INHAA

The Administrator's Advocate

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"Show Me the Money" Conference in East Peoria on March 19-20

INHAA's *"Show Me the Money"* Conference will take place on **March 19-20 at the Par-A-Dice Hotel and Conference Center in East Peoria.**

Ten continuing education units for administrators and nurses will be offered covering today's must-know relevant topics, including:

- Managed Care Billing Procedures for 2014
- Negotiating Managed Care Contracts
- Top Ten F-tag Violations and How They Get Cited
- Using PEPPER to Spice Up Your Compliance Program
- A Comprehensive, Up-to-the-Minute Legislative, Regulatory and Reimbursement Update
- Making It Real, Making It Happen – Turning Staff into Caregivers.

You have until March 10 to avoid late registration fees. Brochure attached here.

The Guiding Principles of LTC State Licensure and Federal Certification Remedies

By Bill Bell, Regulatory Director, IHCA, 800-252-8988 or bbell@ihca.com

Bill Bell will presenting at the upcoming March 19-20 INHAA Conference in Peoria

One of the most frequently asked questions IHCA receives from its' members is, "How does the State come up with the federal and State fine/penalty amount? Is there some magic formula or do they just pull a number out of a hat? There does not seem to be any rhyme or reasoning to how they fine!" Well, there is a process even though the process itself is extremely confusing. We will attempt in this article to clarify/explain the State and federal guiding principles for assessment of remedies and fines against Illinois Long Term Care Facilities. Please remember that these are "**GUIDING PRINCIPLES"** and each enforcement case is reviewed individually and is based on many factors. We will discuss the State process and the federal process separately, but as you will note, as you read the information below, the State and federal processes sometimes overlap and affect each other. Here we go….

STATE

With regard to State fines and penalties for Skilled and Intermediate (SNF/ICF) facilities, Section 300.282 (click here) stipulates the fines and penalties for the various State violations (AA, A, B, C, AWL and repeats). The assessments are made as follows:

1) "AA" violations – automatic conditional license for a period of 6 months and an assessed fine of $25,000 per violation.
2) "A" violations – automatic conditional license for a period of 6 months and an assessed fine of $12,500 per violation.
3) Repeat "AA" or "A" violations – license revocation and three times the fine computed above (1 and 2) per resident per day.
4) "B" violations – an assessed fine of $1,100 per violation.

5) Repeat "B" violations – automatic conditional license for a period of 6 months and an assessed fine of $1,100 computed for all days of the violation including the duration of the first plan of correction compliance time.
6) 10 or more "C" violations - $250 per violation.
7) 1 or more "C" violations with a "high risk" designation – an assessed fine of $500 per violation.

In cases where more than one type of violation is cited (AA, A, B, C), the maximum fine that may be assessed is the fine amount for the highest level of violation.

If IDPH finds that a facility has violated a State requirement that has a "high risk" designation (click here) or that a facility has violated the same provision of the SNF/ICF Code 3 or more times in the previous 12 months, IDPH will assess a fine up to 2 times the maximum fine otherwise allowed.

The fines noted above are assessed fines. The facility has two options to seek reductions of the assessed fine amounts. The options are:

1) if a licensee has paid a civil monetary penalty imposed pursuant to the Medicare and Medicaid Certification Program for the equivalent federal violation giving rise to a fine under the Nursing Home Care Act (NHCA), or provides IDPH with a copy of a letter to the Centers for Medicare and Medicaid Services (CMS) of its binding intent to waive its right to a federal hearing to contest a civil monetary penalty for the equivalent federal violation, IDPH shall offset the fine by the amount of the civil monetary penalty. The offset may not reduce the fine more than 75% of the original fine. The meaning of "equivalent federal violation" shall be determined by IDPH. Upon request of IDPH, the facility shall provide proof to IDPH of the federal civil monetary penalty when the payment is due; or
2) request a hearing to either remove the deficiency or request a reduction of the fines or other penalties pursuant to a legal settlement agreement between IDPH and the facility.

When IDPH finds that a provision of Article II (Resident Rights) has been violated with regard to a particular resident, IDPH shall issue an order requiring the facility to reimburse the resident for injuries incurred, or $100, whichever is greater. In the case of a violation involving any action other than theft of money belonging to the resident, reimbursement shall be ordered only if a provision of Article II has been violated with regard to that or any other resident of the facility within 2 years immediately preceding the violation in question.

