

Gavel to Gavel: CMS updates immediate jeopardy guidance

By: Philip D. Hixon Guest Columnist May 8, 2019 0



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The Centers for Medicare and Medicaid Services recently issued a new Appendix Q to the State Operations Manual, providing state survey teams with revised guidance for determining immediate jeopardy, or IJ, situations. The revisions are intended to broaden the guidance's focus beyond nursing facilities to all Medicare and Medicaid certified providers, suppliers, and laboratories.

The guidance generally defines IJ as "a situation in which entity noncompliance has placed the health and safety of recipients in its care at risk for serious injury, serious harm, serious impairment or death." The new guidance changes the key IJ components to: noncompliance (replacing culpability); serious adverse outcome or likely serious adverse outcome (replacing potential harm); and need for immediate action (replacing immediacy).

Upon an IJ determination, the survey team must confirm the IJ with the state survey agency before notifying the entity of the IJ on a mandatory template, which summarizes the factual support for the IJ.

CMS suggests replacement of the culpability component with the noncompliance component is the "most significant" change in IJ key components from perspective of the survey team. Although CMS is silent on the issue, the change seemingly increases the likelihood of IJ determinations, replacing fault on the part of the entity with mere noncompliance.

The actual or likely serious adverse outcome component must have a causal connection to the entity's noncompliance, but need not be the sole causal factor. It is sufficient if the noncompliance is a factor in causing the actual or likely harm. The harm resulting from the noncompliance may be "a significant decline in physical, mental, or psychosocial functioning." The psychosocial harm element in the guidance is new, introducing a "reasonable person" standard into the survey process.

The final component is the need for immediate corrective action to remove the actual or likely serious adverse outcome resulting, or reasonably expected, from the entity's noncompliance.

The effect of the guidance on the frequency of IJ determinations is not entirely clear. Some changes suggest an increased frequency, such as removal of the culpability component and introduction of subjective considerations into the new objective standards. On the other hand, the survey team's obligation to seek a second opinion from the state survey agency may temper overly aggressive survey teams.

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