

Immediate Jeopardy and Past Noncompliance

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Immediate Jeopardy and Past Noncompliance

Objectives

- Review definition of Immediate Jeopardy and key components for an IJ determination
- Review IJ worksheet and removal plan requirements
- Criteria for citing IJ deficiencies at past noncompliance
- Current trends in IJ complaints in MO

Immediate Jeopardy

Immediate Jeopardy- a situation in which immediate corrective action is necessary because the provider's noncompliance with one or more requirements of participation or conditions of participation has caused, or is likely to cause, serious injury, harm, impairment, or death to an individual receiving care in a facility.

Likely/Likelihood means the nature and/or extent of the identified noncompliance creates a reasonable expectation that an adverse outcome resulting in serious injury, harm, impairment, or death will occur if not corrected.

Immediate Jeopardy

Three key components that are essential for surveyors to use in determining the presence of IJ.

Noncompliance: Has the entity failed to meet one or more federal health, safety, and/or quality regulations?

Serious injury, serious harm, serious impairment or death: Is there evidence that a serious adverse outcome occurred, or a serious adverse outcome is likely as a result of the identified noncompliance?

Need for Immediate Action: Does the entity need to take immediate action to correct noncompliance that has caused or is likely to cause serious injury, serious harm, serious impairment, or death?

IJ template will provide a brief summary of the preliminary facts/evidence. A CMS 2567 will be issued to detail all evidence after exit.

IJ Removal Plan

What is a removal plan? A removal plan identifies all actions the entity will take to immediately address the noncompliance that has resulted the IJ by detailing how the entity will keep recipients safe and free from serious harm or death caused by the noncompliance.

The entity's removal plan must:

- Identify those recipients who have suffered, or are likely to suffer, a serious adverse outcome as a result of the noncompliance; and
- Specify the action the entity will take to alter the process or system failure to prevent a serious adverse outcome from occurring or recurring, and when the action will be complete.

Is it required? Yes, a removal plan is required and documents the immediate action an entity will take to prevent serious harm from occurring or recurring.

What is the timeframe to submit removal plan? As soon as the entity has identified the steps it will take to ensure that no recipients are suffering or are likely to suffer serious injury, serious harm, serious impairment or death as a result of the entity's noncompliance.

If there was a violation of any class I standard, **immediate** corrective action shall be taken by the operator or administrator and a written plan of correction shall be submitted to the department.

IJ Removal Plan

Is the removal plan the same as a plan of correction? No. Unlike a plan of correction, it is not necessary that the removal plan completely correct all noncompliance associated with the IJ, but rather it must ensure serious harm will not occur or recur.

Why are the dates on the removal plan important? The removal plan must include a date by which the entity asserts the likelihood for serious harm to any recipient no longer exists. Facilities should give themselves credit for any corrective measures already taken (even before the IJ template was issued).

IJ Removal Plan Approval

The entity's removal plan will be evaluated and approved by the survey team/surveyor in consultation with Central Office.

A determination must be made as to whether, if implemented appropriately, the removal plan will remove the likelihood that serious harm will occur, or recur.

Approving the written removal plan does not mean the IJ is removed.

To remove IJ, the removal plan must be implemented and the survey team must verify through observation, interview, and record review, that all actions the facility took were effective in removing the likelihood that serious injury, serious harm, serious impairment or death would occur or recur.

IJ Removal Verification

Surveyors confirm that IJ has been removed by **onsite** verification after the removal plan is approved and has been implemented.

Removal of IJ means that immediate action has been taken to prevent a serious adverse outcome from occurring or recurring. *Reminder- this is not to determine substantial compliance.*

If the plan is not fully implemented, the IJ will continue until the removal plan is fully implemented.

While onsite, surveyors should determine the date that the entity's removal plan was fully implemented (not just automatically use the dates provided in the facility's removal plan). The IJ is removed on the date that is determined that all elements of the removal plan have been implemented and that actions taken were completed in a manner that eliminates the likelihood of serious injury, serious harm, serious impairment, or death.

Past Noncompliance

“Past noncompliance” means a deficiency citation at a specific survey data tag (F-tag or K-tag) that meets all of the following three criteria:

- The facility was not in compliance with the specific regulatory requirement(s) (as referenced by the specific F-tag or K-tag) at the time the situation occurred;
- The noncompliance occurred after the exit date of the last standard (recertification) survey and before the survey (standard, complaint, or revisit) currently being conducted; and
- There is sufficient evidence that the facility corrected the noncompliance and is in substantial compliance at the time of the current survey for the specific regulatory requirement(s), as referenced by the specific F-tag or K-tag.

Past Noncompliance

- Facility is in compliance at the time the complaint investigation/survey process begins.
- A facility is not required to provide a plan of correction for a deficiency cited as past noncompliance because that deficiency is corrected at the time it is cited; however, the survey team must document the facility’s corrective actions on Form CMS-2567.
- CMS can impose remedies, including Civil Monetary Penalties, however, immediate correction can reduce the length of time CMPs are effectuated.

Current Trends

Class I/Immediate Jeopardy Citations

2019 – 60, Past Noncompliance – 8

2020 – 33, Past Noncompliance – 7

2021 (as of 11/8/21) – 78, Past Noncompliance – 7, 4 pending

Common Citations in 2021

- Abuse
- Change in condition
- Elopement
- CPR

QUESTIONS

Section for Long Term Care Regulation

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