

Eli's Hospice Insider

Compliance: Beware These Immediate Jeopardy Survey Changes That Could Impact You

Should you worry more about IJ determinations under new regs?

Hospices aren't singled out in recent changes to the State Operations Manual appendix on immediate jeopardy determinations, but you should keep a wary eye on them nonetheless.

Watch out: The **Centers for Medicare & Medicaid Services** has revamped SOM Appendix Q - Core Guidelines for Determining Immediate Jeopardy, CMS notes in a March 5 letter to State Survey Agency directors. The appendix focuses on nursing homes and labs, but also includes general provisions that affect all provider types, including home health and hospice agencies.

The revised guidance, which is effective immediately, contains multiple changes (see story, p. 29). One that might affect HHAs and hospices most is switching from using "potential" to "likelihood" in IJ determinations.

Old way: "The previous version of Appendix Q suggested that a potential for serious harm might constitute immediate jeopardy," CMS says in the QSO-19-09-ALL letter.

New way: "Core Appendix Q makes it clear 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 creates a likelihood (reasonable expectation) that such harm will occur if not corrected, not simply the potential for that level of harm to occur," CMS explains.

"It sounds like CMS is setting the bar higher" for IJ determinations by switching out "likelihood" for "potential," notes attorney **Robert Markette Jr.** with **Hall Render** in Indianapolis. It would be easier for surveyors to prove a potential for harm, etc., versus a likelihood for it.

If that's how the change would play out, it would follow through on CMS's move last year to relax standards for nursing home penalties for IJ determinations. A June 2018 letter to State Survey Agency directors changed Medicare policy to make financial penalties for IJ optional if the patient didn't suffer actual harm.

With all of the revisions in Appendix Q, CMS is giving "investigators ... a clear framework to identify serious patient health and safety problems," CMS Administrator **Seema Verma** says in a release, although CMS frames the new guidance as "just the beginning of upcoming efforts to strengthen oversight of healthcare."

The changes respond in part to stakeholders' "voiced concerns that the guidance needs to be clearer and more consistent to identify serious quality concerns across states," the release says. In other words, to minimize subjectivity between surveyors, or from state to state.

"I'm all for anything that would reduce the subjectivity in surveys," Markette tells **Eli**, noting that he once saw an IJ determination for a HIPAA violation, for example.

Consistency is especially important when surveys and IJ determinations lead to door-closing financial penalties or a 23-day termination track, Markette points out.

However: This guidance is less likely to affect HHAs and hospices, which see fewer IJ determinations than nursing homes, for example. But home care providers should still pay attention, as the changes will "trickle out" to home health and hospice surveys, Markette advises.

Note: The survey letter containing revised Appendix Q is at www.cms.gov/Medicare/Provider-Enrollment-and-Certification/SurveyCertificationGenInfo/Downloads/QSO19-09-ALL.pdf. A new training course for surveyors and providers on the revised IJ guidance is at https://surveyortraining.cms.hhs.gov/pubs/ClassInformation.aspx?cid=0CMSIJUT_ONL.