**Section 340.1220 Determination of the Level of a Violation**

a) After determining that issuance of a notice of violation is warranted and prior to issuance of the notice, the Director or his or her designee will review the findings that are the basis of the violation, and any comments and documentation provided by the facility. The level of violation shall be determined to be either a level AA, a level A, a level B, or a level C violation based on the definition of level of violation contained in the Act, Section 340.1000 of this Part and on the criteria in this Section.

b) The following definitions of levels of violations shall be used in determining the level of each violation:

1) A "level AA violation" or a "Type AA violation" is *a violation of* the *Act* *or* this Part *which creates a condition or occurrence relating to the operation and maintenance of a facility that proximately caused a resident's death*. (Section 1-128.5 of the Act)

2) A "level A violation" or "Type A violation" is *a violation of* the *Act* *or* this Part *which creates a condition or occurrence relating to the operation and maintenance of a facility that creates a substantial probability that the risk of death or serious mental or physical harm will result therefrom or has resulted in actual physical or mental harm to a resident.* (Section 1-129 of the Act)

3) A "level B violation' or "Type B violation" is *a violation of* the *Act* *or* this Part *which creates a condition or occurrence relating to the operation and maintenance of a facility that is more likely than not to cause more than minimal physical or mental harm to a resident*. (Section 1-130 of the Act)

4) A "level C violation" or "Type C violation" is *a violation of* the *Act or* this *Part which creates a condition or occurrence relating to the operation and maintenance of a facility that creates a substantial probability that less than minimal physical or mental harm to a resident will result therefrom*. (Section 1-132 of the Act)

c) In determining the level of a violation, the Director or his or her designee shall consider the following criteria:

1) The degree of danger to the resident or residents that is posed by the condition or occurrence in the facility. The following factors will be considered in assessing the degree of danger:

A) Whether the resident or residents of the facility are able to recognize conditions or occurrences that may be harmful and are able to take measures for self-preservation and self-protection. The extent of nursing care required by the residents as indicated by review of patient needs will be considered in relation to this determination.

B) Whether the resident or residents have access to the area of the facility in which the condition or occurrence exists and the extent of such access. A facility's use of barriers, warning notices, instructions to staff and other means of restricting resident access to hazardous areas will be considered.

C) Whether the condition or occurrence was the result of inherently hazardous activities or negligence by the facility.

D) Whether the resident or residents of the facility were notified of the condition or occurrence and the promptness of such notice. Failure of the facility to notify residents of potentially harmful conditions or occurrences will be considered. The adequacy of the method of such notification and the extent to which such notification reduced the potential danger to the residents will also be considered.

2) The directness and imminence of the danger to the resident or residents by the condition or occurrence in the facility. In assessing the directness and imminence of the danger, the following factors will be considered:

A) Whether actual harm, including death, physical injury or illness, mental injury or illness, distress, or pain, to a resident or residents resulted from the condition or occurrence and the extent of such harm.

B) Whether available statistics and records from similar facilities indicate that direct and imminent danger to the resident or residents has resulted from similar conditions or occurrences and the frequency of such danger.

C) Whether professional opinions and findings indicate that direct and imminent danger to the resident or residents will result from the condition or occurrence.

D) Whether the condition or occurrence was limited to a specific area of the facility or was widespread throughout the facility. Efforts taken by the facility to limit or reduce the scope of the area affected by the condition or occurrence will be considered.

E) Whether the physical, mental, or emotional state of the resident or residents, who are subject to the danger, would facilitate or hinder harm actually resulting from the condition or occurrence.

(Source: Amended at 35 Ill. Reg. 11896, effective June 29, 2011)