

IMMEDIATE JEOPARDY

NEW CMS STANDARDS FOR DETERMINING IMMEDIATE JEOPARDY AND WHAT THAT MEANS FOR YOU

IMMEDIATE JEOPARDY

THE OLD STANDARDS



THE NEW STANDARDS



The Essentials

The Regulation Has Not Changed – Only the SOM Guidance Has Changed

42 C.F.R. §488.301 Defines Immediate Jeopardy as:
“A situation in which the provider’s noncompliance with one or more requirements of participation has caused or is likely to cause serious injury, harm, impairment, or death to a resident.”

The Essentials

Old Appendix Q

- Harm
 - Actual
 - Potential
- Immediacy
 - Harm or potential harm likely to occur in the very near future if immediate action not taken
- Culpability

New “Core” Appendix Q

- Noncompliance that has
- Resulted in or is likely to result in serious injury, serious harm, serious impairment or death and for which
- Immediate action is necessary to correct the noncompliance

IJ TEMPLATE

New IJ Documentation Required

- Necessary in every case of IJ
- Requires fact analysis for each element of IJ
- Must be provided to the facility
- Must contain date and time
- Must identify the F-tag
- Supporting facts are *summarized*
- Only the 2567 is the official statement
- Should contain a brief explanation why the surveyor found that immediate action is necessary to correct the noncompliance

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> | <p>Yes/No</p> | |
| <p align="center">AND</p> | | |
| <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> | <p>Yes/No</p> | |

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.

WHAT ELSE IS NEW??



IJ CHANGES

- The word “potential” has been removed
- The necessity of showing “facility culpability” is removed
- Makes clear that the facts have to demonstrate *likelihood* of serious injury, harm, impairment or death (does not include a 49% vs. 51% balancing of facts, per training); i.e., “reasonably expected to occur”
- Makes clear surveyors are to evaluate the facts for “psychosocial harm” using the “reasonable person” concept
- No automatic IJ citations – including no cutting and pasting

IJ CHANGES

- Section III of Appendix Q sets forth key definitions
- *Serious injury, serious harm, serious, impairment or death* defined as outcomes likely to result in:
 - Death (noncompliance that causes or results in death is always immediate jeopardy)
 - A significant decline in physical, mental, or psychosocial functioning not solely due to disease progression

IJ CHANGES

- 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

IJ CHANGES

- Special note on “rogue” employees:
“in determining noncompliance an entity may state that they properly trained and supervised individuals and that it was a “rogue” employee that violated a regulation. If this occurs it should be cited as noncompliance despite an entity’s compliance efforts to train and monitor the employee. An entity cannot disown the acts of its employees, operators, consultants, contractors or volunteers or disassociate itself from the consequences of their actions to avoid a finding of noncompliance”
- Focus here is on *noncompliance*, still need facts to show IJ

Appendix Q – LTC Subpart

- Lists “triggers” that would result in an investigation to determine IJ
 - Abuse
 - Resident outcome/experience
 - Non-consensual sexual contact
 - Unexplained trauma, injuries, fractures
 - Unexplained bruising
 - Certain fears
 - Withdrawal, isolation, guilt, shame, etc.
 - Staff/facility action
 - Threats, intimidation, humiliation
 - Physical abuse of resident
 - Explicit photographs
 - Sexual assault
 - FAILURE TO INVESTIGATE ALLEGATIONS OR IMPLEMENT ABUSE POLICY
 - Confinement

Appendix Q – LTC Subpart

– Quality of Care/Quality of Life

- Resident outcome/experience
 - Unexpected death
 - Withdrawal, isolation, guilt, shame, etc.
 - Avoidable brain damage
 - Avoidable significant decline in physical, mental or psychosocial functioning
 - Inadequate supervision
 - Loss of limb, disfigurement
 - Avoidable excruciating pain
 - Pressure Ulcers
 - Off-premises elopement
 - Unsafe location on premises
 - Etc.

