

The ABCs of Deficiency Citations

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Question: Every time we get cited for a deficiency by our LPA, she lists it as a Type A. Are there standards for when a deficiency rises to the level of a Type A? Can we appeal these?

Answer: The regulations themselves do not specifically reference levels of deficiencies. Nevertheless, it is Department policy to equate a Type A Deficiency to a serious violation. Regulation §87101(s)(1) defines “serious deficiency” as “any deficiency that presents an immediate or substantial threat to the physical health, mental health, or safety of the residents or clients of a community care facility.”

Similarly, Section 87451 states that a violation of certain specified regulations “may result in serious deficiencies when a failure to comply presents an immediate or substantial threat to the physical health, mental health, or safety of the residents.”

Unfortunately, there are some LPAs who perfunctorily issue a Type A Deficiency for any transgression regardless of whether or not it presents an immediate or serious threat to the health and safety of residents. Some LPAs are apparently confused by Section 87451 which lists specific sections of the regulations. They assume that if one of these regulation sections is violated it is automatically a Type A Deficiency. This, however, ignores the plain wording of Section 87451 which says that a violation of those sections “may” result in a serious deficiency when a failure to comply presents an immediate or substantial threat. Therefore, even if a provider has violated one of the enumerated sections, it is by no means automatically a Type A Deficiency.

We have seen extreme examples of misapplication of Type A Deficiencies. One client received a Type A Deficiency for failing to pay a timely refund to the family of a deceased resident. It is difficult to imagine how the late payment of a refund could have posed an immediate threat to the health or safety of the resident who was deceased. Similarly, we have seen Type A Deficiencies cited where an RCFE submitted an incident report after the due date. While a citation may have been justified for the report being submitted late, late submission did not adversely affect the health or safety of residents.

If a provider receives a deficiency that is warranted, but if it is cited as a Type A when a Type B would be more appropriate, they should appeal. In doing so, providers should cite Sections 87451 and 87101(s)(1). In addition, they may also want to reference the online Evaluator Manual. The portion of the Manual entitled *Reference Material for Facility Evaluation/Visit* contains a discussion of levels of deficiencies. Section 3-4200 I states that Type A Deficiencies are for situations in which there is an

(Continued on page 3)

Deficiency Citations *(Continued from page 2)*

immediate health, safety or personal rights impact. It states that Type A Deficiencies are violations of the regulations that, if not corrected, "have a direct and immediate risk" (sic) to the health, safety or personal rights of those in care. Examples that are given include failure to obtain criminal record clearance, fire safety issues, violations that have a direct negative impact on the physical or emotional wellbeing of clients in care, the failure to treat injuries or summon emergency personnel, failure to have enough food, failure to meet appropriate staffing ratios, and dangerous physical plant conditions such as broken window glass in accessible areas and exposed live electrical wires.

Section 3-4200 II discusses Type B violations. It states that these are "violations of the regulations and the Health and Safety Code that, without correction, could become an immediate risk to health, safety or personal rights of clients, or recordkeeping violation (sic) that would impact the care of clients and/or protection of their resources, or a violation that would impact those services required to meet clients' needs." It then goes on to list a number of examples including the failure to provide timely incident reports, recordkeeping violations, certain personal rights violations (for example, opening client's mail without authorization), and not having first-aid supplies, failing to maintain required perishable and non-perishable food supplies, and not having planned activities or notice of planned activities on file.

Interestingly, Section 3-4200 II 8 states, "Quality of furnishings should be cited as a Type B violation only when they are clearly damaged to the extent that they are not functional (i.e., dresser is shabby, but operational [should not be cited] versus one that is broken and nonfunctional [which should be cited]; a tear in the seat of a chair versus exposed springs); inadequate number of toilets and sinks to meet the needs of clients. . . ."

The Evaluator Manual also discusses Type C violations which do not result in citations. These are for violations that do not pose an immediate health and safety risk but may be indicators of carelessness, intentional disregard or problems with the facility's plan of operation. Frequent Type C violations according to the Manual may, however, be elevated to a Type A or B if it is determined that an immediate risk exists. The Manual gives a number of examples of Type C violations including: missing non-critical information from forms; one or two items missing from first-aid supplies; incident reports not received timely when the licensee has already reported by phone; or hot water temperature that is two or three degrees below the minimum.

Providers may wish to point out these Evaluator Manual provisions to their LPAs during site visit exit conferences. If inappropriate levels of deficiencies are cited, providers should exercise their appeal rights. ■