

MEDICAID COMPLIANCE NEWS

Hospitals Get More 'Immediate Jeopardy' Citations from Better-Informed Patients

Hospitals are increasingly likely to get nailed by Medicaid for "immediate jeopardy" (IJ) situations because recent changes to the program at the state and federal levels make it much easier for patients' friends and families to report providers' serious compliance lapses. But IJ situations don't have to be fiscally fatal, says one consultant. Hospitals need to know what kinds of compliance lapses can land them in hot water and must be prepared to take fast, focused action if state surveyors slap them with IJ citations.

"Part of the problem for hospitals is that patients and their loved ones are finding out how to complain better," explains Ruth Elzer R.N., M.S., the practice leader for accreditation and compliance at Cincinnati's Compass Clinical Consulting. "They're hearing more and more in the media about what's not supposed to happen. And there are new program rules that require hospitals to inform them when they come in that they have the right to complain — and to tell them how to do so, including providing them with a telephone number for the state's survey agency."

She adds: "So people are getting better at complaining and at giving sufficient information to tell surveyors exactly where to look. That's a degree of exposure to which I don't know if hospitals are prepared to respond."

The documents that surveyors use to inspect hospitals define IJ as "a crisis situation in which the health and safety of individual(s) are at risk" or, more specifically, "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." That last word represents another problem hospitals face when it comes to IJ designations, Elzer points out.

"The majority of the standards were written for nursing homes, not hospitals," she says, "and the majority of surveys are done in nursing homes, so the IJ language seems to be tilted toward those institutions. When it's applied to hospitals, it seems to be a little more open to interpretation, and hospitals often get frustrated because the people doing the surveying are more familiar with nursing homes."

Surveyors tend to look for longer-term problems, Elzer notes. But those types of issues may rarely arise in the context of the relatively shorter stays that characterize most hospitalizations.

Of course, there is some consistency in the IJ designating system. "It's a state that really doesn't change with time," Elzer says (see table, p. 3). "There are 10 categories of potential harm, and that list is solid. It's as set in stone as the government gets. So you could say that while there are trends over time and popular topics that come and go, the principles stay the same."

The categories of potential harm based on those principles are so broad, however, that they can be widely interpreted by state surveyors. Two issues that can result in IJ designations, for example, are failure to protect patients from abuse and failure to prevent neglect. "Some surveyors say that giving the wrong medication is abuse," Elzer notes, "or that failure to give an extra pillow at night to a patient who asks for one is neglect. Some deserve to be IJ-level findings, but others do not."

The "trends" she refers to represent another frustration for hospitals. "There does tend to be some regional variance in how people see things and some regional preferences for standards that surveyors like to focus on," she notes. Florida's Medicaid program, for example, recently decided to visit every home-health agency in the state looking for potential violations. And New York has added an extra layer of certification for ambulatory-surgery centers, while Ohio targets its surveys to the types of alleged infractions that generate the most patient complaints.

'Oh, My Goodness' Issues Are Priority

"Every state decides how to allocate its money," Elzer says. "But they all get their priorities from Washington, and complaints that represent immediate threats to the life and safety of patients will always be surveyors' No. 1 priority." After that, she adds, the "high-level, 'oh, my goodness' kind of complaints go first, followed by the 'we haven't looked at that issue in a while' complaints."

Complicating matters further, Elzer contends, is the increasing instability in the hospital work force, especially among nursing staffs. "The fact is the work force is aging," she says. "And the up-and-coming work force is trained differently."

Of course, consistency has always been a challenge for health care personnel managers. "Some organizations are bad at getting all the nurses to do the same thing, whether because of ineffective management or a lot of turnover," Elzer points out. "And hospitals are getting

caught off guard because they're not focusing on the basics in pursuit of more extraordinary initiatives." Organizations that chase carrots may, in other words, forget to focus enough on their patients.

That focus on common-sense, meat-and-potatoes patient care applies to fixing IJ situations, too. "Develop a plan that's a reasonable balance between what's required and the resources you have available," Elzer advises. "You don't need a plan that promises everything. You need to meet certain minimum standards. Surveyors want you to get to 100% compliance, not to wind up on *USA Today's* 'Top 100 Hospitals' list."

