

Frequently Asked Questions About Immediate Jeopardy

Rolf Goffman Martin Lang assists long-term care providers across the State of Ohio in preparing for and responding to surveys conducted by the Ohio Department of Health (ODH) and the Centers for Medicare & Medicaid Services (CMS).

We assist our clients with avoiding Immediate Jeopardy (IJ) citations, and responding to them when they are unfortunately cited.

Our Survey & Enforcement services include:

- Staff training and inservices
- Policy development
- Consulting during the survey
- Plans of correction
- Informal Dispute Resolutions
- Formal appeals to Administrative Law Judges

We have prepared the following Frequently Asked Questions (FAQs) About Immediate Jeopardy to assist skilled nursing facility providers in more fully understanding the importance of IJ citations.

This FAQ is intended to be informational only, and it is not intended to be nor should it be relied upon as legal advice. Indeed, Rolf Goffman Martin Lang Co., LPA. shall not be responsible for any actions taken or arrangements structured based upon this FAQ. The receipt of this FAQ by an organization that is not a current client of our firm does not create an attorney-client relationship between the reader and Rolf Goffman Martin Lang Co., LPA.



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What is “Immediate Jeopardy”?

Immediate jeopardy means a situation in which the facility’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 deficiencies are cited as J, K and L on the CMS Remedies Matrix.

The definition says “likely to cause” – does that mean that my facility can be cited even if no residents are actually injured?

Yes.

Do I need to be more concerned about an Immediate Jeopardy than a “regular” citation?

Definitely! When an Immediate Jeopardy exists, your facility is subject to more severe enforcement remedies.

“Fast-Track” Termination. Normally, your facility needs to get back into substantial compliance within 6 months of the exit date or its provider agreement will be terminated. In an Immediate Jeopardy situation, termination may be imposed in as few as 2 days (one of which must be a working day), but must be imposed no later than 23 days after the exit date. That means that your facility would need to remove the Immediate Jeopardy situation within 23 days of the exit date or its provider agreement would be terminated. Note that you do not need to fix the underlying deficiency, or any other deficiencies, within the 23-day period; you need to remove the serious and immediate threat. Once the IJ situation is removed, then the termination schedule will normally revert back to the normal 6-month track.

Increased Daily Fines. Normally, the daily fines that your facility could face range between \$50 to \$3000. For Immediate Jeopardy, the minimum daily fine is \$3,050, and it can be anywhere up to \$10,000 per day.

Shortened Time Frame for Imposition of Other Remedies. With the exception of state monitoring, which may be imposed immediately without notice, all other remedies may be imposed against your facility with only 2 days notice (one of which must be a working day). Those other remedies include temporary management, denial of payment for new admissions, directed inservice training, and a directed plan of correction.

Can my facility be cited at the Immediate Jeopardy level for Life Safety Code deficiencies?

Yes.

Can my facility be cited for Immediate Jeopardy for resident-to-resident altercations?

Yes. Indeed, resident-to-resident abuse has been cited many times in the past at the IJ level – especially for sexual aggression and injuries to the head.

I heard that getting multiple Immediate Jeopardy citations could hold up my Certificate of Need application. Is that true?

Yes. Under ODH’s current interpretation of the Certificate of Need (CON) law, if during the last 3 survey cycles a facility receives 2 or more “J” level deficiencies, or 1 or more “K” or “L” level deficiencies, then the SNF may be prohibited from moving beds to that facility.

Note that this interpretation only applies to non-appealable final determinations. Thus, the citations would not count toward the calculation if your facility was still appealing them.

What should I do if the surveyors tell me that they are considering citing my facility for an Immediate Jeopardy?

Attempt to convince them that a deficiency does not exist, and even if it does, it does not rise to the IJ level.

What should I do if the surveyors tell me that the facility is in Immediate Jeopardy?

If you are cited with an Immediate Jeopardy, your very first priority will be to have the jeopardy finding removed ASAP. This is known as “abating the jeopardy”. You will need to submit a written allegation that the IJ has been removed. This allegation must include a plan of sufficient detail to demonstrate how and when the IJ has been removed. You should try to do this before the surveyors exit.

Do we have to correct all of the facility’s deficiencies before we can allege abatement?

No. Remember that when you state that the jeopardy has been abated, you are alleging that the Immediate Jeopardy has been removed, not necessarily that all four points of a plan of correction have been implemented. So, once the immediate and serious threat has been removed and poses no more risk to the residents, then you can allege that the IJ has been removed.

I had an IJ at my facility. After the exit, we alleged that the IJ had been removed, and ODH came back in and took us out of jeopardy. After that, we implemented our plan of correction and alleged overall compliance. The surveyors just came back for the revisit, and unfortunately we still have a few minor deficiencies, and so we did not pass. The surveyors are telling me that we will now need special permission from CMS to authorize another revisit. Is this correct?

Yes, but this is not a special rule that applies only to IJ situations. In general, ODH is permitted to conduct 2 revisits without prior approval from CMS; a third revisit can only take place if CMS approves it. Unfortunately, in your situation, you did not abate the jeopardy prior to the exit. Thus, when ODH came back to verify that you removed the jeopardy, that counted as your first revisit. When ODH came back recently to verify your overall compliance, that counted as your second revisit. This is one of the reasons why it is very important to try to get ODH to abate the jeopardy before the surveyors exit.

Can ODH confirm that the Immediate Jeopardy was abated without a revisit?

No. Onsite confirmation of the removal of an IJ is required, and, as noted above, that onsite visit counts as one of your allowed revisits – even if all the surveyors do is verify that the IJ has been removed.

Can I appeal the Immediate Jeopardy citation?

Yes. You can appeal the underlying deficiency just like you could any other deficiency through the informal dispute resolution (IDR) process, and also through the formal appeal process to an Administrative Law Judge (ALJ). In addition, when an IJ is cited, you are allowed to dispute the severity level as well through the appeals process.

What should I do if an incident occurs that I think could potentially be cited as an Immediate Jeopardy?

Fix it immediately! Given the risk for potentially serious penalties that accompany an IJ, you will want to be in a position to qualify the deficiency for *past noncompliance*, if the incident gets cited. This will allow you to limit the penalties that may be imposed, and eliminate the need for a revisit if it is your only citation. Thus, you should make sure that your internal corrective action plan covers all four required parts of a plan of correction.