State fines and penalties for facilities under the MR/DD Community Care Act are similar to the SNF/ICF guidelines <u>except</u> the MR/DD Community Care Act allows for the fine amounts to be adjusted to the facility size. The MR/DD Community Care Act sets up different fine amounts for the MR/DD/ID facilities over 100 beds, less than 100 beds but more than 17 beds and for 16 beds or less. These amounts can be found at 210 ILCS 47/3-305.

FEDERAL

The calculation of federal penalties and fines is not as straight forward as the State assessment of fines and penalties. The federal civil monetary penalties and related other remedies/penalties are based on a calculation of a baseline and depending on the circumstances, fines/penalties can be increased.

The initial guiding principles for federal certification remedies to establish the baseline are as follows:

Level 1
"A" level – commitment to correct
"B" level – acceptable plan of correction

"C" level – acceptable plan of correction

Level 2
"D" level – required – directed in-service
- optional - $100/day for Life Safety Code (LSC)
- optional - $50/day for health

"E" level – required – directed in-service
- optional - $100/day LSC
- optional - $100/day health

"F" level – required – directed in-service
- required - $150/day health
- optional - $100/day LSC
- optional – monitor

Level 3
"G" level – required – directed in-service
- required - $200/day both LSC and health
- optional Denial of Payment for New Admissions (DOPNA)

"H" level – required – directed in-service
- required - $300/day
- required – DOPNA
- optional – monitor

"I" level – required – directed in-service
- required - $1000/day
- required – DOPNA
- optional – monitor

Level 4
"J" level – required - directed in-service
- required – termination in 23 days if immediate jeopardy (IJ) remains unabated
- required – DOPNA
- optional - $3,050/day (although noted as optional, IDPH is assessing this fine – sometimes per day or per instance)
- optional – monitor

"K" Level – required – directed in-service
- required – termination in 23 days if IJ remains unabated
- required – DOPNA
- optional - $3,050 - $5,000/day (although noted as optional, IDPH is assessing this fine – sometime per day or per instance)
- optional – monitor

"L" Level – required – directed in-service
- required – termination in 23 days if IJ remains unabated
- required – DOPNA
- optional - $3,050 - $10,000/day (although noted as optional, IDPH is assessing this fine – sometime per day or per instance)
- optional – monitor
- optional – temporary manager

There are additional mandatory remedies in certain cases. They are:
- Termination – if the facility is not in "Substantial Compliance" in 6 months.

- Denial of Payment for New Admissions – if the facility is not in “Substantial Compliance” within 3 months
- Denial of Payments for New Admissions and State Monitor – must be imposed immediately if the facility has Substandard Quality of Care in the last three consecutive standard surveys
- No “Opportunity to Correct”(immediate penalties) – if facility meets the “Double “G” criteria (“Double G” is **any** two “G” level or above deficiencies within a survey cycle).

There are additional CMP provisions established by federal CMS. They are:

1) The base CMP is determined using the Guiding Principles on Certification Remedies noted above.
2) For each consecutive survey that the facility has Level 3 deficiencies (“G”, “H”, or “I”), $100 will be added to the per day CMP. If the consecutive survey cycles contain “H” or above deficiencies, the CMP may be increased more.
3) If a CMP was imposed for the same Tag or Code of Federal Regulation (CFR) number in a previous case including the last annual, the CMP will be increased $100 over the previous amount if more than the current base amount.
4) CMP’s for Level 2 deficiencies (“D”, “E” or “F”)are not mandatory except for “F” level deficiencies for health.
5) CMP’s can be either per day or per instance (usually the lower level deficiencies are a per day fine and the higher level deficiencies are a per instance fine).
6) The minimum per instance CMP for Level 3 deficiencies is $1,500 and the minimum per instance for Level 4 is $3,500.
7) The maximum per day or per instance CMP amount is $10,000.
8) The per day CMP should begin on the first day noncompliance at the cited Scope/Severity level is documented, even if the first day precedes the first day of the current survey (unless determined to be past noncompliance)and if the facility cannot demonstrate that it corrected the noncompliance prior to the current survey. If the survey team cannot document the first day of noncompliance, then the CMP should start on the date the noncompliance was observed and documented at the time of the current survey.

