



Center for Clinical Standards and Quality/Quality, Safety & Oversight Group

Ref: QSO-19-09-ALL

DATE: March 5, 2019

TO: State Survey Agency Directors

FROM: Director
Quality, Safety & Oversight Group

SUBJECT: Revisions to Appendix Q, Guidance on Immediate Jeopardy

Memorandum Summary

- **Core Appendix Q and Subparts** - Appendix Q to the State Operations Manual (SOM), which provides guidance for identifying immediate jeopardy, has been revised. The revision creates a Core Appendix Q that will be used by surveyors of all provider and supplier types in determining when to cite immediate jeopardy. CMS has drafted subparts to Appendix Q that focus on immediate jeopardy concerns occurring in nursing homes and clinical laboratories since those provider types have specific policies related to immediate jeopardy.
- **Key Components of Immediate Jeopardy** – To cite immediate jeopardy, surveyors 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.
- **Immediate Jeopardy Template** – A template has been developed to assist surveyors in documenting the information necessary to establish each of the key components of immediate jeopardy. Survey teams must use the immediate jeopardy template attached to Appendix Q to document evidence of each component of immediate jeopardy and use the template to convey information to the surveyed entity.

Background

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.

CMS provides guidance to surveyors for citing immediate jeopardy in Appendix Q of the SOM. The version of Appendix Q that is being replaced was drafted in 2004 and is being updated to clarify and increase consistency for identifying immediate jeopardy. These revisions apply to all provider and supplier types. The revisions also include subparts that are focus on specific concerns with nursing homes and clinical laboratories.

Application of Core Appendix Q

This revision creates a Core Appendix Q that will be used by surveyors of all provider and supplier types and laboratories including health, emergency preparedness, and life safety code surveys.

In order 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 the Core Appendix Q

The Core Appendix Q contains a number of key changes from the previous version of Appendix Q. Those changes include:

- **Likelihood instead of potential** – The previous version of Appendix Q suggested that a potential for serious harm might constitute immediate jeopardy. 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.
- **Culpability has been removed** – The previous version of Appendix Q made culpability a required component to cite immediate jeopardy. Because the regulatory definitions of immediate jeopardy do not require a finding of culpability, that requirement has been removed and has been replaced with the key component of noncompliance, since the definitions of immediate jeopardy require noncompliance to be the cause of the serious injury, harm, impairment or death, or the likelihood thereof.
- **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. In situations where the psychosocial outcome to the recipient may be difficult to determine or incongruent with what would be expected, the guidance instructs surveyors to use the reasonable person concept to make that determination. 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).

- 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.

Subparts to Core Appendix Q

CMS has drafted subparts to Appendix Q that focus on immediate jeopardy concerns occurring in nursing homes and clinical laboratories since there are specific policies related to immediate jeopardy for those provider types.

Immediate Jeopardy Template

CMS has established a notification process for surveyors to follow when immediate jeopardy is identified. This process ensures that providers, suppliers, or laboratories 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, suppliers, and laboratories.

Training

Online basic training for Core Appendix Q is available on the Integrated Surveyor Training Website at the following link: <https://surveyortraining.cms.hhs.gov/>. This basic training is intended to provide Regional Office and State Survey Agency surveyors, management staff, and training coordinators, as well as providers, suppliers, and laboratories, and other stakeholders, with the ability to identify immediate jeopardy.

NOTE: This is a required training for RO and SA staff involved in immediate jeopardy determinations. All RO and SA surveyors, members of management, and training coordinators are expected to take this training as soon as practicable, but not later than March 22, 2019.

Point of Contact: For questions related to this information, please add in subject line “Immediate Jeopardy Inquiry” and send your email to: QSOG_GeneralInquiries@cms.hhs.gov.

Effective Date: Immediately. This policy should be communicated to all survey and certification staff, their managers and the State and Regional Office training coordinators within 30 days of this memorandum.

/s/
Karen Tritz
Acting Director

Attachment- Advanced Copy- Revised Appendix Q State Operations Manual

cc: Survey and Certification Regional Office Management