

CMS Relaxes Immediate Jeopardy Standard for Nursing Facilities

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A recent directive to state surveyors eliminates mandatory financial penalties for nursing facilities if a survey reveals that a resident's safety was placed in immediate jeopardy.

The Centers for Medicare and Medicaid Services (CMS) last month released a memo to state surveyors, clarifying its often misunderstood "immediate jeopardy" standard. If the state surveyor finds that a resident was in "immediate jeopardy" but did not suffer actual injury or harm, a fine of the facility is no longer mandatory.

The term "immediate jeopardy" has been defined as "behavior that has caused, or is likely to cause, serious injury, harm, impairment or death to the resident." This definition does not require actual harm to the resident, and nursing facilities can be fined up to \$10,000 for each day of noncompliance. A finding that a resident suffered verbal abuse or threats from a staff person may result in civil monetary penalties even though the resident did not suffer any physical abuse.

Under the new standard, if the misconduct results in actual injury or harm to the resident, civil monetary penalties **must** be imposed. If there was no actual injury or harm, but a likelihood of harm, the nursing facility may be subject to a range of corrective measures, including in-service training, state monitoring, monetary penalties, temporary management or loss of reimbursement. In the most egregious cases, involving long-standing noncompliance, a facility's provider agreement could be terminated.

The revised CMS State Operations Manual explains:

Noncompliance may occur for a variety of reasons and can result in harm to residents or put residents at risk for harm. When facilities do not maintain substantial compliance, CMS may use various enforcement remedies to address a facility's responsibilities to promptly achieve, sustain and maintain compliance with all federal requirements. [We] are directing the immediate imposition of federal remedies in certain situations , and we recommend using the type of remedy that best achieves the purpose based on the circumstances of each case.

While this new CMS guidance may signal a relaxation of enforcement standards, it possibly could trigger more enforcement activity. Since state surveyors can now make a finding of "immediate jeopardy" without mandatory penalties, they may be more likely to cite a facility for less serious incidents. Providers should continue to monitor their facilities for both physical and verbal abuse, or other threatening conduct, to avoid an unwanted finding of "immediate jeopardy" and more importantly, to keep their residents safe from abuse.

If you have questions concerning these new requirements, please call me at (717) 399-1571 or email me at cchurchill@barley.com.

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Christopher J. Churchill

Partner

Tel: (717) 399-1571

Email: cchurchill@barley.com