Opportunity to Correct Case

1) A survey with a Level 2 deficiency that is not Substandard Quality of Care .
   - Opportunity to Correct is 45 days from the survey exit date.
   - There is usually no CMP associated with these cases.
2) A survey with a Level 2 Substandard Quality of Care deficiency or a Level 3 deficiency without a poor facility history.
   - Opportunity to Correct is 30 days from the survey exit date.
   - A CMP is usually associated with these cases.

No Opportunity to Correct Case

1) CMP’s are applied immediately to the following:
   - Any immediate Jeopardy.
   - Any Level 3 deficiency with a history of Level 3 or above in any survey back to and including the last annual survey.
   - Any “F” deficiency or above cited on a survey for a Special Focus Facility.

Adjustments to Calculated Baseline CMP Amount

1) If a per instance CMP exceeds $10,000, reduce the CMP calculated amount to $10,000.
2) If the daily amount for a per day Immediate Jeopardy case exceeds $10,000, reduce daily CMP calculate amount to $10,000.
3) If daily amount for a per day non-IJ case exceeds $3,000, reduce daily CMP calculated amount to $3,000.
4) If daily amount for a per day non-IJ case exceeds $3,000 and there is a repeated deficiency, per day CMP remains as calculated.
5) The total CMP is reduced by 35% if the facility waives its appeal rights.
6) The total CMP is reduced by 50% for self-reporting and if the facility waives its appeal

rights. (Note: The facility cannot get both the 50% and the 35%).

7) If the facility believes they have a financial hardship, they must notify CMS and provide financial documentation acceptable to CMS for review/consideration.

We know this is confusing, but we felt it was important to share with you the process that IDPH goes through to assess State and federal fines/penalties. If you have any specific questions, please contact Bill Bell at bbell@ihca.com

OIG Work Plan for FT 2014 for Skilled Nursing Facilities

FRR Healthcare Bulletin February 14, 2014 847-236-1111 or healthcareconsulting@frrcpas.com

On January 31, 2014, the Office of Inspector General (OIG) released the Work Plan for Fiscal Year 2014. The following is the course of action in regards to skilled nursing facilities (SNFs). The full OIG Work Plan FY 2014 can be located here: http://oig.hhs.gov/reports-and-publications/archives/workplan/2014/Work-Plan-2014.pdf.

In all areas of its Work Plan, the OIG is focusing on payment accuracy, safety, and quality of care issues. The Work Plan outlines the areas of investigation that the OIG plans for the current fiscal year (which began on October 1, 2013). Many other federal agencies follow the lead of the OIG, and also examine these areas. We suggest all organizations review the Work Plan issues and incorporate them into their own self-audit and corporate compliance plan updates, as appropriate.

A new focus for the Work Plan this year with be Medicare Part A billing by SNFs. The OIG will examine the differences of SNF billing practices between selected years. The OIG has found that more and more SNFs billed the highest level of therapy while the general beneficiary characteristics have remained fairly constant. Additionally, the OIG found a $1.5 billion error in inappropriate Medicare payments in 2009 due to the mistakes in the claims submitted by SNFs.

Another target the OIG will review is the Part B billing patterns of residents in nursing homes not paid under Part A. There will be series of studies that will inspect various services across the board. The reason behind this investigation comes from the inquiry of Congress to examine Part B billing for fraud and abuse during residents' non-Part A stay.

Under the category of quality of care and safety, the OIG will monitor if state survey agencies followed up with nursing homes' correction plans for deficiencies found during recertification surveys. Federal regulations and CMS require state survey agencies to collect evidence form the nursing home providing the correction of errors found during the survey.

In addition, the OIG will review the procedures of select states in regards to background checks for long-term care employees, and the cost of performing one. The OIG will conclude whether or not there any accidental outcomes to any of the states' programs.

The Work Plan will continue the focus of the hospitalization of nursing home residents with conditions that are considered "manageable or preventable" under nursing home care. Frequent hospitalization may be an indication of quality of care issues within the nursing home. Hospitalization of nursing home residents can be more expensive than when the beneficiary remains in the nursing facility.

