



NUTRITION CONNECTION

FOOD AND NUTRITION CAN TRIGGER AN IMMEDIATE JEOPARDY IN A CMS SURVEY

BY BRENDA RICHARDSON, MA, RDN, LD, FAND

RECENTLY I WAS ASKED IF CITED NUTRITION

DEFICIENCIES could ever result in an Immediate Jeopardy (IJ) finding with a CMS survey. I can attest to the fact that it most certainly can and does.

Several years ago, I provided consultant services to assist a long-term care facility correct IJ survey deficiencies related to food and nutrition. In addition to having specific food and nutrition-related FTags, there were more than 20 additional FTags cited as not being in compliance. The facility was determined to be in Immediate Jeopardy and was receiving civil monetary penalties daily. These penalties were in excess of \$50,000 per day, which included \$30,000 (\$10,000 per day per resident) for three residents on enteral feedings. These civil monetary penalties accrued until it was determined by an onsite visit that the deficiencies had been corrected.

Achieving compliance took a facility-wide “team approach” to correct multiple processes and systems throughout the organization. The systems and processes were put into place and the facility achieved survey compliance. The revised Continuous Quality Program was a critical component of improvement which has resulted in sustained compliance for this facility.

Nutritional services are a vital part of quality of life and quality of care. Healthcare providers need to understand what “Immediate Jeopardy” means and the impact on facility residents and staff. Certainly, the best plan is prevention of any compliance issues; however, if an IJ does occur, then it is important to understand how to proactively respond to the survey findings.

This article presents general background information with some specific food and nutrition-related areas included in Immediate Jeopardy determination. Examples of specific IJ food and nutrition citations are provided.

IMMEDIATE JEOPARDY (IJ) CITATIONS: GUIDELINES AND COMPONENTS

The Centers for Medicare and Medicaid Services (CMS) State Operations Manual Appendix PP - Guidance to Surveyors for Long Term Care Facilities (Rev. 211, 02-03-23) is the primary resource used by surveyors in determining compliance with regulations. Surveyors will then use State Operations Manual Appendix Q – Core Guidelines for Determining Immediate Jeopardy (Rev. 187, Issued: 03-06-19) in analyzing the findings and making the decision as to whether the facility meets the core components.

IJ 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. IJ represents the most severe and egregious threat to the health and safety of recipients, and carries the most serious sanctions for providers, suppliers, and/or laboratories.

DEFINITIONS: It is important to know the definitions used in Appendix Q. (See sidebar)

To determine that IJ exists, the following three elements must be present:



- 1. Noncompliance.** Surveyors must establish that the nursing home failed to meet one or more requirements of participation and provide sufficient evidence to support the noncompliance.
- 2. Serious injury, serious harm, serious impairment, or death has occurred or is likely to occur.** If harm is likely, surveyors do not need to prove when the serious harm will occur or that it will occur within a certain timeframe. Furthermore, surveyors do not have to show that the noncompliance is the sole factor contributing to the adverse outcome or making a serious adverse outcome likely. It is enough for the noncompliance to be a factor in using or making such an outcome likely. Harm to residents is not limited to physical harm. Appendix Q provides guidance about determining psychosocial and/or mental harm.



IMMEDIATE ACTION IS NEEDED.

The surveyors must decide if corrective action must be taken right away so that the serious adverse outcome will not occur or recur.

- 3. Immediate action is needed.** The surveyors must decide if corrective action must be taken right away so that the serious adverse outcome will not occur or recur. Action must be taken even if the resident is no longer in the facility or has died.

CALLING IMMEDIATE JEOPARDY

Surveyors are required to use an “IJ Template” included in Appendix Q to determine if Immediate Jeopardy exists. The IJ Template identifies the three key components of IJ and requires surveyors to identify their substantiation of each as “yes/no,” and to provide a preliminary fact analysis to support the existence of a key component.

After determining the presence of Immediate Jeopardy, the survey team must consult with their State Agency (SA) for confirmation that IJ exists

and seek direction. In some cases, the CMS Regional Office (RO) is also contacted for confirmation. Surveyors then must immediately notify the nursing home administrator and deliver the completed IJ Template.

REMOVING IMMEDIATE JEOPARDY: THE REMOVAL PLAN

The facility must complete a “removal plan” which:

- 1) identifies the residents who have suffered, or are likely to suffer, a serious adverse outcome as a result of the noncompliance;
- 2) specifies the action the entity will take to change the process or system failure to prevent a serious adverse outcome from occurring or recurring; and
- 3) indicates the date the action will be complete.

The removal plan differs from a plan of correction because the facility does not have to correct all noncompliance – just the noncompliance contributing to the serious harm.

