

## Eli's Hospice Insider

### Survey & Certification: Stay On Top Of These 6 Immediate Jeopardy Manual Changes

**Make sure you steer clear of the most serious survey risk.**

Whether your next survey is a dream or a nightmare may depend on the latest immediate jeopardy guidance to surveyors.

The **Centers for Medicare & Medicaid Services** issued a March 5 letter to State Survey Agency directors containing changes to State Operations Manual Appendix Q, which addresses the IJ process (see story, p. 28). "The new QSO memo applies to all provider types," points out regulatory compliance consulting firm **CMS Compliance Group** based in Melville, New York, noting that the revisions have been "long anticipated."

In addition to swapping out "potential" for the harder-to-prove "likelihood" when it comes to assessing harm that hasn't yet occurred, CMS includes these changes:

**1. Culpability swapped with noncompliance.** "The previous version of Appendix Q made culpability a required component to cite immediate jeopardy," but that didn't jibe with "the regulatory definitions of immediate jeopardy," CMS says in the letter. Thus, "that requirement has been removed and has been replaced with the key component of noncompliance."

Whether a provider's intent will change with that revision is unclear, legal experts say.

**2. 'Reasonable person' approach to assessing psychosocial harm.** "Core Appendix Q includes a section instructing surveyors to consider whether noncompliance has caused or made likely serious mental or psychosocial harm to recipients," CMS explains in the letter. When that decision is difficult, "the guidance instructs surveyors to use the reasonable person concept to make that determination."

**Definition:** "The reasonable person approach considers how a reasonable person in the recipient's position would be impacted by the noncompliance (i.e. consider if a reasonable person in a similar situation could be expected to experience a serious psychosocial adverse outcome as a result of the same noncompliance)," CMS spells out in the letter.

If you're not sure what "psychosocial harm" means, CMS elaborates in the appendix. "Noncompliance rising to the level of IJ does not always result in serious physical adverse outcomes, but may also affect the recipient's mental or psychosocial well-being. For example, a recipient who was sexually abused by a staff member may not have significant physical outcomes, but may suffer a greater psychosocial outcome," the revised guidance says.

However, CMS really needs to define "psychosocial harm" more specifically, judges attorney **Robert Markette Jr.** with **Hall Render** in Indianapolis. The term in the appendix seems "overly broad," Markette worries. With so much riding on an IJ determination, the "terms need clarity," he stresses.

**3. Elimination of automatic IJ citations.** The new guidance "makes it clear that each immediate jeopardy citation must be decided independently and there are no automatic immediate jeopardy citations," according to the letter. Surveyors "must investigate and use professional judgment to determine if ... noncompliance has caused or is likely to cause serious harm, injury, impairment or death to a resident. The team must rely on professional judgment and utilize the resources of the State survey agency, and the [Regional Office] to determine the presence of IJ," the guidance says.

**4. Key IJ components.** When you put the changes together, "to cite immediate jeopardy, surveyors [must] determine

that (1) noncompliance (2) caused or created a likelihood that serious injury, harm, impairment or death to one or more recipients 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," CMS summarizes.

**5. Surveyor IJ tool.** An IJ determination must use a new template CMS has developed, the letter instructs. The template assists surveyors "in documenting the information necessary to establish each of the key components of immediate jeopardy." Surveyors will use the IJ template to document "evidence of each component of immediate jeopardy," CMS notes.

**6. Notification.** You won't be left in the dark if surveyors make an IJ determination. "CMS has established a notification process for surveyors to follow when immediate jeopardy is identified," it says. Surveyors will use the new IJ template for the communication. "This process ensures that providers ... are notified as soon as possible of an immediate jeopardy finding. This process is intended to increase transparency, and improve timeliness and clarity of communication to providers."