The OIG Work Plan will also review state payments to Managed Care entities. They will be looking at the accuracy of Medicaid-managed care reimbursement. Additionally, the OIG will be reviewing the medical loss ratio as it relates to Managed Care Plans' refunds to states.

For further information or if you have any questions regarding the OIG Work Plan, Please feel free to contact a member of our Health Care Management Group at 847-236-1111. If you are interested in previously published FR&R bulletins, please email healthcareconsulting&frrcpas.com.

Broken trust: employee theft from resident trust funds

Submitted by Margaret Scavotto, JD, Management Performance Associates 314-434-4227
Margaret Scavotto will be speaking along with Andrew Buffenbarger at INHAA's March 19-20 Conference in Peoria

Remember the romantic comedy-drama Say Anything? The film's iconic scene has broken-hearted Lloyd (John Cusack) wooing Diane (Ione Skye) from beneath her window, Romeo-style. He is holding aloft a boom-box (remember those?) blaring Peter Gabriel's classic In Your Eyes. Diane, the class valedictorian, had dumped slacker Lloyd at the "suggestion" of her father, Jim. But when Diane discovers that her father has been stealing from the residents of the retirement home he owns, Diane returns to Lloyd and bitterly rejects her father who winds up in a federal penitentiary. Apparently, some nursing home employees haven't seen this movie. Or perhaps they think they can avoid detection better than Jim Court did in Say Anything.

A recent front-page USA Today article revealed a number of cases of theft from nursing home resident trust funds. The article cited employee thefts at nursing homes in amounts as high as $350,000 prompting U.S. Senate Aging Committee Chairman Bill Nelson to request a federal investigation into oversight of nursing home management of resident funds.

The OIG views trust fund theft as a resident rights issue, and thus a compliance issue. Included in the OIG Compliance Program Guidance for Nursing Facilities is the "failure to safeguard residents' financial affairs" as a compliance risk area. Failure to safeguard resident funds can also result in violations of federal and state theft, and fraud and abuse statutes. An accounts-receivable clerk at a facility in Connecticut who wrote 36 checks from resident trust accounts in amounts from $500 to more than $6,500 received a seven-year prison sentence and must repay the $140,170 she stole. Other fallout from detected trust fund theft includes damage to the reputation of the facility, and to the emotional status of the vulnerable residents who have relied upon and trusted the home and its staff.

The USA Today article indicated that embezzlement of resident trust funds goes undetected because the funds are often managed by a single employee who works without oversight. A better practice would be to broaden surveillance by assigning resident trust fund duties and responsibilities between at least two employees who are trained to look for irregularities. Implementing policies, procedures and training programs on anti-fraud and abuse that specifically mention trust fund theft can also help protect resident trust funds.

Another way to deter and detect resident trust fund theft is to add these funds to routine audits and unannounced probes performed by internal or external auditors. Adding audits and probes performed as part of accounting processes to compliance auditing and monitoring is a good example of leveraging existing functions to enhance and augment the nursing home's compliance status.

Another approach is to enhance the nursing home's culture of compliance. The OIG emphasizes the value of a culture of compliance in skilled nursing facilities. One benefit of a culture of compliance is that employee behavior, rather than being driven by the desire to avoid detection and penalty, is driven instead by the desire to do the right thing. Employees so driven tend to do the right thing when no one is looking. And most of the time, no one is looking.

MPA provides guidance in planning and implementing effective compliance programs, including policies, training, auditing and monitoring, and in building a culture of compliance. To learn more about how your compliance program can help you avoid penalties, please visit the MPA website or call 314-434-4227 ext. 25. Margaret Scavotto and Andrew Buffenbarger of MPA will be speaking at INHAA's March 19-20 Conference at the Par-A-Dice Hotel in East Peoria.

Contacting Our Office

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Contacting Our Board Members

Contact Information for any of INHAA's board members can be found on the Board of Directors page at our website at www.inhaa.org.

