

**NEWS**

# 'Profoundly detrimental' PBJ audits targeted in new provider lawsuit

**KIMBERLY MARSELAS**

x @KIMMARSELAS

APRIL 22, 2026

SHARE ^

A New Jersey nursing home that expects to lose \$450,000 in annual Medicaid revenue over its staffing data is suing the Centers for Medicare & Medicaid Services to stop off-site audits from triggering quality rating changes.

Our Lady's Center for Rehabilitation & Healthcare in Pleasantville argues third-party audits of Payroll Based Journal reporting may be legal, but docking star ratings over missed or inaccurate reports exceeds CMS authority under federal law – especially given a lack of appeal rights.

The PBJ case filed Tuesday in US District Court follows on the heels of a similar provider case challenging the agency's use of schizophrenia audits to “weaponize” consumer-facing nursing ratings.

Following an audit by an outside firm in 2024, the 214-bed nursing home had its staffing star downgraded to 1 star, which also dragged down its overall star rating. Those effects – related to missing, unverified or incorrect data, but not necessarily inadequate staffing levels – mean the nursing home will lose \$9 per day for each Medicaid patient, starting July 1. That's thanks to New Jersey's payment system, which like an increasing number of other states, relies on federal star ratings to dole out incentive payments.

Our Lady's had hoped to appeal the audit results, but after one internal submission of additional information to audit firm Myers and Stauffer, facility leaders learned that CMS had no further procedures to contest findings.

“The immediate downgrade of the staffing star rating, its impact on the overall Five-Star Quality Rating, and the immediate publication of the star rating has profound detrimental effects on Plaintiff’s businesses,” the nursing home’s attorneys wrote in their Tuesday filing. “Specifically, Plaintiff will lose at least \$450,000 annually due to the downgraded star rating. And generally, low star ratings limit participation in federal programs and can preclude participation in insurance service networks, accountable care organizations, and preferred provider networks.”

Our Lady’s quickly regained compliance with quarterly PBJ reporting requirements and currently has a 3-star staffing rating and a 4-star overall rating. But its case could be an important test of whether federal law allows CMS to punish providers without appeal, and outside of the long-established and codified survey enforcement system.

## Missing appeals process

The nursing home is being represented by national healthcare law firm sb2, which has launched a national litigation group whose members plan to challenge regulatory authority using strategies tied to recent Supreme Court interpretations.

The same firm targeted schizophrenia audits with a lawsuit filed late last year and amended in March. Those audits started in 2023 and have affected hundreds of providers ratings, often for longer than announced in a related CMS memo.

On the PBJ front, data collection began in 2015, with related staffing data first publicized in 2017 and audits starting in 2018. That same year, CMS also started using PBJ data to calculate Five-Star Quality Ratings.

“While the collection and submission of the [PBJ] data is presumably authorized under the Affordable Care Act, the guidance implementing the PBJ audit process is not articulated therein,” Our Lady’s attorneys argued. “Specifically, the publishing of the change in the facility’s five-star rating calculation before the facility has had a chance to appeal any decrease in its five-star rating is not ever mentioned, discussed or specifically allowed under the Affordable Care Act.”

They also noted that under traditional nursing facilities audits, initial determinations are subject to appeal, as are survey deficiencies. Public hearings are available when civil monetary penalties or termination are threatened, and survey results can’t be posted before the informal dispute resolution process is completed.

That's not the case with off-site PBJ audits.

Dov Greenberg, founder of Boosted Analytical, assists nursing homes with PBJ compliance, looking for missed data and keeping submissions timely. He said the single-layer appeal to the auditor is “murky” and doesn't allow providers to present their case directly to CMS.

“There should be at least some sort of mechanism to correct a missed submission, similar to a delayed tax return,” he suggested. “Dealing with failed audits or missed submissions is honestly a nightmare, especially being that it has a six quarter impact.”

Facilities that fail a PBJ audit are given the lowest possible turnover scores until the affected quarter falls out of calculations 1 ½ years later.

## Challenging ratings implications

Our Lady's case confronts the use of “unauthorized 'guidelines' and 'policies' imposed by CMS producing actionable harm without any due process protections,” said sB2 Founder and Managing Partner Chad Bogar.

He is working with Mark Reagan, managing shareholder and chair of the Post-Acute and Long-Term Care for Hooper, Lundy & Bookman, to advance a portfolio of legal actions challenging unconstitutional uses of the Five-Star.

In an email to *McKnight's Long-Term Care News* Wednesday, the two said the ratings system was meant to assist consumers in choosing facilities based upon quality “but now operates as a 'shadow' enforcement system.”

“Over time, [our] effort is designed to establish case law that will ... constrain CMS from using these unauthorized tools not supported by statute that unfairly punish operators and actually operate to reduce the quality of care for consumers,” they added.

In both the PBJ and schizophrenia cases, the attorneys have asked judges to enforce providers' appeals rights and stop immediate rating downgrades.

## MORE FROM LONG-TERM CARE

---



## Provider sues to stop 'weaponization' of CMS schizophrenia audits



## Live from New York! Insights from the Pinnacle of long-term care