

NEWS

Provider sues to stop 'weaponization' of CMS schizophrenia audits

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An Illinois nursing home is suing to stop federal regulators from docking providers' star ratings over unsatisfactory audits of schizophrenia diagnoses.

Forest City Rehab and Nursing Center was swept up in a series of off-site audits the Centers for Medicare & Medicaid Services launched in 2023 to determine whether nursing homes were inappropriately coding patients with schizophrenia. The effort is tied to the agency's push to reduce the number of patients excluded from quality indicators measuring antipsychotic use.

The Illinois facility was audited in early 2025 and informed that April that CMS contractors found it had provided "erroneous coding of the schizophrenia diagnosis and/or the use of antipsychotic medications."

In accordance with CMS guidance, the agency lowered the facility's short-stay and long-stay quality measures to 1 star for six months, which reduced its overall star rating by one star. Its long-stay antipsychotic quality measure was also suppressed, or not visible to consumers, for 12 months.

The nursing home sued in federal court late last year, arguing that, in violation of the Constitution's Due Process clause and the Administrative Procedures Act, CMS failed to give leaders a chance to appeal. It is asking the US District Court for Northern Illinois

to void the audit findings against Forest City, restore its star ratings and stop CMS from acting publicly on the findings of any schizophrenia audit until a provider has exhausted its appeals.

The contractor-led audits intentionally skirt the regulatory and appeals framework of the survey enforcement system that was designed to ensure high-quality clinical care, said Mark Reagan, managing shareholder and chair of the Post-Acute and Long-Term Care Practice at Hooper, Lundy & Bookman. In some cases, audit findings and resulting ratings implications are costing providers millions in revenue.

“This use of Five-Star as a surrogate enforcement system is what we’re really concerned about because it sort of weaponizes the marketplace against the provider,” Reagan said in an interview with *McKnight’s Long-Term Care News* Friday. “This doesn’t have to happen this way. Something like the MDS schizophrenia audits can be made part of the survey and enforcement system and be subject to all of the underlying clinical basis that you would expect it to be. It’s when you have this Five-Star weaponization ... that does not allow for due process that things have gone awry.”

Helping thousands of providers

Reagan is working with SB2 Healthcare on the Forest City case, the first brought by a newly formed National Litigation Group that aims to challenge CMS actions on a range of issues given recent Supreme Court decisions affecting regulatory authority.

“These issues have existed for a while, [but] there’s been no place for providers to gather and go. There’s been no impetus providers could rely upon to address these issues systematically and comprehensively,” SB2 Founder and Managing Partner Chad Bogar told *McKnight’s* Friday. “We took our time and we came up with, I feel, a very, very good legal theory to address an issue for thousands of providers.”

While the exact number of providers affected by the off-site schizophrenia remains unknown, they have led to lasting star downgrades that carry significant financial implications for many. The audit selection and methodology also remain largely cloaked in secrecy.

But selection seems heavily weighted against the provider: Reagan said he knows of

only one operator that has passed a schizophrenia audit.

A lower quality rating resulting from failure not only impacts the overall ratings viewed by consumers, but it also can limit participation in alternative payment models and referral networks, lower census, and raise insurance rates and the cost of capital. In states where Medicaid rates are tied to Five-Star performance, including Illinois, they also can undercut providers' reimbursement rates.

"Some providers are losing a million dollars a year because of this. Some providers are losing \$10 million a year because of this," Bogar said. "And now, CMS will just extend these sanctions by using the MDS submissions."

Access implications

Providers are finding those one-year suppression timelines publicized by CMS are frequently unending, a fact that Reagan and Bogar say is likely making nursing homes think twice about caring for patients with schizophrenia.

"This discriminates against individuals with schizophrenia who require long-term, skilled nursing care, and it operates to reduce access to necessary care and services and punishes the Plaintiff for diagnosis' that it does not have the professional authority to make," Forest City argued in an amended complaint. "The Plaintiff is not a physician and only executes the physician's orders, including prescribing medication. The Plaintiff is being punished for medical decisions not within its control."

In its first filing in the case on April 10, CMS denied that argument and most others advanced by the plaintiff.

No hearings have been scheduled in the case.

Amid all of that, providers also have no way of knowing what criteria auditors are using to fail them, nor a process by which they can appeal or challenge findings.

"If they wanted to pursue clinical oversight of misdiagnoses of long-term care residents, that's what the survey and certification system was designed to do," added Reagan. "And it has due process checks along the lines of DAB appeals and,