

CMS' NEW IMMEDIATE JEOPARDY GUIDANCE

October 2, 2019

GREATER NEW YORK HOSPITAL ASSOCIATION

Over 100 years of helping hospitals deliver the finest patient care in the most cost-effective way.

GREATER NEW YORK HOSPITAL ASSOCIATION

555 WEST 57TH STREET, NEW YORK, NY 10019 • T (212) 246-7100 • F (212) 262-6350 • WWW.GNYHA.ORG • PRESIDENT, KENNETH E. RASKE

Understanding CMS' New Immediate Jeopardy Guidance

Wednesday, October 2, 2019

2:00 p.m.—4:00 p.m.

Agenda

I. Welcome and Introduction

Lorraine Ryan

Senior Vice President, Legal, Regulatory and Professional Affairs
GNYHA

Mary Ellen Hennessy, RN

VP Health System Redesign and Regulatory Affairs
HANYS

II. Understanding Immediate Jeopardy and the Changes to Appendix Q

Lisa Tripp, JD

Technical Director
Enforcement and Certification
Division of Nursing Homes
Centers for Medicare & Medicaid Services

III. Immediate Jeopardy Process: *Department of Health Overview*

Deirdre Astin

Director, Division of Hospitals and Diagnostic & Treatment Centers
New York State Department of Health

IV. Discussion and Questions



Understanding Immediate Jeopardy and the Changes to Appendix Q



Lisa Tripp, JD
Technical Director
Enforcement and Certification
Division of Nursing Homes
Centers for Medicare & Medicaid
Services

October 2, 2019

A Long Journey...

- Appendix Q – 2004
- 2012 Regional Office (RO)/Central Office (CO) workgroup to revise Appendix Q
- Immediate Jeopardy (IJ) Summit December, 2017 - RO, State Agency (SA), Quality, Safety & Oversight Group (QSOG) Divisions developed framework for Core Appendix Q, Template, and subparts
- Core Appendix Q, IJ Template, Clinical Laboratory Improvement Amendments (CLIA) and Long Term Care (LTC) Subparts ROLLOUT in March 2019



Changes to Appendix Q

- Aligns with regulatory definitions of IJ:
 - Removes “Culpability” and “Potential”;
 - Replaces “Immediacy” with “Need for Immediate Action”;
- Defines key terms (serious harm, likelihood);
- Focuses on the three components surveyors must prove for IJ (Noncompliance, Serious Harm/Death, Need for Immediate Action);
- Uses Psychosocial Harm and Reasonable Person Concept;

5

Changes to Appendix Q (Cont.)

- Clarifies guidance to ensure facts of the situation relate to specific regulation – no automatic citations at related regulations;
- Clarifies/differentiates between accepting a removal plan and IJ actually being removed;
- Specifies what should be included on Form CMS-2567 for consistency; and
- Includes an IJ Template that will be given to providers, suppliers, and laboratories.

6

Key Components of IJ

- **Noncompliance** with one or more Federal health, safety, and/or quality regulations;
- That has caused or made likely **serious injury, harm, impairment, or death**; and
- **Immediate action** is necessary to prevent the occurrence or recurrence of serious injury, harm, impairment, or death to one or more recipient.

7

IJ Template

- Assists surveyors in establishing each key component of IJ;
- Contains instructions and definitions of key terms;
- Allows the provider, supplier, or laboratory to clearly communicate the noncompliance, the impact or likely impact to the recipient of care, and the need to take immediate corrective action to prevent the occurrence or recurrence of serious injury, harm, impairment, or death.

8

IJ Template (Cont.)

Immediate Jeopardy Template

Survey teams must use the Immediate Jeopardy (IJ) Template to document evidence of each component of IJ, and if it is confirmed, the IJ Template will be used to convey information to the entity. Any information presented on this template is subject to change and does not reflect an official finding against a Medicare provider or supplier. Form CMS-2567 is the only form that contains official survey findings.

Instructions: The survey team must use evidence gathered from observations, interviews, and record reviews to carefully consider each component of IJ outlined in the left-hand column of this template. In order for IJ to exist, the survey team must answer "Yes" to all three components and provide a preliminary fact analysis in the right-hand column to support their determination. If IJ is confirmed by the survey team and SAs Supervisor provides this IJ Template to the entity within the date and time that it was provided at the top of page 2. Use one IJ template for each tag being considered at IJ level.

For the purpose of completing this template, the following definitions apply:

Likely/Probable: means the nature and/or extent of the identified noncompliance creates a reasonable expectation that an adverse outcome resulting in serious injury, harm, impairment, or death will occur if not corrected.

