **NLRB Guidance Speeding Up Union Procedures Takes Effect Tuesday.** Procedures for petitioning for union representation are changing April 14, when a final rule proposed the National Labor Relations Board (NLRB) go into effect.

• **Impact-Absorbent Flooring Cuts Injury Rate by 59%: Swedish Study.** Swedish researchers say they have produced the first “statistically significant” proof that impact-absorbing flooring can provide measurable benefit in preventing injuries from falls inside nursing homes.

• **Social Activities Can Reverse Brain Atrophy.** Johns Hopkins researchers say meaningful organized social activities could stop, and in males actually reverse, declines in volume in regions of the brain vulnerable to dementia.

11) Interesting Fact: Laughing relaxes and expands the blood vessels, which helps protect the heart.

*If you have any questions or comments on any of the information contained in this publication, or to suggest content for future editions, please don’t hesitate to contact Bill Bell. If you’d like to be removed from this mailing list, simply reply to let us know. And as always, we welcome your feedback!*

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