A simpler plan will be quicker to implement, too. IJ determinations allow just 23 days for fixes, after which a facility can lose Medicaid reimbursement.

"Get on it with as many resources as you need to

make it happen," Elzer stresses. "IJ is different from a usual survey finding. You're accused not of a misdemeanor or but of a felony. You have to show surveyors beyond a reasonable doubt that you're no longer guilty of it."

A hospital can write a detailed plan of action, but surveyors will want to see evidence that it will be implemented — and stay implemented.

A lot of IJ situations can be avoided by focusing on better one-on-one nursing management, Elzer advises. "You can put compliance in the policy, but how many times did you read the computer manual? People don't operate by policy and procedures. Make sure they know what's expected of them, and then hold them to it."

Contact Elzer at (513) 241-0142 or relzer@compassgroupinc.com. ✧

Surveyors Look for Evidence of Triggers of 'Immediate Jeopardy' (IJ) Situations

Triggers describe situations that will cause a surveyor to consider whether further investigation is needed to determine the presence of immediate jeopardy. These don't automatically equal IJ, however, so a surveyor is expected to investigate and use professional judgment to determine if the situation has caused or is likely to cause serious injury, harm, impairment or death.

Issue	Sample Triggers
Failure to protect from abuse	<ul style="list-style-type: none"> • Serious injuries such as head trauma or fractures • Nonconsensual sexual interactions • Staff yelling, swearing, gesturing or calling an individual derogatory names
Failure to prevent neglect	<ul style="list-style-type: none"> • Access to hot water of sufficient temperature to cause tissue injury • Unsupervised smoking by an individual with a known safety risk • Failure to adequately monitor individuals with known severe self-injurious behavior • Lack of security to prevent abduction of infants
Failure to protect from psychological harm	<ul style="list-style-type: none"> • Application of chemical/physical restraints without clinical indications • Presence of behaviors by staff such as threatening or demeaning that result in displays of fear or other sudden changes in behavior
Failure to protect from undue adverse medication consequences and/or failure to provide medications as prescribed	<ul style="list-style-type: none"> • Administration of contraindicated medications • Lack of diabetic monitoring resulting or likely to result in serious hypoglycemic or hyperglycemic reaction
Failure to provide adequate nutrition and hydration	<ul style="list-style-type: none"> • Food supply inadequate to meet the nutritional needs of the individual • Withholding nutrition and hydration without advance directive
Failure to protect from widespread nosocomial infections, including failure to maintain sterile techniques during invasive procedures	<ul style="list-style-type: none"> • Pervasive improper handling of body fluids or substances from an individual with an infectious disease • High number of nosocomial infections caused by cross-contamination from staff and/or equipment/supplies
Failure to correctly identify individuals	<ul style="list-style-type: none"> • Blood products given to wrong individual • Discharge of an infant to the wrong individual
Failure to safely administer blood products and safely monitor organ transplantation	<ul style="list-style-type: none"> • Improper storage of blood products • Incorrect cross-match and utilization of blood products or transplantation organs • Lack of monitoring for reactions during transfusions
Failure to provide safety from fire, smoke and environmental hazards and/or failure to educate staff in handling emergency situations	<ul style="list-style-type: none"> • Smoking in high-risk areas • Widespread lack of knowledge of emergency procedures by staff • Widespread infestation by insects/rodents • Use of nonapproved space heaters, such as kerosene, in resident or patient areas • Unsafe dietary practices resulting in high potential for food-borne illnesses
Failure to provide initial medical screening, stabilization of emergency medical conditions and safe transfer for individuals, including women in active labor, seeking emergency treatment	<ul style="list-style-type: none"> • Women with contractions not medically screened for status of labor • Absence of ER and OB medical-screening records • Failure to appropriately transfer an individual with an unstabilized emergency medical condition

SOURCE: CMS's *Medicaid State Operations Manual*. Visit www.cms.hhs.gov/manuals/downloads/som107ap_q_immedjeopardy.pdf.