

PUBLICATION

CMS Revises Immediate Jeopardy Guidance: Key Updates for Providers

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December 02, 2024

The federal Centers for Medicare and Medicaid Services (CMS) issued QSO-25-09-ALL on November 21, 2024, revising Core Appendix Q guidance to the State Operations Manual on Immediate Jeopardy. Immediate Jeopardy (IJ) is the most severe deficiency that can be imposed by CMS or state survey agencies and carries with it the potential for the highest level of fines and sanctions. A link to the release is here: [REVISED: Revisions to Appendix Q, Guidance on Immediate Jeopardy](#).

Overall, the revisions expressly say that they were designed to "increase transparency and improve timeliness and clarity of communication to providers, suppliers, and laboratories" and to help "standardize" IJ determinations. There are three key changes that the cover memo from CMS describes and highlights from the previous version of Core Appendix Q and one additional important change in the body of the revised guidance:

- **Likelihood of Harm vs Potential for Harm:** The 2019 version of Core Appendix Q described the "potential" for serious harm as a trigger that could lead to an IJ finding. The "potential for serious harm" language has been removed. Under the revised guidance, surveyors must find that the noncompliance caused or created a likelihood (referred to as a reasonable expectation) that serious injury, harm, impairment, or death to one or more recipients would occur or recur and immediate action is necessary to prevent this.
 - The IJ template that is issued once an IJ is called has been revised to reflect this new definition. It can be accessed from the link above at pp. 29 – 30.
- **Culpability:** CMS describes that if there is a failure of a federal health, safety and/or quality regulation, serious adverse outcome, or likely serious adverse outcome "as a result of the identified noncompliance" and there is a "need for immediate action" to correct the noncompliance, an IJ exists. CMS states that culpability should not be part of the equation because the regulatory definition of "noncompliance" does not mention culpability.
- **Psychosocial Harm:** The CMS memorandum summary instructs surveyors "to consider whether noncompliance has caused or made likely serious mental or psychosocial harm" and in situations where it "may be difficult to determine" (such as where residents cannot express their feelings or have other cognitive or behavioral disorders affecting their ability to show emotion) surveyors should "use the reasonable person concept to make a determination."
- **Reinsertion of Language about Reporting Obligations to Local Law Enforcement:** In situations where the noncompliance may "have been caused by a suspected criminal act" and there was no reporting or reporting to local law enforcement, the state survey agency now "must report the suspected criminal act to law enforcement immediately." This obligation was absent in the 2019 version but has been reinserted by CMS, which seems to signal the importance of reporting such incidents.

Although the changes are described as having gone into effect simultaneously with the release on November 21, 2024, the revisions currently bear an "advanced copy watermark" and specifically state that "all CMS and [state agency] surveyors, members of management, and training coordinators are expected to take this training when the course becomes available." The referenced training is now available and can be found at <https://qsep.cms.gov/ProvidersAndOthers/publictraining.aspx>. As a result, it remains unclear how long it will take surveyors to complete the training and then to take the revisions into account when deciding whether a particular event rises to an IJ level. Regardless, facilities and affected parties should be aware now of these changes and be prepared for them in their next survey.

If you have questions or concerns regarding this alert please reach out to [Diane Festino Schmitt](#), [Howard L. Sollins](#), or any member of Baker Donelson's [Long Term Care](#) team.