The State Agency, or the survey team in consultation with the SA, determines whether, if implemented appropriately, the removal plan will remove the Immediate Jeopardy. To remove IJ, surveyors must determine onsite that the nursing home took immediate action to prevent a serious adverse outcome from occurring or recurring and no resident is currently experiencing serious injury, serious harm, or serious impairment; and/or serious injury, serious harm, serious impairment, or death is not likely.

If the plan is not fully implemented, the IJ will continue until the removal plan is fully implemented and the likelihood of serious injury, harm, impairment, or death no longer exists. Offsite desk/telephone review for removal of IJ is not permitted.

Some key IJ triggers related to food and nutrition while not conclusive include:

- Improper feeding/positioning of an individual with known aspiration risk.
- Food supply that is inadequate to meet the needs of the individual.

- Failure to provide adequate nutrition and hydration resulting in malnutrition.
- Withholding nutrition and hydration without advance directive.
- Lack of potable water supply.
- Unsafe dietary practices resulting in high potential for foodborne illnesses.

REGULATORY AND BEST PRACTICE GUIDELINES

As noted earlier, the CMS State Operations Manual Appendix PP - Guidance to Surveyors for Long Term Care

Facilities is the primary resource used by surveyors in determining compliance. Within Appendix PP are examples provided to surveyors for Severity Level 4 Noncompliance related to food and nutrition such as:

F692

Assisted nutrition and hydration: Examples of Severity Level 4 Noncompliance: Immediate Jeopardy to Resident Health or Safety include but are not limited to:

- Repeated, systemic failure to assess and address a resident’s nutritional status and to implement pertinent interventions based on such an assessment resulted in continued significant or severe weight loss and functional decline; Repeated failure to assist a resident who required assistance with meals and drink resulted in or made likely the development of life-threatening symptom(s), or the development or continuation of severely impaired nutritional status;
- Dietary restrictions or downgraded diet textures, such as mechanical soft or pureed textures, were provided by the facility against the resident’s expressed preferences and resulted in substantial and ongoing decline in food intake resulting in significant or severe unplanned weight loss with accompanying irreversible functional decline to the point where the resident was placed on hospice; or
- The failure to provide an ordered potassium-restricted therapeutic diet resulted in evidence of cardiac dysrhythmias or other changes in medical condition due to hyperkalemia.

THE REMOVAL PLAN
differs from a plan of correction because the facility does not have to correct all noncompliance— just the noncompliance contributing to the serious harm.



REFERENCES

Scan QR code to view the list of resources for this article.

DEFINITIONS YOU SHOULD KNOW

It is important to know the definitions used in State Operations Manual Appendix Q, which include:

- **Likely/Likelihood** means the nature and/or extent of the identified noncompliance creates reasonable expectation that an adverse outcome resulting in serious injury, harm, impairment, or death will occur if not corrected.
- **Noncompliance** means failure to meet one or more federal health, safety, and/or quality regulations.
- **Psychosocial** refers to the combined influence of psychological factors and the surrounding social environment on physical, emotional, and/or mental wellness.
- **Recipient** is a person (patient, resident, or client) who receives care and/or services from a Medicare and/or Medicaid participating provider/supplier, or a patient or individual served by a laboratory subject to CLIA.
- **Recipient at Risk** is a recipient who, as a result of noncompliance, and in consideration of the recipient's physical, mental, psychosocial or health needs, and/or vulnerabilities, is likely to experience a serious adverse outcome.
- **Removal Plan/Immediate Action** includes all actions the entity has taken or will take to immediately address the noncompliance that resulted in or made serious injury, serious harm, serious impairment, or death likely.
- **Serious injury, serious harm, serious impairment, or death** are adverse outcomes which result in, or are likely to result in:
 - > death;
 - > a significant decline in physical, mental, or psychosocial functioning (that is not solely due to the normal progression of a disease or aging process); or
 - > loss of limb, or disfigurement; or
 - > avoidable pain that is excruciating, and more than transient; or
 - > other serious harm that creates life-threatening complications/conditions.
- **Substantial Compliance** is:
 - > One or more standard-level deficiencies with an acceptable Plan of Correction (PoC); or
 - > A deficiency cited at severity Level One for SNFs or NFs (i.e., Scope and Severity A, B, or C) with an acceptable PoC for B and C level deficiencies.

F803

Menus and nutritional adequacy: Examples of Level 4, immediate jeopardy to resident health and safety include but are not limited to:

- The facility only maintains a one day supply of foods and drink on hand to prepare and serve their planned menus. This supply did not include foods to meet the nutritional needs or choices of residents. Several residents reported that they were often hungry and were told by staff that no snacks or other food was available.
- Facility staff failed to follow a menu for a resident on a

puree diet. The wrong texture of diet was provided which resulted in a choking incident for this resident. This placed the resident at risk for potential death or brain damage due to lack of oxygen from choking.