Noncompliance: means failure to meet one or more federal health, safety, and/or quality regulations.

Recipient at Risk: is a recipient who, as a result of noncompliance, and in consideration of the recipient's physical, mental, psychosocial or health needs, and/or vulnerability, is likely to experience a serious adverse outcome.

Serious injury, serious harm, serious impairment or death is an adverse outcome which results in, or is likely to result in:

- death; or
- a significant decline in physical, mental, or psychosocial functioning, that is not solely due to the normal progression of a disease or age-relatedness; or
- loss of limb, or disfigurement, or
- avoidable pain that is excruciating, and more than transient; or
- other serious harm that creates life-threatening complications/conditions.

***NOTE:** IJ does not require serious injury, harm, impairment or death to occur. It is sufficient that non-compliance makes serious injury, harm, impairment or death likely to occur to one or more recipients.

Date/Time IJ Template provided to entity: _____

IJ Component	Yes/No	Preliminary fact analysis which demonstrates whether key component exists.
Noncompliance: Has the entity failed to meet one or more federal health, safety, and/or quality regulations? If yes, in the blank space, identify the tag and briefly summarize the issues that lead to the determination that the entity is in noncompliance with the identified requirement. This includes the action(s), error(s), or lack of action, and the extent of the noncompliance (for example, number of cases). Use one IJ template for each tag being considered at IJ level.	Yes/No	
AND		
Serious injury, serious harm, serious impairment or death: Is there evidence that a serious adverse outcome occurred, or a serious adverse outcome is likely as a result of the identified noncompliance? If Yes, in the blank space, briefly summarize the serious adverse outcome, or likely serious adverse outcome to the recipient.	Yes/No	
AND		
Need for Immediate Action: Does the entity need to take immediate action to correct noncompliance that has caused or is likely to cause serious injury, serious harm, serious impairment, or death? If yes, in the blank space, briefly explain why.	Yes/No	

Disclaimer: The findings on this IJ Template are preliminary and do not represent an official finding against a Medicare provider or supplier. Form CMS-2567 is the only form that contains official survey findings.

9

Date/Time IJ Template provided to entity: _____

IJ Component	Yes/No	Preliminary fact analysis which demonstrates whether key component exists.
Noncompliance: Has the entity failed to meet one or more federal health, safety, and/or quality regulations? If yes, in the blank space, identify the tag and briefly summarize the issues that lead to the determination that the entity is in noncompliance with the identified requirement. This includes the action(s), error(s), or lack of action, and the extent of the noncompliance (for example, number of cases). Use one IJ template for each tag being considered at IJ level.	Yes/No	
AND		
Serious injury, serious harm, serious impairment or death: Is there evidence that a serious adverse outcome occurred, or a serious adverse outcome is likely as a result of the identified noncompliance? If Yes, in the blank space, briefly summarize the serious adverse outcome, or likely serious adverse outcome to the recipient.	Yes/No	
AND		
Need for Immediate Action: Does the entity need to take immediate action to correct noncompliance that has caused or is likely to cause serious injury, serious harm, serious impairment, or death? If yes, in the blank space, briefly explain why.	Yes/No	

Training

- Immediate Jeopardy Update Video:
 - Posted on the Integrated Surveyor Training Website (ISTW) with rollout of Appendix Q
 - Mandatory viewing for RO and SA staff involved in IJ determinations; and all members of management and training coordinators are expected to take this training as soon as practicable, but not later than 2 weeks following rollout
 - More comprehensive training with scenarios to be released before SETI
 - If the initial training has been taken, it does not have to be retaken

11

Training Video



https://surveyortraining.cms.hhs.gov/pubs/EPlayer.aspx?cid=oCMSIJUT_ONL&sid=009geeco-3039-e911-9533-0e63451df8f4&sv=0