Appendix Q – LTC Subpart

- Staff/facility action
 - Inappropriate use of mechanical lifts
 - Serious medication errors
 - Failure to honor advance directives
 - Failure to ID significant change in condition
 - Unanswered call bells, either a pattern OR resulting in serious harm
 - Insufficient staffing numbers
 - Unsafe discharge
 - Untrained or insufficiently competent staff

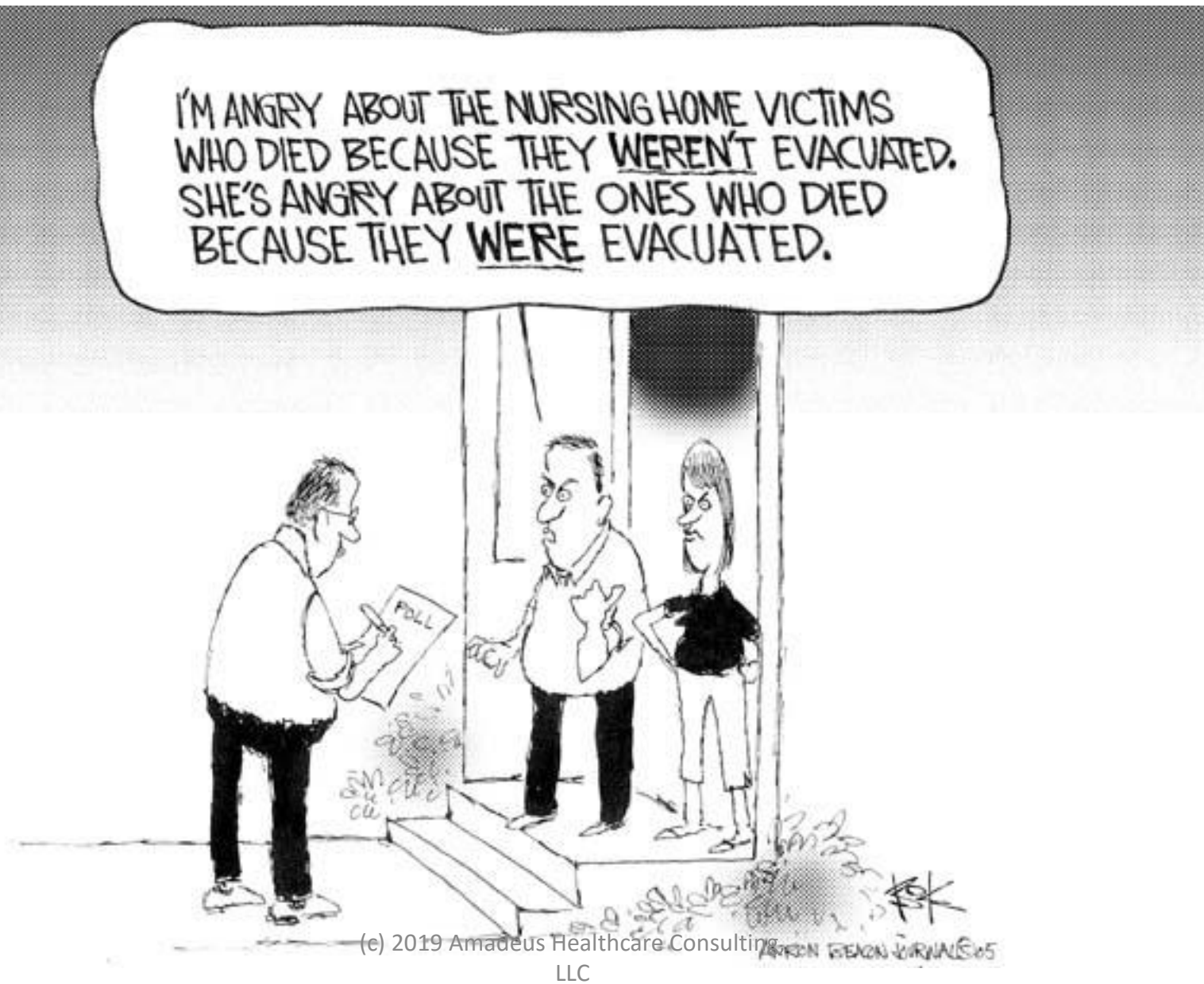
Appendix Q – LTC Subpart

- Infection Control
 - Resident outcome/experience
 - Uncontrolled spread of disease or infection
 - Needle-stick exposure to disease
 - Staff/facility action
 - Re-using needles, syringes or finger-stick devices for more than one resident

Appendix Q – LTC Subpart

- Environmental/structural
 - Resident outcome/experience
 - Chemical burn or 3rd degree burn
 - Unintended chemical exposure
 - Excessive exposure to heat or cold
 - Bed/side rail entrapment
 - Electrical shock
 - Staff/facility action
 - Non-payment of vendors or employees
 - Inadequate emergency preparation

SOME THINGS NEVER CHANGE





REPORTING

A QUICK WORD ABOUT EVERYBODY'S FAVORITE TOPIC

QUESTIONS?

CONTACT ME
WITH
ADDITIONAL
QUESTIONS
ANYTIME



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