

Long-Term Care Survey Alert

What Do You Think? Does Staying on Top of DAB and ALJ Rulings Pay Off as a Survey Management Strategy?

Doing this instead may provide a bigger bang for your effort.

Questions: How advantageous is it for nursing facilities to review ALJ or DAB rulings in terms of applicability to their own situations? Can you sometimes identify trends by staying on top of rulings?

Answers: Departmental Appeals Board and Administrative Law Judge rulings are of very limited use to facilities, in the view of attorney **Joseph Bianculli**, in private practice in Arlington, Va. "The Board specifically says that its decisions are fact-specific and not precedential." And different ALJs may treat the same facts differently, he says. In fact, "two of the five ALJs almost never rule in favor of nursing facilities."

Bottom line advice: "We urge facilities to support their own decision making with the best science" and not rely on "or be scared by previous ALJ or Board decisions," says Bianculli.

Attorney **Meg Pekarske** says she does pay attention to ALJ and DAB decisions but she wouldn't put them on her "top 10 list" in terms of survey management. Pekarske notes, however, that if she were a nursing facility administrator, she'd "focus on really understanding and analyzing the [survey interpretive guidelines] as a risk management strategy as opposed to reading appeals cases. Sometimes reviewing the ALJ and DAB decisions can give you an idea about the big issues in IJs such as falls but you can also get that by looking at the IGs," says Pekarske, in private practice in Madison, Wis.