



Iowa Health Care Association
Iowa Center for Assisted Living
Iowa Center for Home Care

CMS Releases Revised Guidance on Citing Immediate Jeopardy

*IHCA's Regulatory & Legal Team Work Group
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GUIDANCE ON CITING IMMEDIATE JEOPARDY

The Centers for Medicare & Medicaid Services (CMS) recently released a Quality Safety Oversight memo "[Revisions to Appendix Q, Guidance on Immediate Jeopardy](#)" (QSO-19-09-ALL)(March 5, 2019).

The memorandum includes revisions to the State Operations Manual (SOM) guidance relating to surveyor review protocols for the citing of immediate jeopardy (IJ). These revisions to Appendix Q apply to all certified providers and went into effect immediately.

A subpart which is applicable to nursing facilities has also been added because skilled nursing facilities (SNFs) have specific immediate jeopardy policies.

Summary of CMS key changes to Core Appendix Q:

- **Likelihood instead of potential** – Prior interpretations of the standard for determining IJ have allowed IJ to be cited if the noncompliance has the mere potential for causing serious harm or death, even though the rule references a requirement of “likelihood” of harm. Many findings have the potential for causing harm, even though the actual likelihood of harm is low. This change now requires that in order to cite immediate jeopardy in situations where recipients have not already suffered serious injury, harm, impairment or death, the nature and/or extent of the identified noncompliance must create a likelihood (reasonable expectation) that such harm will occur if not corrected, not simply the potential for that level of harm to occur. Likelihood is not defined in the SOM.
- **Culpability has been removed** – The prior version of Appendix Q had required a finding of staff or facility culpability to cite immediate jeopardy. However, the regulatory definitions of immediate jeopardy never required a finding of culpability, and thus has been removed from analysis, and now only requires “noncompliance to be the cause of the serious injury, harm, impairment or death, or the likelihood thereof.” This change conforms guidance to existing rule.
- **Psychosocial harm** – Appendix Q provides that surveyors/state agencies must determine whether noncompliance has caused or is likely to result in serious mental or psychosocial harm to residents, where the psychosocial outcome to the resident may be difficult to determine for example based on a resident’s cognitive limitations. In such circumstances, the guidance instructs surveyors to use the “reasonable person” standard. The reasonable person approach considers how a reasonable person in the recipient’s position would be impacted by the noncompliance (i.e. consider if a reasonable person in a similar situation could be expected to experience a serious psychosocial adverse outcome as a result of the

same noncompliance). For example, a severely demented female resident or resident in a coma, who is sexually assaulted, but does not provide any emotional reaction to the abuse, will be evaluated as to whether a cognitively-intact resident would be emotionally distraught over the event. This “reasonable person” standard has been utilized in the past, so this is not expected to pose a significant change.

- **No automatic immediate jeopardy citations** – Appendix Q provides that immediate jeopardy civil money penalties (CMPs) must be decided independently and there should not be automatic imposition of CMPs. This is consistent with other recent guidance which gives the CMS regional offices the discretion to impose or not impose CMPs for every IJ where there has been a finding of no harm or death to a resident. Region VII has previously indicated that IJs will continue to result in automatic CMPs. This change should assist in the analysis of IJ situations and may result in a decrease in the imposition of CMP remedies.

IMMEDIATE JEOPARDY TEMPLATE

A template has been developed to assist surveyors in documenting the information necessary to establish each of the key components of immediate jeopardy. Survey teams must use the immediate jeopardy template attached to Appendix Q to document evidence of each component of immediate jeopardy and use the template to convey information to the surveyed entity when IJ is called – in most cases this will be before the survey team exits.

THE LONG-TERM CARE SUBPART TO APPENDIX Q

The long-term care subpart to the Core Appendix Q includes guidance on citing IJ that meets the criteria for past noncompliance and lists possible resident outcomes or staff and facility actions that “trigger” the need for further investigation by surveyors.

[Appendix Q: SOM Revision March 9, 2019](#)

QUESTIONS

For questions, contact IHCA at 515.978.2204.