F812

Food safety requirements: Examples of Level 4, immediate jeopardy to resident health and safety include but are not limited to:

- A 10-quart covered stock pot with 8 quarts of cooked beans was in the refrigerator. The internal temperature of the beans at the time of survey was measured at 68 degrees F. The cook stated these beans had been cooked the day

IMMEDIATE JEOPARDY (IJ) TEMPLATE

Date/Time IJ Template provided to entity: _____

IJ Component	Yes/No	Preliminary fact analysis which demonstrates whether key component exists
<p>Noncompliance: Has the entity failed to meet one or more federal health, safety, and/or quality regulations?</p> <p>If yes, in the blank space, identify the tag and briefly summarize the issues that lead to the determination that the entity is in noncompliance with the identified requirement. This includes the action(s), error(s), or lack of action, and the extent of the noncompliance (for example, number of cases). Use one IJ template for each tag being considered at IJ level.</p>	Yes/No	
AND		
<p>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?</p> <p>If yes, in the blank space, briefly summarize the serious adverse outcome, or likely serious adverse outcome to the recipient.</p>	Yes/No	
AND		
<p>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?</p> <p>If yes, in the blank space, briefly explain why.</p>	Yes/No	

Disclaimer: The findings on this IJ Template are preliminary and do not represent an official finding against a Medicare provider or supplier. Form CMS-2567 is the only form that contains official survey findings.

before and were going to be served at the next meal, unaware they had been improperly cooled. Improperly cooled beans are at risk for growing toxin-producing bacteria that are not destroyed in the reheating process.

- A roast (raw meat) thawing on a plate in the refrigerator had bloody juices overflowing and dripping onto uncovered salad greens on the shelf below. The contaminated salad greens were used to make salad for the noon meal.
- The facility had a recent outbreak of Norovirus after the facility allowed a food worker who was experiencing vomiting and diarrhea to continue preparing food.

CONCLUSION

Nutritional services are a vital part of quality of life and quality of care. Healthcare providers need to understand what Immediate Jeopardy (IJ) means and the impact to the facility residents and staff. It is imperative to review and

monitor systems and processes to maintain compliance with regulations and “best practice.” Certainly, the best plan is preventing any compliance issues during a survey. However, if an IJ does occur, then it is critically important to proactively respond to survey findings to achieve compliance. **E**



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CE QUESTIONS | NUTRITION CONNECTION



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This **Level II NUTRITION AND/OR FOODSERVICE** article assumes that the reader has a thorough knowledge of the topic. The desired outcome is to facilitate application of knowledge into practice by drawing connections among ideas and using information in new situations.

Reading *Food and Nutrition Can Trigger an Immediate Jeopardy in a CMS Survey* and successfully completing these questions online in the ANFP Marketplace has been approved for 1 hour of continuing education for CDM, CFPPs. To earn 1 CE hour, visit www.ANFPonline.org/market and select **Edge CE Articles** within the Publications section. Purchase the article and complete the quiz.

1. The Centers for Medicare and Medicaid Services (CMS) _____ - Guidance to Surveyors for Long Term Care Facilities (Rev. 211, 02-03-23) is the primary resource used by surveyors in determining compliance with regulations.
 - A. Federal LTC Manual Appendix AA
 - B. State Operations Manual Appendix PP
 - C. Department of Aging Requirements Appendix VET
2. Immediate Jeopardy (IJ) 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 _____.
 - A. Requirements
 - B. Suggestions
 - C. Protocols
3. Surveyors are required to use an "IJ Template" included in _____ to determine if IJ exists.
 - A. State law
 - B. Statute of appeals
 - C. Appendix Q
4. After determining the presence of IJ, the survey team must consult with their _____ for confirmation that IJ exists and seek direction.
 - A. Supervisor
 - B. Legal counsel
 - C. State agency (SA)
5. Within _____ are examples provided to surveyors for Severity Level 4 Noncompliance related to food and nutrition.
 - A. Appendix PP
 - B. The Food Code
 - C. The CMS Code Book
6. Food supply that is inadequate to meet the needs of the individual, and failure to provide adequate nutrition and hydration resulting in malnutrition are examples of:
 - A. Some key IJ triggers related to food and nutrition
 - B. Not allocating an adequate budget
 - C. Supply and demand issues
7. If an IJ does occur, then it is critically important to _____ respond to survey findings to achieve compliance.
 - A. Slowly
 - B. Proactively
 - C. Collectively



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