Upcoming 2014 INHAA Events Calendar

March 19-20 Conference at the Par-A-Dice Hotel in East Peoria (Brochure here)
June 11-12 Conference at the Par-A-Dice Hotel in East Peoria
August 13-14 Conference at the Parke Hotel in Bloomington
October 29-30 Convention and Trade Show at the Crowne Plaza Hotel in Springfield

Administrator Licensing Information

Information about 2014 Administrator Licensure Examination dates and locations, Administrator Test Review Courses for 2014, Requirements for Obtaining NHA Continuing Education Credits, and how to contact the Illinois Department of Financial and Professional Regulation (IDFPR) can be found on the IDFPR page at our website at www.inhaa.org.

Employment Alley

POSITIONS AVAILABLE:

Full Time Administrator for 100 bed residential facility for DD Adults. Requires education as mandated by the state and federal laws, supervisory experience and computer skills. Successful applicants must hold a current Illinois Nursing Home Administrator's License. Drug testing required. Send resume to Administrator, 1450 Caseville Ave, Swansea, IL 62226.

Full Time Administrator. Heritage Enterprises, a leading Illinois based senior care provider, is proud to offer an excellent opportunity for a proven leader and licensed Indiana Nursing Home Administrator. Currently under construction, Evergreen Crossing is located at 5404 Georgetown Road in Indianapolis and will feature 70 skilled short-term therapy suites and 30 assisted living apartments. Our wellness community is designed to offer seniors hospitality driven services and amenities in a concierge centered environment. Responsibilities include: census development, networking, marketing, fiscal management, team building, managing quality measures and customer service. In addition to implementing state and federal regulations, successful candidates must be motivated to serve, have demonstrated results in navigating both accountable care and managed care organizations and understand the importance of culture as it relates to the team and our customers. Registered nurses who are a LNHA preferred but not required. If you possess strong interpersonal, leadership skills and enjoy the many challenges of healthcare, please send resume to or apply online at: Heritage Enterprises, Inc., Attn: Lori Kerns, P.O. Box 3188, Bloomington IL 61702-3188.
www.heritageofcare.com

CCRC CEO: King-Bruwaert House (KB) in Burr Ridge, Illinois, located approximately 30 minutes southwest of Chicago, is seeking a new chief executive officer. Founded in 1933, KB is a continuing care retirement community (CCRC) located on thirty-five acres. KB provides services to men and women ages 60 and above in an elegant Georgian Manor residence. The main house provides 33 independent living rooms, 14 private assisted living beds, 11 memory loss care beds and 49 skilled nursing beds.

The Woods of King-Bruwaert includes 58 spacious, maintenance-free cottage homes for independent living in a natural wooded setting on-site. KB also offers 31 single-story rental duplex homes for seniors at Godair Park located three miles away, adjacent to the Ruth Lake County Club in Hinsdale. A full-time resident manager who oversees the operations of both communities also organizes an abundance of social outings and seasonal activities.

The ideal candidate for this position will be a CCRC leader with a proven track record of success in the industry. He/she will possess a minimum of 10 years experience, with at least five in a senior management role. He/she will have a bachelors degree; a masters is highly preferred. A clinical background is a plus. Interested and qualified candidates may contact Chris Acuna at cacuna@qlksearch.com or 312-876-9800.

SEEKING POSITION

LNHA seeking a position as Interim Administrator. I have been an Interim Administrator at three previous facilities, as well as been a full time Administrator, with over two decades of experience in the field. I am also a Qualified Mental Retardation Professional, having worked for ARC in Springfield and was a special education teacher for ten years. I have a BA in Management from the University of Illinois. For more information, contact Linda Cox at 217-529-7657.

Working up from being a CNA, Registered Nurse, Human Resource Manager, Patient Care Manger, and Administrator in Training over the past 10 years, I have a BS in Business Administration (2008), BSN (2012) and Master in Business Administration (2013). For more information, contact Amanda Gallagher at 724-747-8814.

Employment Alley is published monthly for members and business members. The cost for nonmembers is $30 a month - $50 for two months - $70 for three months. A business member listing is $25 for one month - $40 for two months - $55 for three months. Send your approximate 55-word ad and payment to INHAA, PO Box 4407, Oak Park, IL 60304 or fax it to 708-848-4219. For further information call Terry Sullivan at 708-800-6161.