

CMS REVISES CORE APPENDIX Q GUIDANCE ON IMMEDIATE JEOPARDY

On November 21, 2024, the Centers for Medicare & Medicaid Services (“CMS”) issued revised **guidance** under QSO-25-09-ALL, updating Core Appendix Q of the State Operations Manual regarding findings of immediate jeopardy. These updates are intended to enhance transparency, standardize immediate jeopardy determinations and improve communication with providers, suppliers and laboratories. These revisions apply to all provider and supplier types and also include subparts that focus on specific concerns with nursing homes and clinical laboratories.

IMMEDIATE JEOPARDY

Immediate jeopardy is a situation in which a recipient of care has suffered or is likely to suffer serious injury, harm, impairment or death as a result of a provider’s, supplier’s or laboratory’s noncompliance with one or more health and safety requirements. Immediate jeopardy represents the most severe and egregious threat to the health and safety of recipients, as well as carries the most serious sanctions for providers, suppliers and/or laboratories. As the most severe deficiency category, immediate jeopardy findings carry the potential for significant fines and sanctions, often putting providers’ participation in Medicare and Medicaid programs at risk of termination.

To cite immediate jeopardy, pursuant to Core Appendix Q guidelines, surveyors determine that: (1) noncompliance; (2) caused or created a likelihood that serious injury, harm, impairment or death to a recipient would occur or recur; and (3) immediate action is necessary to prevent the occurrence or recurrence of serious injury, harm, impairment or death to one or more recipients.

KEY CHANGES IN CORE APPENDIX Q

The revisions to Core Appendix Q emphasize four significant changes designed to clarify criteria for immediate jeopardy findings and streamline the process for surveyors including:

- Likelihood of Harm Replaces Potential for Harm:** Previously, immediate jeopardy determinations could be based on the potential for serious harm. The revised guidance eliminates this and requires surveyors to identify situations where noncompliance creates a likelihood or reasonable expectation that serious injury, harm, impairment or death will occur or recur. This shift places greater emphasis on tangible risks rather than hypothetical possibilities. An updated immediate jeopardy template reflecting the new definition has been provided to assist surveyors in documenting and communicating findings.
- Removal of Culpability:** The updated guidance removes culpability from the immediate jeopardy determination process. Surveyors are now directed to focus solely on whether noncompliance caused or is likely to cause serious adverse outcomes, emphasizing regulatory compliance over individual blame. By excluding culpability, CMS aligns immediate jeopardy findings more closely with regulatory definitions and simplifies the evaluation process.
- Incorporation of Psychosocial Harm:** Surveyors are now instructed to assess whether noncompliance has caused or made likely serious mental or psychosocial harm. In cases where residents may be unable to express their feelings due to cognitive or behavioral conditions, surveyors are advised to apply the reasonable person concept. This approach considers how a reasonable individual in similar circumstances would be affected by the same noncompliance, ensuring that psychosocial outcomes are properly evaluated even in complex cases.
- No Automatic Immediate Jeopardy Citations:** Core Appendix Q makes it clear that each immediate jeopardy citation must be decided independently, and there are no automatic immediate jeopardy citations.

ADDITIONAL CONSIDERATIONS

The guidance also clarifies several procedural elements:

- **Standardized Templates:** CMS has introduced a template to aid surveyors in documenting immediate jeopardy findings. This template ensures consistency in recording evidence and communicating deficiencies to providers. Key components of immediate jeopardy findings include:
 - a. Identification of noncompliance;

- b. Demonstration that noncompliance caused or created a likelihood of serious adverse outcomes; and
- c. Necessity for immediate corrective action to prevent recurrence.

- **Laboratory-Specific Guidance:** Laboratory-related immediate jeopardy guidance has been moved to a new section, Subpart XI under the Clinical Laboratory Improvement Amendments. Laboratories facing immediate jeopardy findings can mitigate the immediacy by ceasing testing, addressing root causes, issuing corrected reports and implementing monitoring mechanisms to ensure compliance.

TRAINING AND IMPLEMENTATION

The guidance was effective November 21, 2024, but it includes an “advanced copy” marked copy of Appendix Q and requires surveyors, management and training coordinators to complete relevant training through CMS’s Quality, Safety & Education Portal. The training modules aim to familiarize surveyors with the revised criteria and the documentation process.

PRACTICAL TAKEAWAYS

Providers, suppliers and laboratories must be proactive in understanding these changes to prepare for future surveys. Key actions include:

- **Policy Updates:** Facilities should review and revise internal policies to align with the updated immediate jeopardy criteria, focusing on eliminating risks that could create a likelihood of serious harm.
- **Training and Awareness:** Staff should be educated on the new definitions and expectations, particularly regarding psychosocial harm and reporting obligations.
- **Documentation and Readiness:** Robust documentation of compliance efforts and corrective actions is crucial for addressing survey findings effectively. Using the updated immediate jeopardy template proactively can help facilities demonstrate adherence to the revised standards.

If you have any questions or would like additional information about this topic, please contact:

- **Sean Fahey** at (317) 977-1472 or sfahey@hallrender.com;
- **Brian Jent** at (317) 977-1402 or bjent@hallrender.com;
- **Todd Selby** at (317) 977-1440 or tselby@hallrender.com; or
- Your primary Hall Render contact.

Hall Render blog posts and articles are intended for informational purposes only. For ethical reasons, Hall Render attorneys cannot give legal advice outside of an attorney-client relationship.