Department
of Health

Immediate Jeopardy Process

Department of Health Overview

October 2, 2019

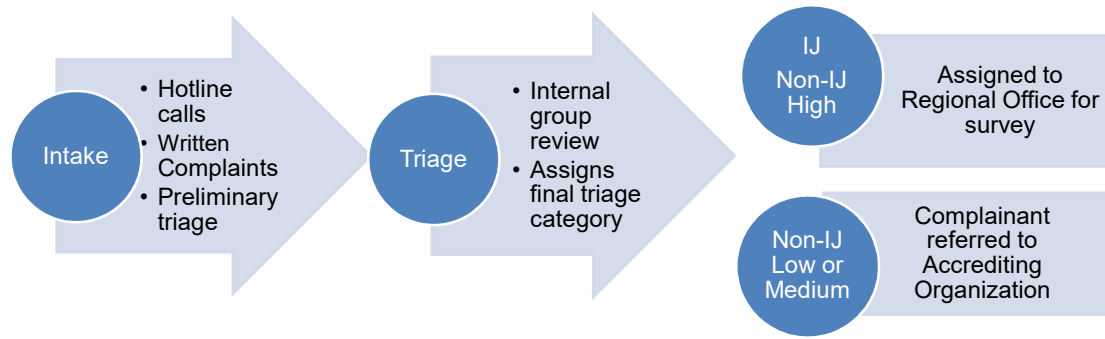
Immediate Jeopardy

- DOH follows the CMS State Operations Manual Appendix Q “Core Guidelines for Determining Immediate Jeopardy”
- IJ can be discovered during complaint surveys, but can also be discovered during other survey types, including:
 - Federal recertification-full survey, for the facilities that are not accredited by an organization deemed by CMS
 - Validation-full survey for a percentage of facilities that are accredited, as assigned by CMS.
- On rare occasions, can be identified during CON surveys.



Department
of Health

Complaint Intake Process



Complaint Triage

Immediate Jeopardy	<ul style="list-style-type: none"> Onsite survey in 2 days Serious injury, harm, impairment or death of a patient or resident, or the likelihood for such, <u>and</u> continuous immediate risk of serious injury, harm, impairment or death of a patient or resident unless immediate corrective action is taken
EMTALA*	<ul style="list-style-type: none"> If considered an IJ, assign for onsite survey in 2 days If Non-IJ, assign for survey in 45 days
Non-IJ High	<ul style="list-style-type: none"> Any case that could result in condition level findings Strong potential for AND/OR Actual harm Onsite survey in 45 days
Non-IJ Medium	<ul style="list-style-type: none"> Referral to Accrediting Organization Track and Trend
State High	<ul style="list-style-type: none"> State specific regulations and statutes

*Emergency Medical Treatment and Labor Act-requires treatment and stabilization by Emergency Department regardless of ability to pay.



Immediate Jeopardy Determination

- When the survey team identifies a potential IJ, the team will discuss the concerns and determine if any additional information is required.
- The survey team completes the CMS IJ Template and notifies the DOH Regional Hospital Program Director as soon as possible.
- All supporting evidence is reviewed.
- One IJ template must be completed for each citation being considered at IJ level.



Immediate Jeopardy Determination

- Using the completed IJ Template and Appendix Q, the DOH Regional Office Hospital Program Director will immediately review the situation with the survey team to ensure that all components of the IJ have been addressed and the evidence gathered supports the determination.
- Once the DOH Regional Office Hospital Program Director concurs that IJ exists, DOH Central Office is contacted with their final recommendation. DOH Central Office reviews the information as part of the final decision making process.



Immediate Jeopardy Determination

- Survey staff will provide the completed IJ Template to the facility and document the date and time it was provided where indicated on the form. Survey staff will retain a copy of the IJ Template.
- CMS Regional II is notified of the IJ.
- Survey staff must stay on site until the facility provides a removal plan and takes sufficient actions to remove the likelihood of risk to patient health and safety. The IJ remains in place until the facility fully implements the removal plan.



Enforcement

- Federal Civil Money Penalties are limited to EMTALA only.
- Enforcement and authorization for state fines-federal citations are crosswalked to applicable state regulations.
 - \$2,000 per citation
 - \$5,000 for repeat citations
 - \$10,000 for harm



Common Findings-Immediate Jeopardy

2017

- Patient Rights – staff did not have training in de-escalation techniques, training requirements for CPR and first aid.
- Patient Rights-patients not assessed and monitored for suicidal ideation.
- Infection Control – isolation of a known HBV positive patient and failure to follow universal precautions.



Common Findings-Immediate Jeopardy

2018

- Patient Rights – elopement (failed to monitor patients at risk)
- Patient Rights-use of law enforcement technique (handcuffs, batons, pepper gel and body strikes)
- Nursing – trained staff failed to monitor telemetry and sufficient training was not provided to telemetry nurses.



Common Findings-Immediate Jeopardy

2019 (as of 9/4/19)

- Nursing – staff failed to conduct ongoing evaluation of patients with deteriorating medical conditions.
- Emergency Services – patients were not assessed to be at risk for violence and provided appropriate treatment and care in the CPEP.
- Physical Environment – magnetic door holds failed to function properly in the out patient clinic and maternity ward.



DISCUSSION AND QUESTIONS

